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LECTURE #2

Court System – 3 tier

1. Supreme Court
2. Appellate Court (Court of Appeals)
3. Trial Court

*Most cases we'll be studying are appellate. There has been a trial, a verdict was reached and then one appeals. Then, there is a panel of judges that hear lawyers. Judges will then write their decision – affirmed/reversed & remanded

Phrases:

Plaintiff Π - brings a civil action

Defendant Δ

*if defendant loses & appeals – appellant (petitioner)
plaintiff – appellee (respondent)

Cultural Setting of Business Law:

- 1) Anglo-American Law
 - 2) Civil Law or Code Law – continental Europe
- *much more difficult to bring negligence

-we concentrate on #1:

- a) we're in MD
- b) commercially
- c) can't be exposed to everything

-we'll view how American gov't has influenced American Law

Federal level – broken in to 3 parts – “system of checks & balances”

&

State level (“sovereignty of the states”)

*federal system distributes power between a central national government and an individual state government; if direct conflict between the two, federal law prevails

-Figure 1-2, p. 16, pp. 17-19 IMPORTANT!



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Purposes of Law:

1. maintain social order
2. promote rational decision making, helps predict future legal consequences
3. shape social behavior

Sources:

1. Primary (authoritative):

- (a) treaties – undertaken by executive branch, with concurrence of 2/3 Senate
- (b) statute – passed by Congress, signed by President; Federal or State
- (c) ordinances – local level legislation ex. Zoning -- # houses on lot, etc.
- (d) administrative regulations – Congress will pass a law & then regulations are set ex. Clean Air Act of '90 passed led to emissions level testing
- (e) Court Rules (rules of how a case will proceed through court)
& Executive Orders (how executive branch handles own business)
- (f) Case Law – judge made law, interpret legislation or prior case law
Precedent = prior judicial decision on a similar factual or legal issue

2. Secondary (nonauthoritative) – NOT BINDING ON JUDGES –

- (a) treatises – books where legal scholars look at law & tell how it is & how it should be changed
- (b) legal periodical
- (c) restatements of law – similar to treatise, reduce mass judicial opinion to clear/precise statements

Classification:

1. Procedural – governs by method by which a legal right is enforced
2. Substantive – governs existence & definition of those rights

Civil Actions – noncriminal actions

- plaintiff vs. defendant
- plaintiff seek damages or injunction
- plaintiff has “burden of proof”, requires proof by a preponderance of the evidence

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Criminal Actions

- public is injured party
- remedy is imprisonment, fine, or death

Strategic Planning:

- trend toward hiring in-house counsel
 1. spiraling costs for legal services
 2. understands corporation & its personnel
 3. recognized need for preventive law
 4. outside counsel is retained when lawsuit

-Read Soldano v. O'Daniels

At trial level, case was dismissed. In case law, you have no civil liability to come to the aid of a person unless you caused peril. At appeal level, case was reversed & sent back to trial level. Once you decide to render aid, you are held to a certain level.

-Question #8, p. 25:

- other info needed -- Did he know or see her take the poison?
 - Did he give it to her?
 - Did he refuse to render aid?
 - Is he responsible for being a jerk to her?



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LECTURE #3

Chapter 1 Continued

Essay pp. 21-22 – “Cultural Defense”

- man slaughter implies emotion vs. murder
- How can you fit this in our system? Can't use Japanese law, can tie into an insanity plea under influence of culture, only need one juror to hang it up.

-Preventive Law – co. strategies structured to avoid future legal problems

-Roles of Lawyers (p. 24)

1. Counselor
2. Advocate
3. Lobbyists – paid professionals who attempt to influence decisions of lawmakers

Chapter 3: Civil Process & Dispute Resolution

-Typical Court Structure (p. 52, Figure 3-1)

-certiorari – can't automatically go to Supreme Court, must convince them why your case is important; Supreme (hears 4,000, 100 decisions)

Court of Appeals (hears 15,000)

District (hears 200,000)

-Diversity of Citizenship – involve a citizen of one state suing a citizen of another state in amount greater than \$50,000

-Concurrent Jurisdiction

-A corporation is both a citizen of state where incorporated & where has principal place of business *can get into federal court for diversity jurisdiction*

<u>Del corp.</u>	17 VA	Can't get into federal court because one from
Business in MD	1 MD	



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-Jurisdiction – authority of court to decide a case, must get jurisdiction over defendant
SEE p. 55, Fig. 3-3

- a) Subject Matter Jurisdiction – court has power to hear a particular case
- b) Personal Jurisdiction – court generally has p.j. over defendant in state boundaries and serve with a notice of suit, called a summons
- c) Long-arm Statute – reach across state boundaries & “pull” nonresident defendant’s back to state where plaintiff is suing

-Amendment 14 (p.1186)

-Burger King v. Rudzewicz (p.55)

- What was connection with Florida? Sent their checks, went to training, contract governed by Florida.
- trademark infringement – Federal Law
- BK won in Florida courts, used long-arm statute due to contracts, at trial level
- appellate court – not minimum contact to satisfy 14th Amendment
- Supreme Court took case – signing contract showed intent to enter long-term contact with a Florida corporation, intent to be bound by Florida law



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Assignment: Read Ch. 4 for Monday

LECTURE #14

Ch. 3 Continued

How to study cases:

- for an exam, the prof will tell you what cases to study for specific ques.
- most questions will be hypothetical application of the law
- read cases to understand principles & be able to apply

Question #5, p. 70

- no commitment to a long-term contract
- where could you sue? Arkansas, Illinois, Minnesota
to decide between states, look at state law to determine most beneficial

Question #6

- decision to sell nationwide led to legal implications, subject to state law--
minimum contact

-In Rem Jurisdiction (p. 57): If a party is disputing over a “thing” or property, they don’t need to get personal jurisdiction over a party to pull them back, they can start without them

-Venue

-Strategy

- Time – most states will set a time limit on how long you have to sue, varies across states ex. You have surgery in ’91, discover sponge in stomach in ’95, is it too late to sue; no many states say you have 2 years from date of discovery
- Statutes of Limitation: time period within which a particular suit must be lodged

-Stages of Lawsuit (p.58, Fig 3-4)

