

Midterm 2 class notes

Sunday, July 14, 2019 11:53

July 17, 2019

Chapter 4

Question: What defines a contract ?

Contract is at the base of business law

Evidence:

- Talked About something from someone (Verbal)
- Cellphone, contract with a phone company
- Order Tim coffee

Form of contract is not essential, But sometimes need requirement of form such as Authentic document

Conclusion:

Contract is something you have to sign your name on it
All it takes is 2 or more people to agree on something

Definition in the book Art. 1385

Definitions

Patrimony:

each person as one, consist of all assets and liabilities

Start as empty, you also don't owe empty

After born, start to have pajama, hat, and keep progressively

Still exist after you die

Cease to exist after estate is settled, after you wrote your will

Person

1. Physical person = human being
2. Legal person = person created by the law

Question: At what point do you become a person?

Evidence: Business woman married

Got 2 kids, purchase life insurance that pay 2M upon death

Now husband become ex, meet new guy, awaiting kid 3

Car accident, woman passed away with (6 months baby)

Baby born but dies soon after

-If born with a defect or missing organs, no capacity to survive, so NOT a person

Question: What happens to insurance payout ?

1. If Kid 3 is a person, Kid 3 receives 2M
2. If Kid 3 is NOT a person, then 1M goes to Kid 1 and 1M goes to Kid 2

Conclusion:

1. Be born
2. Alive
3. With capacity to live

Legal person can be created by public law or private law process

Public law creates legal person: Corporation
 Quebec business corporation Act
 Canada business corporation Act
 Quebec cooperative act
 Canada not for profit act

Private law creates one specific legal person
 At one moment so many people want to legal person using private law, so decide to create public law process
 Concordia University created by a Quebec law called SGW (by private law)
 Millennium Foundation to give bursary to students created by private law
 Divorce Act adopted in Ottawa

Presume:

prove element
 If I prove water is 101C, water is boiling
 Shift burden to prove to other side: you prove that water is not boiling

Deem:

If prove A, B is proven as well
 If water temperature is higher than 100Celsius, water is deemed to be boiling
 If I prove water is 101C, with this rule, boiling is automatically proven

Solidarity:

obligation arise from a contract, shared by many people
 4 people in group project need money, 4000 \$, they go see another person to borrow money
 Sign contract to borrow money and repay with interest
 Lender never get money back and sue the 4 people for 4400\$
 How is it shared? Depends if there is solidarity clause or not

If NO solidarity clause, everyone responsible for 1100
 If YES solidarity clause, lender can collect 4400 from whichever person he wants
 Not fair for the person paying 4400, so 3 people have debt of 1100 each to the 4th person and the 4th person payed 4400 to the lender

Subrogation:

the substitution of one person or group by another in respect of a debt or insurance claim, accompanied by the transfer of any associated rights and duties.

Insurance industry example
 Have a house, problems with neighbor
 House on fire one day, call firefighter, insurance discovered later neighbor did that
 If no insurance, probably sue neighbor
 Insurance company payed you, insurance company acquired right to sue neighbor by subrogation



Audio 1

★ Contracts Classification

- Adhesion (art. 1379)
 All drafted by one party, other side cannot negotiate, can only say yes or no
 Eg: school tuition fees, Software terms and conditions, opening bank accounts
 If clause is considered abusive, judge can annul or reduce the effects
- Unilateral (art. 1380)
 Only one party has obligation
 Eg: donation to charity
- Gratuitous (art. 1381)
 No profit



Audio 2

- Commutative (art. 1382)
All elements are defined
Buy 12 apples, 5\$ each bag
- Instantaneous (art. 1383)
Buy Starbucks coffee, it is done

- Mutual Agreement
Not contract of adhesion
- Bilateral
Both party has obligations
- Onerous
There is profit for both parties
- Aleatory
One or more element not defined
- Successive
Buy monthly OPUS, unlimited use during the month



Audio 3

Capacity to Enter Contract (legal capacity)

2 things that affect capacity to enter into contract

1. Minority
Minors cannot enter all contracts
12 year old Grocery stores, depanneur, cannot buy BMW
14 year old can have employment, operate business

2. Protective regimes (protective supervision)
For somebody full age unable to make decisions, mental capabilities are affected
3 levels
 1. Curatorship
No capacity to contract
 2. Tutorship
No capacity to contract
 3. Advisorship
Still have issues but advisor will help them make decisions



Audio 4

How a contract is formed?

