

Table of Contents

Volume 21

CHAPTER 1. CONTRACT BASICS

PART I. TEXT

- § 1:1 “Contract” defined
- § 1:2 “Contract” defined—Further explained
- § 1:3 “Contract” defined—*Restatement (Second)* approach compared
- § 1:4 Contract versus tort
- § 1:5 Classification of contracts
- § 1:6 Role of courts
- § 1:7 Implied in fact contracts
- § 1:8 Implied in fact contracts—Family services
- § 1:10 Implied in law contracts—Defined
- § 1:11 Implied in law contracts—Elements
- § 1:12 Implied in law contracts—Elements—Critique
- § 1:16 Practice pointers

CHAPTER 2. STATUTE OF FRAUDS

PART I. TEXT

- § 2:1 Introduction
- § 2:2 Scope
- § 2:4 Scope—Contract consideration
- § 2:9 Executor-administrator provision
- § 2:10 Suretyship provision—Basic principles
- § 2:14 Land provision—Basic concept
- § 2:16 Land provision—Relation of UCC
- § 2:17 Land provision—Examples of included transactions
- § 2:18 Land provision—Examples of excluded transactions
- § 2:21 One-year provision—Role of contract interpretation
- § 2:22 One-year provision—“No reasonable probability” doctrine explained—Examples of contracts included
- § 2:24 Sale of goods under Uniform Commercial Code
- § 2:25 Required writing
- § 2:26 Required writing—Uniform Commercial Code

- § 2:27 Required writing—Examples
- § 2:28 Required writing—Relation of parol evidence rule
- § 2:30 Required writing—Signature
- § 2:32 Avoidance of requirements—Equitable estoppel
- § 2:33 Avoidance of requirements—Promissory estoppel
- § 2:35 Avoidance of requirements—Part performance—Critique
- § 2:36 Restitutionary remedies
- § 2:37 Procedural aspects
- § 2:38 Practice pointers

CHAPTER 3. PARTIES

PART I. TEXT

- § 3:1 Introduction
- § 3:2 Joint and several promisors and promisees
- § 3:4 Capacity—Mental infirmity
- § 3:5 Capacity—Mental infirmity—Void or voidable?
- § 3:6 Capacity—Mental incompetency or infirmity—Evidentiary issues
- § 3:7 Capacity—Infants
- § 3:11 Capacity—Infants—Disaffirmance
- § 3:14 Capacity—Corporations—Common law principles
- § 3:15 Capacity—Corporations—Statutory changes
- § 3:16 Capacity—Corporations—Common problems
- § 3:17 Principal and agent—Nature of relationship
- § 3:18 Principal and agent—Rules of contractual liability
- § 3:19 Principal and agent—Implied or apparent authority
- § 3:20 Capacity—Partnerships
- § 3:21 Third-party beneficiaries—In general
- § 3:22 Third-party beneficiaries—Prerequisites for relief
- § 3:24 Third-party beneficiaries—*Owner-Operator* decision
- § 3:25 Third-party beneficiaries—Nature of cause of action—Basic rules
- § 3:29 Third-party beneficiaries—Incidental beneficiaries—Examples
- § 3:30 Third-party beneficiaries—Construction projects
- § 3:31 Third-party beneficiaries—Public contracts
- § 3:32 Assignment—Defined
- § 3:33 Assignment—Basic principles
- § 3:37 Assignment—Exceptions
- § 3:40 Assignment—Notice requirements
- § 3:42 Novation—Defined
- § 3:43 Novation—Pleading and evidentiary rules
- § 3:44 Novation—Related concepts

