I. REMEDIES
   a. Goals of contract damages - Expectation
      i. General rule:
         1. expectation damages formulas:
            a. formula 1: Kp – costs avoided
               i. how profit is measured
            b. formula 2: cost of reliance (incurred costs) less loss avoided + profit + other loss
               i. i.e., costs + profit
               ii. cost avoided = cost of complete performance less cost of reliance (incurred costs)
      ii. Hawkins v McGee
         1. case of hairy hand
         2. value of perfect hand
      iii. Groves v John Wunder Co.
         1. facts:
            a. willful breach; cost to remedy $60,000, but w/ remedy, land only worth $12,000, TT paid $15,000, $12,000 + interest
         2. like Peeveyhouse
            a. K for coal, in K was to put soil back, D breached; remedy cost $60,000, value of land only $12,000, SC reduced TT’s award; not give more than land was worth
      iv. Acme Mills & Elevator Co v Johnson
         1. K for sale of grain
         2. breach:
            a. anticipatory breach
               i. duty of immediate performance
               ii. don’t have to perform until something happens
               iii. if something happens before duty of immediate performance becomes active, then anticipatory breach
            b. seller in breach
               i. buyer tendered, was willing and able to pay on date
                  1. tendering put seller in breach
                     a. constructive concurrent condition
                        i. duty not due until tendered performance and vice versa
            3. measuring loss: expectation damages
               a. seller: Market price on day of breach
                  i. $.97, buyer had no loss
                  ii. as compared to $2.03, then buyer would have lost and D have to pay damages
               b. court agreed:
                  i. used Mp at time of breach
                  ii. Buyer no damages
                  iii. Why?
                     1. economic reasons (to highest bidder)
         4. reliance damages
            a. never ask for only reliance
               i. unless losing K
         5. restitution
            a. not contract claim
            b. if D unfair advantage, TT get back
c. sacks, seller gave back to buyer

v. Louise Caroline Nursing Home v Dix Constructions
1. construction K
2. breach: not completed on time
3. damages:
   a. not standard, i.e., diff btw completed and as is, b/c is completed
   b. 2 possibilities
      i. K 50% complete
         1. cost of completion less costs saved plus other losses (i.e.,
            delays using building, other problems from breach)
         2. TT did not prove other losses, so no recovery

b. Limitations of expectation damages
i. Mitigation
   1. general rule:
      a. Rockingham County v Luten Bridge Co
         i. Bridge construction K breached, but continued to build; sued for
cost of completion
         ii. Court: no recovery
            1. no duty to mitigate, but not doing so can reduce damages
      b. Parker v 20th Century Fox
         i. Studio K for film; studio breached; actress refused to do substitute
role, sued for damages
         ii. Court: for TT
            1. no duty to mitigate (can’t require to work against will)
               a. but can lessen damages?
                  i. NO – sub K substantially different from
                     first (employment)
            iii. probably wouldn’t work for bus driver changed route
                1. fungible job
                   a. actress not as fungible
                   b. parts few
      c. MO Furnace Co v Cochran
         i. Breach: stopped delivery of coke on 2/13 (supposed to deliver
until 12/31); repudiated K; buyer sub K for delivery at $4 (below
Mp), but price went down right after; buyer sued for damages
         ii. UCC § 2-711: buyer’s remedies
            1. cover: sub K
            2. damages for cover: diff btw Kp and subKp
            3. or damages for non-delivery
         iii. UCC § 2-703: seller’s remedies
            1. buyer repudiates:
               a. stop delivery
               b. resell goods and recover damages
                  i. damages = diff btw Kp and subKp
               c. recover damages for non-acceptance
               d. cancel
         iv. Buyer
            1. wanted to use Mp $4 and later Mp as measure, not Mp and
Kp
            2. can’t do that; must use Kp
         v. diff result today
            1. buyer can cover and recover

d. UCC
   i. Seller’s remedies:
1. § 2-708: no resale, then diff btw market price on day of breach and Kp, + incidental damages
2. § 2-703: resale, diff btw Kp and subKp

ii. Buyer’s remedies
1. § 2-713: cover, then diff btw Kp and subKp + consequential damages

