Chapter 11
Contractual Obligations and their Enforcement
Section 1

Transfer and Discharge of Obligations

Goal 1: Identify what rights can be assigned and what duties are delegated

Goal 2: Describe the various ways in which contractual obligations may be discharged
Assignment

Three people involved:

- Assignor (party who transfers the contract)
- Assignee (party who receives the contract)
- Obligor (the one who owes a duty under the contract)
Example:

Three people involved:

- **Assignor** (Saturn)
- **Assignee** (Bank of America)
- **Obligor** (David)

David buys a car from his local Saturn dealer. When he signs the contract to purchase the car, Saturn immediately sells this contract to Bank of America. Now, David makes his payments to Bank of America.
Assignable Rights

• A party may assign contractual rights to another, provided performance will not be materially (importantly) changed

• *Performance* - fulfillment of contractual promise as agreed. *See example on last slide.*
Non-Assignable Rights

Contractual rights may NOT be assigned if the performance req. (ex. # of payments) would be materially changed as a consequence.
Form of Assignments

Made voluntarily by assignor

Although the transfer (assignment) can be oral, it is better to have it written.
Notice of Assignments

- Until notified of the assignment, the obligor (David) still keeps paying the assignor (Saturn)
Discharge of Contractual Obligations

By Performance
By the Initial Terms
By Subsequent Agreement
By Impossibility of Performance
By Operation of Law
By Tender of Performance
Discharge of Contractual Obligations
By Performance

Discharge – termination of duty.

Breach of Contract- Failure to provide complete performance.

Cancellation- In sales contracts, under the UCC, when one party fails to do their crucial part, it is treated as a breach of contract.
Discharge of Contractual Obligations
By Performance

Substantial performance – almost all the duties are performed except for a minor duty.

Defaults- Failure to perform

Anticipatory Breach- Notifying the other party that they can’t perform.

Ex: calling them to say you can’t make a payment
Discharge of Contractual Obligations

By Subsequent Agreement

Both parties of a contract decide to change the terms. Doesn’t breach

Rescission – take back the contract and any consideration.

Accord and Satisfaction- replace with a new contract

Novation- One party releases the other party and accepts a substitute party.
Discharge of Contractual Obligations
By Impossible Performance

Due to EXTREME external conditions, one party can’t perform

- Unique subject matter is destroyed (Picasso painting is burned in a fire)
- Performance becomes illegal (painting walls with lead paint)
- Death or disability of one party who provides a service only they can do
Discharge of Contractual Obligations By Operation of Law

Ex: Person’s filed for bankruptcy so you can’t collect your money.

Ex: Statute of limitations expires

Ex: Alteration occurs
Section 2

Remedies for Breach of Contract

Goal 1: Name and describe various remedies possible for minor or major breach of contract

Goal 2: Discuss the factors that affect the choice of remedies
Remedies for a Possible Breach

Remedy – action followed to enforce a right or to get damages for an injury to a right. A SOLUTION

Remedy for a Minor Breach
– Money damages (usually compensatory)

Remedy for a Major Breach
– Rescission and Restitution
– Money Damages
– Specific Performance
Rescission and Restitution

Canceling the contract and returning whatever has been received under it

Intended to place the parties in the same legal position they were in BEFORE contracting.

Restitution permits the injured party to recover money or property given to the defaulting party.
Money Damages

Compensatory – put injured parties in the same financial position as they were before the breach.

Consequential – court awards money for additional expenses caused by the breach. (ex: having to rent a storage unit because a party didn’t buy the goods you agreed to sell)

Punitive – additional amount to punish the other party. *Amount varies
Money Damages

Liquidated – keeping what you have already have been paid even if the other party breaches.

“In the event the purchaser fails to pay the balance of the purchase price for said computer, the seller shall retain the amounts already paid hereon as liquidated damages”
Money Damages

Nominal – awarding a small amount of money to acknowledge that failing to perform your duty under a contract is legally wrong.

*Similar to punitive damages
Specific Performance

Making the breaching party do exactly what was required under the contract. *Usually happens when the subject matter is unique

Ex: Making the party refinish an antique carving because he is the only person in the state who refinished furniture.

