Business law buad 310.01 exam #3 october 25, 2011 prof. carrigan

Business, Management

Name: Lecturer: Course: Date: Business Law BUAD 310.

01 Elements of common law contract A common law contract has several elements that must be present for a contract to be legally biding. The first element is offer and acceptance. A contract is formed when one party offer is accepted by another party. For instance, if John offered asked Jane to provide distribution services to his customers, it would be considered as the offer. If Jane agrees to the terms of John to distribute goods for John, this is considered the acceptance. The second element is consideration. A consideration is the price to be paid to the accepting party by the offering party when the accepting party fulfills the offer. If Jane takes up the offer, there will be an agreed amount of money, which John shall pay to Jane.

The third element of common law contract is intentions from both parties to enter into a legally biding agreement. A legal agreement may not be expressly implied, but is usually inferred in the agreement. For instance, if Jane agrees to the terms of the offer and later does not fulfill her end of bargain, John can sue her for breach of contract. The fourth element to a common law contract is legal capacity of both parties. Both parties must be legally recognized as capable of entering into a contract. Some of the factors determining legal capacity are legal age sound mind and must have technical capacity to carry out the contract. Differences between common law contract and UCC sale of goods Common law contract and sale of goods under the UCC differ mainly because under the former, contracts deal with services, real estate, insurance and intangible assets while the later deals with sale of goods and securities. In common law contracts, when any

change to the contract occurs, it can result to the rejection of the contract or a counter offer.

Under the UCC sale of goods, minor changes do not affect the contract and does not result to rejection. In common law, several terms such as quantity, performance, price, the kind of work, and time are included while in the sale of goods under the UCC deals largely with quantity alone. For instance, when buying securities, time is not considered, and there is no kind of work. The only thing that matters is the quantity of the securities. Another difference between the two is a statute limitation of four to six years in common law contract while UCC sale of goods contract is four years. Finally, under common law, a contract can only be discharged when it proves impossible, by death of a party member or if the subject matter is destroyed. On the other hand, under the UCC sale of goods contract, a contract can only be discharged by its impracticability. Effect of a mutual mistake on a common law contract A mutual mistake in common law occurs in case both parties to a contract at cross purpose and the terms of the contract are not clear enough for a court to get the real meaning or their intention.

Under common law contract, a third party used to give out their meaning according to what they make of the terms. If the third party derives a meaning, it is considered the intention of the contract; hence, the contract remains legally binding under that meaning. On the other hand, if the third party cannot derive a meaning from the terms, the contract will be rendered void since there cannot be a meaning to the terms. When both parties do not

understand each other’s intentions, it is considered there was no agreement since each party has to have an understanding.

Damages available to innocent party in beech of contract Upon breach of contract, the innocent party has a right to be compensated for the loss suffered, which is called damages. There are four forms of damages available, compensatory damages, punitive damages, liquidation damages, and nominal damages. Compensatory damages are monetary amounts meant to compensate for the loss suffered by the innocent party.

Under this there is expectation damages that are calculated depending on the loss suffered and consequential meant to cover for other indirect costs. Liquidation damages are provided for in the contract during formation when possible loss in case of breach is not determinable. Punitive damages are meant to punish the breaching party to prevent such future actions. Nominal damages are offered to the innocent party when he or she does not incur loss in monetary value. Types of warranties arising in sale of consumer items In sale of consumer items, two types of warranties that are implied warranties and express warranties. When a consumer buys an item, some warranties will not be written or told by the seller, but are provided for by state. For instance, when a consumer buy a loaf of bread and later realizes it was not fully baked, he or she has a right to return it even if there is no statement stating so, as long as it did not meet the expected quality.

Two types of implied warranty are merchantability, where the seller or merchant promises that the item purchased will perform as specified and are

free of any defects. The other type of implied warranty is implied warranty of fitness for a particular purpose, where the seller is liable of providing a specific item for a certain purpose if the consumer asks for it. If the item does not perform the particular purpose, the consumer has a right to take it back. The other type of consumer warranty is express warranty where the manufacturer expresses through written word, when a promise is made such as a one-year warrant, which assures that a product will not malfunction as long as it is used properly. Difference between chapter 7 and chapter 13 bankruptcy In chapter seven, bankruptcy is a form of liquidation, where the petitioner does not have any other income from which to pay up his or her debts, and the court comes in and sells all the nonexempt assets in order to repay the creditors.

However, not all property is sold, some such as residence are not sold if there is no other, among other assets depending on the property owned. On the other had, bankruptcy under chapter 13 is a form of payment plan where the petitioner is still making more money every month and can afford to pay some amount of money per month for repaying the creditors until he or she is through with the debt. Under chapter 13, once the petitioner has fully paid the debt within 3-5 years, they receive a discharge of their debt. Under this chapter, one is not required to surrender any property to be sold, rather, the payment caters for it and it is overseen by a trustee.

For chapter 7, one receives a discharge once in every six years. How courts and businesses operates under chapter 11 When a business files for a bankruptcy under chapter 11, it is usually considered to be in the process of

reorganization while planning to keep the business alive while paying creditors. The business continues to operate following close directions from a trustee appointed by the court. In most cases, this applies to businesses with a big business value than its assets, such as a goodwill that can be lost in case the business is liquidated. The bankruptcy petition starts when the petitioner files a case with the court from where his or her business resided.

It could be voluntary or involuntary where the creditors can file a petition. Differences between sole proprietorship and a general partnership In sole proprietorship, there is only one owner operating the business. A sole proprietor carries all the risks of a business without any help from anybody.

He is considered the business and the business cannot operate without him. A sole proprietor provides capital for the business and takes any debt. The advantage is that he does not share the profit with any body else and has overall authority in the business. On the other hand, a partnership business is owned by more than one person, starting from two people and above. The partners are the joint owners of the business and they make decisions together. The risk of the business is divided among the partners depending on the share of capital each produces. The profits, debts and responsibilities are shared among the partners and if one pulls out, other partner may choose to continue with the business. Default rules of general partnership when there are no written terms A general partnership is made up of general partners who participate in daily activities of the business operations.

All the partners are responsible for the liabilities of the partnership such as debt where they all contribute. When one partner does not pay up a debt, all the other partners become liable to the debt and their assets stand to be liquidated to repay the debt. Each partner is considered an agent to the partnership; hence, his transactions out there affect all other partners jointly. Each partner has an equal right in the management of the partnership. Any body who wishes to join the partnership has to have the consent of all other partners.

More so, profits are divided equally or as stated in the partnership during formation. In addition, a partnership automatically terminates in the death of partners. In case of any disagreement among the partners, the majority wins, and in case any modification has to be made, all the partners have to be aware. Differences between Limited Liability Company and corporations There are several differences of a limited liability company and corporation. A limited liability company is regulated under the state laws and regulated by the same.

Under federal taxation, it is considered a partnership where each partner is treated individually; hence, the tax is higher. This form of business does not have strict regulations to conduct regular meetings and taking of minutes. Limited liability companies have a flexible profit distribution where they can decide among the members how the profit will be shared among the owners. On the other hand, corporations are formed by potential shareholders who contribute money receive stocks in turn. Their taxes are lower than those of

limited liabilities are, and may carry forward their corporate taxes for a period of 15 years.

Corporations further have complicated regulations such as having many meetings and record keeping is strict making it a little more complex than a limited liability company is.