ii. Lost volume sales
1. Neri v Retail Marine Corp
   a. Distinguish btw people who have only 1 thing to sell and people who have a lot of things to sell
      i. UCC built into formula sub price
         1. resale and Mp; if Mp same as Kp, no damages
            a. but supposes only 1 thing to sell
         2. employment: promised job, reneges, get same job at same pay
            a. damages: NO (can’t do both at same time) (can’t perform K and subK at same time)
         3. same but not same time
            a. damages: yes, b/c could do both (subK and K could be performed at same time)
   ii. UCC doesn’t deal w/ lost volume sales
      1. cereal: lost volume doesn’t matter
      2. cars: lost volume, but expensive
         a. but don’t litigate b/c expensive and don’t want to alienate customers
         b. Neri only case like this

iii. Foreseeability
1. Hadley v Baxendale
   a. Rule: damages denied since D could not foresee damages that occurred form breach, was not liable
   b. Differs from previous cases
      i. Loss exceeds Kp
      ii. Look at consequential damages
         1. formula: loss in value measured by Kp
         2. BUT Kp must smaller than what had lost
   c. Hadley:
      i. Limit liability for damages
         1. D not put on notice these damages occur (maybe)
      ii. Rule from Sedgwick
   iii. BUT: UCC follows
      1. § 2-715: buyer’s consequential damages
         a. buyer’s can recover
         b. seller’s cannot recover; though revision being considered
      2. applies to seed cases
         a. i.e., bad seeds, no crops
         b. seed seller is liable
            i. foreseeable consequences
      3. but default rule parties can K around
2. Valentine v General American Credit
   a. Valentine wanted mental suffering damages resulting from breach of employment K; NO, even though foreseeable (Hadley)

iv. Reliance
1. Chicago Coliseum Co v Dempsey
a. Breach in K to box
   i. Injunction (not s per; can’t make perform employment)
   ii. TT 4 claims:
      1. lost profits
         a. profits would have had if D hadn’t breached
         b. too speculative – NO
            i. though might get today; less restrictive
      2. expenses incurred before K w/ D
         a. expenses were speculation on part of TT; took risk, didn’t know if would get K w/ D; NO
      3. expenses incurred restraining D
         a. D had repudiated, TT’s efforts to get to perform at own risk - NO
      4. expenses incurred after K before breach
         a. any expense to further K – OK
         b. reliance damages, i.e., damages made on reliance that K will be performed – NO
            i. rare; don’t look for reliance when can get profit

c. Reliance
   i. General stuff:
      1. always use expectation unless can’t prove profit
      2. use reliance when can prove profit but have losing K
   ii. Construction hypo:
      1. Kp $80,000 + $20,000
      2. 1/3 K done, spent $50,000, owner breaches
      3. profit – costs: damages, but negative
      4. so do reliance
         a. BUT rule that if have loss can’t recover reliance, but not followed b/c not come up

d. Conditions
   i. Constructive concurrent conditions
      1. one duty depends on other
         a. don’t deliver until paid for
         b. don’t pay until delivered
      2. failure of promise
         a. breach
      3. failure of condition
         a. discharge
   ii. Constructive conditions: the order of performance
      1. Nichols v Raynbred
         a. Delivery of cow; not delivered
         b. Court: for TT
            i. No need to deliver cow b/c promise for promise
               1. 1st promise: to deliver cow
               2. 2nd promise: to pay for cow
            ii. no need to deliver b/c had not pay
      2. Kingston v Preston
         a. Mansfield
         b. 3 types of K’s:
            i. mutual and independent (promise-promise)
            ii. condition and dependent
            iii. mutual to be performed at same time (constructive concurrent condition)
c. consequences
   i. promise---------breach------------damages
   ii. condition-----nonoccurrence------discharge

