**Groves v. Wunder:**
Groves (P) entered into contract to have gravel and sand removed from some land and the land kept a uniform grade using the overburden. D. paid money in advance for such. D. breached contract deliberately, removing only select gravel, and leaving the ground broken, uneven, and worthless. Cost of removing the overburden would be $60K, far more than the $12K the land is worth. D’s breach was willful.
Nonbreaching party is entitled to expectation. So, even if the cost of completion is more than the value added, work must still be done.
Exception: can’t do the work if substantial economic waste would occur as a result. Economic waste only applies when a structure already exists and would have to be torn down

**Peevyhouse (note)**
P leased farm to D to mine as long as they fill in the pits and smooth the surface. D didn’t, so P sued. Courts granted only diminution in value of land, not cost of completion.

**Acme Mills v. Johnson:**
Entered a contract in april of 1909. P would provide sacks and D would sell wheat to P after threshing at a specific price. D sold his wheat at higher than fixed contract price to another company, therefore breaching the contract. In seller breach for, measure of damages is market price and time and place of delivery (ies) minus contract price.
So, if market is price is less than contract price, nonbreaching buyer gets nothing

**Rockingham County v. Luten Bridge:**
County board of commissioners awarded construction contract to the P. Afterwards, one of the assenting commissioners resigned and a replacement was appointed. The board then voted to stop construction and notified the P as to such. P continued construction regardless and sued for the entire price of the project.
In construction contract where buyer breaches, construction company can recover lost profits plus costs incurred up to time of breach.

**Doctrine of avoidable consequences** - a person injured by breach of contract can only recover those losses that it could not have reasonably avoided
Affirmative burden on breaching party to prove consequences could have been avoided.

**Kearsage (note case)**
Data processing firm where client breached. “the general rule is that gains made by the injured party on other transactions after the breach are never to be deducted from the damages that are otherwise recoverable, unless such gains could not have been made, had there been no breach.”
Fixed costs that still occur regardless of breach should not be deducted from profit when determining damages.
Defendant has burden of proving savings
Lost profit minus saved costs

**Parker v Twentieth Century Fox Film Corp.**
Film studio entered into contract with actress to star in a musical in LA. The musical was cancelled and the studio offered the actress a part in a western in Australia. She declined, and sued for the contract salary.
In a labor where the employer breaches, the general rule for recovery is the amount of salary agreed upon (K price), less the amount which the employer affirmatively proves the employee has earned or might have earned from other employment

- Employment must be comparable or substantially similar
- If you accept same job w/ same company at lower wage it’s a modification of earlier contract and you can’t recover difference in wages

**Billeter** (note)
One year contract for floor lady and designer. Unemployment doesn’t mitigate damages. Employee not required to perform the same work for less pay. If they do accept same job for less pay, it replaces the previous contract and they can’t sue.

**Missouri Furnace Co. v Cochran**
P and D entered contract for D to deliver goods. D breached. P entered into new contract w/ third party to replace goods at a higher price. P sued for damages to recover difference b/t price in original contract and difference b/t new contract.
Same as Acme Mills, in sale of goods, damages are market price at each time and place of delivery (ies) minus the contract price.

- Breach doesn’t occur until time and place of delivery
- Can’t enter into forward contract at different price than M at T&andP and recover difference.
- UCC changes all this, can now recover difference in substitute contract price, but you are not required to cover (enter into substitute contract)

**Reliance Cooperage** (note)
Contract to buy white oak bourbon staves. Seller breached before time of delivery. Seller obligated to produce and deliver up to time of contract. So, P doesn’t have to try to buy until contracted time.
Anticipatory breach- a clear repudiation of a party’s contract duties before the time has come for performance
Nonbreaching party can sue when breach occurs or wait until time of contract

**Neri v Retail Marine Corp**
Contract to sell goods breached by buyer, who had already paid a deposit. Retailer later resold the goods.
If a buyer breaches a contract for the sale of goods and later the retailer resells the good in question, the retailer is still entitled to recover lost profit if they have an expandable inventory.

If they don’t have expandable inventory, if they resell at same price, no recovery, if different price, contract price minus resell price (ie, K minus market), but can recover additional expenses incurred trying to sell it.

**Hadley v. Baxendale**
Mill part broken and sent for repairs, w/ request for haste. Delivery delayed by neglect, so they did not receive the shaft for several days and they lost profits. In a service contract the breaching party is not liable for damages it could not have reasonably foreseen.

Tacit assent test- it wouldn’t be fair to assume that the party would have agreed to be liable for special damages if it had been part of the contract.

UCC overturns this argument, only in sale of goods

**Valentine v. General American Credit**
You can not recover damages for mental distress in breach of employment contract.

Generally, you can’t recover for mental distress in any breach of contract.

The few exceptions must have major elements of personality, damages can not be calculated, or compensatory damages would not be adequate.

**Chicago Coliseum Club v. Dempsey**
Dempsey entered into employment contract to fight boxing match. Employer had incurred many expenses related to the event prior to the signing of the contract. Dempsey breached. P incurred expenses to try to stop breach.

