

Legal Presentation

October 4, 2007





Topics Covered

1. Basic Principles of Contract Law
 2. Practical Contract Drafting Issues
 3. Upcoming Corporate Restructuring
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Basic Principles of Contract Law

► Contract Formation

What is a contract?

A contract is an agreement between two parties that a court will enforce.

Contracts may express or implied –

- Express contracts arise from the agreement of parties, either oral or written
 - Implied contracts arise from the conduct of parties
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Basic Principles of Contract Law

► Contract Formation

Four Elements of Contract

1. **Offer** – promise to do something or refrain from doing something
 2. **Consideration** – something of value promised in exchange (e.g. money, services, or an agreement to not do something)
 3. **Acceptance** – Unambiguous acceptance of offer; if does not mirror terms offer, generally considered rejection and counteroffer
 4. **Mutuality** – “meeting of the minds”; must both understand and agree to basic terms of agreement
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Basic Principles of Contract Law

► Breach of Contract

What is a breach of contract?

A failure, without legal excuse, to perform any promise in a contract.

How is a breach of contract analyzed?

1. Did a valid contract exist?
 2. What did contract require of parties?
 3. Did the breach of contract occur?
 4. If so, was the breach material?
 5. Does the breaching party have a legal defense?
 6. What damages were caused by the breach?
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Basic Principles of Contract Law

► Breach of Contract

Material breach

- A material breach goes to the essence of the contract—the non-breaching party did not receive a fundamental benefit he bargained for
 - If a breach is material, non-breaching party may suspend performance under the contract and has the immediate right to exercise remedies
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Basic Principles of Contract Law

► Breach of Contract

Minor breach

- In a minor breach, the non-breaching party still receives the fundamental benefits it bargained for
 - If a breach is minor, the non-breaching party must continue to perform under the contract and may seek damages
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Basic Principles of Contract Law

► Breach of Contract

Breach of Contract Example

- Contract calls for performance of certain services by specific date
 - Generally, a minor breach if party performs within a “reasonable period of time”
 - “Time of the essence” exception—delay in performance becomes a material breach
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Basic Principles of Contract Law

► Breach of Contract

Valid Defenses to Breach of Contract

1. Violates public policy (e.g. no real estate license)
 2. Impossibility (e.g. install equipment in building that burns down)
 3. No consideration
 4. Contractual limitation of liability (e.g. liability limited to fees paid for services)
 5. Accord and satisfaction (alternative performance accepted)
 6. Mistake
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Basic Principles of Contract Law

► Breach of Contract

Mistake

- Mutual mistake—both parties made same mistake in contract terms or assumptions
- Unilateral mistake—one party was mistaken about a material term and other party knew or should have known of mistake

Example: Buyer thinks they are buying a Model A home (and Seller knows of Buyer's intent), but Buyer keeps mistakenly referring to a Model B home and inserts the name of the Model B home in their contract

Basic Principles of Contract Law

► Remedies

Two types of remedies

- Legal Remedies, or damages
 - Equitable Remedies
 - Specific performance
 - Rescission
 - Reformation (“blue-penciling”)
 - Injunctive relief
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Basic Principles of Contract Law

► Remedies

Types of damages

Compensatory Damages

- General (or actual) damages
- Special (or consequential) damages

Damages that do not directly result from the breach but result from special circumstances or conditions; to obtain, must prove that breaching party knew of special circumstances at time of contract

Punitive Damages

Basic Principles of Contract Law

► Remedies

Duty to Mitigate

Generally cannot recover damages that could have been reasonably avoided or substantially minimized

One exception: commercial leases—if tenant vacates, no obligation to re-lease—may keep lease in place and collect rent

Basic Principles of Contract Law

► Other Important Principles

Statute of Frauds

Requires that certain contracts be in writing and signed by the party against whom enforcement is sought

Examples

- Contracts for the purchase or sale of real estate
 - Real estate leases with term greater than 1 year
 - Leases of goods with value over \$1000
 - Contracts for services that can't be performed in less than one year
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Basic Principles of Contract Law

► Other Important Principles

Parol Evidence

May not introduce evidence of prior or contemporaneous negotiations that contradict, modify or vary the terms of a written contract intended to be complete and final expression of parties' agreement

Exceptions:

1. Parties intent regarding ambiguous terms in contract
 2. Related agreement that does not contradict or vary
 3. Subsequent agreement
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