



Weekly Information Sheet Review

Midterm Review

BLaw 220 Business Law



Weekly Information Sheet 01

General Legal Principles -

The simple **DEFINITION** of the concept of **LAW** is:

Rules by which civilization is ordered.

The simple **DEFINITION** of the concept of **RIGHTS** is:

The legally recognized ability to exercise power and control over an action or object.

Types and Priority of Law

- The three basic types of law are **Constitutions, Statutes** and **Case Law**.
- The priority or ranking of law is as follows:
 - 1. Constitution;**
 - 2. Statute;**
 - 3. Regulation;**
 - 4. Executive Order or Policy.**
- It should be noted that **Case Law (Common Law)** is not ranked or given a priority order because its purpose is merely to decide a case in controversy or interpret or explain a constitution, statute, regulation or executive order.
- The **Constitution (both federal and state)** are the supreme law, and no other law within the federal or state systems can out rank them.
- Other than the **Constitution**, no other law can ever out rank a statute.
- A statute is a law enacted by **Congress (federal)** or the **legislature (state)**.

Freedom is the Fundamental Pillar of American Law

- *Freedom derives from the **fundamental respect for the individual**.*
- *In order to secure our Freedom, the law protects our rights.*
- *These are **individual rights**, not community or collective rights.*
- *Freedom can be a scary thing. For is not the power to do what everyone thinks is a good idea, but rather what some think is a bad one.*

Founders and Individual Rights

- The founders maintained a clear grasp of the connection between liberty, freedom and individual rights.
- They understood that a person's unfettered ability to freely exercise their property rights, is the gateway of liberty.
- Throughout the Declaration of Independence, the Constitution and the Bill of Rights, individual rights, and a person's ability to freely exercise their individual rights, is deemed sacrosanct.
- Individual rights are thereby a foundational pillar upon which American government is built.

Common Law

Because it developed from the Common Law, most law of Business, Property and Corporations is:

State Law

The Pathway to Liberty

FREEDOM → RIGHTS → LAW

Evolution of Rights

- In our Constitutional system of law, government principle purpose is to protect the rights of individuals, especially property rights.
- Derived from Rome and England, America's legal system was the first in world history to provide such protections and recognize individual rights.
- Under American law these rights are unalienable.
- **St. Thomas Aquinas** transformed the concept of Rights by means of his concept of Grace, citing that all people had an individual relationship with God, and men like William Ockham and John Wycliffe, used this perspective to assert that human beings are instruments of God, with fundamental, individual, natural rights).

The Transformation of the Meaning of Rights

Steps in the Evolution of Rights and Protection of Individual Freedom

1. *Greek Democracy*
2. *Roman Law*
3. *The Development of English Common Law*
4. *The Magna Carta*
5. *Clerical Philosophy and the Recognition of Natural Law*
- Magna Carta - 4th Lateran Council - St. Thomas Aquinas - William Ockham - John Wycliffe
6. *Thomas Hobbes and the Social Contract Theory*
7. *John Locke and the Pronouncement of Property Rights*

Lineage of the Law

- Our laws have an important history from ancient times to today.
- The first real concept of a body of law, with an executive to enforce it, a senate to debate it, and courts to decide it, was in:

Rome

- The reason the first set of laws was developed in Rome was because they viewed their society and culture as lasting longer than a human lifetime.
- They viewed **Law** as a means to maintain that society and to:
 - **Promote the continuity of trade and commerce;**
 - **Help administrate military conquests; and**
 - **Instill consumer confidence.**
- The law we respect today has a lineage over time and distance.
- Beginning in Rome, it was transported to England as a Roman Colony.
- As English law developed, it was then brought to America when we were a British Colony.
- The law we know today in the **United States** is descended from:

England

- As a result, the body of law that was the most prevalent in Colonial and Early America, as descended from England was:

The Common Law

- **Common law** was the law made by **Judges** in deciding cases based upon precedent and custom.
- Most of the cases involved property disputes.
- In making the decisions that created the **Common Law**, **Judges** followed the legal principle of **“Stare Decisis”** which means:

“Let the Decision Stand”

Law and Equity

- Prior to 1800, Courts were divided between Law and Equity.
 - **Equity had sole jurisdiction over injunctions. Its judges were clergy.**
 - **Law had sole jurisdiction over damages (\$). Its judges were lawyers.**

Reporting on the Law

- The man who was the first to compile the reports and explanations of Case (Common) Law in British Courts, into his famous "Commentaries", that would become known as the "Bible of the Law", was:

Sir William Blackstone

- Blackstone's Commentaries would be used as the primary legal authority for common law courts in England and America until the middle of the nineteenth century, and are still often cited today.

Magna Carta

- The first real battle that was fought and won for property rights was:

The Battle of Runnymede in 1215

- At the Battle of Runnymede, the landed knights (freemen land owners) made **King John I** of England sign the **Magna Carta**, which is Latin for:

"Great Charter"

- King John was the son of King Henry and Brother to King Richard.
- A king following the Norman line started by William the Conqueror in 1066.
- The Magna Carta, signed by King John, was one of the forerunners of modern British law.
- The Magna Carta and the Fourth Lateran Council were each major developments in the evolution of rights across the world.
- It was also one of the foundational documents for the US Constitution and its Amendments (the Bill of Rights).
- Originally known by the people of England as the Charter of Liberties.
- It became a guiding document of both England, and several other countries.
- It expanded the rights and liberties of the people, and limited the power of the government.

What is in the Magna Carta

- Containing 63 clauses, this landmark document:
 - Created a council to the King (a forerunner to parliament);
 - Promised all freemen access to courts and a fair trial;
 - Specified many property rights from infringement by the king and his agents;
 - Eliminated unfair fines and punishments;
 - Gave certain legal powers to the Catholic Church; and
 - Addressed many lesser specific issues of the day.
- It should be noted, however, that **one major right the Magna Carta did not recognize, was that it did not abolish the condition of involuntary servitude (serfdom)**, since the freemen who drafted the document, depended upon this feudal system for their wealth, power and life.

Sovereignty

- Sovereignty, in which law recognizes the power of ruling, is vested in Great Britain in the government (the King in Parliament).
- In the United States, however, sovereignty vests in the people.
- Such is why the first three words in the Constitution are:

“We The People”

Constitution:

“The fundamental and organic law of a nation or state that establishes the institutions and apparatus of government, defines the scope of governmental sovereign powers, and guarantees individual civil rights and civil liberties.”