Can’t recover speculative future profits.

Entertainment and sports are almost always speculative

NOTE: d wrong about not recovering expenses prior to contract. Have to look at what would have happened if everything had gone according to the contract.

Have to prove expenses to a reasonable certainty

GF RULE: costs to prevent breach recoverable if no suitable substitute is available

Can’t recover legal expenses

Attorney’s fees are not recoverable in breach of contract cases

**U.S. v. Algernon Blair, Inc.**
Subcontractor has to breach contract b/c of dispute over who will pay for equipment rental. He had spent labor and used equipment. Restitution (aka, unjust enrichment)-no prior agreement, but P has conveyed a benefit on D and wants to be reimbursed

1. P has conveyed a benefit on D
2. retention of that benefit w/o compensation would be unjust
Expectation tries to put you where you would have been if the contract had been completed. Restitution tries to put you where you would have been if the contract had never happened and you have conferred a benefit. Can’t say contract is irrelevant, contract is what tells us that retaining the benefit w/o paying would be unjust. Can sue for either breach of contract or restitution

Britton v Turner
Laborer breached labor contract after partial completion. In an employment contract where the laborer breaches, the measure of damages is the amount of value the labor created, minus the amount of damage, minus the cost of procuring replacement labor, not to exceed the contract price. P has restitution claim, but D has contract claim b/c P breached. Since P breached, P still held to contract, so recovery can’t exceed contract price

City of Rye v. Public Service Mutual Insurance Company
Construction company agrees to post large bond to city to finish work by a certain date in order to obtain a certificate of occupancy. Company didn’t finish by the date specified. City sues for the bond and per day penalty fee. Courts have come up w/ following rules for stipulated damages:
1. amount fixed in contract must be a reasonable forecast of harm likely to result
   Test it at time the contract is formed. Restatement says you can also test actual loss after breach (to see if it was a reasonable forecast)
2. it must be difficult or impossible to make an accurate determination of damages
   Fretwell: Test for limiting liability: Can’t be unconscionable or against public policy

Van Wagner Advertising Corp. v. S&M Enterprises
Lessor breached contract to lease advertising space in a certain location. P sued for specific performance, claiming the location made it unique. Difference b/t physical difference and economic interchangeability. To determine whether remedy in damages would be adequate:
1. the difficulty of proving damages w/ reasonable certainty
2. the difficulty of procuring a suitable substitute performance by means of money awarded as damages
3. the likelihood that an award of damages could not be collected
   Relief in equity is discretionary with the court, even if it meets all the conditions, the court can choose not to enforce specific performance

Fitzpatrick v. Michael
Contract of lifetime employment breached by employer. Also promised house in will. Courts will not order specific performance in employment contracts
Statute of frauds does not require the K to be in writing. It simply requires a writing, and doesn’t have to be signed by everyone.

**Northern Delaware Indus. Dev. Corp. v E.W. Bliss Co.**
P wants to force d to increase number of workers in construction contract b/c he thinks that’s the only way to prevent breach by delay. What would court do in case of noncompliance? Court at law only has to deal with an issue once. In equity, once court gets involved, has to keep intervening to enforce declaration. So, sometimes reluctant to enforce specific performance, especially in anticipatory breaches.

**CHAPTER TWO**

**Sec. 1: Formality**

**Congregation v. Deleo**
DeLeo, now deceased, promised to donate money to the congregation. They claim this was a contract.
No legal benefit to promisor nor detriment to promisee, so no consideration
Enforcement of such promise would be against public policy (don’t want to have to enforce every promise)
A hope or expectation is not a legal reliance

**Sec. 2: Exchange through bargain**

**Hamer v. Sidway**
Uncle promised nephew $5k to give up vices until he was 21. He wrote a letter stating the money was his. Uncle died before the money was transferred.
Nephew sues to recover money from the estate.
Consideration: benefit to promisor OR detriment to promisee
In determining a detriment, don’t look at actual physical detriment, look at legal detriment (can be giving up a freedom)

**Restatement of Contracts, Second**

71 1. To constitute consideration, a performance or a return promise must be bargained for.
2. it’s bargained if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise
81 The fact that what is bargained for does not itself induce the making of a promise does not prevent it from being consideration for the promise

**Fischer v. Union Trust Company**
Father gives daughter land for Christmas. She gave him a dollar. Her brother kept the deed for her, but did not record it until a year after the father’s death b/c of unpaid taxes. Father promised to pay the mortgages, and did not so land was foreclosed. Daughter sued to force estate to pay the mortgages.
Courts do not inquire into adequacy of consideration
Person decides for themselves whether contract is worthwhile when they enter into it. Consideration must be bargained for: mutual reciprocal inducement. Is if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.

**Duncan v. Black**
Sold land and large cotton allotment. Cotton allotment on land reduced by state. Gives some of his for one year, but then stops. According to this case: Consideration must:
- Be made in good faith
- Have some foundation (ie, some reasonable basis for asserting the claim)
GF doesn’t like this test at all b/c it second-guesses agreements and society wants people to settle on w/o violence or the courts.

