BUSINESS LAW 2 – COURSE OUTLINE TEST 3

PROFESSOR GILMORE

Agency Law

Agency: A legal relationship in which one party is legally authorized to act on another party’s behalf. The parties to the agency relationship are the principal and the agent. To be a principal, one must have the necessary **capacity** to create contracts.

**Principal:** The party who is being represented by the agent.

**Agent:** The party who is acting for the principal in a representative capacity.

The agency relationship is either that of an employer and employee, or that of an employer and independent contractor. The difference between the relationships will determine whether the principal is liable for the agent’s wrongful acts during the course of the agency.

**Criteria for Employee Status:**

1) The employee is subject to the employer’s control.

2) The employer sets the employee’s work schedule.

3) The employer controls how the employee actually does the job.

4) The employer can impose a dress code.

5) The employer is required by law to withhold taxes from the employee’s gross pay.

**Criteria for Independent Contractor Status:**

1) The independent contractor is his own boss.

2) The independent contractor is usually self-employed.

3) The independent contractor controls how he does his job.

**Principal’s Liability**

If the agent commits a tort (a civil wrong) during the regular course of the agency, the principal will be liable if the agent is an employee. (Example: Professor Jones sexually harasses a student during working hours at State University.) However, if the agent commits a crime during the course of the agency, the principal will not be criminally liable unless the principal was a co-conspirator or accomplice in the crime (Example: a cab driver, driving drunk, runs a red light and kills a pedestrian. The owner of the cab would be civilly liable for wrongful death, but would not be found guilty of vehicular homicide.)

If the agent is an independent contractor, however, the principal will **NOT** be liable for the agent’s wrongful acts, either civilly or criminally.

**Duties of Agent to Principal**

1) Performance: The agent is duty bound to do his job to the best of his ability based on his training and experience.

2) Notification: The agent is duty bound to notify the principal of any relevant information pertaining to the agency. By law, any information received by the agent during the regular course of the agency is automatically presumed to be received by the principal. (Example: Professor Gilmore catches a student cheating on a test and reports the information to the department chair. Hint, hint.)

3) Loyalty: In acting on the principal’s behalf, the principal’s interests always come first. The agent cannot intercept an opportunity intended for the principal and use the opportunity for his own benefit.

4) Obedience: The agent is duty bound to follow the principal’s lawful instructions in performing his job.

**Duties of Principal to Agent**

1) Compensation: Since there is no more involuntary servitude, the principal must compensate the agent for services rendered. (“Pay Up”)

2) Cooperation: The principal must allow the agent to do his job and must also provide any assistance that is reasonably necessary for the agent to do his job.

3) Provide safe working conditions: The principal must provide the agent with the necessary working conditions in which the agent can properly and safely do his job. The principal is also duty bound to notify the agent about any unsafe work areas.

4) Reimbursement/Indemnification: If the agent incurs reasonable out of pocket expenses during the course of the agency, the principal must reimburse the agent for those expenses. The principal, however, is not required to reimburse any expenses incurred as a result of the agent’s negligence or misconduct.

**Agent’s Authority to Act**

Actual Authority

1) Express Authority: The principal, either orally or in writing, gives the agent the authority to act in **clear, unmistakable, unambiguous language.**

2) Implied Authority: The agent’s authority can be implicitly created by:

a) The position that the agent occupies, or

b) The agent’s doing whatever is **reasonably necessary** to carry out his express authority.

Apparent Authority

Apparent authority is the principal, by words or conduct, causes a third party to **reasonably believe** that the agent has the authority to act. Thus, apparent authority is directly related to how the surrounding facts and circumstances **appear** to that third party.

Ratification

Ratification is the principal’s giving approval to an agent’s act that was previously unauthorized. Once such an act has been ratified, that act or transaction now becomes binding on the principal, meaning that the transaction is no longer voidable.

**Termination of the agency**

By acts of the parties

1) Mutual Agreement: The same way that contracting parties can agree to rescind a contract, the principal and agent can also agree to cancel their agency relationship.

2) Termination by only one party:

a) Renunciation of authority: The agent voluntarily ends the agency relationship (“I quit”).

b) Revocation of authority: The principal unilaterally severs the agency relationship (“You’re fired”)

3) Lapse of time: The specific time period for which the agency was to last has now expired.

4) Purpose achieved: The specific reason for which the agency was originally created has been fulfilled.

By operation of law

1) Death or Mental Incapacity of either the principal or the agent. (Example: If Prof. Gilmore gets run over by a street sweeper and is killed instantly, he has a pretty compelling reason for not coming to work tomorrow.)

2) Impossibility: The agency cannot be completed under **ANY** circumstances. (Example #1: Gilmore enters into a contract to become a surrogate mother…something that can never happen…for obvious reasons.)

(Example #2: A real estate broker won’t be able to sell a client’s house because the house burned down in a fire)

3) Bankruptcy of either the principal or the agent.

**Introduction to UCC Sales and Lease Contracts and Warranties**

Most tangible items are considered goods. From early times, merchants developed their own set of rules and customs that controlled contracts and disputes. In England, these evolved into the Law Merchant courts that were eventually absorbed into the common law. Because of the intricacies of dealing with commercial contracts, the U.S. passed the Uniform Sales Act in the early 1900s. As we continued to industrialize, the Act become outdated, and the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Commercial Code which covers most aspects of commercial transactions.

