

## BIBLIOGRAPHY

Many works were consulted in the preparation of this text. Below is a list of some of the sources used most frequently.

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## GLOSSARY

Below are basic definitions of some of the more important terms and phrases used in this book, with the number of the principal Section(s) discussing each term or phrase noted in parentheses at the end of each definition.

|                                 |                                                                                                                                                                                                                                                                                                                                                    |
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| <b>acceptance</b>               | An acceptance is an offeree's indication of agreement with an offer (2.7).                                                                                                                                                                                                                                                                         |
| <b>accord and satisfaction</b>  | An accord and satisfaction occurs where the parties to an existing contract make a new contract that substitutes a different duty for a duty owed under the old contract (the "accord"), and then that new duty is actually performed as required by the new contract (the "satisfaction") (9.7d).                                                 |
| <b>account stated</b>           | An account stated is an agreement between a creditor and a debtor that a particular sum is the correct amount the debtor owes to the creditor (9.7f).                                                                                                                                                                                              |
| <b>adhesion contracts</b>       | Adhesion contracts are contracts written completely by a party who has much greater bargaining power, and presented to the other party in circumstances where there is no real opportunity to negotiate about the terms, which are usually standardized, difficult to understand, very favorable to the stronger party, and in small print (7.7b). |
| <b>anticipatory repudiation</b> | An anticipatory repudiation is generally considered to be a statement by one contract party to another contract party that clearly shows that the first party does not intend to perform a contract duty in the future when that performance is due (9.4d).                                                                                        |

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| <b>assignment of rights</b> | An assignment of rights is a present-time transfer of contract rights from one party to a contract to a third party (11.3a).                                                                                                                                                                                                                                               |
| <b>bilateral contract</b>   | Under common law, a bilateral contract is a contract in which the parties exchange promises to do things (1.3b).                                                                                                                                                                                                                                                           |
| <b>breach of contract</b>   | A breach of contract is a failure to perform a contract promise without any legal excuse (9.4c).                                                                                                                                                                                                                                                                           |
| <b>capacity</b>             | Capacity is a person's legal power or qualification to do what adult persons generally have the legal power or qualification to do (4.1).                                                                                                                                                                                                                                  |
| <b>condition</b>            | In contract law, a condition is a particular future event which is not certain to occur, but whose occurrence will affect the formation or performance of a contract (2.6b); in particular, a condition is an event which must occur or be excused for a contract duty to become due for performance, or for that duty to be terminated if the duty is already due (9.3a). |
| <b>consideration</b>        | Consideration is the new legal detriment to a party to a contract, which generally means what each party does or promises to do in exchange for a promise or performance from another party (3.2).                                                                                                                                                                         |
| <b>contract</b>             | A contract is an agreement the law will enforce (1.3a).                                                                                                                                                                                                                                                                                                                    |
| <b>counter-offer</b>        | A counter-offer is an offer that the original offeree makes back to the original offeror, in response to the original offer (2.5b).                                                                                                                                                                                                                                        |
| <b>delegation of duties</b> | A delegation of duties is a transfer of contract duties from one party to a contract to a third party (11.4a).                                                                                                                                                                                                                                                             |
| <b>disaffirmance</b>        | Disaffirmance is one party's repudiation of or refusal to abide by a contract--that is, the party's proper indication that she will avoid the contract (4.4a).                                                                                                                                                                                                             |
| <b>discharge</b>            | A discharge is basically an ending of a duty to perform under a contract (9.2).                                                                                                                                                                                                                                                                                            |

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| <b>duress</b>                                         | Duress is the use of an improper threat to induce a party to do something the party would not otherwise do (7.5).                                                                                                                |
| <b>duty</b>                                           | A duty is basically a legal obligation to do or not do something (1.1c).                                                                                                                                                         |
| <b>easement</b>                                       | An easement is basically a right to use (but not possess) the real property of another person in a specified way, such as a right to cross the property to reach a road (6.3b).                                                  |
| <b>estoppel</b>                                       | Estoppel generally occurs where a court says a party cannot make a particular legal claim or argument because of some action of that party that is inconsistent with the claim or argument (9.4i).                               |
| <b>exculpatory clause</b>                             | An exculpatory clause is a clause that attempts to relieve a person of liability for future harm, generally for torts (5.4g).                                                                                                    |
| <b>executed contract</b>                              | An executed contract is one that has been fully performed by all parties to the contract (1.3c).                                                                                                                                 |
| <b>executor or<br/>administrator<br/>of an estate</b> | An executor or administrator of an estate is someone who gathers the assets of a recently deceased person, pays the debts of the deceased person from those assets, and then distributes what remains to the legal heirs (6.3d). |
| <b>executory contract</b>                             | An executory contract is one that has not yet been fully performed by all parties (1.3c).                                                                                                                                        |
| <b>expectation damages</b>                            | Expectation damages are damages that try to place a party injured by a contract breach as close as possible to the position she would have occupied if the parties had fully performed the contract (10.2).                      |
| <b>express contract</b>                               | An express contract is one made in words (1.3d).                                                                                                                                                                                 |
| <b>forfeiture</b>                                     | A forfeiture is basically a loss of something to another person because of a breach of contract, or other failure to act as required by law, with no adequate legal remedy for the party suffering the loss (9.3c).              |