**Section 3: Promises grounded in the past**
**Mills v Wyman**
Estranged son fell sick. P cared for him. Father (d) promised to pay for the care in a letter. He reneged, P sued. More mutual reciprocal inducement. Benefit was not to promisor, but to the son. Promise did not induce the promisee to act, so no bargain.

**Webb v McGowin**
P saved m’s life, permanently injuring himself in the process. M promised to pay him stipend for rest of p’s life, and did so until m’s death. M’s heirs stopped payment, and p sued to recover the remainder. Benefit conferred on promisor, not on third person. If there had been time to bargain, they would have.

**Restatement: Promise for Benefit Received:** A promise made in recognition of a benefit previously received by the promisor from the promise is binding to the extent necessary to prevent injustice.
- Doesn’t count if it was a gift, or for other reasons the promisor has not been unjustly enriched.
- Value must be proportionate to the benefit.

**Section 4: Reliance on a Promise**
**Kirksey v. Kirksey**
Brother-in-law induced widow to leave home and move in w/ him. After two years, he moved her, than kicked her out. More need for mutual reciprocal inducement. Showing how courts didn’t use reliance before, but now they do.

**Rickets v. Scothorn**
(note case) grandfather promises to support granddaughter. He reneges and they find for P b/c of her reliance (ie it induced her to quit work)

**Seavey v. Drake**
Father promised to give son land. He moved onto it and made substantial permanent improvements. Part performance can get past written requirements of statute of frauds Reliance is now enough

**East Providence Credit Union v. Geremia**
Mortgage w/ car as collateral, bank promised to pay insurance on car and didn’t, so d’s lost money for car when it crashed. Bank tried to recover debt for mortgage anyway. D made counterclaim Don’t talk about promissory estoppel, just discuss reliance

**Forrer v. Sears, Roebuck and Co**
Employer induced P to leave farm w/ promise of permanent employment. P did so, incurring a loss. He worked for Sears, but was fired a few months later. Action founded on promissory estoppel. Kirksey-must have consideration Seavey- reliance is enough Later, estoppel has mixed results Geremia and forrer, courts are willing to enforce promises b/c promisee relied on it So, reliance now a governing concept, ie enough to enforce

**Restatement: Promise Reasonably Inducing Action or Forbearance**
1. A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires.

**Section 5: Promises of Limited Commitment**
**Obering v. Swain-Roach Lumber Co.**
P agrees to sell land to lumber co. if lumber co. cuts timber and then resells it back to P in four years. Lumber bought the farm, but Obering refused to accept the deed Mutuality of obligation: both parties must be bound or none is bound Giving up a right counts as this (i.e. doesn’t have to buy from them, but can’t buy from anyone else, so mutual obligation) When K formed is contingent upon a future act that is within the control of the promisee, and the act is completed, is there mutuality of obligation sufficient to make the K enforceable? YES Mutuality doesn't have to mean equality!
Restatement
A promise or apparent promise is not consideration if by its terms the promisor or purported promisor reserves a choice of alternative performances unless:

a. each of the alternative performances would have been consideration alone had been bargained for; or

b. one of the alternative performances would have been consideration and there is or appears to the parties to be a substantial possibility that before the promisor exercises his choice events may eliminate the alternatives which would not have been consideration

Wood v. Lucy, Lady Duff-Gordon
Clothing designer gave wood exclusive right, subject to her approval, to place her endorsements on the designs of others. He also got exclusive right to place her designs on sale, or to license others to market them. They each got one-half of all profits and revenues from such. Had to give 90 days notice to cancel. Inferred obligation can be enforced

Sheets v. Teddy’s Frosted Foods, Inc.
Employee was in charge of quality control. When he found that the food did not meet the standards on the label, he tried to bring it up to code. He was then fired. If employee provides an additional benefit to employer besides promise to provide services, employer can no longer terminate randomly
Now another exception to employment-at-will
If termination contravenes a clear mandate of public policy, employee has a claim and employer commits a tort
Rule is vague

CHAPTER 3: THE MAKING OF AGREEMENTS
SECTION 1: MUTUAL ASSENT

Pg 325, Missouri, 1907
Employer said get your men out after threat to quit working w/out a contract. Employee took this to mean he had a new contract. Difference b/t subjective and objective intent
Courts look at objective, what a reasonable person would think in shoes of people involved (Fake deed hypo, third person can’t think its real and have it be real)

McDonald v Mobil Coal Producing, Inc.
Employee terminated after allegations of sexual harassment. He claims that he relied on the company to follow discipline proceedings outlined in employee manual. Manual had disclaimer that was not set apart from the other text. Question of reasonable reliance, if you have it, what you relied on is enforceable Disclaimers must be conspicuous and set apart from other text
**Moulton v. Kershaw**
Salt company sent ad letter stating price to a consumer. The consumer sent an order, which the company could not fill. Offer is a manifestation of assent to exchange, wholly apart from whether offeree accepts Has to be offer to specific person/company, not general ad

