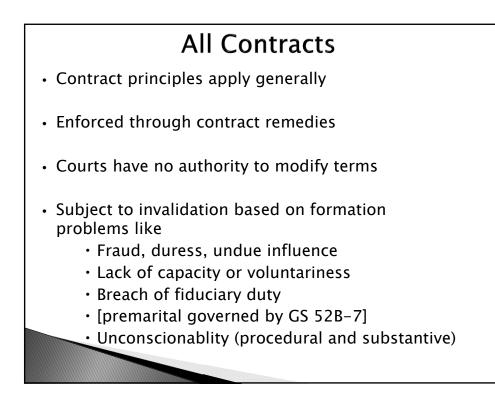




3





Mother filed action alleging father breached the terms of a separation agreement by failing to pay college expenses of the daughter. The agreement states that father will pay 90% of the child's tuition, room and board, and books for a four-year college education as long as the child "diligently applied herself to the pursuit of such education." Father paid the required amount for the child's first year of college but refused to pay the second year because the child had a cumulative GPA of 2.0 and was on academic probation. Mother paid the child's expenses and requests a judgment for father's share pursuant to the contract.

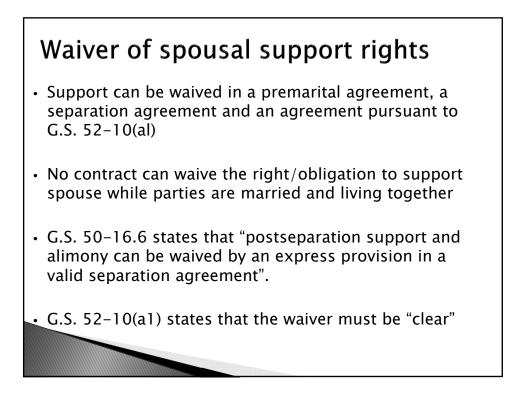
How do you rule?

Interpretation of Terms

- Party seeking damages has burden of proof Contract, Breach of Contract, Damages
- Terms must be given their ordinary meaning
- When contract is unambiguous, trial court interprets intent of parties as a matter of law Trial court limited to the "four corners of the document"
- Evidence allowed only if contract is ambiguous

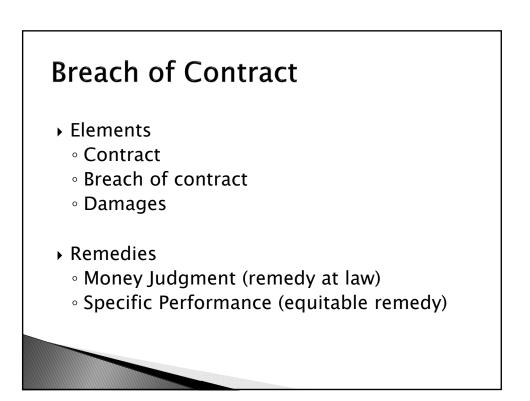
Wife filed complaint seeking postseparation support and alimony. Husband filed a motion to dismiss wife's claims based on his allegation that the separation agreement between the parties waived all rights of either party to alimony.

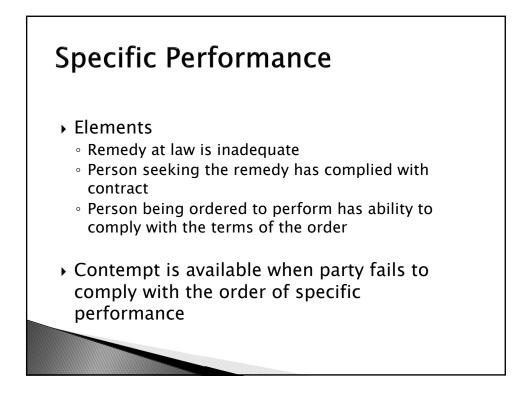
The contract states <u>"each party does hereby release and</u> <u>discharge the other of and from all causes of action,</u> <u>claims, rights or demands whatsoever, at law or in equity,</u> <u>which either of the parties ever had or now has against</u> <u>the other, by reason of any matter, cause or thing up to</u> <u>the date of the execution of this agreement, except the</u> <u>cause of action for divorce based upon the separation of</u> <u>the parties. It is the intention of the parties that</u> <u>henceforth there shall be, as between them, only such</u> <u>rights and obligations as are specifically provided for in</u> <u>this agreement, and the right of action for divorce. ...</u> [This] is an agreement settling [our] property and marital <u>rights.</u>" Do you dismiss wife's claims?

