

CHAPTER 10

Contract / Real Property / Intellectual
Property and Employment Law

Case File

- ▣ Think about the case file at the beginning of chapter 10 (Kersch Matter) Why is it so important that Kersch protect his design against “copycats?”
 - If Kersch does not protect his design what could potentially happen in this scenario?
- ▣ Make a list of things you would think and Employer is legally responsible to provide to an employee?
 - Make a list of the reverse. What must an employee legally provide to an employer?
 - Explain your reasoning in both relationships.

Contract Law (231- 235)

- What is a contract? Explain why you would think contracts are “the heart of almost every business transaction”
 - Why would it be important for persons skilled in the law to draft or review contracts?
- What are the four elements required in any contract? Explain the reasoning behind why these elements required in order for the contract to be enforceable?
 - What makes a contract a contract rather than a gift? Explain.
 - Why does a contract need to contain legal subject matter? Could you sign a contract relegating yourself to a state of slavery? Explain why?
- Must all contracts be written? Explain
- Review Application 10.3
 - Why does this situation create a Quasi Contract? Identify the conditions that exist that make this a quasi contract?
- Review Application 10.4 use this example to explain what Promissory estoppel and detrimental reliance is?
- Suppose you begin working for an organization under direction from the employer. You do so without a contract but with the promise of a job and payment for duties performed. You work for three weeks and are then informed that the organization has changed its mind and will not be offering you the job. They also inform you that because you did not sign a contract you will not be paid for the work you did perform. Explain your rights.
- Vocabulary

Contract Law

- ▣ Contract – an agreement between two or more persons that is enforceable by law
 - Contracts are different from gifts – in a contract both sides must “give up” something. If one side gives something it becomes a gift and not a contract.
 - ▣ Joe lends Frank \$100. Frank promises to pay him back = contract
 - ▣ Joe hands Frank \$100 but no agreement is made that Frank pay Joe back = gift
- ▣ Elements of A Contract
 - Mutual Consent – Offeror and Offeree must agree to the contract
 - Consideration – Both sides must “give” or “offer” something to the other.
 - ▣ Promises are Consideration – if both parties make promises the contract is “bilateral”
 - Capable Parties – Both sides must be legally able to and mentally capable of signing a contract
 - ▣ Children can not sign contracts
 - ▣ People declared mentally impaired or incapacitated by the court can not sign contracts
 - If so the contract is void
 - Legal Subject Matter
 - ▣ The Contract must be legal under statutory law and the actions agreed to must be legal.
 - ▣ Must also be within acceptable public policy (contract must be moral)

Other Elements and Contract Rules

□ Oral Contracts

- Unless prohibited by state law oral contracts are enforceable.
 - In New Jersey to enforce a verbal contract the contract must have Consideration and parties must be able to prove that the verbal contract exists (you must have a witness) Also verbal contracts in NJ involving specific sums of money are unenforceable.
 - Note to all – just write it down and sign it.
- Statue of Frauds – Certain contracts are unenforceable verbally – real estate, marriage, contracts that can not be performed in the lifetime of the promisor.

□ Parol Evidence Rule

- If a written contract was signed as a complete agreement (often containing an integration clause) other oral agreements either modifying or changing the agreement are not admissible. The written contract must be changed and resigned in order to be admissible.

□ Quasi Contract

- Some situations can be treated as contractual even if no contract exists and even if the some of main elements of a contract do not exist
 - If one party is unjustly enriched a quasi contract exists (if one party is getting something without giving something in return)

□ Promissory estoppel / detrimental reliance

- Promise to make a gift is not a contract
- However, if the second party takes action based on the promise of a gift the promise may be enforceable as a contract.

Contracts (235 – 238)

- ▣ Discuss what it means to have a “breach of contract”
 - What recourse does the non-breaching party have against the breaching party?
- ▣ When parties chose to breach a contract what claims are often made that would allow them to breach the contract?
 - What remedies can exist if a contract is deemed unenforceable? Why does this remedy make sense?
- ▣ What is arbitration? When is arbitration utilized?
 - Do the opposing sides in a contract arbitration have an option in listing to the arbitrator?
- ▣ Discuss the difference between assignment of a contract and a delegation of a contract? When are these types of things done?
- ▣ What is the UCC? What does the UCC say about the quality of goods sold under implied promises?
 - What ramifications does the existence of the UCC have on merchants? Use Application 10.6 to assist in your answer.
- ▣ Copy Figure 10-1 into your notes
- ▣ Vocabulary

Performance of Contracts

- ▣ Once a contract is created both sides are obligated to fulfill their ends of the contract
 - Breach of Contract – when one side fails to fulfill their requirements under the contract
 - ▣ Legal remedy can be sought
 - specific performance – court order requiring the breaching party to fulfill a contract.
 - Damages – Financial restitution for losses sustained due to a breach of contract
 - Unenforceable contracts
 - ▣ Contract Breaches can argue that the contract is unenforceable (for many reasons)
 - If contract is unenforceable the contract breacher has rights to restitution if loss is sustained.
- ▣ Arbitration
 - Alternative to Court Action
 - ▣ Requirement often included in contracts
 - ▣ Parties meet before arbitrator who hears both sides and makes a binding decision

Assignment of Contracts and the Uniform Commercial Code

- ▣ Contracts rights and responsibilities can be transferred under certain circumstances
 - Rights can be assigned – Given up to a third party
 - ▣ If Mike assigns the contract rights to collect \$1000 to John, John is now the sole right holder of the contract and can collect the \$1000 (debt collectors)
 - Responsibilities can be delegated – A third party performs the actions required by contract
 - ▣ Delegation can only occur when the agreement is not for personal service
 - ▣ The promisor still retains responsibility for the original contract and is liable for breach of contract if not performed correctly.
- ▣ Uniform Commercial Code – Governs the sale of goods – Implied Contracts
 - Implied Warranty of Merchantability – Promise that goods are not defective
 - Implied Warranty of fitness for a particular use – Promise that goods perform to the specific purpose that they are advertised by the seller as capable of.

Real Property Law (239-241)

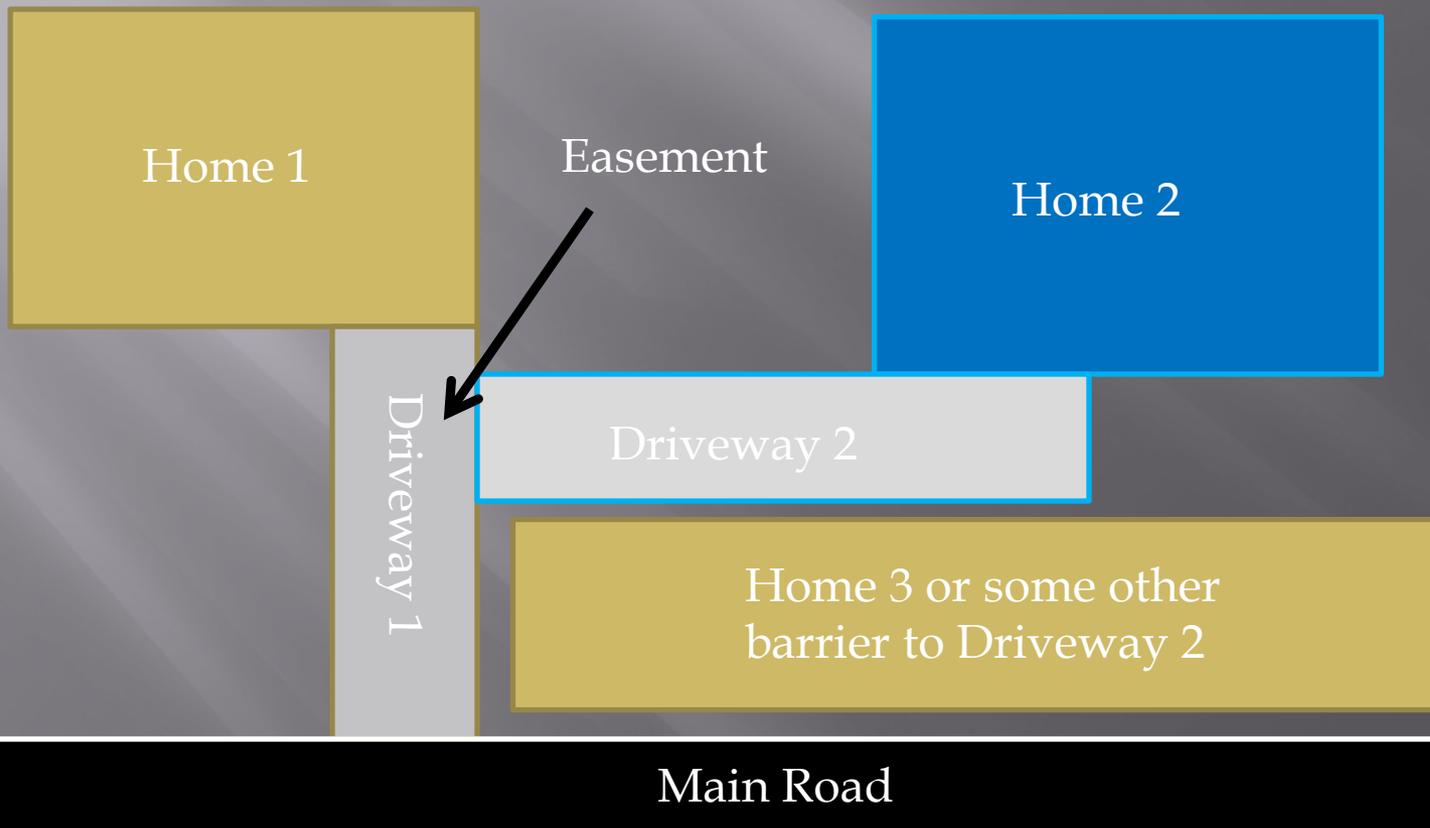
- ❑ Discuss how Real Property Law and Contract Law often intertwine? Why is this the case?
 - What is Real Property and how is this different from personal property?
 - What kinds of things does real property law deal with?
- ❑ Discuss the difference between singular ownership of property and joint ownership of property? What are each of these situations called and what do they mean?
 - What type of document designates owners of a property no matter how it is held?
- ❑ Aside from ownership what other relationships can exist in terms of real property? What do each of these relationships state?
- ❑ Discuss the difference between a month to month tenancy and a rental agreement?
 - What is eviction? What can a landlord not do? What can a tenant not do? What remedies does each side have if the other breaches contract or acts improperly?
- ❑ Many times states make it very difficult for a landlord to evict a tenant. Why do you think the state would “stack the deck” against the landlord?
- ❑ Vocabulary