**Fairmount Glass Works v. Crunden-Martin Woodenware Co.**
P (woodenware) wrote glass works to determine lowest price for set amount of jars, but did not specify type. D wrote back w/ prices for different types. C-W then entered an order, but D was out. Judgment for the P. If a vendor quotes a price w/ specific info on shipping and acceptance and the vendee accepts, it is a valid contract. Look at intention of the parties Article 2 of the UCC says that an agreement is not too indefinite to be enforced if:
1. the parties intended to make an agreement
2. courts are able to determine there was a breach
3. and, there’s a reasonably certain basis for fixing a remedy
Restatement 33, pg 350 extends this to all contracts, not just sale of goods

**Joseph Martin, Jr. Delicatessen v. Schumacher**
Parties entered into lease that allowed tenant to renew at a price to be agreed upon. Landlord decided he would only let it at $900, significantly higher than the fair market value of $545. Court can’t just make up provisions of the contracts There must be room for legal construction or resolution of ambiguity for courts to intervene To enforce a promise, it must by sufficiently certain and specific so that what was promised can be ascertained A mere agreement to agree is unenforceable Must be enough amount of definiteness for court to fashion remedy in event that one of them repudiates

**Raffels v. Wichelhaus**
Contract to sell goods. P is seller. D agreed to buy cotton that arrived on the ship Peerless from Bombay. There were two ships of that name and description, one sailing in October (the one the D thought) and the other in December (the one the P meant). So, when the cotton arrived, the D refused to pay for it, thinking it was the wrong ship and late No consensus = no contract If both parties could claim w/ different figures, no contract

Restatement of Contracts, Second
**Section 20: Effect of Misunderstanding**
1. There is no manifestation of mutual assent to an exchange if the parties attach materially different meanings to their manifestations and:
   a. Neither party knows or has reason to know the meaning attached by the other; or
   b. Each party knows or each party has reason to know the meaning attached by the other.

2. The manifestations of the parties are operative in accordance with the meaning attach to them by one of the parties if:
   a. That party does not know of any different meaning attached by the other, and the other knows the meaning attached by the first party; or
   b. That party has no reason to know of any different meaning attached by the other, and the other has reason to know the meaning attached by the first party.

Caldwell v Cline
D sends a letter on Jan. 29 proposing to buy Caldwell’s land. He gives P 8 days to reply. P doesn’t receive the letter until Feb. 2, and D receives reply by Feb. 9. D claims the offer wasn’t accepted in time. Offeror is master of the offer—can specify the time of offer and way in which the offeree must send their assent—can be as ridiculous or stringent as the offeror wants. Suggestion by offeror is different than a requirement—important distinction. Acceptance is effective when it is received, but if there is no stated deadline, an acceptance is effective when it is deposited in the mail (mailbox doctrine).

Davis v. Jacoby
Favorite niece of deceased was treated like a daughter. The Whiteheads fell sick and in financial difficulties. They entreated the Davis to move in with them to take care of them and their finances, saying that the niece Caro was going to inherit everything so they had an interest in helping their finances. The Davis promised to move, but then Mr. Whitehead committed suicide. The Davis moved and took care of the aunt, who died a few months later. It turned out that the will didn’t leave Caro anything. Unilateral does not mean that only one person is obligated to do something. It’s a contract that is formed by the exchange of a promise for a performance, not one that is formed by an exchange by a promise for a promise. Bridge hypo: a asks b to walk across eads bridge. Pg. 381

If there is ambiguity, courts presume the contract is bilateral.

Brackenbury v Hodgkin
Mother compelled daughter and son-in-law to move in with her and take care of her, promising them the house when she died. They moved, and took care of her for a few weeks before the cantankerous mother caused a bunch of problems. The mother then sold the land to her son, reserving a life estate for herself. The
son knew of the arrangement w/ the daughter, and took the land solely to evict her and her husband.

Once the offeree has started performing in a unilateral contract, does the offeror still have the right to revoke the offer? NO, but the offeree could still change their minds in a unilateral.

In a unilateral, partial performance does not constitute acceptance on the part of the offeree.

**Restatement**

Methods of Termination of the Power of Acceptance

1. An offeree’s power of acceptance may be terminated by
   a. Rejection or counter-offer by the offeree, or
   b. Lapse of time, or
   c. Revocation by the offeror, or
   d. Death or incapacity of the offeror or offeree

2. In addition, an offeree’s power of acceptance is terminated by the nonoccurrence of any condition of acceptance under the terms of the offer.

**Restatement 45**

Option Contract Created by Part Performance or Tender

1. Where an offeror invites an offeree to accept by rendering a performance and does not invite a promissory acceptance, an option contract is created when the offeree tenders or begins the invited performance or tenders a beginning of it.

2. The offeror’s duty or performance under any option contract so created is conditional on completion or tender of the invited performance in accordance w/ the terms of the offer.

**Restatement**

Effect of Performance by Offeree Where Offer Invites Either Performance or Promise

1. where an offer invites an offeree to choose between acceptance by promise and acceptance by performance, the tender or beginning of the invited performance or a tender of a beginning of it is an acceptance by performance.

2. such an acceptance operates as a promise to render complete performance

**Mier v. Hadden**

Option contract gave P’s right to buy land by Nov. 1. P gave D’s consideration of $1. Contract states that the P’s may demand the land at any time, and if the D’s refuse to sell the P’s can sue them. P’s allowed not to buy, but D’s not allowed not to sell. P’s relied on the option and found a 3rd party buyer for the land. They informed the D’s they were buying, but Ds refused to sell. anytime there is purported consideration, an option contract will be enforced.
James Baird Co. v Gimbel Bros., Inc.
Contract for the sale of goods. Subcontractor defendant received wrong price on
linoleum. He sent bids out to 20-30 general contractors with a bid that reflected
the wrong price. One of the gens put in a bid on a highway contract using the
faulty linoleum figure, and received a telegram from D withdrawing the offer later
that same day. Despite being informed of the linoleum error, the gen accepted
the contract anyway and sued the D for damages on a breach. Found for Sub
AND Drennan v. Star Paving Co.
Gen contractor receives faulty bid from subcontractor to do paving. He relies on
that amount to make a bid on a construction contract. He was awarded the
contract, and then informed that the paving bid was being withdrawn. Gen tries to
hold sub to original bid. Found for Gen.
Should a party that proposes a bargain be held to that bargain if the other person
relies on it before giving assent? YES
Reliance issue
GF liked Drennan outcome better.

Livingstone v. Evans
D offered P land for a certain price. P wrote back, asking for the land at a lower
price. D wrote “Cannot reduce price,” and sold the land to someone else. Not
knowing of the sale, P wrote accepting the original offer.
If there is a change, we no longer have assent to the exchange (mirror image
rule, acceptance must be the mirror image of the offer)
“can’t reduce price” re-offer of old terms

Hobbs v Massasoit Whip Co.
P sent eel skins to the D, who kept them for several months before destroying
them and not paying the D. P had sent skins to D before in the same way 4 or 5
times before and D had paid. JUDGMENT FOR P

Restatement 29: Acceptance by Silence or Exercise of Dominion
Pg. 441

UCC 2-207
mirror image rule gone
3. Even if exchange of forms doesn’t create contract, conduct may
1. it’s very complicated and difficult in its application
2. only applies to sale of goods
3. the restatement second (applicable to all contracts) has a modified version of
this, so should apply across the board (this wasn’t a result from the cases, the
authors went beyond precedent)
4. UCC under revision, this is one that will probably be revised, just in details

SECTION FIVE: THE EFFECTS OF ADOPTING A WRITING

Mitchill v. Lath
Oral agreement to tear down ice house not in written agreement to purchase land.

To enforce an oral agreement that is related to a written contract:
1. the agreement must be in the form of a collateral one
2. it must not contradict express or implied provisions of the written contract
3. it must be one that parties would not ordinarily be expected to put into writing

Parol evidence rule- if the parties have put their agreement in a writing that they intend as the final, complete, and exclusive expression of their agreement, evidence of a prior or contemporaneous agreement may not add to, vary, or contradict the terms of the writing.

**Restatement (first) 240**
An oral agreement is not superseded or invalidated by a subsequent or contemporaneous integration…if the agreement is not inconsistent w/ the integrated contract, and
a. is made for separate consideration, or
b. is such an agreement as might naturally be made as a separate agreement by parties situated as were the parties to the written contract

**Hatley v. Stafford**
Written contract to rent land had a buyout provision with a limit of $70 per acre. D exercised their option, cutting P’s wheat crop. P claimed there was an oral agreement that the option was only valid for 60 days after the execution of the contract and sued for $700 per acre.

Parol evidence rule is none of those things
Alleged agreements w/in the limited scope of the writing will not be enforced
If outside the scope of the writing, it can be enforced
parol evidence rule doesn’t apply to agreements made after the writing

**READ PACIFIC GAS NOTE CASE**
Bethlehem (NOTE CASE): If the judge decides the writing is ambiguous, then the parties can present evidence of oral agreements, not before. Before, the judge looks only at the writing.
Pacific Gas: Disagrees, words have whatever meaning the parties intend them to have, not strictly dictionary words
Current trend is back towards Bethlehem standard

**Mundy v. Lumberman’s Mut. Cas.Co.**
Suit to recover actual value of silver stolen from their house. Their previous insurance policy covered the entire amount of the silver. Recently it had changed so only $1K could be recovered. The P’s argued they did not get adequate notice of the change. The TOC of the policy said there were changes. There was a one page summary of the changes made, each with a separate paragraph and set off by bullets. Judgment for D
Person is conclusively presumed to have assented to the terms they have signed
Exceptions: if person who presents form misrepresents the nature of it
If party prevents other party from reading the documents before signing
If term is hidden, or if language is confusing or unable to be determined by average reader
Note: Agricultural Ins. Co. v Constantine- woman handed parking claim check that limited liability of parking garage. Her car is stolen and she sues. Court found for P b/c ticket presented as claim check, no reason for her to have believed otherwise

