

## LAW 300

DR. BERNSTEIN

OUTLINE OF VIDEO: *The Legal Environment of Business: Making Decisions, Managing Risks* (2000) Professor Jane Mallor, Professor of Business Law, Kelley School of Business, Indiana University

During this course, I will use some of Dr. Mallor's excellent videos as a supplement to the book and lectures. In order to assist you, I have outlined each of her lectures.

### **VIDEO LESSON 1. INTRODUCTION**

Law - a way of understanding the way we live our lives.

In the business world, law assists us with making decisions and managing risks.

This chapter will cover:

1. Nature of law
2. Scope of law - law and ethics
3. U. S. legal system
4. Constitutions and interpretations

#### 1. The nature of law

Law is a system of rules and standards that governs society.

Jurisprudence is the study and nature of law

#### 2. Scope of law - law and ethics

Legal concepts come from many areas including customs and ethics.

Law does not equal ethics and vice-versa. What is legal is not necessary ethical. However, it is important to understand that law is based upon ethics even though they sometimes overlap and conflict.

#### 3. U. S. Legal System

There are 51 law making jurisdictions: 1 Federal and 50 states

#### 4. Constitutions and Interpretation

Constitutions:

- A. Are the highest source of law.
- B. They are the fundamental basis for all laws.
- C. The U.S. Constitution is the supreme law of the land.
- D. Constitutions create and restrict the power of government.

Courts:

- A. Maintain the constitution.
- B. They interpret and clarify.
- C. They determine if laws are in conflict with the constitutions.
- D. They create standards of behavior

The U. S. Constitution enumerates the powers of the government.

Examples are power to coin money, declare war, govern the commerce between the states

Bill of Rights is the first 10 amendments to the U.S. Constitution.

Below constitutions are laws made by legislatures (statutes). They can not violate Federal or State Constitutions.

Administrative law, both federal and state, is a delegation of power granted to administrative agencies.

U.S. Constitution:

- Article 1. Creates congress
- Article 2. Creates the presidency and executive office
- Article 3. Creates the judicial system

Courts as law makers:

- 1. Generally not pro-active
- 2. Decide disputes
- 3. Interpret laws
- 4. Apply laws.

Stare decisis: "let the decision stand"

Basis for the way the court makes laws

Calls for consistency

Provides a check on the courts following laws

Judicial discretion - is a way to permit the courts to meet the needs of changing times.

## **VIDEO LESSON 2 - TRIAL AND TRIBULATIONS - RESOLVING DISPUTES IN AND OUT OF COURT**

Two main discussions in this chapter:

- What gives court jurisdictional powers
- Mediation

Chapter will cover:

1. Court types and functions
2. Jurisdiction
3. Complaint to collection
4. ADR

### **1. Court types and functions:**

- A. Trial
- B. Courts of appeal

Trier of fact - entity making decision, can be judge or jury  
 judge always decides questions of law and may decide questions of fact  
 jury always decides questions of fact

A court decision is final and binding unless appealed

Three levels of courts:

- Supreme Courts
- Appellate courts
- Trial courts (may be specialty courts)

US Supreme Court is supreme court of land

- National issues
- Interpret US Constitution and maybe state constitutions
- Hears state disputes

### **2. Jurisdiction**

Means the court must have subject matter jurisdiction. In the case of Federal courts, must be federal question such as constitutionality or suit with diversity of citizenship (with \$75,000 as minimum) or dispute between two states.

Sometimes you can choose between state and federal court system

Personal jurisdiction means defendant is in the state or jurisdiction of the court

In rem jurisdiction means the defendant has property in the state or jurisdiction of the court

Due process is always required

i.e. - defendant must have notice, opportunity to defend, and is always entitled to a neutral decision maker

90% of all court cases settle before trial

### 3. Complaint to collection

Beginning of law suit – complaint is filed: plaintiff is claimant

Defendant is alleged responsible

Summons is notice of law suit and notice to appear and answer within certain number of days

Answer - admits or denies (may counter claim or cross claim)

P/T Stage

Mainly for discovery

Depositions, interrogatories

Admissions

Also time for filing motions

Trial - jury or no jury

Appeals – Losing party always has right to appeal. Sometimes winning party may also appeal.

Remember, judge gives the jury instructions on the law and they apply it to the facts.

In rare case judge may overturn verdict or change it.

Judgment (winning) does not mean you collect

Remember, court is public proceedings.

Also remember, going to court is an adversarial process

### 4. Alternative Dispute Resolution (ADR)

Going to court means lawyer has not done job right- ADR is way to avoid court

Several forms of ADR:

1. Arbitration

2. Mediation

### 3. Summary jury trials

Arbitration and summary jury trials are adversarial process with neutral decision maker

- is private
- shorter
- cheaper
- quicker
- may be informal
- may or may not be binding
- appeal is limited
- can pick an “expert” to be trial of fact

Concern about arbitration being too one sided in employment cases, insurance cases, etc.