*most amount of work by lawyer is in Discovery stage

1)Pleading

- “notice” of pleading tells defendant he/she is being sued & general reasons why



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- must respond within specific time-Answer
OR will result in default judgment
- counterclaim – individual action defendant claims against plaintiff
- **p.60, Fig. 3-8

Know the following terms: motion to dismiss, motion for judgment on pleadings, motion for summary judgment, motion for judgment “not withstanding the verdict”

- if Plaintiff survives these motions, lawsuit becomes more significant/valuable with each motion

2)Discovery (mostly done outside of court)

- deposition: sworn testimony, both lawyers present; most expensive way to do discovery
- written interrogatories (see Slatnick, p. 62)
- request for admissions
- production of documents
- physical & mental examination

Sanctions: if one side is not cooperating, can get court involved

Summary Judgment (p.63): looked at all facts & summarize

3)Trial

- in most states & federal courts there are mandatory pre-trial conferences
- only a small %age (10-15) of cases go to trial
- How do you get a jury? Voir Dire: examination & selection of prospective jurors
 - *criminal cases have more opportunity to throw out jurors than civil cases
- trial begins with opening statements which provide a summary for jurors
- rules of evidence: designed to assist fact finder in arriving at truth
- hearsay evidence: generally excluded because statements not made under oath, out-of-court, have been historically proved



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LECTURE #5

Chapter 3 Continued

- Trial Motions (p.67) – to control spurious litigation (litigants who haven't done their homework) and jury verdicts (jury going with sympathy & not facts); can appeal decision made by judge
- Appellate Stage – appeal specific motions, evidence not let in, etc.; judges usually know their decision going in
- Contingent fees – most countries don't allow these & in some its illegal; in our country it is common but not allowed on everything
ex. Lawyer gets 1/3 of amount awarded to their client in a law suit
- Alternative Dispute Resolution
 - Arbitration is most common for labor contracts, after arbitration, the ability to take it to court is greatly reduced
 - reasons to use: time (can get quicker because docket is too full), get expertise (not “the luck of the draw”)
 - arbitrator may or may not have a written decision
- Question #7, p. 70
 - failure to warn of known hazards – popular way to win lawsuits
 - What rule of evidence? Mock court room argument: 1. Hearsay – 2. It was a sworn testimony under oath and cross examined – 1. They weren't cross examined by me, it wasn't our litigation so it will be prejudicial hearsay, judge at least get rid of the sworn statement because it was not cross examined.



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Chapter 4: Constitutional Law and Individual Liberties

- distinction between U.S. & Great Britain – Great Britain has no judicial review of legislation or judicial action; in U.S. legislation is not higher than Constitution
- Supreme Court cases are literally written into the Constitution

-Burton v. Wilmington (p.76)

When can private conduct be state action?

Burton's argument was 14th Amendment right to equal protection was violated; parking authority was so closely related to state that he sued state

-clear state involvement in this case

*there's no formula for state involvement

Question #5 (p.89): Moose Lodge v. Iris

-there is not an intimate involvement with government as in Burton therefore Iris lost under 14th Amendment claim

-What if gov't had board meetings (PUBLIC FUNCTION) there & Moose Lodge leased property from government for \$1?

*in this case, there is clear state involvement

-5th Amendment (p. 1185)

by court decision, the federal gov't has put an equal protection clause in the Amendment although you won" see it in there

-Pruitt v. Cheney (p.78)

-Pruitt was discharged from Army b/c of her status as a lesbian

-District Court dismissed, Court of Appeals reversed dismissal

-must show a rational basis for what you want; "this is not national security job, its reserve duty"



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Announcement: Read Chapter 5 for Monday and reread Ch. 4

Lecture #6: Chapter 4 Continued

Tests:

- 1) Rational Basis Test
- 2) Intermediate Test
- 3) Strict Scrutiny Test

**see p. 79, Fig. 4-3

-First 10 Amendments ---- Federal government

14th Amendment (1868) ---- States, applied a large portion of 1-10

Amendments to the States

-Supreme Court has spelled out rights, eg. right to privacy, that aren't in The Constitution

**see p. 84, Fig. 4-4 for content of Amendments

-Takings Clause (included in 5th Amendment) = protection against government taking property without giving just compensation;

- Issues:
- (1) Has government taken property?,
 - (2) Whether property has been taken for public use?,
 - (3) How much compensation is due owner?

*ability to exclude someone is biggest property rights you have

-Pruneyard S.C. v. Robins (p.85) --- California Constitution considers shopping malls a public forum; highest court in CA reversed middle decision of case saying the students had the right to free speech; P/Y lawyer issue: value of property is being diminished because don't have power to exclude students; according to 14th Amendment the State Constitution is violating my property rights --- taking of my property because can't exclude; P/Y is legally allowed to restrict speech regarding time, place, and manner (when does regulation become exclusion?).



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-First Amendment (p.87) --- commercial speech has less protection than political expressive (ex. burning the flag), or artistic speech

*any kind of speech can be regulated regarding time, place, or manner

-Posadas de Puerto Rico Associates v. Tourism Co. (p.87) --- Puerto Rican legislature ruled that advertising to Puerto Rican citizens for casino gambling was illegal; Posadas says there 1st Amendment rights were violated; other possible arguments they could have used: not getting equal protection (discriminating among other gambling medians), arbitrarily excluding a certain class of customers

--Test to see if Puerto Rico's decision violates 1st Amendment:

1. Assessment of government's interest in restricting gambling,
2. Fit between legislative's ends & means chosen to accomplish those ends
3. Whether restrictions directly advance government's interests.

-Question #9 (p.90) --- can restrict religion re: time, place, manner; Is this restriction reasonable? Yes, the restriction is not directed to exclude ISCON.

-Question #8 (p.90) --- Is it commercial speech? Yes.

Can a state ban it? (use the same test used in Posadas)



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LECTURE #7

ANNOUNCEMENTS: Midterm will be ½ hypothetical and ½ more direct (simple knowledge), will be allowed a 5x8 card to write notes on; he will hand out a sample exam next week

Chapter 5: Administrative Agencies

-Federal Register = document printed to show proposed legislation, ex. currently there is a proposal to have standards for ergonomic injuries on the job

-Preemption Doctrine (taken from Article VI, Clause 2) = involves conflict between state and federal power; federal prevails, state can propose stronger standards than federal but not weaker

Ex. Case: Arizona passed a law that no trains longer than 60 cars are allowed to pass through AZ. Federal government has no ruling regarding length of trains. Is state law valid? The federal government hasn't preempted the field so more difficult to determine.