What the purpose of a Constitution is:

- To Establish the Structure of Government;
- Define the Powers of Each Structure; and
- Enumerate the Rights of Citizens.

American Constitutional Government

- American Government is based upon the representative, republican model (where people are elected to represent the voters).
- The purpose of government in that system is to protect the rights of individual people, and the **sovereignty of the government is vested in the people themselves.**

American Constitutional Government Continued

- Both the States and the Federal Government are founded upon written constitutions. The first governments in human history to do so.
- When these constitutions were first drafted, they all followed the Adams framework, in his **“Thoughts on Government”** Essay.
- Under this Adams framework, all these governments contain three
 - separate, ○ independent, ○ competing and ○ co-equal branches, that would provide checks and balances, against the powers of each other.
- That is why, to this day, all the early state governments have a common structure.
- The federal government, which was modeled after these states, thus also has a similar structure.
- The states added after the US Constitution was adopted, then also followed this structure.

The New York State Constitution:

- **First State Constitution was drafted at the White Plains Convention, during military operations across New York, in 1777.**
- **Its principal author, John Jay, was a brilliant lawyer who later became the first Chief Justice of the United States Supreme Court.**
- **Followed the “Adams” Thoughts on Government model with independent, separate, co-equal, elected branches, for a Governor, Bicameral legislature (Senate and Assembly) and Judiciary.**
- **Declared sovereignty in the people, was republican in form, and provided for protection of individual rights.**
- **First Elections were held immediately after convention approved it, electing George Clinton, New York’s first Governor.**
- **Today’s Constitution is remarkably similar to the “bones” of the first one drafted by John Jay.**
- **It contains Twenty Articles, contains a Bill of Rights, retains separate, co-equal, branches, for a Governor, Bicameral legislature (Senate and Assembly) and Judiciary, and has Articles on specific areas of state needs.**
- **Amendments are authorized by passing a joint resolution by two successive legislatures, by a majority vote, that is then approved by the voters, also by majority vote, or by means of a convention then approved by the voters.**

The United States Constitution:

- **The United States Constitution was drafted at the Philadelphia Convention, 11 years after the Declaration of Independence in 1787.**
- **Its principal author, James Madison, was also brilliant lawyer who later became the Congressman who authored the Bill of Rights, then later the President of the United States.**
- **Also basically followed the “Adams” Thoughts on Government model with independent, separate, co-equal, branches, for a President (indirectly elected by the electoral college), Bicameral legislature (Senate – now directly elected by state but originally appointed by state legislatures and House of Representatives – directly elected in apportioned districts) and Judiciary (appointed by the President upon advice and consent of the Senate).**
- **Declared sovereignty in the people, was republican in form, and provided for protection of individual rights (after passage of the first ten amendments).**
- **First Elections were held immediately in 1788 after convention approved it, and it was ratified by at least 9 states, electing George Washington, the first President of the United States.**
- **Today’s Constitution contains Seven Articles, a Bill of Rights (first ten amendments), and has been amended 27 times.**
- **Amendments are authorized by passing a joint resolution by a two-thirds vote in both the House and the Senate, and then being ratified by $\frac{3}{4}$ of the state legislatures, or by means of a convention then ratified by the $\frac{3}{4}$ of the states.**



Weekly Information Sheet 03

Generally -

The simple **DEFINITION** of the concept of **Executive** is:

The branch of government responsible for effecting and enforcing laws

The simple **DEFINITION** of the concept of **Judiciary** is:

The branch of government consisting of the courts, whose function is to interpret, apply and enforce the laws.”

The simple **DEFINITION** of the concept of **Legislative** is:

The branch of government, consisting of a legislature, whose function is responsible for the enacting of laws.”

The Executive:

- ***The founders wanted to consolidate Executive Power in a single person, for nimbleness of action and accountability.***
- ***Designed to represent and administrate the government, and the nation or state at large, the Executive is charged with providing public protection, securing civil rights, and faithfully enforcing laws made by the Legislature and the Courts.***
- ***There have been 45 Presidents and every President, except for Franklin Roosevelt, served a maximum of two terms. There is no term limit for New York State Governor.***
- ***The President is elected by the electoral college, the governor of New York is directly elected by the people. Both serve 4 year terms.***
- ***The President must be at least 35, the governor of New York must be at least 30 years of age.***
- ***Executives use departments and agencies to Regulate, License, Adjudicate, investigate and Enforce.***
- ***70 percent of employees who work for agencies are appointed under the civil service system.***

The Judiciary:

- **The founders designed the judiciary to *hear cases in controversy and appeals*, and are charged with providing impartial decisions to secure civil rights, interpret and apply the law, and faithfully enforce laws made by the Congress and State Legislatures.**
- **The Federal Courts are Courts of *LIMITED Jurisdiction*. To get into Federal Court you must either have a federal question or complete diversity of parties (meaning residents of different states) and at least \$75000 in damages.**
- **The State Courts are Courts of *BROAD Jurisdiction*. Most law is state law. There are few restrictions to sue in state court.**
- **The Federal Courts include:**
 - **Supreme Court of the United States – The Highest Federal Court,**
 - **Federal Circuit Courts of Appeals,**
 - **Federal District Courts – The Federal Trial Court,**
 - **The US Court of International Trade,**
 - **Foreign Intelligence Surveillance Courts (FISA),**
 - **Federal Bankruptcy Courts, and**
 - **United States Court of Federal Claims.**
- **The Courts of the Unified Court System in New York Include:**
 - **Court of Appeals of the State of NY – The Highest State Court,**
 - **Appellate Division of the Supreme Court,**
 - **Supreme Courts – The State Trial Court,**
 - **Court of Claims – Suits against the State,**
 - **County Courts – The State Criminal Court,**
 - **Surrogate’s Courts, and**
 - **Family Courts.**
- **Local Courts in New York Include:**
 - **County Courts – Criminal (felony) and up to \$25,000 of civil,**
 - **Family Court – Minor Family Related Criminal and Custody,**
 - **Surrogate Court – Wills, Trusts and Estates, Adoptions,**
 - **City Court – Misdemeanor Crimes, Arraignments \$15k civil,**
 - **Town and Village Courts – Misdemeanor Crimes, Arraignments \$3k civil.**
 - **City Court Judges must be lawyers, Town and Village Justices do not**

The Legislature:

