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Professional Practice 544
Contract Law and Contract Formation

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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