Contracts Part A

Contract signed by Orson Welles to direct play *Native Son*
**Definition**

**Contract**: legally binding agreement (promise or set of promises) creating an obligation (duty) to perform for the breach of which the law gives a remedy.
Elements

(1) agreement (2) between competent parties (3) based on genuine assent of the parties that is (4) supported by consideration, (5) made for a lawful purpose, and (6) in the form required by law, if any
Parties

Promisor: person who makes a promise; a binding promise creates duty for promisor, or obligor

Promisee: person to whom the promise is made; a promissee claims benefit of the obligation or duty under a binding promise, thus is an obligee

Parties to a contract stand in privity
Agreement arises when a person (offeror) makes an offer and the person to whom the offer is made (offeree) accepts.

Offer and acceptance required to form agreement

Parties to a contract must have intent to enter binding agreement
Jackson v. Connecticut Lottery Corporation

**Facts:**

- Jackson bought Connecticut Lotto “Quick Pick” ticket for 10/13/1995 drawing and won, but claimed his prize in person 3 days after final day allowed to claim prize.
- Ticket had instructions to claim prize online & warning: “Prize must be claimed within 1 year from the drawing date.”
- Connecticut Lottery Corp. (CLC) denied Jackson’s claim since 1 year had elapsed.
Procedural History and Issue:
- Jackson sued for breach of contract
- Issue: Is lotto ticket a contract?

Trial Court Ruling:
- Parties entered valid, unilateral contract by purchase of a Lotto ticket
- CLC made a prize offer, Jackson accepted offer
- Consideration ($) supported contract
Jackson v. Connecticut Lottery Corporation

**Trial Court Ruling:**

- One-year presentment rule incorporated into contract whether or not Jackson knew of it
- Public policy: without claim period, regulatory scheme of lottery system would be compromised
- Motion for summary judgment granted
Classification of Contracts

- Formal or informal
- Express or implied
- Bilateral or unilateral
- Valid, voidable, or void
- Executed or executory
**Informal Contracts**

- **Express**: agreement of parties manifested by written or oral words
- **Implied**: agreement not shown by words, but by acts and conduct of parties

Difference between express & implied contracts relates to manner of proving the existence of the contract, not the effect
Some terms are implied by law based upon the context of words that are otherwise vague, or by acts and conduct of the parties, or according to industry practice.

E.g., word “loan” on check will imply agreement to repay amount; going to work each day and receiving a paycheck implies an employment contract.
Implied Terms in a Contract

- Precision not required, especially with “magic words” (e.g., *good cause*)
- Implied terms often depend on industry

“sack” of flour means one thing to a consumer and another to restaurants
Implied Terms

• Indefinite terms implied by industry practice in a requirements contract (to buy all requirements of buyer from the seller) or outputs contract (producer must sell entire production to buyer)

Broiler farm makes requirements contract with feed producer and “poultry integrator” (e.g., Tyson) makes outputs contract with farm based on pound of meat produced
Valid or Voidable Contracts

- **Valid contract**: agreement binding and enforceable
- **Voidable contract**: agreement otherwise binding, but because of circumstances surrounding execution or lack of capacity, may be rejected at option of one party
- **Void contract**: agreement without legal effect because prohibited by law
Option contract: the parties make contract that gives one party absolute right to refuse or enter into 2nd contract later; the option holder generally pays $ for the right

e.g., stock option – buyer pays seller a *premiun* to have the right (but not obligation) to buy or sell stock for agreed price at a later date
Right of First Refusal: contract imposes duty to make first offer to party with right of first refusal.

- E.g., NBC had right of first refusal with Paramount for the TV show *Frasier*:
  - “If there is no agreement reached by March 1, 2001, Paramount will submit its last offer (‘Last Offer’) to NBC. If NBC rejects said Last Offer, Paramount is free to negotiate with third parties, subject to the matching rights of NBC set forth below.”
Sales Contracts

Uniform Commercial Code applies to sales contracts

- **Sale of Goods**
  - **No**
    - UCC applies
  - **Yes**
    - Common law applies

- **Is UCC rule on point?**
  - **No**
    - Rely on common law
  - **Yes**
    - UCC applied by analogy

- **Special rule for merchants**
The Quasi Contract Doctrine

An obligation imposed by law (i.e., “implied by law”) to prevent unjust enrichment of one party in certain circumstances

Example 1 (quantum meruit or value of labor): Plumber performs work thinking that work is justified under the contract. Other party, who receives benefit of work, denies payment claiming work unjustified.
Example 2 (reasonable price): Minor buys car and wrecks it. Contract void by law, *but* minor (or parents) must pay damages based on reasonable value of benefit conferred on minor.

