Introduction

1. Introductions
2. Overview of Contract Law
3. Which Contract Law Applies?
4. How to Use the IRAC Writing Paradigm?
5. What Is a Contract, Anyway?
6. Why Does Contract Formation Matter?
7. Directions for Next Class

Introductions

- About Contracts Law
- Classroom Rules
- How to Prepare
- What to Expect
- What You'll Learn
- Tell Me About You!
About Contract Law

- Contract law regards private agreements, or "Private Ordering." 
- Economics teaches that people generally choose to do things that they prefer. 
- Thus, to the extent that contracts represent free choices, people contract when they expect that doing so will benefit them. 
- But, when should law courts enforce or refuse to enforce purported agreements?

Classroom Rules

- No Laptops
- Attendance Required

How to Prepare for Class

- Read assignments
- Cases
- Restatements
- UCC provisions
- Brief Cases
- Summarize restatements
- Answer “RC” questions
What to Expect in Class

- Lecture
- Case Discussions
  - Factual Rendering
  - Rule Extraction
- Critical Reasoning
  - Analysis
  - Outcomes

What You’ll Learn

- Issue spotting
- Rule recitation
- Applying facts
- Concluding

Let’s Talk About

- Why did you come to law school?
- What do you want to achieve?
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Overview of Contract Law

<table>
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<tr>
<th>Formation</th>
<th>Performance</th>
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<td>1. Promises</td>
<td>7. Content</td>
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<td>5. Defenses</td>
<td>11. Remedies</td>
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<td>6. Signature</td>
<td>12. Damages</td>
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</table>

Formation

<table>
<thead>
<tr>
<th>Promise</th>
<th>Assent</th>
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<tbody>
<tr>
<td>• Objective</td>
<td>• Offer</td>
</tr>
<tr>
<td>• Commitment</td>
<td>• Ads</td>
</tr>
<tr>
<td>• Illusory</td>
<td>• Bids</td>
</tr>
<tr>
<td>• Indefinite</td>
<td>• Acceptance</td>
</tr>
<tr>
<td>• Incomplete</td>
<td>• Mirror Image Rule</td>
</tr>
<tr>
<td>• Terminated</td>
<td>• Battle of Forms</td>
</tr>
<tr>
<td></td>
<td>• Timing</td>
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### Overview of Contract Law

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### Formation

<table>
<thead>
<tr>
<th>Consideration</th>
<th>Alternatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Bargain</td>
<td>- Promissory Estoppel</td>
</tr>
<tr>
<td>- Exchange</td>
<td>- Promissory Restitution</td>
</tr>
<tr>
<td>- Conditional Gifts</td>
<td>- Liability for Restitution</td>
</tr>
<tr>
<td>- Illusory Promises</td>
<td>-</td>
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<tr>
<td>- Pre-Existing Duty Rule</td>
<td>-</td>
</tr>
</tbody>
</table>

### Formation

<table>
<thead>
<tr>
<th>Defenses</th>
<th>Writing</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Incapacity</td>
<td>- MYLEGs</td>
</tr>
<tr>
<td>- Mistake</td>
<td>- Merchants</td>
</tr>
<tr>
<td>- Misrepresentation</td>
<td>- Part Performance</td>
</tr>
<tr>
<td>- Undue Influence</td>
<td>- Estoppel</td>
</tr>
<tr>
<td>- Unconscionability</td>
<td>- Signatures</td>
</tr>
<tr>
<td>- Public Policy</td>
<td>- E-Signatures</td>
</tr>
</tbody>
</table>

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### Performance

#### Meaning
- Express Terms
- Objective
- Construction
- Extrinsic Evidence
- Course of Dealing
- Performance
- Usage of Trade

#### Content
- Ambiguity
- Parol Evidence
- Implied Terms
- Express Conditions
- Implied Conditions
- Mutually Dependent Promises

### Performance

#### Breach
- Conditions
- Material Breach
- Total Breach
- Repudiation
- Insecurity

#### Defenses
- Other’s Breach
- Impossibility
- Impracticability
- Frustration

### Performance

#### Remedies: at Law
- Expectation
- Reliance
- Restitution
- Liquidated
- Punitive

#### in Equity
- Specific Performance
- Prohibitory Injunction
- Specific Restitution

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Sources of Contract Law

• Judicial Opinions → Common Law
• Restatements of the [Common] Law
• Statutory Law = UCC
• International Commercial Law

Which contract law applies?

