CONTRACTS UNDER SEAL AND CAPACITY OF PARTIES

Contracts Under Seal

- Why Seals?
- Seals were the precursors to consideration. If a party went to the trouble of putting its seal on a document, it showed the party was serious and had the intent to contract.
- Three requirements of an enforceable agreement under seal are:
  1. A sufficient writing
  2. A seal
  3. Delivery
- Additional contractual requirements:
  4. Capacity
  5. Legal purpose

Restatement 2nd § 95. Requirements for Sealed Contract or Written Contract or Instrument

- (1) In the absence of statute a promise is binding without consideration if
  - (a) it is in writing and sealed; and
  - (b) the document containing the promise is delivered; and
  - (c) the promisor and promisee are named in the document or so described as to be capable of identification when it is delivered.

Sufficiency of the Writing or Other Record

- Instrument under seal is properly called a "deed"
- Issues exist today with "documents" that are not on paper or parchment.
- What Constitutes a Seal?
  - Original - Impression of signet ring pressed into hot wax
  - Today - Virtually anything (wax, pressure seal, drawing of seal, etc.), however, seal without intent is ineffective
  - Magic words - "I have set my hand and seal"

Delivery of a Sealed Instrument

- Surrender of document with intent to deliver. Mere surrender is not sufficient.
- Effect of Acceptance by the Promisee
- Assent required for bilateral agreements, but not for unilateral obligations.
- If bilateral, return promise must also be made under seal. If not under seal, then the second promise is subject to the normal rules of contract (including consideration).
- Instrument is effective upon delivery, but may be disclaimed by the recipient within a reasonable time after learning of the existence of the document.

Some Effects of the Seal

- Modern view - Sealed agreements may be modified or rescinded in the same manner as any other agreement.
- In some jurisdictions, sealed documents have a longer statute of limitations.

Statutory Changes Affecting the Seal

- UCC § 2-203. Seals Inoperative.
- The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.
  - Not all states have wiped out the seal.
  - NJ - Seal is presumptive evidence of consideration.
  - Delaware - The seal is alive and well.

Capacity of Parties

- Who lacks capacity?
- Minors (legally, infants)
  - Age of majority varies by state
- Those suffering from mental infirmity
- (Formerly) Married women
- Enemy aliens
- You (to contract with yourself)

Minors

- Contracts are not void, they are voidable.
- Transactions that the Infant Cannot Avoid
  - Contracts that further public policy (e.g. Contract to support minor's own child)
  - Contracts that enforce statutory requirements (e.g. agreement not to utilize trade secrets)
  - Contracts for necessaries
  - Contracts for necessaries of their own minor children
  - Statutory exceptions
  - Court approved agreements (i.e., employment agreements)

Avoidance

- Minor may disaffirm an eligible agreement at any time during minority and for a reasonable time thereafter.
- No magic words for disaffirmance. May be done by words or deeds.
- Contract may only be avoided in its entirety.

- Ratification
  - 1. Failure to Make a Timely Disaffirmance
  - 2. Express Ratification
  - 3. Ratification by Conduct

- Effect Upon Ratification of Ignorance of Law or Fact
  - Majority - Everyone, even minors, is presumed to know the law.
  - Minority - No ratification without full knowledge of legal consequences

Obligations of Restitution Upon Disaffirmance

- Infant as Defendant
  - Infant must return any property received as a result of disaffirmed agreement, if still in possession. If infant no longer has property, regardless of reason, there is no obligation to return or recompense seller. No obligation to recompense for services received from disaffirmed agreement.
  - Exception - If infant has traded or sold property, and possesses the property received in exchange, infant must turn over such property.

Infant as Plaintiff

- Infant is entitled to return of what they paid, less depreciation of goods received
- Liability of an Infant for Necessaries
- Infant is liable in quasi contract for necessaries (reasonable value) furnished to her, but may disaffirm executory parts of contracts for necessaries.

Mental Infirmity

- Types include:
  - Insanity
  - Senility
  - Dementia
  - Intoxication (drug or alcohol)

- General standard - person must not understand the nature and consequences of their actions.

Restatement 2d § 15. Mental Illness or Defect

- (1) A person incurs only voidable contractual duties by entering into a transaction if by reason of mental illness or defect
  - (a) he is unable to understand in a reasonable manner the nature and consequences of the transaction, or
  - (b) he is unable to act in a reasonable manner in relation to the transaction and the other party has reason to know of his condition.
- (2) Where the contract is made on fair terms and the other party is without knowledge of the mental illness or defect, the power of avoidance under Subsection (1) terminates to the extent that the contract has been so performed in whole or in part or the circumstances have so changed that avoidance would be unjust. In such a case a court may grant relief as justice requires.

Restatement 2d § 16. Intoxicated Persons

- A person incurs only voidable contractual duties by entering into a transaction if the other party has reason to know that by reason of intoxication

- (a) he is unable to understand in a reasonable manner the nature and consequences of the transaction, or

- (b) he is unable to act in a reasonable manner in relation to the transaction

Contracts with the Mentally Infirm

- Traditional view - Agreements were void

- Modern view - Agreements are voidable, unless contracting party has been adjudged incompetent by a court and a guardian appointed. In that case, agreements are void.

- Requirement of Restitution
  - Automatically Voidable - Executory contracts and contracts based on grossly inadequate consideration.
  - Other agreements are voidable if the incompetent can place the other party in the status *quo ante*, and the competent party has clean hands:

Avoidance and Ratification

- No ratification so long as incompetent remains incompetent. May ratify upon competency or executor or guardian may act for the incompetent.
- Liability for Necessaries
  - Basically the same rules as for minors
- Contracting With Oneself
  - General rule - 1) It's silly; and 2) it's unenforceable
- Contracting With Oneself and Another is Enforceable