Mediation is non-adversarial proceeding ((NOTE - MEDIATION COVERAGE IN THIS TAPE IS VERY POOR and we will be watching a different video))

- No decision maker, neutral third party acts as facilitator
- is cooperative process
- mediator is to create a “safe environment” for both parties
- mediation is more binding because it is an agreement all reach - win/win
- “A good settlement is forever”

Some laws mandate mediation-some states in divorce

## **VIDEO LESSON 3 - WILLFUL AND INEXCUSABLE: TORTS AND INTENTIONAL TORTS**

Businesses are becoming more and more liable for torts, especially intentional torts

Chapter will cover:

1. What is a tort?
2. Nature of intentional torts
3. Defamation
4. Invasion of privacy

### 1. What is a tort: Latin (tortus) - twisted or “wrong”

Is in Civil law-wrongs that cause injury to other people’s legally protected interest

A. tort is a wrong for which the law will give you a civil remedy - usually financial compensation

In a tort the way a person has behaved, deviates from how they should have behaved. Is a deviation from what law requires - not necessarily a moral wrong

Main purpose of tort law is to provide compensation for injury

A person is “liable” for a tort, not “guilty” of a tort

While a tort must always be a civil action, it can be both criminal and civil tort - i.e. dui causing accident

Not all torts are criminal and vice-versa

Types of compensation you may receive if injured by a tort:

A. Compensatory damages

Damages used to compensate a person for losses due to a tort

B. Punitive damages

Designed to punish defendant

Are awarded in addition to compensatory

Only awarded when defendant’s conduct raises to the level of reckless or with malice

Fault ladder:

Not unlawful – not with Malice

Negligence - a defendant acts carelessly in a way that has a foreseeable risk of harm  
normally does not receive punitive damages

Recklessness - defendant is creating a high level of risk with conscious indifference to the outcome  
May get punitive damages

Malice - the intent to cause harm is intentional  
may get punitive damages

## 2. Intentional torts

An intentional tort is a tort in which the defendant has the same level of intent to do a particular act that has led to the tort. Example would be a battery

Two types: interference with personal rights

Interference with property or business rights

To have an intentional torts, you must have “elements” and each element must be proven.

Example is a battery:

intentional touching

physical contact  
harmful or offensive  
W/o consent

## 2. Defamation

The elements are:

hurting a person or business reputation  
by communicating a false statement  
to someone else  
about that person or business  
that causes injury

May be:

Libel - written  
Slander – spoken

Concern here is first amendment rights

Defamatory - tendency to harm a person's reputation  
must be false

Conduct (level of fault) must be willful (intentional) or reckless

Level depends upon person's status - i.e. public figure vs. private person

### Defenses

Truth is always a defense

Privilege may be a defense

Absolute (example is government agency such as judge in official capacity)

Qualified (example is doctor reporting alleged child abuse when not true)

Must have good basis and no malice

## 4. Invasion of privacy

One has a right to control information about one's self

Question is, do you have a reasonable expectation of privacy?

Law vary state by state - case by case

4 torts of invasion of privacy:

1. Intrusion on solitude (intentional, you have an expectation of privacy)
2. Public disclosure of private facts (even if true)
3. False light (places person in false light in public eye)
4. Appropriation of identity (use I.D. for commercial purposes without consent or compensation).

## **VIDEO LESSON 4 - FAULT LINES - NEGLIGENCE AND STRICT LIABILITY**

Negligence and Strict Liability are the two categories of torts that impose liabilities for injuries

Chapter will cover:

1. What is negligence?
2. Elements of negligence
3. Defenses to negligence
4. Strict liability

### 1. What is negligence?

Conduct that involves an unreasonably great risk of harm that falls below the standard of care that the law establishes for the protection of others

conduct - how defendant behaved - not what was intended  
 unreasonable risk of harm  
 that falls below the standard of care the law (or a reasonable person under the same circumstances) would establish

Negligence is part of everyday life and sometimes we hurt others by our negligence

### 2. Elements:

Duty of care - defendant has an obligation to adhere to certain standards of behavior for the protection of plaintiff

A duty of care is owed –

voluntarily like when we drive

written law that imposes duty - statutory duty (may be administrative law like handrails on stairs in public access)

Could be contractual - i.e.- a builder promises to build in safe manner

Breach of duty - plaintiff must prove that defendant's conduct fell below the standard of care that the law requires

Reasonable person standard - law requires an individual to act how a reasonable person would act in similar situations (note, take into consideration parties to establish "reasonable person")

This is an objective standard and is up to trier of fact

Factors to look at to establish negligence by trier of fact:

How foreseeable was what happened

How serious could harm be

Value to society of defendant's conduct



How difficult would it have been to avoid causing the harm

Negligence per se - situations in which people violate duties that are provided by statute

Res ipsa loquitur - the thing speaks for itself

helps the plaintiff prove breach of duty by shifting the burden to the defendant to come forward with exonerating evidence

Actual causation

Requires plaintiff to prove that defendant's negligence played a substantial role in bringing about the plaintiff's injury

Proximate cause

Requires plaintiff to establish that the casual relationship between the defendant's negligence and the plaintiff's harm is substantial enough for the defendants to be liable ("but for rule")

Can only exist if there is actual cause

Depends on foreseeability

Injury

Plaintiff must prove they suffered some type of harm that defendant caused and they must be able to prove that amount of losses

Personal injury (P/I)

Reimbursement for cost

lost wages

future damages

pain, suffering

Emotional injury

hard to prove

allowed if foreseeable

Deep pocket theory

Punitive damages usually not available in negligence cases, but...

