Contracts — Part B

Company Lawyer

This contract would be subject to a "reasonable man" interpretation.

Where is this guy? I'll squash him like a bug!

Okay, moving on...

It's you! I knew it!

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CONTRACT FORMULA

Capacity & Lawful Purpose

Offer & Acceptance

Genuine Assent & Consideration

CLPOAGAC = CONTRACT
Clearly,
Live People On A Gate Are Crazy
Cute Little Penguins Often Attack Giant Arctic Cats
To state a claim of breach of contract, the plaintiff must establish 1) the formation of a contract between the plaintiff and defendant, 2) performance by the plaintiff, 3) failure by the defendant to perform, and 4) resulting damages.
Genuine Assent

• Contract may be unenforceable if the parties have not genuinely assented to its terms because of:
  – Mistake
  – Misrepresentation
  – Undue Influence
  – Duress
Unilateral Mistake

• One party mistaken as to some *material fact*
• Unilateral mistake alters effect of contract if
  – other party to contract knows or should have known that a mistake of fact was made and benefits from the mistake
  – mistake due to inadvertent mathematical error in addition, summation, subtraction, division, or multiplication
Bilateral Mistake

• If *mutual* mistake as to some *material fact*:  
  – contract can be rescinded by either party or voided by both  
    • e.g., Dept. Store ordered 100 Dior *white* leather suits and Dior sent 100 *black* leather suits  
  – but, mistake of value is *not* sufficient to avoid contract  
    • Morgana thought the antique painting was worth $1,000 and wanted to return it because it was worth only the $50 she paid
Misrepresentation: 2 Types

• Negligent misrepresentation:
  – may affect contract depending on the state and the circumstances

• Intentional misrepresentation (fraud):
  – intent to deceive and reliance required
  – contract voidable by innocent party
  – misrepresentation of law, future facts, and statements of opinion aren’t fraud, unless person is an expert

• May be express or implied (including silence)
Rodi v. Southern New England School of Law

• **Facts:**
  - 1997: Rodi went to Southern New England School of Law (SNESL) which claimed that ABA accreditation committee recommended SNESL for “provisional accreditation”
    - Catalogue had disclaimer about accreditation
      - Same disclaimer as is currently on their webpage
  - Rodi intended to take New Jersey bar exam and the law requires bar applicants to hold law degrees from ABA accredited law schools
    - Accreditation critically important to Rodi
• **Facts:**
  
  – ABA denied accreditation during Rodi’s first year; Dean urged Rodi to remain
  – Rodi graduated, SNESL remained unaccredited, and Rodi was ineligible to sit for the New Jersey bar examination
  – Rodi filed suit against SNESL and others alleging fraudulent misrepresentation
  – Court granted SNESL motion to dismiss
Rodi v. Southern New England School of Law

• **Issue and Legal Reasoning:**
  – Had Rodi failed to state a claim?
  – Despite catalogue disclaimer, if SNESL representatives knew of non-accreditation probability, then positive statements about the likelihood of SNESL’s accreditation were actionably misleading
  – Reversed and remanded in favor of Rodi
  – Law school website (1/7/09) states: “The Law School makes no representation to any applicant that it will be approved by the American Bar Association prior to the graduation of any matriculating student.”
Pressure to Contract

• Claims of pressure are fact dependent:
  – *Undue influence* possible in relationships in which one party in a confidential relationship dominates the other; if undue influence proven, the contract is voidable
  – *Duress* (physical or economic) must be serious to void a contract, but may occur if party enters contract to avoid illegal threatened danger; however, hard bargains or statement of legal remedies do not constitute duress
  – *Adhesion contracts* (“take it or leave it” offers where bargaining is not really “arms length”) generally are not voidable merely because it benefits one party more
Thought Question

• Your landlord tells you that you will be evicted from your apartment or your rent must increase by $75 per month because your neighbors complain about your dog. If you agree to the increase, would the contract be void or voidable under the theory of duress?
SPECIAL DOCTRINES

The Statute of Frauds &
The Parol Evidence Rule
The Statute of Frauds

• To be enforceable, the following contracts must be in writing and signed:
  – Contracts involving interest in land
  – Contracts subject to “One year rule”
  – Collateral or Secondary Contracts
  – Promise made in consideration of marriage
  – Contracts for the sale of goods priced at $500 or more
The One-Year Rule

- A contract that cannot, by its own terms, be performed within one year from the date it was formed must be in writing to be enforceable.
  - Test: Whether performance is possible (even though unlikely) within one year.

