**Overview and Sources of Contract Law**

Welcome to this podcast on the Overview and Sources of Contract Law brought to you by CALI. I am Professor Jennifer S. Martin. The topic of this podcast is the identification of the elements of a claim for breach of contract and the primary sources of contract law.

We often use the word contract to refer to a document reflecting an agreement between parties, such as an agreement for the sale of a home from the seller to a buyer. From a legal perspective, however, the word contract refers to a promise or set of promises for which the law gives a remedy. The primary sources of contract law include the common law and statutory law. The common law is represented first by the decisions of courts. Second, the common law also includes, with a lesser status than court decisions, the Restatement (Second) of Contracts and books and articles written about contract law. The statute most often applicable in the area of contracts is Article 2 of the Uniform Commercial Code (sometimes called the UCC). It is worth noting that statutes take precedence over the decisions of courts and decisions of courts are more authoritative than other sources of common law, such as the Restatement. So, if Article 2 applies, its provisions would override the common law of contracts.

As it turns out, the term contract does not refer to all agreements or promises, only those that are enforceable by law. Of course, this leads to a question about which types of agreements does the law enforce? The study of contract law takes up a broad set of issues that typically includes: did parties make an agreement; is the promise of a type that is enforced; are there defenses to enforcement; is there a writing required for the type of contract; what is the nature of the parties obligations; what are the rights and duties after breach; is there any excuse for nonperformance; what remedies are available for breach; and whether any third parties have rights under the agreement.

The broad areas of contracts include formation, interpretation, performance and breach, and remedies. A plaintiff wanting to bring a contract claim will have to prove: (i) that a contract was created, (ii) the terms of the contract have been breached by the other party; and (iii) the plaintiff has suffered injury that should be compensated or for which a court should grant some other relief. A defendant in a contract action might: (i) have defenses that bar contract enforcement, (ii) assert that the contract is of a type that must be evidenced in writing and was not; and (iii) claim circumstances that excuse nonperformance.

Again, contract law is primarily governed by the common law, meaning judicial opinions. The common law applies to all contract disputes, but may work with statutes on the same subject matter. Examples of contracts governed by the common law would include contracts for services, employment and the sale of land. The Restatement of Contracts, a secondary source of common law, describes both the law as represented by these judicial opinions and, sometimes, rules not widely accepted by courts. The Restatement of Contracts contains “black letter” statements of law, along with comments about the provisions and illustrations which provide examples.

Let’s look at several examples where the common law applies.

Example #1. Henry, a handyman, agrees to repair Henrietta’s broken ceiling fan for $100. Henry repairs the ceiling fan, but Henrietta is not satisfied and will not pay him. A dispute between Henry and Henrietta arising from the agreement to repair the broken ceiling fan would be governed by contract law. The common law of contracts would apply to this dispute. If Henry wants to bring a claim for breach of contract, he would need to prove that the contract was created for the repair of the ceiling fan; that Henrietta breached when she did not pay; and that he should be compensated by getting the $100 for his work. Of course, Henrietta might be able to claim that Henry did not do the work properly and should not get paid.

Example #2. Eddie, an employee, agrees to a one-year employment contract with Big Company for an annual salary of $75,000. Big Company fires Eddie after six months. A dispute between Eddie and Big Company arising from the defective performance of this agreement would be governed by contract law. The common law of contracts would apply to this dispute. If Eddie wants to bring a claim for breach of contract, he would need to prove that he had a one-year employment contract; that Big Company breached it when it fired him; and that he should be compensated by getting six-month’s salary for $37,500. Of course, Big Company might claim that Eddie was fired in accordance with the employment agreement, such as that he did not do his work properly, or that Eddie failed to properly mitigate damages if Eddie didn’t seek other employment.

Example #3. Leslie Landlord agrees to rent her home to Taylor Tenant for one year for $1800 per month. Taylor Tenant does not pay the rent and is evicted after four months. Taylor Tenant claims the house was not habitable. A dispute between Leslie Landlord and Taylor Tenant arising from the lease agreement would be governed by contract law. The common law of contracts would apply to this dispute, but many states also have residential landlord tenant statutes that would also apply. If Leslie wants to bring a claim for breach of contract, she would need to prove that there was a rental agreement, that Taylor breached when she failed to pay, and that she should be compensated in the amount of the lost rental income. Of course, Taylor will likely defend any claim by Leslie on the grounds that she should not have to pay rent where the home was not habitable.

