

Anatomy of a Contract

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Disclaimer

Governing Law

UCC - goods

Common Law - services

What is a contract:

A promise or a set of promises for the breach of which the law gives a remedy.

Formation Elements

Offer

Acceptance

Consideration

Meetings of the Minds

Offer

an offer as the manifestation of willingness to enter into a bargain that justifies another person in understanding that assent to that bargain is invited.

The most common types of invalid offers include jokes, preliminary negotiations, and advertisements

Methods of Termination

Generally, there are five ways to terminate an offer:

rejection

counteroffer

lapse of time

Death or incapacity

Revocation

<https://www.youtube.com/watch?reload=9&v=qiuCKv3tooc>

Acceptance

When an offer is made, the power to give an acceptance is created in the intended offeree who is invited to accept.

The Mirror Image Rule

requires an acceptance to be an unconditional assent to the exact same terms that were stated in the offer.

Consideration

Consideration exists when something of value is exchanged in a bargain.

This means that the promisor must give something of value to the promisee, and, in exchange, the promisee must give something of value to the promisor.

Defenses to formation

SOF

Mistake, fraud

Terms

Breach

Damages

Statute of Frauds

The Statute of Frauds forbids the enforcement of a contract unless it is set down in a signed writing. There are six classes of contracts that fall within the Statute of Frauds, which means that they require a signed writing in order to be enforceable.

SOF

marriage contracts, contracts that cannot be performed within 1 year, land contracts, executor-administrator contracts, sale of goods contracts for \$500 or more, and suretyship contracts.

Contract Terms

Court interpretation

Standards of preference

Terms needing interpretation

Court interpretation

Typically, courts will consider the terms of the agreement, as well as the intent of the parties regarding those terms.

Also, as a general rule, the purpose of the parties is given significant weight, and their words and conduct are interpreted in light of the circumstances.

Standards of preference

First, courts will prefer to give reasonable, lawful, and effective meaning to all of the terms.

Second, courts will give greater weight to specific or exact terms than to general language.

Third, courts will give greater weight to negotiated or added terms than to non-negotiated or standard terms

Finally, courts will interpret the contract against the drafter when choosing among reasonable meanings

Terms needing interpretation

Indefinite

Ambiguous

Omitted terms.

Indefinite terms

The terms of a contract may be indefinite in that they are left open or uncertain. If so, then courts may void the contract for indefiniteness, depending on the importance of the terms.

Essential = No contract

Nonessential= court may infer

Example: if the time for payment is left open or uncertain, then the court will set the time for performance at a reasonable time

Abrams v. Illinois College of Podiatric Medicine

Jonathan Abrams (plaintiff) was a student at the Illinois College of Podiatric Medicine (College) (defendant) for one year. During his first semester at the College, Abrams failed Physiology 101. The College allowed him to retake the exam, but Abrams failed again. The College then removed Physiology 203 from Abrams's second-semester schedule, telling Abrams that, if he passed all the classes in his reduced workload, Abrams could retake Physiology 101 in the summer. Throughout the year, Abrams talked with College representatives about his struggle to keep up with the customary workload. The College reassured Abrams that the College would make an effort to help Abrams through. The student handbook said that it was "desirable" for professors to keep their students up-to-date about their progress. The handbook also said that students "should be" told how they were doing shortly after mid-terms and given recommendations to help them improve. Abrams's professors, however, did not update him about his progress or standing throughout the school year. Ultimately, Abrams failed two of his second-semester courses and the College expelled him. Abrams then sued the College for breach of contract, arguing that the handbook's language and the College representatives' statements to him created a binding contract. The trial court ruled in favor of the College. Abrams appealed.

Ambiguous terms

The terms of a contract may also be ambiguous in that they have multiple meanings or involve a misunderstanding between the parties. If so, then courts may void the contract for a lack of mutual assent, depending on what the parties understood.

If the parties had the same meaning for the term, then the court will interpret the contract based on that meaning

If one party knew of the misunderstanding, then the court will interpret the contract based on the other party's meaning.

Omitted terms

Courts will usually fill in the gaps of the contract by supplying a reasonable term under the circumstances.

Courts will also impose a duty of good faith in the performance and enforcement of the contract.

Under the duty of good faith, both parties must act with decency, fairness, reasonableness, and honesty in their conduct and in their transaction

Parol Evidence

Under the parol evidence rule, extrinsic evidence may not be used to modify or supplement a written contract.

No evidence will be admitted in terms of oral or written statements prior to the written contract or oral statements contemporaneous to the contract.

only applies to written contracts that are integrated agreements.

Conditions

A condition is an uncertain event that must occur before a party can be required to perform.

Conditions can be either express or constructive.

An express condition is one to which the parties explicitly agree.

A constructive condition is a condition implied by law to avoid injustice.

