CONTRACTS OUTLINE

CHAPTER 1: Intro to Contracts

I. Contract – enforceable promise
   ~ exchange relationship
   ~ created by agreement
   ~ containing at least one promise
   ~ enforceable in law
B. Cases:
   1. McHenry v. Onions
   2. Morgan v. Digital

CHAPTER 3: Contractual Assent and the Objective Test

I. Objective Standard:
   A. contracts are formed by mutual consent – both parties must intend to contract
   B. Assent is determined objectively – actions and words
      1. party is bound if words/actions indicate assent
      2. objective evidence is more reliable
      3. subjective evidence can only inform – not prove
      4. manifestations must be interpreted reasonably
   ~ cases:
      1. Kabil v. Mignot – court allowed subjective evidence of intent and expectation – showed existence of a contract
      2. Lucy v. Zehmer – court examines parties’ conduct to evidence intent – including past conduct and conduct subsequent to transaction

II. Remedies for Breach
   A. Expectation damages
   B. Specific performance – breaching party must perform as they promised
   C. Punitive damages – RARE
   D. Injunctions

CHAPTER 4: The Offer

I. What is an offer?
   A. Manifestation of willingness to make a bargain
   B. Offeree must reasonably understand that offeror has given her the power to accept and bind
   ~ cases:
      1. Fairmount Glass Works v. Grunden-Martin – quotes are not offers except when they state “for immediate acceptance”
      2. People v. Braithwaite – contracts must have specific terms and the terms must be agreed upon
II. Advertisements: Offer v. Solicitation
A. Ads are not usually offers – usually solicitations
B. Solicitations are invitations to make an offer
C. Offer must be:
   1. clear, definite, explicit
   2. leaves no material terms open for negotiation
   3. acceptance of which completes the contract
   ~ Cases:
   1. Leonard v. Pepsico – advertisements are not offers! The offer is the order form and the acceptance is acceptance of the form and cashing the check
   ~ also doesn’t count when its clearly in jest – like this one
   ~ must say “1st come, 1st served” and be definite

III. UCC 2-204
A. Contract for sale of goods may be made in any manner showing agreement, including mutual conduct
B. Contract may be found even though moment of its making is undetermined
C. Even if 1 or more terms are left open – contract does not fail if parties intended to contract and there is a reasonably certain basis for giving appropriate remedy

CHAPTER 5: Acceptance
I. Offer and Acceptance
A. Rejection occurs when:
   1. offeree doesn’t accept within specified or reasonable time
   2. offeree ignores offer
      a. silence can be acceptance when offer expressly says so
   3. offeree makes a counteroffer
B. Revocation
   1. Offeror can revoke any time before acceptance
      a. can revoke even when offer said it would be open for a specific time period
      b. offeror must give offeree notice of revocation
   2. Hendricks v. Beehee – acceptance must be communicated and offer can be revoked if communicated before acceptance
   3. Indirect revocation – Dickenson v. Dodds – offeree must have reliably learned in some other way that offer is closed
      a. acceptance wasn’t adequately communicated
      b. offeree knew offeror intended to sell to another buyer so this counts as indirect revocation
C. Acceptance must comply with:
   1. Offer’s Substantive Nature
a. terms of transaction  
b. may include variance in non-material terms only  
c. Keller v. Bones – acceptance is the manner in which the offer stipulates will be satisfactory acceptance

2. Procedural nature of offer  
a. if offer states how to accept, acceptance must comply  
b. offer may not give an acceptance procedure  
   i. may be any reasonable mode  
   ii. may be within a reasonable time  
c. acceptance may fail if it occurs after expiration of offer or doesn’t comply with procedure

3. Mail-Box Rule:  
a. acceptance is effective when it is put in the mail  
b. may be avoided if offer specifies a different manner of acceptance or that it is only effective upon receipt.

D. Inadvertent Manifestation of Acceptance  
1. sometimes subjective intent is too compelling to disregard  
2. Glover v. Jewish War Veterans – you can’t collect a reward if you didn’t even know about the reward

E. Silence as Acceptance  
1. Silence usually = rejection  
2. Some exceptions in Restatement 2nd section 69  
   a. where offeree takes benefit of offer with reasonable opportunity to reject and reason to know payment for them was expected  
   b. Where offeror has stated or given reason to understand that assent may be given by silence and offeree intends to accept  
   c. due to previous dealings, it is reasonable for offeree to notify when they don’t intend to accept  
   d. offeree’s conduct is inconsistent with offeror’s ownership of offered property

F. Termination of the Power of Acceptance  
1. Lapse of the offer terminates power of acceptance  
   a. if no lapse date, offer stays open for a reasonable time  
      i. reasonable time is determined in light of the circumstances of the transaction  
   b. Vaskie – settlement offer is accepted after statute of limitations had run. D refused to pay and court says if there’s no deadline in the offer, it should be a “reasonable time” to accept. The statute of limitations does not void the contract

2. Rejection  
   a. no response before expiration  
   b. communication of intent not to accept  
      i. offeree cannot accept after rejecting

3. Counteroffer
a. serves as a rejection and new offer by offeree
4. Death/Mental disability of Offeror
   a. offer lapses if offeror dies btw. offer and acceptance
   b. offer lapses if offeror becomes incompetent btw. offer and acceptance

G. Acceptance by Performance – Unilateral Contracts
1. Offeror can require performance as acceptance
2. offers may not require performance as acceptance but generally do not forbid it
3. communication of performance to offeror may be done any time after performing as long as offer is not revoked before notice
4. part performance creates an option contract
   a. duty of performance is conditional on completion of performance in accordance with offer’s terms
   b. operates as a promise to complete
5. Carlill v. Carbolic Smoke Ball Co. – unilateral – D promises to pay if P performs – P tries the ball and asks for payment – contract exists

CHAPTER 6: UCC Article 2 and the Battle of the Forms (sale of goods, not services!)