iii. Perfect tender vs. substantial performance
   1. Prescott v Powles
      a. K for 300 crates to be delivered; only 240 crates delivered (war, US gov’t commandeered boat); buyer refused acceptance
         i. Since buyer suing (not seller), can’t exit b/c seller didn’t perform exactly as specified
            1. seller bound to deliver 300 crates, not less
            2. i.e., number of crates was a condition of K
            3. strict (perfect) tender rule
               a. failure to follow any provision of K you have not performed and other party may exit
      b. UCC on this issue:
         i. § 2-601: buyer’s rights on improper delivery
            1. fail in any respect to conform to K
               a. buyer can exit (perfect tender rule)
         ii. § 2-508: cure by seller of improper tender
            1. seller can cure by:
               a. making conforming tender of delivery w/in agreed time
               b. can fix, BUT only w/in agreed time
   2. Plante v Jacobs
      a. House construction K; builder makes mistakes; owner paid $20,000, owed $675, but didn’t want to pay; builder wanted $675
         i. Owner: builder not substantially performed
            1. therefore can’t collect damages
         ii. Court: builder had substantially performed
            1. awarded $675 less damages to owner
               a. house not being done right didn’t preclude builder from getting paid, but b/c not done right, owners got damages
      b. constructive concurrent conditions
         i. total breach = nonoccurrence of condition
            1. therefore:
               a. condition---nonoccurrence—discharge
         ii. sales: uncured nonoccurrence = total breach/nonoccurrence of condition
            1. substantial per doesn’t apply unless in L
         iii. other: substantial performance breach BUT not total, therefore
            1. damages can be awarded, but cannot exit
   c. substantial performance test
      i. whether meets essential purpose of K
         1. but variance
            a. difficult to measure in some cases
            b. case by case basis
      ii. who decides:
         1. judge: matter of law
   d. economic waste
      i. wall in wrong spot
         1. can’t force to move,
            a. no forced servitude
         2. subK and sue for damages?
iv. Restitution

1. Also called:
   a. unjust enrichment
   b. quantum meruit
   c. quasi contract
   d. ex contractu
   e. implied K

2. Definition:
   a. Restitution v Contract
      i. Restitution
         1. K price does not matter (i.e., can get if losing K)
         2. calculate by unjust gain on part of breaching party
            a. NOT non-breaching party’s loss
            b. Can be reasonable value of services or value by
               which breaching party’s property has increased

3. US v Algernon Blair
   a. Contract to build hospital, subcontractor, used own cranes, but contractor
      wouldn’t compensate for use of cranes, losing K, so subcontractor stopped
      working; sued for restitution
   b. Issue:
      i. Was D’s breach sufficient to warrant TT’s exit?
         1. was D’s performance substantial? NO
      ii. suit under quantum meruit
         1. recover for labor and equipment already given
            a. can’t sue under K b/c losing K
      iii. material breach by D, so TT was allowed to exit and recover
           restitution

4. Oliver v Campbell
   a. Lawyer Kp for $850, normal charge $5000, at end of trial, client fires,
      lawyer sued for quantum meruit, not under K, but since sub per, can’t
      recover restitution

5. hypo
   a. stop working for last 6 days of K
      i. can get any money?
         1. probably yes, unless in K have to work all days,
         2. BUT, can’t claim sub per if willful breach

6. Britton v Turner
   a. Was able to recover thru quantum meruit even though had breached (NH)
   b. Seek restitution when other party is in breach and total/material breach,
      allows you to exit K, and claim outside K for restitution when have losing
      K

e. Contractual remedies
   i. Liquidated damages (i.e., contractual controls on the damage remedy)
      1. general stuff
         a. general principle to let parties do what want
         b. but have default rules if parties don’t say
            i. liquidated damages mandatory rule
               1. if stipulated damages provide for act as penalty, the
                  stipulation fails and revert to default rules
                  a. test is if at Tk anticipated damages were
                     reasonable and that harm caused by breach would
                     be difficult to determine
         c. restatement
i. more freedom than before for liquidated damages clause

2. City of Rye v Public Service Mut. Ins. Co
   a. Contractor for city, required by city to post $100,000 performance bond (insurance will perform K); contractor unable to complete on time; city tried to collect bond for damages to city; insurance co argued bond was a penalty
   b. To determine if damage clause is penalty
      i. If damages from breach difficult to ascertain (i.e., just hard, or emotional damage), then damage clause is good if reasonable measure of anticipated harm
      ii. But if amount fixed is disproportionate to anticipated probable harm, unenforceable
   c. This case:
      i. Harm minimal; city acted w/o legislative authority;
   d. Restatement
      i. Always difficult to estimate actual damages, so ordinarily let parties fit some figure, as long as reasonably attempted to forecast damages from breach

3. Wilt v Waterfield
   a. Buyer got earnest money after seller’s breach
      i. But K written w/ buyer’s breach in mind
      ii. Theory to treat sellers differently
      iii. But allow economic efficiency
         1. let seller breach and use damage clause if good economically
   f. Equitable remedies
      i. Specific performance
         1. general info:
            a. not standard remedy in US (money damages standard)
            b. concern:
               i. might undercut efficient breach
               ii. s per can also turn K into property right
                  1. i.e., K for sale, breach, s per gives buyer possession of item

2. Van Wagner v S&M Enterprises
   a. Lease of billboard in very good spot; sublease; new landlord wants to evict
      i. Lease clause about terminating lease, but ambiguous; court sided w/ TT and said can terminate only in contemplation of sale
   b. Damages?
      i. Is TT entitled to damages or s per?
         1. court: no s per, only damages;
            a. only do s per when can’t measure, but can measure damages in terms of lost profits
   c. restatement factors in determining if use s per:
      i. degree of difficulty and uncertainty in making an accurate valuation of subject matter involved
      ii. existence of sentimental association and aesthetic interest not measurable in money affected by breach
      iii. difficulty, inconvenience, or impossibility of obtaining a duplicate or substantial equivalent of what was promised
      iv. degree of possibility that damages awarded would not be collected
      v. probability that full compensation cannot be had w/o multiple litigation
3. Curtice Bros
   a. Court awards injunction (negative s per) b/c of uniqueness of goods
      promised (tomatoes)

4. Fitzpatrick v Michael
   a. Employment K
      i. TT wrongfully terminated; sued for s per; willing and able to
         perform K, so make other side perform
      ii. Court: NO s per
         1. not for employment K’s
            a. can’t force employee on people

5. Northern Delaware Indus Dev. Corp. v EW Bliss CO
   a. Construction K
      i. Work not going as fast as specified in K, owner wants s per
         requiring builder to hire more workers
   b. Court:
      i. No s per
      ii. Only under special circumstances and when not impractical
         iii. No special circumstances, not practical

II. GROUNDS FOR NEFORCING PROMISES
   a. Formality
      i. Congregation Kadimah Toras-Moshe v DeLeo
         1. oral agreement to give synagogue $25,000 (death-bed promise)
         2. executors refused to give $; synagogue sued
         3. Court: no contract
            a. Oral
            b. No consideration
               i. Not bargained for (i.e., if had said, I will give you if you name
                  library after me)
            c. No reliance
               i. Synagogue had put in budget, but nothing beyond that; didn’t rely
                  on promise

   b. Exchange through bargain: consideration
      i. Hamer v Sidway
         1. K for nephew to live prudishly and uncle would give money
         2. Court: consideration
            a. Uncle gained nothing
            b. But nephew gave up legal rights
               i. Money in exchange for non-performance
               ii. Not just nominal consideration (i.e., show of consideration to
                    show bargain – pay $5 for $5000 book that’s meant to be a gift –
                    can’t make a K to give a gift)
      ii. Fischer v Union Trust Co
         1. father gave insane daughter deed to property and promised to pay mortgage in
            exchange for $1 (was seen as a joke)
         2. K enforceable? NO
            a. Nominal consideration, but still a gift
            b. No bargain – intent was to give gift, $1 was mere pretense
         3. compare to Hamer, De Leo
            a. uncle really wanted nephew not to do things
            b. De Leo, not enough evidence of intent
      iii. Batsakis v Demotsis
         1. K to loan 5000 drachmae ($25) in exchange for $2000 + interest
2. Court: enforceable K
   a. Mere inadequacy of K will not void K
   b. K was under seal (will not always make enforceable, but helps)
   c. A bargain was made (not like book for $5 example)
iv. Embola v Tuppela
   1. Gold prospector went insane after acquiring gold mine. Mine was sold by
guardian; after release, tried to get back, promised friend if friend helped him get
mine back, then would give friend $10,000. Got mine back, but insane again,
guardian refused to pay.
   2. Court: was bargained for, had consideration, not unconscionable, in sound mind at
time
v. Duncan v Black
   1. sale for land, including certain cotton quota, seller gave some of own to make
quota, didn’t second year; sued for cotton
   2. Court: not enforceable
      a. Quota system gov’t run
      b. Promise made on good faith, but no solid foundation – illegal
         i. Quota year by year, can’t go beyond 1 year b/c expires at end of
year
         ii. Doesn’t matter if knew was illegal or not
vi. Martin v Little, Brown & Co
   1. law student tells publisher book has been plagiarized, offers to give; publishers
take, start proceedings, student sues for compensation for services
   2. court: No K
      a. no bargain; student volunteered

III. PROMISES GROUNDED IN THE PAST
a. Cases
   i. Mills v Wyman
      1. son was sick, TT took care of; after expenses incurred, father (verbally) told would
pay, but backed out
      2. Court: not enforceable
         a. No consideration (not bargained for, just offer, and no direct benefit)
         b. Moral not legal obligation
   ii. Webb v McGowin
      1. man saved another’s life at great injury to self; rescuee offered and did pay $15
every 2 weeks for rescuer’s care until death; rescuer sued
      2. Court: enforceable even though past consideration
         a. Consideration: money in exchange for saving life (direct benefit to
promiser)
         b. Intent: to pay (did for 9 years)
         c. Plus unjust enrichment – life saved, rescuer no benefit
b. Reliance on a promise – promissory estoppel
   i. Kirksey v Kirksey
      1. K: promised to provide house and land if would move
      2. TT moved, D refused to provide house/land
      3. Court: unenforceable
         a. TT’s reliance not enough to cause enforcement (though 1 judge thought
would)
         b. Promisor no benefit in K
   ii. Rickets v Scothorn
1. grandfather told granddaughter to quit job and would pay and did (though later w/ 
grandfather’s permission, took another job)
2. Court: enforceable
   a. Granddaughter quit job in reliance on promise – detrimental act
   b. Grandfather benefited – reputation, granddaughter didn’t have to work

iii. Allegheny College v National Chautauqua County Bank
    1. promise to give money to college to be used for scholarship (in her name)
    2. rescinds; college wants enforcement
    3. Court: enforceable
       a. Consideration: naming/memorializing promisee
       b. Reliance: 1st money already in scholarship fund

iv. East Providence Credit Union v Geremia
    1. car loan, promise to pay insurance premium, didn’t, insurance cancelled, car 
totaled, bank wanted loan paid off, refused since in breach
    2. Court:
       a. Don’t have to pay: was promise that could be expected to induce 
performance (or not); bank at fault

v. Hoffman v Red Owl Stores
    1. promise to give store, made TT go thru hoops, then raised price; sued to recover 
costs incurred while going thru hoops
    2. Courts: promissory estoppel applies
       a. Can recover (some, though not all)
       b. Promise that would induce action

c. Antecedent duty
   i. Levine v Blumenthal
      1. rent for 2 years, but couldn’t pay rent increase 2 year; oral agreement, either to 
keep 1st year’s rent or put increase on account
      2. Court: oral agreement unenforceable
         a. No new agreement w/o new consideration

IV. PROMISES OF LIMITED COMMITMENT
   a. Illusory promises
      i. Obering v Swain-Roach Lumber CO
         1. lumber co promised that if bought land, would sell to family less lumber; family 
refused to buy
         2. Court: enforceable
            a. Once condition of buying land was met, was enforceable (unenforceable 
illusory promise until condition met, no consideration until buys land)
      ii. Wood v Lucy, Lady Duff-Gordon
         1. K to endorse and manage; breach, claimed illusory, manager no duty
         2. Court: enforceable
            a. Exclusive right in exchange for managing well
            b. Not illusory
      iii. Feld v Henry S Levy and Sons
         1. K to buy all product factory made; unprofitable, tried to get out
         2. Court: not illusory
            a. Good faith required
i. Good faith effort required
b. Promises both sides: to make and to buy

iv. Sheets v Teddy’s Frosted Foods
   1. employment K, terminated b/c saw violation of health code
   2. Court: wrongful termination, can recover