Can be excused if bad faith - not credentialing

Can be waived

Breach

full performance of a duty under a contract discharges the duty. When performance of a duty under a contract is due, any non-performance is a breach

Anticipatory Repudiation

A party may also sue for a remedy even when a breach has not yet occurred, based on anticipatory repudiation by the other party.

Anticipatory repudiation may take one of two forms.

1. The repudiating party may give a statement clearly indicating the intention to breach. Must be a firm statement
2. Second, the repudiating party may take an action that renders him unable to perform.

Damages

Expectation

Reliance

Let's talk negotiations

All about POWER

Are you an at will Employee?

If you are employed at will, your employer does not need good cause to fire you

Employers are free to adopt at-will employment policies

Unless your employer gives some clear indication that it will only fire employees for good cause, the law presumes that you are employed at will.

Can be fired for any reason except illegal reasons (discrimination etc)

Check your contract, written policies, applications, handbooks, job evaluations, or other employment-related documents, for at will language

Let's look at some cases

No poach Agreements

Employee Non-Solicitation and Non-Recruitment Agreements Can Raise Potential Civil and Criminal Antitrust Liability

No poach agreements are when two companies (2 hospitals) agree not to hire each other's workers.

According to the complaint in Michigan brought by Josh Schexnaildre, a certified nurse anesthetist, the CEO of Munson Healthcare in Traverse City, Michigan instructed hospital recruiters to not solicit or hire current or recent employees of Traverse Anesthesia Associates (TAA), a provider of anesthesia and pain management services to hospitals and outpatient sites.

Schexnaildre alleges that while employed by TAA he responded to an advertisement for a CRNA position at Munson. A hospital recruiter told him about the agreement and that the "CEO of the hospital had directly provided the details of the agreement to Munson recruiters."

Reasonable employee non-solicitation clauses are of course common and accepted in M&A transactions. In such instances, enforcers would consider such restrictive covenants as "ancillary" to a legitimate agreement and not necessarily anticompetitive.

So-called "naked" - because there is no legitimate purpose they support, e.g., joint venture - no-poach or non-solicitation agreements, however, are horizontal agreements to restrict competition in the labor market and could be categorized as per se illegal violations of Section 1 of the Sherman Act,

Such agreements put employees at a disadvantage when negotiating wages. The “No-Poach” allows a current employer to rest easy knowing that employees won’t be hired elsewhere, and therefore have limited options. In this case, the agreement stipulated a non-solicitation period of one year, filings in the lawsuit contend.

BRANDON BOSCH

V.

NORTHSHORE UNIVERSITY HEALTH SYSTEM,

Alleged Facts

In 2010, Bosch enrolled in the School. He successfully completed all clinical and classroom instruction from September 2010 to July 2012. In July, he began his final course, Practicum III. Defendants Tracy Felt and Julia Feczko were the preceptors—the clinical instructors—for Practicum III. Bosch claims that due to a "personality conflict," Felt and Feczko "began manufacturing reasons to discipline Plaintiff and eventually have [him] dismissed from the program.

On July 26, Bosch was placed on probation for alleged problems in Practicum III. In accordance with the program's student handbook, Bosch received a notice detailing the reasons he was being placed on probation. The notice stated that Bosch (1) failed to prepare routine anesthesia equipment, (2) failed to correlate anesthetic requirements with monitored parameters and surgical events, (3) required frequent reminders to provide routine equipment, (4) failed to manage intra-operative problems, (5) failed to comply with the controlled substance policy, (6) was disorganized in setting up for cases, (7) failed to anticipate progress of cases, (8) was unable to multitask, and (9) was unable to think critically and solve problems during case management.

P claims:

One way in which Bosch seeks to hold defendants liable in contract is by claiming that the School had a contract with the body that provides it accreditation, the Council on Accreditation of Nurse Anesthesia Educational Programs (the Council). Bosch claims that he is a third-party beneficiary of that alleged contract. We agree with the trial court that these counts fail to state a claim.

The Council is a nongovernmental accrediting body that claims to have been recognized since 1975 by the DOE. Among other things, accreditation by a DOE-approved body makes a school eligible for certain federal funding, and its students eligible for federal student loan programs. (There appear to be other benefits as well, such as the ability of students to transfer credits between accredited schools.) The accrediting agency sets standards for accreditation—

An accrediting body, then, is much like a traditional administrative agency,
For that reason, courts have consistently refused to apply contract law to actions
involving accreditation disputes.

And because there is no contract between a school and an accrediting body, there
obviously can be no third-party beneficiary to a nonexistent contract.

P also claims

Bosch also alleges the breach of a direct contract with the School—an implied contract to provide him an education and a degree.

An implied contract arises where the intention of the parties is not expressed but an agreement in fact creating an obligation is implied or presumed from their acts—in other words, where circumstances under common understanding show a mutual intent to contract.“

Illinois law generally recognizes an implied contract between a student and a school (at least a private school, as here

Holding

we hold that Bosch stated a claim for breach of an **implied contract** with both NorthShore and DePaul. While the trial court was understandably reluctant to wade into matters of academic judgment for which courts have long considered themselves ill suited, this case, as pleaded, is. **Bold and difficult to prove as they may be, these allegations, if true, would state a claim not about the school's academic judgment. It's about fabricating charges against a student the instructors didn't like, to run him out of the school on the eve of his graduation** claim for breach of an implied contract.