### 3. Defenses:

Assumption of risk - plaintiff voluntarily accepted risk or danger

1. Express - usually written - assumption of risk

2. Implied - example is getting in car knowing driver was drunk

Behavior rather than words demonstrate that you are relieving the other

party of liability

Plaintiff's own negligence may reduce liability  
 plaintiff's behavior is cause of injury - i.e. walking against red light

Contributory negligence vs. comparative negligence:  
 Contributory negligence no longer exists in most states  
 Mixed (comparative negligence) - plaintiff's negligence in most cases can only be less than 50% to recover but some states, like Ca. would give 10%

#### 4. Strict Liability

Negligence not present  
 A more rigorous exacting standard that the law places on people carrying out certain kinds of activities

Product liability - if product defective - law holds liable

Statutory or legislative - workers comp is example

Abnormally dangerous activities - i.e. blasting, fireworks, hazardous material storage

### **VIDEO LESSON 5 - BREAKING THE RULES: BUSINESS TORTS AND EMPLOYER LIABILITY**

This chapter will cover:

1. Fraud
2. Unfair competition
3. Property and environmental
4. Employer liability

#### 1. Tort of Fraud or deceit

The intentional misrepresentation of a fact

Can also be a business crime

Civil liability for fraud

Don't make false claims or lie

1. Misrepresentation - a statement about a fact that is not true  
 must be material fact-a fact that is important to the business transaction or

relationship the parties are entering into  
can also be concealment especially when duty to tell

2. Scierter - knowledge of a statement falsity or at least reckless indifference to whether or not it was true
3. Person or business must have the intention to deceive the victim
4. The victim must rely on the misrepresentation
5. Victim must have acted reasonably on this reliance
6. To recover, the victim must have suffered some type of economic loss

Negligent misrepresentation - cousin of fraud. Is different in that the person making the false statement believes it is true but lacks a reasonable foundation for believing in the truth of the statement

Scierter not required  
Just defendant is negligent in making the statement

## 2. Unfair competition

Numerous types  
Federal, state and lots of common law

### Lanham Act

Designed to combat and compensate for a variety of unfair competitive practices,  
from trade mark infringement to false advertising

One form of unfair competition is "palming off"

Happens when a person makes a false representation meant to confuse  
others about the identity or origin of goods or service - i.e. is  
counterfeiting clothing - very common at swap meets, mail order,  
or "the corner stand"

Remember, vendors may be taken in too

### Trade dress infringement

A business imitates the overall appearance of a competitor's product or service in  
a way that is likely to confuse the public - Tommy, dark cola in a coke  
look alike bottle

### Injurious falsehood

Permits a business to obtain compensation for economic harm suffered because of  
false statements

Where one disparages another about a business - first amendment problems exist

### Trade secret

Confidential information that gives the business a competitive edge

### Misappropriation of Trade Secret

Obtaining, disclosing, or using another business' trade secrets without that business' permission

Use a non-compete or confidentiality agreement with employees, etc.

### Uniform trade secret act

Information must be valuable and secret to be protected

Owner must make reasonable efforts to keep it secret

Theft of trade secrets can be federal crime

RICO - Racketeer Influenced and Corrupt Organization Act - allows the government to seek additional civil penalties against businesses involved in those type activities  
also allows private individual to obtain treble damages

## 3. Property and Environmental torts

### Trespass to land

When someone enters a property without permission or without some kind of legal privilege

remains when asked to leave

causing someone else or something to enter someone's land without permission

no harm necessary

### Conversion

When a person exercises dominion or control over another's property without authorization or without some legal privilege - i.e. theft, embezzlement, gaining control of property by fraud

### Nuisance

When a persons use of their own land interferes with another persons use of their land

Factors:

Degree of damage

Extent to which it is unusual

### Environmental pollution tort

All kinds of laws

Federal clean air act, etc.

