

## CONTRACTUAL DEFECTS

### Overview

- A **defective contract** is flawed in its information.
- The question is whether there is a contract to enforce.
- A defective contract is not the same as a contract that is breached.
- A contract that is breached is not flawed; rather, one or more parties to the contract is not performing its obligations.

### Incapacity to Contract

- **Incapacity** concerns the legal authority of a person to enter a contract.
- Legally capacity to contract can be challenged on various grounds:
  1. **Age (Minors)**: The law provides that those who are minors lack legal capacity and can void (rescind) contracts. The exceptions to these are for:
    - (1) Contracts for the “necessities of life” (e.g., shelter, food, clothing)
    - (2) Employment contracts
  2. **Mental Incapability**: If a person has been legally declared to lack mental capacity, their contracts are void and not enforceable.
  3. **Intoxication**: A contract entered into while one of the parties is intoxicated may be voided provided.
    - (1) The intoxicated party could not appreciate what they were doing
    - (2) The other party(s) were aware of the intoxication
    - (3) Once sober, the intoxicated party promptly voids the contract
  4. **Corporations versus Associations**: Associations (unincorporated organizations) do not have independent legal capacity, so a member who contracts on its behalf has legal liability for the contract.
  5. **Indian Band**: An Indian Band is a body of Indigenous people whose land and money are held by the crown. Generally, Indigenous people can contract, with the exception of those who are legally deemed an “Indian” under the Indian Act. For those who are subject to the Indian Act, their reserve property cannot be used as a security for credit transactions nor transferred to another band member without the Crown’s consent.
  6. **Public Authorities**: Those acting on behalf of the government have legal authority to contract, subject to the public authority acting within its constitutional powers.

### Absence of Writing

- Contracts may be verbal or written.
- However, there are two exceptions:
  1. **Statute of Frauds:** It requires certain types of contracts to be written to minimize instances of fraud. It is required for:
    - (1) Contracts for the sale of an interest in land
    - (2) Leases for more than three years
    - (3) Guarantees
    - (4) Declarations or creations of trusts of land
  2. **Consumer Protection:** Statutes to protect the consumer require agreements to be written and (sometimes) that a copy be provided to the consumer.

### Mistake

- A contract requires a “meeting of the minds:” all parties must share an intention for a particular and enforceable transaction under certain terms and conditions.
- There are three types of mistakes:
  1. Mistakes preventing contract creation
  2. Mistakes rendering impossible the contract’s purpose
  3. Documents mistakenly signed

### **Mistake Preventing Contract Creation**

- **Mistaken Identity:** A mistake as to the identity of the other party does not necessarily render a contract defective or unenforceable. The relevant questions are:
  1. Did the other party know of the mistaken identity?
  2. Was the mistake “material” (i.e., important)?
- **Mistake about Subject Matter:** A mutual mistake occurs regarding the subject matter of the agreement. It must be “material” and have a meaningful effect on the performance of the contract.

### **Mistake Rendering Impossible the Contract’s Purpose**

- **Mistaken about Existence of Subject Matter:** A mistake made by all parties to the contract (e.g., a group making a mistake about the existence of a lease on a house).

### Contract Frustration

- **Frustration** concerns circumstances or events after contract formation, rendering its performance impossible or profoundly different from what was agreed to.
- The contract is automatically terminated at the moment of frustration.
- The rights and obligations accrued before the frustration remain enforceable.

## The Protection of Weaker Parties

- The **Protection of Weaker Parties** concerns the circumstances under which the law will not hold weaker parties to their bargain:
  1. **Duress**: The ***Duress of Person*** is violence or threat of physical violence; the ***Duress of Goods*** is a seizure of another party's goods from a contract; ***Economic Duress*** is a contractual entered into as a consequence of threatened financial harm.
  2. **Undue Influence**: There are two ways to establish it:
    - (1) Proof of actual undue influence on a choice made by a party
    - (2) Proof of a special or fiduciary relationship between the parties that raises the presumption that undue influence was exerted
  3. **Unconscionability**: An unconscionable transaction is an agreement that is manifestly unfair and one-sided. If the following elements are present, the contract is unconscionable:
    - (1) Improvident bargain (i.e., one lacking foresight)
    - (2) Inequality in bargaining positions