

# The Cutthroat World Of Business Law

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## I. The Legal System

- A. The Nature of Law
- B. The Sources of Law
  - 1. Constitutions
  - 2. Statutes and Regulations
  - 3. The Common Law
- C. Civil Actions
  - 1. Plaintiff vs. Defendant
  - 2. Respective Roles of Judge and Jury
  - 3. Distinction Between Contract and Tort, i.e.
    - a. Contract Cases: Fixing Broken Promise
    - b. Tort Case: To Correct Wrongs Other Than Broken Promise

## II. Tort Law

- A. Purpose To Remedy and Discourage Unreasonable Conduct
- B. Relation to Criminal Law
  - 1. The Different Purposes of Tort and Criminal Law
  - 2. Single Act May Violate Both
- C. Intentional Torts
  - 1. Meaning of "Intent"
  - 2. Major Intentional Torts
    - a. Battery
      - i) Definition
      - ii) Contrasted With Assault
    - b. Conversion
      - i) Definition
      - ii) Innocent Purchaser of Stolen Goods Liable For Conversion
    - c. Defamation
      - i) Definition
      - ii) Truth is an Absolute Defense
      - iii) "Malice" Requirement For Public Figures
- D. Negligence
  - 1. Required Elements
    - a. Duty
    - b. Breach
    - c. Proximate Cause
    - d. Injury
  - 2. Defenses
    - a. Old Rule: Contributory Negligence
    - b. Modern Rule: Comparative Fault
    - c. Assumption of Risk

## III. Contract Law

- A. General Nature of Contract Law
  - 1. Used to Determine Which Promises Are Enforced, Whether Promises Have Been

- Performed, and Remedies for Breach
- 2. Sources of Contract Law
  - a. Common Law
  - b. Uniform Commercial Code (UC C)
  - c. When Each Applies
- B. Requirements for a Valid Contract
  - 1. Agreement
    - a. Offer
      - i) Definition
      - ii) Creates a "Power of Acceptance" in the Offeree
    - b. Acceptance
      - i) How Offers are Accepted
      - ii) When Offers Are Accepted
        - (A) Must Accept Before Offer Terminates
        - (B) The Mailbox Rule
      - iii) When Offers Terminate
        - (A) Revocation
        - (B) Rejection
        - (C) Counteroffer
        - (D) Lapse of Time
    - c. The Objective Theory of Contracts Determines Whether and To What Parties Have Agreed
  - 2. Consideration
    - a. Definition of Consideration
    - b. How to Recognize Consideration
      - i) Legal Detriment
      - ii) Peppercorn Theory
    - c. Agreements Lacking Consideration
      - i) Promised Gifts
      - ii) Pre-existing Duties
      - iii) Past Consideration
- C. Two Alternative Theories For Enforcing Promise When No Valid Contract Exists
  - 1. Promissory Estoppel
  - 2. Quasi Contract
- D. Performance
  - 1. Substantial Performance vs. Material Breach
  - 2. Anticipatory Breach
- E. Defenses
  - 1. Defenses Make Contract Void, Voidable, or Unenforceable
  - 2. Major Defenses
    - a. Lack of Capacity
      - i) Minors
      - ii) Mentally Ill/Intoxicated
    - b. Fraud
      - i) Misrepresentation of a Material Fact
      - ii) Intent/Scienter

- iii) Reliance
- c. Duress
  - i) Definition
  - ii) Example of Duress
- d. Undue Influence
  - i) Definition
  - ii) Example of Undue Influence
- e. Illegality
  - i) Includes Those Contracts Which Violate Either a Statute or an Important Public Policy
  - ii) Illegal Contracts Are Void
- f. Impossibility
  - i) Definition
  - ii) Examples Include Destruction of Subject Matter or Death
- g. Statute of Frauds
  - i) General Rule: Oral Contracts Are Enforced
  - ii) Exceptions: Contracts Which Require a Writing Signed by The Party Trying to Avoid the Contract
    - (A) Involving Interest in Land
    - (B) To Answer for Debt of Another
    - (C) That State a Completion Date That is More Than One Year After Date Contract Was Made
    - (D) Sale of Goods for \$500 or More
- F. Remedies for Breach of Contract
  - 1. Money Damages
    - a. Compensatory
    - b. Consequential
  - 2. Specific Performance
- G. Rights of Third Parties
  - 1. Rule of Privity Contract
  - 2. Exceptions Wherein a Third Party Can Enforce The Contract
    - a. Assignment of Contract Rights
    - b. Intended (vs. Incidental) Beneficiaries

## V. Products Liability

- A. Definition
- B. Contract Theories of Recovery
  - 1. Express Warranty
  - 2. Implied Warranty
  - 3. Implied Warranty of Fitness for Particular Purpose
- C. Tort Theories of Recovery
  - 1. Negligence
  - 2. Strict Liability