Real Property (Real estate Law)

- ▣ Real estate law (Real Property Law) – involves contracts regarding “Real” Property – Land and anything affixed or growing on land
 - Does not deal with Personal Property – Moveable Property
- ▣ Land Ownership
 - Singular Ownership
 - ▣ Fee Simple – Outright Ownership of Land
 - ▣ Life Estate – The right to use property for the term of someone’s life
 - Dual Ownership
 - ▣ Joint Tenancy – If one person dies the other inherits the deceased’s share of property (is not impacted by Wills)
 - ▣ Tenants in Common – No rights to survivorship
 - ▣ Community Property – Often used to describe property in marriage
 - Ownership – Deed – Document describing the property and stating the Owners
 - ▣ filed with the county in which the land is located.

Non-Ownership Interests

- Property is not always owned by someone who has an interest in the property
 - Easement – Land that is owned by a person but another has a right to use: Example:



Non Ownership Interests

- ▣ Lien or Mortgage
 - Debt owed to a non owner by a landowner – secured by the value of the property
 - ▣ If the property owner pays the debt as required by the mortgage contract the creditor has no claim to property
 - ▣ If not – creditor can ask the courts to allow him to sell the property to pay for the debt
 - Foreclosure

Non Ownership / Landlord Tenant Law

- ▣ 35% of the American Population Rents their Home (104 Million People / 300+ Million)
 - The Home they live in is not owned by them they are Tenants
 - ▣ The Landlord retains ownership of the property and allows the tenant to live there.
- ▣ Governance of Rentals
 - Month to Month Rental – Indefinite until one side or the other cancels the arraignment (30 days notice is common)
 - Rental Agreement – Secured by a written document called a lease
 - ▣ Lease – Specifies amount of time as well as other details of rental agreement
- ▣ Termination of Rental Agreements
 - Rental Agreements are Contracts – Violation of an agreement is a breach of contract and breacher is liable for damages
 - Eviction – Removing a renter from a property and terminating the agreement for breach of contract (not paying rent)
 - ▣ Can not simply change the locks etc.
 - ▣ Unlawful Detainer – lawsuit asking the court to require a tenant to move out (used if tenant refuses to leave)

Intellectual Property (Copyright) Law (242-246)

- What is intellectual property and how does one protect their intellectual property against infringement?
 - How old is the idea of intellectual property?
- What is a copyright and what types of work can be copyrighted?
 - Does work need to be published in order to be copyrighted?
 - What constitutes infringement on a copyright? What does not?
- What is fair use? If Mr. Payne copies sections of a law book for use in this class does he violate copyright law?
 - Do you violate copyright law if you resell a textbook after you're done with this class?
- If you are working for a company and create a manual on how to use a piece of equipment who owns the copyright? Why?
- Look over the list of things that Can not be Copyrighted. Do any of these surprise you? Why?
- If you own a copyright can you allow someone else to use your copyright and profit off of it? How?
- Do all copyrights need to be registered? What benefits does registration give a copyright holder? How long do copyrights last?
- Vocabulary

