I. What are the goals of Contract Law? Expectancy, Reliance, NOT PUNITIVE

Two Main Remedies for Expectancy:

- **Cost of Completion** (for the willful br of a "construction" K): gives expectancy, encourages P, deters Br
  - *Groves*: C/c is the only appropriate remedy in a willful br of construction K even if the c/c is grossly disproportionate to the fmv of result of P
    - Groves majority ct. does not want to determine whether the land has an aesthetic, personal value or whether the land will be put to the use purported
  - **Mrkt Price- K price** (For the willful br of a K for the sale and delivery of goods)
    - *Acme Mills*: vendor br K; vendee wants to use as the measure of D= sale price to X- K price the standard for D for a vendor who br K with vendee is mrkt price at delivery date and place - K price- this measure places vendee in expectancy position
    - This standard might encourage vendor br, because vendor can br and sell goods at higher, mrkt price
      - Efficient Br.: A Br. Is efficient if the party contemplating br evaluates his gains at a higher figure than the value that the other party puts on his losses -if the party contemplating br will gain enough form the br to have a net benefit to compensate other party for resulting loss-this loss is based on subjective preferences
      - But cts. don't look at intangibles or subjective preferences!
      - Seller's expectancy when vendee br: K price- mrkt price
  - **Diminution in Value**: Reliance, encourages P, deters br- does not give value of literal expectancy, but gives the value of what P of the K gives to fmv of land
    - **PeevyHouse**: Dim. in value is the appropriate standard for D in willful br of K where c/c is grossly disproportionate to fmv of P regardless of whether end result of P has aesthetic or monetary value to ¶
      - *Peevyhouse* seems unfair because a contingency of signing the K was that the land would be patched up after mining - obvious signal of personal aesthetic value
    - **Advanced v. Wilks**: c/c if P produces something with personal or aesthetic value to ¶; dim. in value if the purpose of P of K was to increase market value and make money; the crt. must determine what the ¶ really intends to do with the D
    - **Laurin v. DeCarolis**: buyers of land were entitled to recover under br of K that measure of D was the fmv of property removed- seller's cost in removing it- regardless of whether the removal of the property did not decrease the fmv of land and regardless of whether buyers were going to do anything with the property
II. Limits to Expectancy Damages

1. Doctrine of Avoidable Consequences

- Doctrine of Avoidable Consequences (DoAC): don't aggravate one's D; one can only recover for unavoidable losses
  - *Rockingham County v. Luten Bridge*: the county br construction K, Luten P and wants to recover the K price; D are measured *expenses incurred up until the point of br + profit from completion of K* -
    - how is profit determined?
    - **Profit**: K price- expenses saved
    - Expenses saved= variable, not fixed costs- one can recover their fixed costs
    - If Luten had stopped work and shifted to another project, what would they get? ASK GREENFIELD
  - Note:
    - *Leingang*: Yearly profit margin is not an appropriate measure of D, overhead costs are not included in calculating profit
    - *Kearsarge*: overhead costs are not included in profit; can't reduce D based on entering a new K after the br unless the new K would not have been possible w/o the Br
  - However, the measure of recovery if one keeps performing or if one discontinues performance after the br is *exactly the same*

- Doctrine of avoidable consequences: employment (*Parker v. Fox*)-encourages employee productivity
  - If the other employment offer is different or inferior then one can recover all losses, because they couldn’t have reasonably avoided these losses by taking comparable employment; If the other offer is comparable then she can't recover for the K price because she could have avoided additional losses- here avoiding losses means the affirmative act of seeking new employment
  - However, if Parker stars in another movie or is employed as a dishwasher-
    - *IF PARKER WORKS*, the crts. would calculate D to be K price- money earned from other work-strict expectancy
      - If Parker sits at home, and could be employed as a dishwasher but chooses not to (it is different & inferior work), the D have **no deduction** taken out from them
  - *dissent*: the different and inferior employment issue is a question of fact
    - *Billetter*: If a discharged employee is offered by same employer the same exact employment at a lower salary, they can refuse said 2nd offer and recover D under the 1st offer- also, can't deduct unemployment checks