-Wickand v. Filburn 317 U.S. 110 (1942) – Federal gov't set up standard of production of crops. It is not just what farmer produces, it's the aggregate of production. Estimated 4% is fed to family.

-Minimum Wage Law (\$5.60/hr) – if you produce a good and pay less than min. wage to employee, can't move good across states

-Federal gov't made law can't have gun 500 yards from school

-How is gov't applied? Legislation is put in place & an agency is set up to regulate it through issuing rules, such as the Environmental Protection Agency

-Administrative Procedures Act (p.95) – rules about how to set up rules

-FOIA (p.96) – passed in 1966, has undergone many changes; under this law anyone can request information from agency, if rejected can sue; see exemptions (Fig. 5-1)

-DOS v. Ray (p.96) – Plaintiffs are Haitian Nationals who wanted interviewing documents & DOS gave them doc's with names blacked out-exemption under

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FOIA says we don't have to give it (#6). Balance between privacy & right to know. If information is given, these people could be killed. Plaintiffs won at lower courts but info. Was not released – can ask for a “stay”, DOS proved would cause harm so release of info. Was stayed pending final decision; Supreme Court decision was in favor of DOS.

-Government in Sunshine Act – mandates that government meetings are open to the public

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LECTURE #8

*Announcements: Read Ch. 6 (just for terms, not cases), Ch. 7, and Ch. 8.
Pick-up copy of old midterm.*

Chapter 5 Continued

- focus studying on informal rulemaking and rulemaking by negotiation, don't need to know formal or hybrid rulemaking
- Informal Rulemaking (a.k.a. Notice & Comment Rulemaking) – must propose rule in Federal Register, gives people opportunity to comment and then final rule is published in Federal Register no later than 30 days prior to effective date
- Adjudication (p.100)
 - must adhere to procedures eg. APA
- What kind of due process must they give? It depends. Constitution determines how much due process an individual gets. Elements (p.101): notice, opportunity to participate, disclosure of reasons for decision
- Matthews v. Eldridge (p.101) --- Supreme Court said not guaranteed hearing for disability benefits (70's), not giving hearing before termination of benefits. Lower courts were in favor of Eldridge due to Goldberg case (in 60's) which required hearing for welfare benefits. In this case no hearing because based on routine, unbiased medical reports.
- Amendment 4 (p.1185): each state has their own amendment 4, Are commercial establishments subject to as much protection as private homes?
General rule: everyone including commercial businesses should be free from unwarranted searches & seizures
- N.Y. v Burger (p.103) --- certain businesses are less protected than others. Who makes the determination? Agencies who make rule (in this case, legislature of N.Y.) See criteria on p.103.
 - What if there had been evidence of murder, could they take it? Yes, if it was in plain view.



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- What if a man is sleeping in a room in building on premises, can they go in to search it? Search must be made during normal business hours and if it is his residence they can't go in but if it is just the office they can go in because it is a closely regulated industry.
- Other closely regulated industries: food, day care centers.
- Judicial Review of Agency Action: before going to court must exhaust remedies before agency
- Question #8 (p.108): was meant to protect consumer and inmates are not consumers; drug was intended to kill the inmates so no need for protection.
- Fig 5-4, p.105---Scope of Review
If subject to adjudication, agency must provide substantial evidence on record.
- Question #10: How FTC should proceed against co? Rulemaking would have industry-wide significance. Adjudication enforcement action against single co. can do both. Decision is up to FTC.
- Managerial Perspective, p. 93: Stage of case is proposed rule so in comment stage. T-N-S can comment will interfere with business. Is it one particular model causing problem? If so, don't ban all lids just that type or proceed against manufacturer.

Chapter 7 Intentional Wrongs: Business Crimes and Torts

- in some cases, intentional torts may also be crimes
- p. 132: embezzlement vs. larceny
 - embezzlement: property entrusted to you and you take it; ex. crooked lawyer holding funds for someone
 - larceny: took property and never had it in your possession
- Foreign Corrupt Practices Act ('77) --- makes it a crime to bribe an official of another country
- Not against the law to pay money to move an application forward (out of country) but if you pay for result it is a crime.
- Bribery is anticompetitive



LECTURE #9

Chapter 7 Continued

-illegal stock purchase:

Insider trading --- mailed in check (mail fraud) --- called thru broker (wire fraud)
In court would be charged for everything possible to see what they can prove,
“throw book at you”.

-Racketeer Influenced & Corruption Organizational Act (RICO) - p.134 - makes it a
crime to acquire/operate an enterprise by a pattern (2 acts or more) of
racketeering--persons, corporations, partnerships--would need to give up profits
plus 2x that amount (treble damages) ex. \$25,000 + \$50,000

*if pattern affected your business, can bring a civil suit for amount lost plus treble
damages

-commitment of perjury & obstruction of justice is a CRIME --- civil case

-Torts:

-p. 136 Fig. 7-2: Tort Spectrum

Intentional ----- Negligent ----- Strict Liability
(crimes) (implies fault) (explosives, dangerous products)

-another to sue for harmful product/service --- Breach of Warranty
(contract between buyer & seller)

-elements = what is needed to prove a case

-Tort Against Persons

1)Battery = intentional offensive touching of another, ex. wrong leg removed in surgery
Question #5 (p.149): yes, because he did intend to touch him.

2)Assault

3)False Imprisonment = restriction to move,must be complete,victim must be aware of it.
Faniel v. Chesapeake & Potomac Phone Co.

-if felt like had to go with officers --- Can you argue she was mentally restrained? No,
not in this case because she agreed and there was no complaint; she is an adult with
reasonable intelligence.