EPA

#### 4. Employer Liability - Tort liability

When an employer is liable for the acts of another

Agency - when one person does something for another

Agent-the person who does the action

Principal-the person for whose benefit the action is done

2 kinds of agents:

1. Employee - agents employed on a regular, continuous basis, where the employer has great deal of control over the details of the job they do
2. Independent contractor - agents who perform acts for an employer on a more-or-less irregular basis, generally hired to do a specific job for a limited time

Key is control employer has over performance

More liability for acts of employee

Respondeat superior - employer shall answer for the mistakes of an employee

2 forms of employer liability:

1. Imputed - also called vicarious liability or respondent superior-employer liable for an employees' torts committed in the scope of employment even if the employer didn't personally do anything wrong or authorize the act  
Key is if the employee was acting within the scope of his employment  
The act of the employee is treated like he was the employer
2. Direct liability - is when an employer commits a wrongful act or doesn't act when they should

Negligent hiring or negligent retention or negligent supervision

Especially today in workplace violence

Could be direct liability if aware of potential

negligent in hiring, training, supervising, or retaining when someone subsequently injures another

have the duty of reasonable care

### **VIDEO LESSON 6 - ILLEGAL, IMMORAL AND ILL ADVISED - BUSINESS CRIMES AND SOCIAL RESPONSIBILITY**

Wrongful corporate behavior can lead to criminal prosecution

This chapter will cover:

1. Criminal law vs. civil law

- 2. Requirements for a crime
- 3. Criminal procedure
- 4. White collar crime and RICO
- 5. Corporate Social Responsibility

### 1. Criminal law vs. civil law

Crimes are wrongs against society  
Torts are wrongs against an individual  
action can be both

Only society (the government) can prosecute a crime

Civil actions are brought by private party

Criminal- guilty = loss of liberty and/or money  
Civil - liable = loss of property

Criminal - counsel appointed if you can't afford  
lots of constitutional safeguards  
jury must be unanimous to convict  
guilt beyond a reasonable doubt - prosecutor must prove to the trier of fact that  
beyond a reasonable doubt, the defendant committed every element of the  
crime

Civil - majority of jury  
preponderance of the evidence -more probable than not. The trier of fact must  
decide based on the greater weight of the evidence

One can be found innocent of a crime but liable for civil violation

Purposes:

Criminal - remove dangerous people from society  
express society's outrage  
retribution - social responsibility to keep order and control  
act as a deterrent  
rehabilitation

Civil- compensate for wrong doing

### 2. Requirements for a crime

Elements of a crime:

Defendant violated a statute  
Presumption of innocence  
Proof beyond a reasonable doubt

Criminal intent - *mens rea* - a guilty mind or wrongful mind

Can be inferred from behavior

Children usually not capable of this - that is why we have juvenile system

Insane not capable of this

Constitution prohibits ex post fact laws

### 3. Criminal procedure

US and state constitutions set limits

US constitution - 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, and 8<sup>th</sup> amendments protect

Assumption of innocence

Constitution protects this

4<sup>th</sup> amendment - limitations on the power of the government to conduct searches and seize property

Warrant-a document in which a judge or other judicial officer authorizes the search or seizure (may be of person or property)

General rule - search warrant required

Must be for probable cause - a reasonable person would find cause that a crime might have been committed

No "fishing expedition"

Actually true for both search warrant and arrest warrant

Exclusionary rule - when evidence is obtained in violation of the 4<sup>th</sup> amendment, the evidence is inadmissible at trial

5<sup>th</sup> amendment - gives all persons the right to due process of law before government can deprive them of liberty or property

Also - right against self incrimination - government can not force people to give testimony that would help convict them of a crime

Miranda v Arizona - must inform of constitutional rights

Double jeopardy - once someone has been convicted or acquitted of a crime, they can not be retried in the same forum for the same crime - does not apply to criminal and then civil action - however, you could be charged and tried for both state and federal crimes

6<sup>th</sup> amendment -

Speedy trial

Trial by an impartial jury

Right to confront witnesses

Right to be informed of charges

Compel attendance of witnesses on your behalf  
Effective counsel

All rights (or some) may be waived (giving up a right by a defendant)

Plea bargaining - the prosecutor offers a deal to the defendant whereby the defendant pleads in exchange for some penalty or outcome that the government and defendant feels is satisfactory  
Judge must approve  
90 % of all criminal cases

#### 4. White Collar crime and RICO

White collar crimes are non-violent crimes committed by a business entity or individuals in business

Corporation can be prosecuted and employees may be responsible - usually fines for corp. and jail for persons but not as serious as violent crimes

Actions of employees may be imputed to corporation

Individuals responsible usually punished (deterrent factor)

Examples are fraud, mail fraud, theft of trade secrets, price fixing, etc.

RICO - Racketeer Influenced and Corrupt Organization Act  
1970 - organized crime in business  
both civil and criminal penalties

Terms:

Racketeering activity - any of the more than 30 state and federal offenses listed, all fraud, arson, criminal tying, etc.