The UCC is a mostly uniform statute adopted by the states covering commercial matters which applies to individuals and consumers, as well as merchants. Because the UCC is not completely uniform, though, you should make sure to check the particular provisions adopted in the state whose law governs the contract at issue. It’s important to make clear that the UCC applies to everybody. That said, while the UCC applies to everybody, sometimes it contains special rules that govern the activities of merchants.

The UCC is comprised of a number of articles that you might study in law school and that may be tested on a bar examination. Article 1 of the UCC contains definitions and general provisions related to the UCC as a whole. Article 2 of the UCC is important to the study of contracts because it governs the sale of goods. Other articles of the UCC might be studied in other classes, such as Article 2A on leases, Article 3 on banking, Article 4 on negotiable instruments, and Article 9 on secured transactions.

When the UCC applies, its rules displace the rules of common law. If the UCC applies, but is silent on a particular issue, the common law applies to that issue and will govern that particular aspect. Because Article 2 is important to the study of contracts, it is important to know when it applies. Quite simply, Article 2 applies when there is a transaction in goods. Article 2 applies automatically without any need for contracting parties to take any further action. Sometimes students will mistakenly say that Article 2 only applies to merchants, but this is not correct. It applies to everybody, and it applies to transactions of any size. So a consumer to consumer sale of goods would be governed by Article 2, as would a merchant to consumer transaction or a merchant to merchant transaction.

Because Article 2 applies to transactions in goods, it is important to know what goods are. Whether Article 2 or the common law governs matters because Article 2 contains a number of important gap filling provisions that apply to transactions in goods, such as provisions related to warranties. Goods for purposes of Article 2 are anything that is movable. Examples of things that are movable, and thus governed by Article 2, would include books, computers, furniture, clothing, electronics and food. Transactions that do not involve goods are governed by the common law, but sometimes there are mixed transactions that have both a service and sale of goods component. These transactions can be tricky at times, but courts typically apply a “predominant purpose” test to determine whether the goods or services aspect of the transaction predominates. If the goods aspect predominates then Article 2 applies to the entire transaction, even the services part. If the services aspect predominates, the common law applies to the entire transaction, even the goods part.

Let’s look at some examples where Article 2 applies.

Example #4. Tessa orally promises to purchase from William his copy of Tale of Two Cities for $10. A book is movable, so it is a good. As such, this contract is for the sale of goods. It doesn’t matter that the transaction is for a small amount of money and that it is a consumer to consumer sale. Article 2 applies to this transaction.

Example #5. Whitechapel Books, a rare bookseller, agreed in writing to sell a first edition copy of Great Expectations to Shadow Books for $3500, delivery in three weeks. Here, the contract is for the sale of goods because the book is something that is movable. This is a merchant to merchant sale. The law of Article 2 applies to this transaction.

Example #6. Coach telephoned Sporty, a sporting goods manufacturer, and ordered 10 gold and black soccer balls with the team name printed on the balls for $25 per ball, delivery in 30 days. Soccer balls are movable, so they are goods. As such, this contract is for the sale of goods. The law of Article 2 applies to this contract.

Example #7. Recall our Example #3 earlier with Leslie Landlord and Taylor Tenant. The contract involved land, which is not movable. The common law will govern the transaction, not Article 2.

Example #8. Jasper, hungry, heads to Club 2600, a restaurant to get dinner. Food is moveable, so it is a good. It is also true that eating at a restaurant involves a service. However, the Club 2600 purchase by Jasper is governed by Article 2 because the goods component (the food) predominates over the service component. The law of Article 2 applies to this contract in its entirety.

Before concluding, it’s worth noting that there are other sources of contract law. For instance, there is a Convention on Contracts for the International Sale of Goods, commonly called the CISG. The CISG is an international treaty of the United Nations and enacted by the United States and many other nations, making the Treaty relevant in any transaction between commercial parties from member countries. There is also a great deal of federal and state legislation governing consumer contracts. An example is the Magnuson-Moss Warranty Act, which is a federal law enacted in 1975 that governs warranties on covered consumer products.

At this point, you should be able to explain the basic issues involved in a contract claim and identify the primary sources of contract law, the common law and Article 2 of the UCC. You should also be able to explain which law applies to what types of basic transactions.

I hope you’ve enjoyed this podcast on the Overview and Sources of Law.

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