17 year old driver killed
The Offer

A promise conditional on an act, return promise, or forbearance (refraining from doing something) and requires intent to create binding obligation
What is NOT an Offer

- **An invitation to negotiate** (e.g., seller sending out flyers, catalogs listing prices, or “for sale” ad in newspaper or yard) is not an offer.

- **Sales puffery** is not an offer: “HARRIER JET FIGHTER 7,000,000 PEPSI POINTS.”
Offer and resulting contract must be definite and certain and communicated to offeree cannot be vague re: major points

“I’ll paint your house until I’m tired” is vague, but “I’ll finish painting your house in three days” is definite

Headhunter Corp.’s promise to “place Mr. Z in a good job” is vague, but a promise to “arrange at least 10 interviews by Nov. 10 for jobs with annual salaries > $25,000” is certain
**Termination of Offer**

- **Revocation**: if revoked & communicated to offeree before offer accepted
- **Counteroffer**: any change to offer as part of attempt to accept offer is a counteroffer that rejects original offer
- **Rejection**
- **Lapse of time**: offer expires
- **Death or disability** of either party
- **Subsequent illegality**
Acceptance of Offer

Acceptance must be by clear expression by offeree of intent to be bound by terms of offer

- Only offeree may accept offer
- Silence may be acceptance
- Sending unrequested merchandise does not obligate payment
- If offer calls for performance, then performance is the acceptance

Offeror may specify manner of acceptance

- e.g., “notify me of your acceptance in writing”
REMEMBER!

OFFER + ACCEPTANCE → AGREEMENT
Consideration

Consideration is legal value given in return for a promise or performance.

- Generally, money or goods constitute consideration.
- Consideration can be a covenant not to sue or doing something not otherwise required to do.

E.g., *Gottlieb v. Tropicana Hotel and Casino*: participating in promotion that benefited the company was adequate consideration to form a contract.
A court will not question the fairness of the bargain if legally sufficient.

Law *generally* does not protect a person for entering into an unwise contract.

*Sarah and Thomas studied the proposed draft with full awareness that their adversaries were notorious for sneaking things into the fine print.*

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Promissory Estoppel

Court may apply doctrine of **promissory estoppel** if one party relies upon promise of other party to his/her detriment (**detrimental reliance**), but there’s no “contract”

- Court may force promisor to fulfill promise or pay damages
- E.g., XX Corp. tells Jack he has a job if he arrives on Oct. 22. Upon reasonable belief of a job offer, Jack quits his job, moves, and shows up on the 22nd. XX denies job offer, but court will hold XX liable for Jack’s damages for detrimental reliance.
Facts & Procedural History:

- Holt was a H.D. manager for four years
- H.D. assured employees that open-door policy meant complaints to management about supervisors was without penalty
- H.D. moved Holt and family to Conn., but soon after, Holt began to have difficulties with his immediate supervisor
- Holt told senior manager about problems
- Holt called Impact Line to begin formal complaint
- Six days later, Home Depot fired Holt
Holt v. Home Depot

Procedural History:
- Holt sued claiming promissory estoppel
- Jury found for Holt, awarding $467,000 damages
Holt v. Home Depot

Appellate Decision and Ruling:

Jury could reasonably find that H.D.’s promise not to retaliate against employees was so clear and emphatic that Holt could reasonably believe it was inviolable; evidence indicated Holt terminated because of complaint about supervisor.
The ability to understand that a contract is being made and the general meaning of the contract

Presumption: everyone has capacity

Only the party *without* capacity can avoid a contract by proving “status incapacity” (minor or mental incompetent by law) or “factual incapacity” (e.g., intoxication)
A minor can enter into any contract, but a contract a minor enters into is voidable at the option of that minor (disaffirmed) or may be “ratified” (affirmed).