Waiting for contract performance.
The Convention on the International Sale of Goods does not require that a contract be in writing to be enforceable.

- A contract need not take any particular form, and can be proven by any means.
• *Electronic Signatures in Global and National Commerce Act (E-Sign)* of 2000 provides that in interstate commerce transactions, an electronic signature has the same legal effect as a handwritten signature, and an electronic contract has the same legal effect as a traditionally-printed contract.

In cyberspace, clicking a submit button equates to your signature.
Parol Evidence Rule

• Rule: If the court finds that the parties intended their written contract to be a complete and final embodiment of their agreement, a party cannot introduce evidence of any oral agreement or promise made before the contract’s formation or at the time the contract was created.
Parol Evidence Rule

• Exception: evidence allowed if there are ambiguous terms, clear errors, or one party alleges deception by the other party
  – E.g., contract states “50 sacks,” so industry practice may be used to help clarify the type of “sack” intended by the parties
  – E.g., fraud
## Parol Evidence Rule

<table>
<thead>
<tr>
<th>Parol Evidence Rule</th>
<th>Applies when:</th>
<th>Provides that:</th>
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<tbody>
<tr>
<td></td>
<td>Parties create a writing intended as a final and complete integration of at least part of the parties’ contract.</td>
<td>Evidence of statements of promises made before or during the creation of the writing cannot be used to supplement, change, or contradict the terms of the written contract.</td>
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**But Parol Evidence Can Be Used to**

1. Prove consistent, additional terms when the contract is *partially integrated*.
2. Explain an ambiguity in the written contract.
3. Prove that the contract is void, voidable, or unenforceable.
4. Prove that the contract was subject to a condition.
5. Prove that the parties subsequently modified the contract or made a new agreement.
THIRD PARTY RIGHTS

• **Rule:** only Parties to a contract have rights and liabilities under the contract

• **Exception to rule:**
  – Third parties (not party to a contract) have rights in an Assignment or Delegation
  – Third parties also have rights in a *third party beneficiary* (TPB) contract
Elements of TPB

• When a contract is *intended* to *benefit* a 3rd party (not promisor or promisee), the third party is a *third party beneficiary* (TPB)
  – contract between Abe & Betty
  – an intent, either expressed by parties or in the contract, that the contract benefit Carl
  – if Abe or Betty breaches contract, then damages to Carl
  – Non-breaching party & Carl may sue
Beneficiaries

• Intended Beneficiary
  – Promisee intended to confer benefit on the beneficiary, including the right to bring suit to enforce the contract

• Incidental Beneficiary
  – Contract unintentionally benefits another person (e.g., spouse of intended beneficiary)
  – Incidental beneficiary cannot sue to enforce the contract
TPB Example

- Dad and Bob’s Construction contract to build Daughter and Son-In-Law a house. Contract specifies Daughter as beneficiary of the contract.
- Dad fully paid, but Bob gets angry at Dad and stops building before construction completed.
- Dad and Daughter (intended) could sue Bob to fully perform the contract (specific performance), but Son-In-Law (incidental) could not sue
Assignments

• An assignment is a transfer of rights
  – party making assignment is the assignor
  – party to whom assignment is made is the assignee
  – Note: some rights cannot be assigned

• When contractual right of obligee is to receive performance of the other party (obligor), the obligee can assign that right

• If obligor breaches the contract, the assignee of contract may sue directly on contract rather than in name of assignor
Assignments

Obligee/Assignor → Original Contract Formed → Obligor

Assignment

Assignee

Duties Owed After Assignment
Proper Assignment
Example

- Dan contracts with Bob’s Construction to build a house for $150,000
- Bob (assignor) assigns his rights to the $150,000 under the contract to his Bank (assignee), and requests in the contract that Dan pay the Bank the $150,000
- If Dan doesn’t pay Bank as agreed, Bob or Bank (or both) could sue Dan for payment (specific performance)
Managed Health Care Associates v. Kethan