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*shopkeepers are allowed to detain shoplifters for a reasonable amount of time for the police to arrive

4) Intentional Affliction of Emotional Distress

ex. Glen Burnie, MD in 1975: Chain Saw Massacre was being shown at a movie theater and the attendant decided to start up a chain saw in the lobby to scare everyone and an old man died of a heart attack. --- THIS IS IAED

5) Defamation - tarnishing reputation; target is any living person; truth is an absolute defense; slander is verbal and libel is written

*see book for four types where Plaintiff doesn't have to prove damages in slander

6) Invasion of Privacy

-intrusion = person's privacy is physically invaded; ex. of question of privacy is drug tests for employment

-public disclosure of private facts = when information, private in character, is exposed to public gaze

-*Beard v. Akzona, Inc.* ('81) p. 140 --- husband suspected affair and tapped their home phone; tape was shared with 5 managers and Beard & Bosma were fired; Beard sued Akzona for invasion of privacy-- jury awarded Beard; reason for suing Akzona is because they have "deep pockets"; Akzona did invade privacy but wasn't public disclosure of private facts (no elements of tort)

-false light = when one publishes false material designed to make a person look bad

-appropriation = when a person's name, picture, or other likeness is used for commercial advantage without person's consent

-Torts Against Property

1) Trespass to Realty = intentional invasion of another's real property without authorization; see definition of nuisance

2) Conversion

Question #7 (p.149) -- possible charges: infliction of emotional distress, false imprisonment (this argument is weak), conversion



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LECTURE #10

Announcement: Monday (3/15) will be review days, cut-off for material will be announced this Wednesday (3/10)

Chapter 7 Continued

-when we look at torts, remember to think about what are our elements or requirements for the suit

-Chemawa v. Wnuk (p.144)

-tortious interference with contractual relations (with their members)

-judgement notwithstanding the verdict – no facts supporting the suit

-Court of Appeals stated that needed proof of economic loss, was none

-court guesses that loss of members occurred due to a shooting

-Appropriation of Trade Secrets

-Wrongful Discharge

*don't need know to know a lot about either of these

-Defenses to Intentional Torts (p.146)

1)Implied Consent (know definition)

2)Self Defense --- person has right to use force proportionate to occasion necessary for self-protection

ex. if being attacked with deadly force, you can use deadly force; doesn't mean has to be gun-to-gun or knife-to-knife

-Katko v. Briney (p.147) --- Katko committed larceny, he was convicted of a crime & turned around to sue Briney's for damages for willful and wanton injuries

-jury --- verdict against defendant

-appeal to Supreme Court --- upheld verdict

-Court said can't protect property in a lethal manner

-What if this had been Briney's garage? If it was attached to their dwelling, then would be allowed to use deadly force to protect yourself



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-What if they protected barn with dog? If barked before Katko entered, courts would only award nominal damages such as \$1. Had it been a snake? He would get a lot more because no warning before entering.

-Question #10 (p. 150) --- if golf balls were deliberately being hit it would be trespass or intrusion or attempted battery or intentional infliction of emotional distress. If trap had been built to drive Fenton's away, it would be intentional infliction of emotional distress.

-What about damages? Would need to prove broken windows were the result of intentional tort & the result of living by a golf course. Possibility of punitive damages.

Chapter 8: Negligence & Strict Liability

-know elements of negligence (p. 154, Fig. 8-1)

-negligence is basically carelessness

-doctrine of Respondent Superior – when employee is working within scope of employment, employer is responsible for damages

-Quinones v. U.S. (p. 155) --- Quinones sued for negligence failure to maintain complete & adequate records, Federal District Court dismissed case and Court of Appeals reversed this decision

-element: due care, breach of duty

-Res Ipsa Loquitur --- “the thing speaks for itself”

-Question #7 (p. 165) --- rather than having to prove duty or breach of duty, if you can show res ipsa the defendant will have to prove was not his fault

-THIS IS NOT RES IPSA, not exclusive control of defendant

-Violation of a Statute --- note limitations

-Proximate Cause --- in fact or foreseeability

-Causation in Fact – defendant's conduct was a substantial factor in contributing to Plaintiff's injury; burden of proof on Plaintiff

-Foreseeability – question is whether, at time of act or omission, the consequences of injury are reasonably foreseeable



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-Chrystal v. The Hawkes Hospital (p. 157) --- sued for negligence, ordering a blood transfusion was negligence

-judgement for Plaintiff for both jury & Court of Appeals

-If they had screened the blood and she still got AIDS, what would she have to prove? That the blood was properly screened, ie.: are they using most current tests or cheapest tests, what was the test. If the test was the state of the art, the hospital is probably not liable



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ANNOUNCEMENT: Mid-Term Exam on Wednesday, 3/17/99!

LECTURE #11

Chapter 8 Continued & Exam Review

- Negligence need to prove: duty, breach of duty, proximate cause, injury
- Proximate Cause (must have both):
 - 1)Causation in Fact
 - 2)Foreseeability (focus on Chrystal v. Hospital, p. 157)
- Injury --- compensatory damages is “making the person whole”, ie. medical expenses, loss of wages, etc.
- Defenses to Negligence:
 - Contributory Negligence --- when Plaintiff’s own negligence is contributing cause of own injury, absolute bar to Plaintiff’s recovery
 - Comparative Negligence --- Plaintiff’s recovery is diminished by the percentage he/she contributed to injury; modified & pure
- Assumption of the Risk (p. 160) --- when Plaintiff voluntarily assumes risk of exposure, bars Plaintiff recovery
- Question #6, p. 165
 - who is duty to? Safe job site for employees
 - breach of duty? Yes, should have barriers and/or warning signs
 - proximate cause? Can prove foreseeability because could know people would run off the road
 - injury? Yes
 - *all elements satisfied therefore Felix is liable*
- Strict Liability --- in past this applied to unreasonably dangerous activity such as storing explosives, keeping wild animals; by statute it has been expanded to include more activities such as field burning, unreasonably dangerous product
- Yukon Equipment v. Fireman’s Fund Insurance Co. (p.161) --- if there was a superseding cause, they would not impose liability
 - ex. of a superseding cause: lighting bolt, plane crash

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absolute and strict liability are interchangeable in this case

-Question #10, p. 166

-was whirlwind unforeseen? In Kansas, no. In Maine, yes.

-was wind unforeseeable?

-superseding cause is what?

