

CHAPTER 1

INTRODUCTION: BASIC CONCEPTS

1.1 OVERVIEW

The goal of this book is to provide practicing New Jersey attorneys with a guide to the structure, questions and concepts of New Jersey contract law. New Jersey's appellate courts have a rich tradition of innovation in this area of the law, which has led some to argue that New Jersey courts will permit virtually any set of facts to be construed as a contract or quasi-contract, and that any evidence will be admissible to enhance understanding of the agreement. Nonetheless, as the following chapters explain, there are still 'rules' that define what a contract is, how it is formed, how it is to be interpreted, how background or parol evidence is to be utilized, when quasi-contract or "contract substitute" claims (as defined below) are permitted, and what damages will flow from a breach.

While one can imagine a more comprehensive treatment of any one of the many topics discussed below, this book seeks to cover every major aspect of New Jersey contract law and some related statutory topics in some depth. General rules are set forth, exceptions are enumerated, citations are provided, and, when necessary or helpful to illustrate a particularly fine or complex point, examples from case law are presented.

The common law is the primary source of contract law, and thus dominates most chapters. However, because of its significance in commercial transactions, the Uniform Commercial Code ("UCC"), codified in New Jersey under *N.J.S.A. 12A:1-101 et seq.*, is also a prevalent topic herein. Other relevant statutes are cited.

New Jersey's Model Civil Jury Charges¹ are also weighty items to cite, because they (1) are approved by New Jersey's Supreme Court, and (2) contain case citations.

Every effort has been made to keep this book as up-to-date as possible. Where the law on a particular topic is particularly dated because few, if any, decisions have been rendered on it in the last few decades, the reader is encouraged to look for any recent decisions that might have been issued after this book was published.

In dealing with any issue of contract law, the reader's attention is also called to some of the leading contract law treatises; including Williston, *Treatise on the Law of Contracts*, and Corbin on *Contracts*. The *Restatement (Second) of Contracts* is also invaluable, respected, and frequently cited by New Jersey courts.

Another well-regarded general overview of contract law cited at times in this book is Marvin A. Chirelstein, *Concepts and Case Analysis in the Law of Contracts* (Foundation Press 2006). While Professor Chirelstein's book is not specific to New Jersey, a few noteworthy New Jersey contracts cases are discussed therein in depth, including *Henningsen v. Bloomfield Motors, Inc.*, 32 N.J. 358 (1960); *Wasserman's Inc. v. Township of Middletown*, 137 N.J. 238 (1994); *Beachcomber Coins, Inc. v. Boskett*, 166 N.J. Super. 442 (App. Div. 1979); and *Kehoe*

¹ Each (below), a "Model Charge". Citations in the text may refer to the date each *Model Charge* was adopted or substantively revised.

v. Borough of Rutherford, 56 N.J.L. 23 (Sup. Ct. 1893). Professor Chirelstein, a former Rutgers-Newark Law School instructor and one of America's foremost tax law scholars, wrote the book as a law school guide. However, because his treatise takes considerable time to point out flaws in many of the cases he discusses, it is a useful resource for any lawyer, especially if your adversary is citing one of the aforementioned cases.

The reader's attention is also called to other important treatises for specific types of matters. For example, NJICLE's "Guidebook to Chancery Practice in New Jersey" (Eighth Edition), authored by the Honorable William A. Dreier, Paul A. Rowe, Esq. and Andrea J. Sullivan, Esq., is an invaluable resource when researching remedies in the types of Chancery matters that often arise in commercial contract disputes.

The remainder of this Chapter outlines contract law generally.

1.2 DEFINITION OF A CONTRACT

A contract is a voluntary obligation proceeding from a common intention arising from an offer and acceptance. *Johnson & Johnson v. Charmley Drug Co.*, 11 N.J. 526, 539 (1953). In a disputed matter, the plaintiff must prove that "the parties entered into a contract containing certain terms", that the plaintiff performed, that a defendant did not perform, and that a loss resulted. *Globe Motor Co. v. Igdalve*, 225 N.J. 469, 482 (2016), citing *N.J. Model Charge (Civil)* ("Model Charge"), Section 4.10A, "The Contract Claim-Generally".² The term "contract" is essentially synonymous with "agreement," but one which is enforceable. *See, Silvestri v. Optus Software, Inc.*, 175 N.J. 113, 121 (2003).³ Any "exchange relationship, even the simplest transaction, is based on an agreement between the parties, and we naturally expect--though without thinking about it unless we have to--that legal rules in some way provide assurance that the agreement will be honored." Marvin A. Chirelstein, *Concepts and Cases in the Law of Contracts* 1 (2006).

