10-24-2026 | Lecture 9 - Modification, Fraud, Misrepresentation and Integrated Agreements

Under Restatement (Second) of Contracts § 89, when is a modification of a partially performed contract binding without consideration?	When it is fair and equitable in light of unanticipated circumstances, allowed by statute, or necessary to prevent injustice due to material reliance.
Under UCC § 2-209(1), is separate consideration required to enforce a contract modification?	No, an agreement modifying a contract within UCC Article 2 needs no consideration to be binding.
What statutory requirement must a modified contract satisfy under UCC § 2-209?	The requirements of the Statute of Frauds.

What is the legal effect of an oral modification when the contract contains an enforceable 'no modification clause'?	The oral modification is unenforceable as a modification, but it can operate as a waiver.
Under UCC § 2-209, under what condition may a party retract an executory waiver?	By giving reasonable notice, provided the other party has not materially changed position in reliance on the waiver.
What standard governs contract modifications under the UCC in lieu of consideration?	Good faith, requiring legitimate commercial reasons for seeking the modification.
What is contract rescission?	An equitable remedy that unmakes or undoes a contract, restoring the parties to their pre-contractual positions.

Name four traditional equitable grounds for requesting contract rescission.	Misrepresentation, mistake, duress, or undue influence.
Does every case involving a pre-existing duty automatically entail duress?	No; while pre-existing duty issues often overlap with duress, not all pre-existing duty cases involve legal duress.
What defines undue influence in contract law?	Untoward bargaining tactics and pressure exerted against a vulnerable party that fall short of fraud or duress.
What two essential elements must be established to prove undue influence?	(1) Unfair persuasion was used (2) against a vulnerable party.

Identify three forms of party vulnerability that satisfy the vulnerability element of undue influence.	Mental infirmity short of incompetence, vulnerability due to recent trauma, or reliance based on a relationship of trust/confidence.
What is the primary contractual remedy for an agreement executed under undue influence?	The contract is voidable at the option of the aggrieved party.
What restitution obligation applies when a party avoids a contract due to undue influence?	The aggrieved party is entitled to restitution of benefits conferred, but must return any value received in excess of those benefits.
When a third party exerts undue influence, under what conditions is the contract NOT voidable by the victim?	If the other contracting party gives value or materially relies on the transaction, AND acts in good faith without knowledge of the undue influence.

Is the defense of common law undue influence available in transactions governed by the UCC?	Yes, common law undue influence applies as a supplementary provision under the UCC.
What constitutes concealment in contract law?	An affirmative act intended or known to be likely to prevent another party from discovering a material fact.
How does contract law treat an affirmative act of concealment?	An affirmative act of concealment is legally equivalent to an affirmative misrepresentation.
Under what condition does non-disclosure of a material fact justify nullifying a contract?	When the fact could not have been known by the other party and the concealing party knew it was material.

What is misrepresentation in contract law?	An intentionally or negligently false representation made verbally, by conduct, or by non-disclosure/concealment that induces detrimental reliance.
What defines fraudulent misrepresentation?	A false representation made deceitfully, with knowledge of its falsity or reckless indifference to its truth.
What defines negligent misrepresentation?	A careless false statement made where it is reasonable that the recipient will rely upon it.
What defines innocent misrepresentation?	A false statement made with an honest belief in its truth and justifiable grounds for that belief.

What general categories of remedies are available for contract misrepresentation?	Rescission and damages (including compensatory or punitive tort damages when applicable).
How do disclosure duties apply to seller knowledge regarding latent issues under caveat emptor?	Sellers must disclose material facts known to them that are latent or not readily observable by reasonable inspection.
List the six legal elements required to prove fraudulent misrepresentation.	(1) Representation (2) material to transaction (3) made falsely with knowledge/recklessness (4) intent to mislead (5) reliance (6) resulting harm.
How is misrepresentation used as a 'shield' in contract litigation?	As an affirmative defense to resist enforcement of an executory contract.

How is misrepresentation used as a 'sword' in legal claims?	As the legal basis for an affirmative tort claim seeking monetary damages.
To support an actionable misrepresentation claim, what subject matter must the statement address?	Existing facts, rather than future conduct, actions, or ungrounded opinions.
What must a victimized party do with performance received if a partially executed contract is rescinded for misrepresentation?	Provide restitution of benefits received to the performing party to prevent unjust enrichment.
How do contract misrepresentation remedies differ fundamentally from tort misrepresentation remedies?	Contract remedies focus on avoidance and rescission, while tort remedies allow recovery of monetary damages for harm caused.

What three requirements must a party prove to rescind a contract based on misrepresentation?	(1) Actionable act of deception (2) materiality or intent to deceive (3) justified reliance on the deception.
What acts qualify as deceptive acts satisfying the first element of contract rescission for misrepresentation?	An affirmative false statement or an affirmative act of concealment.
What constitutes fraudulent non-disclosure?	A defendant's intentional silence regarding a fact when under a legal duty to disclose it.
How does promissory fraud differ from a simple breach of contract?	A simple breach is non-performance of a promise; promissory fraud is making a promise with no present intent to perform.

What remedies are recoverable for promissory fraud that are unavailable in simple breach of contract?	Tort remedies, including punitive damages in addition to compensatory damages.
What does 'dissembling' mean in bargaining transactions?	Concealing true facts, feelings, or intentions under a false appearance to mislead others through trickery.
Under UCC § 2-316(3)(a), what is the legal effect of selling goods 'as is'?	It excludes all implied warranties, transferring the risk of quality to the buyer.
What is fraud in the inducement?	Deceit or trickery used to mislead a party about facts, causing them to enter into a transaction to their detriment.

