I. Intro
   a. UCC
      i. Purpose: to create uniformity and promote transactions
      ii. Scope: Only for Goods
      iii. ILL: Pass v. Shelby
         1. Q: Is a transaction a primary service that includes goods, or a primary sale of goods that involves services?

II. Assent and Objective Test
   a. Objective: Shown by overt actions and words, not subjective state of mind ("Meeting of the minds" necessary for assent).
   b. However, modern courts allow subjective testimony
      i. ILL: Kabil v. Mignot
         1. Court allowed subjective evidence to allow jury to find the objective determination
   c. Reasonable Person: used to determine assent, must look at if reasonable person would think a contract was entered.
   d. Undisclosed Intent: One party may have something else in mind, despite outward manifestation.
      i. ILL: Lucy v. Zehmer
         1. Outward intent showed that it was a real contract, even though one party claimed it was a joke. Found to be reasonable and objective.

III. Offer
   a. ILL: Fairmount v. Grunden
      i. Mere quotation of prices not an offer
   b. Offer v. Solicitation
      i. ILL: Lefkowitz v. Great
         1. Performance on part of offeree will make it an offer
      ii. Solicitation: an invitation for the buyer to come and make an offer to the seller.
      iii. ILL: Leanard v. Pepsico
         1. Offer in clear jest not an acceptable offer

IV. Acceptance
   a. Intro
      i. If offeree accepts terms, offeror need make no more action
      ii. Ignoring offer = rejection
      iii. Counter-offer: Offeree becomes new offeror, and old offeror becomes new offeree
   b. Something
      i. ILL: Keller v. Bones
         1. Time of acceptance is time of signing document, not faxing.
      ii. Acceptance: accept substantive terms of offer. If it differs in any aspect, it is either a rejection or counteroffer.
      iii. Also must follow procedure (eg form of acceptance or time frame). If none is specified, it is a reasonable amount of time.
iv. ILL: Roth v. Malson
   1. Q: What type of error is necessary to make it a non-conforming acceptance?

c. Date of Acceptance
   i. Mailbox Rule (default rule): acceptance is activated upon putting form in mailbox.
   ii. Can contract out of mailbox rule.

d. Inadvertant Acceptance
   i. ILL: Glover v Jewish
      1. Acceptance w/o knowing of offer cannot lead to acceptance

e. Silence as Acceptance
   i. ILL: Restatement
      1. Silence allowable when offeree takes benefit with a reasonable time to reject
      2. Offeror and Offeree understand that silence will lead to acceptance
      3. Previous dealings

f. Termination of Power of Acceptance
   i. Lapse of Time
   ii. Rejection by Offeree
   iii. Counter-Offer
   iv. Revocation by Offeror (Offeror can take away any time period of acceptance by express revocation, excluding option contracts). Indirect revocation also allowable.
   v. Death or Mental Disability of Offeror
   vi. ILL: Hendricks v. Behee
      1. An offeror can revoke offer at any time if he has no received notification of acceptance, even if the offer has been mailed.
   vii. Mailbox rule does not apply to revocation
   viii. ILL: Dickenson v. Dodds
      1. An offer revoked and heard of indirectly is a valid revocation.

g. Acceptance by Performance
   i. Bilateral: Promise for a Promise (Performance at a future date)
   ii. Unilateral: Performance for a promise (offeree’s performance complete at formation of contract)
   iii. When contract states neither bilateral nor unilateral acceptance, courts allow either
   iv. ILL: Carlille v Carbolic
      1. Unilateral acceptance of an advertisement is acceptance
   v. Communication of Performance by offeree not necessary unless contracted for.
   vi. An acceptance by beginning performance of a non-instantaneous contract operates as a promise to render complete performance.

h. Offer and Acceptance in Perspective
   i. Offer and Acceptance problems arise to dispute whether a contract was formed, or disagreement on terms.
ii. Figuring out offer and acceptance are crucial to deciding the ultimate contract terms

V. Acceptance under UCC and battle of Forms

a. Basics of Article 2
   i. Contracts recognized by words and conduct showing intent to enter contract
   ii. Contract still allowable if no exact time of creation is discernable
   iii. Contract not void if some terms left open and courts can find reasonable remedy
   iv. UCC 2-206
      1. Offer invites acceptance by any reasonable medium
      2. An order to buy (Offer) invited promise of shipment or shipment (acceptance), but shipment of non-conforming goods is not acceptance if reasonably notified.
      3. Offeror not notified of acceptance=lapse of offer

v. Battle of the Forms
   1. Traditional acceptance requires mirror image of offer, but not in modern contract law
   2. UCC 2-207 is against the: “Last shot” rule: last invoice sent would be offer and delivery is acceptance, allowing irrational results.
   3. UCC 2-207
      a. Definite acceptance w/ different or additional terms is treated as acceptance, unless it is expressly conditional on consent of the terms
      b. Additional terms BETWEEN MERCHANTS become part of contract unless:
         i. Original offer expressly limits acceptance to original terms
         ii. New terms materially alter contract
         iii. Notification of objections to new terms are offered in a reasonably amount of time
      c. When actions indicate a contract, the existing agreed upon terms are maintained and the conflicting terms are dropped and default terms supplied by the court.k
   4. Materiality: A term is material if it relates to an important aspect of the transaction. (Also, can be defined that disregard of a material term places undue hardship on one party).
   5. UCC 2-104(1): Merchant
      a. Deals in goods of that kind
      b. Has special knowledge to the practices of this transaction
      c. Has special knowledge to the goods of this transaction
      d. Employs an intermediary w/ above attributes, and answerable to him
   6. Expressly conditional acceptance (counter-offer if):
      a. Not timely acceptance
b. Clear that offeree doesn’t accept offer, but instead differs on many levels.
c. Acceptance makes it clear that offeror must expressly accept offeree’s terms

7. Distinction between additional and different terms:
a. No word “different” in UCC 2-207(2) and following holdings adopted:
   i. A different term rather than additional is discarded
   ii. Treat “different” same as “additional” (view supported by official UCC comments)
   iii. “Knockout rule”: different terms are discarded in favor of default UCC rules
   iv. ILL: Northrop v Litronic
      1. Courts adopted “knockout rule” since it was in majority

8. Confirmatory Memoranda
   a. Parties already have contract, but conformational materials were added
   b. Confirmation letters treated same as acceptance letters under UCC (different or additional terms)
   c. ILL Klocek v Gateway
      i. Found since II not a merchant, additional terms not part of contract. Additionally, Δ did not expressly say that II needed to accept these terms.

VI. Preliminary and Incomplete Agreements
   a. ILL: Academy v Cheever
      i. There are no good default rules or essential terms included, so thus no contract
   b. ILL: Joseph v Schumaker
      i. Agreement to agree does not allow court to fill in terms
   c. Reduction to writing
      i. Courts must decide if prior oral agreement to finalize in writing if oral or finalized is the contract
   d. Obligation of good faith
      i. Could argue that an oral agreement to finalize means both parties are bound to bargain in good faith
      ii. ILL: Jenkins v. Schuylkill
         1. Not enough specificity in agreement to negotiate to establish a bad faith bargaining in negotiations
   e. Tort Liability for Enticing
      i. A 3rd party that compels a negotiating party to negotiate in bad faith may be liable for the breach and tort punitive damages

VII. Statute of Frauds
   a. Provides that certain transactions must be in writing
      i. Typical requirements: writing, signature, and sufficient content
1. Writing: any document (print or electronic) and may be pieced together from multiple documents
2. Signature must be signed by party whom enforcement sought
3. Content: writing need not be complete if it has identifying materials of the subject matter of the contract

ii. Statute of Frauds analysis:
   1. Is the contract subject to statute of frauds? (If no, no writing is necessary)
   2. Is there a signed writing that satisfies the statute? (If yes, contract enforceable).
   3. Do any exceptions to the statute apply?

iii. Applications: sale of land or transfer of land, contract which cannot be performed w/n 1 year of execution, and contracts for the sales of goods

b. Common Law
   i. Sale and Transfers of Land
      1. ILL: Roberts v. Karimi:
         a. Courts found some writing and that statute of frauds not to allow people to evade contracts
   ii. Not performable for one year
      1. ILL: Klewin v. Flagship
         a. Courts basically found anyway around statute of frauds by claiming it was of unknown duration.
   iii. Part performance exception:
      1. Part performance of land or one year may find for exception
      2. ILL: Burns v. McCormick
         a. Court found part performance doesn’t count unless it unequivocally leads to whole performance

c. Statute under UCC
   i. Must have writing for sales over $500
   ii. For merchants, contract formed if writing is sent w/n reasonable time unless objected w/n 10 days
   iii. Exceptions to i.
      1. goods are specially manufactured before notice of repudiation, and substantial performance has occurred.
      2. If party admits contract was made but not beyond quantity allowed
      3. Goods have been paid for and shipment accepted.

VIII. Consideration
   a. Intro
      i. Consideration is not the only important thing in making a contract.
      ii. Consideration=promisor receives something in exchange for the promise
      iii. Consideration can also be a benefit to the promisor or a detriment to the promisee.
   b. Elements of an exchange
      i. Gift: a gift with no strings attached has no return performance, and thus no consideration, and is not enforceable.
         1. ILL: Congregation v. DeLeo
a. Courts found plans to build a library did not constitute detriment or reliance, and thus no consideration.

2. ILL: Hamer v. Sidway
   a. Courts found child who refrained from sinful activities suffered a detriment and thus consideration.

ii. ILL: Patel v. Board
    1. Court found a promise with no return performance was not a bargain and thus not a contract.

iii. Purpose of Consideration: to find balance between formalities and subjective bargaining
    1. ILL: Carlisle v. T&R
       a. Courts found no consideration for past services, only a gratuitous promise

2. Sufficient consideration
   i. ILL: Apfel v Prudential
      1. Party did give something novel and of value, so there was consideration
   ii. ILL: Batsakis v. Demotsis
      1. Courts found that even if a contract is grossly unequal, it can still be bargained for legitimately.
   iii. A “sham” consideration (eg money gift for a pencil) is not sufficient
   iv. Preexisting Duties: someone who contracts for a pre-existing duty does not have consideration
      1. ILL: State v Avis
         a. Court found an additional reward was consideration since detective’s continued work on case was influenced.

4. Settlement Agreements
   i. Restatement §74
      1. Forbearance to assert or surrender a claim which is invalid is not consideration unless
         a. The claim or defense is doubtful because of legal uncertainty, or
         b. The forbearing party believes the claim may be determined valid
   ii. ILL: Fiege v. Boehm
      1. Court found that probability of fathering a child had an honest belief and was thus consideration

5. Mutuality—both promises must be substantive to create consideration
   i. ILL: Weiner v. McGraw
      1. Court found that promise to not fire without just cause was in fact consideration, and there need not be an exhaustive search for mutuality
   ii. ILL: Iacono v. Lyons
      1. Court found promise to split winnings provide both benefit and detriment to both parties, and thus consideration.
f. Discretionary promises—a “satisfaction” clause of a contract still requires you to bargain in good faith.
   i. ILL: Wood v. Lucy
      1. Court found a sole distributorship was consideration since the distributor was bound to use good faith marketing.
g. Exclusivity, Output, and requirements-UCC doesn’t allow any amount disproportionate to reasonable estimates in the future, and exclusive dealings require a good faith effort

IX. Promissory Estoppel-41 pages (9:36)

a. Helps mostly when a promise cannot be enforced under consideration doctrine. Promissory Estoppel helps the promisee while consideration helps the promisor. Promisee relied on the promise to his detriment.
   i. ILL: Restatement
      1. A promise in which the promisor reasonably expects to induce action, and the promisee relies on to his detriment, and an injustice occurs.
   ii. Debate: some believe estoppel is contract, some tort
   iii. ILL: Deli v University
      1. Found that since promissory estoppel is a contract claim, cannot recover on grounds of emotional distress
   iv. ILL: Ricketts v Scothorn
      1. Although it was a gratuitous promise, the Π gave up her job to her detriment, and would be inequitable to deny relief because of lack of consideration
   v. ILL: Wright v. Newman
      1. Courts found mother relied on another man for support and forewent finding the real father for support.
   vi. ILL: In Re Morton Show Company
      1. Courts found sufficient evidence in gift case that consideration and reliance since the charity relied on the gift.
   vii. ILL: East v. Geremia
      1. Courts found that family relied on insurance company to their detriment when they agreed to give a loan and extend the plan
   viii. ILL: Ypsilanti v. General
      1. Courts found no definite promise to sue motor company for leaving town after getting tax rebates.
   ix. ILL: Lord v Souder
      1. Π relied on supervisor to not tell of her ratting out her superior
   x. ILL: Hoffman v. Red Owl
      1. Red Owl continuously dragged Hoffman to their detriment, promising a store
   xi. ILL: Gruen v. Biller
      1. A complex negotiation that fails does not constitute promissory estoppel
   xii. Remedies under promissory estoppel: only valid to the point to promote justice
X. Options and Firm Offers
   a. Option contract-keeps offer open with no power of revocation. However, this requires consideration under classical doctrine. Courts do not require stringent consideration, however.
   b. ILL: Drennan v. Star
      i. Sub-contractor bid was faulty, but contractor could not know, and sub-contractor was liable for damages
   c. ILL: Bard v. Gimbel
      i. Learned Hand: Sub-Contractor made no definitive offer, and thus no acceptance.
   d. ILL: Pavel v. Johnson
      i. Contractor can recover under bilateral contract or detrimental reliance.
   e. UCC: a firm offer need no consideration, but cannot stay open for more than 3 months.

XI. Unjust Enrichment and Material Benefit
a. Unjust Enrichment
   i. Injustice—there must be an unjust benefit without payment. However, and “officious intermeddler” that provides benefit without asking doesn’t need payment, but it may be required to be returned if returnable.
   ii. Enrichment—courts must determine the value of the benefit.
      1. Quantum meruit—value of services
      2. Quantum valebant—value of goods
   iii. Terminology—
      1. Unjust enrichment=theory
      2. Restitution=remedy
      3. Measured by quantum meruit or quantum valebant
      4. Unjust enrichment→”Quasi-contract” or “contract implied in law”
   iv. ILL: Martin v. Little
      1. Court found volunteering of information and subsequent reward did not unjustly enrich information peddler
   v. ILL: Feingold v Pucello
      1. A lawyer was an officious intermeddler by providing services and then charging a high rate for them without approval
   vi. ILL: estate of Cleveland
      1. Courts allowed family member to recover from the services she provided and was not an officious intermeddler

b. Moral Obligation and Material Benefit Rule
   i. “Past consideration”—detriment previously suffered by the promisee usually does not count as consideration, only a moral obligation.
   ii. A promise to pay back a past debt over bankruptcy is sufficient consideration
   iii. Material benefit rule—prior material benefit can occasionally count as consideration
      1. ILL: Webb v. McGowin
         a. A worker who crippled himself to save another was allowed to receive a promise of money
2. ILL: Restatement
   a. Promise made in recognition of previous benefit is binding only to prevent injustice
3. ILL: Demantas v. Tallas
   a. A previous benefit of daily help out of friendship is not binding to create a binding promise.

XII. Improper Bargaining
   a. Intro
      i. Voidable-aggreived party can either rescind or keep it
      ii. Void-contract is a nullity
      iii. Remedy-both parties allowed to recover up until avoidance
   b. Misrepresentation and Fraud
      i. Misrepresentation-non-purposeful untruth
      ii. Fraud-purposeful untruth either express or concealment
      iii. Restatement: if the party relies on material misrepresentation or fraud for the contract, the contract is voidable
      iv. Restatement: Misrepresentation is fraud if the teller knows or likely knows. Material if it would induce the person to assent.
      v. ILL: Sarvis v. Vermont
         1. Teacher was rightfully fired for materially lying on his resume
      vi. ILL: In re House of Drugs
         1. Mall owner did not use fraud by nondisclosure since store buyer could have easily done his own research
       vii. ILL: Stambovsky v. Ackley
         1. Court found a haunting was misrepresentation for not disclosing
      viii. ILL: Cummings v. HPG
         1. Not misrepresentation since HPG did not know that roofs would not last 20 years.
      ix. Negligent misrepresentation: not purposeful, but careless.
      x. Fraud constitutes a tort, and can be punitive
     xi. Fraud in the Inducement: very nature of contract false. Fraud in factum-an underlying fact is false.
   c. Duress
      i. Using coercion, either from force, threats (to loved ones or economic loss)
      ii. Restatement: Duress makes a contract voidable
      iii. Restatement: Improper threats: prosecution, power, etc.
     iv. ILL: Germantown v Rawlinson
        1. Thugs threat to husband was improper and duress
      v. ILL: Quigley v. KPMG
        1. Mere uncertainty of at will employment not duress
      vi. Duress by third party: courts do not want to hurt an innocent party, but will find for duress if threats by third party take are strong.
   d. Duress with Contract Modification
      i. ILL: Austin v. Loral
         1. Sub-contractor was found to use duress to get more business by threat of non-performance.
ii. UCC: contract needs no consideration for a modification, but must be within the statute of frauds

e. Undue Influence
   i. Undue influence is not a misrepresentation, but under circumstances in which enforcement would be unjust (unfair persuasion under the domination or a relationship)
   ii. ILL: Odorizzi v Bloomfield
       1. Courts found relationship and circumstances urging teacher to quit were consistent with undue influence.

f. Unconscionability
   i. Unconscionability: contract is so unfair that it would offend the conscience to enforce it
   ii. Remedy: court may refuse contract, or keep contract without unconscionable term, or limit the application to avoid an unconscionable result. Determined by judge, not jury.
   iii. Procedural Unconscionability: unfair bargaining tactics, disparity of power to take unfair advantage.
   iv. Substantive Unconscionability: terms of contract
   v. Contracts of Adhesion: a more powerful bargaining party gives a contract on a “take it or leave it” basis and weaker party must adhere.
   vi. ILL: NEC v Nelson
       1. It is not unconscionable to contract out of resulting damages, but yes to resulting injuries.
   vii. ILL: Southwest v. Koch
       1. Not unconscionable when no party had stronger bargaining power, and many other distributors.
   viii. ILL: Brower v. Gateway
        1. Court found unconscionable to require very expensive arbitration from a powerful computer company.
   ix. ILL: Sosa v. Paulos
        1. Court found procedural unconscionability by requiring her to sign papers before her surgery.

XIII. Other grounds for Policing contracts
   a. General policy so against certain contracts it will not enforce them (eg drug contracts)
   b. Illegality
      i. ILL: Diversified v. Sahn
         1. Ticket scalpers were not forced to refund overhead since public policy did not enforce these contracts
      ii. ILL: Danzig v. Danzig
         1. Courts allowed brother to recover from attorney in unethical act since attorney should have known
   c. Contracts in Violation of Public Policy
      i. ILL: Stevens v. Rooks
         1. Courts found an anti-competition clause for attorneys against public policy since citizens have right to be represented
ii. ILL: Harmon v. Mount
   1. Courts upheld a non-liability clause since it was not gross negligence
d. Incapacity
   i. Courts protect those without an ability to contract: minority age, and mental incompetence
   1. Minority contracts-voidable, not void. Minors reaching majority age then have a reasonable time to disaffirm the contract.
      a. ILL: Webster Street
         i. Courts found minors not “emancipated” (outside of parent’s obligation), and apartments not “necessasries” for living.
      b. ILL: Halbman v. Lemke
         i. Minor entitled to all his consideration back, but required to give as much of benefit back as can.
      c. ILL: Zivich v. Mentor
         i. Parent can contract for child
   2. Mental Incapacity-burden of proof on party alleging mental incompetence
      a. Modern courts look towards when mental person could not act rationally in relation to the contract
      b. Restatement
         i. Voidable if
            1. Unable to understand nature of contract, or
            2. Unable to act in reasonable manner and other party has reason to know of condition
            ii. If other party doesn’t know of condition, power to avoid terminates if contract has been performed in whole or part, and would be unjust to rescind.
      c. ILL: Farnum v. Silvano
         i. Buyer knew of seller’s mental condition and contract was voidable.
d. ILL: Hauer v. Union
   i. A majority incompetent, absent fraud, can only recover as much according with equitable principles.

XIV. Contract Interpretation and Construction
   a. Interpretation-courts may look to explicit terms, contextual terms, or gap fillers
      i. Objective theory demands that courts not look at either parties expectations, but what a reasonable person would have expected under circumstances
         1. ILL: Guilford v. Public
            a. Certain terms were uncertain meanings and must be determined for a good ruling
      ii. Restatement: Interpretation
         1. Words and conduct interpreted by circumstances
2. Writing is interpreted as a whole
3. Terms:
   a. Where language has prevalent meaning, use it
   b. Except for technical terms, which are used in their field
4. Repeated action without objection given weight

iii. Restatement: Preference in Interpretation
   1. Interpretation that leaves all meanings meaningful preferable over which leaves a part unmeaningful
   2. Express terms, course of performance, course of dealing given great weight over trade usage
   3. Specific terms given greater weight than general language
   4. Negotiated terms greater than standard terms

   1. Various trade usages do not proved burden that

v. Courts do not always tie themselves to simply the words
   1. ILL: Atwater v. Western
      a. Courts found intent of contract important, not specific wording.

b. Construction of Obligations
   i. Gap Fillers-courts use a standard term to complete contract
      1. Some gap fillers prefer common sense fillers
      2. Others prefer economic gap fillers, that the default rule is the most contracted, and parties can contract away from if they want to.
      3. Others prefer gap fillers that are specific to the community and relationship of parties
      4. UCC: Implied warranty of merchantability
         a. Goods should be merchantable w.r.t. goods of that kind.
         b. Goods must pass objections, are of average quality, fit for ordinary purposes, of adequate quality, packaged, conform to any label promises.
         c. Unless excluded by UCC 2-316.
   5. UCC 2-316: Exclusion or modification of warranty
      a. Expressions such as “as is” or “with faults” implies no warranty.
      b. If buyer has examined goods or declined to examine there is no warranty as to what the examination should have revealed
      c. Warranty can be excluded or modified by course of dealing or usage of trade

   ii. Good faith
      1. Output contracts require a “good faith” effort to market or buy the output.
      2. ILL: United v. Good
         a. No Cause termination clause can be bargained for in good faith