A contract can be disaffirmed (expressly or impliedly) at any time during minority or for reasonable period after minor is of age.

Parents not liable for minor’s contracts unless statute states otherwise.
Stroupes v. The Finish Line, Inc.

Court ruled that a minor’s employment contracts, including arbitration agreements, were voidable by the minor, but not by the employer.

Minors may not avoid contracts if statutory exception exists.

Marriage, educational loans, insurance.
Intoxicated persons may lack contractual capacity at time contract is being made.

Contract either voidable or valid.

Courts look at objective indications to determine if contract is voidable.
Agreement must not call for performance of any act that is criminal, tortious, or otherwise opposed to public policy.

Good faith and fairness:
- parties must act in good faith to perform
- unequal bargaining power may be remedied
Unconscionable Contracts:

- a provision that gives one party too much advantage over other party may be deemed unconscionable
- fact dependent
Akon calls Taylor’s lawn mowing service to mow lawn weekly and Taylor agrees on the phone to mow lawn every Monday. Taylor mows Akon’s lawn the next Monday; he pays.

Express K?   Implied K?

Akon calls Taylor’s lawn mowing service and leaves a message on her machine that Akon wants his lawn mowed every Monday and will pay $25 each mowing. Taylor mows Akon’s lawn the next Monday and he pays her.

Express K?   Implied K?
Mr. Painter painted the house at 1010 College thinking it was 101 College which he was supposed to paint for SpongeBob.

Speed Racer, owner of 1010 College, saw Painter painting his house and yelled out the window to Painter, “Thanks!” Racer didn’t stop Painter since Racer’s house needed painting and he didn’t think he’d be forced to pay since he didn’t order the painting.

Contract?  Quasi K?  Painter’s negligence?

Painter painted Racer’s home thinking it was Sponge Bob’s home. Racer arrived home next day and found a bill from Painter to SpongeBob taped on his door.

Contract?  Quasi K?  Painter’s negligence?
Quiz

Obama buys a 1966 Corvette split-back from John, but John agrees to sell to Obama only if he can buy the car back for the same price if Obama sells the car in the future; Obama agrees.

Option K? First-refusal K?

Obama wants to buy John’s Corvette, but needs to look at another car first. Obama pays John to take his car off the market for one week until Obama can look at the other car. John agrees for $100.

Option K? First-refusal K?
Quiz

Angela, a minor, buys a car from Spike and promises to pay Spike in installments

- Valid K?  Void K?  Voidable K?

Angela, a minor, buys a car from Jeff Gordon Chevrolet and wrecks the car one week later, returning it to JG Chevy

Mr. Bigg, an executive from Charlotte, agrees to speak at UNCW and the written agreement states: “in exchange for a $100 fee and travel expenses.” Bigg rents a limo for a week, driving the LONG way (via Myrtle Beach) to UNCW and speaks, charging UNCW a $100 fee and $1000 for travel expenses.

Express K?  Implied K?
Valid K?  Void K?  Voidable K?
How much must UNCW pay Bigg, if any?
Stewie accepts a job offer from Toon Corp. and moves from NYC to Toon Town. When Stewie arrives for work, Toon Corp. tells Stewie they hired a Toon Town resident instead. This is an example of:
- Contract?
- Detrimental reliance?
- Revocation?

Toon Corp. sends an express mail letter to Stewie about a change in plans before Stewie moves. Toon Corp. knows Stewie received the letter, but Stewie moves anyway.
- Valid contract?
- Valid revocation?
- Valid acceptance?
Quiz

- The Bus. Law class offers to pay Johnny Depp “a fortune” if he will visit class someday in his pirate costume. Depp visits class one day, then demands his fortune. Must we pay?

- UNCW hires the cast of *The Office* to star in *Macbeth*. The dates are set, the fee agreed, but the arrangements for housing and feeding the actors is not specified. A valid or voidable contract?
“Well, here’s your problem, Mr. Abbott. You didn’t read the finest print.”