TABLE OF CONTENTS

CHAPTER 4. MUTUAL ASSENT

PART I. TEXT

- § 4:1 Meeting of minds
- § 4:5 Effect of misunderstanding
- § 4:6 Subjective versus objective theory
- § 4:7 Subjective versus objective theory—Criticisms
- § 4:8 Requirement for definite agreements—Common law view
- § 4:11 Requirement for definite agreements—Agreements to agree/
“best efforts”
- § 4:12 Requirement for definite agreements—Savings doctrines—
Implied terms
- § 4:13 Requirement for definite agreements—Savings doctrines—
Rules of interpretation
- § 4:14 Offer—Definition of “offer”
- § 4:15 Offer—Definition of “offer”—Relation to acceptance
- § 4:16 Offer—Definition of “offer”—UCC
- § 4:17 Offer—Interpretation of “offer”
- § 4:18 Offer—Other communications distinguished
- § 4:20 Offer—Offer for unilateral contract—Right of first refusal
- § 4:26 Acceptance
- § 4:27 Acceptance—Express or implied
- § 4:29 Acceptance—Rules of interpretation
- § 4:30 Acceptance—Preliminary discussions compared
- § 4:32 Acceptance—Mirror image rule—Common law approach
- § 4:33 Acceptance—Mirror image rule—Common law approach—
Qualifications
- § 4:36 Acceptance—Mirror image rule—UCC approach—Comments
and criticism
- § 4:37 Acceptance—Methods
- § 4:38 Acceptance—Dispatch rule
- § 4:44 Practice pointers

CHAPTER 5. CONSIDERATION

PART I. TEXT

- § 5:1 Defined
- § 5:3 Defined—Element of bargained-for exchange
- § 5:5 Historical development/policy basis
- § 5:6 Mutuality
- § 5:7 Mutuality—Illusory promises
- § 5:11 Mutuality—Noncompetition agreements
- § 5:14 Adequacy—Partial versus total failures
- § 5:18 Relinquishment/forbearance of right or claim
- § 5:23 Promissory estoppel

- § 5:26 Promissory estoppel—Elements
- § 5:27 Promissory estoppel—Elements—Promise
- § 5:32 Pleading; burdens of proof; rules of evidence

CHAPTER 6. VALIDITY OF ASSENT

PART I. TEXT

- § 6:2 Duress—Defined
- § 6:6 Duress—Business compulsion
- § 6:7 Duress—Business compulsion—Cases granting remedy
- § 6:9 Duress—Burden of proof, pleading, evidence, and remedies
- § 6:10 Undue influence—Defined
- § 6:11 Undue influence—Classification and comparison
- § 6:13 Undue influence—Presumed influence—In general
- § 6:14 Undue influence—Presumed influence—Fiduciary relationships
- § 6:15 Undue influence—Presumed influence—Confidential relationships
- § 6:16 Undue influence—Presumed influence—Confidential relationships—Prenuptial agreements
- § 6:17 Undue influence—Presumed influence—Burden of proof
- § 6:18 Undue influence—Ascertaining valid transactions
- § 6:19 Fraud—Defined
- § 6:20 Fraud—Defined—Additional classifications
- § 6:21 Fraud—Elements
- § 6:22 Fraud—Elements—Falsity explained
- § 6:23 Fraud—Elements—Fact versus opinion explained
- § 6:25 Fraud—Elements—Materiality and causation explained
- § 6:26 Fraud—Elements—Reliance explained
- § 6:29 Fraud—Elements—Reliance explained—Effect of disclaimers
- § 6:30 Fraud—Elements—Concealment and nondisclosure
- § 6:31 Fraud—Elements—Nondisclosure—Analysis
- § 6:33 Fraud—Promissory fraud
- § 6:35 Fraud—Burden of proof; quantum of evidence
- § 6:37 Fraud—Evidentiary factors—Circumstantial proof; extrinsic evidence
- § 6:38 Fraud—Remedies
- § 6:39 Fraud—Innocent and negligent misrepresentation compared
- § 6:40 Fraud—Practice and procedure
- § 6:41 Mistake—Defined
- § 6:42 Mistake—Defined—Key characteristics
- § 6:43 Mistake—Policy
- § 6:44 Mistake—Impact of movant’s fault or negligence
- § 6:47 Mistake—Mutual mistake
- § 6:48 Mistake—Unilateral mistake
- § 6:49 Mistake—Mistake of law

