

## Business Law 210: Unit 4 – Chapter 10 Contracts: Nature and Terminology

Law and the Legal Environment of Business

[Professor Scott Bergstedt]

**Slide #: 1**

**Slide Title:** Slide 1

This illustrates how your instructor wants his contracts to look.

*[Image of a comic]*

**Audio:**

Today we'll be talking about contracts. This first slide illustrates how your professor likes to see his contracts look. That is, I want each paragraph to have its own heading so you can run down the contract, look, and find exactly what you want and not have to read each and every part or see what's hidden here and there. That being said...

**Slide #: 2**

**Slide Title:** Chapter 10 Contracts: Nature and Terminology

Chapter 10 Contracts: Nature and Terminology

**Audio:**

...this is the unit on contracts. It covers a lot of material, and the book is a little bit more detailed than I would cover had I written the text for this class in particular. So, it would be important to pay attention to the slides and to the lecture because what is most important to me is more likely to be on the exam than anything else. The other aspect of contracts to recognize is that contracts is really a bunch of rules. It's not real exciting and it's not real interesting and you just have to learn it. Sorry, but that's the way it is.

**Slide #: 3**

**Slide Title:** § 1: Overview of Contract Law

§ 1: Overview of Contract Law

- Sources of Contract Law.
  - Common Law for all contracts except sales and leases.
  - Sale and lease contracts—Uniform Commercial Code (UCC).
- Function of Contract Law.
  - Provides stability and predictability for commerce.

**Audio:**

What is a contract? The law of contracts is covered in two different ways. One is by common law and the other is by statutory law. For the most part, common law contracts, the part that we'll cover at the first of this unit, are the laws that have been handed down over the years and years and years as far as what a contract is, what's required for a contract, and how to enforce it. The other part is the Uniform Commercial Code which we'll cover in the last part of this unit.

The Uniform Commercial Code covers the sale of goods. So, any time you're doing an analysis of a contract problem, you need to determine first and foremost, is this the sale of goods covered by the Uniform Commercial Code, or is this something else and covered by common law contract? Because the rules are a little bit different. So this first section will all be common law contract and you can assume that I'm talking about common law contract unless I specifically say Uniform Commercial Code.

**Slide #: 4**

**Slide Title:** Overview of Contract Law

Overview of Contract Law

- Definition of a Contract.
  - Promises or set of promises,
  - For breach of which,
  - The law provides a remedy, or
  - The performance of which the law in some way recognizes as a duty.

**Audio:**

The big overview: What is the definition of a contract? A promise or a set of promises for the breach of which the law provides a remedy or the performance of which the law in some way recognizes as a duty. So, that's the big picture of a contract. We'll get into the specifics so that you can understand how to apply that definition.

**Slide #: 5**

**Slide Title:** Overview of Contract Law

Overview of Contract Law

- Objective Theory of Contracts
  - Circumstances to determine intent of parties.
  - Objective Facts Include:
    - What a party said when entering into the contract,
    - How the party acted or appeared (intent may be inferred), and
    - Circumstances surrounding the transaction.

**Audio:**

The courts view contracts with what's called the Objective Theory of Contracts and that is what a party says, their outward actions, their appearance is what determines whether or not the terms of the contract or the requirements or elements of the contract have been met. And as you'll see in the first case you brief that what one secretly believes when they write a contract or sign a contract really doesn't matter. What matters is what one says and does and what is written in the contract. So next we move on to the elements of a contract.

**Slide #: 6**

**Slide Title:** § 2: Elements of a Contract

§ 2: Elements of a Contract

- Agreement (Offer and Acceptance).
- Consideration: bargained-for-exchange.
- Contractual Capacity.
- Legality: purpose of contract must be legal at the time of execution.

**Audio:**

Anytime you see the elements of something or the requirements of something or the rule, write it down and remember it because it's likely to be on the exam. First of all, elements of a contract: agreement which consists of an offer and acceptance. Each of the parties have to reach an agreement, otherwise known as a meeting of the minds. Next element is consideration. Consideration does not mean that you consider something, that you think about something. Consideration means there is a bargained-for exchange between the parties. A legal benefit and a legal detriment. Without the bargained-for exchange, there's no contract. Third element, contractual capacity: the parties have to have the capacity to enter into a contract. That's usually a pretty easy thing to determine – over 18 and not subject to a guardianship in the courts or something of that nature. Legality: the contract has to be for a legal purpose. You cannot legally contract to do something that is illegal in itself.

**Slide #: 7**

**Slide Title:** Elements of a Contract

Elements of a Contract

- Defenses to Enforceability:
  - Voluntary consent.
  - Form: some types of contracts must be in writing.

**Audio:**

[No audio]

**Slide #: 8**

**Slide Title:** § 3: Types of Contracts

§ 3: Types of Contracts

[Diagram of Contract Formation]

**Audio:**

There are several different types of contracts. Contracts as illustrated in the diagram here: you can have a bilateral or unilateral contract, a formal or informal contract, express or implied contract. Each one of these is different sections that describe the type of contract that one is dealing with.

**Slide #: 9**

**Slide Title:** Types of Contracts

Types of Contracts

- Bilateral: Offeree must only promise to perform (“promise for a promise”).
- Unilateral: Offeree can accept the offer only by completing the contract performance (“a promise for an act”). *Irrevocable*: Offer cannot be revoked once performance has begun.

**Audio:**

First of all, we’ll start with the bilateral contract. The offeree must only promise to perform and there’s a promise for a promise. As opposed to a unilateral contract where the offeree can accept the offer only by completing the contract. If performance is the completion of the contract, then it can be a unilateral contract.

