

UNIVERSITY OF ILLINOIS
AT URBANA-CHAMPAIGN

Engineering Law

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Class 5



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Announcements

- Exam #1
 - Second half of this class
 - Review Exam next week
 - Questions on anything from classes 1-4?



Contracts and Torts - Part 2

- In Part 1, we reviewed the systems for creating laws and for adjudicating laws
 - Laws are legislative rules imposed on all
- However, we can also make our own rules!
 - We can agree with others to have certain rules applicable to us and our agreement can be enforced by the courts – Contracts!
 - Also, in addition to the explicit rules imposed on us by the legislature, we have other more general rules – such as the rule of “reasonableness” - imposed by tort law (negligence)



Contracts As Rules -1

- What is a legally binding contract?
 - (1) An agreement, (2) Between at least two parties, (3) That is enforced by a court
- Attempting enforcement vs. getting it
 - You never know for sure until the court rules
 - Many people think that they have a legally binding contract when they really just have an unenforceable agreement
- If you believe a contract binds you, then it does
 - Elephant Metaphor



Necessary For A Contract? - 1

- What is necessary to have an agreement that a court will enforce?
 - Does it need to say “Contract” at the top?
 - No - It’s just an agreement, typically don’t have to use “magic language”
 - Does it need to be written on paper?
 - No - Electronic transmission and storage is often considered more permanent than paper



Necessary For A Contract? - 2

- What is necessary to have an agreement that a court will enforce?
 - What if one person is just kind of joking around?
 - Maybe - Objective reasonableness created in the mind of the perceiver?
 - What if I just write someone an e-mail that says “unless you tell me different by Oct 1, then X”?
 - Maybe - Objective reasonableness based on custom, practice, communications, etc.



Origins of Contract Law

- Where does contract law come from
 - Historic Case Law
 - Restatement of Contracts (“Restatement”)
 - Uniform Commercial Code (“UCC”)
- Much of contract law is based on “reasonableness” – we want to enforce what the parties reasonably agreed to
 - Honor expectations of the parties
 - Honor practice in industry



Contract Law Is State Law - 1

- Historically, contract law was developed by the states in the state court system
 - Lots of regional variation in interpretation of claims and provisions
 - Meaning of “Reasonably Promptly” that was enforced by a particular state court could vary
 - Maybe - Within 1 day in Massachusetts
 - Maybe - Within 30 days in Alabama
 - Interpretation arose from what local community found to be reasonable and repeatedly enforced



Contract Law Is State Law - 2

- General practice over decades created a fairly uniform sample set of decisions so that you could generally predict what a court would enforce
 - This is called “Case law”
- Sometimes state legislatures would intervene and codify contract principles
- End up with fairly specific, but fairly local:
 - Interpretation of terms
 - Some agreements/clauses not enforceable
 - Requirements for binding agreement



Evolution of Contract Law - 1

- Locally varying contract law works well with local contracts
 - Example - Two Vermont Farmers – OK!
 - Both are socialized to have the same local community values
 - Both had the same expectation of those internalized values when they entered agreement
- But! - Now we have trains and roads and people of different communities making agreements
 - Example - New Yorker and Texan – Uh-oh
 - Very different values
 - Very different local laws and local case law
 - Very different expectations when entering the agreement



Evolution of Contract Law - 2

- So which law gets used to interpret and enforce the contract?
- A race to the courthouse! -
 - Remember – “full faith and credit”- Judgment from New York court must be enforced by Texas courts
- Courts arguing about jurisdiction – especially elected judges, as many state judges are
- State legislatures expanding state jurisdiction to defend their people
 - Make long-arm statutes as long as possible



Evolution of Contract Law - 3

- More recent unifying factors
 - Widely published national models for contracts
 - Restatement of Contracts
 - Uniform Commercial Code (UCC)
 - Choice of Law provisions in contracts
 - In general, the people with the money write the contracts and set the rules
 - Investors get what they want -and they use their local rules
 - Much, much, greater societal uniformity over different geographies with the advent of mass media – people nationwide trained to accept uniform standard
 - Today – still some state variations, but substantial degree of uniformity on basics



Restatement - 1

- Restatement (Second) of the Law of Contracts started in 1962, finished 1979
- Lawyers from many states got together to create a treatise with regard to how to interpret contracts
 - Tried to agree on what was “reasonable” nationwide
 - Non-binding, but very persuasive and implemented by many states
 - Sometimes only partially implemented by state legislatures or modified to reflect local case law



Restatement - 2

- Restatement is high-level, definitional law – Exs.
- §24. OFFER DEFINED - An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it
- §30. FORM OF ACCEPTANCE INVITED
- (1) An offer may invite or require acceptance to be made by an affirmative answer in words, or by performing or refraining from performing a specified act, or may empower the offeree to make a selection of terms in his acceptance.
- (2) Unless otherwise indicated by the language or the circumstances, an offer invites acceptance in any manner and by any medium reasonable in the circumstances.



Restatement vs. UCC

- Criticism - Restatement is too high-level, covers too many sensitive areas
 - Maybe we only need to support uniform system for sale of goods across state borders – not real estate or services, which states disagree about more extensively
 - Need specific enforcement of standard business terms
 - Need actual terms to be adopted as law by the states
- Enter UCC – Uniform Commercial Code
 - Deals with “personal property” (goods) rather than real estate or services – for those look to Restatement
 - Codified in all 50 states, so very uniform across the states – Restatement is much less uniform



UCC – Really Technical

Article 2, § 2-310. Open Time for Payment or Running of Credit; Authority to Ship Under Reservation.

- Unless otherwise agreed
- (a) payment is due at the time and place at which the [buyer](#) is to receive the [goods](#) even though the place of shipment is the place of delivery;
- (b) if the [seller](#) is required or authorized to send the [goods](#), the seller may ship them under reservation, and may tender the documents of title, but the [buyer](#) may inspect the [goods](#) after their arrival before payment is due unless the inspection is inconsistent with the terms of the [contract](#) (Section [2-513](#));
- (c) if tender of delivery is agreed to be made by way of documents of title otherwise than by paragraph (b), then payment is due regardless of where the goods are to be received (i) at the time and place at which the [buyer](#) is to receive delivery of the tangible documents, or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and
- (d) if the [seller](#) is required or authorized to ship the [goods](#) on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.



UCC- 2

- Pretty much any “good” that you have ever purchased has been governed by the UCC
 - Any personal, portable thing
 - Eggs to clothes to iPads
- If you work at a company that sells products/goods, then they will also be governed by the UCC



Restatement vs. UCC

- Some cases would be decided differently based on whether the Restatement or UCC is used to interpret the law
- How do I know which one is going to be used to interpret my contract?
 - Quick and Dirty – Are you a merchant selling goods? If yes, then UCC. Otherwise Restatement, especially if real estate or personal services
 - More on this next class



- Questions on anything from classes 1-4?

- **Exam #1**