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| <b>formal contract</b>             | A formal contract is one made under seal (1.3d).                                                                                                                                                                                                                                        |
| <b>gambling agreement</b>          | A gambling agreement is an agreement in which parties stand to win or lose some consideration based on the occurrence of some future event over which they do not have complete control, and which therefore contains an element of chance (5.3b).                                      |
| <b>good faith</b>                  | Good faith is almost impossible to define exactly, but it generally includes a party's honest belief and conduct, and a lack of malice or intent to seek an unfair advantage (3.6a).                                                                                                    |
| <b>good faith and fair dealing</b> | The duty of good faith and fair dealing basically requires a party to a contract to be honest and not seek unfair advantage over the other party (good faith), and to follow reasonable standards of fair conduct in the type of contract the parties made (fair dealing) (8.3j, 9.5c). |
| <b>hold harmless clause</b>        | A hold harmless clause is basically one in which a party agrees to be responsible for the potential legal liability of another party (8.3i).                                                                                                                                            |
| <b>implied contract</b>            | An implied contract is one made through the conduct of the parties (1.3d).                                                                                                                                                                                                              |
| <b>jurisdiction</b>                | A jurisdiction is, among other things, a geographical unit in which courts apply a particular set of legal rules (1.1c).                                                                                                                                                                |
| <b>lapse</b>                       | A lapse is a termination of some right or power because of a failure to exercise that right or power within some period of time, or because some particular thing fails to happen (2.6a).                                                                                               |
| <b>lease</b>                       | A lease is an agreement to rent property; that is, an agreement in which one party promises to allow another party to possess (but not own) real or personal property for a certain amount of time (6.3b).                                                                              |
| <b>licensing statute</b>           | A licensing statute is a statute which requires that some competent authority (generally a government body) formally give permission--a license--in order for someone to do something (5.3d).                                                                                           |

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| <b>liquidated damages</b> | see stipulated or liquidated damages.                                                                                                                                                                                                                      |
| <b>material change</b>    | A material change is a new or different term which gives one party significantly greater benefits, rights, or advantages (and the other party less) than she had before (2.10c).                                                                           |
| <b>material term</b>      | A material term in a contract is basically one that is important to a party's decision to make or not make a contract (2.3b).                                                                                                                              |
| <b>merchant</b>           | A merchant, for the purposes of contract law, is basically a person who normally deals in goods of the kind involved in the transaction being analyzed (2.10c).                                                                                            |
| <b>misrepresentation</b>  | A misrepresentation is a statement that is not in accord with the facts (7.4).                                                                                                                                                                             |
| <b>mistake</b>            | A mistake is a belief that is not in accord with the facts (7.3).                                                                                                                                                                                          |
| <b>money damages</b>      | Money damages is an amount of money that a court or arbitrator orders one party to a legal dispute to pay to another party to the dispute because of some injury or loss the first party caused to the second party (10.1).                                |
| <b>mortgage</b>           | A mortgage is an interest in land which secures (or guarantees) the performance of some obligation, usually the repayment of a debt (6.3b).                                                                                                                |
| <b>mutual rescission</b>  | A mutual rescission is basically the cancellation of a contract by agreement of the parties (3.7a, 9.7a).                                                                                                                                                  |
| <b>nominal damages</b>    | Nominal damages are a small sum set by the court and awarded to a party seeking damages principally to show that another party has committed a legal wrong against the first party, even though the party seeking damages has proved no real harm (10.5b). |
| <b>novation</b>           | A novation is generally defined as an agreement to substitute a new party for one of the parties to an existing contract, and to immediately discharge the duties under the original contract (9.7e).                                                      |

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| <b>objective interpretation</b>                          | An objective interpretation of an agreement is one based on what reasonable people normally intend in situations similar to the situation of the parties (8.3b).                                                            |
| <b>offer</b>                                             | An offer is a proposal to make a contract (2.2).                                                                                                                                                                            |
| <b>offeree</b>                                           | An offeree is a party to whom an offer is made (2.2).                                                                                                                                                                       |
| <b>offeror</b>                                           | An offeror is a party who makes an offer (2.2).                                                                                                                                                                             |
| <b>option contract</b>                                   | An option contract is a contract whose purpose is to keep an offer open (2.4b).                                                                                                                                             |
| <b>oral contract</b>                                     | An oral contract is one made using spoken words (1.3d).                                                                                                                                                                     |
| <b>promise</b>                                           | In a contract, a promise is basically a statement that a party will perform a contract duty when that performance is due (9.3a).                                                                                            |
| <b>promissory estoppel (detrimental reliance)</b>        | Promissory estoppel (detrimental reliance) is a doctrine some common law jurisdictions use to avoid injustice by enforcing promises on which parties justifiably rely, even though there is no valid contract (2.4e, 7.8a). |
| <b>prospective inability or unwillingness to perform</b> | A prospective inability or unwillingness to perform exists where circumstances provide a reason to believe that it is likely that a party will be unable or unwilling to perform a contract duty (9.4e).                    |
| <b>public policy</b>                                     | Very generally, public policy is the promotion of the common good and well-being of society (5.4a).                                                                                                                         |
| <b>punitive damages</b>                                  | Punitive damages are damages a court awards in order to punish a party who has committed some civil wrong, and to deter her and others from committing such wrongs in the future (10.5d).                                   |
| <b>quasi-contract</b>                                    | Quasi-contract is a doctrine under which courts impose contract obligations on a party, even though they cannot enforce a contract for the party seeking help, in order to avoid unjust enrichment (1.5a).                  |