-was it so extraordinary & uncommon?

-Answer: sued under both, negligence & strict liability, this guy was found strictly liable

-Exam Review

-bring 3x5 card, can write on both sides, and pencils

-32 multiple choice & 18 true/false

-will not be on exam: substantive due process p.83-84, only interested in informal rulemaking on pp. 98-100, Restatement Test p.161

-general suggestions: study elements of tort, review cases, how issues come up in context of facts, proximate cause, motions

-two cases to know in detail: Burger King and Burton



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FINAL

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Lecture #12

Chapter 23: The Laws of Product Liability

**Announcements: grades are posted in VMH case, midterm make-up is 4/2
8:00AM-9:30 (must see prof. before then)**

- strict liability for “unreasonably dangerous products” (words of art)
- see Restatement of Torts (p.452) ---- no matter what the chain of distribution, seller is still liable (even if no contractual agreement)
- strict liability (tort) doesn't imply punitive damages but negligence (tort) may; they have overlap

-Types of Defect

1. Design ex. Titanic didn't have enough lifeboats
2. Construction ex. rivets on steel were imperfect so broke
3. Labeling or Failure to Warn Defect ex. didn't warn not enough life boats

-Warranty – deals with contract between buyer & seller; seller of a product can't disclaim liability for injuries

1. Express ex. “100% nonflammable”
2. Implied – arise out of law (p.1201)
 - a) goods must be merchantable
 - b) fitness for a particular purpose – depends on seller knowledge

-Proving a Breach of Warranty (p.449)

-Palmer v. A.H. Robins Co., Inc. (p.449) --- suing on express & implied warranty

-express: representation was made to doctor, that was enough; told was superior birth control

-implied: implied that was safer than “the pill”, fitness for particular purpose: safe contraceptive, merchantability: when have IUD inserted, don't expect to have hysterectomy & almost die

**don't need to know Magnum-Moss (pp.450-51)



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-Negligence – focuses on defendant’s conduct

ex. if swallow chunks of glass in soda --- res ipsa loquitur

-Market Share Liability

-Zafft v. Eli Lilly & Co. (p.453) --- Lilly was giving drug to prevent miscarriages
& later it caused cancer in offspring

-element in proximate cause: causation in fact

-liable on concept of market share liability, 151 co’s; divide co’s by share of
market & pay damages accordingly

-respondents say market share liability is unfair according to Missouri law, courts
agree; must find particular defendant (co’s didn’t act together)

-Damages – physical harm caused to the ultimate user or consumer, or to his property; if
economic loss must pursue warranty

-Defenses to Strict Product Liability

1. State-of-the-Art Defense

-Feldman v. Lederle Labs (p.456) – Carol is suing under strict liability, product
lacked warnings that will turn teeth gray

-when do you put out a warning? As soon as a reasonably prudent person would
have know based on information

-they didn’t warn until ’63 so they are liable



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LECTURE #13

Chapter 23 Continued

-Product Misuse --- generally not liable in negligence, strict liability, or warranty if Plaintiff's injuries are caused by an abnormal or unintended use of product

*if misuse is foreseeable, management might be liable for failure to warn

-Daniell v. Ford Motor Co. (p.458) --- Daniell locked herself in trunk to commit suicide, didn't die after 9 days so sued Ford, Ford moved for summary judgement; note 3 facts that bar recovery

-need to know how customer is using product

-you have a duty to warn, may have duty to redesign

-Tort Reform (p.459)

-note opposing arguments

-punitive damages --- award for intentional torts and, in some cases, for negligence

-proposals for reform ex. some state have adopted limit on punitive damages

-Federal Product Regulation

-three agencies:

1) National Traffic & Motor Vehicle Safety Administration

2) Food & Drug Administration

3) Consumer Product Safety Commission: can set standards & ban products, can withdraw products from market

-Question #9 (p.466) --- need to establish if glass of wine is good or service; in this case is a good but not a product (see p. 1201)

-theories suing under are warranty and strict liability

-must be a product, otherwise motion to dismiss strict liability

-if a service, sue under negligence

-won under implied warranty of merchantability



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LECTURE #14

Chapter 9: Property

-property --- “bundle of rights” (p.170, Fig. 9-1), legal relationships, and exclusivity (right to exclude others)

-Types of Property: 1) personal --- generally movable
2) real --- immovable

-personal property: tangible (can be touched) or intangible

** Fig. 9-2, p. 176 --- memorize

-VA has higher personal property taxes and MD has higher income taxes

-Finding personal property

-Question #5: Need to determine what type of personal property it is.

-abandoned – discarded by owner

-lost – involuntarily left somewhere

-mislaid – voluntarily placed and forgotten

*owner of premises holds mislaid property in trust for owner, whereas, finder of lost property holds for owner

-Ray v. Flower Hospital (p. 174) – found to be mislaid property

-change the facts where Ray would win (lost property): if jewelry had been found lying in the middle of the floor or jewels were strewn all over the floor

-Accession (p.175) --- change or improvement to personal property by nonowner

-Real Property --- passes by deed rather than by bill of sale, sale of property is controlled by Article 2 of the Uniform Commercial Code

* need to consider the intent of the attacher

* law favors buyer over owner and tenant over owner

-Little v. National Industries (p. 177)

-issue is whether lift is real or personal --- in this case it is real so action needs to be taken within 6 years, lift was installed more than 6 yrs. ago



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LECTURE #15

Chapter 9 Continued

- term tenancy = has definite beginning and ending date
- period tenancy = continues for successive period of time until proper notice to terminate tenancy is given by landlord or tenant

- fee simple absolute = most common ownership interest, owner may make unlimited use of the property
- dower was replaced by statutory share = in divorce, spouse gets 1/2 estate

- tenancy in common = each tenant possesses an undivided right to entire parcel, have separate interests, may sell without consent of others, and upon death, tenant's interest passes to heirs not to other tenants
- joint tenancy = estate passes to surviving co-owner upon death of owner
- ** be able to distinguish between tenancy in common and joint tenancy
- community property = if acquired in marriage, spouse gets 1/2 and doesn't matter how it's held
- equitable distribution = if acquire property before marriage it's not subject to distribution, unless can't be identified

- general warranty deed = assures grantor owns property, grantor has right to convey, property is free from encumbrances
- quitclaim deed = no warranties ex. used in divorce situations
- adverse possession = real prop. passes against wishes of grantor

- don't need to know water rights
- Air = landowner owns space above property that is reasonably usable
- Prah v. Maretti --- Prah sued to stop construction of Maretti's house because would be a nuisance (unreasonable interference with somebody's use of property) to solar system. Trial court denied. Supreme Court reversed and remanded. Sent back to trial court to prove elements required.