- **Congress Designed to enact written statutes involving the issues of federal concern, and provide oversight over all three branches of the federal government, the Congress is charged with enacting laws and taking measures to establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty.**
- **The State Legislature was Designed to enact written statutes involving the issues of state concern, and provide oversight over all three branches of the state government, the Senate and Assembly are charged with enacting laws and taking measures to secure the blessings of liberty.**
- **Both Congress and the New York State Legislature are Bicameral (two house) legislatures whose members are elected directly by the people. Members of Congress and all State Legislators serve for a Term of Two Years. United States Senators serve for a term of 6 years.**
- **There are 435 members of the House of Representatives and 100 United States Senators. There are 150 members of the New York State Assembly and 63 New York State Senators.**
- **Legislative bodies pass bills by a majority vote which must be signed by the executive to become law (unless a veto is overridden by a 2/3 vote). They also use their Committees to conduct investigations and obtain information.**
- **United States Senators are elected from their states. All other legislators in Congress and in the states are elected from districts, which must be nearly equally apportioned within their respective houses (same size).**

Local Governments:

- **Counties:**
 - **There are 62 Counties in New York State.**
 - **The Legislative Branch of a County is known as the **County Legislature, or the County Board of Supervisors**, and the Executive Branch is known as the **County Executive**. They are elected.**
- **Cities:**
 - **There are also 62 Cities in New York State.**
 - **The Legislative Branch of a City is known as the **City Council**, and the Executive Branch is known as the **Mayor**. They are elected.**
- **Towns:**
 - **There are 932 Towns in New York State.**
 - **The Legislative Branch of a Town is known as the **Town Council**, and the Executive Branch is known as the **Supervisor**. They are elected.**
- **Villages:**
 - **There are also 551 Villages in New York State.**
 - **The Legislative Branch of a Village is known as the **Board of Trustees**, and the Executive Branch is known as the **Mayor**. They are elected**



Bob
Farley



Weekly Information Sheet 04

Generally -

- **Basis of all Law:** Contract Law is the basis for all law, and impacts all areas of human activity;
- **Freedom of Contract:** Freedom of Contract holds that individuals and corporations have an **inherent right** to make legally binding, mutual agreements without arbitrary or unreasonable legal restrictions.
- **The Common Law:** In most states, most aspects of contract law are governed by case law (i.e., “common law”), rather than by statutes. Common law further held that contracts work best when an agreement is performed.

Definition of Contract:

“An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.”

Elements of a Contract:

- Agreement,
- Between Competent Parties,
- Based on Genuine Assent,
- Supported by Consideration,
- for Lawful Purpose Subject Matter,
- in Legal Form.

Nature of Contracts:

- Parties – A Promisor (offeror) and Promisee (offeree),
- Reciprocal Duties and Benefits,
- A Contract Arises when an offer made by an offeror is accepted by an offeree,
- The Parties Intend to make a Binding Agreement.

Classes (types) of Contracts:

- Formal and Informal Contracts;
- Written and Oral Contracts;
- Express and Implied Contracts;
- Valid and Voidable Contracts;
- Void Agreements;
- Executed and Executory Contracts;
- Bilateral And Unilateral Contracts;
- Quasi Contracts; and
- Internet/Electronic Contracts.

Offers -

Definition of Offer:

“The act or instance of presenting something for acceptance; by means of a promise to do or refrain from doing some specified thing in the future, conditioned on an act, forbearance, or return promise.”

Offers Continued -

Requirements of an Offer:

- **Contractual Intention** - The Offeror, by their offer, must intend to create a binding agreement, as determined by reasonable person (objective standard).
- **Definiteness** - The Offeror, by their offer, must express definite and understandable terms of the offer, which are clear and spelled out, again as determined by reasonable person (objective standard).
- **Communication of Offer to Offeree** - "The offer, and its terms, must be clearly communicated by the Offeror to the Offeree."

Termination of an Offer:

- **Generally** - An offer can be terminated so as to not support a valid contract, and an Offeree cannot accept a terminated offer.
- **Revocation** - An offer that has been revoked by the Offeree cannot support a valid contract, and generally, an offer may be revoked at any time by the Offeror PRIOR TO the offeree's acceptance.
- **Counter Offer** - A Counteroffer by the Offeree constitutes a Rejection of the Offer, and such a counteroffer, constitutes a new offer, where the Offeree now becomes Offeror.
- **Rejection** - A communicated Rejection by the Offeree constitutes a Termination of the Offer, and as an offer must be accepted to create a contract, no contract is created.
- **Lapse of Time** - When an Offer is conditioned upon acceptance within a specific period, and the Offeree fails to accept such offer within such time period, constitutes a Rejection of the Offer, and when no time is specified in the offer, then an acceptance is required within a reasonable period of time
- **Death or Disability** - If either the Offeror or Offeree dies, or becomes mentally incompetent, before the offer is accepted, the offer is deemed by law to be automatically terminated.
- **Subsequent Illegality** - If the performance of the contract becomes illegal after the offer is made, but before the contract is able to be fulfilled, then the offer is also deemed terminated.

Acceptances –

Definition of Acceptance:

"An offeree's assent, either by express act or by implication from conduct, to the terms of an offer in a manner authorized or requested by the offeror, so that a binding contract is formed."

Requirements of an Acceptance:

- **What Constitutes An Acceptance** - An Acceptance is the offeree's manifestation of assent to the terms of the offer, made in a manner invited or required by the offer, as determined by reasonable person (objective standard), and where there is no contractual intention, there is no valid acceptance.

Acceptances Continued –

Requirements of Acceptance Continued:

- **Privilege of Offeree** - An Acceptance must be in response to an offer, not in response to something other than an offer, such as a solicitation of offers, and as an offer is directed to the offeree, it is the offeree who has the privilege of the power of acceptance or rejection, and it is essential to for a valid contract that each party manifest assent.”
- **Effect of Acceptance** - An Acceptance creates a valid contract, and once a contract is created, neither party can subsequently withdraw from, or cancel, the contract without the consent of the other party.
- **Nature of Acceptance** - The Nature of an Acceptance includes the following:
 - A manifested intent to Accept;
 - An objective or outward appearance of Acceptance, not some subjective or unexpressed intent of the offeree;
 - An absolute and unconditional intent to Accept the offer; and
 - An Acceptance of just what is offered, without changes.
- **Who May Accept** - Only the person to whom an offer is directed may accept it, and an Acceptance is made by the offeree (the person to whom the offer is directed), and unless the offer says otherwise, only the offeree may accept the offer.
- **Manner and Time of Acceptance** - The offeror is always the master of the offer, and it is the offer that is controlling with respect to the manner and time of its acceptance, but overall, the manner and time of the Acceptance must be in the manner and time invited or required by the offer, and any such Acceptance takes effect when the offeree communicates an absolute and unconditional intent to Accept the offer.
- **Communication of Acceptance** - Acceptance by the offeree is the last step in the formation of a bilateral contract, and the offeror’s receipt of the acceptance is the point in time when the contract is formed and its terms apply, but in order to have an Acceptance, the offeree must be communicate such Acceptance to the offeror, and under the “mailbox rule”, Acceptance by mail takes effect at the time and place when and where the letter is mailed (or FedEx’d) or when the fax is transmitted by the offeree.

