Is there a contract?

Mutual Assent (constructive meeting of the minds)

Objective Approach to Intent

*Embery* (325)- Aget men out@objective assent- reasonable meaning of words and actions- one=E actual intent is irrelevant- question is, would a reasonable man understand the other to be manifesting assent- *Fairmount Glass Works*

*Island Oil* (333)- Mexico sham- when neither party involved intends or believes an agreement to be formed, then there is no agreement, regardless of how it might appear to third persons (unless they have reasonably detrimentally relied) actual intent of parties is always relevant in determining how an agreement should be interpreted- disclosed intent

*Robbins* (334)- only intent a court may consider is that which both parties had access to

Restatement, 2d (338)- Neither real nor apparent intention that a promise be legally binding is essential to the formation of a contract, but a manifestation of intention that a promise shall not affect legal relations may prevent the formation of a contract

*McDonald*- objective manifestation of intent to modify an employment contract modifies it

*Pine River State Bank*- retention of at-will employment indicates assent to modified terms of employment

*Torosyan* (342)- Retention of for-cause employment though the employer has attempted to reduce the employee=E rights does not necessarily indicate assent to the changes- the employee must have the opportunity to defend the contractual rights of the original contract

Ambiguity

*Raffles* (358)- two ships Apeerless@if there is a latent ambiguity in the contract which neither party is or should be aware of, the contract is void, as there is no mutual assent

*Flower City Painting Contractors* (360)- units- when both parties have reasonable
interpretations of the contract which are in direct conflict, there is no contract-one party read it literally, the other in terms of trade usage, which the other did not know or have reason to know
If neither party can be assigned the greater blame for the misunderstanding and neither interpretation is more reasonable than the other, there is no non-arbitrary way to decide whose interpretation to enforce, so both parties may abandon the contract without liability

Dickey(362)- GA land- if a latent ambiguity in the offer becomes apparent to the offeror while the offer is open, it is upon him to clarify it or be bound by the other’s interpretation

Restatement, 2d(362) Misunderstanding voids a contract whenever blame cannot be assigned to one over the other (both A and B have no reason to know or both do have reason to know)

Certainty

Joseph Martin, Jr. Delicatessen(347)- rent- in order to be enforceable, what is assented to must be sufficiently definite to be enforced, either in the contract or through a history of dealings that can be looked to for guidance

Restatement, 2d(350)- In order for there to be a contract there must be terms certain enough to establish when there has been a breach and to provide a basis for establishing damages in the event of a breach- uncertainty may be evidence that the parties did not intend to be bound

UCC(351)- agreements to agree are enforceable if the parties intend to be bound and there is some basis for granting a remedy

Offer

Moulton(343)- Michigan salt- whether a communication is an offer is to be judged by its language and by the circumstances- would the recipient reasonably believe it to be an offer- a general advertisement is not a binding offer- an offer is more than a statement, it is also a promise

Lefkowitz(346)- fur ad- definite offer in newspaper to first person to show is enforceable as an offer for a unilateral contract

Fairmount Glass Works(S. 5)- mason jars- correspondence is to be viewed as a whole, such that a statement which would not generally be considered an offer is one when it is given in response to a request for an offer

Caldwell(S. 10)- WV land- offer has no legal existence until it reaches the offeree- and so length of time to accept starts then
Textron, Inc. (S. 11)- rods/ phone- an oral offer generally ends with the end of the conversation, but may be found to last longer under the particular circumstances- if no duration is given for an offer which outlives a conversation, it lasts for a reasonable time

Davis (372)- suicidal uncle- an offer is presumed to be for a bilateral contract, i.e. acceptable by a return promise, unless the intent of the offeror is shown to be otherwise

Restatement, 2d- offer is presumed to be acceptable by performance or promise

Jordan (377)- guaranty- offer is terminated by death of either party

Restatement, 2d (377)- Offer is terminated by 1) counter-offer 2) lapse of time 3) revocation by the offeror 4) death or incapacity of either party 5) nonoccurrence of any condition of acceptance under the terms of the offer

Dickinson (390)- indirect communication of a revocation revokes the offer- reliable information of sale or contract to sell reaching offeree before he accepts- Offers open for a specific time are still revocable prior to acceptance so long as no consideration has been given for the option- offer as promise

Mier (S. 13)- land speculators- an offer to sell for consideration of $1 is open for the time period specified, regardless of attempts to withdraw, and may be specifically enforced if damages are not an adequate remedy- states that still recognize the seal will hold the option open if under seal, but equity will not enforce unless there has been valuable consideration

Restatement, 2d (395)- An offer is binding as an option contract if it is in writing and signed by the offeror, recites a purported consideration for the making of the offer, and proposes an exchange on fair terms within a reasonable time (or is made irrevocable by statute)

James Baird, Co. (395)- linoleum/Hand- sub≠ bid to general is not an option contract- general≠ use of bid is not acceptance (gen. would not be liable to sub if didn≠ use them)- offer is not meant to be a promise until consideration is received, so promissory estoppel does not apply- no reason to think offer was an option

Drennan (399)- paving/Traynor- sub≠ bid to general is not an option contract or a bilateral contract, but is irrevocable based on reliance (reasonable and foreseeable) on implied promise to hold bid open- G- option contract, consideration being the bargained for use of sub≠ figures in bid- offeror should bear the burden of its mistake once it has been relied on by general and they will be held to their bid
*E.A. Coronis Associates*(403)- structural steel- promissory estoppel may be used to hold a bidder to his bid- under the UCC a promise to hold an offer open for no consideration is enforceable only if in writing and signed by the offeror and for a reasonable period

*Southern California Acoustics*(406)- acoustic sub- promissory estoppel (or option contract) in the other direction doesn’t work barring some promise by the general to accept the bid, even if used in its own bid- however, in this case substitution violated a statute, so P won

Restatement, 2d(408)- an offer which the offeror should reasonably expect to induce action or forbearance of a substantial character by the offeree prior to acceptance and which does so is binding as an option contract to the extent necessary to avoid injustice

*Livingstone*(416)- A cannot reduce @rejection of an offer by a counteroffer terminates so that it cannot be accepted without the consent of the offeror- but implication that offer still stands reopens it- interpreting intentions

Acceptance- acceptance must conform to the terms of the offer or it is a rejection- mirror image/ deviant acceptance rule- but, valid unless materially contradictory- question is whether acceptance is absolute or conditioned- modern rule- if an actual agreement can be identified, the details of its history are irrelevant- under UCC contradiction does not bar a contract- option contract is not terminated by counter offer

Restatement, 2d(447)- silence can act as acceptance only when the offeree accepts performance under reasonable conditions and assents to compensate, where offeree has given reason to believe that he intends to accept by silence and does in fact mean to do so, where this accords with previous dealings

*Prescott*- cannot accept offer by silence- requires words or other overt action

*Hill*(S. 17)- Gateway- contract sent with computer may be accepted by retention of computer- offeror controls means of acceptance and if they say accept by retention, then that is sufficient

*Klocek*(S. 18)- Gateway 2- purchaser is generally the offeror- Gateway accepted the offer prior to shipping and any terms sent in the packaging are unenforceable as post-contract

*Hobbs*(448)- eel skins/whip co.- objective assent- where there is a history of dealing such that silence reasonably indicates acceptance, it is on the offeree to indicate refusal within a reasonable space of time or be bound by his acceptance- duty to speak
Restatement, 2d(384)- tendering a beginning of a performance on a unilateral contract creates an option contract which is accepted by full performance

UCC 2-207- deals with battle of the forms no mirror image rule- additional terms are proposals for addition to the contract- between merchants additional nonmaterial terms in the acceptance form become part of the agreement unless the offer explicitly limits acceptance to terms of the offer or timely notice of objection is given- conduct by both parties which recognizes the existence of a contract establishes a contract for sale although the writings of the parties do not otherwise establish a contract- terms are those on which the parties agree

McGurn(450)- 24 mos.- a sophisticated employer who receives a letter of engagement from an employee and fails to read it may do so at his peril- could be held to revised terms though never intended to assent and only did so through silence- jury question as to whether it should have been noticed

insurer who fails to respond in a reasonable amount of time (especially when application includes first premium) has been held to assent to the insurance- sometimes on tort basis

Austin(451)- newspaper- person who retains benefit which he cannot believe to be conferred as a gratuity is held to have agreed by implication to pay for it

Most states have statutes dealing with unsolicited goods that they may be treated as gifts- alters exercise of dominion provision- clubs are different

Contracts of Adhesion- take it or leave it, no bargain, no alternative- one party can select and control risks assumed under the contract

Duty to Read- unless one is prevented from reading a contract or was induced by statements of the other to refrain from reading it, it is binding
But, if party does not know that there is a contract, as on a claim ticket, and the fact is not called to her attention, she is not bound by it (even if she had assented, a bailee for hire may not relieve itself of negligence in the course of general dealing with the public as it is contrary to law and against public policy

Sharon(513)- cheerleading- release of school from liability is enforceable- clearly labeled, offered supplemental insurance, intelligible, not like a ticket that one wouldn’t realize had a contract on it

Mundy(514)- silverware theft- an insured is bound by an insurance policy as long as he receives it- changes were clearly stated- a casual reading of the material would have given sufficient notice

Weisz(515)- fake art auction- disclaimer in a catalog of liability for authenticity sufficient notice- though gallery did not intend for the bidders to take the
disclaimer seriously and it was not prominent enough to counteract the apparent warrants of authenticity permeating the whole endeavor- caveat emptor

**Henningse**n- no knowledgeable assent- not sufficient notice of a waiver of an implied warranty of merchantability, contract of adhesion- dictum not binding- terms could not reasonably be taken to mean that the manufacturer disclaimed all liability to the injured person

**Richards**- contract of adhesion which is overly broad and not clearly labeled which releases a company from any and all liability ever is void as against public policy

**Broemme**r(531)- abortion- decide enforceability based on the reasonable expectations of the adhering party (related to knowing consent)(R2) and whether the contract is unconscionable- she would not expect to give up her right to a jury trial and the fact that the arbitrator had to be an OB/GYN makes the bargaining practice more suspicious, as it is a biased term- it was outside the plaintiff’s reasonable expectations and therefore unenforceable- did not hold on conscionability dissent- contract meets reasonable expectations standard- but she doesn’t know what arbitration is

Restatement, 2d(537)- 1) Where a party manifests assent to a writing and has reason to believe that like writings are regularly used to embody terms of agreements of the same type, he adopts the writing as an integrated agreement with respect to the terms included in the writing 2) Such a writing is treated wherever reasonable as treating alike all those similarly situated, without regard to their knowledge or understanding of the standard terms of the writing 3) Where the other party has reason to believe that the party manifesting such assent would not do so if he knew that the writing contained a particular term, the term is not part of the agreement (parol evidence rule for contracts of adhesion) used with regard to insurance policies

Disclaimer

**McDonald**(334)- harassment- Disclaimers must be conspicuous to be effective and conspicuousness is a matter of law- if not set off in any way, placed under a general subheading, not capitalized, and in the same type size, it is inconspicuous

**Karri**(341)- severance package- if couched in disclaimers in a handbook with a conspicuous disclaimer, description of a severance package does not constitute an offer nor modify the terms of employment

UCC parol evidence rule(475)- disclaimers and integration clauses are not controlling if the parties did not intend to bar oral agreements made between the parties- the intention of the parties is more important than what is included in a
written contract presented to an unsophisticated consumer- but if the note has been transferred, the writing likely binds

*Martin*- disclaimer of liability for seed disease unenforceable because of unequal knowledge and no bargaining- unconscionable

Illusory Promise- Promisor retains absolute discretion as to performance- not a contract

*Davis*(292)- recipe- promise to use and compensate as one chooses cannot support recovery of any kind

*Nat Nal Service Stations*(292)- gas discount- a promise that if you make an offer and I accept this will be a term is not a contract, as it is an illusory promise- but it may be a term of subsequent dealings if a contract is formed with it in mind

An unrestricted cancellation clause will invalidate a contract

Restatement, 2d(295)- the fact that a rule of law renders a promise voidable or unenforceable does not prevent it from being consideration

Restatement, 2d(297)- An alternative promise is consideration only if both alternatives alone would have amounted to consideration or it is likely that the one that wouldn’t will no longer be available by the time of choice

Mutuality of Obligation- basically consideration- both parties must be bound

*Obering*(295)- land/timber- court says no one bound by contract, though they were- limiting one’s future legal rights is consideration- condition of performance under party’s control does not invalidate contract

*Paul*(296)- liquor store- again court wrong, limited rights- but, both consideration and implied obligation to try to achieve condition

*Wood*(298)- Lady designer- implied obligation is enforceable and may serve as consideration

*Is it enforceable?*

Consideration- (bargained for benefit to promisor or detriment to promisee)(in minority of states, sealed instrument suffices) (a writing generally raises a rebuttable presumption of consideration, though in some states the effect is greater) (adequacy of consideration may be examined in equity)

*Gurfein*(298)- plate glass- if a promisor’s rights are restricted for any period of time, his promise may be consideration
Gianni- A clause in a contract for purchase of fashion merchandise from a manufacturer which allows for cancellation up to the time of shipment is unenforceable as unconscionable when unequal bargaining power under the UCC

Hamer(205)- uncle Will- Forbearance of a legal right is consideration- courts will not inquire into consideration except to say that it exists

Earle(206)- aunt’s funeral- a promise to perform something after the other party’s death can be consideration

Forbearance of Claim

Duncan(219)- cotton allotment- a claim must be made in good faith and have some foundation in order for forbearance of it to rise to the dignity of consideration (molehill)- law favors settlement of doubtful claims- settlement of a claim based on a contract against public policy is not consideration

Military College Co.(222)- son’s tuition- settlement of claim based on legitimate dispute is consideration

Restatement, 2d(222)- claim must be made in good faith or have some foundation- forbearance of a claim that one does not believe is valid is consideration if bargained for

Bargain

Whitten(207)- affair- forbearance of a right must be sought after by the other party in order to amount to consideration

Restatement, 2d(208)- mutual reciprocal inducement- requirement of consideration- consideration must be sought and given in exchange for promise- it need not of itself induce the performance- unless both parties know that the purported consideration is mere pretense, it is immaterial that the promisor’s desire for the consideration is incidental to other objectives

Fischer(210)- encumbered deed- a promise in a deed given as a gift is unenforceable if there is no bargained for consideration, even if a dollar is exchanged after the fact

Restatement, 2d(213)- A penny given for a promise to pay $300 is not consideration

Forrer- incidental detriment which the other party was aware was a necessary condition of performance, but was not requested, is not additional consideration sufficient to make permanent employment not at-will; this must be in the form of benefit to employer
Restatement, 2d- the fact that a rule of law renders a promise voidable or unenforceable does not prevent it from being considered.

