

# Lwc1 flashdb

[Law](#), [Contract Law](#)



What is the definition of a contract? An agreement between two or more parties for the doing or not doing of something specified. Describe the various types of contracts. 1) Bilateral and Unilateral 2) Express and Implied 3) Executory and Executed What elements does a contract need to be enforceable? 1) Agreement 2) Legality 3) Consideration 4) Capacity What elements would constitute a discharge of a contract? 1) Material breach 2) Minor breach 3) Anticipatory breach 4) Mutual Rescission 5) Accord/Satisfaction What is a bilateral contract? Both parties make a promise. What is a unilateral contract?

One party make a promise that the other party can accept only by doing something. ex. I'll give you \$10 to mow my lawn. If not mowed no \$10. What is an express contract? Two parties state all important terms of their agreement. ex. Where, when, how much, oral or written. What is an implied contract? Words and conduct of the parties indicate that they intended an agreement. What is an executory contract? When one or more parties have not fulfilled its obligations. What is an executed contract? When all parties have fulfilled their obligations? If there is a breach of contract, what remedies are available?

Injunction - An order forcing someone to do something or refrain from doing something. Expectation Damages / Restitution - \$ required to put on party in the position she would have been had the other side performed the contract. Specific Performance - In cases of rare property court ordered to complete the deal. Reformation - Court will rewrite contract. Describe types of acceptable performance of a contract. Strict Performance Substantial

Performance What are the Sherman and Clayton Antitrust Acts? Sherman Act of 1890 - first national law to regulate competition.

Clayton Act of 1914 clarified the Sherman Act. What are the key provisions of the Sherman and Clayton Antitrust Acts? \*Prohibits all agreements that will "restrain trade" (Sherman) \*Bans "monopolies" (Sherman) \*Prohibits anticompetitive mergers (Clayton) \*Tying arrangements (Clayton) \*Exclusive dealings (Clayton) \*Bans pricediscrimination- illegal to charge different prices to different purchasers. (Robinson-Pattman Act 1936 an amendment to Clayton -) Describe the variety of aggressive business actions that are illegal and violations of antitrust regulations.

Monopolization -possessing a monopoly is not illegal; using bad acts to acquire or maintain one is. Predatory Pricing - lowering prices below cost to drive competitors out. Tying Arrangements - selling products on the condition the buyer purchases a different (or tied) product. Controlling distributors or retailers (Retail price maintenance) How is consumer credit regulated? Through the Truth in Lending Act What government regulations apply to consumer product safety? \*Federal food, drug, cosmetic act \*Food quality protection act What is the role of the Environmental Protection Agency?

Monitor and protect the air, water and land pollution. . . What requirements were specified by the Federal Trade Commission Act of 1914? Unfair or deceptive acts or practices. What is the point at which a legal agreement is said to have occurred? intend to contract List the types of breach of contracts. Material Breach Minor Breach Anticipatory Breach Mutual Rescission Accord/Satisfaction What is an express warranty? Seller creates  
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with words or actions that goods meet certain standards. Created three ways: Affirmation of a fact or promise, Description of the goods, or sample or model. What is an implied warranty?

Created by UCC code itself, not by an act or statement of the seller. What is a disclaimer? A statement that a particular warranty does not apply. What are the limitations on remedies for breach of warranty and product liability? Limitation of Remedy Clause - Parties may limit or exclude normal remedies permitted. What is negligence? Seller's conduct unreasonable. Violation of a standard of care set by statute. How does negligence apply to a manufacturer? Negligent Design Negligent Manufacturing Failure to Warn What are the types of warranties? Implied, Express, Implied Warranty of Fitness, Warranty of Merchantability.

What is strict liability? A tort doctrine holding to a very high standard all those who engage in ultrahazardous activities. (ie explosives) OR who manufacture certain products. What are the defenses available to an action for negligence? Contributory Negligence - If the plaintiff is even slightly negligent she recovers nothing. Comparative Negligence - Plaintiff may generally recover even if she was partially responsible. What are the defenses available on an action for strict liability? None - a defendant engaging in an ultrahazardous activity is virtually always liable for any harm that results.