Auctions:

- **Invitation to Negotiate** - statements made by the auctioneer to draw forth bids are merely invitations to negotiate;
- **Each Bid is an Offer** - and the bidder may generally withdraw the bid at any time before it is accepted by the auctioneer.
- **Bid Acceptance** - Acceptance of the Bid (the offer) is usually done by the fall of the auctioneer’s hammer, and the auctioneer indicating that the highest bid made has been accepted.
- **Without Reserve Auctions** - When the auction sale is without reserve, the auctioneer must accept the highest bid.
- **Generally** - A person making a bid is making an offer, and the acceptance of the highest bid by the auctioneer is an acceptance of that offer and gives rise to a contract.



Weekly Information Sheet 05

Contractual Capacity

Definition of Contract:

"An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law."

Definitions of Competency and Capacity:

Competence: *"A basic or minimal ability to do something"*

Capacity: *"The power to create or enter into a legal relation under the same circumstances in which a normal person would have such power to do so."*

Contractual Capacity: *"The ability to understand that a contract is being made, and to comprehend its general meaning, to the extent that genuine assent may be given to its terms."*

Reasoning for Capacity:

*Without **Contractual Capacity** there can be no genuine assent to a contract, as the ability of the parties to understand the terms, conditions, duties and responsibilities of the agreement to which they are entering, is called into question due to age, mental illness, brain injury, or intoxication from medication, illegal drugs or alcohol.*

Classes of Capacity:

Status Incapacity: *Minors (persons under 18 - the legal age of majority) do not have the legal capacity to contract. If they have been emancipated from their parents, however, they are presumed to have capacity. Contracts with minors are therefore often found to be voidable at the option of the minor.*

Factual Incapacity: *Mental incompetence due to mental illness, brain injury, or intoxication from medication, illegal drugs or alcohol.*

Minors:

Defined: *A Person under 18 years of age.*

Ability to Contract: *Minors do not have the legal capacity to contract, but as with anyone who has capacity questions, they may enter into a contract, so long as the other party understands that they are contracting with a party of insufficient capacity. Such contract will be VOIDABLE by the minor*

Issues Concerning Voidable Contracts:

Restitution after Disaffirmance: *Minors must make restitution to the extent possible.*

Contracts for Necessaries: *A minor can disaffirm a contract for necessities but must pay the reasonable value for such.*

Liability of Parent or Guardian: *Parent can be held liable for contracts for necessities and medical expenses when a third person supplies the parents or guardian of a minor with goods.*

Minors Cannot Avoid Contracts:

- *For Educational/Student Loan;*
- *For Medical Care;*
- *Made while running a business;*
- *Approved by a court;*
- *Made in performance of a legal duty; and*
- *Relating to bank accounts, insurance policies, or corporate stock.*

Contractual Capacity - Continued

Mentally Incompetent Persons:

Defined: A person is determined to be incompetent when they have been found to be unable to manage their own affairs.

Ability to Contract: Mentally Incompetent people do not have the legal capacity to contract, just as minors. Such contract will be VOIDABLE by the mentally incompetent person or their legal representative. If their mental disability is removed they can ratify or disaffirm the contract.

Intoxicated Persons:

Defined: A person is intoxicated when they experience a diminished ability to act with full mental and physical capabilities, because of alcohol or drug consumption.

Effect of Intoxication: The capacity of a party to contract, and the validity of the contract, are not affected by the party's being impaired by alcohol or drugs at the time of making the contract, so long as the party knew that a contract was being made.

If the degree of intoxication, however, is such that a person does not know that a contract is being made, the contract is VOIDABLE by that person.

After becoming sober, the individual may avoid or rescind the contract, but an unreasonable delay in taking steps to set aside a known contract, entered into while intoxicated, may bar such person from asserting this right.

Mistake:

Definition:

“An error, misconception, misunderstanding, or erroneous belief with respect to the terms, conditions, duties and/or responsibilities contained in a contract.”

Why Mistakes Matter: Because of the requirement of genuine assent, the validity of a contract may be affected by the fact that one or both of the parties made a mistake. In some cases, the mistake may be caused by the misconduct of one of the parties. In others, the mistake is the result of a non purposeful error.

Not Every Misunderstanding is a Mistake: It is important to understand that not every erroneous idea, is a “mistake” in a contractual context.

For purposes of rescinding contracts, a “mistake” refers only to a mistaken belief about an existing fact, NOT an erroneous belief about what will happen in the future.

Nor is a “mistake” a misunderstanding as to the “meaning” of the contract.

For a misunderstanding in the meaning of is not an error as to some external fact, but rather an error as to the meaning of a manifestation of assent, which is ultimately resolved by the process of interpretation.

Three Types of Mistake:

- Unilateral Mistake;
- Mutual Mistake; and
- Mistake due to transcriptions or printing.

Unilateral Mistake: Is a mistake made by only one of the parties. A party making the mistake may avoid the contract, only if the other contracting party knew, or should have known, of the mistake. This is because the mistake in such case was avoidable for the victim of the mistake. (2)

Mistake Continued:

Three Types of Mistake Continued:

Mutual Mistake: Is a mistake made by both of the contracting parties. It is a mistake as to a fact, that does affect the contract, and such mistake is shared by both parties, so that it is often held that no contract was formed at all, or that the contract should be subject to either rescission (i.e., cancellation) or reformation (i.e., re-writing by the court).

When Can a Contract Be Rescinded or Reformed for Mutual Mistake: When both parties are mistaken about a basic, material fact of the contract, the adversely affected party may generally avoid the contract.

Three Requirements: Three requirements are generally must be satisfied before the adversely affected party may avoid the contract on account of mutual mistake:

- The mistake must concern a basic assumption on which the contract was made;
- The mistake must have a material effect on the “agreed exchange of performances”; and
- The adversely-affected party (the one seeking avoidance) must not bear the risk of the mistake.