Pattern if racketeering activity - 2 or more racketeering crimes within a 10 year period with proof the actions were related and involve racketeering - is a business operated crime

Civil penalties - money and loss of property and the business

For victims

Treble damages

Criminal penalties -

Jail and fines

Loss of the business

#### 5. Corporate Social Responsibility

Profitability is the purpose of business



Now we expect business to think of the needs of all stakeholders, not just shareholders and to integrate social responsibility with all its corporate thinking

Includes adopting and following ethical principals

I.e. - do well and do good

Philanthropy and volunteerism

## **VIDEO LESSON 7 - COMING TO TERMS - AN INTRODUCTION TO CONTRACTS**

*(Note- "K" is legal shorthand for "contract")*

Ks are lifeblood of business

A K is a legally enforceable promise or set of promises

This chapter will cover

1. Significance of Ks
2. Common law and the UCC
3. Offer and Acceptance
4. Consideration

### **1. Significance of Ks**

K - A mechanism that allows for agreements to be enforced

K - A promise or a set of promises that the law will enforce  
Remember, not all promises are enforceable

Values underlying K law

Freedom of contract - individual should be permitted to choose terms and subject of K

Security of Bargain - reliable enforcement of Ks, rules and standards need to be clear

Fairness - especially to weaker parties

### **2. Common Law of Contracts**

50 different states, has mostly been superseded by the Uniform Commercial Code (UCC)

Uniform Commercial Code (UCC)

Started movement in early 50s for standardization, all 50 states had adopted some of it by the early 70s - some customized

Covers all phases of commercial transactions

Article II - Ks for the sale of Goods (not real estate or services-common law covers these)

### 3. Offer and acceptance

Most are in writing but can be verbal - oral hard to prove sometimes

Offer - proposal made by one of the parties about the terms of a K

Acceptance - other persons consent to that proposal

May take several to come to K

Valid agreement requirements:

1. Intent - a party's seriousness and readiness to enter into a K  
They intend to be bound
2. Definite terms - must be specific-what agreed to (the tape never uses the term "Meeting of the minds")
3. Agreement on the offerors terms - "mirror image rule" - in other words, every term in the acceptance must match every term in the offer
4. Communication - may be spoken, written or inferred by actions  
Law recognizes "grumbling acceptance"

An offer may only be accepted if it is a "live offer" - has not been terminated by offeror

Termination of offer by:

Time - only open for so long, K should specify otherwise is "reasonable"

Rejection - once rejected, no offer on table, counter offer is blanket rejection

Revocation - closes offer

Death or insanity - of offeror prior to acceptance closes offer

Destruction of subject matter - prior to acceptance closes offer

K becomes illegal - no offer exists

If termination exists, there is not offer existing to accept

Option K - a separate K in which the offeror promises to keep the offer open for a specific time period in exchange for something of value

K normally considered binding at time of acceptance

Bilateral K - K is formed when the promises are exchanged - do not need to wait for performance - example would be sale of real estate

Unilateral K - when one person's promise is exchanged for an act performed by the other, i.e. - I will pay you \$100 to paint my house, house painted-have K

Offer should state when acceptance is effective

Mail Box rule - effective when sent - presumption is that the acceptance is effective at the point when the offeree dispatches the acceptance (from mail box days when you could not get into mail box to get letter back)

#### 4. Consideration

To be enforceable, agreement must be supported by consideration

Consideration - something of legal value given in exchange for a promise

Gratuitous promise - a promise made when a person asks for nothing in return - generally not enforceable

Elements of consideration

Legal value - something that the promise receiver (promisee) has the right to give but has no previous obligation to give

Can be promise to do or not do something

If no consideration present, no enforceable K

Illusory promise - doesn't bind promise maker to do anything - also would include language that permits canceling at any time without notice

Past consideration - this is where action was performed before the other person's promise-nothing of value exchanged, no consideration or K

However, courts will enforce "best effort" agreements

Exception to consideration rule is *Promissory Estoppel*

Enforces promise because of reliance and fairness rather than a bargained-for exchange - this is when you act or don't act based upon a promise without consideration -tort does not discuss concept of "unjust enrichment"

## **VIDEO LESSON 8 - THE BOTTOM LINE: K PERFORMANCE AND THE UCC**

UCC deals with Ks for the sale of goods

This chapter will cover:

1. Performance and Breach
2. Legal and Equitable remedies
3. UCC vales and concepts
4. Common law vs. the UCC

### **1. Performance and Breach**

Performance - carrying out an obligation and behaving in a way to achieve an individual and mutual goal of a contract

Breach of K - any failure to perform that is not excused

Excuses for non-performance:

Impossibility - after the K was made, the facts changed in a way that made it impossible to perform

2 kinds of breach

Material - the major kind of failure to perform that justifies bringing the deal to a close - can cancel and sue for damages

Non-material - limited damage, can't cancel K

2 standards of performance

Strict performance standard - the more exacting standard, applied to Ks when a high degree of perfection is possible or specifically bargained for - example would be being required to deliver a deed; can have only one meaning-has a very strict and limited obligation. Any breach, unless excused is a material breach

Substantial performance - is less exacting standard. Applied to Ks when precise or perfect performance of the K is very difficult or the parties do not specify strict performance in K duties. Example would be K to build house-does not specify every single detail and partial breach is normally not material

Late performance can be either strict or substantial - must specify if time is of the essence

### **2. Legal and Equitable Remedies**

Legal remedy - a court judgment for money

Equitable remedy - a court order restraining the defendant from doing something or compelling the defendant to do something other than pay money

Different types of legal remedies (money damages)

Compensatory - the amount of money necessary to compensate the party injured by the breach of the K

Consequential - make up for indirect losses, i.e., lost profits

Liquidated - a remedy that is agreed to in advance by both parties to a K - normally no way to determine exact damages