List the remedies available. Compensatory Damages - flow directly from contract. Consequential Damages - result from the unique circumstances of the particular injured party. (Recoverable only if breaching party should have foreseen them). Incidental Damages - Minor costs an injured party incurs

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responding to a breach. What are the basic provisions of the Sarbanes - Oxley Act? \*Created a public company accounting oversight board \*Revising auditor independence rules \*Revising corporate governance standards \*Increasing criminal penalties for violations What are the rights of the shareholders? Right to information - including minute book, accounting records, and shareholder lists. \*Right to vote \*Right to Dissent \*Right to protection from other shareholders. What recourse do shareholders have against corporations if shareholder rights are violated? Derivative Lawsuits - Shareholders sue corporation, but damages go to corporation. \*Direct lawsuits \*Class Action What are the key provisions of the Securities Act of 1933? Before offering or selling securities, the issuer must register the securities with the SEC, unless the securities qualify for an exemption. What are the disclosure requirements of the Securities Act of 1933?

Initial detailed information statement when the company first registers. How did Sarbanes - Oxley change the disclosure requirements of the Securities Act of 1933? Added to the 1934 Securities Act by requiring CEO and CFO to certify that: \*The information in the quarterly and annual reports are true. \*The company has effective internal controls. \*The officers have informed the company's audit committee and its auditors of any concerns that they have about the internal control system. What year did the Sarbanes - Oxley Act pass? 2002 How would you define business ethics? The study of how people ought to act.

What is involved in developing an ethical culture in an organization? Managers setting the example and training. What year was the Clean Air Act passed? 1963 What year was the Clean Water Act passed? 1977 What are the

alternative dispute resolution techniques? \*Arbitration - 3rd neutral party hears both sides and makes a binding decision, possible award, no discovery, no class action, no public info of outcome. \*Mediation - Neutral party coaxed two disputing parties toward voluntary settlement. No decision made by mediator. \*Negotiation - List the types of courts. State Courts = Trial Courts

Federal Courts = Trial Courts and Specialty courts (bankruptcy, tax, etc)  
Appellate Courts = Describe the National Labor Relations Act of 1935. Also known as Wagner Act. 1) Created NLR Board to enforce labor laws. 2) Prohibits employers from penalizing workers who engage in union activity. 3) Requires employers to bargain "in good faith" with unions. Describe what COBRA is, and when was it passed? Consolidated Omnibus Budget Reconciliation Act passed in 1985. Statute provides that former employees be allowed to continue health insurance for 18 months after leaving their job.

Describe what the Fair Labor Standards Act is and when it passed? Regulates wages and limits child labor. Passed in 1938. 1. 5 times paid for overtime. Children under 14 may only work in agricultural and entertainment. 14-15 limited hours after school. 16-17 unlimited hours in non-hazardous. Describe what constitutes wrongful discharge under the law. Wrongful discharge prohibits an employer from firing a worker for a bad reason. They fall into three categories. 1) public policy - prohibits employer from firing someone for a reason that violates basic social rights, duties, and responsibilities. 2) contract law-written or oral promises made during the hiring process can be enforceable. Employee handbook creates a contract. 3) tort law - defamation; giving a false or unfavorable reference about a former employee, or "Intentional Infliction of Emotional Distress" - employers who

condone cruel treatment of their employees face liability under tort of intentional infliction of emotional distress. Explain the responsibilities of OSHA. Holds employers to a workplace " free from recognized hazards that are causing or likely to cause death or serious injury to employees.

Inspects workplaces to insure that they are safe. Describe the main points of the Americans with Disabilities Act of 1990. The ADA prohibits employers from discriminating on the basis of disability as long as she can, with reasonable accommodation, perform the essential functions of the job. An accommodation is not reasonable if it would create undue hardship on the employer. What is liquidated damages clause? A provision in the contract that declares in advance what one party will receive if the other side breaches. What is necessary to prove negligence? Duty of Due Care Breach (defendant breached duty)

Factual Cause Forseeable Harm Injury What does the Family and Medical Leave Act guarantee? Both men and women up to 12 weeks unpaid leave each year for childbirth, adoption, or medical emergencies for themselves or a family member. When was Social Security instituted and what does it do? Passed during the Great Depression in 1935. Benefits to workers who are retired, disabled, or temporarily unemployed and to spouses and children of disabled or deceased workers. What is the FUTA? Federal Unemployment Tax Act and is part of the Social Security system. What is the Equal Pay Act and when was it instituted?