Henningsen v. Bloomfield Motors, Inc.
Ten days after P bought new car from D, the wheel spun and the car veered, crashing into a wall. It was totaled. The wife, who was driving the car sued for damage for her injuries. The husband joined in the suit seeking to recover consequential losses (the car). D claimed the warranty didn’t cover the car. The warranty included a disclaimer of 65 lines in very small type. One provision purported to limit liability for defective parts w/in 90 days of the sale. The P did not read the warranty before he signed it. Judgment for P
It’s a contract of adhesion- against public policy
Reasonable person would not have understood it
No sufficient signal that there is important language giving up rights on back
GF wants burden on offeror to point out what is being given up

Person is bound by what they sign unless:
1. the clause is misrepresented
2. the signor is prevented from reading the terms
3. the clause is inconspicuous
4. clause is confusing and/or unintelligible to reasonable person
5. beyond the reasonable expectation of the party

Richards v. Richards
Mr. Richards is codefendant w/ his employer for whom he works as a trucker. His wife, the P, wanted to ride with him on his trips. To do so, she had to sign a Passenger Authorization form, which included a statement preventing her from recovering damages from the company. She signed it, and was riding w/ her husband when the truck overturned. She sued for injuries from the accident Judgment for P
The authorization was narrow and specific, whereas the release was broad and all-inclusive
This indicates its one-sidedness
Important lesson- keep the effort focused on the objective, don’t make it too broad

**Hill v. Gateway 2000, Inc.**
P ordered a computer by phone. When the system arrived it contained a contract. Among other terms, it included a provision requiring all disputes be resolved by arbitration. It said that if you don’t agree with the contract, send the computer back w/in 30 days. Judgment for D
Under what circumstances can the offeror make the silence of the offeree into assent?
GF says contract actually formed on the phone, should have been informed then that there were additional terms other than warranty
More reasonable expectation

**Broemmer v. Abortion Services of Phoenix**
P signed an agreement to arbitrate waiver before receiving a clinical abortion. She suffered a punctured uterus and sought damages. Judgment for P
Unconscionable- falls outside person’s reasonable expectation
Only matters for contracts of adhesion
An adhesion contract is a standardized form offered to consumers of goods and services on essentially a take it or leave it basis w/out affording the consumer a realistic opportunity to bargain and under such conditions that the consumer cannot obtain the desired product or services w/out consenting to the form--No ability to negotiate

Reasonable reliance
Timing of assent
Question of real offer or not
Ambiguity of terms
Unilateral v bilateral
Mirror image rule
Parol evidence rule
Contracts of adhesion
Conspicuous disclaimers
Offeror as master

**CHAPTER 4: POLICING THE BARGAIN**

**Austin Instrument, Inc. v. Loral Corp**
Subcontractor threatened to stop delivery of originally contracted goods if they were not awarded new contract.
In a contract for the sale of goods where the seller threatens to breach in order to secure a second sale, and the buyer who has reliance on the sale tries to find a
substitute seller and cannot, has the seller used economic duress, and is therefore liable for damages?
YES

Standard for relief for economic duress is when immediate possession of needful goods is threatened, or by proof that one party to a contract has threatened to breach the agreement by withholding goods unless the other party agrees to some further demand, and can’t obtain the goods from another source of supply and that the ordinary remedy of an action for breach of contract would not be adequate

Duress is a wrongful threat that precludes the exercise of free will

*Smithwick v. Whitley* pg 557--Had adequate performance b/c could have sued for specific performance, so threat did not deprive defendant of free will (either pay, or sue) (so adequate remedy)

*Wolf V. Marlton corp.* pg 558- courts now willing to find duress when the withholding of goods is not tortuous

pre-existing duty rule- A promise to do what one is already contractually bound to do is not consideration, so can't hold out for higher terms of contract already formed b/c no consideration for second agreement.

**Marton Remodeling v. Jensen**
Dispute over amount due for remodeling. Jensen sent check in amount smaller than P requested, stating that the check would be fully payment. P refused it, but then cashed the check, writing “not full payment” below the condition. Found for D.

Policy favoring settlements usually wins over preexisting duty rule

Once settlement is made and accepted, no more claim

Court refuses to differentiate b/t a compromise (each gets something) and a settlement (only one party gives up something)

Even though offeror did not assent and did not intend to assent, (typo on price), if reasonable person would have believed it was a bona fide offer and the offeree accepts, it’s enforceable

**Sherwood v. Walker**
P contracted to buy cow from D that they both thought was barren for a price of $80. Before the time of delivery, the cow in question got pregnant, making her now worth $850. D refused to deliver cow. Found for D.

Mistake going to entire substance, root of the matter, and mistake must be mutual for contract to be voided—the essence of the contract.

**Hinson v. Jefferson**
Land sold that was zoned for residential use only. It was found that the land could have a sewer system installed, essentially making it useless for residential use. Found for P.