Limitations on damages:

Reasonable certainly - have to be able to prove exact amount of damages with a reasonable certainly

Reasonably foreseeable - must be reasonably foreseeable at time of K or you can't collect

Duty to mitigate - can't just let them pile up if you can mitigate

Economic losses - normally can't collect emotional or punitive

Courts will give equitable remedies when money damages would be inadequate to compensate

Specific performance - a court order telling the other party to complete the K

Not available for personal service

### 3. UCC Values and concepts

Article II - covers K for the sale of goods - meaning products or property that is tangible and moveable

Doesn't cover intangible or services or sale of real estate

Common law covers the above

To determine if UCC or common law applies, you must look at the terms of the K, what is the major element or agreement for - if for sale of goods, UCC

Values that UCC tries to put in practical instead of strictly legal concepts:

Business

Tries to be flexible

- Tries to place parties on equal footing
- Tries to be ethical
- Tries to enforce reasonable expectations of parties
- Places higher standards on those who are experienced - calls them “merchants”

Merchant:

- A person who deals in goods
- A person who claims to have special skill or knowledge
- A person who employs an agent or broker with a great deal of

knowledge

Number of terms in UCC:

Good faith

Reasonable - that which is logical or intended and given meaning only with relationship to particular facts of the transaction

#### 4. Common law (c/l) vs. the UCC

Under Common law, an offer must be specific, under UCC it may be general if it shows an agreement

Under C/L all terms must be specific, UCC permits flexibility and reads a lot between lines or “what is custom in the business”

UCC contains “gap-filling” provisions to cover that not in agreement - rules that will apply unless parties agree otherwise

UCC is flexible, c/l is not

To think of difference, think of sale of produce (UCC) and sale of r/e (C/L)

Unless agreed to, under C/L can't inspect before acceptance, under UCC have right to inspect and reject

Revocation of offer:

C/L - at any time before acceptance

UCC - if made by merchant, is open for reasonable time unless specifies other

UCC does not rely on mirror image rule - in other words, the UCC tries to make sure business takes place if the parties intended to do business

Title - right to ownership of goods when passed from seller to the buyer

Risk of loss - a provision determining which party will be responsible for damage to or destruction of K goods

UCC covers remedies-

Cover - you may buy substitute goods and seek damages from seller for K breach

Specific performance applies in UCC

## **VIDEO LESSON 9 - CONTRACTS WITHOUT CONSEQUENCES: VOIDABLE, UNENFORCEABLE, AND VOID KS**

Why Ks may not be binding in court:

This chapter will cover:

1. Lack of real consent
2. Lack of capacity
3. Statute of frauds
4. Illegality

Some very important terms:

A voidable contract - where one or more parties may have legal permission to cancel a K without penalty because of flaws in K

Unenforceable K - a court can not enforce the agreement because the parties failed to fulfill some formality required by law

Void K - the law treats a K as if it had never really been formed

Ending a K

Performance complete

Termination - in midstream

Breach - fail to complete

Avoidance - just not doing it

Recession - the legal name for unwinding a K - if you do this, you must place parties in position they were at start

### **1. Lack of real consent**

No K if agreement was not voluntarily or knowingly made - person must know what is going on and voluntarily consent

No K if:

Misrepresentation - can't know if facts not correctly presented

Mistaken - when you have a misunderstanding

Voluntarily - must be freely given, no force, no threats, etc

Duress - a person has been forced, either physically or, most of time by threats, to enter into a K - no K

Undue influence - a vulnerable individual or someone in a susceptible position, is subjected to unfair methods of persuasion - the elderly, etc.

Misrepresentation - a party enters into a K relying on an important untrue statement of fact made by the other party

If made with Scienter (falsity or intent to deceive) we call it fraud

If innocently made, we call it innocent misrepresentation

Either way, may void K

It must be a material fact - not just an "opinion" - material fact is one that "a reasonable person would consider important"

To cancel, must also show that you justifiably relied on this representation

## 2. Lack of capacity

Capacity - the ability to give legal consent and shoulder legal objectives

3 groups of people unable to enter into a K:

1. Minors (infants is term used) - normally under 18
2. Mentally impaired
3. Seriously intoxicated

K made by infant is voidable by the infant - disaffirmance - where the infant voids the K by rescinding the same, only the infant may do it, not the other party

## 3. Statute of Frauds

Certain types of Ks must be in writing to be enforceable

No other evidence is permissible

6 types:

1. Marriage - is someone pays someone to marry or not - prenuptial agreements
2. Year - a K which can not be performed within a year
3. Land - any interest in real estate
4. Executor's promise to personally pay the debt of the estate
5. Goods which cost over \$500
6. Suretyship - a K where someone promises to pay the debts of another if that person fails to pay



Writing required - can be memorandum, something in writing that provides evidence that the K was made - need not be complete but should be. Only needs to be signed by person against whom enforcement is sought

Parol Evidence Rule - when parties enter into a written K, a court will not permit them to use evidence of prior or contemporaneous statements to add, alter, or contradict the terms of the K

I.e. - is the best evidence rule, the K is the best evidence

Always read K to make sure it is complete, etc.