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-Subsurface = hard rock minerals can be titled separately from property itself, whereas can sever rights to extract for nonsolid minerals

-Restrictive covenants = limitations included in deed
-will not be tested on easements
-will be tested on nuisance

-Zoning = public regulation by municipality of land uses
ex. C-1 --- allows various types of commercial activity
R-24 --- residential with 24 dwellings

Chapter 11: Introduction to Contracts

- distinction between contracts and tort
 - tort arises by operation of law, duty
 - contract arises by operation of the parties, "private piece of legislation"
- contract = promise or set of promises for breach of which law gives remedy, or the performance of which law in some way recognizes as a duty
 - *certain social situations don't have protection of law
eg. being stood up for a date
- Question #5: law does not give remedy for these type of social arrangements
- bulk of contract law is derived from common law (sales of land & services) or judge-made law
- Uniform Commercial Code embraces goods --- read this section carefully
 - *this semester will focus on Section 2



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Lecture #16

Chapter 11 Continued

-contract = exchange relationship between two or more persons, written or oral agreement, containing at least one promise, recognized in law as enforceable

-Common Law (judge-made) vs. Uniform Commercial Code (statutory)

1)real property

1)goods

2)services

*sometimes principles are used interchangeably

-Lovett v. Emory University, Inc. --- family suing implied breach of warranty and implied breach of merchantability under UCC (sale of goods)

-court ruled was a sale of services, not a sale of goods

-General Assembly said food and drink is a good without including blood

-if selling services you get an express warranty

--Why not sue under strict liability? Not a product.

--Why not negligence? She couldn't prove it.

-Classification of Contracts (p.223)

1)voidable = at least one party to a contract has power either to avoid responsibilities created by contract or treat as binding

*U.S. allows minors to void contracts very easily, if age is misrepresented it's a different story

-some contracts are unenforceable because lack formalities

-see Fig. 11-3, p. 224 for unilateral & bilateral

2)bilateral = promise exchanged for a promise

3)unilateral = promise exchanged for an action

-executed & executory

*not all contracts must be in writing

4)Express = manifest by words or in writing

5)Implied in Fact = ex. dry cleaners- I promise to pay you if you clean my clothes

6)Implied in Law (quasi-contract) = court will construct a contract (even if didn't exist) to avoid unjust enrichment (need 3 elements)



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-Hurdis Realty v. Town of Northern Providence:

- if hired brother-in-law who charged \$20,000, would decision be different? Still would be quasi-contract but the benefit conferred would be \$5,000, not \$20,000
- what if job was botched? City would argue didn't receive any benefit
- see p. 227 for Contract Principles

Chapter 12: The Agreement

- parties must assent to the same terms
- valid offer contains: see p.232

-Present Contractual Intent

1) offer in jest = intent to contract by offeror is measured objectively
objective assent- reasonable interpretation of outward manifestations of intent,
use a reasonable person standard

vs.

subjective intent

-Lucy v. Zehmer --- Zehmer sold Lucy farm for \$50,000 with a signed contract by him & wife, Zehmer then changed mind; Zehmer could have helped his case by not waiting so long to change his mind; manifestation of conduct and words all led to his intent to sell

2) Advertisements = an invitation for you to make an offer

*ad on p.234 was held to be an offer

3) Auction Sales – most are “with reserve” (don't have to sell)

4) Definiteness and Certainty of Terms = offer must be made in terms that are certain for court to determine: 1) breach 2) remedy

5) Open Terms = where parties intend to be bound to a contract but have left one or more of the terms open for future determination, courts often find that there is both a definite offer and a contract.

-Martin v. Schumacher --- could have changed contract to “. . . additional period of five years at reasonable rentals.” (could have gotten a set of comparables)

*must have a formula, “reasonable rentals” would suffice



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Lecture #17

Chapter 12 Continued

-Code & Gap Fillers

- no price ---- reasonable price
- place of delivery ---- seller's place
- time of delivery ---- reasonable time
- *notice bias toward creating an enforceable contract*

-Communication of Offer

- need mutual assent
- only held to terms of offer conveyed to you and could have reasonably known the terms
- Question #4: the ticket is not the offer, it's a receipt; Atalia lost

-Terminating the Offer (see Fig. 12-3, p. 237)

- rejection or counteroffer by offeree, original offer is terminated
- can revoke offer anytime prior to acceptance
Ex.: Offeror: I offer 200 widgets at . . . offer to remain 60 days." --- Rejects at 31 days
Offeree: Accepts at 32 days ---- TOO LATE, ALREADY TERMINATED!
- made irrevocable by: 1) an option, 2) under UCC's firm offer rule, 3) offeree begins performance

-Acceptance (see four requirements on p. 239)

- person who signs agreement manifests assent to its terms, even if he/she didn't read or understand agreement
- silence - silence alone isn't acceptance unless agreed to by pattern of silence as acceptance
- Question #9: had established pattern of doing business where silence is acceptance

-Acceptances Varying Terms of Offer

- common law ---- mirror image (p.242)
- UCC section 2-207 completely alters common law approach



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- 1) even if have additional or different, terms doesn't necessarily invalidate contract unless made conditional
- 2) if both parties are merchants arbitration clause goes in; if one is a merchant and the other is not, additional terms become proposals for addition to contract
 - *disclaiming implied warranty of merchantability is material alteration
- 3) even if contracts have different terms the parties can agree to be bound; contract would consist of those terms agreed upon and gap fillers take place of terms not agreed upon

-Communicating Acceptance

- offers, rejections, revocations are effective when received by the other party
- acceptance of bilateral contract effective as soon as it is put out of possession of offeree



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LECTURE #18

Chapter 12 Continued

Question #3 (p.245): can have an option or a contract signed in writing; must have separate exchange & negotiation for an option, it is not a down payment

Question #7: Yes, there is a contract. Correct labels are offer, counteroffer, renewal of original offer, and acceptance.