Offer ---> acceptance

Offer must include all elements that if accepted, contract will be formed

2 characteristics

- Determinate or indeterminate

Determinate: sell cellphone to you or to the class (know the recipient)

Indeterminate: sell phone on Kijiji (don't know the recipient)

- Term or no term

Term : deadline to accept

Determinate with term

Sell phone 100 to class until next Wednesday to accept

On next Monday, decide to cancel offer, although term is on Wednesday

Cannot take away the offer before the term ends

On next Thursday, classmate wants to buy the phone

term is passed so, teacher can refuse to sell

If you want to buy phone for 90, it is not a contract, making an offer

Even if delay, if you refuse offer ???

If sell phone 100 no term

Next Monday, you want phone, but I say no longer for sale

No term--> yes can pull away offer

Question: How long is offer good if there is no term?

★ **Conclusion: Offer is good for reasonable amount of time**

What does reasonable mean?

Case by case analysis, Depends on what are you buying, value of contract, circumstances,

In general the more expensive, the rarer you see no term offer

1388

Question: What is an offer ? Offer must contains all essential elements.

1390

Offer must be either determinate or indeterminate, with term or no term

- With term, cannot cancel offer before expiration
- Without term, can be cancelled at any time before acceptance, or before hearing that someone accepts offer

1392

Offer lapses if

- Nobody accepts the offer before expiration (with term)
- Nobody accepts the offer before a reasonable amount of time (no term)
- Somebody accepts then reject the offer

1393

Under which circumstance does the offer being accepted as invalid?

- 90 vs 100 no acceptance
- Cancelled offer, receive acceptance
- Making a new offer

Whether this is an essential element or not?

Is it a violation of the contract?

If it essential , then violation

If it is not essential, then not a violation

? Criminal trial vs civil trial?

House mortgage: 2M several transactions over years

I successive

Prepaid rent for a year: contract is for a year

Successive

July 22, 2019

Consent - Qualities and Defects (Art. 1398 to 1408)



Audio 5

Question: What are the 3 ways to attack a consent ?

3 defects of consent---> make consent invalid or reduce the effects/amount

1. **Error:** can happen because of 2 reasons

Question: How does error happen ? 2 answers

- Confusion (good faith)
Eg: I believe it is a contract of sale, other believes it is a contract of lease
- Somebody mislead you (bad faith) ----> Fraud
Eg: Purchase of art from a garage, thought it was valuable, turns out to be fake
Seller fails to divulge relevant information that affect your decision
1401

DoL: get money from damage because of bad faith

2. **Fear:** under physical threat

Fear of safety, safety of somebody close to you, damage to your property, Fear of person using a legal right

Eg: sell chalet, show to boss, boss wants to buy it or you lose job
1402,1403,1404

3. **Lesion:** can only be used by minor or someone under protective regime

Exploit the other party

Eg: cellphone for 1000\$, Selling something you cannot afford: Ferrari
seller in good faith can offer reduction to solve problem

Eg: reimburse you 900 when you pay 1000\$
1405, 1406, 1407, 1408



Audio 6

NULLITY: when a consent is attacked, it lead to nullity

1416

Question: What are the 2 sources ?

- **Absolute** (contract against public order, always be illegal regardless of situation)
Eg: Hiring somebody to commit crime, Surrogate mothership
1417,1418
- **Relative** (at the base contract is legal, particular circumstances lead to annulment)
Eg: Sell chalet for 70k, but did sell for 50k because of fear
1419,1420

If a contract is null, then it never existed

RESTITUTION: Put back parties before the contract happened

Eg: bought phone for 1000\$, seller gives back 1000\$, I return phone
(difference restitution resolution)?

Resolution of a contract: as if contract never existed

Return phone and return money

Car for 5y, contract is annulled ---> you never rent/bought car, return car but dealer might charge you on the depreciation since the value of the car is not the same as when you bought/rent it

Resiliation of a contract: you want contract to be terminated today

Question in exam difference between resolution and resiliation

CONFIRMATION

At the time it was made, there was a situation that you did not consent, once that situation is no longer around, keep the deal anyway and make it legal

Cannot confirm contract that is absolute nullity, only relative nullity.