V. STATUTE OF FRAUDS
a. Statute of frauds:
   i. 5 areas (restatement)
      1. executor-administrator provision
      2. surety ship provision
      3. marriage provision (not so important now)
      4. land contract provision
      5. one-year provision
   ii. Boone v Coe
      1. oral K, move and then will give work, moved, didn’t give work
      2. Court:
         a. Can’t enforce – S/F
            i. Might not be performed in under 1 year
         b. Could recover under restitution, but don’t have here
   iii. Seavey v Drake
      1. father gave son land, son made improvement, but oral agreement can keep
      2. Court: enforceable
         a. Normally can’t oral sale of land, but son in possession and made improvements w/ knowledge of decedent; PE
   iv. Stearns v Emery-Waterhouse
      1. employment K (w/ PE) oral, but 1 year rule, fired
      2. Court: unenforceable
         a. One year rule

VI. THE MAKING OF AGREEMENTS
a. Mutual assent
   i. Objective vs. subjective intent
      1. Embry v Hargadine-McKittrick Dry Goods Co
         a. Employment K for 2 years, expired, renewal? Employ thought was
         b. Court: enforceable
            i. Objectively what was intention of parties, whether to form new K
            ii. Intent thru actions (let continue working)
      2. Kabil Developments Corp v Mignot
         a. Oral K for helicopter services, breach; helicopter claimed no breach b/c no K;
         b. Court: K
            i. Not only objective but subjective needed, especially in oral K’s
   ii. Or something else?
      1. McDonald v Mobil Coal Producing
         a. Breach of employment K; question of if termination breach of conditions in employee handbook for proceedings
         b. Court: manual ambiguous if was modifying at-will employment
   iii. Offer and acceptance
      1. rule
         a. Offer creates power of acceptance, then acceptance makes K
            i. If no acceptance, counter-offer, creates new power of acceptance
ii. Offeror master of offer
iii. Time defeats offer (i.e., time limit)

b. Most important (first) question: Is there an offer?

iv. Offer or invitation?
   1. Moulton v Kershaw
      a. D sent letter asking for salt orders (all terms but quantity); TT gave, refused to perform
      b. Court: NO offer
         i. Invitation not offer (if offer, could order as much as want)
         ii. Business paternalism

v. Certainty
   1. Joseph Martin Delicatessen v Schumacher
      a. Lease, renewed but at $900 rent, lessee wants $545 appraised rent
      b. Court: no K
         i. Can’t give tenant leverage
         ii. Renewal clause in lease w/o rent stipulation was not K but condition could turn into K

vi. Misunderstanding
   1. Raffles v Wichelhaus
      a. Peerless case – 2 ships names Peerless, buyer refused to accept
      b. Court: NO K
         i. No agreement, so no K, seller loses

vii. Restatement on misunderstanding
   1. no mutual assent if both parties have different meanings to terms and neither knows diff meanings (no fault), do know diff meanings (problem know and should have fixed – fault both sides),

VII. CONTROL AND CONDUCT
   a. The unilateral contract
      i. Cobaugh v Klick-Lewis
         1. offer to give car if get hold in one (sign was there late)
         2. Court: enforceable
            a. Unilateral K: offer payment for performance, D performed
            b. Performance consideration
            c. Objective (RP) theory of intent – would have thought offer
      ii. David v Jacoby
         1. agreement if would come care for him, leave them everything in will; but before performance for one (not both), committed suicide and will not changed
         2. Court: enforceable
            a. Death revokes unilateral K, but court found bilateral
      iii. Petterson v Pattberg
         1. mortgage agreement, if paid in full by certain date, discount, tried, but sold to another, couldn’t get to him, lost discount
         2. Court: revocation was valid
            a. Unilateral: if revoke before pay, ok
            b. Bilateral: if say going to pay, can’t revoke
            c. Depends on what offer find; found unilateral, and then saying I’m here to pay not same as I am paying
   b. Making offers irrevocable:
      i. by promise with consideration – the option contract
         1. Thomason v Bescher
a. K under seal that for consideration of $1, would allow to buy for $6000 when wanted; accepted offer, then revoked
b. Court: offer was irrevocable
   i. $1 was sufficient consideration (though under seal, didn’t need – seal sub for consideration in minority of states)
   ii. buyer had notified of acceptance, can’t revoke after
i. by promise with reliance
   1. James Baird v Gimbel Bros
      a. Construction K: owner gave incorrect calculations to builder, based on wrong #’s, wrong amount, owner refused to accept, didn’t award general contract
      b. Court: no K
         i. No, no offer or acceptance
         ii. Can’t get promissory estoppel either
ii. Drennan v Star Paving
   a. Construction K: subcontractor wrong numbers, gives to general con, general con wins general K and awards sub K, but revoke
   b. Court: binding K
      i. subK should have excepted general K to use bid
      ii. using bid for general K made irrevocable
   c. Offer and acceptance revisited
      1. Morrison v Thoelke
         a. mailbox rule: sale of house, mailed signed K, revoked after
      2. Court: binding K
         a. K was formed when it was mailed, not when it was received
d. The implied contract
   i. HB Toms Tree Surgery v Brant
      1. K for landscaping, work went beyond K, implied consent
      2. Court: K
         a. Implied b/c general consent and knew what was being done
   ii. Hobbs v Massasoit Whip Co
      1. relationship w/ selling/buying eel skins; then destroyed;
      2. Court:
         a. Buyer bears loss; had accepted even though silence
         b. Silence in light of prior relationship can be acceptance
   iii. Morone v Morone
      1. common law marriage (but not), implied K for domestic duties in exchange for money
      2. Court: no K
         a. No common law marriage recognized
         b. Won’t find implied K

VIII. BATTLE OF THE FORMS
a. Battle of the forms – UCC § 2-207
   i. Commercial K using standard forms
      1. if different terms, still accept
      2. but, if terms additional to ones in original offer, K is made according to terms in original offer
      3. but if materially alter, alterations can become counter-offer, proposals for new K

IX. PAROL EVIDENCE
a. The parol evidence rule
   i. Rule:
      1. applies only when have a writing but there’s a dispute that there was a prior oral
         agreement not in the written K
      2. written agreement
         a. fully integrated (complete) – can’t introduce evidence or prior oral
            agreement
         b. partially integrated – as long as oral agreement does not contradict written,
            and if it’s something that wouldn’t ordinarily be put in writing, can
            introduce evidence
   ii. Mitchell v Lath
      1. agreement for sale of house; not in written K but said oral agreement to remove
         icehouse before sale
      2. Court: cannot introduce parol evidence
         a. Have fully integrated agreement
         b. But under Corbin would have taken facts of situation into account to find
            if fully integrated
   iii. Hatley v Stafford
      1. lease agreement, included provision for landlord to buy out lessee (farmer), but
         trespassed to evict; TC for lessee
      2. Court: TC right to allow parol evidence
         a. TT proved not fully integrated agreement, evidence was not inconsistent
            and was such that might be separate from written
   b. Standardized forms – assent and public policy
      i. Mundy v Lumberman’s’ Mut Cas Co
         1. change in insurance policy not to insure full value of silver, didn’t read,
         2. Court: change in binding
            a. Don’t need to read to make binding
            b. Also change was highlighted on front
      ii. Broemmer v Abortion Services of Phoenix
         1. agreement to perform abortion, included binding arbitration agreement for all
            problems, med mal
         2. Court: not binding
            a. K of adhesion
            b. Didn’t understand giving up such fundamental right, not reasonable
               expectation, service K, not negotiation btw companies, and arbitrator
               chosen by clinic