Courts are reluctant to do this because it is hard to make sure the party completed their part.
Factors Affecting the Choice of Remedy

Conflict of Remedies

*Mitigate the Damages*

Waivers

Statute of Limitations

Bankruptcy
Conflict of Remedies

A party injured by a breach of contract must choose a remedy when suing. When you choose one remedy you usually rule out another.

Ex: Specific Performance and Damages don’t go together.

Ex: (Rescission and Restitution) don’t go together with Damages

* Under the UCC, you can combine
Mitigate the Damages

Even though the other party breached the contract, it is your responsibility as the injured party to help minimize the harm.

Ex: A landlord must take reasonable steps to re-rent the apartment vacated in a breach of a lease.

*Your damages are minimized if you don’t try to help out
Waivers

A party intentionally gives up a contractual right.

Ex: If a creditor says, “I will accept your late payment w/o a late charge.”

*If the debtor keeps doing this, then the future late payment fee may be waived.
Statute of Limitations

Can’t sue if the time expires

3 year for torts

4 years for contracts
Bankruptcy

Legal proceeding whereby a debtor’s assets are distributed among his/her creditors to discharge the debts.

Under the U.S. Constitution, Congress, has established uniform laws on bankruptcies that permit the discharge (excusing) of debts.

Debtors get a fresh start
Section 3

The Marriage and Divorce Contract

Goal 1: Recognize the contractual elements of premarital and marital relationships

Goal 2: Describe the various ways in which a marriage contract is ENDED.
Fred and Jennifer are both 16 years old. While dating they have intimate relations, and Jennifer becomes pregnant.

Will the law compel them to marry?

NO
Marriage

Legal union of a man and woman as husband and wife.

*No law specifies a minimum age for dating*

*State laws set a minimum age for marriage* *Usually 18 yrs. Old*

*Cohabitate* – A man & woman live together but are not married.
Contractual *Elements of Premarital Relationships*

- If one party in a heterosexual relationship proposes marriage and the other accepts, a binding contract results. *Usually oral agreement*
- If both agree to end their engagement, the law considers their agreement void and never to have existed.
  - If woman breaks it off, she has to give ring back.
  - If man breaks it off, she keeps the ring.
Statutory Requirements for Marriage

Each state has its own requirements

Usually the couple goes to court and apply for a marriage license and pays a fee

*In most states, if you are over 18 you do NOT need parental consent

Some states require a blood test before the license is obtained
Uniform Marriage and Divorce Act

Standardize state laws for marriage and divorce

States include:
IL, Kentucky, Missouri, Minnesota, Colorado, Montana, Arizona, Washington
Marital Consortium

Law sees husband and wife as parties in a contract for life. Their duties are to procreate, raise children, fulfill sexual, economic, and companionship needs.

Loss of Consortium

When one party does NOT fulfill their marital duties.
Rights and Duties of Parenthood

By law, parents are obligated to support their children until they reach the age of majority

*unless children become emancipated

Both parents are financially responsible for their children
Property Rights and Duties in a Marriage

Property acquired during the marriage may be kept in the name of the husband, wife, or both. Some couples have a *prenuptial agreement* to make sure all the possessions each partner obtained during marriage stays only in their name and does not become their spouses.
Common-Law Marriage

If a man and a woman live together, share common property, and hold themselves out as husband and wife over a period of time (usually 10 years) they are considered in the eyes of the law a common-law marriage.

*only certain states recognize (Pg 201)*
Ending the Marriage Contract

By:

–Annulment
–Divorce
Annulment

Canceling a marriage because of a problem that existed from the beginning of the marriage.

- Refusing to have kids or fraudulent grounds (spouse lying to another about wealth, condition of pregnancy. Freedom from disease, past marriage, or age) makes a *voidable marriage*.

- A *Voidable marriage* would be marrying someone who is already married (bigamy)
Divorce

- Divorce = dissolution of marriage
  - Before filing for divorce, couples file for Separation. Here, the couple resides in separate living quarters, but are still legally married. If the couple fails to reconcile their differences during the period of separating, their separation agreement usually becomes the basis for the final divorce decree.
Typical issues in a Divorce

• Division of Property
  – Community Property- whatever you acquire during the marriage both of you share

• Child Custody and Support
  – Joint Custody- responsibility of raising the children is shared.
  – Child Support- money to support a child.

• Alimony-Support paid by the wage earner of the family to the other spouse.