- DoAC: *Missouri Furnace*: in forward K for the sale of goods and services, the upper limit on ¶'s recovery is the cost of substitute P not incidental expenses incurred from br- incidental losses could have been avoided by entering into a daily transaction, paying mrkt price everyday
  - Expectancy: forward K, fixed cost $1.20, one transaction
  - If there is a br of a forward K at a fixed price the non-br party can't recover D= new forward K- original forward K, because there is no
obligation to enter forward contracts- entering into a new forward K is not a way to mitigate D
  o Ct. says Enter forward k at your own risk- but this seems unfair- vendee made good faith effort, shopped around, tried to get good deal- ct. is discourages K formation-¶ is asking for expectancy= new K price- old K price- ct. is asking ¶ to take on tarsnatcion costs
  o Reliance Coop. v. Treat: there is no "duty" to mitigate until there are D to mitigate- Reliance, after hearing Treat would br, had no reason to mitigate and buy new staves until the date of delivery with Treat as specified in K- anticipatory repudiation- you can sue now, or sue at the time of performance

• Change in DoAC for situation like Missouri Furnace,Reliance- UCC code
  o UCC- after a br, a buyer can cover- look to the substitute price for D and not the mrkt price
  o If a substitute transaction is made in good faith w/o unreasonable delay- this helped determine D
  o If a buyer does not cover or chooses not to, there are other remedies, including mrkt price
  o Seller's Expectancy for a vendor with a supply greater than demand (retail, bulk, volume seller): Neri v. Retail Marine: buyer who br- seller is entitled to profit from the boat + incidental D +fixed costs, regardless of whether the boat was sold- there is a loss because the seller would have sold two boats, not one, since he is in retail- mrkt standard need not apply

• Foreseeability
  o Hadley v. Baxendale: Responsible both for natural consequences of a br of this type of K, and for those that don't arise naturally, but arise out of special circumstances of the K if special circumstances are communicated at the time of K formation- responsible for all reasonably foreseeable consequences of the br
    ▪ Lampkins- tacit assent test- foreseeable D aren't recoverable if ▲ wouldn't assent knowing the special circumstances-UCC Art. 2 rejects this
    ▪ Victoria Laundry Ltd. V, Newman Industries- A commercial boiler is necessary for doing laundry and the only purpose it would serve is to function for commercial purposes- they could have reasonably foreseen that delaying a boiler to a launder would make the launder lose money.
    ▪ Hector Martinez v. Southern Pacific Transp.- a ¶ must not show "the most foreseeable of possible harms"…it is enough to show that a harm "was not so remote as to make it unforeseeable to a reasonable person at the time of contracting"
  o Mental distress: Valentine v. General American Credit: Even if mental distress is a foreseeable result of a br of K, and perhaps can be compensable, mental distress D are not awarded to people under K law, with the exception of K with purely non-economic promises-same thing with house K-Hancock v. Northcutt
III. Reliance and Restitution

