

CONTRACTS JURY INSTRUCTIONS OUTLINE

5.00 Overview of Elements

5.01 Formation of a Binding Contract

- I. Offer and Acceptance
- II. Consideration
- III. Supplemental Instructions
 - A. Substitution for Consideration: Detrimental Reliance
 - B. Revocation of Offer
 - C. Rejection of Offer
 - D. Counter-Offer
 - E. Duration of Offer

5.02 Terms of A Contract

- I. Implied Covenant of Good Faith and Fair Dealing
- II. Modification
- III. Parol Evidence
 - A. Unambiguous Terms
 - B. Ambiguous Terms
- IV. Express Warranties in the Sale of Goods (Uniform Commercial Code)
- V. Implied Warranties in the Sale of Goods (Uniform Commercial Code)
 - A. Claim of Breach of Implied Warranty of Merchantability (G.L. c. 106, § 2-214)
 - B. Claim of Breach of Implied Warranty of Merchantability – Duty to Warn (G.L. c. 106, § 2-214)
 - C. Claim of Breach of Implied Warranty of Fitness for a Particular Purpose (G.L. c. 106, § 2-215)
- VI. Warranty Disclaimers and Modifications (G.L. c. 106, § 2-316)
 - A. Disclaimer or Modification of Implied Warranty of Merchantability
 - B. Disclaimer or Modification of Implied Warranty of Fitness of Purpose (G.L. c. 106 § 2-316(2))
 - C. Additional Way to Disclaim or Modify Implied Warranties for Cases that Do Not Involve Consumer Goods (G.L. c. 106, § 2-136(3))

5.03 Performance

- I. Time For Performance
- II. Performance to Plaintiff's Satisfaction
- III. Performance by Defendant
- IV. Anticipatory Breach

5.04 Contract Substitutes

- I. Quantum Meruit
- II. Third Party Beneficiary

5.05 Defenses

- I. Misrepresentation/Fraud
 - A. Fraudulent Misrepresentation
 - B. Negligent Misrepresentation
 - C. Innocent Misrepresentation
- II. Conditions Precedent
- III. Mistake
 - A. Mutual Mistake
 - B. Unilateral Mistake
- IV. Waiver
- V. Duress
- VI. Mental Capacity
- VII. Rescission
 - A. Mutual Rescission
 - B. Unilateral Rescission
- VIII. Impossibility of Performance
- IX. Frustration of Purpose
- X. Illegality
- XI. Undue Influence
- XII. Breach of Implied Duty of Good Faith and Fair Dealing

5.06 Material Breach of Contract: Remedies; Excuse from Performance

5.07 Damages

Introduction

- I. General Damages – Expectation Damages
 - A. Alternatives to Expectation Damages
 - 1. Reliance Damages
 - 2. Restitution
- II. General Damages – Consequential Damages
 - A. Lost Profits
- III. Construction Contracts
 - A. Damages Against a Contractor
 - 1. Work Not Fully Performed
 - 2. Defective Work
 - 3. Delay in Completion of Construction

- B. Damages Available to a Contractor
- IV. Real Estate Seller and Buyer
 - A. Seller's Damages
 - B. Buyer's Damages
- V. Damages Under the Uniform Commercial Code
 - A. Seller's Remedies
 - 1. Unfinished Goods
 - 2. Resale
 - 3. Contract-Market Price
 - B. Buyer's Remedies
 - 1. Cover Costs
 - 2. Contract-Market Price
 - 3. Warranty Damages
- VI. Employment Contracts
- VII. Liquidated Damages
- VIII. Nominal Damages
- IX. Delay Damages
- X. Limitation on Damages
- XI. Mitigation of Damages

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