TABLE OF CONTENTS

- § 6:50 Mistake—Mistake of law—Qualifications
- § 6:51 Mistake—Procedure, evidence, defenses, remedies
- § 6:52 Unconscionability—Background
- § 6:54 Unconscionability—Procedural/substantive aspects
- § 6:56 Unconscionability—Adhesion contracts compared
- § 6:58 Failure to read or understand contract
- § 6:59 Failure to read or understand contract—Defenses
- § 6:60 Remedies—Rescission
- § 6:61 Remedies—Rescission—Equitable principles
- § 6:62 Remedies—Rescission—Restoration to status quo
- § 6:63 Remedies—Rescission—Restoration to status quo—Further explained
- § 6:64 Remedies—Reformation—In general
- § 6:65 Remedies—Reformation—Grounds for relief
- § 6:66 Remedies—Reformation—Grounds for relief—Nature of mistake
- § 6:67 Remedies—Reformation—Parol evidence rule; statute of frauds
- § 6:68 Remedies—Reformation—Pleading and burden of proof; contract interpretation
- § 6:70 Practice pointers

CHAPTER 7. PUBLIC POLICY

PART I. TEXT

- § 7:2 Definition and sources
- § 7:4 Policy for contract invalidation
- § 7:5 Contract interpretation
- § 7:7 Contract interpretation—Illegality in terms versus performance
- § 7:8 Effect of illegality—General rule
- § 7:11 Effect of illegality—Exceptions—Other qualifications
- § 7:15 Contracts violating statute—Statutory interpretation—General rules
- § 7:18 Contracts violating statute—Statutory interpretation—Effect of changing laws
- § 7:20 Contracts violating statute—Licensing statutes—*Gene Taylor*
- § 7:21 Contracts violating statute—Licensing statutes—*Gene Taylor*—Analysis
- § 7:22 Contracts violating statute—Restraint of trade—Trade practices
- § 7:23 Contracts violating statute—Other examples
- § 7:24 Contracts violating common law—Restraint of trade
- § 7:25 Contracts violating common law—Restraint of trade—Noncompetition agreements—Overview
- § 7:26 Contracts violating common law—Restraint of trade—Noncompetition agreements—Former employees

- § 7:28 Contracts violating common law—Restraint of trade—
Noncompetition agreements—Former employees—“Unfair
advantage” explained
- § 7:30 Contracts violating common law—Restraint of trade—
Noncompetition agreements—Former employees—Time
and territorial limits—“Rule of reason”
- § 7:35 Contracts violating common law—Other examples
- § 7:36 Exculpatory clauses
- § 7:37 Exculpatory clauses—Ascertaining public policy
- § 7:38 Exculpatory clauses—Examples of public interest
- § 7:39 Conflict of laws—Lex loci contractus
- § 7:40 Forum selection clauses
- § 7:41 Practice pointers

CHAPTER 8. INTERPRETATION

PART I. TEXT

- § 8:1 Introduction
- § 8:3 Conflicting perspectives of interpretation
- § 8:5 Freedom of contract principle and function of judiciary—
Further explained
- § 8:6 Sources of authority
- § 8:9 Preliminary considerations—Meeting of minds
- § 8:10 Preliminary considerations—Meeting of minds—Objective
test explained
- § 8:11 Contractual intent—Requirement for mutuality
- § 8:12 Contractual intent—Content versus context
- § 8:13 Contractual intent—Plain meaning rule
- § 8:14 Contractual intent—Plain meaning rule—Defended
- § 8:16 Role of extrinsic evidence
- § 8:17 Role of extrinsic evidence—Further explained
- § 8:19 Other rules of construction—Overview
- § 8:20 Other rules of construction—Illustrations
- § 8:21 Other rules of construction—Implied terms
- § 8:22 Other rules of construction—Implied terms—*Restatement*
(*Second*) approach compared and critiqued
- § 8:23 Other rules of construction—Implied incorporation of
applicable laws
- § 8:25 Other rules of construction—Implied incorporation of
applicable laws—Policy and critique—Further explained
- § 8:28 Other rules of construction—Severability
- § 8:31 Other rules of construction—Course of dealing
- § 8:32 Other rules of construction—Duty of good faith and fair
dealing
- § 8:33 Other rules of construction—Duty of good faith and fair
dealing—“Good faith” and “fair dealing” explained
- § 8:35 Insurance contracts—General rules