I. Acceptance under UCC 2-206
A. offer to contract may be accepted by any reasonable method unless otherwise stated
B. an order to buy goods = an offer to buy conforming goods
   1. non-conforming goods do not equal acceptance but if seller notifies buyer it is only an accommodation to buyer
C. where beginning of performance = acceptance, offeree must notify of acceptance within a reasonable time or the offeror may construe the offer as lapsed
D. ProCD v. Ziedenberg – shrinkwrap licenses – D could have returned the product but chose to accept licenses – D breached contract by using commercially in contradiction to license provisions

II. Battle of the Forms: UCC 2-207
A. A definite and seasonable expression of acceptance = acceptance even when including addition or different terms, unless acceptance is expressly made conditional upon consent to new terms
B. Additional terms are proposals to the contract normally
C. When both parties are merchants, additional terms become part of the contract unless:
   1. offer expressly limits acceptance to terms of offer
   2. terms materially alter contract
   3. objection to the terms has already been made and notice given
D. Conduct by both parties recognizing contract for sale (even when writings
don’t establish contract) = no contract!
   1. when this happens, terms of the contract are those upon which the
      writings of the parties agree
   2. used to avoid contracts using boilerplate forms that nobody reads
      where parties didn’t realize what they were agreeing to
E. Last Shot Rule – If goods are delivered and paid for, the contract is the last
   offer and acceptance made – precedent of last communication
F. Knock-out Rule – applies to “different” terms – conflicting terms cancel
   each other out and are replaced by default UCC rules (gap-fillers)
G. Klocek v. Gateway – P orders computer and receives it with a license and
   doesn’t agree to the terms – sues for breached warranties, false
   claims and an arbitration clause – court says “standard terms” are
   not a counteroffer and D did not make P aware that acceptance was
   conditional upon acceptance of new terms – both parties are not
   merchants so terms are only proposals and not agreed to –
   arbitration clause is void!

CHAPTER 7: Preliminary and Incomplete Agreements

I. Agreements to agree are too indefinite – unenforceable
   A. must include material terms

II. Obligation to bargain in good faith doesn’t work out

III. Cases
   A. Academy Chicago Publishers v. Cheever – short stories, terms too
      indefinite ~ No contract!
   B. Joseph Martin v. Schumacher – agreement to agree excluding a material
      term is unenforceable
   C. Jenkins v. County of Schuylkill – condition not met – no agreement
      established – good faith not violated
      ~ promise to negotiate is not a promise to contract

CHAPTER 8: Statute of Frauds – requires a “writing”

I. Statute is Applicable to:
   A. Sales and transfers of interests in land
   B. Contracts not to be performed within one year
      1. if contract does not expressly state that the contract is for more than
         one year, the statute doesn’t apply
   C. Contracts for the Sale of Goods – UCC 2-201
      1. if goods are for $500 or more you must have a writing
         a. a writing can include a symbol or identifying mark as signature
         b. doesn’t have to be on every page of agreement
         c. writing has to have a signature and content to evidence contract
2. between merchants the writing may be done within a reasonable time
3. contract without a writing is still enforceable if:
   a. goods are specially manufactured and are not suitable for sale to others within ordinary course of business and has begun manufacture
      i. substantial beginning of their manufacture or commitments for their procurement
   b. if party admits in testimony that there was a contract then it is not enforceable beyond the quantity of goods admitted
   c. payment has been made and accepted for goods received and accepted
4. Cases:
   a. Klewin – owner hires and contracts with contractor for phase I, not phase II (oral agreement) and later backs out on phase II – statute doesn’t apply – contract must SAY more than one year and doesn’t – contract exists!
   b. Burns – oral agreement – care of old man in exchange for his estate – statute must be upheld – part-performance doesn’t override the statute because the performance is not unequivocally referable to the agreement – no contract

CHAPTER 9: Consideration

I. Consideration – a bargained-for exchange
   A. promise in exchange for a promise
   B. promise in exchange for performance
      1. may be a forebearance, or
      2. creation/modification/destruction of legal relation
   C. NOT gifts – these aren’t a bargained-for exchange
   D. legal benefit to promisor/detriment to promisee
   E. Cases:
      1. Congregation Kadimah Toras-Moshe v. DeLeo
      2. Hamer v. Sidway
      3. Patel v. American Board of Psychiatry
      4. Carlisle v. T&R Excavating
      5. Apfel v. Prudential
      6. Batsakis v. Demotsis

II. Performance of a legal duty/Preexisting Duties
   A. Does not count as consideration (policemen and rewards)
      1. State v. Avis