What three analytical steps determine contractual obligations in Chapter 5 of contract law?	(1) Determining the agreement in fact, (2) interpreting the agreement, and (3) determining content added by law.
How does UCC § 1-201 define 'agreement'?	The bargain of the parties in fact, as found in their language or inferred from other circumstances.
How does UCC § 1-201 define 'contract'?	The total legal obligation resulting from the parties' agreement as determined by applicable legal rules.
Name three elements of commercial context used to interpret contract obligations.	Course of dealing, usage of trade, and course of performance.

What three core questions structure the analysis of the Parol Evidence Rule?	(1) What is the scope of the rule? (2) What is the level of integration? (3) What consistent terms fit if partially complete?
What is the primary function of the Parol Evidence Rule?	It excludes prior written/oral or contemporaneous oral agreements that contradict, modify, or vary a completely integrated writing.
What presumption arises when a written contract contains a merger (integration) clause?	A presumption that the written contract is a complete and final expression of the parties' agreement.
Does the Parol Evidence Rule apply exclusively to oral ('parol') evidence?	No; despite its name, the rule applies to prior written agreements as well as prior or contemporaneous oral agreements.

Is the Parol Evidence Rule a rule of evidence or a rule of substantive law?	It is a rule of substantive law.
What defines a completely integrated contract?	A written agreement intended by the parties as a complete and exclusive statement of all terms.
What defines a partially integrated contract?	A writing intended as a final expression of the specific terms included, but not as a complete statement of all agreed terms.
What extrinsic terms may be admitted to supplement a partially integrated contract under the Parol Evidence Rule?	Consistent additional terms that do not contradict the terms finalized in the writing.

May extrinsic evidence be introduced to contradict express terms in a partially integrated writing?	No, extrinsic evidence cannot contradict terms that have been finalized in the writing.
Does the Parol Evidence Rule bar extrinsic evidence introduced to interpret an ambiguous contract term?	No, evidence offered to clarify or interpret ambiguous writing is outside the bar of the Parol Evidence Rule.
Does the Parol Evidence Rule preclude extrinsic evidence offered to prove contract invalidity due to fraud or duress?	No, the rule does not bar evidence offered to prove illegality, fraud, duress, lack of consideration, or unconscionability.
What is a 'scrivener's error' (vitium clerici) in contract drafting?	A typographical or clerical mistake resulting in a written document incorrectly reflecting a prior valid agreement.

What standard of proof is required to show a scrivener's error for contract reformation?	Clear, convincing, and precise evidence.
Does the Parol Evidence Rule apply to agreements or modifications entered into AFTER execution of the written contract?	No, the Parol Evidence Rule applies only to prior agreements or contemporaneous oral agreements, not to subsequent modifications.
How does the Parol Evidence Rule handle evidence of an unfulfilled condition precedent?	Extrinsic evidence is admissible to show a condition precedent that had to occur before contractual performance became due.
Under UCC § 2-202, how may a written sales contract be explained or supplemented even if fully integrated?	By course of dealing, usage of trade, or course of performance.

Under UCC § 2-202(b), when may evidence of consistent additional terms supplement a written contract?	Unless the court finds the writing was intended as a complete and exclusive statement of all contract terms.
What is 'course of dealing' under the UCC?	A sequence of conduct concerning previous transactions that establishes a common basis for interpreting contract terms.
What is 'usage of trade' under the UCC?	A practice or method of dealing regularly observed in a place, vocation, or trade justifying expectation of observance in the transaction.
What is 'course of performance' under the UCC?	A sequence of conduct between parties under the current agreement involving repeated performance accepted without objection.

Under Restatement (Second) of Contracts § 216(1), when is evidence of a consistent additional term admissible?	To supplement an integrated agreement, provided the court does not find the agreement completely integrated.
Under Restatement (Second) § 216(2), name two circumstances where an agreement is NOT completely integrated despite omitting an agreed term.	When the omitted term was agreed to for separate consideration, or is a term that might naturally be omitted from the writing.
What is the legal impact of the 'naturally omitted term' rule under Restatement (Second) § 216(2)(b)?	If a term would naturally be left out of the writing, its omission does not prevent introduction of parol evidence to establish the term.
Under Restatement (Second) § 216, Comment d, if an omitted term seems natural under the circumstances, what inquiry is bypassed?	It is unnecessary to further analyze complete integration or whether the term falls within the writing's scope.

Does a side agreement that contradicts the main written contract escape the Parol Evidence Rule?	No, a related side agreement is admissible only if it does not contradict or change the terms of the main written contract.
When interpretation of an agreement depends on credibility or choices among reasonable inferences, who resolves the question?	The trier of fact (it is treated as a question of fact).
Can an oral modification function as a waiver under UCC § 2-209 even if a 'no oral modification' clause exists?	Yes, an attempt at modification that fails to satisfy a 'no modification' clause can still operate as a waiver.
What constitutes an affirmative act of deception sufficient for contract rescission?	An explicit false statement or an active attempt to conceal a material fact.

How does contract law define 'materiality' in the context of misrepresentation?	A representation is material if it would likely induce a reasonable person to manifest assent or if the maker knows it will induce assent.
What is the standard for justified reliance in misrepresentation claims?	The victimized party must have actually relied on the misrepresentation and such reliance must have been reasonable under the circumstances.
Why does law distinguish promissory fraud from standard breach of promise?	Dissembling intent at contract inception is inherently deceptive, warranting tort remedies beyond contractual expectation damages.
Under the Parol Evidence Rule, what role does a merger clause play regarding integration status?	It provides strong evidence that the document was intended to be the final and exclusive statement of the agreement.