WHAT IS A CONTRACT

• An Agreement between two or more parties which creates rights and obligations between the parties, with the intention of the parties to create legally binding responsibilities.
WHAT IS A CONTRACT

• Express Contract
• Implied Contract
• Contract implied in law

Sources of Law

• Constitution
• Common Law
• State Contract Codes
• Uniform Commercial Code
• Restatements
• UN Convention on Contracts and the Sales of Goods (CSIG)

Sources of Law

• US Constitution

• Article I Section 10
• No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.
Sources of Law

- Constitution
- Common Law

The Common Law

- Brief History
- 1066
- Development
- The Writs
- Stare Decisis/Precedents/Res Judicata
- Common Law v. Equity

The Development of the Common Law

- Pre 1066. Anglo Saxon tribes- Fluid.
- Localized Government and Judiciary
- Customary Law- based upon Ecclesiastic Courts and local tradition and custom.
- Justice not terribly efficient

Adapted from, American Contract Law PPT, Crystal, N. U. So Carolina
**Historical Background**

- **Common Law Judges**
  - Very few - below 20- Itinerate
  - Met in London to compare notes.
  - Judges were often religious men.
  - Noble class.

- **Doctrine of Stare Decisis** (let the decision stand) developed.
- **System of Appeals** developed to provide a check and balance.
Historical Background

–The Writs

• System of notices and orders that required action by one party or another.

• A standard form that was easily recognizable and requested the Court to order another person do something very specific.

• These actions became formalized and became causes of actions. Very strict parameters for fit into which writ.

• If a party used the wrong writ, relief would be denied: if there is no writ there is no remedy.

Types of Writs/Causes of Action: Contract

– Trespass on the Case

– Replevin (recovery of property)

– Attachment

– Assumpsit

Writ of Habeas Corpus
Historical Background

– The Writs

• Benefit of stability, and fairness. Like cases are settled in like ways. If a court wishes not to follow precedent, the court must either overrule or distinguish.

• Disadvantage of rigidity. If there is no writ, there is no remedy.

• Contracts did not fit neatly into any particular Writ
  • Humber Ferry Case (Bukton v. Townsend (1348))
    – P contracted with D to ferry his horses across the Humber River. Boat sank. Horses were lost. P sued under Writ of Trespass of the Case.

Writ of Assumpsit

• Writ to deal with Contractual Disputes
• Promise to pay:
• Made obsolete in England with the abolition of the causes of action in 1852 and the Judicature Acts of 1875.
  – Implied Assumpsit
  – Express Assumpsit

Historical Background

– The Writs

• Stare Decisis– A judge was obligated to let the decision of the lower court stand.

• Precedents– Decisions of the court (or higher level Court) that were binding on the lower court.

• Res Judicata– When an issue in a particular case is decided, it should not be re-litigated.
Historical Background – The Writs

- This rigidity lead to injustice. Individuals would petition the king for relief from this inequity.
- Additionally, the Common Law Courts primarily awarded damages.
- The King established a Court of Chancery or “Equity” to hear cases and to rectify the unfairness and rigidity of the Common Law Courts.
- These courts could issue Equitable Remedies

Equity Courts were not bound by precedents and sought a just or equitable resolution to the problem. However, with time, traditions, procedures and even precedents evolved in the Courts of Equity.

Courts of Equity could order a party to take positive action. Equitable remedies included Injunctions and Specific Performance as opposed to Common Law Courts which could only give money damages.

In Re The Earl of Oxford. (1615) Equity prevails over Common Law.

Difficulty developed as two parties would often be in two courts on similar Issues.

The Common Law and Equity Courts stood side by side until 1875 when Parliament enacted the Judicature Acts, merging the Common Law and Equity Courts. This Act also codified many of the Common Law Writs into causes of Actions.
Common Law v. Civil Law

- What are the pros of each?
- What are the cons of each?
- How are rights protected in each?
- What are the impacts on parties who enter into contracts?
- Who does the common law favour?

Sources of Law

- Constitution
- Common Law
- Statutory Provisions
  - State and Federal Law
  - Uniform Commercial Code
  - Statute of Frauds
Statutory Provisions

• State and Federal Contract Law
  – Consumer Protection
  – Environmental Protection
  – Fraud
  – Labour Protections
Statutory Provisions

- UCC (Uniform Commercial Code)
  - Established to harmonize contract law between the states
  - Affects sales contracts primarily.
  - Takes the analysis out of Common Law. Yet where silent, Common Law applies.
  - Adopted in 49 states

Statutory Provisions

- Statute of Frauds: Certain contracts MUST be reduced to writing.
- Marriage.
- Land.
- Contracts that take longer than a year.
- Executor
- Surety

  - IT IS RAISED AS A DEFENSE

Sources of Law

- Constitution
- Common Law
- Statutory Provisions
- Restatement of Law
Sources of Law

- **Restatement of Law**
  - American Law Institute (group of lawyers)
  - Restates development of Common Law
  - Black Letter Law
  - Secondary source (not *binding*, yet persuasive)

What is a Contract? (1)

- Contract Formation
- Offer
- Acceptance

What is a contract?

