

## BUL 3310 FINAL EXAM REVIEW

### CH.9

#### Requirements of a valid contract:

1. Agreement- consists of an offer and an acceptance.
2. Consideration- any promises made by the parties to the contract must be supported by legally sufficient and bargained-for consideration.
3. Contractual capacity- must be recognized by the law as possessing the characteristics that qualify them as competent parties.
4. Legality- the contract's purpose must be to accomplish some goal that is legal and not against public policy.

#### Defenses to the enforceability of a contract:

1. Voluntary consent- parties must enter into the agreement voluntarily without any undue influence, fraud, mistake, or duress.
2. Form- contract must be in whatever form the law requires. Aka written vs non-written.

#### Contract formation:

##### Bilateral vs. Unilateral

- Bilateral contract- if the offeree can simply accept by promising to perform. "promise for a promise"
- Unilateral contract- offer is phrased so that the offeree can accept the offer only by completing the contract performance. "Promise for an act."

##### Formal vs. Informal

- Formal contracts- contracts that require a special form or method of creation to be enforceable. Any negotiable instruments, such as checks, drafts, promissory notes, bills of exchange, certificates of deposit, and letters of credit, are formal contracts.
- Informal contracts- include all other contracts, no special form is required as the contracts are generally based on their substance rather than form.

##### Express vs. Implied

- Express contract- terms of the agreement are fully and explicitly stated in words. Can be for either oral or written.
- Implied contract- the conduct of the parties, rather than their words, creates and defines the terms of the contract.

#### Contract Enforceability:

- Valid contract- has the elements necessary to entitle at least one of the parties to enforce it in court.
- Voidable contract- a valid contract but one that can be avoided at the option of one or both parties.

- Unenforceable contracts- one that cannot be enforced because of certain legal defenses against it. It is a valid contract that has been rendered unenforceable by some statute or law.
- Void contracts- no contract at all. None of the parties have any legal obligations if a contract is void.

#### Requirements of the offer:

- Offer- a promise of commitment to do or refrain from doing some specified action in the future.

Three elements are necessary for an offer to be effective:

1. The offeror must have a serious intention to become bound by the offer.
2. The terms of the offer must be reasonably certain, or definite, so that the parties and the court can ascertain the terms of the contract.
  - o Definiteness of the terms must include:
    - o The identification of the parties
    - o The identification of the subject matter of the contract
    - o The consideration to be paid
    - o The time of payment, delivery, or performance.
3. The offer must be communicated to the offeree.

#### Termination of the offer:

- The power of acceptance can be terminated either by the actions of the parties, such as revocation, rejection, or a counteroffer.
- Counteroffer- a rejection of the original offer and the simultaneous making of a new offer.
- Mirror image rule - requires the offeree's acceptance to match the offeror's offer exactly. "Mirror the offer."
- The power of acceptance can also be terminated by operation of law, such as a lapse of time, destruction of the subject matter, death or incompetence of the offeror or offeree, or supervening illegality of the contract.

#### Acceptance:

- Acceptance- a voluntary act by the offeree that shows the assent to the terms of an offer. May consist of either words or conduct.
- The Mailbox rule- if the authorized mode of communication is the mail, an acceptance becomes valid when it is dispatched (placed in the control of the USPS), not when it is received by the offeror.

#### Consideration:

- Consideration- usually defined as the value (such as cash) given in return for a promise or in return for a performance. Broken down into two parts:
  1. Something of legally sufficient value must be given in exchange for the promise
  2. There must be a bargained-for exchange.
- To be legally sufficient, consideration may consist of the following:
  1. A promise to do something that one has no prior duty to do

2. The performance of an action that one is otherwise not obligated to undertake.
  3. The refraining from an action that one has a legal right to undertake (called a forbearance)
- Bargained-for exchange is what distinguishes contracts from gifts. In other words, the item of value must be given by the offeror in return for the promise or performance of the offeree.

#### Agreements that lack consideration:

- Preexisting duty- a promise to do what one already has a legal duty to do does not constitute legally sufficient consideration. Unforeseen difficulties may allow an exception to this rule depending on the ruling of the courts.
- Past consideration- promises made in return for actions or events that have already taken place are unenforceable. Therefore, past consideration is no consideration.

#### Contractual Capacity:

- Contractual capacity- the legal ability to enter into a contractual relationship.
- Capacity may be lacking in the following situations:
  1. Minors- any contract entered into by a minor is voidable at the option of that minor.
  2. Intoxication- condition in which a person's normal capacity to act or think is inhibited by alcohol or some other drug. A contract entered into by an intoxicated person can be either voidable or valid (Courts rarely permit contracts to be avoided due to intoxication)
  3. Mental incompetence- contracts made by mentally incompetent persons can be void, voidable, or valid. They're void when the person has previously been deemed mentally incompetent. They're voidable when the person was mentally incompetent at the time the contract was formed, but has not been previously judged incompetent. They're valid if the person had capacity at the time the contract was formed, this is referred to as a "lucid interval" or a temporary period of sufficient intelligence.

#### Legality:

- Any contract to commit a crime is in violation of a statute and is thus unenforceable
- A lender who commits usury, which is lending at an interest rate above the legal maximum, renders the contract unenforceable.
- Gambling contracts are also illegal and thus void.

#### Contracts contrary to public policy:

- Contracts in restraint of trade usually adversely affect the public policy favoring competition in the economy.
- Unconscionable contracts or clauses- bargains that are so unscrupulous or grossly unfair they're considered to be "void of conscience"
- Exculpatory clauses release a party from liability in the event of monetary or physical injury no matter who is at fault.

#### Statute of Frauds: