

Topic 1: Introduction

Law: the system of rules which a particular country or community recognizes as regulating the actions of its members and which may be enforced by the imposition of penalties.

Principals of the law:

1. Establishing standards
2. Maintaining order
3. Resolving disputes
4. Protecting liberties and rights

Functions of the law:

1. Keeping the peace
2. Shaping moral standard
3. Promoting social justice
4. Maintaining the status quo
5. Facilitating orderly change
6. Facilitating planning
7. Providing a basis for compromise
8. Maximizing individual freedom

Types of legal systems:

1. The common law: the system of law that emerged in England in the middle ages. It is based on case law and precedent rather than codified law.
2. The Civil Law: the system of law that emerged in continental Europe in the middle ages. It is based on codified law drawn from national legislation and custom as well as ancient Roman law.

Remarks:

- With the spread of the European nations, their systems of law spread with them
- Hierarchy of law:
 1. Constitution
 2. Statutes / decrees
 3. Rule

The relation of law and economics:

- Social sciences (i.e., the sister sciences)
 - Ethics □ duties
 - Law □ rights
 - Economy □ provide for wants / needs
- Any separation of the sciences which deal with human societies is irrational

Nature of legal dispute:

1. Someone thinks he is guilty therefore he has a “cause of action”
2. He files a complaint, thus he is called the plaintiff
3. The defendant / offender must answer the complaint
4. The dispute may proceed to trial if not settled
5. A trial may or may not have a jury (usually depending on the importance / severity of the case)
6. Judging method
 - 6.1. If a civil case □ Whose arguments are more believable?
 - 6.2. If a criminal case □ Is he guilty beyond a reasonable doubt?
7. The jury returns with a verdict, but the judge has final judgement
8. Either party may appeal if there was a mistake about the relevant law, not the facts
9. An appeal may affirm, reverse, or remands the previous judgement

Development of laws in the Arabian Peninsula:

1. The Islamic legal system
 - 1.1. Primary sources of legislation □ Quran, Sunnah, Ijma
 - 1.2. Secondary sources of legislation □ Istehsan, Istislah, Urf
2. The Ottoman empire (16th – 19th century)
 - 2.1. Majalla AlAhkam AlAdliyah (based on the Hanafi school)
3. The British empire
 - 3.1. Based on common law
 - 3.2. Led to legal pluralism
4. The French / Egyptian civil law system
 - 4.1. Based on civil law
 - 4.2. Egypt (Dr. Abdulrazzaq AlSanhoury) was instrumental in setting up the legal infrastructure for many of the Arab countries

GCC countries:

1. Kuwait

- Based on the Maliki school
- Uses a civil law system
- The legal system is a blend of:
 - British common law
 - French civil law
 - Islamic legal principles
 - Egyptian law
- The constitution is divided into the following 5 chapters:
 - The state and the system of government
 - Fundamental constituents of Kuwaiti society
 - Public rights and duties
 - Powers
 - The national assembly
 - The executive power
 - Financial affairs
 - Military affairs
 - The judicial power
 - General and transitional provisions

2. Saudi Arabia

- Based on the Hanbali school
- Uses sharia as a system of law

3. Bahrain

- Uses a common / civil law
- Sharia is a principal source of law

4. UAE

- Has a civil law emphasis
- Sharia is a principal source of law

5. Qatar

- Based on the Hanbali school
- Has a civil based system of law
- Sharia is the main source, but not the sole source of law

6. Oman

- Based on the Ibadi school
- No written constitution

Historical timeline of Kuwait:

1. 1752 □ Sabah the first is chosen as a ruler
2. 1899 □ transition from the Ottomans to the British
3. 1914 □ Independent state under British protection
4. 1921 □ advisory council
5. 1922 □ Uqair treaty
6. 1938 □ the legislative council
7. 1946 □ oil discovered and exported to Britain
8. 1961 □ Independence
9. 1962 □
 - 9.1. National assembly elections
 - 9.2. Member of the UN
 - 9.3. Constitution
10. 1976 □ dissolution of parliament
11. 1981 □ the repeal of the Majalla
12. 1982 □ securities market crisis
13. 1986 □ dissolution of parliament
14. 1990 □ establishment of the national council
15. 1990 □ Iraqi invasion

Topic 2: Intentional Tort and Privacy

Tort (French for wrong): an act or omission of an act that gives rise to injury or harm to another and amounts to a civil wrong for which courts impose liability.

Types of torts:

1. Intentional
2. Unintentional

Basis of tort law:

1. Wrong
2. Compensation

Purpose of tort law: provide remedies for the invasion of various protected interests.

Types of damages:

1. Compensatory damages
 - 1.1. Special damages == monetary / quantitate
 - 1.2. General damages == compensate individuals for the non-monetary aspects of the harm suffered
2. Punitive damages == punish the wrongdoer and deter others from similar wrongdoing

Critique against tort law: it encourages trivial and unfounded lawsuits.

Classification of intentional torts:

Against people

1. Assault and battery
 - 1.1. Assault □ no contact necessary
 - 1.2. Battery □ completion of assault
 - 1.3. Defense
 - 1.3.1. Consent
 - 1.3.2. Self / other / property defense
2. False imprisonment
 - 2.1. Moral pressure is not included
3. Shoplifting and merchant protection statutes
4. Misappropriation
5. Invasion of privacy
 - 5.1. Appropriation of identity
 - 5.2. Intrusion into an individual's affairs or seclusion
 - 5.3. False light
 - 5.4. Public disclosure of private facts
6. Defamation
 - 6.1. Slander == oral
 - 6.2. Libel == written
 - 6.3. Defense
 - 6.3.1. Privilege to speech
 - 6.3.1.1. Qualified privilege
 - 6.3.1.2. Conditional privilege
 - 6.3.2. Public figures
7. Intentional infliction of emotional distress
8. Fraudulent misrepresentation
 - 8.1. Intentional deceit for personal gain
9. Frivolous litigation

Against businesses

1. Wrongful interference with a contractual relationship
2. Wrongful interference with a business relationship
 - 2.1. There is a difference between competitive practices and predatory behavior

Against property

1. Trespass to land
 - 1.1. Defense
 - 1.1.1. Warranted trespass
 - 1.1.2. License to enter
2. Trespass to personal property
 - 2.1. Movable objects
3. Conversion
 - 3.1. Wrongfully retaining property
4. Disparagement to property
 - 4.1. Slander of quality
 - 4.2. Slander of title

To succeed in a negligence action, the plaintiff must prove each of the following:

1. Duty of care
2. Breach
3. Causation
4. Damages

The basic principle of duty of care: people are free to act as they please so long as their actions do not infringe on the interests of others.

Important concepts for unintentional tort:

- The reasonable person standard
- The duty of landowners
- The duty of professionals
 - Malpractice
- No duty to rescue
 - Unless there is a special relationship
- Causation specific questions:
 - Is there a causation in fact?
 - Was the act the proximate, or legal, cause of the injury?
- Injury
 - Must suffer a legally recognizable injury
 - No harm, no foul
 - Punitive damages if grossly negligent
- Defense
 - Assumption of risk (either explicit or implicit)
 - Superseding cause
 - Contributory negligence
 - Comparative negligence
 - Pure comparative
 - Modified comparative
 - 50% rule
 - 51% rule
- Some activities are liable regardless of care
 - People who keep wild animals

Topic 3: Ethics

Ethics: the study of what constitutes right or wrong behavior. It is a branch of philosophy focusing on morality and the way moral principles are derived.

The relationship between law and ethics:

- Law is an expression of the ethical beliefs of our society
- The moral minimum == compliance with the law
- Ethics > Law

A comparison between law and ethics:

BASIS FOR COMPARISON	LAW	ETHICS
Meaning	The law refers to a systematic body of rules that governs the whole society and the actions of its individual members.	Ethics is a branch of moral philosophy that guides people about the basic human conduct.
What is it?	Set of rules and regulations	Set of guidelines
Governed By	Government	Individual, Legal and Professional norms
Expression	Expressed and published in writing	They are abstract
Violation	Violation of law is not permissible which may result in punishment like imprisonment or fine or both	There is no punishment for violation of ethics
Objective	Law is created with an intent to maintain social order and peace in the society and provide protection to all the citizens	Ethics are made to help people to decide what is right or wrong and how to act
Binding	Law has a legal binding	Ethics do not have a binding nature

Theories of ethics:

1) Duty / Responsibility and Rights based ethics

- Ethical fundamentalism
 - a person looks to an outside source or a central figure for ethical rules or commands
 - critics argue that ethical fundamentalism does not permit people to determine right and wrong for themselves
- Kantian ethics
 - a person owes moral duties based on universal rules
 - premise that people can use reasoning to reach decisions
 - people should employ categorical imperative (golden rule)
 - Kantian ethics universal rules based on
 - consistency □ all cases are treated alike with no exceptions
 - reversibility □ the actor must abide by the rule he or she uses to judge the morality of someone else's conduct
 - if one makes an exception for himself, that exception applies to everyone
 - hard to reach a consensus as to what the universal rules should be

2) Outcome based ethics / utilitarianism

- The greatest good for the greatest number
- Focuses on the consequences of actions, not the actions themselves (outcome oriented)
- Requires:
 1. Determining which individuals will be affected
 2. A cost-benefit analysis of alternatives
 3. Choosing the option with the greatest net-benefit

3) Others

- Rawls's social justice theory
 - a person has a social contract with all others in society to obey moral rules that are necessary for people to live in peace and harmony
 - based on fairness
 - the least advantaged must receive special assistance
 - veil of ignorance when choosing principles of justice
 - criticism
 - establishing blind original position is impossible
 - many persons in society would choose not to maximize the benefit to the least advantaged persons
- Ethical relativism
 - a person must decide what is ethical based on their own feelings
 - criticism
 - no universal ethical rules guide conduct
 - some people think some things are ethical when they are not

Business ethics: focuses on what is right and wrong in the business world.

Ethics in business

- Long term profit maximization is what is best for a company
 - the capital market orientation forces companies to be tempted by short term targets
 - business ethics is usually consistent only with long-run profit maximization
- Management usually sets the ethical tone of a company
 - Management who sets unrealistic sales goals will increase the probability that employees will act unethically
- Companies need to create a code of conducts in order to set the base tone of ethical behavior in a company
 - A written code of conduct explicitly states a company's ethical priorities and demonstrates that a company is committed to ethical behavior (it needs to be communicated to employees to be effective).

Corporate social responsibility

- The idea that those who run corporations can and should act ethically and be accountable to society for their actions
- Approaches:
 - Stakeholder approach □ corporations have a duty not just to shareholders, but to other groups affected by corporate decisions as well ("stakeholders")
 - Corporate citizenship □ corporations should behave as good citizens by promoting goals that society deems worthwhile and taking positive steps toward solving social problems
- CSR as a way of doing business
- CSR for employee recruiting and retention

The principle of right (rights theory)

- a key factor in determining whether a business decision is ethical is how that decision affects the rights of others
- but which rights are most important?

Practical solutions to corporate ethics questions (business process pragmatism):

1. Inquiry
2. Discussion
3. Decision
4. Justification
5. Evaluation

Guidelines for making ethical business decisions:

1. The law
2. Rules and procedures
3. Values
4. Conscience
5. Promises
6. Heroes

Business ethics on a global level:

1. The monitoring of employment practices of foreign suppliers
2. The foreign corrupt practices act (FCPA)
 - 2.1. Prohibition against the bribery of foreign officials
 - 2.2. Bribery by foreign companies
 - 2.3. Accounting requirements
 - 2.4. Penalties for violations

The Sarbanes-Oxley act (2002): requires companies to set up confidential systems so that employees and others can “raise red flags” about suspected illegal or unethical auditing and accounting practices.

Topic 4: Contracts

“The social order rests upon the stability and predictability of conduct, of which keeping promises is a large item”.

- Contract law deals with the formation and enforcement of agreements between parties.
- Promisor == the person making the promise
- Promisee == the person to whom the promise is made

Contract:

- A promise or set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.
- A legally binding agreement between two or more parties who agree to perform or to refrain from performing some act, now or in the future.

Intent in a contract is determined by the “objective theory of contracts”, not by the personal or subjective intent, or belief, of a party. Objective facts include:

1. what the party said when entering into a contract
2. how the party acted or appeared
3. the circumstances surrounding the transaction

Requirements of a valid contract:

1. Agreement (offer and acceptance)
2. Consideration
3. Contractual capacity
4. Legality

Defenses to the enforceability of an otherwise valid contract:

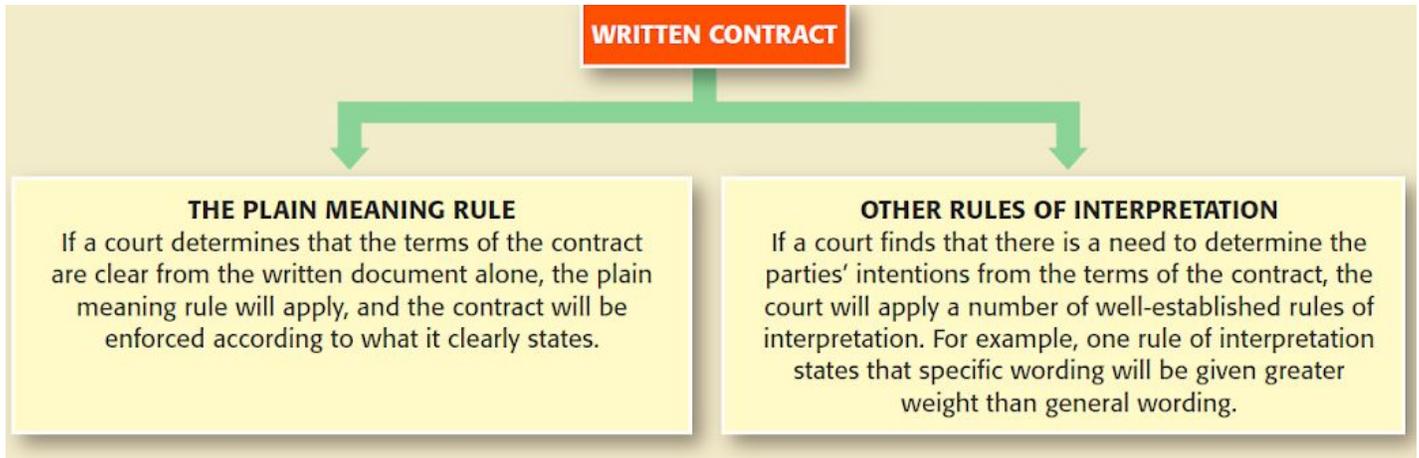
1. Voluntary consent voluntary consent from both parties
2. Form the contract must be in whatever form the law requires

Contracts can be categorized based on legal distinctions as to:

1. Formation according to how and when they are formed
2. Performance according to the degree to which they have been performed
3. Enforceability

Aspect	Definition
Formation	<ol style="list-style-type: none"> 1. <i>Bilateral</i>—A promise for a promise. 2. <i>Unilateral</i>—A promise for an act (acceptance is the completed performance of the act). 3. <i>Formal</i>—Requires a special form for creation. 4. <i>Informal</i>—Requires no special form for creation. 5. <i>Express</i>—Formed by words (oral, written, or a combination). 6. <i>Implied</i>—Formed by the conduct of the parties.
Performance	<ol style="list-style-type: none"> 1. <i>Executed</i>—A fully performed contract. 2. <i>Executory</i>—A contract not fully performed.
Enforceability	<ol style="list-style-type: none"> 1. <i>Valid</i>—The contract has the necessary contractual elements: agreement (offer and acceptance), consideration, legal capacity of the parties, and legal purpose. 2. <i>Voidable</i>—One party has the option of avoiding or enforcing the contractual obligation. 3. <i>Unenforceable</i>—A contract exists, but it cannot be enforced because of a legal defense. 4. <i>Void</i>—No contract exists, or there is a contract without legal obligations.

Interpretation of contracts:



Other rules of interpretation:

1. Insofar as possible, a reasonable, lawful, and effective meaning will be given to all of a contract's terms.
2. A contract will be interpreted as a whole; individual, specific clauses will be considered subordinate to the contract's general intent. All writings that are a part of the same transaction will be interpreted together.
3. Terms that were the subject of separate negotiation will be given greater consideration than standardized terms and terms that were not negotiated separately.
4. A word will be given its ordinary, commonly accepted meaning, and a technical word or term will be given its technical meaning, unless the parties clearly intended something else.
5. Specific and exact wording will be given greater consideration than general language.
6. Written or typewritten terms will prevail over preprinted ones.
7. Because a contract should be drafted in clear and unambiguous language, a party who uses ambiguous expressions is held to be responsible for the ambiguities. Thus, when the language has more than one meaning, it will be interpreted against the party who drafted the contract.
8. Evidence of usage of trade, course of dealing, and course of performance may be admitted to clarify the meaning of an ambiguously worded contract. When considering custom and usage, a court will look at what is common to the particular business or industry and to the locale where the contract was made or is to be performed. Express terms (terms expressly stated in the contract) are given the greatest weight, followed by course of performance, course of dealing, and custom and usage of trade—in that order.

The importance of having a detailed written contract:

- The contractual parties' details and their address details.
- The duty and obligations of the contractual parties and the execution of the contract.
- The authority of the contractual parties to sign a contract.
- The contract amount details and the payment installments.
- The details of product shipment or the service execution details.
- The term should also be specified in the agreement.
- The events on the occurrence of which the contract will be terminated should also be specified. This clause also describes the methods of giving notice, and whether the breaching party must be given a chance to cure the breach.
- A detailed clause for the Confidentiality / Non-Compete Contracts.
- The date and duration of the contract.
- The language of the contract
- The court jurisdiction and the applicable law.

There are dozens of different types of contracts. Selecting the type that best fits your intended agreement is a critical 'art'. Below are a few common types of contracts for commercial businesses:

- Sales/Service Contracts: spells out terms of sale of goods or services, payment terms, warranties, rights and obligations of parties;
- Confidentiality/Non-Compete Contracts: protects confidential information of a business including client lists, inventions, trade secrets, and other important information. Non-compete provisions must be reasonable as to time, place and scope; and
- Partnership Agreements: spells out the obligations between partners and their responsibilities with regard to the ownership and management of a business.

Requirements for implied contracts:

1. The plaintiff furnished some service or property.
2. The plaintiff expected to be paid for that service or property, and the defendant know or should have known that payment was expected.
3. The defendant had a chance to reject the services or property and did not.

Topic 5: Agreement

Agreement: a meeting of minds with the understanding and acceptance of mutual legal rights and duties as to particular actions or obligations, which the parties intend to exchange.

- An agreement is evidenced by two events, an offer and an acceptance.
- Because words often fail to convey the precise meaning intended, the law of contracts generally adheres to the objective theory of contracts.
- Offer == a promise or commitment to do or refrain from doing some specified action in the future.

Requirements for an effective offer:

1. Intention
2. Definiteness of terms
3. Communication

1) Intention

Types of expressions and statements that are not offers:

- Expression of opinion
- Statements of future intent
- Preliminary negotiations
- Advertisements (treated as invitations to negotiate)
- Auctions
 - With reserve
 - Without reserve
- Agreements to agree

2) Definiteness of terms

Generally, a contract must include the following terms, either expressed in the contract or capable of being reasonable inferred from it:

1. The identification of the parties.
2. The identification of the object or subject matter of the contract (also the quantity, when appropriate), including the work to be performed, with specific identification of such items as goods, services, and land.
3. The consideration to be paid.
4. The time of payment, delivery, or performance.

3) Communication

The offer must be communicated to the offeree. Ordinarily, one cannot agree to a bargain without knowing that it exists.



CONCEPT SUMMARY 11.1

Methods by Which an Offer Can Be Terminated

By Action of the Parties—

1. *Revocation*—Unless the offer is irrevocable, it can be revoked at any time before acceptance without liability. Revocation is not effective until received by the offeree or the offeree's agent. Some offers, such as a merchant's firm offer and option contracts, are irrevocable. Also, in some situations, an offeree's detrimental reliance or partial performance will cause a court to rule that the offeror cannot revoke the offer.
2. *Rejection*—Accomplished by words or actions that demonstrate a clear intent not to accept the offer; not effective until received by the offeror or the offeror's agent.
3. *Counteroffer*—A rejection of the original offer and the making of a new offer.

By Operation of Law—

1. *Lapse of time*—The offer terminates at the end of the time period specified in the offer or, if no time period is stated in the offer, at the end of a reasonable time period.
2. *Destruction of the subject matter*—When the specific subject matter of the offer is destroyed before the offer is accepted, the offer automatically terminates.
3. *Death or incompetence of the offeror or offeree*—If the offeror or offeree dies or becomes incompetent, this offer terminates (unless the offer is irrevocable).
4. *Supervening illegality*—When a statute or court decision makes the proposed contract illegal, the offer automatically terminates.

Types of acceptance:

- Unequivocal acceptance
- Silence as acceptance
- Communication of acceptance
 - Necessary if bilateral
 - Generally not necessary if unilateral
- Mode and timeliness of acceptance
 - Timely before offer termination
 - Mode
 - The mailbox rule (valid when dispatched)
 - Authorized means of acceptance
 - Substitute method of acceptance

The following legal requirements can be summarized upon electronic contracts:

- Clear identification of the contracting parties·
- Clear indication of the subject of the contract·
- Clear indication of the time period of validity·
- The contract has to have valid signatures of the involved parties certifying their acceptance of the liabilities laid down in the contract.

- The signature should be accompanied by a date indicating the start of the contract validity.
- Non-repudiation, i.e. nobody should be able to change the content of the contract after the contract is signed.
- Online contract may be formed for sale of goods, services, and also for licensing (selling software. i.e. the right to use the software).

Online offers:

- Displaying the offer (link to full contract)
- Provisions to include
 - Acceptance of terms
 - Payment
 - Return policy
 - Disclaimer
 - Limitation on remedies
 - Privacy policy
 - Dispute resolution
- Dispute-settlement provision (forum-selection-clause)

Online acceptances:

- Click-on agreements
- Shrink-wrap agreements
 - Enforceable
 - Not enforceable
- Browse-wrap terms (often not enforceable)

E-signature technologies:

