

Chapter 10
Contract Defenses and Remedies

1 Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Legal Capacity

- You do not have legal capacity to contract if
 - You have been adjudicated incompetent by a court
 - You are intoxicated or mentally incompetent, but have not been so adjudicated by a court

2 Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Voidable Contracts by Minors

- The age of majority in your state determines minority status
- Minors are required to contract for necessities
- After reaching majority, a minor may ratify a contract he/she entered into as a minor
- There are a variety of theories that can be applied when a minor misrepresents his/her age

3 Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Legality

- An agreement is illegal if either its formation or its performance is criminal, tortious, or otherwise opposed to public policy
 - For example, you cannot enter into a contract to kill someone

4

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Legality

- Licenses
 - Regulatory
 - Revenue-raising
- Usury
- Blue Sky Laws
- Restraint of Trade
- Unconscionable Bargain

5

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Contracts that Must Be in Writing under the Statute of Frauds

- Contracts involving real property
- Contracts that by their own terms cannot be performed within one year from the date of formation
- Collateral contracts where a third party promises to pay or perform a duty owed to another
- Contracts for the sales of goods over \$500 (under the UCC)
- There are some exceptions

6

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Sufficiency of a Writing

- Contract must be signed by the party against whom enforcement is sought
 - Parol evidence rule

7

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Assignment and Delegation

- Assignment
 - Assignor transfers his rights under a contract to a third party the assignee. Under this scenario, the assignor's rights are extinguished
- Delegation
 - When a delegator transfers the duty to perform to a third party, the delegatee is still liable

8

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Third Party Beneficiaries

- Intended
 - Creditors
 - Donees
- Incidental

9

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Discharge

- Discharge by performance
- Discharge by substantial performance (with minor deviations)
- Discharge by agreement
 - Accord and satisfaction
 - Covenant not to sue
 - Novation
- Discharge by operation of law

10

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Discharge by Operation of Law

- One party alters the terms of the contract w/o knowledge of other party
- Suit not filed within statutes of limitations
- One party dies or mentally incompetent and performance is essential
- Subject matter destroyed
- Bankruptcy

11

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Damages

- Money
 - Compensatory damages
 - Consequential damages
 - Liquidated damages
- Equitable
 - Rescission
 - Restitution
 - Specific performance
 - Reformation

12

Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Cyberlaw

- Electronic Signatures in Global and National Commerce Act
- Uniform Electronics Transactions Act

13

Source: Bohlman/Dundas, The Legal, Ethical,
& International Environment of Business

Summary

- Legal Capacity
- Voidable Contracts by Minors
- Legality
- Contracts that Must Be in Writing under the Statutes of Frauds
- Sufficiency of a Writing
- Assignment and Delegation
- Third Party Beneficiaries
- Discharge
- Damages
- Cyberlaw

14

Source: Bohlman/Dundas, The Legal, Ethical,
& International Environment of Business