Pine River State Bank (341)- handbook- retention of at-will employment constitutes assent to and consideration for modification to the terms of employment.

Simmons (212)- Diamond Jim III- one’s performance of a unilateral contract is consideration even if unintentional so long as he is aware of the offer.

Exceptions to Consideration

Past Benefit- Restitution- contract implied in law- quasi-contract- parties would have agreed if it had occurred to them.

A promise which follows a requested performance will serve as consideration.

Mills (230)- dead son- A past debt barred by the statute of limitations, incurred by an infant, or forgiven through bankruptcy may serve as consideration for a new promise to pay it- but one is not liable for an unrequested benefit not to oneself.

Webb (235)- mill savior- a promise to pay based on past receipt of material and substantial benefit to one’s person implies a previous request for the act and so the act may serve as consideration- concurrent injury to savior is also relevant.

Restatement, 2d(241)- A promise made in recognition of benefit previously received is binding to the extent necessary to prevent injustice unless the benefit was conferred as a gift or the promise is disproportionate to the benefit (unjust enrichment)- promise may be partially enforced to accord with the value of the benefit.

Edson (243)- well- built well at request of tenant- recovered reasonable value from owner who promised to pay.

Muir (243)- realtor- written promise to pay after allowable by statute valid because fair and moral obligation.

Harrington (238)- voluntary act of aid without request cannot be consideration, perhaps because of officious intermeddling or no manifest intent to charge cf. Restatement of Restitution.

Reliance- promissory estoppel- a promise which the promisor should reasonably expect to induce actions or forbearance of a definite and substantial character on the part of the promisee and which does induce that is binding if injustice can be avoided only by enforcement of the promise- Geremia, Forrer Restatement, 2d §90.

Kirksey (244)- AL sister-in-law- old rule- detriment suffered in reliance on a
promise does not constitute consideration

*Ricketts* (245)- granddaughter quit- quitting job is sufficient reliance to support promissory estoppel- D is estopped from denying consideration

*Prescott* (246)- letter/fire- old rule- statement of present intention rather than fact cannot support estoppel

*Geremia* (259)- letter/car insurance- one gratuitous promise to procure insurance is made enforceable by the other party detrimental reliance on this promise

*Seavey* (264)- son/land- part performance suffices as consideration in equity where a promise to convey land induces expenditures in improving it and conveys possession

*Hunter* (274)- telephone co./quit- even if details of a contract have not been established, if one quits her job on the promise of one and a request to do so, and is not hired as promised, she may recover under reliance for lost wages until she can find a job

*Forrer*- As soon as one is hired the promise is fulfilled and promissory estoppel no longer applies, so long as employment is at-will

*Davis*- Reliance on an illusory promise, or no contract at all, cannot support recovery

*Ragosta* (409)- cash/bank- part performance (of a unilateral contract R45) requires that performance actually be tendered and preparations for performance are not enough- but, P may recover under promissory estoppel (R90) based on foreseeable preparations

*Salsbury* (263)- college donation- promises to make charitable donations enforceable without asserting reliance as matter of public policy (unpopular decision- rather use purported reliance)- Restatement, 2d §90

*Grayson* - Robinson Stores (183)- Levittown store- agreements to arbitrate may be specifically enforced(subject to the usual requirements of a valid contract), and the orders of the arbitrators, even for specific performance when not possible, enforced also

Statute of Frauds B The following contracts must have a memento in writing signed by the party to be charged- 1) interest in land 2) sale of goods exceeding $500 or with liability exceeding $5000 or for lease of goods exceeding $1000(all under UCC) 3) contracts not to be performed within one year 4) promises to answer for another default, etc. 5) marriage must be sufficiently definite- Kearns

But, contracts in violation of the statute of frauds may be enforced in equity under the doctrine of part performance- *Seavey* - *Fitzpatrick*
Preexisting Duty Rule- A promise to do what one is already bound to do cannot serve as consideration

Duress- economic duress- when a party was forced to agree by means of a wrongful threat precluding the exercise of his free will- immediate possession of needful goods is threatened and there is no alternative to compliance

*Austin Instrument, Inc.* (562)- Navy contract- threat to breach unless P payed more and granted second contract a contract for the delivery of goods which P needed to complete government contracts which it needed to remain in business- could not get extension from Navy, could not breach and sue- was not required to use unknown suppliers- was justified in waiting to sue by fear of another breach
dissent- at least an issue of fact as to whether P should have used other suppliers

*Smithwick* (565)- land deed- threat after three years of buyer’s possession that seller would not convey deed unless buyer paid more than the contract price did not amount to economic duress because P could have not paid and sued for specific performance

*Wolf* (566)- Marlton house- a threat to buy a house and then sell it to someone undesirable to hurt the builder’s business might amount to economic duress if the builder believed it and by that his will was overborne even though the buyer had every right to sell to whomever since his motives were malicious and unconscionable and thus wrongful as required by duress

*Stewart M. Muller Constr. Co.* (566)- architect’s certificate- a threat to do something within one’s contractual rights is not wrongful and thus cannot cause duress

Unconscionability-

Covenants not to compete which are overly broad may be found to be unconscionable and thus void- Wis. legislation following *Fullerton Lumber* (178)- but generally will be rewritten so as to be reasonable if drafted in good faith- *Data Management, Inc.*

*Woolums* (688)- mineral rights- contract with old recluse to sell at 3% of value will not be enforced in equity as unconscionable

*Williams* (S. 19)- cross-collateral- under UCC a contract which is unconscionable at the time that it is made will not be enforced- absence of meaningful choice together with terms that are unreasonably favorable to the other party- examine general commercial background, commercial needs of the particular trade or case, and circumstances existing at the time of the contract- procedural and substantive factors combined

*Frostifresh Corp.* (S. 24)- refrigerator- unconscionable price, charge, language, but court granted fair value of fridge since they kept it, G says should have given nothing

*Central Budget Corp.* (S. 24)- Buick- party may submit evidence to show that price
charged for a used car was so disproportionate to its actual value as to be unconscionable

*Gianni Sport Ltd.* (709)- cancelled order- under UCC- reasonableness of the term is the primary consideration- disparity of bargaining power alone will not make it unenforceable- special order goods which could be cancelled up until shipment- 20 times sales total- women=fashion industry fast paced, stock would be wasted

*Martin* (711)- seeds- unequal position of parties allowed seller to shift burden from where it reasonably should have been- no knowledgeable assent because of unequal bargaining positions- were both parties informed, clause would be valid

Against Public Policy

*Henningsen* (520)- car warranty- the disclaimer of an implied warranty of merchantability is void given the gross inequality of bargaining position and that there was no bargaining permitted, no alternative, quasi-public nature, undercuts legislative intent and against public policy

*Richards* (527)- trucker- exculpatory contracts are disfavored and closely examined to ensure they do not violate public policy and are construed against the party seeking to rely on them1) purpose of document must be clearly labeled and distinguished from other agreements2) release is overbroad, release is disproportionate to the authorization being granted, and thus one-sided- 3) contract of adhesion, no bargaining, had to sign it

Attempts by bailees for hire to relieve itself of liability for negligence in the general course of dealing with the public by disclaimers on parking stubs is unenforceable as against public policy

Uncertainty-

*Joseph Martin, Jr. Delicatessen*- a bald agreement to agree on a future rental is unenforceable for uncertainty as a matter of law

*Fairmount Glass Works*- nonspecificity of makeup of an order in an offer is not too uncertain

*William Whitman & Co.* (S. 8)- yarn- when an order is not specific, the seller is entitled to the least amount of profit possible under the contract, as this much damage is certain, at least

Mutual Mistake

*Sherwood* (606)- replevin for a cow- A contract can be voided if it is made because of mutual mistake of a material fact dissent- if the parties believe different things on the same available information and one is right, then the contract is valid
**Beachcomber Coins, Inc.**(612)- Denver dime- A contract can be voided for a mutual mistake of a material fact about which there is no doubt at the time of contracting- R1- even if the buyer was negligent in not discovering the mistake

**Messerly**(614)- septic apartment- rescission is permitted when the mistaken belief relates to a basic assumption of the parties upon which the contract is made, and which materially affects the agreed performance of the parties- R2- there is no rescission, though, if one party has assumed the risk of mistake

**Smith**(616)- violins- both parties honestly mistaken as to subject matter- sale by description- not enforceable

**Gartner**(616)- zoned land- mutual mistake allows rescission- P inquired of D as agent, had no duty to investigate further- zoning a material fact

**Hinson**(628)- home unseptic- Court refuses to apply mistake doctrine to sale of land as unclear and likely to destabilize land transactions and relied instead upon an implied warranty

Unilateral Mistake- not generally grounds for rescission or revision, unless the other party should have known that the cancelling party was mistaken or enforcement of the contract would be unconscionable- R2

*see non-disclosure*

*If not, can P recover anyway?*

Estoppel can be asserted only when a party has reasonably and foreseeably relied on the representations of the other party- *Acme Mills*

Promisee upon breach may forego suit upon the contract and sue for restitution in quantum meruit (or in the alternative)- contract price may be indication of value, but does not limit recovery- measure is market price- *Algernon Blair, Inc.*

Party can recover in restitution even if he could not under the contract (though not for his own default) for work completed at the other's request for which he expected compensation- *Kearns*

Breaching party may recover in restitution for value of work performed- *Britton*

Part performance- party can recover in equity if partially performed K and justice requires- *Seavey*

*What is the contract for?*

UCC 2-207- no mirror image rule- additional terms are proposals for addition to the contract- between merchants additional nonmaterial terms in the acceptance form become
part of the agreement unless the offer explicitly limits acceptance to terms of the offer or timely notice of objection is given- conduct by both parties which recognizes the existence of a contract establishes a contract for sale although the writings of the parties do not otherwise establish a contract- terms are those on which the parties agree

Implied Obligation

Restatement, 2d- Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement

Paul- a condition within a party’s control may be an implied promise to try to achieve that condition as is evidenced by party’s intentions shown through the contract (not in opinion)

Wood- Read contracts for the reasonable intentions of the parties- if one is intended to be bound and it is implied throughout the contract, then he is bound- exclusive dealing

Implied Warranty

Hinson(628)- restrictive covenants limiting the use of land to a specific purpose carry with them an implied warranty that the land is suitable for that purpose which places the risk of unknown defects which should not reasonably be known on the seller- rescission/restitution

Cook(633)- erosion- court declined to adopt Hinson rule and apply it to award damages for leasing land susceptible to erosion- majority position, but if the seller should have known of the defects, then there is an implied warranty of habitability

Non-Disclosure

Cushman(640)- sulfur water- where one has full information and represents that he has, if he discloses part of this information only, and by his words or conduct leads the one with whom he contracts to believe that he has made a full disclosure and does this with intent to deceive, he is guilty of fraud if this is relied on- silence alone is insufficient to constitute fraud unless there is a duty to speak; such a duty is created by the superior knowledge inherent in the relationship of vendor and buyer of real estate- must disclose material facts not within the reach of diligent attention, observation and judgment of the purchaser- damages should compensate for damage actually suffered and put the defrauded in his expectancy position

Eytan(644)- paintings- no duty to inform of the obvious- low prices were sufficient to give notice that the paintings were not genuine antiques and so seller had no duty to speak

Restatement, 2d(645)- vendor has a duty to disclose when 1) necessary to prevent a previous assertion from being a misrepresentation or fraudulent 2) it would correct a
mistake as to a basic assumption on which the other party is making the contract and non-disclosure amounts to a failure to act in good faith and within reasonable standards of fair dealing 3) would correct the mistake of the other party as to the contents or effect of a writing 4) the other party is entitled to know the fact because there is a relationship of trust and confidence between them

Requirements/ Output Contract

*Lima Locomotive*(307)- steel castings- obligation to supply only from one source is consideration, though there is no guarantee it will order- still mutuality

Bilateral Contract- promise for promise- *Davis*- bilateral contracts were presumed- must be shown that offeror intended for it to be unilateral- under *Re2d* offeree’s choice is presumed

Unilateral Contract- promise-offer accepted by performance-*Davis*

**Obering**- act of performance is both acceptance and consideration

*Simmons*- a UC may be accepted by unintentional performance so long as the party is aware of the offer

*Gainsburg*(262)- hospital donation- promise to donate in consideration of humanitarian work performed and donations accepted construed as a UC accepted by continuation

*Pine River State Bank*- an employee handbook which seems to change the terms of employment may act as an offer for a unilateral contract which is accepted by continuation of work by the employee

Restatement, 2d(384)- tendering a beginning of a performance on a unilateral contract creates an option contract which is accepted by full performance- if the offer is indifferent to the means of acceptance, beginning performance also acts as a promise to complete performance

**Brackenbury** (385)- mother-in-law- revocation of an option contract once performance is begun is a breach

At-Will Employment

*Forrer*(271)- Sears/ farmer- *permanent employment* means employment at will where the employee furnishes no consideration beyond the services incidental to employment

*Sheets*(316)- frozen foods- An at-will employee may establish in tort that he was wrongfully discharged if his firing is against public policy, in that he was fired for not violating a law or legislatively recognized public good- being a good citizen
Price (321)- auto dealer/ insurance- firing for intent to file a claim under health insurance policy does not justify recovery in tort, as it is a private matter and does not touch on public policy- there is no statute giving a right to recover on a policy or mandating that a business allow one to do so

McDonald- employment at will may be modified by an employee handbook and actions of supervisors which appear to be promising that employment is for cause, even if it was not intended to be so

