

# Contract Law

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## Sources of Contract Law

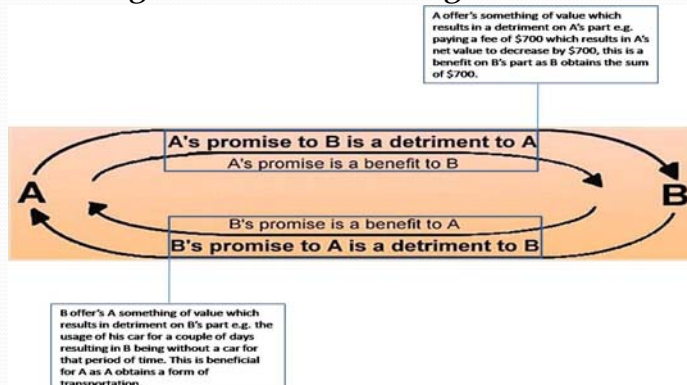
- Common Law – Judge-made law
  - Cases as precedent
  - Non-precedential cases as persuasive
  - Restatements of Law
- Statutory Law – legislature can choose to occupy the field
  - Uniform Commercial Code
  - Federal and State Consumer Protection Laws
  - Federal, State, Local Procurement Laws
- International Law
  - UN Convention on Contracts for Int'l Sale of Goods (CISG)
  - UNIDROIT

## Common Themes in Contract Law

- Immutable versus Default Rules
  - Freedom of Contract – most rules can be altered by private agreements
  - Immutability for public policy
- Efficient Breach
  - Breach of contract is not “immoral”
  - Breaching party needs to pay damages for breach
- Objective Theory of Contract Law
  - Formation, meaning, performance are guided by what a reasonable person would believe or expect.
- Good Faith and Fair Dealing are Implied Terms of Every Contract

## Contracts Require Consideration

- Bargained – for - Exchange



## Consideration Channels Certain Promises into Contractual Obligations

- Excludes Gift Promises
- Excludes Promises in Recognition of Past Benefits
- Excludes Contract Modifications Without New Consideration (UCC Rejects This)

Hypo: 2 neighboring merchants each have 10 parking stalls. One merchant generously promises that the other may use the parking stalls allotted to her at night, since she does not have evening operations.

Hypo: A merchant with a 2 year lease with a 10% rent increase in year 2, comes to the landlord at the end of year 1 and says that he cannot afford the rent increase. The Landlord agrees to maintain the rent at the same level as year 1.

## Common Law; judge-made law develops over time

- The Restatement of Contracts and the modern trend is to enforce some modifications that are unsupported by consideration if the agreed modification is on fair terms, agreed to in good faith, and responds to unanticipated circumstances.

Hypo: Angel has a fixed fee, five year contract to pick up the residential trash in Newport, RI. He has had these contracts for 30 years. Newport's growth has predictably been 2-4% a year. In year two of the contract, Newport has an unexpected population surge of 15%. The City agrees to a price increase. A taxpayer challenges the modification as lacking consideration.

## Promissory Estoppel

- Rise of promissory estoppel – detrimental reliance– in the Twentieth Century



## Requires a change of position

- Contracts with consideration are enforceable, even while executory
- Enforcement based on reliance requires that a promisor expects and induces reasonable, foreseeable reliance
- The remedy may be limited “as justice requires”

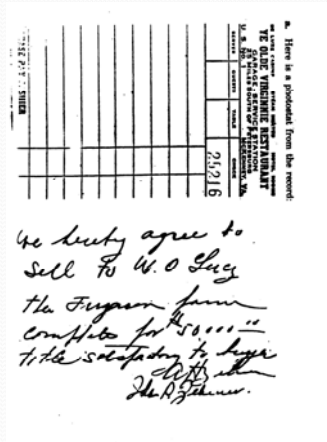
Hypo: Hawaii County promises Honolulu Police Department Officer Ravelo a position as a probationary (at-will) officer. After he quits his job and gets ready to move to the Big Island, Hawaii County refuses to hire him.

## The objective theory of contracts

- We no longer require a “meeting of the minds.”
- We look instead at the objective, reasonable person determination of formation and meaning



## Lucy v. Zehmer



## Contracts can usually be informal

- Oral contracts are okay
- No special form required



## Informality in Contracting



Embry v. Hargadine McKittrick Dry Goods, 105 S.W 777 (1907)

## Contract law only requires written evidence and a signature in a few kinds of contracts

- Statute of frauds
  - Land
  - Cannot be performed in one year
  - Contracts to answer for the debt of another
  - Sale of goods over \$500
- Riddled with exceptions
  - Part performance
  - Promissory estoppel



## Contract Interpretation

- Ambiguity
  - Plain, ordinary meaning of terms
  - Four corners of the document
  - Determined by court as a matter of law
  - Course of performance, course of dealing, usage of trade
  - Where there is any doubt or controversy as to the meaning of the language, the court is permitted to consider parol evidence to explain the intent of the parties and the circumstances under which the agreement was executed.

## Parol Evidence Rule

- Parol Evidence any oral or written words outside the four-corners of the document.
- Parol Evidence Rule – A rule that says if a written contract is a complete and final statement of the agreement between the parties, then evidence of prior or contemporaneous statements that alter, add to the agreement, or contradict the agreement are inadmissible.

## Policing the bargain

- Capacity doctrines (minority & mental incapacity)
- Duress & business compulsion
- Misrepresentation
- Unconscionability
- Undue influence
- Void as against public policy



## Damages

- Expectation damages – puts you in the position that you would have been had the contract been performed (includes direct and consequential damages)
- Reliance damages – compensates you for your injury; puts you back to where you were before you entered the contract
- Restitution – gives you back any benefit you gave to the other party

## Limitations on Damages

- Foreseeable at the time the Contract was made
- Proven with reasonable certainty
- Cannot recover for avoidable losses (Mitigation)
  - Wrongfully fired? Can't recover salary and sit at home all day!



Law prefers \$\$ damages -- not specific performance  
Cost to obtain contract as promised



Contract damages are not punitive



## No emotional distress damages

- Unless the breach causes direct physical injury
  - Example: Erlich v. Menezes (Cal. 1999) Family hires contractor to build dream home. Leaked, foundation cracked, total loss. Husband had a heart attack he was so distressed to learn that the house was a total loss. NO RECOVERY FOR EMOTIONAL DISTRESS. “The negligent construction did not cause physical injury. No one was hit by a falling beam.”
- Or the contract was of a unique nature where emotional aspects of the contract are apparent
  - Funeral cases
  - Medical cases (such as misdiagnosis of venereal disease)

## Contract Law Is Not Punitive

- Liquidated damages must be a reasonable forecast of damages that would be difficult to prove (not a punishment)
- Hawaii uses a 2-look approach (reasonable at time of contracting and in light of actual damages)
- Specific Performance
  - Not available in personal contracts – no coercion
  - Inappropriate if it will require judicial supervision
  - Exceptions: real property; money damages would be inadequate (i.e., can't replace it; can't prove damages)

*Mahalo nui loa!*