III. Forbearance of a Legal Relation
   A. Promise not to sue/exercise legal right/claim/defense
      1. forbearance of patently invalid claim is bad consideration
IV. Mutuality of Obligation – not required for consideration
   A. Both parties must contribute something of value to contract
      1. thing promised need be of no value to the party who agreed to it
   B. Lack of mutuality doesn’t mean lack of consideration
      1. mutuality is not necessary when promisor receives other valid
         Consideration
   C. Conditional promises: I promise X if Y happens…
      1. Illusory promises aren’t consideration
      2. Promise is not enforceable if condition doesn’t happen
      3. Promisor must take on some risk – not just a sure thing
         a. risk may be a legal detriment
      4. Iacono v. Lyons
   D. Output contracts – buyer agrees to buy all seller’s output
      1. seller doesn’t agree to produce anything!!!
         a. implied obligation of good faith
   E. Requirement Contracts – seller agrees to sell any quantity the buyer needs
      1. buyer doesn’t actually agree to anything!
         a. implied obligation of good faith

V. Exclusive Dealings
   A. Agreement for exclusive dealing imposes an obligation to use best efforts
      to supply goods and promote their sale
   B. Satisfaction clauses
      1. standard of reasonable person to determine whether discretion is in
         good faith
      2. Wood v. Lucy, Lady Duff-Gordon

CHAPTER 10: Promissory Estoppel – there must be a promise!!
I. Purpose
   A. protects promisee who has relied to their detriment on a promise, even
      though consideration is not present
   B. Used to keep defendants with unclean hands from profiting from their
      Misconduct
   C. Cases:
      1. Deli v. U of Minnesota
      2. Wright v. Newman
      3. In Re Morton Shoe Co.
      4. East Providence Credit Union v. Geremia
      5. Ypsilanti v. Gen. Motors

II. Found when:
   A. Promisor makes clear and definite promise he should reasonably expect to
      induce promisee’s action/forbearance, and
   B. Promise does induce promisee, and
C. Injustice can only be avoided by enforcing the promise  
D. Promise doesn’t need to induce when made to a charitable subscription  

III. Problems:  
A. Employment at-will  
   1. when promissory estoppel interferes with at-will employment, reliance on promises will not be reasonable  
   2. Lord v. Souder  

IV. Remedies  
A. specific performance – rarely available  
B. Contract damages  
   1. Expectation damages – put in position they expected to be in  
   2. reliance damages – put in position had they not relied  

CHAPTER 11: Options and Firm Offers  

I. Option Contracts – makes an offer firm  
A. Options are given in exchange for consideration and promises to limit promisor’s power of revocation for a designated time period  
B. Offeror is obligated to keep offer open for specified time  
C. Remains open even after:  
   1. rejection  
   2. counteroffer  
   3. death/incapacity  
D. Offeree makes no promise to accept  
E. Offeror’s risk is compensated by consideration  
   1. recital of consideration is enough – it doesn’t have to be paid  
   2. Beginning performance in unilateral contract counts as consideration for option to keep open  
      a. promisee is still under no obligation to complete  
F. Option is distinct from contract to buy/sell  

II. UCC 2-205 Firm Offers  
A. offer to buy/sell by merchant in signed writing saying it will be held open is not revocable  
   1. irrevocability may not exceed 3 months  
   2. writing must be signed by offeror  
B. no extra consideration needed for firm offers  

III. Cases  
A. Drennan v. Star Paving  
   - contractor makes a bid to owner based on subcontractors’ bids  
   - sub backs out – contractor relied on their bid  
   - not an option contract but due to promissory estoppel, contractor’s
reliance held sub’s offer irrevocable
- contract exists enforceable

B. Pavel v. AJ Johnson
- contractor/subcontracts are tricky
- may be decided either way – at what point is the contract formed?

CHAPTER 12: UNJUST ENRICHMENT AND MATERIAL BENEFIT

I. Unjust Enrichment
   A. Not based on a promise!!!
   B. claimant confers a material benefit upon recipient under circumstances that make it unjust for recipient to keep it without payment
   C. Remedies:
      1. Restitution – order for return of benefit or $$ judgment
         ~ measured by the market standard of quantum meirut
   D. Implied Contract:
      1. In law – found by courts to fix unjust enrichment
         ~ this is not contract law!
      2. In fact – intent to promise, consideration, terms
         ~ this is contract law
      4. Feingold v. Pucello
   E. Injustice
      1. No restitution for gifts! – volunteers cannot recover
      2. no restitution for unreturnable benefits
         ~ officious intermeddlers providing unwanted services
         ~ Estate of Cleveland v. Gorden
   F. Enrichment
      1. must be conveyance of material benefit

II. Moral Obligation
   A. Past consideration (prior detriment) may be sufficient to support a later Promise – promisee expects something in return – not a gift
      ~ Promisor makes a promise ratifying a preexisting obligation that has become unenforceable
         1. promise to pay creditors after bankruptcy
         2. promise to pay debt after statute of limitations has run
         3. promise to pay on previously voidable obligation (obtained under duress, fraud, etc.)
   B. 3 Rules
      1. benefit conferred on promisor by promisee before promise was made
      2. benefit unjustly enriched promisor
      3. promisor subsequently made a promise to pay for benefit
   C. Cases:
      1. Webb v. McGowin
      2. Dementas v. Estate of Tallas
CHAPTER 13: POLICING CONTRACTS

