

Notes on Module 5

[Review of last time . . .](#)

At our last class, we finished the first of two modules devoted to contracts in small claims court.

The Devil's in the Details: When a government commits to enforcing by way of the court system private agreements between parties, additional rules are required to address various issues we know will arise. The best way to understand and apply many principles of contract law that might otherwise seem unpredictable or arbitrary is to begin with understanding the purpose they serve.

- Question: What evidence will courts require before putting the force of the government behind enforcing a private agreement?
Group 5 suggested requirements that contracts be written and witnessed, which were in fact requirements at an early stage of the law. Informal contracts are enforceable under modern contract law in response to the demands of our commercial society in which many individuals enter into many contracts as part of daily life. But the law also has very formal requirements, such as those mentioned by Group 5, for particular sorts of contracts. For example, contracts for the sale of land, promises to pay another person's debt, and contracts for the sale of good for more than \$500 must be in writing.
- Question: Are there contracts which the law may refuse to enforce?
 - Contracts in which one party *lacked capacity to agree*: e.g., contracts by minors or persons who are mentally incompetent.
 - Contracts in which there was *no true agreement*: e.g., contracts in which one party has been coerced or tricked.
 - Contracts that *violate social policy*: e.g., contracts requiring performance that violates criminal law, or contracts so extremely one-sided as to be unconscionable.
 - Contracts not supported *by consideration*: e.g., a promise by one party requiring nothing from the other party. "I'll buy you a pony for your birthday."
- Question: For contracts that aren't immediately completed, what rules should we have about modifications?
 - Impossibility of performance: if subsequent events make performance impossible, the law will cancel the contract. E.g., "The house I promised to sell you burned down."
 - Frustration of purpose: One party's entire reason for entering into this agreement has been unforeseeably destroyed. E.g., "I agreed to buy a food truck for from a dealer the day before the County prohibited food trucks."
- Question: What does the law do – and not do – to enforce a contract?

- An order requiring a party to comply with their agreement or else be held in contempt (*specific performance*) is available in limited circumstances, but not in small claims court.
- The general rule is that the non-breaching party (NBP) is entitled to the amount of money necessary to restore NBP to the same position as NBP would have occupied if the contract had not been breached.

Remember the Sears Salesperson:

The other legal principle important in contract law we discussed is *agency*. The take-away points were:

- An agency agreement is created when one person (*P*, the *principal*) authorizes another person (*A*, the *agent*) to act on P's behalf. In an agency relationship, P controls the actions of A and is legally bound by A's actions, so long as those actions are within the *scope of A's authority*.
- As a general rule, A is not bound personally for contracts entered into on behalf of P.
- In some instances, however, A may contract both on behalf of P and also on A's own behalf. The most common example of this is a contract entered into by one spouse pursuant to which they both enjoy benefits of the contract.
- If A acts outside the scope of A's authority, only A is bound, unless:
 - P has acted in a way causing reasonable people to assume that A is authorized to act for P (*apparent authority*). But remember, apparent authority can never be proven solely by statements or actions made by A alone.
 - When A acts with apparent authority, both A & P are bound.
 - Corporations and similar business entities can only act through agents.