Transcription or Printing Mistake: Is a mistake that is made in the typing or printing of a written contract. This can happen when the parties make an oral agreement, and in the process of committing it to writing, or when printing it from a manuscript (a hand written document), a phrase, term, or segment is inadvertently left out of, or inadvertently altered in, the final, signed document.

When Can a Contract Be Rescinded or Reformed for Transcription or Printing Errors: When an error takes place as a result of a faulty transcription or printing, the aggrieved party may petition the court to rescind or reform the contract to reflect the actual agreement of the parties. The burden of proof in such case, however, is heightened to clear and convincing evidence that such a transcription or printing mistake was made.

Back to the Actual Intent of the Parties: A mistake in transcription is completely different in nature from a mistake of fact. When the mistake is in printing or transcription, the desired relief is to have the writing changed to reflect what was actually agreed.

Deception or Pressure:

Definition:

When there is a **Deception** or **Pressure** in the contract, there can be no genuine assent, as the ability of the parties to truly understand the terms, conditions, duties and responsibilities of the agreement to which they are entering, is not what they believed it to be, or they were forced against their will to enter into it (so as to remove the essential element of assent).

Types of Deception or Pressure:

Intentional Misrepresentation: The act of intentionally or purposefully making a false or misleading assertion about something with the intent to deceive.

Fraud: An intentional misrepresentation of a material fact, made for the purpose of inducing another to act to their detriment.

Negligent Misrepresentation: A careless or inadvertent false statement made in circumstances where care should have been undertaken.

Non Disclosure: The failure or refusal to reveal something that either might be or is required to be revealed.

Undue Influence: The improper use of power or trust in a way that deprives a person of free will and substitutes another’s objective.

Duress: A threat made to compel or induce a person to do something against their will or judgment. This can be physical duress or economic duress (type of threat).

Unconscionability: Where one party to a contract of exerts such extreme unfairness in a contract (when viewed through an objective standard), so that the other party lacks a meaningful choice. In such case, the contract’s terms are deemed so shockingly unfair as to unreasonably favor the other party, and thereby “shock the conscious of the court”.



Weekly Information Sheet 06

Consideration

Definition of Contract:

“An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.”

Elements of a Contract include:

- *Agreement,*
- *Between Competent Parties,*
- *Based on Genuine Assent,*
- *Supported by Consideration,*
- *for Lawful Purpose Subject Matter,*
- *in Legal Form.*

Definition of Consideration:

“Something (such as an act, a forbearance or a return promise) bargained for and received by a promisor from a promisee, that motivates a person to do something.”

It’s a “Bargained-for-Exchange” and requires “Mutuality of Promises”

Purpose and Function of Consideration:

- *The purpose of consideration is to distinguish between those promises that are enforceable, and those promises that are not.*
- *Promises to make a gift are unenforceable because they lack consideration.*
- *There are two primary functions of consideration – evidentiary and cautionary.*

Measure and Adequacy of Consideration:

Measure of Consideration: Legal Detriment and Bargained for Exchange

Adequacy of Consideration:

- *Amount of Consideration Considered Immaterial*
- *Sufficiency of Consideration Not Reviewable*
- *Exceptions –*
 - *Past Consideration, Pre-existing Legal Obligations and Moral Obligations*
 - *Sham, Incidental, Unconscionable or Fraudulent Consideration*

Forbearance, Illusory and Conditional Promises Consideration

Forbearance – Positive Consideration and Forbearance Consideration

Illusory Promises – Not Consideration because not a Promise

Bilateral Contracts - To be enforceable, there must be mutuality of obligation.

Conditional Promises: Depends on the occurrence of a future specified condition in order for the promise to be binding. Such promises are enforceable.

Exceptions:

- *Charitable Subscriptions - A charity’s reliance on the pledge, will be a substitute for consideration*
- *Uniform Commercial Code - In some situations, UCC abolishes the requirement of consideration.*
- *Promissory Estoppel - This doctrine known as detrimental reliance, is applicable when:*
 - *The promisor makes a promise that lacks consideration;*
 - *The promisor intends, or should reasonably expect, that the promisee will rely on the promise;*
 - *The promisee in fact relies on the promise in some definite and substantial manner; and*
 - *Enforcement of the promise is the only way to avoid injustice.*

Legality

Definition of Legality:

Requirement: To be a valid Contract, it must be for a lawful purpose subject matter.

Legality Defined: “Strict adherence to the law, prescription or doctrine, and the quality of being legal and/or being in compliance with the law.”

Subject Matter Defined: “The issue or topic presented, represented or performed in the contract.”

Illegality Defined: “An act that is not authorized by law, or a state or condition of being unlawful (in contravention of the law).”

Effect of Illegality:

Generally: An agreement is illegal when its formation or performance is a crime or a tort, or when it’s provisions are unconscionable, oppressive, unfair or made in bad faith.

Effect of Illegality: Ordinarily, an illegal agreement is void. When an agreement is illegal, the parties are usually not entitled to the aid of the courts.

Exceptions to Effect of Illegality:

Protection of One Party: When the law that the agreement violates is intended to protect one of the parties, that party may seek relief.

Unequal Guilt: When the parties are not in *pari delicto*—equally guilty—the least guilty party may be granted relief when public interest is advanced by doing so.

Partial Illegality: An agreement may involve the performance of several promises, some of which are illegal and some legal. The legal parts of the agreement may be enforced, provided that they can be separated from the parts that are illegal.

Crimes and Civil Wrongs:

There is a difference between illegality and criminality.

Criminal Conduct in Contract: A contract to commit a crime (such as where one of the parties pays the other to murder someone) is not enforceable and its making, or performance, will lead to criminal prosecution.

Non Criminal but Unlawful: Not all illegal contracts are criminal. A statute or the common law could simply forbid a type of contract or a contract term without making the violation of the law a criminal offense. For purposes of contract law, it is not concerned with whether the transaction attracts criminal penalties.

Good Faith and Fair Dealing:

Implied Covenant: This means that in every contract there exists an implied covenant of good faith and fair dealing. This means each party a duty of good faith and fair dealing in its performance and its enforcement.

General Obligation: The general obligation of good faith and fair dealing is imposed by law on both parties in the performance and enforcement of the contract. This duty is expressly recognized in both case law and the UCC.

Based Upon the Reasonable Expectation of the Parties: the determination of whether a party acted in good faith must be made with reference to the reasonable expectations of the parties in the context of the transaction.