An employee may not be paid at a lesser rate than an employee of the opposite sex for equal work. Passed in 1963. What is Title VII and what does it prohibit? Passed in 1964. It prohibits employers from discriminating on the

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basis of race, color, religion, sex, or national origin. More specifically, 1) discrimination in the workplace 2) sexual harassment 3) discrimination because of pregnancy. What does sexual harassment entail? unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature with two major categories. 1) Quid pro quo (this for that) 2) Hostile work environment

What is the EEOC? Equal Employment Opportunity Commission is a federal agency to oversee Title VII cases. They may sue or issue a "Right to Sue" letter. They also oversee age discrimination cases. What are the remedies to Title VII violations? Hiring, reinstatement, retroactive seniority, back pay, reasonable attorney's fees and damages up to \$300,000. What does the Age Discrimination Act prohibit? When was it passed? Prohibits age discrimination against employees or job applicants who are 40 years or older. Cannot fire, refuse to hire, fail to promote or force to employee to retire. Passed in 1967.

What is the Norris-LaGuardia Act? declared that federal courts could not issue an injunction for non-violent labor disputes. What rights does Section 7 of the National Labor Relations Act (NLRA) guarantee? the right to organize and join unions, bargain collectively through representatives of their own choosing, and engage in other concerted efforts. What does Section 8 of the NLRA guarantee against? Unfair Labor Practices - the employer cannot: \*interfere with union organizing efforts. \*dominate or interfere with any union. \*discriminate against any union member. \*refuse to bargain collectively with any union.



What are the two main functions of the NLRA Board appointed by the President? \*Representation - the board decided whether a particular union is entitled to represent a group of employees. \*Unfair Labor Practices - adjudicates claim by either the employer or workers the the other side has committed a ULP. What is the Taft-Hartley Act? Also called the Labor Management Relations Act. A statute that amended section 8 of the NLRA to outlaw certain ULP by unions. \*interfer with employees who are exercising their right under 7. \* to encourage an employer to discriminate against a particular employee because of a union dispute. refuse to bargain collectively. \* to engage in an illegal strike or boycott, especially secondary boycotts. (secondary boycott is picketing innocent companies to coerce them to stop doing business with an employer) What is the Landrum-Griffin Act? Also called the Labor-Management Reporting and Disclosure Act (LMRDA) requires union leadership to make certain financial disclosures and guarantees free speech and fair elections within a union. What does Section 9 of the NLRA offer? Exclusivity - a valid recognized union is the EXCLUSIVE representative of the employees. What steps are needed to organize a union?

Campaign - rally employees to form a union. Authorization Cards - signed card by employee giving union exclusivity. Recognition - union asks employer to recognize it as the bargaining unit. Petition - union petitions NLRB for an election if 30% of workers are unified. Election - NLRB supervises election. What is a CBA? Collective Bargaining Agreement. What is UPA Uniform Partnership Act passed 1914. At what point is a partnership formed? The association of two or more person to carry on as co-owners a business for

profit forms a partnership, whether or not the persons intend to form a partnership.

What factors create "co-owners of a business for profit"? \*Must share profits \*Share in management of business \*(optional) Share in losses \*(optional) referring to yourselves as partners \*Charitable business are not partnerships When does Partnership by Estoppel apply? \*they allow others to call them partners \* a third party relies on assertion \* a third party suffers harm What agency does a "partner" in a partnership hold? \*Actual authority - authorized acts \* Implied authority - act reasonably necessary \*Apparent authority - unauthorized acts Which partner is responsible for paying the debt of the partnership?

ALL - all partners are PERSONALLY liable for all debts of the partnership. (Yes, that means the house is at risk. ) What is the liability of an incoming partner? A partner is personally liable only for obligations the partnership incurred while he was a partner. His liability for debts incurred before he became a partner is limited to his investment in the partnership. What are the two categories antitrust is divided into? per se - violations are automatic (no one was hurt is not a defense criminal and civil damages) rule of reason - only if anticompetitive impact

Name the three types of potentially illegal cooperative business strategies. Horizontal Agreements among competitors. (Levis and Wranglers) Vertical Agreements between participants of different stages of production (Levis and Macys) Mergers and Joint Ventures among competitors. What is market division? An effort by a group of competitors to divide its market is a per se violation of the Sherman Act. What is the FTC? Federal Trade Commission <https://assignbuster.com/lwc1-flashdb/>

created in 1915. What options does the FTC have to enforce the law?