Kari- however, if sufficiently disclaimed, a handbook does not modify a contract

Pine River State Bank- continuation of at-will employment serves as acceptance of and consideration for modifications to the terms of employment

Restatement, 2d- if one party knows what the other means understanding is, then that is the interpretation that should be given to the contract

Absent stipulation to the contrary, a contract is presumed to be made with reference to the public belief of what will be done- Britton

Ambiguity as to the meaning of a contract is decided as a matter of law- Van Wagner

Obering- contracts for the future sale of land require less specificity as to the land than deeds- parol evidence may be used to identify the land if slightly ambiguous

Writings

Parol Evidence Rule- if the parties have put their agreement in 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, explicit or implied by fact (not those which would be implied by law). ways around- ambiguity, waiver, estoppel

Mitchell (457)- ice house- for a prior oral agreement to alter a written contract it must be a collateral one, not contradict express or implied terms of the contract, and not one that would ordinarily be expected to be embodied in the writing- must not be part and parcel of the written transaction- were there an agreement regarding the ice house to do with the sale, it would be expected to be in the contract- how closely bound to the contract is the supposed collateral agreement is the decisive factor dissent- promise to remove ice house would not naturally be in writing as that dealt only with conveyance of the land- question is whether parties intended to render prior agreement legally ineffective by not including it in the writing- if it was a complete integration

Hatley (464)- lease/ wheat- parol evidence rule applies only to those aspects which the parties intend to memorialize in the writing- rule is useful when parties have actually
intended an integration so that they may know their duties - question of intent to integrate is one for the court - base this on whether the oral agreement was inconsistent (contradict an express provision) with the written agreement and whether it was one that might naturally be made as a separate agreement by parties situated in that position - court should presume complete integration - court may consider reasonableness of result if complete

Restatement, 2d(471) - 1) An integrated agreement is a writing or writings constituting a final expression of one or more terms of an agreement 2) whether there is an integrated agreement is to be determined by the court as a question preliminary to determination of a question of interpretation or to application of the parol evidence rule 3) where the writing reasonably appears to be a complete agreement, it is taken to be an integrated agreement unless it is established by other evidence that the writing did not constitute a final expression

1) A binding integrated agreement discharges prior agreements to the extent that it is inconsistent with them 2) A binding completely integrated agreement discharges prior agreements to the extent that they are within its scope 3) An integrated agreement that is voidable and avoided does not discharge a prior agreement. But it may be effective to render inoperative a term which would have been part of the agreement if it had not been integrated

Agreements and negotiations prior to adoption of a writing are admissible to establish the nature of the writing and anything other than modifying it as prohibited above

UCC - look to intention of parties

Luria Bros. & Co.(476) - scrap steel - a parol condition on performance is inconsistent with a contract with no mention of conditions - inconsistency is the absence of reasonable harmony in terms of the language and respective obligations of the parties

Interpretation

Bethlehem Steel Co.(502) - steel prices - four corners standard of ambiguity - mostly outdated (UCC rejects) - if a contract is clear on its face, no extrinsic evidence may be offered to alter its interpretation, which is a matter of law - dissent - the clause was susceptible of multiple interpretations, D's reading was consistent with the language used, and P's literal meaning did not comport with the general use of such clauses and forced technical meanings on common words - as such the contract was ambiguous and a trial should have been granted to determine what the parties meant by it (not their outside intentions, but how it should be interpreted)

Pacific Gas & Elec.(504) - turbine damage - extrinsic evidence may be offered to show that another meaning of the contract is possible - goal of court is to enforce the contract as the parties intended it, not to impose the judge's absolute reading of the words used - though extrinsic evidence may not modify the meaning of a written agreement, it first must be determined what this meaning is, for which the position of the parties forming it is of the utmost relevance
language in a contract is not rendered ambiguous simply because the parties do not agree upon its meaning

Spaulding (508)- military/trust (and railroad bridge case)- courts can look to the purpose of the contract to supply missing or modify unclear terms

Restatement, 2d(509)- Interpretation of an integrated agreement is a matter of law unless it depends on the credibility of evidence or a choice among reasonable inferences to be drawn from the evidence

Has it been modified?

Under common law modifications to a contract require consideration- under UCC they don’t so long as the parties agree

Promissory Estoppel- though modifications require consideration, if a promise to modify has been relied upon, the promise is enforceable- Fried (283)- florist lease

McDonald- objective manifestation of intent to modify an employment contract from at-will to for-cause does so

Pine River State Bank- at-will employment may be modified by retention of employment after the distribution of an employee handbook which seems to alter terms of employment

PE may also be used to waive a right under a contract if one’s actions have caused another to reasonably rely on a course of action to his detriment- Mahban (285)- burnt hotel

Accord and Satisfaction

Marton Remodeling (590)- check cashing- there is accord and satisfaction where a check purporting to be full payment is cashed and there is a single unliquidated claim or bona fide dispute as to the amount due to which it relates- retention of money indicates assent to the settlement of the dispute

School Lines, Inc. (592)- sending as payment for two busses less than was charged writing payment in full on the check is not accord and satisfaction because there was no bona fide dispute and the debt was liquidated- cashing of the check does not erase the rest of the debt and the creditor may sue thereon

Are there conditions?

Condition- some operative fact subsequent to acceptance and prior to discharge- may be a promise- occurrence creates a duty, non-occurrence prevents the existence of a duty- lower standard of completion necessary than for obligation- point of view of the statement may indicate whether it is a condition or a promise A will@ is a promise and A You will@ is a condition unless other intention is clear
Express Conditions- whether a clause is in fact an express condition material to the contract, without which performance the contract is not completed is an open question

Glaholm (716)- charter party- clause that a vessel to sail by certain date ruled a condition, the non-occurrence of which allows for abandonment rather than an obligation, the non-occurrence of which allows for a recovery of damages because sits apart from the rest of the contract so as to imply a different meaning- because ship didn’t leave in time, freighters had non obligations whatsoever

Howard (716)- tobacco crop- clause in insurance contract stating that insured will leave stalks for inspection ruled a promise rather than a condition precedent to recovery- promises interpreted over conditions in doubtful cases- the expression of one thing is the exclusion of the other (where other clauses were labeled as conditions and this was not, it is not a condition)- general policy opposed to forfeitures- insurance policies construed most strongly against the insurer- insurer may assert that damages caused by breach preclude recovery

Merritt Hill Vineyards (720)- closing- non-occurrence of condition precedent to sale by seller entitles the buyer to abandon the contract and to recover his deposit, it does not entitle him to damages unless the condition is also a promise

Timeliness may be an express condition if bargained for, but generally is not (especially in contracts for real property)

Doctorman (748)- half hour- express conditions of timeliness with express consequences are enforceable if bargained for (equity is generally less strict about enforcing such clauses)

Jacob & Youngs- Reading Pipe- express condition that precise compliance with building instructions overlooked and full K awarded on grounds of substantial performance

Constructive Conditions

Kingston (780)- silk business- there are covenants which are mutual conditions to be performed at the same time, in order to bring action for which one must demonstrate that he himself was ready to perform- one must look to the evident sense and meaning of the parties and whether the intent of the transaction requires the performance of both

Restatement, 2d- 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 the contrary- when performance is to be simultaneous, it is a condition of each party’s duties to render such performance that the other party either rendered or, with manifested present ability to do so, offer performance of his part of the simultaneous exchange- render or tender

Price (783)- loan/Holland- where mutual covenants go to the entire consideration on both
sides, they are considered mutual conditions and dependent unless there are clear indications to the contrary- knowledge at the time of formation of the contract that one of the performances might not be possible until after the time stipulated for the other is such evidence

Bell(792)- culinary water- when neither party has tendered its performance, neither party can recover- this rule prevents the waste that would occur by requiring one party to perform a task that would go unused by the other, who it was meant for- party could not recover down payment (in other cases, rescissionary restitution has been allowed)

Ziehen(792)- encumbrance- render or tender, but dispensed with when it appears that the other party has disabled himself from performance or for any reason unable to perform- D theoretically could have performed by removing the encumbrance- cannot recover down payment if the other party didn’t breach

Neves(795)- rescind prior to closing- seller is not required to have clear title throughout executory period- land contracts may extend for a long period beyond planned date of performance- in order to recover, the one party must put the other in default by tendering (not necessarily so for SP)

Caporale(799)- trade- when suing for anticipatory breach, one must show that he was able and ready to perform had he been called on to do so- never had title, and couldn’t show that he could get it- while the breach excused him from making preparations and performing, he could not recover unless he could show that he could have- constructive tender

Have they been met?
Excuse- conditions are excused when they cannot possibly be met

Semmes(739)- Civil War/ fire insurance- disability relieves one from conditions permanently, time limits are not tolled but excused

Statham(740)- Civil War/ life insurance- payment of premiums, as crucial to the business could not be waived as conditions even by disability, but since they had not been missed by any fault of the parties, they are entitled to restitution of all they have paid to the company (in another case less company expenses)

Monteiro(741)- crazy lawyer- failure to bring suit on an insurance claim in the required time because one lawyer was incapacitated is not disability so as to waive the condition, P cannot recover as barred by the condition

Murphy(760)- dentist- a condition may in appropriate circumstances where the condition is not a material part of the exchange be excused to avoid disproportionate forfeiture- R2- there will be no assumption of a contractual purpose to visit venial faults with oppressive retribution; equity and fairness may outweigh consistency and certainty- Cardozo- 1) contract of adhesion 2) forfeiture 3) can still protect insurer’s interest by allowing rebuttal
of presumption that delay would cause injury- insured bears burden of showing no prejudice

Waiver/Estoppel- waiver is an intentional, knowing relinquishment of a right, may need consideration or reliance, may be irrevocable- Estoppel is applied when a party has misled the other and they have relied on it to their detriment, is revocable by notice

**Gilbert v. Globe** (742)- garnishment- insurer was estopped from claiming that the time limit condition was not complied with so long as it told the ensured that it would pay on the claim, but after it informed him it would not, he then had to file within a reasonable time (or the contractual time) as a condition precedent to recovery- waiver is a voluntary relinquishment of a known right, while an estoppel consists of a preclusion which in law prevents a party from alleging or denying a fact in consequence of his own previous act, averment or denial- ban of estoppel may be lifted by giving of proper notice

**Gilbert Frank Corp.** (745)- though insurer continued to investigate claim throughout the period to file, this does not support a claim of estoppel that the period should be extended

Conditions of Satisfaction- two categories 1) operative fitness, utility- objective reasonable man standard 2) fancy, taste, sensibility- subjective good faith standard

**Pan-American Bridge Co.** (S. 25)- architect’s certificate/ 8 or 10 rivets- condition of architect’s certificate can be excused only if the architect is withholding it in bad faith- third person’s expert judgment is a valuable tool for avoiding disputes and should be used as such and respected

**Maurer** (S. 28)- liquidated damages- architect’s certificate may only be withheld for violations within the architect’s judgment, to do with the building, other contractual disputes with the owner are not relevant and not a basis for good-faith withholding

**Fay** (S. 28)- impossible beads- architect must withhold the certificate on his own independent judgment in order for it to be valid, not because owner told him

**Hartford Elec. Applicators of Thermalux, Inc.** (S. 28)- failure of the architect to inspect the building constitutes bad faith and thus a waiver of the condition of certification

**Fursmidt** (773)- valets- two standards- here, fancy- good faith- point of contract was to make the hotel’s guests happy- so long as there is honest dissatisfaction, the condition is not met and the contract is avoidable

**Haymore** (776)- homeowner lists- building contracts are for utility so the objective standard is applicable

**Breslow** (776)- lawyer- utility- full performance- personal satisfaction is irrelevant

Restatement, 2d- if it is practicable to determine whether a reasonable person would be
satisfied, an interpretation is preferred under which the condition occurs if such a reasonable person in the position of the obligor would be satisfied

*Jacob & Youngs*(833)- Reading pipe- the builder could recover the full price less damages for using the wrong pipe even regardless of the condition of an architect certificate

**Has the contract been breached?**

promise may be a condition and an obligation-the condition may be met while the obligation is not, such that the other party is not released from its subsequent obligations, but may sue for breach of the obligations to it

**Is it a material breach?**

*Oshinsky*(815)- shirtings- contract which says that delivery of merchandise is due at Nov. 15 is specific and delivery at any later time is a material breach such that it need not be accepted

UCC(817)- maintains perfect tender rule for goods, but it is mitigated by considerations of fairness and good faith such that *Oshinsky* might have come out differently unless the buyer could show damages

*Prescott*(817)- Australian onions- seller must deliver the whole order in order for the buyer to be compelled to accept it

*Beck & Pauli Lithographing Co.*(817)- stationery- contracts primarily for artistic services are not the same as those for merchandise and time is of the essence clauses are construed less strictly- if the buyer was damaged by the delay of a week, his remedy is damages, he is not justified in refusing delivery

*Aiello Constr., Inc.*(S. 32)- missed payments- failure to make missed payments constituted a material breach justifying cancellation since the breach went to the essence of the contract

*Tichnor Bros.*(S. 32)- post cards- breaking a promise not to sell the same goods to any other store in town was not a material breach justifying no-payment with retention of the goods but only a suit for damages

**Substantial Performance**

*Plante*(829)- misplaced wall- there can be no recovery by the builder on a building contract as opposed to quantum meruit unless there has been substantial performance- the test is whether the performance meets the essential purpose of the contract- something less than perfection is the test- recover contract price less the damages caused by the defects
Jacob & Youngs(833)- Reading pipe- full contract price recoverable by builder who used wrong pipe and thus did not get the architect’s certificate even though the contract stipulated that any work not in strict compliance would be replaced

Reynolds(834)- wrong brick- plaintiff substantially breached by using the wrong brick but was entitled to half the price in quantum meruit

Hadden(836)- Con Edison- willful breach of an employment contract through dishonesty does not preclude performance of the employer as long as the employee has substantially performed

Turner Concrete Steel Co.(S. 29)- walk out- substantial compliance as to advance payments is a condition precedent to the contractor’s obligation to proceed- the builder is not entitled to cancel the contract unless there has been some wrongful act or default on the part of the owner- if there is no honest dispute the contractor may cancel if in doing so he acts reasonably, if the owner is acting good faith, then the sub may not cancel- reasonable time must be given to comply with the demand before work is abandoned- contractor may temporarily cease work until full payment is made and after a reasonable time and proper notice cancel

Reigart(865)- a vendor can have specific performance of a sale of land if there is not a material breach of the contract and the land is not what was bargained for only in some unimportant way- a discrepancy which it seems but for that the contract would not have been formed is a material breach- if not material, the contract is valid and the buyer can recover in damages the difference in price

Keating(867)- 1/4 acre- specific performance of a land sale is not available if the discrepancy is a material one, be it never so small

Bartlett(867)- larger- a seller cannot rescind the sale when it is found that land he sold was bigger than thought, but he can recover for the added value- the intention of the parties, not the degree of the discrepancy controls whether the breach is material- the parties contracted for a parcel of land and not a certain acreage and all that was affected was the price

Buyers can specifically enforce land contracts even if there is a material discrepancy against them and recover in damages for the discrepancy

Repudiation

Anticipatory repudiation is an overt showing of intention not to perform one’s future duties under the contract. One is relieved of his obligations to the repudiator and may cover; he may sue immediately after repudiation or wait until after the time of performance cf. Reliance Cooperage applies only to bilateral contracts

Restatement, 2d- anticipatory repudiation gives rise to a claim for damages for a total
breach and discharges the other party\textsuperscript{4} remaining duties and may excuse the non-occurrence of a condition

Anticipatory repudiation provides non-breacher with an election of remedies- can immediately sue for damages, thereby terminating the contract or he can wait and see if the breach actually occurs and sue then

\textit{Greguhn}\textsuperscript{857}- iron cross- missing a payment on a unilateral contract does not entitle one to recover future damages- an insured who sues because his insurer is not making payments that it should because it is wrongfully classifying the injury can recover those payments missed but not those future payments because the company\textsuperscript{5} action does not yet amount to a repudiation- if they are forced to sue again then they may recover future damages or have some other remedy which compels performance

\textit{Caporalit}\textsuperscript{860}- middle ground- awarded judgment in installments to be payable as they become due

Denial that a contract exists amounts to repudiation.- \textit{Chicago Coliseum Club}

Late delivery of two of four machines justified returning those and rejecting the others and recovering on the whole contract even though they were used- \textit{L. Albert & Son}\textsuperscript{98}

Refusal to pay for cranes is material breach justifying abandonment of contract- \textit{Algernon Blair}

\textit{Price}- one cannot generally recover on a breach of a contract to loan money unless it leads to further injury

Substantially performing party must have acted in good faith- \textit{Groves} majority

Plaintiff must have suffered and demonstrate damages- \textit{Acme Mills}

Damages must be demonstrated to a reasonable certainty- \textit{Chicago Coliseum Club}

Plaintiff generally cannot recover for attorney fees- \textit{Neri}

Party cannot recover mental distress damages except for K with A elements of personality @ \textit{Valentine}

\textit{RESTATEMENT, 2d}- if there is physical injury or the contract or breach is of a sort especially likely serious emotional disturbance

Party cannot recover in full where value to promisee exceeds cost of performance- \textit{Valentine} cf. \textit{Groves}

Party cannot recover exemplary damages for breach of K absent separate tortious conduct-
Negligent misrepresentation is not separately tortious and so cannot be recovered for when suing on a contract- *Brown* (81)- sold property twice

Party can recover down payment on chattel, less damages (at least the less of 1/5 of K or $500 under UCC), in restitution- *Neri*

Overturns rule from *Thach* that down payments cannot be recovered (defeats purpose)

Sellers can recover incidental, buyers consequential, damages- UCC

*What is the remedy?*

Expectancy- (what did he lose? cf. *Groves*) by econ. theory, measure by subj. preferences of party

Cost of Completion of Building Contract-always upper limit of award

*Groves* (12) majority- land grading cf. adequacy of consideration

in *Groves*, Restatement 1- unless economic waste

the victim of a willful breach is likely to be more sympathetically awarded through rule-bending But, cf. *Acme Mills*; Restatement 2d- not done, promote efficiency

*Peevyhouse* dissent- foreseeable costs- agreed to

*Advanced, Inc.* (21)- Alaska home- look to likelihood party will complete

*Plante* (829)- cost of completion where items can be remedied without economic waste (destroying work already completed) and diminished value elsewhere- when the separation of defects would cause confusion, then the diminished value rule should apply to everything

Diminution of Value of Land in Building Contract

*Groves* dissent- if cost of completion greatly exceeds this

*Peevyhouse* (19) majority- coal strip mining- If breach not primary object of contract, diminution

Contract Price Less Market Value at Time and Place of Performance in Sales Contract

*Acme Mills* (23)- wheat
Neri- UCC

Value of materials in the Land in Construction Contract where Wrongfully Taken

Laurin(26)- gravel taken during construction (P ≠ loss, not D ≠ gain)

Expected Profit (including overhead) Plus Incidental Expenses for Fixed Price Articles
(Lost volume seller)

Neri(64)- boat- under UCC- when difference between K and market price does not adequately compensate P- but for breach would have sold 2, not 1

Future Damages

Van Wagner- damages may be awarded into the future in cases of repudiation
where they are reasonably certain

Greguhn

Limitations on Expectation Damages-

Duty to Mitigate- A plaintiff cannot hold a defendant liable for damages which need not have been incurred. (Rock. Co.) Expenditures to date plus profits/ Full K less costs saved

Rockingham County(41)- bridge- After repudiation, the other party cannot perform and recover damages based on full performance.

Fixed overhead is unavoidable, and so recoverable- Leiangang(44)- weed board

Expandable businesses- full K if no costs avoided- New clients are not mitigation

Kearsarge(45)- data-processing

Parker(47)- Recovery of an employee for breach of contract is limited to the K amount less what the defendant can show the plaintiff actually earned or with reasonable effort might have earned through substantially similar employment

Billetter(53)- Unemployment payments do not mitigate damages (contended position); One is not required to take the same position for less pay as this would amount to a willing modification of the original contract

Chicago Coliseum Club- expenses incurred in an effort to compel performance of an anticipatory breacher are not recoverable, as they could be avoided

Missouri Furnace(56)- coke- Non-breacher of advance installment contract has no duty to cover by an advance contract and does so at his own risk. Measure of recovery is market price at time and place for delivery of each installment. UCC allows for good
faith forward cover contracts

*Reliance Cooperage*(58)- there is no duty to mitigate damages until they exist. One need not cover until time for performance, but one may; doctrine of anticipatory repudiation is designed to help plaintiff, not defendant

Foreseeability- A party may only recover such damages as arise naturally, in the usual course of things, or were within the contemplation of both parties at the time the contract was formed

*Hadley*(69)- shaft

*Lamkins*(72)- tractor and light- tacit agreement to liability for particular loss

*Globe Refining Co.*(72)- Holmes- liability must be within his contemplation@

*Victoria Laundry*(73)- reasonably foreseeable with actual or assumed knowledge

*The Heron II*(74)- sugar price drop in Iraq- dispute as to statement of rule- A liable to result, @ serious possibility, @ not betting terms

*Hector Martinez & Co.*(75)- drag line for strip mining- does not have to be most foreseeable, just not unforeseeable

RESTATEMENT 2d(76)- A foreseeable as a probable result @ also allows just discretion re: disproportionate losses

*Valentine*(77)- employment K- foreseeable mental distress can be recovered on only when the K contains A elements of personality@ compensation by reference to the terms of the contract is inadequate

*Hancock*(80)- other Alaska home- construction of a house is not sufficiently personal and there are ascertainable monetary damages in the terms of the contract- where damages for distress is allowed, the breach is generally intangible

Causation- Damages must be the result of and naturally flow from breach.