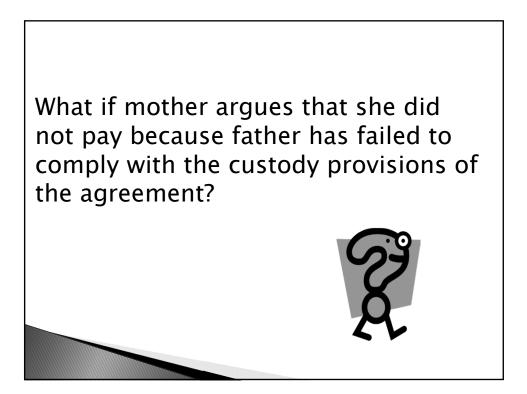


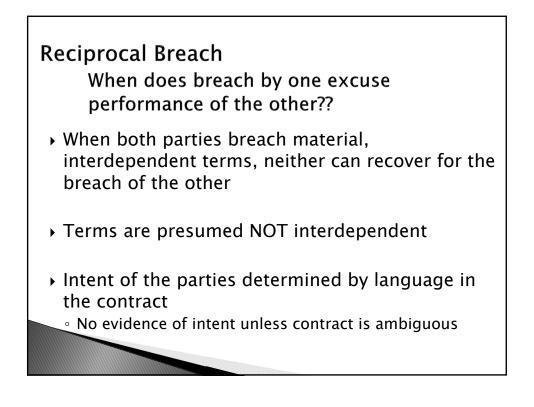
Father filed complaint alleging mother breached terms of separation agreement regarding alimony and child support. The agreement provides mother will pay father \$1,500 each month for child support and \$3,000 each month as alimony. Father claims mother owes \$15,000 in past due alimony and child support. The agreement contains a provision stating that the remedy of specific performance will be available should either party breach the agreement. Husband's complaint asks for an order of specific performance for all past due arrears as well as prospective payments.

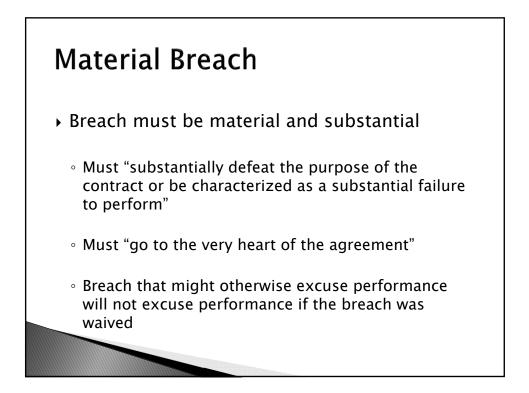
What does husband have to prove to be entitled to an order of specific performance?

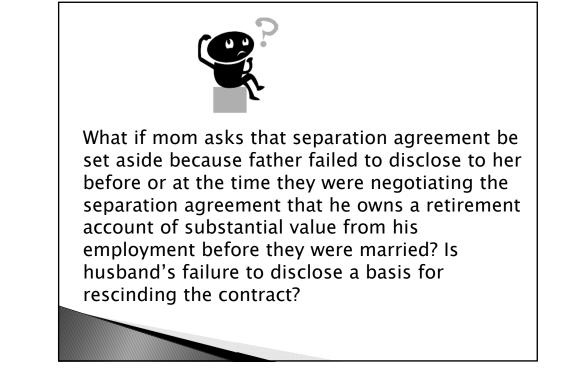










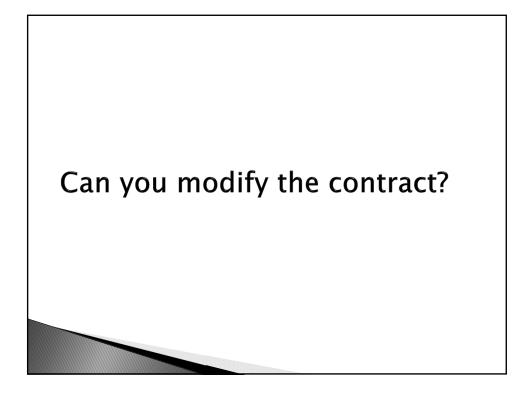




What if instead of \$1,500 in child support and \$3,000 per month in alimony, the agreement provides that mom will pay father \$2,000 in child support and \$10,000 per month in alimony? Mom argues that since her monthly income now and at the time the agreement was executed was only \$13,000 per month, the agreement is unconscionable and should be set aside. In the alternative, she asks that you modify the amounts she must pay.