1. Digitized handwritten signatures
2. Public-key-infrastructure-based digital signatures

Electronic Transactions Law

- the Kuwaiti parliament has recently passed **Law No. 20 of 2014** pertaining to Electronic Transactions (**the “Electronic Transactions Law”**).
- The Electronic Transactions Law does not itself pertain to a certain system, but rather provides a set of provisions relating to the use of electronic communication as a recognizable mechanism in Kuwait.
- The Electronic Transactions Law provides certainty for electronic transactions and allows electronic commerce to operate on the same basis as paper transactions.
- Notwithstanding the above, the Electronic Transactions Law has exempted the following from its operation:
 - Transactions and means pertaining to personal affairs, waqf and wills;
 - Property deeds for real estate and the resulting original or complementary rights;
 - Promissory notes and tradable vouchers; and
 - Any document which is required to be made as an official document, registered by law or which is required by another law, e.g. attestation certificates (except as defined under article 24 of the Electronic Transactions Law).
- The Electronic Transactions Law provides that a signature shall be considered as a protected electronic signature if the following conditions are met:
 - Means of determining the identity of the signatory;
 - Connection of the signature to the signatory himself only;
 - Execution of the signature using a safe signature tool which is controlled by the site alone during signature; and
 - Means of detecting any change in the information pertaining to the protected signature or the relation between the information and signature.

Topic 6: Consideration

Consideration: the value given in return for a promise or performance.



CONCEPT SUMMARY 12.1

Consideration

Elements of Consideration	Consideration is the value given in exchange for a promise. A contract cannot be formed without sufficient consideration. Consideration is often broken down into two elements: <ol style="list-style-type: none">1. <i>Legal value</i>—Something of legally sufficient value must be given in exchange for a promise. This may consist of a promise, a performance, or a forbearance.2. <i>Bargained-for exchange</i>—There must be a bargained-for exchange.
Adequacy of Consideration	Adequacy of consideration relates to how much consideration is given and whether a fair bargain was reached. Courts will inquire into the adequacy of consideration (if the consideration is legally sufficient) only when fraud, undue influence, duress, or the lack of a bargained-for exchange may be involved.
Agreements That Lack Consideration	Consideration is lacking in the following situations: <ol style="list-style-type: none">1. <i>Preexisting duty</i>—Consideration is not legally sufficient if one is either by law or by contract under a <i>preexisting duty</i> to perform the action being offered as consideration for a new contract.2. <i>Past consideration</i>—Actions or events that have already taken place do not constitute legally sufficient consideration.3. <i>Illusory promises</i>—When the nature or extent of performance is too uncertain, the promise is rendered illusory and unenforceable.

Adequacy of consideration == consideration must be something of legally sufficient value in the eyes of the law

- Courts typically will not consider adequacy
- Inadequate consideration may cause a court to examine whether voluntary consent was lacking

Exceptions to pre-existing duty:

1. Unforeseen difficulties
2. Recession and new contract

Settlement of claims:

1. Accord and satisfaction

- a. Accord □ the agreement under which one of the parties undertakes to give or perform, and the other to accept, in satisfaction of a claim, something other than that on which the parties originally agreed
- b. Satisfaction □ the performance that takes place after the accord is executed
- c. Types
 - i. Liquidated debts
 - ii. Unliquidated debts

2. Release

- a. A contract in which one party forfeits the right to pursue a legal claim against the other party
- b. Releases are binding if they are:
 - i. Given in good faith
 - ii. Stated in a signed writing
 - iii. Accompanied by consideration

3. Covenant not to sue

- a. Unlike a release, a covenant not to sue does not always bar further recovery. The parties simply substitute a contractual obligation for some other type of legal action based on a valid claim.

Exceptions to the consideration requirement:

1. Promises that induce detrimental reliance, under the doctrine of promissory estoppel.
 - a. There must be a clear and definite promise.
 - b. The promisor should have expected that the promisee would rely on the promise.
 - c. The promisee reasonably relied on the promise by acting or refraining from some act.
 - d. The promisee's reliance was definite and resulted in substantial detriment.
 - e. 5. Enforcement of the promise is necessary to avoid injustice.
2. Promises to pay debts that are barred by a statute of limitations.
3. Promises to make charitable contributions.

Topic 7: Capacity and Legality

Capacity: the ability, capability, or fitness to do something; a legal right, power, or competency to perform some act. An ability to comprehend both the nature and consequences of one's acts.

- The person asserting incapacity bears the burden of proof.
- Certain persons do not have this capacity: **Minors, Intoxicated persons, and Mental incompetence**



CONCEPT SUMMARY 13.1

Contracts by Minors

Concept	Description
General Rule	Contracts entered into by minors are <i>voidable</i> at the option of the minor.
Rules of Disaffirmance	A minor may disaffirm the contract at any time while still a minor and within a reasonable time after reaching the age of majority. Most states do not require restitution.
Exceptions to Basic Rules of Disaffirmance	<ol style="list-style-type: none">1. <i>Misrepresentation of age (or fraud)</i>—In many jurisdictions, misrepresentation of age prohibits the right of disaffirmance.2. <i>Necessaries</i>—Minors remain liable for the reasonable value of necessaries (goods and services).3. <i>Ratification</i>—After reaching the age of majority, a person can ratify a contract that he or she formed as a minor, becoming fully liable thereon.