**Facts & Procedural History:**

- Kethan signed an employment agreement with MedEcon that contained a non-compete clause and requirement that modifications be in writing.
- MHA purchased MedEcon and Kethan left to join First Choice, a customer with whom Kethan had developed a sales relationship.
- MHA sought an injunction to prohibit Kethan from working for First Choice, but the district court denied the suit and MHA appealed.
• Issue and Legal Reasoning:
  – First issue is whether MedEcon’s assignment of Kethan’s employment agreement modified the terms of his contract
    • An assignment does not modify the terms of the underlying contract, thus did not modify Kethan’s employment agreement
  – Second issue is whether a non-competition clause is assignable under Kentucky law
    • Yes
Managed Health Care Associates v. Kethan

- **Holding:**
  - Kethan was able to develop his business relationship with First Choice *because* MedEcon employed him and placed him in charge of the First Choice account
  - Kethan is precisely the type of employee for whom noncompetition clauses were designed
  - Reversed and remanded in favor of MHA
Delegation

• Contractual *duties* in a bilateral contract that are delegated to a 3rd party

- Obligee
- Original Contract Formed
- Obligor
- Duties Owed After Delegation
- Delagatee

• Note: some duties cannot be delegated
E.g., Effective Delegation

- Dan contracts with Bob’s Construction to build a house, but soon after, Bob becomes very ill and can no longer work (must close his company)
- Bob finds another contractor, BuildCo, which is as good or better than Bob’s Construction
- Dan agrees BuildCo can perform Bob’s duties
- Bob (delegator) delegates his obligation or duties under the contract to BuildCo (delegatee), who completes the job and is paid by Dan
Effect of Delegation

- Delegator remains liable
  - E.g., if BuildCo fails to perform, Bob is still liable for finishing the job under the contract

- Delegatee also liable for failure to perform
  - Essentially, delegation contract creates a third party beneficiary relationship in the obligee
    - E.g., if BuildCo fails, Bob and Dan can sue BuildCo
E.g., Improper Delegation

- UNCW hires Coldplay to perform in concert, but lead singer Chris Martin loses his voice.
- Coldplay (delegator) delegates their duties as band to Abba (delegatee), who appears to perform, much to the dismay of the audience that paid to see Coldplay.
- Lesson: unique duties can’t be delegated.
CONTRACTUAL PERFORMANCE

Foxtrot by Bill Amend

IF YOU BITE A JAWBREAKER AND IT BREAKS YOUR JAW, CAN YOU SUED THE CANDY COMPANY ANYWAY?

AND IF IT DOESN'T BREAK YOUR JAW, CAN YOU SUED THEM FOR FALSE ADVERTISING?

AND TO THINK SOME PARENTS ACTUALLY WANT THEIR KIDS TO BE LAWYERS.

AND WHAT ABOUT LIFE SAVERS... SUPPOSE YOU ATE ONE WHILE YOU WERE DYING...
Discharging the Contract

• A party may be discharged (released) from a valid contract by:
  – A condition occurring or not occurring
  – Full performance or material breach by the party
  – Agreement of the parties (including agreeing to new or different contract)
  – Operation of law (e.g., fraud, impossibility or impracticability of performance)
Conditions

- Possible future event, the occurrence or nonoccurrence of which will trigger the performance of a legal obligation or terminate an existing obligation under a contract

- Types of Conditions:
  - Conditions Precedent
  - Conditions Subsequent
  - Conditions Concurrent
Precedent v. Subsequent

- **Condition Precedent:** Brandy will buy David’s motorcycle *as soon as* Brandy obtains financing
  - If Brandy can’t get financing, she doesn’t have to buy the motorcycle

- **Condition Subsequent:** Cameron will work at the motorcycle plant *until* school begins again
Discharge by Performance

• The contract comes to an end when both parties fulfill their respective duties by performing the acts they have promised.

• Types of Performance:
  – Complete Performance
  – Substantial Performance (minor breach)
  – Performance to Satisfaction of One of the Parties or a Third Party
BREACH OF CONTRACT

Beyoncé Knowles hit with a $1.5 million lawsuit by Icon Entertainment for allegedly breaching a contract for her House of Dereon clothing line.