Many of the specific legal rules governing contracts are "default provisions"; the parties are by no means bound to adopt those rules, and if their particular interests dictate otherwise, then, with certain exceptions (many statutory), they are free to create their own "rules" by explicit contractual provision. *Id.* at 11. While the parties' freedom in this area is not unlimited, as is discussed later in this book, parties can either accept or "contract around" most of the default rules. *Id.*

1.2.1 QUASI-CONTRACT AND "CONTRACT-SUBSTITUTE" CLAIMS DISTINGUISHED

Contract claims must be distinguished from other claims frequently appearing in litigation relating to contracts. In the chapters that follow, these claims are referred to in two basic categories:

- A. Quasi-contract claims, which mimic contract claims but involve either (1) missing

² Another formulation from an earlier version of the *Model Charges*, Section 4.10L, "Bilateral Contracts-Generally", is that a contract is (1) an exchange of promises, oral or written, constituting an agreement to do, or not to do, a particular thing which (2) is enforceable by law.

³ Other closely related terms with different shades of meaning include "understanding", "deal", and "transaction."

contract elements, or (2) other issues potentially precluding a strict contract claim. The most frequent examples (discussed below) are probably (a) promissory estoppel; and (b) *quantum meruit*, involving compensation for the value of services provided (or, when *goods* are involved, sometimes the term *quantum valebant* is employed). “Unjust enrichment” is another concept, which shares some elements with *quantum meruit*.

B. “Contract-substitute” claims. That term, as used in this book, encompasses tort or other claims arising in contract situations, including claims potentially involving third parties. Frequently, these claims are pleading along with contract and quasi-contract claims. This would encompass claims such as tortious interference, malpractice, fraud, civil conspiracy, the oppressed minority shareholder statute, *N.J.S.A. 14A:12-7*, the New Jersey Consumer Fraud Act (“CFA”), the New Jersey Law Agreement Discrimination, the New Jersey Trade Secrets Act, the New Jersey Insurance Fraud Prevention Act, the Racketeer Influenced and Corrupt Organizations Act (“RICO”) (state or federal), antitrust claims (state or federal), etc. Moreover, many types of cases that arise from contractual relationships are presented in ways that hardly mention contract principles; *e.g.*, malpractice claims and many types of class actions.

1.2.2 DIFFERENCES BETWEEN COMMERCIAL AND CONSUMER CLAIMS

Although the basic principles are the same, different outcomes are sometimes seen when dealing with consumer claims as opposed to commercial disputes. This may turn upon a variety of factors, such as:

1. Are there applicable statutory consumer protections, such as federal or state rules on credit or disclosure? Does the CFA apply? (Note that the CFA may be applicable to certain commercial transactions as well⁴.) Other types of statutes available in consumer but not commercial settings include: (a) the Magnuson-Moss Warranty-Federal Trade Commission Trade Improvement Act, 15 U.S.C. §2301 *et seq*; and (b) the New Jersey Motor Vehicle Lemon Law. For an interesting application of the Magnuson-Moss Act and the New Jersey Motor Vehicle Lemon law, *see, Fedor v. Nissan of North America, Inc.*, 432 N.J. Super. 303 (App. Div. 2013), *certif. den.* 217 N.J. 52 (2014).

2. Are there unconscionability factors more applicable to consumer than commercial transactions?

3. Might there be a greater likelihood of duress, fraud, mistake, or the like when dealing with certain categories of unsophisticated consumers?

⁴ This issue is discussed in subsequent chapters. For example, in *Princeton Healthcare System v. Netsmart New York, Inc.*, 422 N.J. Super. 467, 472 (App. Div. 2011), the Court explained that under some circumstances, “a corporation may maintain an action for a violation of the CFA.” If the merchandise or services are marketed to “the public at large” a business may have as much standing to sue for consumer fraud as an individual--but only if the merchandise or services are ‘generally available to the public’ (a term encompassing both consumer and business), *i.e.*, a *fairly standardized* offering and not for individualized services or products arranged or tailored for a particular business. Obviously, the divide is somewhat vague--especially when dealing with services, which often have to be adapted; but the test seems manageable in most contexts.