Legality Continued

Unconscionability:

Defined: Black's Law Dictionary defines "unconscionability" to mean:

"Contract terms that unreasonably favor the other party, and where such are so unreasonably unfair or oppressive, that they shock the conscience of the court"

Generally: Ordinarily, a court will not consider whether a contract is fair or unfair, is wise or foolish, or operates unequally between the parties.

However, in certain unusual situations, the law may hold a contract provision unenforceable because it is simply too harsh or oppressive to one of the parties.

What Constitutes Unconscionability: A provision in a contract that gives what the court believes is too much of an advantage over a buyer may be held void as unconscionable, if it "shocks the conscience of the court".

An Equitable Remedy: Unconscionability originated as discretionary equitable relief in a contract suit. It is the function of a court of equity to do justice between the parties, and thereby decline relief to a plaintiff who had unfairly taken advantage of the other party.

Under the principles of equity, the court has the power to refuse enforcement of an unconscionable contract or to adjust the contract by removing or modifying the unconscionable provision.

Public Policy

Definition of Public Policy:

Requirement: To be a valid Contract, it must be for a lawful purpose subject matter.

Contracts which are deemed invalid because of **Public Policy** are the same as those which fail for the lack of a lawful purpose subject matter.

Public Policy Defined: *"Broadly, principles and standards regarded by the legislature or by the courts as being of fundamental concern to the state and the whole of society"*

Agreements Affecting Public Policy:

Agreements Contrary to Public Policy: The law will not recognize certain agreements that a legislature or the courts deem are substantially against the public interest, and harmful to society as a whole. These agreements, that may harm the public welfare, are thereby condemned as being contrary to public policy, and are therefore held not to be binding.

Types of Agreements that Are Not Upheld: Agreements that interfere with public service or the duties of public officials, obstruct legal process, or discriminate against classifications of individuals may be considered detrimental to public welfare and, as such, are not enforceable. These agreements are struck down by courts in the same manner as if they were illegal.

No Clear Delineation

Unenforceable Contracts:

- **Societal Protections:** The protection of the public welfare, health, or safety;
- **Personal Protections:** The protection of persons or property; and
- **Institutional Protections:** The protection of recognized social institutions.

Courts Are Hesitant to Use This Remedy

Public Policy Continued

Gaming Wagers and Lotteries:

Gaming Generally Illegal

Exception: State regulated casino gambling and contracts involving such, are enforceable and valid.

Exception: In many states, public lotteries (lotteries run by a state government) have been legalized.

Promotional Sweepstakes with Purchased Tickets – Illegal

Free Gift Promotions – Lawful so long as no purchase is required

Skilled Activity – Is not gambling.

Regulation of Business:

Business Regulations: These laws can take the effect of everything from licensing, to operational limitations on the business and its employees, to disclosure requirements, to consumer protections.

Effect of Violation: Whether an agreement made in connection with business conducted in violation of the law is binding or void, depends on how strongly opposed the public policy is to the prohibited act. Most courts take the view that the agreement is not void unless the statute expressly specifies such.

Consumer Protection Statutes: Consumer protection legislation often gives the consumer the right to rescind the contract in certain situations.

Licensed Callings or Dealings:

Required Licenses: Some professions and trades require that a person to obtain a license before engaging in such professions or trades. These professions and trades often require a high degree of education, training and/or skill to be deemed proficient.

Licensed Professions and Trades: Such professions and trades include law, medicine, accountancy, real estate brokers, stock brokers, insurance agents, hotel keepers, pawn brokers, electricians, and plumbers. In most jurisdictions, a license is required by law in order to practice these professions or trades in order protect the public from unqualified persons.

Contracts with Unlicensed Persons Unenforceable: A contract made by an unlicensed person in these types of enterprises would be unenforceable.

Quantum Meruit: The doctrine of Quantum Meruit is an equitable remedy that allows a person who performs services to recover the reasonable value of services, and damages incurred, in compensation for work performed in a quasi contractual relationship.

Certain business regulations of home improvement contractors, however, forbid an unlicensed contractor from not only enforcing a home improvement contract against a home owner, but also prohibit any recovery in quantum meruit as well.

Contracts in Restraint of Trade:

Restraint of Trade: Restraint of trade is an action that interferes with competition in a free market. Agreements (contracts) that unreasonably restrain trade are illegal, and void on the ground that they are contrary to public policy. In addition to the illegality of the agreement based on general principles of law, both federal and state statutes explicitly declare monopolies illegal and subject the parties to various civil and criminal penalties.

Agreements Not to Compete:

Permissible Under Certain Circumstances But Disfavored Enforceable Non-Compete Contracts if:

- It is narrowly drawn to protect the employer's legitimate business interests;
- It is not unduly burdensome on the employee's ability to earn a living;
- The geographic restriction is not overly broad, and
- A reasonable time limitation is given.

Usury:

Defined: According to Black's Law Dictionary, Usury is defined as "charging of an illegally high rate of interest".

New York Usury Rates: Section 5-501 of the New York State General Obligations law establishes a civil usury rate cap of 16 percent per year. Section 190.40 of the New York State Penal Law established a criminal usury rate cap of 25 percent per year. Certain borrowing transactions are not subject to civil usury, including credit cards.



Weekly Information Sheet 07

Contract Rules and Interpretation

Definition of Contract:

“An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.”

Elements of a Contract include:

- *Agreement,*
- *Between Competent Parties,*
- *Based on Genuine Assent,*
- *Supported by Consideration,*
- *for Lawful Purpose Subject Matter,*
- *in Legal Form.*

Statute of Frauds

Oral and Written Contracts:

Oral or Written: Contracts in most situations can be an oral or written agreement.

Oral Contracts: Unless otherwise required by law, a contract does not have to be in writing to be a binding and enforceable legal obligation.

Written Contracts: Although it is always a good idea to make contractual agreements in writing (as such tends to reduce confusion) under certain legal requirements sometimes contracts are mandated to be in writing.

Statute of Frauds: In accordance with the legal principle known as the statute of frauds, there are some types of contracts that must be recorded in writing, and signed by the party to be charged in order to be enforceable.

Basic Rule and Intent:

Basic Rule: The basic rule of the statute of frauds is that a contract within its scope may not be enforced unless a memorandum of it is written and signed by the party to be charged. This gives rise to a three observations:

First: The statute does not require the entire contract to be written, but only a memorandum of it.

Second: Only the party who is to be charged, that is, against whom enforcement is sought, needs to have signed it, and thus the signature of the other party is not needed.