Voluntary Compliance Administrative Hearing and Appeals Penalties

What sales practices does the FTC oversee? Bait & Switch Mail/Phone Order

Merchandise Telemarketing Unordered Merchandise Door to Door Sales

Consumer Credit What is the " Truth in Lending Act"? Requires lenders to

disclose the terms of the loan in an understandable and complete manner.

Truth in Lending Act (TILA) applies only if . . . \*It is a consumer loan \*The

loan has a finance charge or will be paid in more than four installments. \*The

loan is for less than \$25, 000, or to secure a mortgage on real estate \*The

loan is made by someone in the business of offering credit What is the

Magnuson-Moss Warranty Act?

The act requires any supplier that offers a written warranty on a consumer

product that cost more than \$15 to disclose the terms of the warranty in

simple, understandable language before the sale. What does the Consumer

Product Safety Act of 1972 protect? Created to prevent injuries from

consumer products. Instituted the Consumer Product Safety Commission to

evaluate consumer products and develop safety standards. The FTC deems a

practice unfair if it meets three tests. What are these tests? 1) It causes

substantial consumer injury. 2) The harm of the injury outweighs any

countervailing benefit. ) The consumer could not reasonably avoid the injury.

What is the EPA? What is the EPA's primary function? Environmental

Protection Agency. Created in 1970. When Congress passes a new

environmental law, the EPA issues regulations to implement it. What is the

Clean Air Act? When was it passed? The Clean Air Act of 1970 has four

provisions: 1) Primary Standards (National Ambient Air Quality Standards,

NAAQS) -pollutionthat harms public health. 2) Secondary Standards - pollution that may not threaten health BUT has unpleasant effects, low visibility, harmful to plants or other materials. ) State Implimentation Plans (SIPs) States offered plans for bringing areas into compliance within a reasonable amount of time. 4) Citizen Suits - citizens can file against a polluter or the EPA for failing to enforce statute. What is the Clean Water Act? When was it passed? Passed in 1972 with twogoals: 1) to make all navigable water suitable forswimmingand fishing by 1983 2) to eliminate the discharge of pollutants into navigable waters by 1985. What does the Safe Drinking Water Act require? When was it passed? Passed 1974. Requires: 1) EPA to set national standards ) enforcement left to states with provisions for EPA to enforce if needed. 3) Prohibits use of lead in any water pipes. 4) Requires community water systems to send annual water report to every customer. What two statutes regulate waste? The Resource Conservation and Recovery Act (RCRA) - regulates the production and disposal of solid waste. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) - focuses on cleaning up existing hazardous waste sites. What does EPA oversee? Air Water Waste Chemicals - shared with other agencies (FDA, OSHA, and NRC)

Natural Resources What act was passed to regulate the air? Clean Air Act What acts were passed to regulate water? \*Clean Water Act \*Safe Drinking Water Act \*Ocean Dumping Act \*Oil Pollution Act What acts were passed to regulate chemicals? \*Federal Insecticide, Fungicide, and Rodenticide Act \*Federal Food, Drug, Cosmetic Act \*Food Quality Protection Act \*Toxic Substances Control Act What acts were passed to regulate natural

resources? \*National Environmental Policy Act \*Endangered Species Act  
What are common types of antitrust violations? Cooperative Strategies  
Aggressive Strategies Define ethics. The study and philosophy of human  
conduct, with an emphasis on determining right and wrong. \*Moral  
philosophy \*The principles, values, and standards that guide behavior in the  
world of business. What are the changes made to the 1933 Securities Act in  
1934? \*still must file initial info statement (like 1933) \*Annual reports with  
audited financials, analysis of company's performance, info about officers  
and directors. \*Unaudited quarterly reports \*Report any significant  
developments, bankruptcy, change in control, purchase or sale of significant  
assets, resignation of a director as a result of policy dispute, change in  
auditing firms.