TABLE OF CONTENTS

- § 8:36 Insurance contracts—Automatic construction against insurer?
- § 8:37 Insurance contracts—Automatic construction against insurer?—Discordant views
- § 8:41 Parol evidence rule—Basics
- § 8:46 Parol evidence rule—Key issues—Contradiction versus explanation
- § 8:48 Parol evidence rule—Determining finality
- § 8:49 Parol evidence rule—Determining finality—Integration clauses
- § 8:50 Parol evidence rule—Determining finality—Complete versus partial integration further explained
- § 8:52 Parol evidence rule—Exceptions and qualifications
- § 8:54 Ambiguity
- § 8:55 Ambiguity—Latent versus patent
- § 8:56 Ambiguity—Latent ambiguity versus plain meaning
- § 8:57 Ambiguity—Ambiguity versus omissions
- § 8:59 Ambiguity—Techniques for resolution—Practical construction
- § 8:61 Ambiguity—Techniques for resolution—Contra proferentem
- § 8:66 Role of court and jury—Questions of law and fact
- § 8:68 Role of court and jury—Further observations and suggested approach
- § 8:69 Role of summary judgment—General rules
- § 8:71 Practice pointers

Table of Laws and Rules

Table of Cases

Volume 22

CHAPTER 9. CONDITIONS

PART I. TEXT

- § 9:1 Conditions defined
- § 9:2 Conditions defined—Further explained
- § 9:3 Promises distinguished
- § 9:6 Types of conditions—Conditions precedent
- § 9:8 Types of conditions—Conditions precedent—Additional illustrations
- § 9:11 Types of conditions—Conditions precedent—Contracts conditioned on satisfaction of party
- § 9:13 Additional rules of contract interpretation

CHAPTER 10. MODIFICATION AND MERGER

PART I. TEXT

- § 10:1 Introduction
- § 10:2 Modification—Further explained
- § 10:3 Modification—Mutual assent
- § 10:5 Modification—Formalities—Written modification requirement
- § 10:7 Modification—Formalities—Equitable estoppel
- § 10:8 Modification—Contract interpretation
- § 10:11 Merger—Elements
- § 10:12 Merger—Independent agreements distinguished

CHAPTER 11. PERFORMANCE, BREACH, AND DISCHARGE

PART I. TEXT

- § 11:1 Introduction
- § 11:2 Performance—Moral and legal aspects
- § 11:3 Performance—Dependent, independent, and concurrent promises
- § 11:6 Performance—Buyer's rights upon receipt of defective goods
- § 11:7 Performance—"Acceptance" and its effects under UCC—T.C.A. § 47-2-606
- § 11:9 Performance—"Acceptance" and its effects under UCC—T.C.A. § 47-2-608
- § 11:10 Breach—Defined
- § 11:11 Breach—Substantial performance
- § 11:12 Breach—"Material breach"
- § 11:13 Breach—"Material breach"—Tests
- § 11:14 Breach—"Material breach"—Illustrations
- § 11:15 Breach—"Material breach"—Rule of first uncured material breach
- § 11:16 Breach—Anticipatory repudiation—Definition, origins, and policy
- § 11:17 Breach—Anticipatory repudiation—Nature of repudiation
- § 11:19 Breach—Anticipatory repudiation—Injured party's choices
- § 11:24 Breach—Time of performance—Basic rules
- § 11:32 Breach—Burden of proof
- § 11:33 Breach—Procedural, evidentiary, and remedial aspects
- § 11:34 Breach—Defenses—Compliance with conditions
- § 11:37 Breach—Defenses—Impossibility of performance—Corollaries

TABLE OF CONTENTS

- § 11:38 Breach—Defenses—Impossibility of performance—Acts of God
- § 11:39 Breach—Defenses—Impossibility of performance—Death or disability of party
- § 11:42 Breach—Defenses—Frustration of purpose—Defined
- § 11:45 Breach—Defenses—Waiver of performance/breach
- § 11:46 Breach—Defenses—Waiver of performance/breach—Evidence and contract interpretation
- § 11:47 Breach—Defenses—Equitable estoppel
- § 11:52 Discharge—Accord and satisfaction—Relation to negotiable instruments
- § 11:54 Discharge—Release
- § 11:55 Discharge—Release—Enforceability
- § 11:56 Discharge—Release—Covenant not to sue compared
- § 11:61 Practice pointers