**Uniform Commercial Code (UCC)**

The UCC is a model act divided into articles, with each article establishing uniform rules for a facet of commerce. It is continually being revised to reflect changes in modern commercial practices.

**Landmark Law: Uniform Commercial Code (UCC)**

The UCC is a model act drafted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws. This model act contains uniform rules that govern commercial transactions.

**Article 2 (Sales)**

All states except Louisiana have adopted some version of Article 2.

**What Is a Sale?**

A sale is when title to goods passes from a seller to a buyer for a price.

**What Are Goods?**

Goods are tangible moveable items. Article 2 establishes that money, stocks, bonds, patents, and real estate are not tangible goods.

**Goods versus Services**

Services are not covered by Article 2, unless it is a mixed sale and the goods make up a predominate part of the sale.

**Example:** A client walks into Gilmore’s office asking that he prepare the client’s will. This is a transaction for professional services and not a contract for the sale of goods.

**Formation of Sales Contracts**

A sales and lease contract requires an offer and acceptance, the same as any other contract.

**Contemporary Environment: UCC Firm Offer Rule**

The UCC states that a merchant that offers to sell, lease, or buy goods and gives a separate assurance that the offer will be held open for a stated time period or for a reasonable time, cannot revoke the offer. A merchant is also prevented from revoking an options contract. All other offers may be revoked at any time prior to its acceptance.

**UCC Statute of Frauds**

All contracts for the sale of goods costing $500 or more and lease contracts of $1000 or more must be in writing.

**Passage of Title**

Title is by definition legal ownership of goods and real property.

The title to goods passes in any method agreed to by the parties. Absent an agreement, title passes when delivery is completed. In a shipment contract that requires the seller to ship the goods to the buyer via a common carrier and the seller is required to make proper shipping arrangements and deliver the goods into the carrier’s hands, title passes to the buyer at the time and place of shipment. In a destination contract that requires the seller to deliver the goods either to the buyer’s place of business or to another destination specified in the sales contract, title passes to the buyer when the seller tenders delivery of the goods at the specified destination.

**Risk of Loss**

Although common law places the risk of loss on the party who had title, the UCC allows the parties to agree who will bear the risk. In a shipment contract the risk of loss passes to the buyer when the seller delivers the conforming goods to the carrier; the buyer bears the risk of loss of the goods during transportation. In a destination contract the seller bears the risk of loss of the goods during their transportation; the risk of loss does not pass until the goods are tendered to the buyer at the specified destination.

Contemporary Environment: Commonly Used Shipping Terms

This section covers FOB, FOB place of destination, FAS, FAS port of shipment, CIF, C&F, Ex-ship, and no-arrival no-sale contracts.

FOB point of shipment requires that the seller arrange for the shipment of goods and be responsible for them until they are received at the common carrier. FAS requires that the seller bear the responsibility for the goods until they are delivered alongside a vessel or at a dock. CIF is cost, insurance, and freight, while C & F is cost and freight. Ex-ship requires the seller to bear the expense and risk until the goods are unloaded. A no-arrival, no-sale contract requires the seller to bear the expense and risk of loss during transportation. If the goods do not reach the buyer, the seller is under no obligation to replace the shipment.

**Sales of Goods by Nonowners**

**Stolen Goods**

If a buyer has purchased goods from a thief, the real owner can reclaim the goods from the purchaser or lessee. This is a void title.

**Fraudulently Obtained Goods**

The seller has a voidable title if the goods are obtained by fraud. However, the buyer can transfer good title to a good faith purchaser for value.

**Entrustment Rule**

If an owner entrusts possession of goods to a merchant, they can transfer the goods to a buyer in the ordinary course of business.

**Example:** I take my watch to a jeweler for repairs but a store employee unwittingly sells my watch to an innocent purchaser. The purchaser now has legal title to what **was** my watch. My only recourse is to sue the jeweler for money damages.

**Warranties**

Warranties are the buyer’s or lessee’s assurance that the goods meet certain standards. Article 2 of the UCC establishes certain warranties that apply to the sale of goods.

**Express Warranties**

Express warranties are created when a seller or lessor states orally, in writing, or through inferences that the goods meet a certain standard of quality, performance, or condition. No formal words are necessary to create an express warranty. Puffing and commendation of goods do not create an express warranty, nor does as affirmation of the value of the goods.

**Implied Warranty of Merchantability**

If the seller is a merchant normally dealing in the goods sold, there is an implied warranty of merchantability that the goods are fit for the purpose sold, that they are adequately contained, packaged, and labeled, and that they are of an even kind and quality. This warranty also means that the goods conform to all promises on their container, that their quality would pass without objection in the trade, and if they are fungible goods, that they are of at least average quality for the type of goods that they are.

**Implied Warranty of Fitness for a Particular Purpose**

The UCC contains an implied warranty of fitness at the time of contracting if the seller knows the particular purpose that the buyer will be using the goods for, the seller makes a statement that the goods will serve that purpose, and the buyer relies on the statement.

**Warranty Disclaimers**

Express warranties can be limited by disclaimers, if the warranty and disclaimer can be construed together. Implied warranties of quality can be disclaimed by use of “as is,” “with all faults,” etc. Implied warranties of merchantability must be specifically disclaimed, while implied warranties of fitness can be generally disclaimed.

**Conspicuous Disclaimer**

Written disclaimers must be clearly noticeable by a reasonable person.