I. Misrepresentation and Fraud
   A. Misrepresentation – an assertion of false fact(s)
      1. fraudulent – maker lies with regard to a fact which induces recipient to
         assent at the time of contract – intent to lie and induce
            a. knowledge of falsity (scienter)
            b. intent to mislead
      2. materiality – maker lies with regard to a fact which is likely to induce
         assent
   B. 3 Types
      1. Concealment of fact – assertion that fact doesn’t exist
      2. false assertion – explicit lie
      3. non-disclosure – don’t say anything
         a. maker knows disclosure is necessary to prevent
            misrepresentation
         b. maker knows disclosure would correct assumption upon which
            the other party is contracting – failure to act in good
            faith/fair dealing
         c. maker knows disclosure would correct other party’s mistake in
            the writing of an agreement
         d. other party is entitled to know because of relationship of
            trust/confidence
   C. Silence as Fraud: Non-disclosure/duty to disclose
      1. not fraud if other party knew or should have known about facts
   D. Timing is critical
      1. maker must have reason to know of falsity at the time the assertions are
         made
   E. Negligent Misrepresentation
      1. not deliberately false but carelessly made assertions
      2. materiality is more important here
   F. Damages
      1. rescission of contract (partial performance enables restitution)
      2. suit for money damages – if contract is kept enforced
         a. may seek punitive damages here!
   G. Fraud
      1. in the inducement – misrepresentation with regard to facts that induce
         formation of a contract – contract is avoidable
      2. In the factum – misrepresentation within contract itself in its terms or
         conditions, etc. – contract is void
** Plaintiff must have relied on misrepresentation to recover!!!
** Timing is critical – defendant must have known statements were false AT THE
TIME THEY WERE MADE!
II. Duress – coercion undermining the free will of the promisor into false manifestation of assent – Improper Threat!

A. Types
   1. physical force/threat of physical force – renders contract void
   2. Economic duress

B. Improper Threat
   1. threat is a crime or tort, or
   2. threat is of criminal prosecution, or
   3. threat is the use of civil process made in bad faith (no real claim), or
   4. threat is of breach of duty and fair dealing in a contract, or
   5. resulting exchange is not on fair terms, and
   6. threat would harm recipient and not significantly benefit the maker, or
   7. use of power for illegitimate ends, or
   8. effect is increased by prior unfair dealing by maker

C. 3rd Parties:
   1. contracts induced under duress by non-parties are voidable unless other party relies or in good faith without knowledge of duress, gives consideration

D. Contract Modification – parties may modify existing contracts by they must do so cooperatively
   1. Two issues:
      a. new consideration must be given with exchange of new detriments
      b. modifications can be avoided if induced by duress
   2. supervening difficulties exception
      a. modification without consideration is valid if parties fairly bargain to take account of unforeseen difficulties
      b. only when…
         i. it is apparent that performance is subject to substantial burdensome difficulties
         ii. party benefiting from modification must be honest
         iii. change in performance for party assuming obligation must be fair

E. UCC 2-209: Contracts for Sale of Goods
   1. Agreement modifying a contract within this article needs no consideration
   2. a signed, written agreement excluding modification or rescission cannot be otherwise modified or rescinded, but btwn. merchants such a requirement must be separately signed by merchant not providing the form
   3. Statute of Frauds must be satisfied if contract as modified, is within it

III. Undue Influence

A. There must be a relationship btwn. the parties
   1. Family
2. Fiduciary – one party required to act in best interests of the other

B. Application
1. unfair bargaining/deliberate advantage-taking
2. often victim is particularly vulnerable to the other party due to their relationship
3. abuse of power/dominance over trusting party

C. Common Factors
1. discussion of transaction @ unusual time/inappropriate time
2. consummation of transaction in unusual place
3. insistent demand to complete transaction at once
4. extreme emphasis on consequences of delay
5. multiple persuaders against one vulnerable party
6. absence of third party advisors to servient party
7. statements that there’s no time for financial/legal advice

D. Cases:

IV. Unconscionability – not in accordance with what is right
A. UCC definition of Unconscionable
1. any unconscionable part of a contract is unenforceable
2. parties may introduce evidence of commercial setting, purpose, and effect to help courts determine unconscionability
3. procedural unconscionability (how the deal was made)
   ~ disparity/absence of bargaining power
   ~ hidden terms?
4. substantive unconscionability - contract itself
   ~ oppressive terms
   ~ fact driven

B. Elements
~ is the contract, in the light of the general commercial background and the commercial needs of the trade,
~ so one-sided as to be unconscionable
~ under the circumstances existing at the time of contract

C. Unconscionability in Transactions Btwn. Sophisticated Businesses
1. Is the bargaining power equal?

D. Relief for Unconscionability
1. Nonenforcement of the entire contract
2. Severance – removal of unconscionable terms
3. Rewriting- adjustment of the term to lose unconscionable effect

CHAPTER 14: POLICING CONTRACTS

I. Illegality – contracts for illegal conduct will not be upheld
A. Contracts that are illegal or against public policy are not enforced
   EXCEPT when parties are not equally culpable
1. Danzig v. Danzig – only atty’s actions were illegal so client could Collect
2. if both are equally guilty – no relief for either – parties left as they are
   B. If enforcement does not further harm public policy – enforce it

II. Incapacity - show incapacity through evidence that they lacked contractual capacity at the time they entered the transaction
   A. Minors
      1. a minor’s lack of contractual capacity makes the contract voidable
      ~ minors are not liable for contractual obligations w/ a narrow exception:
         a. where an emancipated minor contracts for necessaries furnished to him (contract implied in law)
            ** emancipated = parents’ duty of support is terminated
            ** necessaries = goods/services essential to maintain existence or that are appropriate to the minor’s standard of living
         b. an unemancipated minor contracting for necessaries – parents may be liable for unjust enrichment!
      2. minor may disaffirm the contract at any time before reaching majority or within a reasonable time after reaching majority
      3. a reasonable time is determined by the nature of the transaction and all the circumstances of the case
      4. once the contract is disaffirmed, minor cannot change his mind and enforce it
      5. a former minor’s new promise to perform, made after reaching majority, does not require additional consideration to be binding
      6. Minors don’t have to pay back benefits they no longer have ($ spent)
   B. Adults suffering from mental illness or defect
      1. Contract is voidable by mental illness if:
         a. person is unable to understand in a reasonable manner the nature and consequences of the transaction, or
         b. he is unable to act in a reasonable manner in relation to the transaction and the other party has reason to know of his condition.
      2. Other party’s knowledge or reason to know of mental defect becomes relevant – courts don’t like parties who take advantage – bad faith
      3. Incompetence must derive from a psychiatrically recognized condition
      4. Two kinds of mental incapacity:
         a. Cognitive – defect so severe that at time of contract, person was unable to understand the nature and consequences of the transaction
         b. Motivational – person may have understood the transaction, but her illness affected her ability to act rationally in relation to the transaction
      5. Unlike minors – incapacitated adults may have to repay benefits received even if they have spent the money, etc.
CHAPTER 15: CONTRACT INTERPRETATION AND CONSTRUCTION

I. Interpretation
   A. Interpretation; Search for Contract Meaning
      1. Examination of the content of the contract – intent of the parties is central through examination of the reasonable expectations that the words and conduct of the parties engender
      2. interpretation – process of discerning the meaning of the parties to a contract
      3. construction – process of adding terms by legal implication
      4. Objective theory requires the court focus on what a reasonable party would have expected under the circumstances
   B. Sources of Contract Meaning and Standards
      1. rules in aid of interpretation - Restatement
         ~ words/other conduct/principal purpose of the parties (if ascertainable)**
         ~ all writings
         ~ language w/prevailing meaning (unless otherwise manifested)
         ~ technical meaning of technical terms
         ~ past dealings on the issue
         ~ parties’ manifestation of intention should be consistent with each other and any relevant course of performance, dealing, or usage of trade
   C. Interpretation of Standard
      1. standards of preference in interpretation:
         ~ interpretations which give reasonable lawful and effective meaning is preferred
         ~ greater weight in this order: express terms, course of performance, course of dealing, usage of trade
            **Course of dealing – sequence of previous conduct btwn parties to a particular transaction which may be regarded as a common basis of understanding for interpreting their expressions and other conduct
            **Usage of trade – any practice or method of dealing having regularity of observance in place, vocation, or trade so as to justify expectations that it will be observed with respect to the transaction in question (evidence of such must be given to other party)
            **Course of performance – contract involves repeated occasions for performance and opportunity for rejection of it (relevant to show waiver of any term inconsistent with course of performance)
         ~ specific/exact terms over general language
         ~ separately negotiated or added terms over standardized terms
CHAPTER 16: PAROL EVIDENCE RULE

I. Introduction to Parol Evidence Rule
   A. Purpose, Premise, and Content
      1. You always have a writing for the Parol Evidence Rule to apply
      2. This Rule is an exclusionary rule – when applied it excludes extrinsic evidence
         a. parol evidence – evidence other than the written memorial of agreement that is offered by a party to prove alleged contract terms
      3. When Rule is applied, extrinsic evidence relating to any contemporaneous or prior oral or written agreement may not be applied to interpret the final writing – DOES NOT apply to anything after the final agreement was reached!
   B. Process of dealing with Parol Evidence
      1. 2 stages in dealing with parol evidence:
         a. decide whether the evidence is admissible – is contract ambiguous on its face?
         b. present evidence to factfinder for evaluation of its credibility along with all other evidence

II. Application of the Rule
   A. Is the writing the final agreement? Is it complete? (does it include every single agreed upon term intended to be a part of the contract?)
      1. Final agreement = integrated agreement
   B. if agreement is completely integrated/binding then it discharges all prior agreements to the extent that they are inconsistent with the writing
   C. if only partially integrated, you may introduce evidence that isn’t contradictory/inconsistent with the writing
      1. partially integrated agreement – final agreement that’s not completely integrated
   D. if completely integrated, Parol Evidence Rule applies and excludes all evidence within scope of agreement. If evidence is outside the scope of the contract, it is still admissible!!
      1. what is the scope of the completely integrated agreement?
   E. Don’t use extrinsic evidence when the writings of the contract are clear and unambiguous – Rule applies!

III. UCC Interpretation
    ~ recognizes an implied warranty of merchantability and an implied obligation of good faith – seller has to be in the business of selling goods of this kind and if so, the goods have go to be conforming and not defective

IV. Merger and Integration Clauses - provision says that this is the complete deal
A. a final agreement may be supplemented by course of dealing or usage of Trade or course of performance
B. consistent additional terms may be added unless court determines the final writing was to include all relevant terms without exception

V. Exceptions to the Rule
A. at common law, you may introduce evidence to successfully show a contract is void or voidable
   1. misrepresentation, duress, mistake, etc…
B. exceptions also apply to the UCC

CHAPTER 17: MISUNDERSTANDING, MISTAKE, AND EXCUSE DUE TO CHANGED CIRCUMSTANCES

I. Misunderstanding - interpretation issues are severe and cannot be resolved – involves words
   A. Doctrine applies only when the parties have diff. understandings of their expression of agreement
   B. Does not apply when one party’s understanding, because of that party’s fault, is less reasonable than the other party’s understanding
   C. two contradictory interpretations and no clues as to which is better or more objectively reasonable – courts conclude that any manifestation of mutual assent is illusory and no contract has been formed.

II. Mistake – a belief not in accord with the facts
   ~ Parties reach an agreement under assumption that a certain state of affairs exists
   ~ state of affairs did not exist at time of contract – party wouldn’t have consented had he known of the actual state of affairs
   A. Three general themes:
      1) nature of the mistake – mistake must relate to a fact that was in existence at the time of contract
      2) seriousness of the mistake – mistake must relate to something central to the contract (not minor/peripheral matter) and must have significant effect on the benefits of the mistaken party or the burdens he undertakes under the contract
      3) must be unfair or inappropriate to allocate the risk of the mistake to the aggrieved party
   B. Mutual Mistake – mistake is shared by both parties
      1. complaining party didn’t bear the risk of the mistake = void contract
         ~ A party bears the risk of a mistake when;
            a. risk is allocated to him by agreement of the parties, or
            b. he is aware, at the time the contract is made, that he has only limited knowledge with respect to the facts to which the mistake relates but treats his knowledge as sufficient, or
            c. the risk is allocated to him by the court on the ground that it is reasonable in the circumstances to do so
C. Unilateral Mistake
1. mistake made by only one party
2. based assumption on which mistaken party made the contract
3. mistaken party did not bear the risk of the mistake
4. effect of mistake is that enforcement = unconscionable, or
   - other party had reason to know of the mistake or actually caused it
D. Relief
1. rescission – completely rescind the contract
2. parties sometimes just request reformation of the contract instead
   - reformed to reflect the terms to which parties actually agreed
   - courts prefer to do this rather than rescission

III. Excuse due to Changed Circumstances - circumstances change after formation of contract as to radically alter the nature or effect of the agreed performance
   ~ one court says change in circumstance must be unexpected but does not have to be unforeseeable
A. Impracticability – impossibility of performance
1. must be objective – the thing cannot be done (not I cannot do this)
B. Frustration of Purpose
1. change in circumstances defeats the mutually understood purpose of the contract – parties are not liable for performance

CHAPTER 18: CONDITIONS AND PROMISES

I. Conditions and Promises
   ** unmet condition = discharge and no damages, **unmet promise = discharge & damages!!!
A. Nature of conditions v. promises
1. condition - an event, uncertain to occur, that must occur before performance under a contract is due
2. performance is contingent on the happening of a specified uncertain event
3. Condition may be a happening or a non-happening (an event or the absence of an event)
4. parties can contract subject to a condition regarding an event that is in the past, but which they don’t have enough information about to confirm its happening or non-happening
5. Conditions must have a purpose
B. Non-events and past events
1. conditions may be the happening of an event, or the non-happening of an event – as long as X doesn’t occur
2. past events count if the parties are uncertain as to whether it occurred and cannot find out at the time of contract
3. event must not be certain to occur – if so, no point in promising on it
C. Purpose of Conditions
1. Nonfulfillment of a condition excuses the performance that was contingent upon the condition

D. Conditions Precedent
1. Condition precedent – condition that must be satisfied prior to Performance
2. Initiates a duty
   a. A promises to pay on condition that B exterminates all the termites in A’s house

E. Concurrent Conditions
1. Concurrent condition – set of promises that are dependant on each other and must be performed simultaneously

F. Conditions Subsequent
1. Conditions Subsequent – same as a condition precedent except a condition subsequent discharges a duty that is already in existence
   a. duty to provide insurance is discharged if insured is never injured

G. Express, Implied, and Construed Conditions
1. found by interpreting the meaning of the contract or by drawing an inference as a matter of law
2. courts can conclude as a matter of law that a condition is reasonable and fair given the nature of the relationship and the usual expectations in this type of contract

H. Pure and Promissory Conditions
1. Pure promise – no further performance under the contract contingent upon it
2. Promissory condition – combined promise and condition
   ~ allows for damages
   ~ includes promise w/condition – not just condition
   “Rent is $1,000/month for five months, unless used for purposes other than storage” – says if used otherwise, the RENT may change – not discharged!
3. Pure Condition – failure to fulfill allows discharge
I. When is an event a condition?
   ~ when something else (performance) is contingent upon it – when fulfillment initiates or discharges a duty of other party

II. Express, Implied, and Construed Conditions
2. Jacob & Youngs, Inc. v. Kent

III. Various Uses of Conditions
A. Allowing a party to Escape a Contract
B. Conditions of Satisfaction
   1. if satisfaction relates to taste or artistic judgment – dissatisfaction must be in good faith
   2. if satisfaction relates to a technical or commercial nature – dissatisfaction must be reasonable
C. Provide for Alternative Performances
1. if condition is satisfied = one performance, if not satisfied = a different performance

D. Sequence Performances
1. conditions contingent upon other conditions
2. concurrent conditions – simultaneous performance

IV. Excuse of Conditions
A. Waiver and Estoppel – beneficiary of the condition manifests the intention (by conduct or words) that he no longer requires satisfaction of the condition for performance to occur
1. a knowing and voluntary abandonment of a right
2. one-sided – nothing received in exchange
3. if the right is material – can only be abandoned by modification of the contract under which consideration is given for relinquishing it
   **a party can reinstates a formerly waived right through express notice – Mercedes-Benz v. Morgan**
4. Estoppel – beneficiary of a condition indicates he will perform a contingent promise despite nonfulfillment of the condition
5. party to be estopped must have known or had reason to know that his words or conduct were likely to have been relied on and must have actually been relied on to other party’s detriment
6. waiver v. estoppel
   a. waiver doesn’t require justifiable reliance
   b. estoppel is not confined to nonmaterial changes in contract
      ~ party may be estopped on the basis of careless action not deliberately intended to give up a right

B. Obstructive or Uncooperative Conduct
1. if a promisor actively prevents fulfillment of a condition – breaches duty not to hinder or impede its occurrence, condition is excused and promise becomes unconditional

C. Unfair Forfeiture
1. arises out of court’s determination that enforcement of the condition would result in undue and unfair hardship to the party to whom the performance is due
   ~ usually with express conditions

CHAPTER 19: MATERIAL BREACH AND SUBSTANTIAL PERFORMANCE

I. Material v. non-material Breach
A. material breach – breach is so serious that it allows the other party to decline her performance, terminate the contract, and sue for expectation damages
B. partial breach – not as serious as material breach
   ~ no discharge, performance still required – may sue for damages
C. substantial performance – performance by the breaching party
1. nonbreaching party must allow a reasonable time for breaching party to cure – fix the problem before it becomes serious

II. Consequences of Substantial Performance
   A. Proper measure of relief for substantial performance
   B. Recovery of Breaching Party: Unjust Enrichment or Recovery under Contract
      1. material breacher can’t recover damages or enforce contract he violated
      2. if there was partial performance – he has claim for unjust enrichment to seek restitution for any benefit conferred on other party
      3. nonmaterial breach/substantial performance – breacher can get full contract price less compensation to nonbreaching party

III. UCC: Perfect Tender, Cure, Installment Contracts
   A. Perfect Tender – if goods or tender fail in any respect to conform to the contract, buyer may:
      ~ parties must act in good faith
      1. reject whole thing
      2. accept the whole thing
      3. accept any commercial unit and reject the rest
   B. Seller’s Right to Cure to avoid rejection
      1. if time for performance has not expired, a seller may seasonably notify the buyer he intends to cure, and then may cure before time expires
      2. if time has ended and seller believes rejected goods can be cured, he has a reasonable time to effect cure if he seasonably notifies the buyer
   C. Installment Contracts
      1. installment contract – requires or authorizes the delivery of goods in separate lots to be separately accepted
      2. buyer may reject a defective installment if it substantially impairs the value of that installment and cannot be cured
      3. if non-conformity of installment(s) substantially impairs the value of the whole contract, there is a breach of the whole
         a. nonbreaching party reinstates the contract if she accepts a non-conforming installment without seasonably notifying seller of cancellation, brings action about past installments, or demands performance of future installments

CHAPTER 20: CONTRACT REMEDIES

I. Goals and Principles
   A. Expectation, Reliance, and Restitution Interests
      1. three forms of damages
   B. Compensation Principle
      1. make aggrieved parties whole
      2. admits possibility of efficient breach – party can rationally choose to
breach a contract if, taking into account the damages it would have to pay, it would be profitable to do so

II. Expectation Interest
   A. Components
      1. loss to the plaintiff of the value of the contract
         a. direct damages – difference in what P hoped to get and what she actually received
      2. indirect losses:
         a. consequential losses – arise as a consequence of the breach
            ~ lost profits, injury to property, personal injuries
         b. incidental losses – costs of coping with the breach
            ~ inspecting defective performance, arranging substitute Performance
      3. lost profits – direct or consequential – loss of the economic value of the contract
         a. dependence on contract performance to carry out business;
            breach occurs; party can’t conduct business as expected and loses profits it would otherwise have made – consequential lost profits
   B. Measurement: to recover expectation damages, parties must:
      1. establish them with reasonable certainty
      2. show they were foreseeable by the parties
      3. overcome evidence that they could have been avoided - mitigated
   C. Measurement by Market Value
      1. court may measure damages by comparing contract price to the FMV
   D. Measurement by Substitute Transaction
      1. damages measured – diff. between sub. price and contract price
   E. Measurement when performance is deficient
      1. difference in value between what was expected and what was received under the contract, less any costs saved
      2. if cost of completion of performance is grossly out of proportion to the good to be attained, courts may measure diff. in value between market values
         a. Jacob & Youngs v. Kent – FMV of house w/reading pipe v. FMV of house with other types of pipe

III. Expectation under UCC – based on expectation and mitigation
   A. Buyer’s Remedies
      1. cancel and recover $ already paid if seller doesn’t deliver, and
         a. cost of cover
            i. good faith w/out unreasonable delay buyer may make any reasonable purchase or contract to purchase substitute goods
            ii. buyer recovers diff. between cost of cover and contract price from the seller
iii. failure to effect cover doesn’t bar buyer from recovery
b. damages for non-delivery
   i. diff. btwn market price at time buyer learned of breach
      and the contract price + incidental/consequentials
c. seek specific performance – delivery of goods
2. hold goods and resell them like a seller
   a. recover for any non-conformity of goods
   b. breach of warranty – diff btwn value of goods accepted and
      value they would have had as warranted
c. incidental and consequential damages

