

CONTRACTS I

Fall 2004: 102-002

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Readings

Casebook: *Contract Law and Theory* (3d ed. 2002), Robert E. Scott & Jody S. Kraus

Supplement: *Contract Law and Theory – Document Supplement* (2003), Scott & Kraus

Recommended: *Concepts and Case Analysis in the Law of Contracts*, M.A. Chirelstein

Assignments

Your primary reading will be from the casebook. On occasion, I will email to you additional readings. If your reading in the casebook includes a mention or discussion of either a U.C.C. (Uniform Commercial Code) section or a Restatement (Second) of Contracts section, read that section in your supplement. Not all sections will appear in the supplement; I will provide you with any omitted sections that I want you to read.

I recommend a short, pleasant book by Chirelstein. I will not assign any reading from this book, nor will you be tested on it. As the semester goes along, however, you may find that it provides some coherence to your study of contract law by placing certain major subjects in a broader context.

First Assignment

For the first week of class, please read:

Enforcing Promises:

Pages 1-9, *Bailey v. West* notes 1-2, 4-5, pages 19-30, excluding notes.

Consideration: Bargain versus Gift:

Pages 131-137 Note that these readings refer back to pages in the introductory chapter; include pages 44-55 in your reading.

Please also read the attached page of Restatement (Second) sections.

Office Hours

Most of you have obligations during the day that preclude you from dropping by during ordinary office hours. I will therefore be available online and by appointment, including limited evening and weekend appointment times if necessary.

§ 2. Promise; Promisor; Promisee; Beneficiary

- (1) A promise is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made.
- (2) The person manifesting the intention is the promisor.
- (3) The person to whom the manifestation is addressed is the promisee.
- (4) Where performance will benefit a person other than the promisee, that person is a beneficiary.

Comment

b. Manifestation of intention. Many contract disputes arise because different people attach different meanings to the same words and conduct. The phrase "manifestation of intention" adopts an external or objective standard for interpreting conduct; it means the external expression of intention as distinguished from undisclosed intention. A promisor manifests an intention if he believes or has reason to believe that the promisee will infer that intention from his words or conduct. Rules governing cases where the promisee could reasonably draw more than one inference as to the promisor's intention are stated in connection with the acceptance of offers (see §§ 19 and 20), and the scope of contractual obligations (see §§ 201, 219).

d. Promise of event beyond human control; warranty. Words which in terms promise that an event not within human control will occur may be interpreted to include a promise to answer for harm caused by the failure of the event to occur. An example is a warranty of an existing or past fact, such as a warranty that a horse is sound, or that a ship arrived in a foreign port some days previously. Such promises are often made when the parties are ignorant of the actual facts regarding which they bargain, and may be dealt with as if the warrantor could cause the fact to be as he asserted. It is then immaterial that the actual condition of affairs may be irrevocably fixed before the promise is made.

§ 4. How A Promise May Be Made

A promise may be stated in words either oral or written, or may be inferred wholly or partly from conduct.

Comment

a. Express and implied contracts. Contracts are often spoken of as express or implied. The distinction involves, however, no difference in legal effect, but lies merely in the mode of manifesting assent. Just as assent may be manifested by words or other conduct, sometimes including silence, so intention to make a promise may be manifested in language or by implication from other circumstances, including course of dealing or usage of trade or course of performance. See Uniform Commercial Code § 1-201(3), defining "agreement."

Illustrations

1. A telephones to his grocer, "Send me a ten-pound bag of flour." The grocer sends it. A has thereby promised to pay the grocer's current price therefor.
2. A, on passing a market, where he has an account, sees a box of apples marked "25 cts. each." A picks up an apple, holds it up so that a clerk of the establishment sees the act. The clerk nods, and A passes on. A has promised to pay twenty-five cents for the apple.