Audio 7

Eg: Someone sells shares, I bought at 25 cents, although worth 5 cent
But stock goes back to 5\$, happy with deal == so confirm, no need to sue the seller

INTERPRETATION

use when contract is unclear (1425 to 1432)

Only interpret if it is not clear, figure out what did 2 or more parties agreed to

1425: search for common intention for the parties

1426: take into consideration the nature of the contract, the circumstances in which contract was formed, the interpretation which was already been given to it or which it may have received and usage

1427: interpret clause taking in consideration each other clause (in context)

1428: my interpretation --> sth happens, your interpretation --> nothing happens
my interpretation is favored

1429: words susceptible of 2 meanings, give meaning that best conforms to the subject

? 1430: want clause to remove ambiguity, going specific cannot argue because you went specific to an issue that it doesn't apply to the rest

1431: garage, enter contract with police, exclusive right to repair vehicles fleet
Helicopter broke down, going to garage--- NO

If still cant figure out common intention

1432: in case of doubt, ask yourself,

Do I have contract of adhesion?

YES, The person who wrote it got it their way (favor person who agreed to the obligations)

NO, in favor to person who has to fulfill the obligation (could be bilateral, both sides have obligations)

Eg: I Loan 500 to A, A will pay back 600 in a year, find where the problem lies, who contracted the obligation

Problem is with me versing fund --> my obligation towards him

Problem is with payment back --> his obligation towards me

Question: What happens if one side doesn't respect contract?

Conclusion:

- **Execution of the contract** --> force other side to comply
- Or
- **Damages compensation** --> get compensation

EXECUTION

Court proceeding called injunction: order from court to do sth or not to do sth

3 level of injunction

1. Provisional level (show 4)

Fast procedure, only good for 10 days, doesn't need to convince judge that I am right,

show all 4 of them for judge to give you provisional for 10 days

-Emergency: bulldozer is coming to destroy house

-Appearance of law: interest and seriousness of the issue

-Balance of inconvenience: order is giving, other side will not be inconvenient as much as you would be

-Irreparable prejudice: cannot be repaired by final procedure(permanent) eg: house is destroyed, cannot have house back

Safeguard (is a general power of the court): allow extension from the 10 days to know when interlocutory will be head in court



Audio 8

If you don't have the elements required, just go directly for permanent

2. Interlocutory (only show 3)

No time limit, decision is interlocutory is good until decision in permanent (level 3)

-Appearance of law:

-Balance of inconvenience:

-Irreparable prejudice:

3. Permanent

Show that I am right according to law

DAMAGES

4 types

- **Present:** suffer damage, compensate me (bodily, moral or material damages)
Contract of 1 y, laid off after 6 months, get compensated for other 6 months
- **Future:** damage not happened yet
Show judge that damage will CERTAINLY happen
Bought 3 material and a 4th one missing--> cannot finish product, I already sold product
- **Penal:** only happens when there is a contract
Violate contract, get compensated for a fixed amount
If collect penalty, cannot get execution EXCEPT
If penalty is for being late eg: deliver raw material, if no deliver before some specific date, fine 5000
Construction, not finishing in time, pay penalty and still have to complete the construction
? Execution + suffer damages, go after both
- **Punitive:**
Violation of a fundamental right section 49 Quebec Charter, goal is to punish



Audio 9

CASES



Audio 10

Audio recording started: 20:05 Monday, July 22, 2019

4.1

Annulment of contract

Relative, based on error, committed by fraud, resulting from silence

P.119 paragraph 4

No problem with land

P.123 paragraph 3

Court agrees

Reimbursed the amount paid by Malik, land goes back to owner

Got extra 10 000\$ damages

4.2

P.128

Special accounting system charge client more and don't pay tax

P.137

Buy tax scam

Decision: Absolutely null contract

P.140 last sentence

Legal issues
 Intention buy tax scam
 Absolutely null
 Judge ordered restitution and annulment

4.3
 About punitive damage

4.4
 Interlocutory injunction
 Bottom p.152
 153 unreasonable

No appearance of law

July 24, 2019

Chapter 5 Mandate

MANDATE

Do a legal act, a contract on behalf of somebody else
 Hire lawyer, give them a mandate
 Anything that you ask somebody to do on my behalf

2130

Mandator: person who gives the contract
Mandatory: person who executes the contract

2132

2 ways to accept mandate can be EXPRESS or TACIT (Know difference between them)

EXPRESS: communicate to the mandator your acceptance

Eg: If you answer email and say no problem, then accepted expressly

TACIT: start to do the action on your own

Eg: Ask somebody to buy milk, left 10\$ on table, If you grab money and leave, then tacitly accepted

2133

can do mandate for free or get paid

2 presumptions that happen

- Between 2 natural persons (brother will buy milk with the 10\$ for no extra fees) (gratuitous)
- Professional mandate (such as lawyer) do work for you (onerous)

What if it does not fall into any category?