X. POLICING THE BARGAIN
a. Competency to contract
   i. Halbman v Lemke
      1. K to buy car w/ minor; car defect, minor disaffirms and won’t pay repair bill; car
         vandalized
      2. Court: seller no damages
         a. At moment of disaffirmance seller owned car
         b. No restitution b/c will allow to get around disaffirmance
   ii. Faber v Sweet Style
      1. manic depressive entered into K to buy land, wanted out
      2. Court: K unenforceable b/c no capacity
         a. During time negotiated and signed, buyer institutionalized
         b. Not rational behavior, beginning work before sale closed
   iii. Odorizzi v Bloomfield School Dist.
1. teacher arrested for homosexual activity, school officials convinced to resign, charges cleared, wanted job back
2. Court: resignation void
   a. Undue influence:
      i. Discussion at unusual place/time
      ii. Positions of superiority/inferiority
      iii. More on one side than other; no counsel one side
      iv. Insistence done at once; emphasis on consequences of delay
b. Duress
   i. Austin Instrument v Loral
      1. contractor and subcontractor for gov’t K; subK refused to do at agreed price, wanted more, couldn’t find anyone else, paid more
      2. Court: duress – unenforceable
         a. Duress – improper, unlawful threat
            i. Economic duress
            ii. Need threat, no feasible alternative
   ii. Brain Constr. v Brighenti
      1. construction K; subK to remove gravel, needed to do more than in K; needed approval of owner to do more, couldn’t get
      2. Court: oral agreement for more work enforceable
         a. Additional work outside scope of original K, new K
   iii. Marton Remodeling v Jensen
      1. accord and satisfaction: K for remodeling, paid less than K price; contractor tried to get more; cashed check as installment
      2. Court: cashing check was accord
         a. Agreed to that amount, can’t get more
c. Mistake
   i. Sherwood v Walker
      1. replevin for a cow: K for barren, was not, refused to deliver
      2. Court: K voidable
         a. Mutual mistake (if unilateral, not voidable)
d. Misrepresentation
   i. Hinson v Jefferson
      1. sale of land for building of house, but after sale learned land wouldn’t support septic system; buyer sued for money back and cancel deed
      2. Court: mutual mistake and facts of case allow rescission of deed
e. Nondisclosure
   i. Cushman v Kirby
      1. K to buy house, asked about water, was told just hard, was really sulfur water, money to fix
      2. Court: misrepresentation
         a. Knew and told differently (and was silent)

XI. JUSTIFICATION FOR NONPERFORMANCE
a. Impossibility, frustration, impracticability and mistake
   i. Taylor v Caldwell
      1. K for use of hall; hall burned down
      2. Court: condition that hall would be standing
         a. Implied condition
         b. Impossibility of performance
   ii. Tompkins v Dudley
      1. K to build school, not delivered on date specified, and burned down before was
2. Court: builder responsible; didn’t substantially perform

iii. Bunge v Recker
   1. K for sale of beans, weather ruined crop, repudiated
   2. Court: performance not impossible
      a. No condition beans had to come from farmer’s field
      b. Farmer could have bought beans elsewhere (although farmer not broker)

iv. American Trading v Shell
   1. K for shipment, but had to go around Africa b/c Suez canal closed; shipper wanted compensation for farther traveled
   2. Court: no recovery, original route not exclusive way to perform, didn’t change terms of K

v. Krell v Henry
   1. rented apartment for 2 days to watch coronation parade; parade postponed b/c King’s illness
   2. Court: performance impossible
      a. Condition that was renting to watch parade
      b. Both parties knew condition

XII. UNCONSONABLE EQUITY
    a. Unconscionable equity
       i. Waters v Min Ltd
          1. woman assigned annuity to company for far less than worth on advice of boyfriend who got reward from company
          2. Court: unconscionable
             a. Combination of factors
                i. Inadequate consideration
                ii. Boyfriend broker working for company
                iii. No legal rep
                iv. Odd places/times
                v. On drugs (provided by boyfriend)
       ii. Gianni Sport Ltd v Gantos
          1. K for sale of clothes from manufacturer; clause allowing buyer to breach; did after clothes made, no options but to sell to original buyer for 50% off
          2. Court: unconscionable
             a. Makes seller take all risk
             b. Buyer can breach any time
             c. Not negotiated