

Lecture 6, Feb 9, 2026

Contracts

- *Contracts* set out the rights, responsibilities, and liabilities of parties
 - Can be used to limit tort liability, e.g. *Swift v Tomecek Roney Little & Associates Ltd.*
 - Can be oral instead of written, except for some special types (e.g. mortgages, guarantees)
 - * e.g. buying groceries at the store counts as a contract
 - Can have express (explicitly stated) or implied terms (e.g. a vehicle purchased will work)
 - Are enforceable
- Only parties privy to the contract can enforce its terms – if someone did not sign, the contract cannot be enforced for them
- Contracts require 5 elements; lack of any of these elements invalidates the contract
 1. Offer and acceptance
 - Acceptance of a contract must be unequivocal (i.e. unambiguous)
 - Counteroffers count as rejections of the original offer, and an offer to replace the original contract
 - * The original offer cannot be accepted again, since the counteroffer implies its rejection
 2. Capacity to contract (e.g. age, mental disabilities, but also who can sign within a corporation/partnership/etc)
 - Transient situations (e.g. being drunk) can be difficult to prove whether there was sufficient capacity
 - Sole proprietorships contract in the name of the proprietor
 - Corporations can contract since they are persons
 - * The people with capacity to sign contracts is often outlined in the articles of incorporation
 - Partnerships are formed by a contract
 - Each partner has *ostensible authority* over other partners and the partnership, where if they sign a contract, others could be bound by it
 - * Partnership agreements can outline who can sign contracts to mitigate this
 3. Consideration (parties have to be providing something of value to each other)
 - The value provided does not necessarily have to be equal
 - Note that giving up something (e.g. waiving the right to sue) counts as consideration
 4. Intention to create legal obligations
 - This is also related to capacity
 5. Lawful purpose
- Intent to create a contract is determined by the court based on course of conduct and/or written terms
 - An “agreement to agree” is not a contract
 - Letters of intent or memorandums of understanding (MOU) are not contracts and are not legally enforceable
 - * If one party treats it as enforceable and act upon it, the court may determine it as enforceable based on the actions and knowledge of parties
- *Invitations to Treat* are calls for offers (e.g. advertisements, RFPs) and not offers
 - e.g. checking out at a cashier is inviting the cashier to offer
 - Not all contractual relationships need an invitation to treat, but the offer and acceptance are necessary
 - Generally, if saying “yes” results in a contract, then it’s an offer, otherwise it’s an invitation to treat
- A *tender* is an offer to bid or submit a quote on a project or contract (e.g. an RFP)
 - Tenders are usually done through a formal process
 - The bid or quote may be an offer which results in a contract if accepted
 - * Often this is not the case however (e.g. multiple rounds of bid selection)
- Contracts can end in one of two ways:
 - Being void or voidable (the contract was never valid)
 - * *Duress* is when a party is being forced to enter a contract against their will

- * *Unconscionability* is when the contract was found to not have a lawful purpose
- * Mistake and misrepresentation
- Through termination of the agreement
 - * *Frustration* of a contract means that it can no longer be fulfilled
 - * Full and complete performance
 - * Termination clauses
 - * Breach (intentional or unintentional): when one or more of the parties fail to meet their obligations pursuant to the contract
 - Damages are awarded to compensate for the breach (monetary or other remedies, e.g. ordering specific performance/actions, in the case where the need is unique)
 - Can also be an injunction or declaratory order (the court setting out the rights and obligations of a party)
 - Defences can include:
 - * Mitigation: the innocent party must have taken reasonable steps to minimize their loss
 - * Remoteness: only damages foreseeable when the contract was formed are considered
 - * Causation: only damages caused by the actual breach (and not speculative losses) are considered
 - What constitutes a breach is based on the facts, and is often disputed
 - The first party to breach the contract is the one responsible; once the first breach occurs, the contract ends, so the parties no longer have obligations after that
 - The test for whether a breach is substantial enough (a fundamental breach) amounts to whether it deprives the innocent party of “substantially the whole benefit of the contract”
 - The contract can outline fundamental terms that if unfulfilled, constitutes a fundamental breach
 - A breach can occur when there is an actual breach, or when one party says that they will be unable to perform the obligations at some point in the future (*anticipatory breach*)
 - The innocent party can claim damages at the time of notice, or when the other party actually stops performing the obligations
- Changes to contracts creates a new contract or contractual obligations, so the same principles regarding contract formation applies
 - Amendments still need fresh (not in the original contract) and mutual consideration; if one party requests more money to be offered, they must offer something additional in return
 - The original contract can set out terms on how the contract can be changed
- *Waiver* is when one party relieves the other party from performing all or part of the contract
 - *Estoppel* is the principle that the party waiving the right can no longer rely on it
 - This requires clear expression that the waiving party intended to wave its rights, and that the party benefiting from the waiver relied upon that waiver
- Exclusion clauses exclude certain damages or remedies
- Limitation clauses limit liability (e.g. to a low value) but do not entirely eliminate it
- Consequential damage clauses restricts the ability to claim for lost profits or other damages indirectly related to the claim being made
 - e.g. a developer building a website for a large company can use this to avoid being liable for any profits lost resulting from the website not functioning