Third: The consequence of noncompliance is usually unenforceability, not invalidity.

Intent: The statute is intended to prevent a person from enforcing a falsely alleged contract through perjured testimony.

Statute of Frauds (Continued)

Covered Items:

Contracts Involving the Sale or Conveyance of an Interest in Land: The statute of frauds requires that contracts concerning the sale or conveyance of an interest in land, must be in writing;

Contracts That Cannot Be Performed Within a Year: The statute of frauds further requires that any contract, which cannot be performed within a year, must be in writing;

Contracts For the Sale of Goods in Excess of \$500: The statute of frauds additionally mandates that a contract for sale and/or purchase of goods, in excess of \$500, must be in writing;

Contracts To Answer for the Debt or Obligation of Another: The statute of frauds also requires that suretyship contracts, meaning a contract to pay another person's debt or obligation, must be in writing;

Contracts Made by Executors or Administrators to Answer for the Duty of Their Decedents: The statute of frauds further requires that contracts in which the executor or administrator of an estate assumes personal liability to a creditor of the decedent for a debt or obligation incurred by the decedent before his death, must be in written form;

Contracts Made upon Consideration of Marriage: The statute of frauds requires that prenuptial contracts motivated by the impending marriage must be in writing. This is not a promise of marriage, which can be, and usually is an oral agreement; and

Contracts Involving the Assignment of, or the Naming of a Beneficiary of, a Life, Health or Accident Insurance Policy: That any contract, involving a promise to assign, or name a beneficiary of, a life, health or accident insurance policy, must be in writing.

Writing and Signature:

What Constitutes Writing: Although writing is traditionally the inscription of words on a tangible surface, such as paper, it is clear in contemporary law that "writing" includes a retrievable recording in an electronic or other medium. The statute of frauds is silent as to the particular formality needed for the writing as long as it contains the statute's minimum required content and signature.

Can Be a Memorandum and Not the Entire Contract: A written memorandum of the contract can suffice to satisfy the statute of frauds, and need not be in a single document.

What Constitutes Signing: In accordance with the statute of frauds, the contract, or memorandum thereof, must be signed by the party sought to be bound by the contract. A signature is any mark or symbol placed by the party on the writing with the intention of authenticating it. This includes electronic signatures under the UETA and the ESRA.

Who Must Sign – The Party to be Charged: In accordance with the statute of frauds, the "party to be charged" (i.e. the party sought to be held liable to perform the duties under the agreed to contract), must have signed the contract.

Exceptions:

Partial Performance: The doctrine of partial performance, allows an oral contract to be upheld, when the parties begin performance, because such provides reliable evidence of a contract.

Judicial Admission: The doctrine of judicial admission also allows an oral contract to be upheld, when the party being charged admits in pleadings or testimony that a contract was made.

Estoppel / Detrimental Reliance: The statute of frauds may be circumvented when the party seeking to get around the statute of frauds is able to prove estoppel and detrimental reliance.

Parole Evidence Rule

Parole Evidence Rule:

Basic Statement and Rationale: The Parole Evidence Rule holds that no oral or extrinsic evidence (evidence outside the provisions of the written contract) shall be considered when determining the meaning of the contract itself.

The Written Contract Represents the Final Expression of the Parties: The Parole Evidence Rule is based on the principle that when the parties record their agreement in writing, they intend the written record to be the final expression of their agreement. Accordingly, under the Parol Evidence Rule, no oral or extrinsic evidence may be admitted to supplement, explain, or contradict the written contract.

The Written Contract Supersedes All Previous Discussions and Agreements: When parties reduce the contract to writing, and sign the same, the courts hold that they intended such to supersede anything that might have been proposed, discussed, or agreed to prior to execution of the writing but not ultimately recorded in it. This is why the Parole Evidence Rule requires that the court should not hear evidence of any terms that were allegedly agreed to but are not reflected in the writing, as such evidence is suspect, unreliable, and irrelevant, and is more likely to mislead and confuse than to inform.

Purpose and Premise of the Parole Evidence Rule: The primary purpose of the parole evidence rule is to control the court's decision making and to shield it from evidence that is suspect and unreliable. This Rule also promotes efficiency in the conduct of litigation, by excluding such suspect evidence at the outset thereby saving the time that would otherwise be wasted in presenting such less reliable evidence. Lastly, the Rule also promotes transactional efficiency, because due to its existence, contracting parties are more likely to make an effort to record their agreement more fully and accurately.

Exceptions:

Ambiguity: If a written contract is **ambiguous** or clearly has term which can have two or more different meanings, then parole evidence may generally be admitted by the court to clarify the meaning.

Fraud, Duress, Mistake or Illegality: Under certain circumstances involving fraud, duress, mistake, or illegality, parole evidence may also sometimes be admitted:

Contract Modification: The Parol Evidence Rule prohibits only the contradiction of a complete written contract. It does not prohibit proof that the contract is incomplete or was subsequently, thereafter modified or terminated.

Rules of Construction and Interpretation

Ascertaining the Meaning of an Agreement:

Process: The processes of interpretation (inferring meaning from facts) and construction (inferring meaning as a matter of law) of contracts follows several rules and legal methods in the areas examined.

Areas of Examination: These include the Intention of the Parties; Examination of the Whole Contract; Analysis of Contradictory and Ambiguous Terms; Determination of Implied Terms; Conduct and Custom of the Parties; and Manner of Avoidance of Hardship.

Disputes of Law vs. Fact: Whereas construction determines the legal effect of the words or actions in a contract, interpretation identifies the meaning of such words or actions.

Rules of Construction and Interpretation

Areas of Examination:

Intent of the Parties: When people enter into a contract, it is to be presumed that they intend for their agreement to have some effect. A court will strive to determine the intent of the parties in order to give this effect to it. A contract, therefore, is to be enforced according to its terms. But a court cannot remake or rewrite the contract, under the pretense of interpreting what the intent of the parties actually is.

Examination of the Whole Contract: The provisions of a contract must be construed as a whole in such a way as to examine the whole contract so that every part is given effect. Every word of a contract is therefore to be given effect if reasonably possible. The contract is thus to be construed as a whole, and if the plain language of the contract thereby viewed solves the dispute, then the court is to make no further analysis.

The Four Corners of the Contract: Proper contractual interpretation first focuses on the normal, accepted meaning of the words used by the parties within the four corners of the contract.