Case dismissed: no evidence of written contract.
Breach of Contract

• Breach of contract is the failure to act or perform in manner called for by the contract
• Breach leads to Remedies of:
  – Monetary damages
  – Rescission or Restitution
  – Specific Performance
  – Reformation
  – Recovery Based on Quasi Contract
An action for damages covers compensatory damages (even if “nominal”), whether direct (caused by breach) or consequential (happens because of the injured party’s circumstances)

punitive damages may be available if a tort is involved

mitigation of damages may be required
Rescission and Restitution

- There are technical differences, but rescission and restitution essentially cancel a contract.
- Goal is to restore parties to the positions each party occupied before the contract.

Crane collapses and cannot do the job for which it was hired. Rescinding the contract means that the general contractor does not have to pay the crane operator and crane operator isn’t liable for not doing the job.
Specific Performance

- Action for specific performance is a remedy calling for performance of the act promised in the contract
- Goal: force other party to carry out the terms of the contract
- Available at judicial discretion, and is not available if specific performance would impose undue hardship on defendant
Reformation

- Equitable remedy allowing a contract to be reformed or rewritten to reflect the parties true intentions
- Available when an agreement is imperfectly expressed in writing and parties agree to the reformation
Recovery via Quasi Contract

- Equitable theory imposed by courts to obtain justice (prevent unjust enrichment)
- Party seeking to recover under the doctrine of quasi-contract must show the following:
  - A benefit was conferred to the other party
  - Party conferring benefit did so with the reasonable expectation of being paid
  - The benefit was not volunteered or for free
  - Retaining benefit without paying for it would result in unjust enrichment of the party receiving the benefit
Injunction as Remedy

• Action for injunction is a request to the court to prevent or prohibit the other party from acting in a certain manner

• e.g., while an employee of Wilmington-based Surfin’ Safari, Sunny signed a non-competition agreement. Sunny quit Surfin’ Safari and set up her own surf shop around the corner from Surfin’ Safari. Surfin’ Safari could request the court for an injunction to stop Sunny from operating so close to their business.
Contract Provisions
Limiting Remedies

• Exculpatory clause:
  – states that no damages can be recovered even if one party is negligent
  – must be clear and unambiguous

• Limitation of liability clause:
  – limits the availability of certain remedies in the event of a breach of contract or a tort
  – must be conspicuous
PARKING COMPANY OF AMERICA • (714) 536-6889
Available for private parties

THIS CONTRACT LIMITS OUR LIABILITY—READ IT
This ticket is your only contract. It licenses you to park and lock one vehicle in a designated area at your sole risk and at posted rates. Operator does not guard or assume care, custody or control of your vehicle or its contents and is not responsible for fire, theft, damage or loss. Operator issues this ticket as your contract and for timekeeping purposes only. Only a license is granted hereby and no bailment is created. This is not a claim check. Cars left over 30 days may be impounded at owner's expense. This is your entire contract and no employee may modify or waive any of its terms. By your acceptance of it you agree to all foregoing terms.
DEAR MS. RIPA:

This letter will constitute the agreement (the “Agreement”) by and between Buena Vista Television (“BVT”) and My Poppy, Inc. (“Lender”) for the services of Kelly Ripa (“Artist”) in connection with BVT’s syndication of the one-hour daily series presently entitled “LIVE WITH REGIS & KELLY” (“Series”) and Lender’s furnishing the services of Artist in connection therewith and upon execution, this Agreement will supersede and replace any and all other agreements between Lender and BVT in connection with the Series and both parties will look only to the terms and conditions of this Agreement as governing the relationship between the parties and all previous agreements are effectively terminated as of the execution of this Agreement, excluding executory provisions of the previous agreement in connection with the Series episodes broadcast through the end of the 2002/2003 broadcast season.
• Cancellation
• Force Majeure
• Liquidated Damages
• Arbitration
• Governing Law/Choice of Forum
• Amendments
• You have reached the end of the formal presentation on the concepts of contracts.
• However, almost everything in business is contractually based, thus you will see “contracts” throughout the course!
• Next step: application of theories you’ve learned thus far.
Next Week

• Property Law

Publicity tours are part of the contract