• The Uniform Commercial Code (UCC) applies to __________.
  • See UCC § _____ for the __________.
• The Common Law applies to contracts for __________ and __________.
What are “Goods?”

• Goods are things that are ______ and ______ at the time of sale
• NOT ______
• NOT ______
• See UCC § ______ for the ____________.

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IRAC

<table>
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<th>Issue</th>
<th>Rule</th>
<th>Whether</th>
</tr>
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<tbody>
<tr>
<td></td>
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<td>Under</td>
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<tr>
<td></td>
<td></td>
<td>Here</td>
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<td></td>
<td></td>
<td>Therefore</td>
</tr>
</tbody>
</table>
Issue

• Whether this agreement is governed by common law [of the state of _______]
or the Uniform Commercial Code?

Rule

• Under __________, the UCC applies to transactions in _______. (“Unless the context otherwise requires, this Article applies to transactions in goods”)

Rule Explanation

• The UCC defines Goods in § 2-105 as “all things (including specially manufactured goods) which are _______ to the contract for sale.”
Application

• Here, are these things “goods?”
  • A happy puppy
  • Grandma’s silverware
  • Roofing services
  • The family farm
  • Oil rights under the family farm
  • Two million dollars
  • 0.0349 Bitcoins

Analysis

A happy puppy is a good because he is movable and identifiable at the time of sale: you can pick him out based on his fuzzy face and take him home with you!

Conclusion

• Therefore, since a happy puppy is a good the UCC governs this agreement.
Special Rules

• Sometimes, a special rule applies only to a certain set of facts. Such rules should only be mentioned when they apply.
• The UCC has a special rule in §____ that says the UCC pertains to sale of ______.
  (“A contract for the sale of...oil...is a contract for the sale of goods within this Article if they are to be severed by the seller...”)

Application of Special Rule

• Here, this contract’s predominant purpose is the sale of oil rights under the family farm.

Conclusion

• Therefore, since this is a contract for __, ______, ______, ______, ______.
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What is a Contract, Anyway?

• A contract is ______________________
  __________________________________
  __________________________________
  _________________________________
  Restatement (Second) of
  Contracts § 1 (1981)

Contract = Enforceable Bargain

• The formation of a contract requires a
  _______ in which there is a _________
  of __________ to the _________ and
  __________. Restatement (Second) of
  Contracts § 17(1) (1981)
3 Elements of a Contract

• Promise
• Assent
• Consideration

Promise

• A promise is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made.

Assent

• Manifestation of mutual assent to an exchange requires that

Restatement (Second) of Contracts § 2(1) (1981)
Consideration

(1) To constitute consideration, a performance or a return promise must be bargained for.

(2) A performance or return promise is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise. Restatement (Second) of Contracts § 71 (1981)

Alternatives to Consideration

• Whether or not there is a bargain a contract may be formed under special rules applicable to formal contracts or under the rules stated in §§ 82-94. Restatement (Second) of Contracts § 17(2) (1981)

Defenses to Formation

• Lack of Capacity § 12-16
• Mistake § 151-158
• Misrepresentation § 159-173
• Duress & Undue Influence § 174-177
• Public Policy § 178-199
The Statute of Frauds

• The following classes of contracts are subject to a statute, commonly called the Statute of Frauds, forbidding enforcement unless there is a written memorandum or an applicable exception: M.Y.L.E.G.S.

Restatement (Second) of Contracts § 110 (1981)

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Why Contract Formation Matters

• Contracts are promises that courts will enforce when a contract was formed but not performed in rare cases, courts will require a party to perform contractual duties
Assume that a Contract Has Been Formed…

- Mutual Assent
- Offer
- Acceptance
- Consideration
- No Defenses
- Statute of Frauds Satisfied

...and the contract says performance is due…

- Express Terms
- Canons of Construction
- Extrinsic Evidence
- Conditions Precedent
- Implied Terms
- Mutual Promises
- Circumstances
- Good Faith

...did the party fail to perform as required?

- Breach
- Material
- Total
- Repudiation
- Failure to Give Adequate Assurances
...can the party assert defenses to the failure?

- Other’s Breach
- Impracticability
- Frustration of Purpose
- Force Majeure

...or does a non-performing party have to pay damages?

- Expectation: $____
- Consequential: $____
- Incidental: $____
- Loss Avoided: $____
- Reliance: $____
- Restitution: $____

MONEY DAMAGES TOTAL: $____

A court will rarely require a party to specifically perform

- Specific Performance
- Prohibitory Injunction
- Specific Restitution
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