CHAPTER 12. ACTIONS FOR BREACH

PART I. TEXT

- § 12:1 In general
- § 12:3 Damages—Rule of fair compensation
- § 12:5 Damages—Expectation damages
- § 12:7 Damages—Requirement for certainty—Fact versus amount
- § 12:8 Damages—Requirement for certainty—Items other than profit
- § 12:10 Damages—Compensatory damages—Rule of *Hadley v. Baxendale*—Special versus general damages
- § 12:14 Damages—Compensatory damages—Standards for calculation—Applications
- § 12:15 Damages—Compensatory damages—Standards for calculation—Evidentiary issues
- § 12:16 Damages—Reliance interest
- § 12:17 Damages—Compensatory damages—UCC—Seller's remedies
- § 12:18 Damages—Compensatory damages—UCC—Buyer's remedies
- § 12:20 Damages—Breach of warranty—UCC—Express warranties
- § 12:21 Damages—Breach of warranty—UCC—Implied warranties—Merchantability
- § 12:22 Damages—Breach of warranty—UCC—Implied warranties—Fitness for particular purpose
- § 12:23 Damages—Breach of warranty—UCC—Exclusion or modification of warranties
- § 12:25 Damages—Compensatory damages—Profits
- § 12:26 Damages—Compensatory damages—Profits—Certainty/foreseeability requirements
- § 12:29 Damages—Nominal damages

TENNESSEE PRACTICE SERIES—CONTRACT LAW

- § 12:30 Damages—Punitive damages
- § 12:31 Damages—Punitive damages—Further explained
- § 12:32 Damages—Duty of mitigation
- § 12:34 Damages—Duty of mitigation—Illustrations
- § 12:37 Damages—Liquidated damages—Public policy restrictions
- § 12:40 Damages—Liquidated damages—*Guiliano v. Cleo's*
“prospective approach”
- § 12:44 Damages—Liquidated damages—Illustrations
- § 12:45 Damages—Prejudgment interest—Awards as matter of
discretion—“Interest” defined—Related issues
- § 12:46 Damages—Prejudgment interest—Awards as matter of
discretion—Guiding principles
- § 12:47 Damages—Prejudgment interest—Awards as matter of
right
- § 12:48 Damages—Attorney fees
- § 12:49 Damages—Jury instructions/verdicts
- § 12:50 Damages—Election of remedies
- § 12:51 Damages—Review of awards—In general
- § 12:55 Restitution—Defined
- § 12:56 Restitution—The varying applications
- § 12:62 Specific performance—In general
- § 12:64 Specific performance—Equitable principles
- § 12:65 Specific performance—Equitable principles—Inadequacy of
legal remedies
- § 12:67 Specific performance—Validity of contract
- § 12:69 Specific performance—Other defenses
- § 12:70 Specific performance—Land contracts—General policy
- § 12:71 Specific performance—Land contracts—Further explained
- § 12:72 Specific performance—Other contracts
- § 12:74 Specific performance—Concurrent availability of monetary
compensation
- § 12:75 Statutes of limitations—Definition and policy
- § 12:76 Statutes of limitations—Comparison to other concepts
- § 12:78 Statutes of limitations—Selection of statute
- § 12:79 Statutes of limitations—Selection of statute—Further
explained
- § 12:80 Statutes of limitations—Accrual
- § 12:81 Statutes of limitations—Accrual—Further explained
- § 12:82 Statutes of limitations—Tolling—Discovery rule
- § 12:83 Statutes of limitations—Tolling—Discovery rule—Particular
statutes
- § 12:84 Statutes of limitations—Tolling—Fraudulent concealment
- § 12:86 Statutes of limitations—Tolling—Defendant’s absence from
state
- § 12:87 Statutes of limitations—Tolling—Equitable estoppel/waiver/
equitable tolling
- § 12:89 Statutes of limitations—Savings statute
- § 12:91 Statutes of limitations—Procedural issues—Amended
pleadings