If terms of writing are ambiguous, parol evidence rule does not apply - TO THOSE TERMS

Rule does not apply to what happens after K is signed

#### 4. Illegal Ks

Ks that go against public policy and society's best interest

Any K that violates a statute

Non-competitive K may be against public policy if overboard

To enforce a non-competitive K, must prove a legitimate interest is at stake

Also clause must be no more than necessary

Can't be unfair burden on the parties or society as a whole

Exculpatory clause

might      One K-ing party agrees to release the other party from liability for harm that occur in the future - bull riding or parking ticket release for example

Must be done knowingly and voluntarily

Not good if action is intentional or reckless

Watch legalese or size or location of print

Unconscionability

A court has the power to refuse to enforce a K if it finds the k to be extremely harsh, unfair, or commercially unreasonable

is case by case

court looks at the way it was written and the terms, if one sided, no good

Severability clause - where a court may enforce part of a contract if there is a statement

in the K that if one of the terms of the K is invalid, the balance of the K still stand (unless this is a material part of the K)

## **VIDEO LESSON 10 - PROTECTING THE PUBLIC: CONSUMER LAW**

How the law gives consumers information and power to fight back against unfair and dishonest business practices

This chapter will cover:

1. Consumer protection Statutes
2. Checks and Banking
3. Consumer credit
4. Bankruptcy
5. Tenant rights and responsibilities

### 1. Consumer protection statutes

Numerous state and federal

Till 1930s was mainly caveat emptor

Example is Federal Drug and Cosmetic Act

FDA

Must approve medical, cosmetic, drugs, etc

Product liability laws

Lemon law

FTC - federal trade commission

Forbids unfair or deceptive acts or practices in business

Sets telemarketing rules, etc. - door to door solicitations (3 days to rescind)

### 2. Check and Banks

Articles 3 & 4 of the UCC

Bank has legal duties - good faith

Duty to use reasonable care in paying checks

Checks can't be postdated

Under UCC bank has no obligation to pay stale (6 month old) check

Bank only has to use "ordinary care" in inspecting checks

### 3. Consumer Credit

Under fed law, no one can be discriminated against for standard reasons

Equal credit opportunity act - regulates entities that regularly extend credit, etc.

Truth in lending act - applies to consumer credit only for personal, family, or household purposes  
Requires disclosure of all costs, etc.

Credit reports are covered by Fair Credit Reporting Act  
places duty of disclosure on both the companies who assemble information and those using their services

### 4. Bankruptcy (only part of this worthwhile)

Exclusively federal

Creditors - those who are owed money

Debtors - those who owe money

Concept is to allow fresh start

Chapter 7 - Liquidation

Chapter 11 - Reorganization (business or very large debtor)

Chapter 13 - consumer debt adjustment

Need not have fewer assets than liabilities - only inability to pay

Bankruptcy terms:

Petition

Automatic Stay

Exemption

Non dischargeable debt

Discharge

### 5. Tenants Rights and Responsibilities

Varies from state to state

Under common law, defects were tenants responsibilities

Is combination K and property transaction  
normally governed by statute - note - lots of areas have rent protection

Implies Warranty of Habitability  
Requires that residential property be safe and fit for human habitation during the rental period

Constructive eviction - not permitted - like when landlord turns off heat to get you to move

Implied warranty of possession  
When property is leased, landlord must deliver property to tenant and give quiet enjoyment

Landlord can have tort liability

Note that a lot of states, like Ohio, permit tenant to place rent in escrow with court if landlord breaks lease or refuses to make repairs

landlord required to place deposit in escrow, pay interest, etc.

Landlord may not use self help eviction and must follow statutes

## **VIDEO LESSON 11- BUYING TROUBLE: PRODUCTS LIABILITY**

Product liability - the liability of a manufacturer and those who market products for defects in the produce

This chapter will cover:

1. Significance of product liability
2. UCC warranty of quality
3. Negligence
4. Strict liability
5. Defense of product liability

### **1. Significance of product liability**

Common law was caveat emptor - buyer beware

Now caveat venditor - seller beware (video tries to make it sound like it is starting to change but I don't think so based on current case law)

Product liability includes 2 branches of law:

tort law - when a person violates a standard of care that is imposed by law

K law - when a person violates a duty taken voluntarily through an agreement

This area of law comes from many sources:

Statutes

UCC - contains provisions that allocate responsibility between buyer and seller for defects in products

Common law - court made

Negligence law - applied to the process of designing, manufacturing, inspecting, and giving information about a product

## 2. UCC warranty of quality

Warranty is seller's promise that goods will measure up to a certain standard of quality  
places contractual duty on seller