- An Agreement between 2 or more parties that generates rights and obligations and is intended to have legally enforceable consequences.

- Agreement- means a meeting of the minds *consensus ad item*-Mutual Assent

- The parties agree about the same thing and intend for the agreement to be enforceable.

- Enforcement may be for damages or for performance.
Peerless Case

- **Raffles v. Wichelhaus (1864)**

- P contracted to sell 125 bales of cotton to D. The goods were to be shipped from India to England, on the ship “Peerless”. Unknown to either party, there were two ships names “Peerless” carrying cotton one arriving in October and the other in December.

- D thought he had purchased the cotton arriving on the October ship, but P sent his cotton on December ship. D refused to accept delivery of the cotton arriving on the December ship and Raffles brought this lawsuit for breach of contract.

Peerless Case

- **Raffles v. Wichelhaus (1864)**

- Restatement (Second) Section 20(1): If the misunderstanding concerns a material term and neither party knows or has reason to know of the misunderstanding, there is no contract. Parol evidence is admissible to determine the meanings of terms when a latent ambiguity arises later.

Contract Formation

- **Carbolic Smoke Ball Case (1892)**

- Facts:
- Controversy:
- New Rule:
Session II

- Is there a Contract?
  - Offer
  - Acceptance
  - Consideration
  - Also
    - Statute of Frauds
    - Parole Evidence Rule
Is there agreement?

- Offer v. Invitation to Treat
- Invitation to treat - an expression of a willingness to negotiate.
  - Shop window displays.
  - Advertisement of price.
  - Auction offerings.
  - Invitation for bids.

- Consumer protection Laws do however limit the above.


4. (a) The purchase price is: 1,000,000 Euros

   (b) The purchase price shall be paid by the Purchaser to the Seller as follows:

   The Purchaser shall pay the Seller the sum of: 1,000,000 Euros

   as and for a down payment upon the signing of this Contract (this includes $ paid to Broker), which shall be made payable to the order of "Baldwin & Bloomstein, Attorney Trust Account" attorney for

   the Seller, and shall be held in escrow pending closing of title or default by the Purchaser.

   (i) The Purchaser shall, at the time of the closing, pay the Seller the sum of: 900,000 Euros. being the balance of the purchase price, by certified bank checks or checks, or mortgage account closing checks, payable in accordance with the Seller's instructions.

12. Condition of Property. (a) Purchaser acknowledges and represents that Purchaser is fully aware of the physical condition based on Purchaser's inspection and investigation thereof, and shall accept the same "AS IS" in their present condition and state of repair, subject to reasonable use, wear, tear and natural deterioration between the date hereof and the date of Closing (except as otherwise set forth in paragraph 5(c)), without any reduction in the purchase price or claim of any kind for any change in such condition by reason thereof subsequent to the date of this contract.

(b) PROPERTY CONDITION DISCLOSURE STATEMENT (PCDS): The Purchaser acknowledges that the property has been furnished with a Property Condition Disclosure Statement prior to the execution of this Contract, and the Purchaser shall sign a copy of the PCDS in order to acknowledge receipt of this document prior to the execution of the Contract. Purchaser further acknowledges and agrees that matters set forth in the PCDS are for informational purposes only and do not in any manner affect or modify the terms of this Contract, in particular, but without limitation, the "condition of property" which provides in part that the property is sold "AS IS" without any warranties, guarantees or representations by the Seller as to its condition. The Purchaser further expressly acknowledges and agrees that none of the matters set forth in the PCDS shall survive the closing.
13. Title. Seller shall give and Purchaser shall accept a Bargain and Sale Deed in proper statutory short form for the property, subject to all encumbrances, except as hereinafter designated. In the execution of such Deed, Purchaser must pay all fees, taxes and costs of such execution as required by law. The Deed shall constitute the entire contract as between the parties.

14. Closing Date and Time. Closing shall take place at 9:00 A.M. One hundred days after the date of this Agreement, or as agreed upon by the parties for the best interests of both parties.

15. Condition at Closing. The premises are sold and shall be conveyed subject to the following conditions:

(a) Seller shall deliver to Purchaser a marketable and insurable title to the property, subject to the following exceptions:

(b) The premises are sold subject to all recording and unrecorded easements, covenants, and restrictions as of the date of this Agreement.

(c) Seller shall not be liable or bound in any manner, by express or implied warranty or guarantee, in connection with the sale of the property, including but not limited to, the condition, use, and value of the property.

16. Payment. The purchase price shall be $, payable as follows:

17. Property Ownership. The premises shall be owned by both parties as joint tenants with the right of survivorship.

18. Taxes. The property shall be subject to all taxes and assessments levied against the property from the date of this Agreement until the date of transfer.

19. Insurance. Seller shall maintain insurance on all insurable property located on the premises until the date of closing.

20. Indemnification. Seller agrees to indemnify and hold harmless Purchaser from and against any and all claims, losses, damages, or expenses arising out of or in connection with the sale of the property.

21. Agreement constitutes the entire contract. This Agreement constitutes the entire contract between the parties, and no other agreements or understandings, either written or oral, have been made or agreed to in connection with the sale of the property.
Vielen Dank

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