Question #10: No, because there is no time specification and it is a sale of services, not a sale of goods

Chapter 13: Capacity and Genuine Assent

-classes of people who historically were partially or totally incapacitated to assent to transaction: minors, insane persons, intoxicated persons, married women, corporations, and Indians

-now the class of people have changed to: minors, mentally incompetent, and some intoxicated

-*Valencia V. White* --- under these circumstances White was functioning like an adult, therefore there court made judgement for Valencia of \$12,898 to pay for benefits received

-Contracts for Necessaries – may disaffirm contract for necessaries but must pay reasonable value of the necessaries

-Misrepresentation of Age – must restore adult to status quo

-How should businesses protect themselves from minors? Check I.D., require a co-obligator to sign with a minor

-Example: if a 16 year old dresses up and goes into a restaurant, they serve her and she refuses to pay because she is a minor, what will happen? She will get out of it.

-a minor may ratify a contract upon reaching age of majority

-contracts with mentally incompetent follow similar rules as contracts with minors --- once healed, will get a statement of sanity and can contract

**if no guardian, transaction may be disaffirmed if contract is executory (unperformed); if executed (fully performed), incompetent may only disaffirm after restoring value taken from competent party

-Question #6: has not been adjudicated incompetent so will be held to the contracts; if revokes, will be held to consequences of a normal person

*if he had been adjudicated he would disaffirm but would be liable for those executed such as lost value to Sweet Style's property

-Contracts with Intoxicated Persons (see p. 255)

-Fraud – see elements on p. 256; must be a false statement of fact, not of opinion (some exceptions on p. 256)



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LECTURE 19
Chapter 13 Continued

Announcements: will hand-out sample final exam on Monday

-Concealment and Nondisclosure – as long as a person isn't responsible for other's ignorance of truth through concealment of a false statement, generally no duty to speak

-Weintraub v. Krobatsch – issue is whether or not sellers were under a duty to inform the Plaintiff's of the roach condition; "when in doubt, always disclose"

-Injury & Remedies – fraudulent misrepresentation is a "tort of deceit" therefore may seek punitive damages; damages typically include Plaintiff's loss of expected profit

-Duress – cases involving lack of assent; traditionally required physical violence to enforce but now is more extensive (ie. economic duress)

-Rich & Whillock, Inc. v. Ashton Development, Inc. – Ashton knew R&W was overextended to creditors; R&W succumbed to avoid economic duress therefore judgement was for R&W

-see p. 259 for the most frequent mentioned factors in claiming economic duress

-Undue Influence – comes out of a relationship of trust whereas duress does not; no false assertion need be present

-Question #7: the art was stolen; who will succeed? Lloyd's, due to false statement. One problem was there was no third party to perform appraisal.

-Question #8: could have tort of false of imprisonment; strongest argument is undue influence --- especially if woman is a devote Catholic, relationship of trust; wrongful use of dominance because she wanted to leave and church persuaded her to stay

-Question #3: economic duress? Depends on replaceability and if will harm business (different result based on Ch. 14 theory)



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Lecture #20
Chapter 13 Continued

Announcements: Final exam will be in Skinner 0200. Also, he handed out a sample final exam today in class.

-Today's handout:

- 1) Definition of **contract**: an exchange relationship created by oral or written agreement between two or more persons, containing at least one promise, and recognized in law as enforceable.
- 2) Definition of **Fraud/Fraudulent Misrepresentation**: A false representation of fact; made with knowledge of its falsity and with intent to induce the other party to enter the contract; which does in fact deceive the other party; to the other party's injury or detriment.

-Two Conditions of Mutual Mistake

- 1) crucial fact (no specification of falsity)
- 2) risk of mistake hasn't been assumed

-Aluminum Co. of America V. Essex Group, Inc. – Anticipated outcome within a certain range; formula included 3 variable components based on specific indices; both parties knew use of objective price index injected a limited range of uncertainty into their projected return on the contract. Both consciously undertook a closely calculated risk rather than a limitless one. ALCOA was entitled to some form of relief due to mutual mistake of fact.

-look at unilateral mistake, although he says he has never tested on that

Chapter 14: Consideration and Its Substitutes (there will only be 3/50 questions on the final regarding this chapter)

-not all promises are legally enforceable

-**consideration** elements (a hurdle, once you have it --- MOVE ON): benefit to promisor or detriment to promisee bargained for in exchange; usually have both elements but not required



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- Hamer V. Sidway** --- Sr. promised to pay Jr. \$5000 if stopped drinking, smoking, etc.; Sr. died before paying and living relatives didn't want to pay; Jr. sold suit to Hamer; trial court awarded Hamer but reversed in appeal; Hamer appealed to highest court in NY; Hamer won
 - relatives argued no detriment to promisee
 - assume all except swearing are illegal, would it be a different outcome? No, because he gave up legal right to swear, even one small thing is detriment
 - if all had been illegal --- insufficient consideration
- see p. 270, Fig. 14-3

- illusory promise** --- ex. "I will sell all the widgets I want" --- no specific number

- forbearance to sue** --- surrender of a valid legal claim constitutes a legal detriment and will support a promise of payment for such surrender. If success on the claim was doubtful because of uncertainty on the law or facts and the claimant is making the claim in good faith, courts generally hold that such surrender is legal detriment.
 - Question #6** (p.279) --- promise to pay \$21,000 in exchange for release of suit
 - avoiding law suit is worth something because don't know if going to win
 - was sufficient consideration because claim was brought in good faith and promisee has avoided process of litigation

- Preexisting Duty Rule** --
 - ex. from last chapter: "Pay me or I'll walk off the job" Is there a duty to pay? Because he/she had a preexisting duty to do work, his/her promise to pay more for what was already contracted is not supported by sufficient consideration --- therefore, not required to pay.
 - versus common law of contracts, UCC allows changes in price quickly ex. Pay me \$5 for widgets, price has gone up to \$5.50 --- is sufficient consideration to pay more
 - exception to preexisting duty: encounter unforeseen difficulties



