

CONTRACTS

Class I I



GENERAL CONTRACTUAL RESPONSIBILITIES

- **Legal Subject Matter**

- If a contract's subject matter is illegal, a court will *refuse to take any action on it*.
- If one party enters a contract for an illegal purpose that the other party does not know of (the parties are not "*in pari delicto*"), the innocent party can enforce the contract, but the guilty party cannot.

- **Good Faith**

- Both parties must do their best to achieve the contractually called for results or those anticipated at the time the contract was formed.
- (This duty is implied even if the parties do not express it; and it is often used to establish mutuality of consideration even where there does not appear to be mutuality from the face of the agreement.)



CONDITIONS

- A condition is a prerequisite to one party's duty to perform.
- A condition is stronger than a regular contract term; without the condition being fulfilled, the other party's duty to perform never kicks in.
- **Types of Conditions – Chronology:**
 - Condition **Precedent**: First the condition must occur and then the duty of performance kicks in.
 - Condition **Subsequent**: The duty starts immediately but ends upon the occurrence of the condition.



CONDITIONS (CONT.)

- Types of Conditions – Timing:
 - Express
 - Implied
 - Constructive (implied by law)



PERFORMANCE – WHEN THE DUTY ARISES

- **Historical Rule:** Performances under a contract were independent of each other; if one party failed to perform, the other party still had to perform and sue for breach.
- **Modern Rule:** Performance by one party is a "*constructive condition*" for the performance of the other person; thus, if one party refuses to perform, the other party does not have to perform either.



ORDER OF PERFORMANCE

- This is important because the first to perform must perform in order for the second to perform to have a duty to do so.
- If there is a services contract in exchange for money, it is presumed that the services are to be performed first.
- If there is a performance that takes a long time and one that takes a short time, it's presumed that the one that takes a long time is first.
- If the contract calls for the simultaneous exchange of goods (or goods for money), each party must be "ready, willing and able" to complete the transaction in order for the other party's duty to apply.



QUIZ TIME!



PERFORMANCE – WHEN IT IS COMPLETED I

- **Common Law Rule: ("Substantial Performance rule")**
- Completing a "**substantial performance**" is enough to force the other party to perform, i.e., even if you breach a contract, you can still force the other party to perform as long as you did at least complete a "substantial performance."
- Committing a "material" (serious) breach means that there has been no substantial performance ("**material breach**" and "**substantial performance**" are *mutually exclusive* - if you have one, you don't have the other).
- Whether there has been "substantial performance" is a case by case determination and the courts use a variety of factors to make that determination.



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- **Two important points to remember when applying the substantial performance rule:**
 - If there is any breach, even if there is substantial performance, you can still sue for breach of contract and collect the damage you suffered as a result of the breach.
 - A party can always secure complete performance simply by making that performance into a condition precedent to the contract rather than just a term in the contract.
- **UCC Rule ("Perfect Tender" rule)**
 - The goods delivered have to be exactly as the contract called for or the buyer can reject the goods and sue the seller for breach of contract.
 - Exception: Divisible Contracts