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| <b>ratification</b>           | Ratification is a proper confirmation that a party intends to be bound by a voidable contract, despite that party's right to avoid it--basically the opposite of disaffirming a contract (4.4b).                      |
| <b>rejection</b>              | A rejection is a refusal to accept an offer (2.5a).                                                                                                                                                                   |
| <b>release</b>                | A release is a document signed by a party in which that party discharges a duty that is owed to him (9.7b).                                                                                                           |
| <b>reliance damages</b>       | Reliance damages are damages that try to place a party injured by a contract breach or failure to perform a promise as close as possible to the position she occupied before the contract or promise was made (10.3). |
| <b>restitution damages</b>    | Restitution damages are damages that try to compensate a party for the value of the benefit she has given to another party, in order to prevent unjust enrichment (10.4).                                             |
| <b>restraint of trade</b>     | Agreements that unreasonably restrain trade are basically those that harm competition or unreasonably restrict a party's freedom to conduct his trade or business as he chooses (5.3e).                               |
| <b>revocation</b>             | A revocation is the act of withdrawing an offer (2.4a).                                                                                                                                                               |
| <b>right</b>                  | A right is basically the legal ability to do or not do something, including the ability to control the acts of others (1.1c).                                                                                         |
| <b>severance</b>              | Severance is a court's removal of unenforceable parts of an agreement, leaving behind an agreement the court will enforce (5.5b).                                                                                     |
| <b>simple contract</b>        | A simple contract is one not made under seal (1.3d).                                                                                                                                                                  |
| <b>specific performance</b>   | An order for specific performance occurs where a court orders a party to actually perform according to the terms of a contract (10.7a).                                                                               |
| <b>statutes of limitation</b> | Statutes of limitation are laws which specify how much time a party has to make a certain kind of legal claim in court after the claim arises (3.8d).                                                                 |

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| <b>stipulated or liquidated damages clause</b> | A stipulated or liquidated damages clause is a contract provision that specifies the amount of damages one party must pay another party in the event that the first party breaches the contract (10.5a).                                                                                                                               |
| <b>subjective interpretation</b>               | A subjective interpretation of an agreement is one based on what the parties themselves actually intended in their particular situation (8.3b).                                                                                                                                                                                        |
| <b>suretyship contract</b>                     | A suretyship contract is an agreement in which one person (the surety) agrees to become responsible for the debts or obligations owed by a second person (the debtor or promisor) to a third person (the creditor or promisee); the surety agrees to perform if the second person fails to pay the debt or meet the obligation (6.3d). |
| <b>tender of performance</b>                   | A tender of performance is basically a party's offer to perform his existing contract duties, with the present ability to do so (9.4g).                                                                                                                                                                                                |
| <b>tort</b>                                    | A tort is basically a non-contractual civil wrong for which the wronged party--not society--can seek compensation (5.4b).                                                                                                                                                                                                              |
| <b>unconscionable agreements</b>               | Unconscionable agreements are basically agreements whose process of formation or actual provisions are so unfair to one party that they shock the conscience of the court (7.7a).                                                                                                                                                      |
| <b>undue influence</b>                         | Undue influence is the improper influencing of a party to make an unfair contract, often through a relationship of trust or confidence, even though no threats are made (7.6).                                                                                                                                                         |
| <b>unilateral contract</b>                     | Under common law, a unilateral contract is a contract in which the parties exchange a promise for an act (1.3b).                                                                                                                                                                                                                       |
| <b>usurious agreement</b>                      | A usurious agreement is a loan agreement in which the amount of interest charged is higher than the rate allowed by law (5.3c).                                                                                                                                                                                                        |
| <b>valid contract</b>                          | A valid contract is a contract that is enforceable by all parties to the contract (1.3a).                                                                                                                                                                                                                                              |

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| <b>void "contract"</b>   | A void "contract" is an agreement that is not enforceable by anyone (1.3a).                                                                |
| <b>voidable contract</b> | A voidable contract is one that is enforceable, but which at least one party to the contract can avoid (1.3a).                             |
| <b>waiver</b>            | A waiver is often defined as the intentional relinquishing or giving up of a legal right that is known by the holder of that right (9.4i). |
| <b>written contract</b>  | A written contract is one made using written words (1.3d).                                                                                 |