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- Angel V. Murray* (p.273) --- normally anticipated increase 20-25 homes per year; but increased 400 units – beyond previous expectation; sufficient to support a consideration to pay additional amounts
- Question #10** (p.279) --- look at job description --- is there a preexisting duty of bank employees and officers? What about sheriff in another jurisdiction? If preexisting duty, no consideration to pay.
- don't need to know *McGowin V. Mobile*
- see **Fig. 14-5, p. 276** (*no bargaining in estoppel)
- Managerial Perspective** (see front page of chapter) --- get contract in writing; Is he without remedy? No, promissory estoppel (see elements on p.276) --- he relied on promise and there is an injury



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LECTURE #21

Chapter 15: Illegal Agreements

this is the substance of agreements

-Agreement is deemed illegal for three reasons:

#1) enforcement may be prohibited by a statute

ex. some gambling activities

-**Usury** = charging amount of interest beyond legal limit, chiefly regulated by state statutes

-**Wagers** = illegal wagering agreement occurs when agreement itself creates the risk

vs.

Hedging = risk-shifting; is legal; reduces uncertainty of consequences of changing market ex. insurance

*to insure someone/something, you must have an insurable interest

-**Licensing and Registration Status** (see Fig. 15-2)

-regulatory statute – much more comprehensive

ex. hair stylist required to do a list of things such as education, fees, etc. in order to be licensed

vs.

revenue-raising statute – to boost state's revenue

ex. barber required to pay \$20/year for a license

ex. Can you refuse to pay an unlicensed hair stylist? Maybe.

-**Gene Taylor & Sons V. W&W Construction** (p.284) --- this is a regulatory statute; W&W refused to pay Taylor, trial court dismissed & Court Appeals affirmed, Supreme Court: remedy of actual expenses under quantum merit; intended to protect the public and in this case there is no public, otherwise remedy would not have been enforced



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#2) Agreement Contrary to the Common Law

ex. unreasonable restraints of trade

-**Ancillary Restraints** – one that is secondary to a larger purpose of the agreement (legal if reasonable)

vs.

Primary Restraints – restraint that is principal to the agreement & lessens competition (illegal)

-**goodwill** = intangible value of business measured by reputation

-**Westec V. Westinghouse** (p.287) --- WSSI sold all stock to Westec and agreed not to compete in sale of security systems in U.S. for 20 years; Court reformed the agreement: U.S. is too broad so reformed to any markets which Westec expands into during 10 years, WSSI has to get out; 20 years is unreasonable so reformed to 10 years

-**Restraint of Trade in an Employment Contract** --- looked at very closely due to unequal bargaining power between employer and employee and you have to let people earn a living

-**Question #9** --- Is coverage overly broad? Probably not because limited to teenage pageants and small range of states therefore the franchisee would be able to earn a living; however may be argument that five years is too much

-**Question #7** --- is a regulatory scheme and a criminal penalty (misdemeanor), not enforceable because regulatory; *pari delicto* (equality of fault) does not apply

#3) Agreement Violates Public Policy

ex. can't sell a baby



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LECTURE #22

Chapter 15 Continued

-*Marvin vs. Marvin* (p.289) --- California does not recognize common law marriages, therefore, this is a contract law case; Michelle sues under theory she held up contract, he made over \$1 million during time they were together so she is entitled to ½

-**Unconscionable Agreements** --- includes exculpatory clause which relieves person from liability for his/her own negligence or wrongdoing

*see p.291 for unenforceable instances

-**Characteristics of Unconscionable Agreements** --- see Fig. 15-4

-*Discount Fabric House vs. Wisconsin Telephone Co.* (p.292) --- defense is in exculpatory clause – if screw up ad, only responsible for cost of ad; judge ruled exculpatory clause was unconscionable, phone co. argues that others will have to absorb loss of one person; but according to public policy they should absorb the loss

-**Question #10** (p.296) --- banks could argue the fee helps promote public policy



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LECTURE 23

Chapter 16: Contracts in Writing

-contract doesn't have to be in writing but, whenever possible, should have in writing to avoid problems

-some contracts are required to be in writing: (Fig. 16-1)

- 1) suretyship agreement
- 2) contracts for sale of land
- 3) promises not performed within one year
- 4) contract for sale of goods >\$500

-statute rule of fraud requires a written memorandum, must state . . . see p.300

-trend is toward making statute more flexible

-What is a signature? Some courts say letterhead is sufficient, initials, doesn't include a faxed signature, not a typed name

-**Suretyship Agreement** (see Fig. 16-2) --- agreement to answer for another's debt on condition that isn't paid by original debtor; 3 parties, 2 promises, 2nd is condition of nonperformance

*main purpose doctrine – making agreement for economic self-advantage, an oral promise is enforceable

-*Howard M. Schoor Ass., Inc. vs. Holmdel Heights Const'n Co.* --- issue is that it doesn't fall under main purpose doctrine, so must be in writing

-**Question #4** (p.311) – not a suretyship agreement because no 2nd promise and no condition, therefore, it is a bilateral verbal contract, oral is enforceable

-**Estate Representative Agreement** – promise of representative of an estate to personally pay a debt of the decedent

-**Contracts for Sale of Land** – mortgages require writing but easements do not; exception: Doctrine of Part Performance – when buyer relies on oral promise to sell & party performs, oral contract is enforceable



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-**Gegg vs. Kiefer** (p.303) – court found he didn't part perform because corn planter wasn't correlated to purchase; all his actions were consistent with being a cash tenant (renter), wanted to improve yield of land

-**Promises Not to be Performed within One Year** – requires writing (“memory dims”) if takes > one year to perform; only those by very terms couldn't possibly be performed within one year

-**Question #3** (p.311):

- a) No, because may be built within one year
- b) No, could be within one year
- c) Yes, must be in writing because 13 monthly deliveries
- d) No, because <\$500

-**Contracts for Sale of Goods** (p.305-306)

-**Other Usages of Contracts** --- see p. 306

-**Question #6** --- main purpose doctrine applies – oral enforceable

-**Question #8** --- if >\$500, must be in writing but if specially manufactured, oral is enforceable ; both parts were specially manufactured therefore oral is enforceable