Plain Meaning: Where the court has no evidence of meaning extrinsic to the bare language of the contract, an examination is necessarily confined to the four corners of the agreement interpreting that language to ascertain its meaning. Where the contract expresses the disputed term in clear and unambiguous language, extrinsic evidence as to its meaning is rejected and/or treated with caution. Courts are quite strongly resistant to considering extrinsic evidence if the language used in the contract is clear on its face. Under the doctrine of Parol Evidence, it is the written contract itself that contains the intent of the parties, and from which such can be determined.

New York Four Corners Rule: The New York Court of Appeals has explicitly held that the four corners approach should be followed, and that an examination of the entire contract must be done to determine the meaning of its terms. In *WWW Associates v. Giancontieri*, 77 NY2d 157 (1990) the court held “[E]xtrinsic and parol evidence is not admissible to create an ambiguity in a written agreement which is complete and clear and unambiguous upon its face.” Id at 163. “Such court further stated that “when parties set down their agreement in a clear, complete document, ... [e]vidence outside the four corners of the document as to what was really intended but unstated or misstated is generally inadmissible to add to or vary the writing.” Id at 162. Under this New York doctrine, when the plain meaning of an integrated writing is unambiguous, that meaning governs.

Analysis of Contradictory and Ambiguous Terms: The provisions of a contract must not conflict or have different meanings. If a term in a contract conflicts with another term, or one term has two different meanings, then it is necessary for a court to determine whether there is a contract and, if so, what the contract really means.

Determination of Implied Terms: In certain cases, a court will imply a term to cover a situation for which the parties failed to provide or, when needed, to give the contract a construction or meaning that is reasonable. In such instances, the court will imply details of the performance of a contract not expressly stated in the contract. In contracts to perform work, courts will find an implied promise to use such skill as is necessary to properly perform the work.

Conduct and Custom of the Parties: The conduct of the parties and the customs and usages of a particular trade may give meaning to the words of the parties and thus aid in the interpretation of their contract.

Manner of Avoidance of Hardship: As a general rule, a party is bound by a contract even though it proves to be a bad bargain. This means, that if possible, a court will interpret a contract to avoid hardship. Courts will also, if possible, interpret a vague contract in a way to avoid any forfeiture of a party's interest. As a result, when hardship arises, because the contract makes no provision for the situation that has occurred, the court will sometimes imply a term to avoid the hardship.



Weekly Information Sheet Cases

Cases

Marbury v. Madison

This case **established the doctrine of judicial review.**

Here William Marbury, a judicial appointee of President John Adams, sued the New President's (Thomas Jefferson) Secretary of State, James Madison, for a court order to deliver the certificate of appointment that Madison was refusing to do so.

The Court, in a decision written by Chief Justice John Marshall, who was Adams' secretary of state (and the man who was initially supposed to deliver the certificate to Marbury, but didn't) wrote a decision stating that Marbury could not get the decision, because the law under which he was appointed (the Organic Act) was unconstitutional, and thus invalidated such law as unconstitutional.

How A Bill Becomes A Law

This class exercise **established the procedure as to how a bill becomes a law in New York State.**

A bill must be introduced and sponsored by both a Senator in the Senate and a Member of the Assembly in the Assembly.

After introduction, it is referred to a committee, which must vote to report such to the floor of the respective house.

Once reported, the bill is put on an active list by the leader of each house (the Majority Leader in the Senate and the Speaker in the Assembly). Once on an active list, it is brought up for a vote by all members of the House, and must pass by a vote of at least 32 Senators (out of a house of 63) and a vote of at least 76 members of the Assembly. A bill must pass both houses in the same year to be sent to the Governor.

The house that passes the bill first must send it to the Governor in the same year in which it passes. The Governor has 10 days (exclusive of Sundays) to decide whether to sign the bill. If the Governor signs the bill, it becomes law. If the Governor does not sign the bill, and does not veto the bill, it becomes law. If the Governor vetoes the bill it is returned to the Senate and Assembly for override.

If the Senate and Assembly vote to override the governor's veto, by a 2/3 majority in each house, it becomes law.

Kolchins v. Evolutionary Markets

This case established that a contract comes into existence when there is a manifestation of mutual assent to its essential terms.

Here Andrew Kolchins, a stock broker for the brokerage firm of Evolution Markets, sued his employer over a renegotiation of his employment contract.

The Court, in a decision written by the New York State Appellate Division, found that emails and other writings between the parties, proved that the parties reached an agreement on the material terms of an employment contract renewal, under specifically defined terms. As a result, a new employment contract came into existence.

Gerstein v. Broad Hollow Company

This case established that although Duress or Pressure can invalidate a contract, there is no duress when the party accused of such, has the legal right to do the act complained of.

Here David Gerstein, a real estate developer, sued Broad Hollow Company, a real estate holding company, over a contract for lease of a premises in Melville, Long Island, which Broad Hollow claimed was executed under Duress and Undue Pressure.

The Court, in a decision written by the New York State Appellate Division, found that merely because Gerstein had made a very good deal for the terms of the lease, did not mean such was obtained by duress or undue pressure. In fact, such duress must "involve an act, or a threat of action from, which the person sought to be influenced is entitled to be free".

In this case no such act occurred, and Gerstein was legally entitled to his good deal.

Allegheny College v. Nat'l Chautauqua Bank

This case established that strict adherence to the requirement of consideration is not always necessary in cases involving a pledge to a charity.

Here Allegheny College, an institution of higher learning and a charity, sued the Executor of Mary Yates Johnston's Estate, seeking to collect on a pledge for a scholarship fund she made before her death.

The Court, in a decision written by the famous Chief Judge Benjamin Cardozo of the New York State Court of Appeals, found that strict adherence to the requirement of consideration is not always necessary in cases involving a pledge to a charity, based upon the fact that the charity relied upon the pledge in establishing the scholarship, and would be unjustly harmed if the pledge was not fulfilled.

Bethlehem Steel v. Turner Construction

This case established that a contract's terms are determined from the four corners of the written document that creates it.

Here Bethlehem Steel, a steel manufacturer, sued Turner Construction, for payment on steel components provided in the construction of the MONY building in Manhattan.

The Court, in a decision written by the New York State Court of Appeals, found that the written contract, contained a specific provision, found within the "four corners of the document" that required Turner to pay for an increased adjustment for steel based on market conditions.

Turner, who had a fixed priced contract with MONY did not wish to pay the increase. The court found that the contract between Bethlehem and Turner was controlling, and that despite the fixed priced contract with MONY (Mutual of New York), Turn was liable to pay the adjusted price pursuant to their contract with Bethlehem.