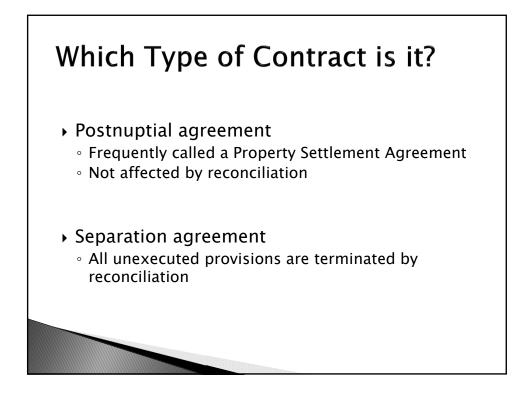
How do you rule?

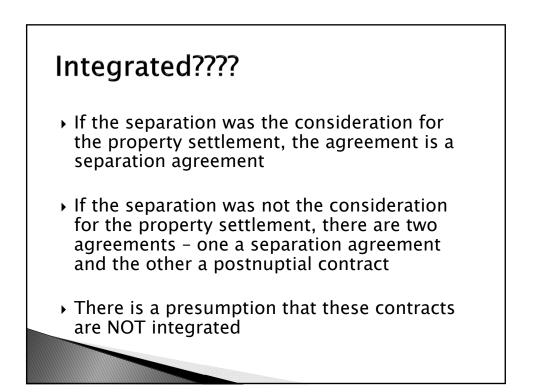
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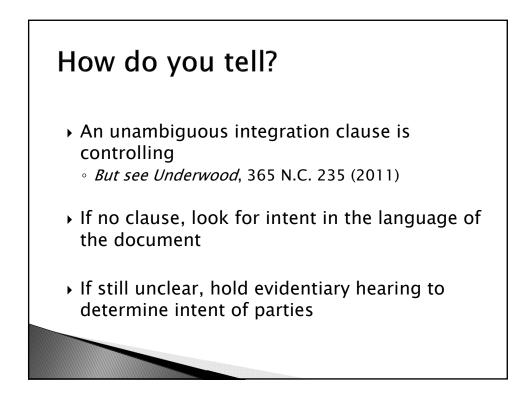


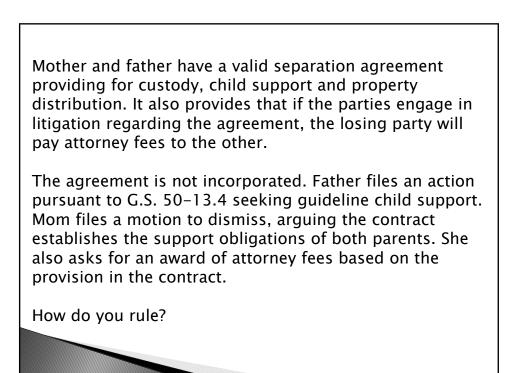
Mother files a claim for equitable distribution. Husband files a motion to dismiss stating that the parties have a contract waiving all rights to equitable distribution. The contract is titled "Property Settlement and Separation Agreement" and it was executed when the parties were living separate and apart. In addition to providing for custody, child support and alimony, it divided property between the parties and contained a waiver of equitable distribution. Wife admits she signed the agreement but shows that the parties reconciled and lived together for a year after the agreement was executed. Father argues that property settlements are not affected by reconciliation.

How do you rule?









Custody and Child Support

- Agreements between parties are valid and enforceable but the parties cannot contract away right to seek a court order for custody or child support
- For child support, court must order support as provided in the contract unless the court finds that amount does not meet the reasonable needs of the child
- Right to attorney fees is governed by G.S 50-13.6 rather than the contract