Copyright

- ▣ This is why plagiarism matters!!!
 - Plagiarism is the use of someone else's work knowledge or information and passing it off as your own. – Technically you are violating copyright law if you plagiarize someone else's work
- ▣ Copyrights
 - Exist from the moment a work is created in a permanent form (includes publishing on the internet)
 - You can file copyright paperwork with the government but you do not have to
 - ▣ Filing gives the copyright holder the ability to claim infringement and sue for copyright violations.
- ▣ What can be Copyrighted
 - Intellectual works: Movies, Music, Literature, Software, Dramatic Performances
- ▣ What can't be copyrighted
 - Things not in tangible form: oral expressions, performances, speeches, titles, slogans, ideas, methods, procedures
- ▣ How long does it last:
 - Life of the author +70 years

Intellectual Property Law (Patent and Trademark) (246-253)

- ❑ Do not read cases yet
- ❑ Discuss the difference between a patent and a copyright? How do they serve different purposes?
 - How old is the practice of patent law?
 - What can be patented? And what requirements exist for something to be patentable?
 - What can not be patented? Why would these make sense as disqualifying factors?
 - Why can apply for a patent / who cannot?
 - How long do patents last?
- ❑ Think about the idea of a patent. Why are patents necessary / Why would they be included so specifically in the founding documents of our country / what is the benefit of encouraging patents rather than sharing information and inventions?
- ❑ What is a trademark? How does a trademark differ from a copyright?
 - What can not be trademarked?
 - How long do trademarks last?
- ❑ How do the protections of a trademark differ from that of a patent or copyright?
- ❑ Read the following article: <http://www.ibtimes.com/dumb-starbucks-coffee-trademark-law-brilliant-parody-or-blatant-infringement-1554483>
- ❑ Vocabulary

Patent and Trademark Law

- ▣ Patents: Provides protection for inventors of “new and useful process(es), machine, manufacture or composition of matter or any new improvement thereof”
- ▣ Trademark: Protects “words, phrases, symbols and designs and combinations [there of]”
 - Very different from a copyright or patent
 - ▣ Does not prevent others from using it
 - Only prevents others from using it to confuse consumers
 - http://appleinsider.com/articles/11/09/06/icloud_communications_drops_trademark_lawsuit_apple_in_dispute_over_chinese_logo



Trade Secret Law

- ▣ State based law governing “trade secrets”
 - Information including formula, pattern, compilation, program, device, method, technique or process that are kept secret by the owner.
 - ▣ Why are they protected: Because according to states a process can have value
 - Customer Lists and client contact information

Universal City Studios v Nintendo Co. (252-253)

- ▣ Read Universal City Studios v Nintendo Co. on page 252-253
 - Answer all Case Analysis Questions
- ▣ Read A&M Records Inc. v Napster Inc. : Posted on Google Drive
 - You will be assigned an essay in class tomorrow. You may begin working on it tonight.

Employment Law (256-258)

- ▣ Employment law can become rather complex. Why, based on your reading, would this be the case?
- ▣ Discuss the difference between employment-at-will and other forms manners of an employer-employee relationship.
- ▣ What criteria can an employer not use when making a hiring decision? Why?
- ▣ What kinds of benefits and work quality conditions do employers provide employees?
 - Think about these benefits. Are they required? Explain
- ▣ What is wrongful termination? Under what conditions can an employee's employment be terminated?
 - What reasons can not be used for termination?
- ▣ What is the EEOC? What does it do?

Employment Law

▣ Types of Employment

▪ Contracts

- ▣ The parties agree to the length of time of employment. At the end of that time there is no obligation to continue employment by either side
- ▣ Conditions (salary, length of employment, working conditions) are spelled out in a contract

▪ Informal (Employment at Will)

▣ Employment At Will

- The Parties do not agree to a length of time for employment and the employment can be terminated at any time by either side, with or without cause.
- Conditions are often not spelled out and are

▪ Collective Agreements (Also Contracts)

▣ Hiring and Termination

▪ Hiring and Termination must be done within the bounds of state and federal law

- ▣ Illegal to discriminate based on race, color, religion, sex, national origin, disability or age
 - **Compelling interest** rule is the exception – an employer can discriminate if the demands of the job require certain qualifications (ex. Heavy lifting requirement in a job – age and disability can be disqualifying factors if duties can not be performed with “reasonable accommodations”)

Case Study Brother Records, Inc. V Jardine

- ▣ Read Brother Records, Inc. v Jardine (258-260)
 - Answer Case Analysis Questions
- ▣ Complete questions 1 and 2 in Application and Analysis problems on page 262
- ▣ Complete Questions 3-6 on page 262