Will be cases where no presumption applies

2134

remuneration is decided by contract, usage, or law

Eg: government job --> fixed salary

2135

SPECIAL (for a particular matter) vs **GENERAL** (for all affairs, simple acts)

- Special mandate ---> Currently in US --> Sell condo in Canada is your mandate
- General mandate ---> give power of attorney to a daughter

General mandate limited to simple acts, cannot sell my house

EXCEPTION is if you are in protective regime ---> mandatory has full authority



Audio 11

2136

Mandate to sell house in Canada, it is winter, there is snowstorm, people need to come and see
What about clearing driveway? Inferred to be cleaned

2137

Give mandate to professional, does not need to be explicitly mentioned

OBLIGATION OF MANDATARY TOWARDS MANDATOR

2138

Mandatory has to act with

- Prudence
- Diligence
- Honesty
- Faithfully (loyalty)

Avoid conflict of interest

-Conflict of interest (falls into loyalty) or Appearance of conflict interest

Do a job, decision making process will be altered because of personal interest

Eg: work in the IT department of a company, report to VP, in charge of people in programming,

Job is to replace a programmer,

Brother is a programmer, you want him to fill this spot --> positive conflict of interest

Brother is great addition to team but you hate him --> negative conflict of interest

If manager is very professional, he is in appearance of conflict interest

How to manage this conflict/appearance of conflict ?

Disclose applicant is your brother, manager ask you if you can handle it

Manage with transparency ---> conflict well managed

Rule of reasonable person to find if you are in appearance of conflict

If a **reasonable person** would look at the situation, would they see a conflict?

If still unsure, apply prudence and act as if answer is positive

Rule Reasonable person is applied in

- Appearance of conflict interest
- Criminal negligence

Example of criminal negligence causing death:

Women saving ducks and ended up causing accident

SYSTEMIC CONFLICT --> whole system is in conflict

2139

Mandatory has to inform mandator of the stage reached in the performance of the mandate

2140

Mandatory has to do mandate by himself, cannot pass to somebody unless authorized by mandator

2141

Mandatory is accountable for the acts of the person he has appointed

Eg: Court day, I'm sick, cannot go, need to find someone, so call mandator to send somebody else

You are responsible to the decision

2142



Audio 12



Audio 13

For assistance, do not need permission unless prohibited, mandatary remains liable to the mandator for the acts performed by the person who assisted him

Eg: hire legal intern/assistant is okay

2143

when you represent more than 1 person, each of the mandate is aware of your double mandate

Eg: Couple comes to see a lawyer, divorce papers, can you represent both, yes

So 2 mandates from 2 people, could have interest of conflict

So they sue each other and lawyer could lose both clients

2144

All mandataries bound by solidarity have to accept for the mandate to take effect

2147

Mandate is to sell house, you cannot buy the house for 470k when mandator wants 500k

You cannot be 3rd party unless mandator is aware that you are buyer

2148

Doing mandate for free, can also be in trouble if mandatary causes damages

Eg: Taking care of your child for free --> kid got hurt



Audio 14

OBLIGATION OF MANDATOR TOWARDS MANDATARY

2149

Mandator has to cooperate with mandatary to facilitate fulfillment of the mandate

2151

If mandatary is doing mandate, if there is a problem and you get sued, mandator has to legally indemnify (compensate) the mandatary

2154

If there is several mandators, obligation of mandators towards mandatary is in solidarity

OBLIGATIONS OF PARTIES TOWARDS THIRD PARTY

2157

Mandatary is not responsible with 3rd party unless 2158

2158

If mandatary exceeds power, then becomes personally liable

Act outside mandate, you open your personal liability

Sold car for 18k when asked for not below 20k

1. Mandator can rectifies

Or

2. You are responsible towards the 3rd party, so you owe mandator 2k

Or

3. You deal with the problem --> mandator does not sell car

2159

Mandator wants to remain anonymous, eventually will disclose

If you don't disclose, hard to sue someone you don't know, so you ended up being sued

2163

If there is confusion in mandate --> everyone believe there is a mandate

You are responsible towards 3rd party as if there is a mandate

Eg: you are VP technology of a company, purchase equipment 5K, you purchased for 7K
President is angry, can you annul contract because VP did not respect the 5K ? Hard to do

2184:

If sell car for 21k when asked for 20k, you cannot keep 1k for yourself

2185

Bought for mandator, spend money, keep item until reimbursement is made by mandator



Audio 15

Audio recording started: 20:02 Wednesday, July 24, 2019

Cases