Express warranty - a warranty stated in words or their equivalent

Implied warranty - is a warranty implied by the nature of the sale

Under UCC, 3 different ways seller makes an express warranty:

promise

description

sample or model

Difference between puffing and warranty - depends upon facts

Implied warranty of merchantability

only seller who is merchant can make

creates a standard that products being sold are merchantable - the goods will be at

least fit for their ordinary purpose intended

created every time goods sold

Implied warranty of particular purpose

guarantee that a product will be fit for the particular individual purpose that the  
buyer had in mind

under UCC for this to happen, 3 things need to be in place:

1. Seller's knowledge of the buyer's purpose

2. Reliance on the seller's judgment in selecting

3. Reliance on the seller in purchasing

Video says not created when picked up off shelf (but what about advertisement)

Breach of warranty - UCC provides for remedies by recover of:

1. Damages for physical injury
2. Damages for property injury
3. Damages for economic loss

Disclaimers- seller causes

language to limit or manage warranty liability - like “for 90 days...”

Federal law limits ability to restrict implied warranty

### 3. Negligence

Applied to product

Seller must exercise duty of reasonable care, no damage, inspect, includes putting on warning labels

### 4. Strict liability

By statutes or common law

Applies to professional sellers

Holds the seller liable without any proof of negligence or other kind of fault when the seller’s product is sold in a defective condition that is unreasonably dangerous

Permits punitive damages

Must prove defect in product design or manufacture

### 5. Defenses

Own negligence

Comparative negligence

Assumption of risk

## **VIDEO LESSON 12 - WORKPLACE WOES: EMPLOYMENT LAW**

This chapter will cover:

1. Workplace safety
2. Job security
3. Employee rights
4. Employment discrimination

### 1. Workplace Safety

Prevention and compensation

OSHA - occupational safety and health act - biggest regulator- requires employers to provide employees with jobs in work places that are free from hazards likely to cause injury or death

Occupational safety and health administration is part of US labor department - enforces law

3 principal parties:

OSHA - rules and regulations to lessen injury and/or accidents

employer - by complying with law and rules

employee - contributes by complying and reporting when violation

Most enforcement based upon employee reporting

### Workers Compensation

Is mainly state for injury or illness suffered as a result of work

Feds cover fed employees

removes cause as necessary element

removes claims from court to administrative law

strict liability for employer

exclusive remedy (except for willful, wanton, intentional)

## 2. Job Security

The legal right to retain a job as long as performance is adequate

Some job security is by K

if so, must prove breach to terminate

just cause needed - a reason substantial enough to justify ending the K early

Remember to document and give advance warning, etc., prior to termination

Labor unions-most Ks require only termination with just cause

Employment-at- will

A person who does not have job security by K or by statute is presumed to be an employee-at-will

Can terminate at any time or quit at any time

Any reason (except as below) or no reason

Can't terminate for:

1. Engaging in union activities

2. Reporting unsafe work conditions

3. Race, sex, religion, color, age discrimination, disability

4. Refusing polygraph exam
5. Taking family leave
6. Whistle blowing

Law of wrongful discharge was based on common law

Three theories

Public policy - almost always a tort theory that permits the employee to recover tort damages from an employer that has fired the employee for a reason that is against public policy (being called for jury duty, national guard duty, whistle blowing)

Implied K - is view of overall picture including such things as job reviews, annual raises, promotions, etc.

Implied covenant of good faith and fair dealing - holds employers liable when they discharge a person for a reason that constitutes bad faith (like to not have to pay a commission or refusing sec)

### 3. Employee rights

Right of privacy (a very rapidly changing field)

Big distinction between private sector and government sector - in private sector may monitor if for important business reason - have written, published policy

Written communications, e-mail, video taping

Public Polygraph Testing Act  
sets limits

Drug and alcohol testing- need written rules, equal treatment

Family medical leave act

Gives employees who have worked for an employer (with 50 or more employees) at least 1,250 hours over 12 months, the right to take up to 12 weeks of unpaid leave for family reasons or medical reasons

### 4. Employment discrimination

Prohibits making employment decision on an employee based upon their membership in a group



Section 1981 - no discrimination based on race or ethnicity

Equal pay act - addresses no pay discrimination based on sex

Title 7 (1964) of civil rights act - foundation for all discrimination law  
all employers with over 15 employees-covers all employee rights: no  
discrimination on basis of:

- race
- color
- religion
- sex (gender only)
- natural origin

Equal employment opportunity commission (EEOC) administers Title 7

1967 - age discrimination in employment act - no discrimination for being over 40

American with disabilities act - 1992-1995

Sexual harassment: unwelcome verbal or physical incidents of a sexual nature that is  
sufficiently severe to adversely affect working conditions

2 major forms:

1. Quid pro-quo - this for that  
When a supervisor makes threats or promises, or conditions  
employment on cooperating with a request for sexual favors or a  
personal relationship
2. Hostile environment sexual harassment  
Harassing behavior that essentially poisons the workplace for the  
employee and makes work life so difficult that is essentially  
changes the terms of the employment K

American with disabilities act:

The ADA protects qualified individuals with a disability who can perform the essential  
functions of a job with or without reasonable accommodations

A disability - a mental or physical impairment that substantially limits one or more major  
life activities