Was the mistake unilateral or bilateral, was it palpable or impalpable, was one party unjustly impoverished or enriched, was the risk assumed by one of the
parties, was the mistake fundamental or collateral, was the mistake related to present facts or future expectations?
S owns a tract of land, b is interested in land and knows that a developer is going to build mall across road from tract of land. B offers to buy land for 50K, its current worth. Should seller be able to rescind? NO, see pg 638.
Knowledge is valuable to society

Cushman v. Kirby
Cushmans bought house from the Kirbys. While touring the house, the Cushmans asked about a water treatment system in the basement. Mrs. Kirby stated it was to fix hard water and that the water was good. Mr. Kirby remained silent. In fact, the water was sulfurous and nearly undrinkable. They had to hook up to city water at a cost of $5,000. Cushmans sued for misrepresentation. Found for P.
Saying half of the story and knowing that will mislead the other is not allowed
If we say there’s mutual mistake, just get rescission, not damages b/c it says something was wrong w/ the assent process

Wollums v. Horsley
Businessman buys mineral rights from small local farmer for forty cents per acre. It actually was worth almost fifteen dollars per acre. Large disparity between knowledge and business experience of the parties. Farmer refused to deliver deed and P, Horsley, sued for specific performance. No specific performance.
No absolute right to equitable relief
They won’t do it when:
Courts have to get super involved
Cause people to be together who don’t want to be
Contract is hard and unconscionable

Williams v Walker-Thomas Furniture Co.
Business had printed form contract that every time an additional item was purchased, it added to the balance of everything that has a balance left, so it’s almost impossible to own anything and a default on payment on one item would allow the company to repossess all items. P defaulted on one item and D sought to replevy all items. Found for P.
Contract is unconscionable if:
1. absence of meaningful choice by one of the parties, AND
   a. disparity in bargaining power
   b. formation process
2. terms that unreasonably favor the other party
   a. commercial setting, etc.
Must have both

Gianni Sport Ltd. v. Gantos, Inc.
Contract b/t small manufacturer and large retailer included provision that the retailer could cancel an order any time before the order is shipped. D ordered
large holiday line, and then cancelled it two months later. P subsequently agreed to sell the clothes at a 50% discount to the retailer in an attempt to mitigate. Found for P.

Reasons not to enforce contract:
Mutual mistake
Duress
fraud
unconscionability
accord and satisfaction

CHAPTER 5: THE MATURING AND BREACH OF CONTRACT DUTIES
Contracts where parties have expressly agreed that one or both of them are only obligated to perform if one for more event has occurred.

Howard v Federal Crop Ins. Corp.
Crops insured by D damaged by rain. Farmers plowed under the field before insurer inspected the crops, contrary to a contract provision.
Judgment for P

Restatement 261: Interpretation of Doubtful words as promise or condition
Where it is doubtful whether words create a promise or an express condition, they are interpreted as creating a promise; but the same words may sometimes mean that one party promises a performance and that the other party’s promise is conditional on that performance
If it’s a promise-damages can still result from breach
Condition-P can’t recover anything
If one provision is labeled CP and the other not, the other is not one

Semmes (note)
Away at war so couldn’t file insurance claim. If it’s impossible to comply, obligation is voided.

Contract for insurance included provision that suit can only be brought within 12 months of a fire. Fire burned cottage down, and P filed paperwork. Third party brought a suit against P. D promised to make payment to P as soon as that garnishment was settled. D didn’t refuse to pay until over a year. P brought suit two years after that, and D claimed the statute of limitations was up.
Judgment for D
Waiver-voluntary relinquishment of a known right
Estoppel- preclusion in law which prevents a party from alleging or denying a fact in consequence of his own previous act, averment, or denial
While P did rely on the assurances of D for the year they were promising to pay (creating an estoppel), once they refused, the time limit started again. If occurrence of the condition is in control of the promisor, the condition disappears. If in control of the promisee, but promisor prevents the occurrence, occurrence is excused (estoppel).

**Second nat'l bank v. pan-american bridge co.**
Contract provides that P (bridge co.) shall furnish and erect work, “agreeably to the drawings and plans prepared by” the architects. Payments were made from time to time, but not full amount. Dispute over connection of beams. P’s drawings were approved by the architect and construction continued. Inspector later found issue w/ the connections. P refused to change them. D did at own expense. Architect then refused to give certificate of acceptance to completed project. Found for D
Architect’s decision is only overturned if it’s in bad faith

**Haymore** (NOTE CASE, pg 767)- owner’s refusal to pay only has to meet level of unreasonableness to be overturned (reasonable only about fitness), bank v. bridge the architect’s refusal had to meet higher level of bad faith
   Difference is difference in expertise b/t layman and architect
   Owner has more incentive not to be satisfied
   So different standard

**Fursmidt v. Hotel Abbey Holding Corp.**
Hotel contracted w/ P to provide laundry services. Contract stated that services must meet w/ the approval of the hotel, who shall be sole judge of the sufficiency and propriety of the services. D terminated services and P sued. Trial court held that dissatisfaction had to be objectively reasonable This standard doesn’t have to be met where “fancy, taste, sensibility, or judgment” is involved Subjective test Reasonable man standard only in cases relating to operative fitness, utility or marketability

**THE ORDER OF PERFORMANCE**

**Nichols v Raynbred**
P can enforce D’s promise even though P has not performed himself. Everything is an independent covenant.