*Chicago Coliseum Club*(89)- boxing- Plaintiffs cannot recover for expenditures made prior to the contract as they were not incurred in reliance but in anticipation

Certainty- cf. Reliance below

On a contract terminable at notice, one can only recover in expectancy damages for the period prior to possible termination, as that is all that is guaranteed

*William Whitman*- P may recover expectancy on an uncertain sales contract up to
as much as is certain- the minimum profit under the contract

Joseph Martin, Jr. Delicatessen- one may only recover on contracts sufficiently certain that what was lost can be ascertained- otherwise an intervening court would be making up its own agreement for the parties to be bound by

Reliance (what of what was lost can be proven?) or (put back in original position, but not really, because of allowance for loss) (actually expectancy, assume break even unless shown otherwise [which is the same as showing negative profits and just giving expectancy])

Chicago Coliseum Club- reasonable expenses incurred prior to breach and after formation are recoverable (cf. expectancy principle) even if profits cannot be proven (Rock. Co.)

Security Stove(96)- gas convention- A even if there were no expected profits as such- expenses incurred prior to contract in reliance on reliability of common carriers are recoverable- most definite and certain measurement of damages is sought

Anglia Television Ltd.(96)- Robert Reed- P may recover expenses incurred before contract if D should have foreseen that such expenditures would have been made and would be wasted if he breached

RESTATEMENT, 2d(97)- P may recover in reliance on expenditures made in preparation of performance including collateral transactions and actual performance less any loss D can demonstrate P would have suffered even if there was no breach- L. Albert & Son(98)- rubber, armistice

Algernon Blair, Inc.(103)- Miller Act- even if the loss exceeds the expenditures in reliance, P may recover in restitution for the market value of the work done

If no enforceable contract, i.e. promissory estoppel, then damages can be limited as justice requires- may recover expectancy or maybe just reliance

Restitution- (unjust enrichment) (promisor must do something not necessarily entailed by the contract in order to remedy his wrong- return promisee to status quo by compensating for benefit conveyed) (basis in equity though applicable in law, too, so invites considerations of fairness)

Algernon Blair- quantum meruit- for services rendered- recover market price, K not limit because quasi contractual (contract voided by breach)

Kearns(105)- repapering house for sale- work done at the request of another that then confers no benefit on him may be recovered on so long as compensation was expected

Restatement, 2d(107)- restitution cannot be had for work done in preparation but not conveyed (quarrying stone, building machine)- not done for other party
Oliver (109)- lawyer- restitution is not available to a party that has fully, or nearly fully, performed (Restatement 1) a valid contract- sue on K

Quasi-contract- implied promise to pay- promise (if it exists) not actually enforceable- return parties to status quo- failure of consideration

Davis- Courts will not invoke quasi contract where there is explicitly not one, as with an illusory promise

Britton (115)- farmhand- Breacher of a contract may recover the value of his work conferred and accepted less damages, not to exceed the pro rata contract price

Reynolds (834)- wrong brick- plaintiff substantially breached by using the wrong brick but was entitled to half the price in quantum meruit

Restatement of Restitution (239)- an actor who has no intent to charge or who officiously intermeddles cannot recover for past benefits conveyed

Equity (when law is inadequate)

Specific Performance- will be granted only when there is no adequate remedy at law and when enforcement will not impose a disproportionate burden on the defendant- Van Wagner, Curtice B.

Woolums- mineral rights- a weaker case is needed to defeat SP than to procure it- hard bargain will not be enforced

Kleinberg (690)- underground pipe- court would not grant restitution of down payment since there was no fraud, but would not give SP, since D was genuinely unaware and it would be an undue hardship, so court stayed its hand granting no relief

Marks (692)- AK gold- courts of equity will not specifically enforce contracts where the consideration is grossly inadequate

Van Wagner Advertising (151)- N.Y.C. billboard- SP generally granted in sale of real estate, not as a matter of course in lease- uniqueness measured by uncertainty in valuing it

Restatement, 2d (154)- factors affecting adequacy of damages are 1) the difficulty of proving damages with reasonable certainty 2) 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

UCC- where goods are unique or in other proper circumstances

Dallas Cowboys (175)- James Harris- unique does not mean the only, but that the
equivalent is not currently available to P- cf. Pingley

_Paloukos_ (161)- truck from dealer- SP extraordinary remedy- SP not granted when it would be impossible, as when seller does not have something that he is asked to sell

_Curtice Bros._ (155)- tomatoes- SP is granted when intangible damages like loss of market share and reputation are involved- cf. City Stores Co.- risk of inability to cover is reason for contract- presumption of inadequacy of damages re: land; of adequacy re: chattels

_Fitzpatrick_ (171)- nurse, will- Equity will not generally specifically enforce contracts for personal service which are executory

_Chicago Coliseum Club_- preliminary injunction- enforces express (or implied, but not related to personal service- _Pingley_) negative covenants related to personal service even though would not enforce affirmative covenants; generally done where there is a special quality to the performance of the breacher which would be detrimental beyond just the loss of performance cf. _Dallas Cowboys_- reversible decision, irreparable harm, reasonable likelihood of success on the merits- to preserve status quo cf. _Curtice Bros._

_Fullerton Lumber Co._ (177)- covenants not to compete will only be enforced as reasonably necessary to protect the legitimate business interests of the employer- They may be modified to meet this requirement- cf. Data Management, Inc._ (179)_- Alaska CNC

_Northern Delaware Indus. Dev. Corp._ (180)- massive modernization- the award of equity is discretionary and courts may deny it where they do not want to get involved in the middle of a hugely complex undertaking- SP may be granted for very specific construction contracts, but not for those which the court has no means of administering

_City Stores Co._ (182)- NoVA department store- SP of construction and lease contract may be granted when no adequate remedy at law and no undue hardship- building is on D≠ land, so can get no one else to do it- Court may appoint special master or parties may submit to arbitration

Doctrine of Part Performance- SP granted P who has performed his part of the contract when failure to do so would operate as a fraud upon him _Seavey_- cf. _Fitzpatrick_

_Brackenbury_- injunction to hold land in trust may be granted where a party has conveyed the land to a third party with notice in breach of a contract to devise it to the promisee- if parties can not get along so that P may continue to perform, the court may devise some means for the P to pay for similar services for as long as they are due if this is possible- if not, P may just get reliance or restitution damages, not specific performance

_Mier_- SP of an option contract will be granted where P has incurred outside liabilities and thus damages cannot be awarded so as to necessarily fully compensate him