**Slide #: 10**

**Slide Title:** Types of Contracts

Types of Contracts

- Formal vs. Informal Contracts.
  - Formal: Must be in writing to be enforceable.
  - Informal: All other contracts.

**Audio:**

Next we cover the difference between formal and informal contracts. That’s really simple. A formal contract must be in writing and when we talk about the statute of frauds, we’ll talk about which contracts must be in writing. Informal contracts are all other contracts.

**Slide #: 11**

**Slide Title:** Types of Contracts

Types of Contracts

- Express: Words (oral or written).
- Implied (In fact): Conduct creates and defines the terms of the contract. Requirements:
  - PL furnished good or service.
  - PL expected to be paid.
  - DEF had chance to reject and did not.

**Audio:**

And lastly, the express contract as opposed to the implied, or implied in fact, contract. Express is oral or written where there’s an intent to make a contract and it’s expressed. Implied is where there’s an attempt to make a contract, but it’s implied by one’s actions and we’ll cover that a little bit more specifically later as well.

**Slide #: 12**

**Slide Title:** Contract Performance

Contract Performance

- Executed—a contract that has been fully performed on both sides.
- Executory—A contract that has not been fully performed on either side.

**Audio:**

Contract performance can be looked at in two ways: executed and executory. Executed, a contract that has been fully performed, it's been executed and executory, a contract that has not been fully performed, that there's been something that is incomplete.

**Slide #: 13****Slide Title:** Contract Enforceability

## Contract Enforceability

- Valid: agreement, consideration, contractual capacity, and legality.
- Void: no contract.
- Voidable (unenforceable).
  - Valid contract can be voided or rescinded based on certain legal defenses.

**Audio:**

Contracts, on their face, can be in three different types of enforceability: a valid contract, a void contract, or a voidable contract.

**Slide #: 14****Slide Title:** Contract Enforceability

## Contract Enforceability

[Diagram of valid vs. void contracts]

**Audio:**

Depending on the specifics of the contract itself, it can meet one and sometimes looked at in more than one way.

**Slide #: 15****Slide Title:** § 4: Quasi-Contracts

## § 4: Quasi-Contracts

- Quasi-Contracts are implied *in law*.
  - Equitable remedy created by courts, and imposed on parties in the interest of fairness and justice.
  - Quantum Meruit.
  - **CASE 10.1** *Scheerer v. Fisher* (2010). *What are the elements of quantum meruit?*

**Audio:**

Next we cover quasi-contracts. Quasi-contracts are contracts that are implied in law, otherwise known as quantum meruit. They're contracts which may lack some element, but in the interest of fairness and justice, the courts will imply that there is an actual contract.

**Slide #: 16****Slide Title:** Quasi-Contracts

## Quasi-Contracts

- Limitations on Quasi-Contractual Remedy: enriched party is not held liable in certain situations dealing with benefit is conferred unnecessarily, negligently, or by misconduct.
- When an Actual Contract Exists: ordinarily no quasi-contract.

### **Audio:**

There are limitations on quasi-contracts and when it can and cannot be applied.

### **Slide #: 17**

#### **Slide Title:** § 5: Interpretation of Contracts

#### § 5: Interpretation of Contracts

- “Plain Meaning Rule”: courts will enforce contracts whose meaning are clear from the face of the instrument.
- If terms are clear and unambiguous, court will not admit “extrinsic” (external) testimony or evidence. →

### **Audio:**

Concerning the interpretation of contracts, the courts use what’s called the Plain Meaning Rule, which, good for us, means what it says. The courts will apply the plain, dictionary meaning to the terms of a contract unless some other meaning would be indicated as in a technical term or something of that nature. If the terms in the contract are unambiguous, the court will not allow extrinsic or other testimony or evidence to explain the intent of the contract. It’s understood on the face and additional evidence is not allowed. This is called the Parole Evidence Rule. If there is an ambiguity in the contract, that is a word that can be taken this way or that way, then the courts may allow some extrinsic evidence to explain what the intent of the parties was at the time they entered into the contract.

### **Slide #: 18**

#### **Slide Title:** § 5: Interpretation of Contracts

#### § 5: Interpretation of Contracts

- “Plain Meaning” Rule (cont’d).
  - However, if terms are ambiguous, court may admit “extrinsic” (external) evidence.

### **Audio:**

Additional...

### **Slide #: 19**

#### **Slide Title:** Other Rules of Interpretation

#### Other Rules of Interpretation

- Contracts are interpreted as a whole.
- Terms that are negotiated separately are given greater weight.

- Words given ordinary, common meaning.

**Audio:**

...rules of interpretation are that the contract will be interpreted as a whole. You read the whole thing, what makes sense, and don't apply some definition to a term that's different in one paragraph than the next.

**Slide #: 20**

**Slide Title:** Other Rules of Interpretation

Other Rules of Interpretation

- Specific wording given greater weight than general language.
- Written or type-written given greater weight than preprinted.
- Ambiguous terms interpreted against the drafter.

**Audio:**

And any specific terms that are negotiated would be given greater weight than those that aren't. Things that are handwritten, as opposed to type, would be given greater weight and maybe one of the more significant aspects is that if there is an ambiguity, the courts will interpret that ambiguity in favor of the party that did not draft the contract. The reasoning of the court is that the party that wrote the contract had the greatest opportunity to write the contract in a way that was clear and unambiguous, and therefore they should be the ones to suffer if there is an ambiguity in the contract.