**Kingston v. Preston**
Service contract. Employer promised in return for a year of service he would give half his business to P for a yearly fee. Neither performed their part
Judgment for D
This case, P DOES have to perform before he can sue P
If a promise is also a condition, that condition has to be performed before that
party can sue the other for breach

**Restatement 234**: order of performances
Where all or part of the performances to be exchanged under an
exchange of promises can be rendered simultaneously, they are to that extent
due simultaneously, unless the language or the circumstances indicate to the
contrary.

**Restatement 228**: effect on other party’s duties of a failure to offer performance
Where all or part of the performances to be exchanged under an exchange of
promises are due simultaneously, it is a condition of each party’s duties to render
such performance that the other party either render or, with manifested present
ability to do so, offer performance of his part of the simultaneous exchange.

**PROTECTING THE EXCHANGE ON BREACH**

**Oshinsky v. Lorraine Mrg. Co.**
Contract for the manufacture and sale of goods. Delivery stated in contract was
missed by one day. D refused to accept goods as a result.
Judgment for D
Time is of the essence
“at” means on the date itself, not around
opposite of Raynbred, P has to perform every part to get damages

**Beck (note) Pg. 811**
Overturns rule of Oshinsky in regards to artistic skill and labor contracts b/c
goods would not be saleable to another buyer (refusal to accept delivery would
be major loss to seller, minimal harm to buyer). Any damages as a result of the
delay should be rewarded to the buyer.

**Plante v. Jacobs**
Contract for the construction of a house. 25% of the project was wrong, all
various error. Major error was placing of a wall one foot off. Rest of house was
completed.
In a contract for construction where there are numerous errors in the construction
but the project is completed, was there substantial performance entitling the
owner to only damages, not refund of the contract price?
YES
Test is whether performance meets essence of contract
Similar to restitution
If you have an obligation, complete performance is necessary and is discharged
only at complete and total performance.
But, if it’s a condition, condition is fulfilled with substantial performance.
Aetna
Disproportionate forfeiture and disproportionate loss is bad

Turner Concrete Steel Co. v. Chester Constr. & Contracting Co.
D is contractor and P is subcontractor. Contract agreed for P to submit work estimates at beginning of month and D to pay them on or about the 20th. Contract provided that P was allowed to stop labor if payments not made as provided for. Dispute over amount to be paid from July. D paid lessor amount than P asked for on August 28th. P abandoned the work site and sued for balance due. Judgment for D
In a contract for construction where there is dispute over the amount due, and the owner pays the majority of the amount but not all of the disputed items, can the builder stop work until the full amount is paid?
NO, the owner has substantially performed.
Material breach- P can cancel then and can sue and recover lost expectancy
If not material, P can’t cancel but may be able to suspend until D performs
Material breach = no substantial performance
2 contexts for recission: mutual, or act of one parties and return to pre-contract situation

P worked as brick mason when fall aggravated an existing nondisabling condition, disabling him for life. Insurance policy defined injuries as, “accidental bodily injuries received while this policy is in force and resulting in a loss independently of sickness and other causes.” Company paid P for some time, then stopped payment.
Judgment for P
Anticipatory repudiation = material breach
Dissent is right here!
They weren’t repudiating, they were arguing w/ facts

Reigart v. Fisher
Contract to purchase land and home for use as a residence. Contract stated that the land was 7 acres when it was actually only 4.764 acres. Reigart (P) demanded back his down payment and refused to pay further. Fishers sued for specific performance.
Test is whether they would have made the contract if the true nature had been known
Here, the acreage was not so substantial that the contract would not have been made at all since they viewed the land and it was for residential, not agricultural, use
P must substantially perform to get relief in equity

CH 5 concepts:
Express conditions
Conditions of satisfaction and timeliness
Waiver and estoppel
Anticipatory repudiation
Order of performance
Disproportionate forfeiture
tender
substantial performance

CONTRACTS CONCEPTS:
Expectancy
Avoidable cons.
Cover
Foreseeability
Restitution
Equity
Consideration
  Benefit/detriment
  Mutual reciprocal inducement
  Mutuality of obligation
Reliance
Reasonable reliance
  Timing of assent
  Question of real offer or not
Ambiguity of terms
Unilateral v bilateral
Mirror image rule
Parol evidence rule
Contracts of adhesion
Conspicuous disclaimers
Offeror as master
Reasons not to enforce contract:
Mutual mistake
Duress
fraud
unconscionability
accord and satisfaction
Express conditions
Conditions of satisfaction and timeliness
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was there an agreement?
If yes, how would the courts enforce it?
Is there any reason not to enforce it?

Exactly what was agreed to?
Was there a breach?