CONCEPT SUMMARY 13.2

Contracts by Intoxicated Persons

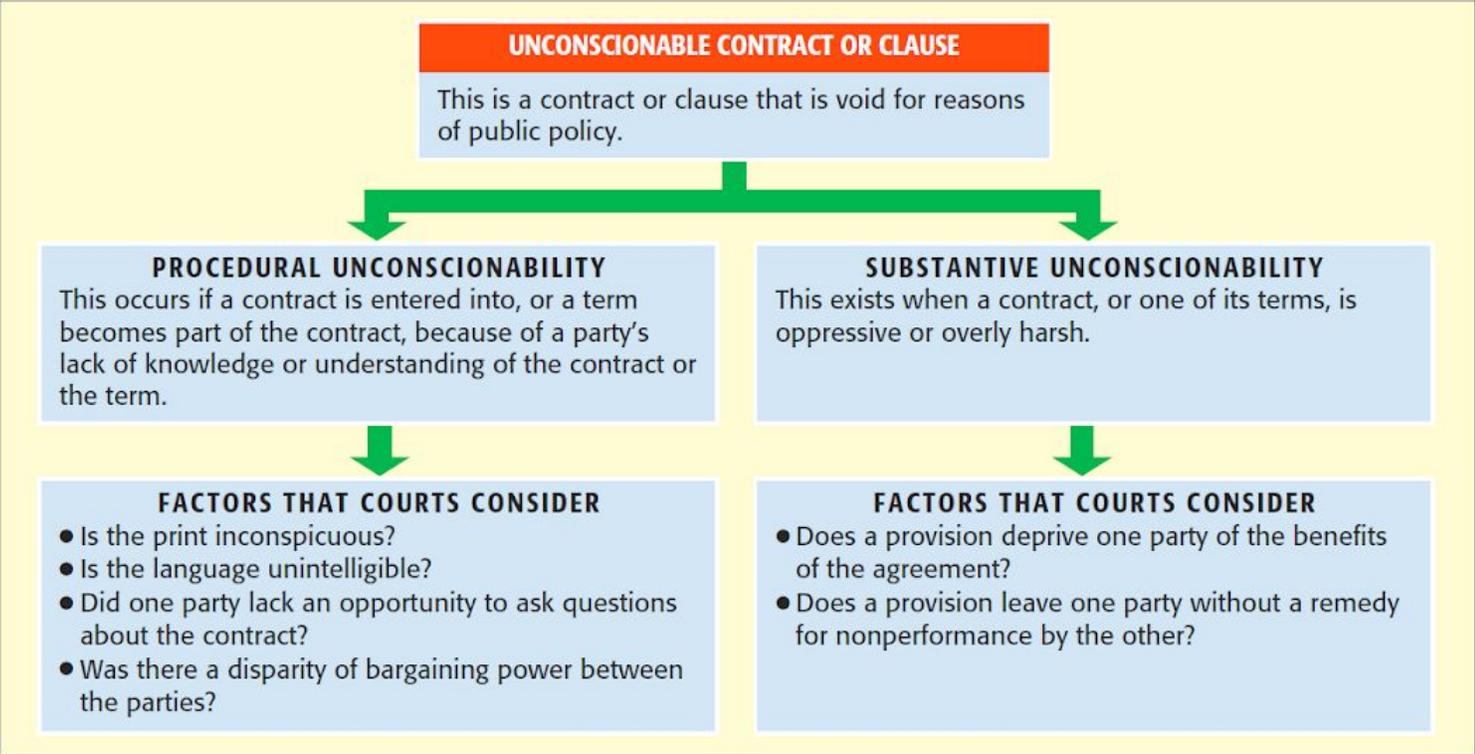
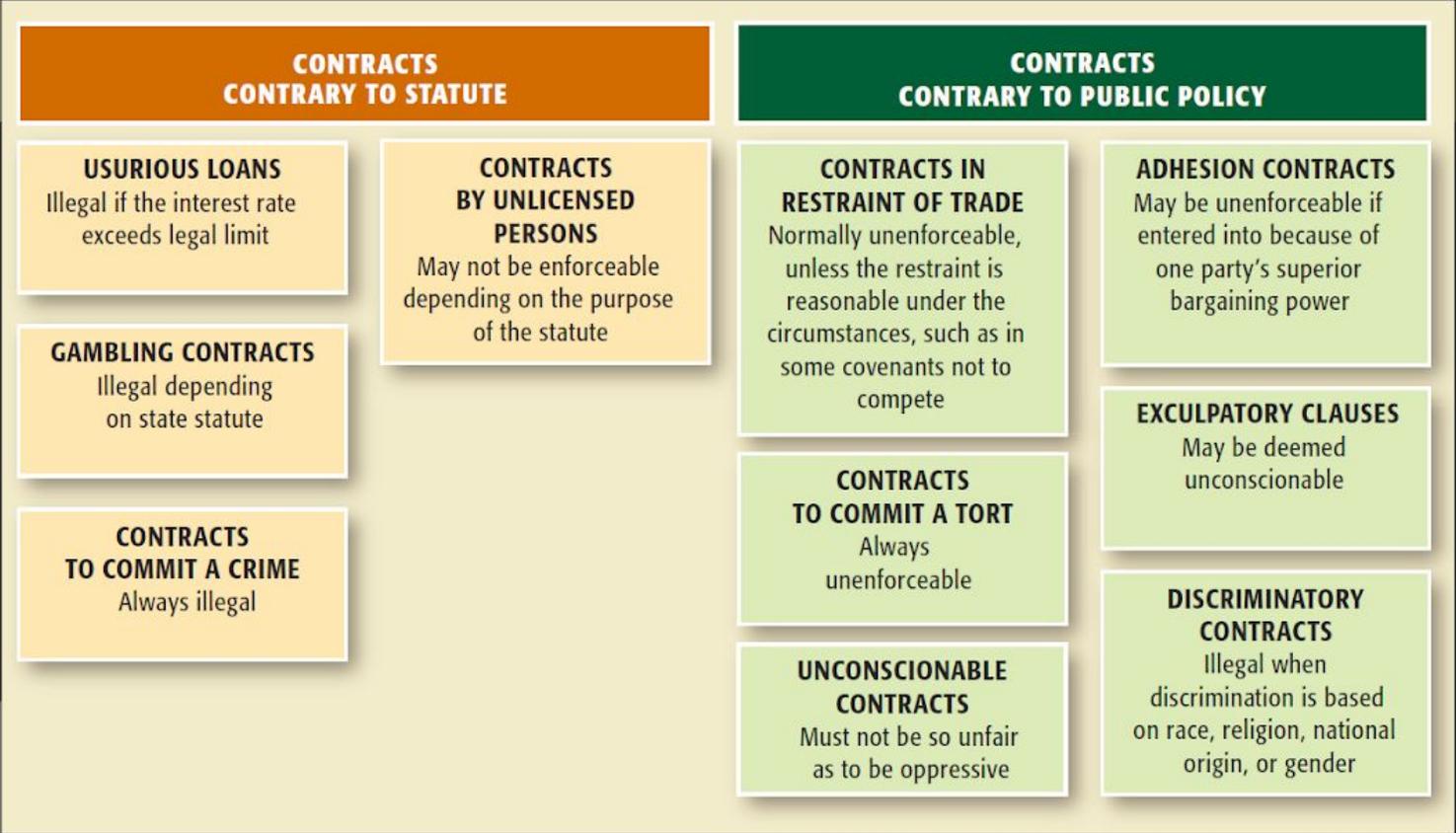
Concept	Description
General Rules	If a person was sufficiently intoxicated to lack the mental capacity to comprehend the legal consequences of entering into the contract, the contract may be <i>voidable</i> at the option of the intoxicated person. If, despite intoxication, the person understood these legal consequences, the contract will be enforceable.
Disaffirmance	An intoxicated person may disaffirm the contract at any time while intoxicated and for a reasonable time after becoming sober but must make full restitution. Contracts for necessities are voidable, but the intoxicated person is liable for the reasonable value of the goods or services.
Ratification	After becoming sober, a person can ratify a contract that she or he formed while intoxicated, becoming fully liable thereon.



CONCEPT SUMMARY 13.3

Contracts by Mentally Incompetent Persons

Concept	Description
Void	If a court has declared a person to be mentally incompetent and has appointed a legal guardian, any contract made by that person is void from the outset.
Voidable	If a court has <i>not</i> declared a person mentally incompetent, but that person lacked the capacity to comprehend the subject matter, nature, and consequences of the agreement, then the contract is voidable at that person's option.
Valid	If a court has <i>not</i> declared a person mentally incompetent and that person was able to understand the nature and effect of the contract at the time it was formed, then the contract is valid and enforceable.



There are exceptions to the general rule that neither party to an illegal bargain can sue for breach and neither party can recover for performance rendered:

1. Justifiable ignorance of the facts
2. Members of protected classes
3. Withdrawal from an illegal agreement
4. Contract illegal through fraud, duress, or undue influence
5. Severable, or divisible, contracts