Murphy v El Paso Health

Facts

Laura Murphy CRNA worked pd at El Paso

Worked per diem

No obligation to assign or to work

What happened?

While working an overnight shift, Murphy interacted with a nineteen-year-old patient who was a first-time expectant mother with gestational diabetes. This patient was under the care of Dr. Frederick Harlass, a high-risk-delivery specialist. When Murphy arrived that night, the patient's cervix had not sufficiently dilated to allow for a vaginal birth, and her progress appeared to be stalled. Harlass had advised the patient and nurses that he would deliver the baby by Cesarean section if the patient did not dilate further within a particular amount of time. The patient told Murphy that she was worried about having a C-section. Murphy told the patient that she had the right to "ask the doctor what he wants to do and why he wants to do it." She said, "You remember you have the right to do that. You have the right to say who does what to your body."

By 9 p.m., the patient had not further dilated, and Harlass ordered the C-section. The patient asked to speak with Harlass before she signed the consent form for the procedure. Harlass and another nurse, Olivia Juarez, went into the patient's room to talk to her. Murphy remained outside. Murphy estimated that Harlass was in the room with the patient for four or five minutes. When Harlass came back out, he approached Murphy. He was very angry and said, "I don't have to take this crap." He believed that Murphy had discouraged the patient from consenting to the C-section and, in doing so, had hampered a safe and successful delivery. Harlass explained to Murphy that he "just told [the patient] that if she wanted a brain-damaged or dead baby, it wouldn't be his fault." Murphy asked Nurse Juarez if Harlass really said this to the patient. Juarez confirmed that he had, but added that "he wasn't real nasty about it." Murphy conceded not really knowing what Juarez meant by this. After speaking with Harlass, the patient consented to the C-section. Harlass successfully delivered the baby without complications.

Around 8 a.m. the following morning, Murphy visited with Las Palmas's ethics coordinator. Murphy complained about Harlass's behavior around patients, his tendency to order premature inductions and C-sections, and her belief that he failed to obtain the nineteen-year-old patient's informed consent. She also expressed apprehension about making the complaint, stating that she feared doing so "may become the cause for [her] dismissal." Sometime that same morning, Harlass called West Texas OB and complained that Murphy had interfered with his treatment and management of the patient. Shortly before eleven that morning, a West Texas OB partner left a voice mail for Murphy, telling her that because of complaints by Harlass and another Las Palmas physician, she should not return to work at Las Palmas until further notice. The next day, Murphy sent letters to West Texas OB and to Las Palmas's ethics coordinator, memorializing her recollection of these events.

About a month later, Murphy had still not returned to work, and the chairman of Las Palmas's credentialing committee asked Murphy to attend a meeting. When Murphy inquired about the purpose of the meeting, the committee coordinator refused to say. Fearing the committee would revoke her credentials at Las Palmas, Murphy asked if her attorney could attend the meeting. When her request was denied, Murphy refused to attend the meeting and instead filed this suit against El Paso Healthcare a few days later.

At trial, the court submitted jury questions on Murphy's claims against El Paso Healthcare for statutory retaliation and tortious interference with "the continuation of the business relationship between" Murphy and West Texas OB. The jury found El Paso Healthcare liable on both causes of action and found that Murphy sustained damages of \$31,000 in lost wages and \$600,000 for past and future emotional pain, mental anguish, loss of enjoyment of life, and damage to her reputation. The trial court entered judgment on the jury's verdict, and the court of appeals affirmed

Appealed to the Texas Supreme Court

P Claimed

Tortious Interference with her contract

Murphy claims that El Paso Healthcare interfered with her business relationship by requesting that Murphy not be scheduled at Las Palmas while it conducted its investigation into Murphy's and Harlass's complaints.

To prevail on a claim for tortious interference with an existing contract, Murphy had to present evidence that El Paso Healthcare induced West Texas OB to "breach the contract," and thus interfered with Murphy's "legal rights under the . . . contract,"

But as Murphy admits, an obligation to provide employment was not a term of Murphy's existing contract with West Texas OB. Although West Texas OB had agreed to pay Murphy at a particular rate on a monthly basis for the hours she worked, it had not agreed to schedule Murphy at Las Palmas, or indeed at any hospital. The evidence does not support a finding that El Paso Healthcare interfered with Murphy's legal rights under her existing agreement with West Texas OB, **so Murphy's tortious-interference claim must fail.**

Take home points

Careful when interfering with contracts - big \$\$ judgements (although reversed)

Careful on characterization of your position - do you have a contract

Could be a lower threshold to prove tortious interference than if a mere business relationship