

Chapter 8

Introduction to Contract Defenses

I. Introduction

- Defense: Term used in litigation to assert that you don't have liability
 1. No Contract was formed because the parties never reached an agreement
 - No Offer
 - No Acceptance
 - No Consideration
 2. If there was a contract → Not enforceable:
 - Statute of limitations
 3. Performance under the contract has been discharged or excused

- Can also have Defenses as cause of action
 1. Rescission for fraud, etc.
- Pleading in the alternative
 1. Legal arguments that are inconsistent with each other
- Handout

II. Indefiniteness

1. Necessary information is missing from the contract
 - Contract must contain “certain and definite terms”
 - The more detail, the better
2. How important is the missing detail?
 - Certain information could easily be supplied
 1. Gap Fillers
 2. Reasonableness

3. Implication – Process by which court supplies missing information according to the parties intent.

4. Hanes v. New York
 - Reasonable time for performance
 - Intended the city to maintain disposal facility until such time “as no longer needed or desired.”

5. Common law – indefiniteness must be MATERIAL
6. UCC – Gap Fillers (p. 166)
7. BUT if evidence shows parties did not reach agreement, court will not make a contract for the parties
 - See, R.2d §33(3)
 - UCC §2-204

III. Mistake

A. 5 Types of mistake

1. Mistake in Transmission
2. Mistake in Transcription of contract
3. Mutual Mistake
4. Unilateral Mistake
5. Misunderstanding or Ambiguity

B. Mistake in Transmission

1. Intermediary used to convey offer and intermediary makes an error in communication
 - If offeree has no reason to believe of error in offer → Binding contract
 - Offeror is bound – Can sue the intermediary

C. Mistake in Transcription

1. Oral contract reduced to writing that does not accurately reflect the oral agreement
2. Court can reform the contract to reflect the terms of the oral agreement

D. Mutual Mistake

1. Can't have a contract unless there is common understanding
2. Erroneous assumptions about material factual circumstances → may prevent formation because “No common understanding.”
3. Must have:
 - a. Erroneous assumption about factual circumstances of a contract
 - b. Both parties made the same assumption
 - c. Assumption occurred at the time of contract formation
 - d. Assumption has a material effect on contract
 - e. Complaining party did not assume the risk of alleged error or mistake

*Remedy: Can rescind the contract

Sherwood v. Walker – barren cow

E. Unilateral Mistake

1. Clerical or computational error made by one party
2. Courts will generally allow rescission

F. Ambiguity / Misunderstanding

1. Prevents formation of a contract where the parties had equally reasonable but different interpretations of material term, or phrase or provision
2. Must have:
 - a. Two interpretations of ambiguous contract
 - b. Both are reasonable
 - c. Difference in interpretation is material to contract