TABLE OF CONTENTS

§ 12:92 Practice pointers

CHAPTER 13. GOVERNMENT CONTRACTS

- § 13:1 Overview
- § 13:2 Statutes and rules
- § 13:3 Statutes and rules—Maxims of construction and implementation
- § 13:4 Statutes and rules—County Purchasing Law of 1957
- § 13:6 Statutes and rules—Local government authority
- § 13:8 Statutes and rules—Socioeconomic policies
- § 13:8.50 Law against boycotting Israel *[New]*
- § 13:11 Statutes and rules—Legality of contracts—Case law standards—Strict view
- § 13:12 Statutes and rules—Legality of contracts—Case law standards—Lenient view
- § 13:19 Procuring agencies—Procurement personnel
- § 13:59 Request for Proposal—Protests—Central Procurement Office—Timeliness and standing
- § 13:62 Request for Proposal—Protests—Central Procurement Office—Additional procedures
- § 13:63 Request for Proposal—Protests—Judicial actions—Scope of review/remedies
- § 13:64 Performance and administration
- § 13:65 Bonding—Payment bonds—Statutes and rules
- § 13:68 Bonding—Other bonds

CHAPTER 14. ARBITRATION

I. OVERVIEW

- § 14:1 Overview
- § 14:4 “Arbitration” defined, contrasted, and compared

II. TUAA POLICY AND RELATION TO THE FEDERAL ARBITRATION ACT

- § 14:6 Arbitration policy—The changing perspective
- § 14:7 Arbitration policy—TUAA’s objectives
- § 14:12 Federal arbitration policy—Need for judicial economy
- § 14:13 The FAA and Federalism
- § 14:15 The FAA and Federalism—Reach of the statute
- § 14:16 The FAA and Federalism—Federal/State law conflicts
- § 14:17 The FAA and Federalism—Federal/State law conflicts—Some illustrations
- § 14:18 TUAA, FAA and arbitrability

III. TUAA AGREEMENTS, AWARDS, AND RELATED PROCEDURES

- § 14:20 TUAA-covered agreements—Overview
- § 14:21 TUAA-covered agreements—Treatment of invalid, unenforceable or revocable contracts
- § 14:22 TUAA-covered agreements—Treatment of invalid, unenforceable or revocable contracts—Unconscionability
- § 14:23 Judicial enforcement of TUAA arbitration agreements—Overview
- § 14:24 Judicial enforcement of TUAA arbitration agreements—Motions to compel arbitration—Arbitrability
- § 14:25 Judicial enforcement of TUAA arbitration agreements—Waiver of arbitration
- § 14:27 Pre-hearing matters and arbitration hearings
- § 14:28 Arbitration awards
- § 14:29 Vacatur or modification of awards—Overview
- § 14:30 The appellate courts and appealable matters

IV. TUAA GROUNDS FOR VACATUR

- § 14:31 “Vacatur” explained
- § 14:32 Record review in vacatur cases
- § 14:35 Grounds for vacatur—Evident partiality by an appointed neutral arbitrator or corruption in any arbitrators or misconduct prejudicing the rights of any party (T.C.A. § 29-5-313(a)(1)(B))
- § 14:36 Grounds for vacatur—The arbitrators exceeded their powers (T.C.A. § 29-5-313(a)(1)(C))
- § 14:40 Grounds for vacatur—“Manifest disregard of the law”

V. CRITIQUE OF TENNESSEE ARBITRATION LAW AND PRACTICE

- § 14:42 The superiority of arbitration over litigation: Fact or fiction?
- § 14:45 Transcripts and findings of fact/conclusions of law
- § 14:48 TUAA and attorney fees
- § 14:49 Misreading “exceeding” arbitrator “powers”
- § 14:51 Judicial interpretation of arbitration contracts: Question of law or fact?
- § 14:54 Manifest disregard of the law
- § 14:55 The FAA and TUAA on separability: A recipe for confusion

Table of Laws and Rules

Table of Cases