Welcome to this podcast on Overview and Sources of Contract Law brought to you by CALI. I am Professor Scott J. Burnham. 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 a 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 are the common law and statutory law. The common law is represented by the decisions of courts, which are generally followed under the principle of stare decisis. Secondary sources of the common law include the Restatement (Second) of Contracts and books and articles written about contract law, which courts don’t have to follow. The statute most often applicable in the area of contracts is Article 2 of the Uniform Commercial Code (the UCC), which deals with the sale of goods. So when you see a contracts transaction, if it’s a transaction in goods, then you will apply the rules from the UCC. If it involves anything else, or if the UCC does not have a rule on point, then you will apply the rules from the common law.

The term contract does not refer to all agreements or promises, but only to those that are enforceable by law. Which agreements or promises does the law enforce? Your study of contract law includes not only bargained-for contracts that require mutual assent and consideration, but also promises that are enforceable because of reliance. You will then explore whether there are defenses to enforcement; whether the agreement is found just in a writing, and what the language of the agreement means. You will then look at whether a party who does not perform is in breach or whether their duties were discharged. If there was a breach, you will look at the available remedies. Finally, you will explore whether the contract involves third parties, that is, parties other than the parties who formed the contract.

In some of your courses you will study many causes of action, but in contracts there is generally only one – breach of contract. A plaintiff wanting to bring a claim for breach will have to prove: (i) that a contract was created, (ii) that the defendant’s duty was unconditional and they breached that duty; and (iii) that the plaintiff has suffered damages for which they should be compensated or for which a court should grant some other relief. A defendant in a contract action might have defenses that bar enforcement of the contract or might claim circumstances that excuse nonperformance.

Let’s look at several examples where the common law applies. Since US contract law is state law, when you are in practice you will have to become familiar with the law of a particular state. But in law school, we learn general rules that have been adopted by most jurisdictions. Although in theory you would have to read thousands of cases to determine those rules, the Restatement has done all that work for us – the drafters synthesized the cases and restated them as black-letter rules. While it is a handy guide to the common law, keep in mind that the Restatement is a secondary source that courts do not have to follow.

Example 1. Henry, a handyman, agreed to repair Henrietta’s broken ceiling fan for $100. Henry repaired the ceiling fan, but Henrietta claimed he did not do an adequate job and refused to pay him. Which law governs this dispute? It would be governed by the common law since it involves repair services. If Henry brought a claim, he would have no difficulty proving that there was a contract and that Henrietta breached by not paying. Henrietta would counterclaim that Henry breached the implied duty to perform in a workmanlike manner and that she should recover the damages necessary to put her where she would have been if Henry had performed as he was obligated to.

 Example 2. Eddie agreed to an employment contract with Big Company for an annual salary of $75,000. Big Company fired Eddie after six months and Eddie protested. Which law governs this dispute? It would be governed by the common law since the transaction involves services. To bring a claim for breach of contract, Eddie would need to prove that he had a contract for a term, since an employer is generally free to discharge an at-will employee. He would then have to prove that Big Company breached the contract when it fired him; for example, that it discharged him without cause, and that he should be compensated by getting the salary he would have had for the remainder of the term. Big Company might claim that Eddie was fired for cause, but if the court found that Big Company was in breach, Big Company could still try to prove that Eddie failed to properly mitigate damages if he didn’t seek other employment.

Let’s now look at some examples governed by UCC Article 2, which applies to the sale of goods. Remember that the UCC applies to *all* transactions for the sale of goods. However, some of its rules apply only to merchants, so you have to read the rule carefully to see if it is applicable to particular facts.

Because Article 2 applies to transactions in goods, it is important to know what goods are. Goods for purposes of Article 2 are anything that is movable. Examples of things that are movable 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 hybrid transactions that involve both a good and something else. The rule in those cases is somewhat complicated, as we will see.

Example 3. Mary, a 16-year-old bought a car from John for $3000. A short while later, Mary regretted the decision and wants to get out of the transaction. Can she? Because a car is a good, this is a UCC transaction. However, you will search the UCC in vain for a rule on contracts with minors. So in that case, we go to the common law for the rule and we find that a minor can generally avoid a contract they entered into while they were a minor.

Example 4. Joanne told her neighbor she was interested in buying her car. The neighbor sent her an email that stated, “I offer to sell you my car for $5000. To give you time to think it over, I will keep the offer open for a week.” Three days later, Joanne learned that the neighbor had sold the car. Joanne went to her and said, “You told me you would keep that offer open for a week. It is therefore still open, and I accept.” Since the neighbor can’t perform, is she in breach? The general rule is that an offeror can revoke an offer anytime before acceptance. This is a UCC transaction, and the UCC has a rule that a firm offer can’t be revoked during the time stated. A firm offer has to be in writing, and the statute called UETA, the Uniform Electronic Transactions Act, tells us that an electronic transaction such as an email qualifies as a writing. However, the UCC firm offer rule also states that it only applies to offers from merchants. Since the neighbor is not a car merchant, the exception does not apply and the neighbor was free to revoke the offer.

Example 5. Tessa orally promised to purchase from William his copy of Contract Law for Dummies for $10 and William orally agreed to sell it. Was a contract formed? A book is movable, so it is a good, so this contract is governed by the UCC. Oral contracts are generally enforceable unless there is an exception, and no exception applies here. A contract was formed.

Example 6. Abigail hired a contractor to build a deck on her house. The contractor said he would charge $15,000, of which $8,000 was for the wood and other materials and $7,000 was for his labor. When he was finished, Abigail complained that a number of the boards were warped. Would this dispute be governed by the UCC? This is a hybrid transaction, since it involves both goods and services. Prior to the 2022 Amendments to the UCC, there was no statute that governed, but now § 2-102 governs hybrid transactions. It tells us to first determine which part of the contract predominates. Even though the cost of the goods exceeded the cost of the services, I think a court would likely find that the services predominate because Abigail did not primarily buy a pile of wood and ask for it to be used for a deck; she contracted for the services of having a deck built, for which the contractor used the wood. In that case, if the services predominate, we would still apply the UCC rules that apply to the goods part of the transaction. While all of Article 2 of the UCC applies to the sale of goods, the distinction is between those parts of Article 2 that apply to goods as opposed to those that apply to the contract as a whole. Therefore, the UCC would apply to a dispute about the wood.

Example 7. Jose bought a computer that came loaded with software. One of the software programs did not function and Jose brought a claim against the seller. Would this dispute be governed by the UCC? This is a hybrid transaction, since it involves both goods and software. Prior to the 2022 Amendments to the UCC, there was no statute that governed, but now § 2-102 governs hybrid transactions. It tells us to first determine which part of the contract predominates. I think a court would likely find that the goods part predominates, since Jose was primarily buying a computer. In that case, if the goods predominate, then we apply the UCC to the entire transaction unless there is a more appropriate body of law. For example, if we were in one of the few jurisdictions that has enacted UCITA, the Uniform Computer Information Transactions Act, then it would be appropriate to apply that body of law to a dispute about software. But in most jurisdictions, we would apply the UCC.

In conclusion, you should now be able to explain the basic issues involved in a contract claim. And, when you are faced with a contract law issue, you should be able to determine whether the applicable law is the common law or the UCC.

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

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