- Reliance
  - Dempsey - Note: Can only get after K before br D
    - Loss of profits, expenses incurred prior to K, expense incurred in
      resining ▲, expense incurred after K before br
    - Loss of Profits: Even though loss of profits are foreseeable by
      both parties as result of br and couldn’t have been avoided,
      recovery is denied because D were considered purely speculative
    - Higher Standard of proof for determining D for lost expected
      profits-Standard: "reasonable degree of certainty"- that's why
      intangibles, transaction costs are never claimed D, because they
      cannot be proved with reas. degree of certainty
    - Because of the uncertainty, we can't award expectancy!
      - Victoria Laundry: data from years of generating stable
        profits made this case able to pass the higher standard of
        proof:"reas. Degree of certainty"
    - Recovery for expenses made of furthering performance- under
      reliance these expenditures are recoverable- they are expenditures
      made in reliance on the K (this should include FC)
  - Special expenses in the furtherance of performance
    - Security Stowe: regular employees of the company were
      compensated for their time- president went to installation-
      is president's salary the result of his position or is it a
      special expense incurred in furthering P?
    - Anglia- ct. says one must choose in reliance D between lost
      profits and wasted expenditures- WRONG- one can
      recover under reliance for both wasted expenditures
      (includes fixed overhead) + lost profits (under higher
      standard of proof)
  - Expenses incurred prior to K
    - Dempsey: can't rely on a K that doesn't exist
    - Stowe: no inconsistency for recovering for rental booth, an
      expense before the K, because one can rely on a common
      carrier delivery K
    - Still, wasn't it foreseeable to Dempsey that they would have
      expenses in procuring someone else to fight him before K,
      therefore relying on Dempsey K?
    - Before K expenses fall under expectancy D-expectancy
      covers all before and after expenditures covered by K price
  - Expenses incurred in mitigating loss are compensable
    - Albert v. Armstrong: non-br party can recover expense in
      preparation for performance unless br party can show that
      performance would not have covered expenses, or would not have
      been profitable-burden on the breaching guy
• Restitution-unjust enrichment
  o *US v. Algernon Blair*: May a subcontractor who justifiably stops work under a K because of the prime contractor's br, recover reas. value of labor and equipment already furnished pursuant of the K regardless of whether he couldn't recover because the amount due at time for P was less than total loss that would have been incurred?
    ▪ Recovery under Restitution: reasonable value (look to mrkt or the K price to determine that) of benefit conferred
      • What is reas. Value? Amount for which such services could have been purchased from one in the ¶'s position at the time and place services were rendered
      • **Labor + expenses + profit**
    ▪ Here is a thought- why is retention of the benefit unjust?
      • Because there is a K! But there are no K in restit.!
    ▪ By agreeing to a fixed price K, ¶ takes risk that it will cost more to perform than the K price
    ▪ *Noyes v. Pugin* says that in this situation, K price is the upper limit
    ▪ *Us v. Blair* ct. does not think the K price is the upper limit, but says one way to determine reas. value is by looking at K price
    ▪ *Keans*: when K is unenforceable, restit. is available- if work was done only because of a reasonable expectation to get compensated for it and a reasonable expectation that promise was enforceable, one is entitled to recovery in restit. - ¶ may recover for efforts that were to his detriment whether or not ▲ benefited ultimately- the work was done *in expectation* that ▲ would benefit
    ▪ *Oliver v. Campbell*: Restit. does not apply to full or nearly full performance- only K remedy available -Why? Because if there is a K price, there has been an agreement of what the value of performance is, meaning why make the cts. Figure out the reas. value of P and imply new K?
  o *Britton v. Turner*: K price- substitute costs - remedy for recovery under Restit. - **WRONG**, BAD IDEA
    ▪ K price is the upper limit of recovery of reasonable value in Restitution
    ▪ In this case, ¶ has claim in Restit., but ▲ has claim in K
    ▪ *Algie Blair*, not similar situation

IV. Equity-Specific Performance-Discretionary Remedy

• *Van Wagner*: physical uniqueness does not necessitate specific P- uniqueness of location alone is not enough for equity-what matters is it *economically interchangeable*?
  o Can we obtain, at reasonable cost, enough info about substitutes to permit it to calculate an award of $ D w/o imposing an unacceptably high risk of under-compensation on the injured promise? If no-EQUITY
  o Factors Affecting the Adequacy of D, thus leading to Specific P:
- The difficulty of proving 
  - The difficulty of procuring a suitable sub. Performance by means 
  - The likelihood that an award of 
    - Curtice Bros.- specific performance for tomato crop- the goods weren't 
    - For one, market price would reflect the scarcity of tomatoes 
    - Paloukos v. Intermountain Chevrolet: ¶ wanted the specific P of car K-
      - The impact on employees
    - Is Specific P warranted?

  - Fitzpatrick v. Michael: Ct. of equity will not enforce the k for personal 
    - Why ct. might be wrong: Where is the enforcement of an acrimonious 
    - Why not enforce specific P for personal/employment services?

  - Equity will not enforce a negative covenant in a K it cannot specifically enforce 
    - Ex. Dallas Cowboy Club v. Harris- not only is football player not 
    - Noncompete- A clause in which a K that says I will not engage in 
    - Negative covenant- a promise not to do something
- Juries/ct. can determine the reasonableness of a noncompete covenant (*Fullerton Lumber*: emphasized employer's need for protection in an activity largely dependent on customer contacts especially where employer was a foreign corporation in determining reasonableness of noncompete clause)

- *Data Management v. Greene*: when it comes to overbroad noncompete clauses, if covenant can be reasonably altered to render it enforceable then crt. shall do so, as long as it was drafted in good faith

- *Northern Delaware v. Bliss*: the redevelopment company is working behind schedule, and steel company wants to order specific P of a double shift, which was included in the K-difficulty of enforcing makes ct. say NO
  - Ct. says no to specific P- its not that the ct. can't order a double shift or can't compel company to hire people- it's that "working on schedule" is a mother of a thing for the equity ct. to enforce- ct. can imagine development company being in contempt of the ct. again and again for working behind schedule, thus effectively making the equity ct. a construction manager
  - *City Stores v. Ammerman*: Money D couldn't compensate ¶ for "the almost incalculable future advantages that might accrue to it as a result of extending its operations into the suburbs"