B. Seller’s Remedies
1. resell and recover any damages
   a. recover diff btwn resell price and contract price
2. recover damages for non-acceptance
   a. diff btwn market @ time contract was made and contract price +
      incidentals
3. cancel – in proper cases
4. withhold delivery or stop delivery by bailee
5. proceed with goods still unidentified to the contract

IV. Limitations on Recovery of Expectation Damages
A. Reasonable Certainty
   1. plaintiff is responsible for proving economic loss due to breach
      - consequential damages are the hardest to prove
   2. if damages are entirely speculative and uncertain, plaintiff will not
      recover
B. Foreseeability
   1. used to prove consequential damages – what damages are foreseeable
   2. reasonably foreseeable consequence of failing to deliver by promised
      time
C. Mitigation
   1. burden on the nonbreaching party to mitigate their damages –
      NOT A DUTY!
   2. nonbreaching party doesn’t have to mitigate, but cannot recover
      damages for any losses that could have been avoided by mitigation
   3. Reasonable Efforts used to mitigate damages
   4. it is up to the breaching party to prove that the nonbreaching party
      failed to mitigate damages
   5. employment – substitute employment must be equivalent

V. Reliance Damages - recovery is based on promissory estoppel rather than breach
   of contract – but also available for breach of contract
   ~ usually smaller than expectation – parties don’t generally spend more in
   reliance than they expect to gain
   ~ Essential reliance – costs the disappointed party incurs in preparing to
      perform under the contract
~ incidental reliance – costs it incurs in preparing to take advantage of the benefits to accrue to it under the contract
~ excessive/avoidable costs are probably unreasonable, as is any cost incurred after breach was evident
~ if for some reason, reliance damages exceed expectation damages, a court may adjust a reliance damage downward

A. When Expectation Damages are Inappropriate
1. courts use reliance when expectation damages can’t be proven with reasonable certainty and foreseeability

B. In a Losing Contract
1. Reliance damages are not available when such recovery would put P in a better position than had performance of the contract occurred as expected – fully-performed contract would have been unprofitable

VI. Restitution Alternative
A. Measurement
1. Restitution is available when there is unjust enrichment, an unenforceable contract for indefiniteness, a defect in the bargaining process, or failure to satisfy the statute of frauds.
2. Restitution focuses on the benefit received by the breaching party
3. Court must measure by:
   - market value
   ~ contract price may help determine this
   - extent to which the breaching party has been enriched
4. Factors:
   - conduct of the parties
   - comparing different measurements
   - types of benefits at issue

B. Limitations
1. inappropriate where substantial performance has been rendered
   a. restitution seeks to set aside the contract – this is not an available remedy where there has been substantial performance (requires completion of performance and then damages for deficiencies)
2. only works where there has been a total and material breach
3. if only remaining act under the contract is payment of a definite amount of money, courts won’t grant restitution
   a. courts will just make breaching party pay

C. Restitution to the Breaching Party - Courts favor breaching parties who are relatively innocent and the nonbreaching party is unjustly enriched

VII. Agreed Remedies – parties may agree within the contract to specified remedies should either party breach
A. Policing Liquidated Damages
1. must be reasonable – cannot simply be a penalty for breach but a compensation for it
a. courts examine:
  i. anticipated OR actual harm caused by breach
  ii. difficulties of proof of loss
2. parties may seek to limit damages
   a. cap on damages
   b. limit damages to certain categories
   c. restrict the types of available remedies
   d. specify procedures that must be used to resolve disputes
3. if liquidated damages are reasonable in light of anticipated harm but not actual harm – they may be viewed as a penalty by a court

B. Remedy Limitations and UCC
   1. if actual damages end up being much higher than those stipulated in the contract, the nonbreaching party may ask a court to ignore the agreement
   2. UCC and consequential damages:
      a. limitation on consequential damages is allowed unless it is unconscionable
      b. limitation of consequential damages for personal injury is unconscionable, but for commercial loss it is not

VIII. Specific Performance and Injunctions – available only if damages are inadequate to compensate the plaintiff
A. Inadequacy of Damages
   1. difficult to obtain a substitute
   2. performance is unique
      a. contract to sell real estate – this is always unique
   3. inability of buyer to cover
   4. sales of intangibles and/or service contracts
   5. damages cannot be established with reasonable certainty
B. Discretionary Nature
   1. no specific performance where it would be too costly or difficult to fashion or administer
      a. long-term construction contracts use up too many judicial resources
   2. plaintiff can be adequately compensated by damages
C. Injunctive Relief as an Alternative
   1. mandatory injunction – calls for positive action
   2. prohibitory injunction – commands that a certain action be avoided
   3. may encourage parties to reach settlement on their own
D. Clean Hands doctrine – can’t get specific performance if you are culpable Yourself

St. Louis Paving – is it a promise or a condition? Difference means difference in whether or not the entire contract is avoidable…
Condition – paving company can sue for unjust enrichment for prior work and is discharged from the contract
Promissory condition – paving company is discharged from the contract