

January 23, 2017

Professional Practice 544

Contract Law and Contract Formation

Michael J. Hanahan
Schiff Hardin LLP
233 S. Wacker, Ste. 6600
Chicago, IL 60606
312-258-5701
mhanahan@schiffhardin.com

CONTRACT LAW AND FORMATION

Theory of Contracts

- An agreement between two or more parties enforceable under law
- Purpose: To tie down the future (predictability)
- Involves a bargain or trade, a “meeting of the minds”

Types of Contracts, by Expression of Agreement

- Express contracts
 - Written contracts
 - Oral contracts
- Implied contracts – Implied contract in fact
- Quasi-contracts – Implied contract in law
 - Were you unjustly enriched?

Bilateral and Unilateral Contracts

- Bilateral contracts involve an exchange of mutual promises (or completed performance and a promise of future performance)
- Unilateral contracts are like a contest, with no promise of performance by the contestant

Types of Contracts as to Validity

- Valid contract
- Void contract
- Voidable contract
- Unenforceable contract

Elements of a Valid and Enforceable Contract

- Proper offer
- Proper acceptance
- Mutual consideration
- Absence of a valid defense to enforcement

Termination of the Offer and Timing of Acceptance

- Recipient may reject offer or make a counter-offer; both terminate the offer
- An offer terminates after a “reasonable” period of time
- Offer terminates as a matter of law upon death or insanity of the parties or destruction of the subject matter

Termination of the Offer and Timing of Acceptance (Cont'd.)

- The party making the offer may revoke the offer, effective upon communication to the other party
- Timing problems with acceptance/revocation
 - Offers and their revocation are effective when received by the second party
 - But acceptances are effective when made, even if not yet received by the party who made the offer being accepted
 - The “mailbox rule” and the risk of multiple acceptances

The Legal Concept of “Consideration”

- Giving or agreeing to give something of value
- Doing or offering to do something of detriment
- Examples of consideration:
 - Payment of money
 - Performing a service
 - Giving up ownership of something
 - Agreeing to forego anything that has the possibility of being valuable

The Legal Concept of “Consideration” (Cont’d.)

- “Illusory” promises do not constitute consideration
- Consideration may go to a third party (“third-party beneficiary”)
- A substitute for consideration: detrimental reliance/promissory estoppel

Defenses to an Otherwise Valid Contract

- Mutual Mistake of Fact
- Unilateral Mistake (*Typically Not a Defense*)
- Fraud
- Illegality
- Lack of Capacity to Contract

Defenses to an Otherwise Valid Contract (Cont'd.)

- Duress or Coercion
- Statute of Limitations
 - Ten (10) years for written contracts
 - Five (5) years for oral or implied contracts
 - Special statute for design/construction in Illinois §13-214
 - Four (4) years from discovery of problem
 - Ten (10) years from date of act or omission
- Unconscionability
 - Terms so extremely unjust or so overwhelmingly one-sided in favor of the party with the superior bargain power
 - Contrary to good conscience

Assignment of Rights and Delegation of Duties

- Assignment: Giving a contract right or duty to another party and being disconnected from the transaction
- Delegation: Same as an assignment, except that the “giver” stays involved in the transaction
- What can be assigned or delegated?
 - Personal duties usually cannot be assigned/delegated
 - General/generic duties usually can be assigned/delegated

QUESTIONS