XV. Parol Evidence Rule
a. Intro-Parol Evidence: evidence extrinsic of writing that may clarify writings.
   i. Parol Evidence rule limits a party’s ability to offer extrinsic evidence (oral or previous writings) to a written contract.
   ii. Theory-parties intend to have their final writing be the final product.
   iii. Reasoning-to reduce length of litigation, and for judge to guide jury.
   iv. General Rule:
      1. Where a writing is “fully integrated”, no parol evidence may be admitted to contradict or augment it
      2. A partially integrated (has a final writing, but not complete), parol evidence may be admitted to fill in the gaps.
      3. If writing is unclear or ambiguous, parol evidence may clarify, but not contradict the writing.
   v. Process: parol evidence decided to be admitted/denied, and if admitted, factfinder evaluates credibility
b. Application of Parol Evidence Rule
   i. Classical view (still in effect in many places): “Four Corners”-judge looks at writings to determine admissibility, not circumstances. “Plain meaning”-judge doesn’t look past normal definitions to clarify terms.
   ii. Legal Realist view: look at the circumstances and credibility to determine admittance/denial of parol evidence.
   iii. ILL: Masterson v. Sine
      1. Court finds a contract silent on some parts, and thus, only partially integrated.
   iv. ILL: Pacific v. Thomas
      1. Court finds that a term was not “plain meaning” and thus extrinsic evidence was admissible about its meaning
c. UCC Parol Evidence
   i. A complete contract may not be contradicted by prior evidence or an oral agreement but may be supplemented by
      1. a trade usage or course of dealing; and
      2. evidence of consistent additional terms
d. Merger or Integration Clauses
   i. Purpose: Merger or Integration Clauses state that they supersede any previous dealings, thus getting out of parol evidence.
   ii. Courts generally give these clauses great weight to find a fully integrated writing
   iii. However, courts are also weary a powerful party could exploit the other via an integration clause. But, usually the clauses are still held above these worries.
   iv. ILL: Bristow v. Drake
      1. An employment by term contract cannot be changed by contradicted an self stated integrated contract.
   v. ILL: UAW v. KSL
      1. Court found parol evidence only admissible for an self stated integrated contract with fraud, or if it is obviously not integrated.
e. Escape from Parol Evidence Rule
i. Courts have a difficult time balancing misrepresentation and fraud. They would like to allow misrepresentation to be stopped, but such continuous allegations could destroy the parol evidence rule.
   1. ILL: Sound v. Hoffman
      a. Courts found misrepresentation but not fraud, and thus, did not parol evidence.

XVI. Misunderstanding, Mistake, and Excuse due to changed circumstances
   a. Misunderstanding—when each party attaches a different meaning to the terms
      i. ILL: Konic v. Spokane
         1. A material term involved a misunderstanding, and thus the contract was void
   b. Mistake—based on an assumption about a certain state of affairs
      i. 1) Mistake must relate to a fact at the time of the contract, not in future
      ii. 2) Mistake must be significant
      iii. 3) Unfair to allocate risk on aggrieved party
      iv. Mutual mistake—both parties in mistake of facts
         1. ***ILL: Wood v. Boynton
            a. Courts found mistake in value of rock, but did not rescind
         2. ***ILL: Sherwood v. Walker
            a. A mistake of attributes of cow warranted rescission.
   3. Restatement: grounds of mistake for voiding contract
      a. Mistake relates to facts in existence at time of contract
      b. Mistake shared by both parties
      c. Mistake relates to basic assumption on which contract made
      d. Mistake has a material effect on the agreed exchange of performances
      e. Complaining party did not bear risk of mistake
   4. ILL: Mattson v. Rachetoo
      a. Courts put mistaken parties to position before contract
   5. Restatement: when a party bears risk of mistake
      a. Risk allocated to him by agreement; or;
      b. He is aware of limited knowledge but accepts it; or
      c. Risk allocated to him by the court for reasonableness.
   6. ILL: Estate of Nelson v. Rice
      a. Acceptance of limited knowledge gave party the risk
   v. Unilateral mistake—one party more at risk than the other
      1. Courts need particularly strong inequity to avoid contract since more one fault than the other.
      2. ILL: Drennan v. Star
         a. Calculation of mistake by one party, so their own fault
   vi. Relief
      1. Only relief is rescission: to restore status quo
      2. ILL: Rancourt v. Verba
         a. Mistake of possibility of development leads to rescission, not damages.
c. Excuse due to changed circumstances
   i. Impracticability—occurrence of event changes basic assumption underlying contract
      1. ILL: Taylor v. Caldwell
         a. Music hall burned down, so contract need not be enforced.
      2. ILL: Ling v. College
         a. Due to a change in law, college could not give 12 month notice, but was excused from impracticability
      3. ILL: Clark v. Wallace
         a. A bad crop did not entail impracticability, it was simply a gamble that didn’t pay off
      4. ILL: Opera v. Wolfe
         a. A power outage, while not making the performance impossible, made it extremely impracticable
   ii. Frustration of Purpose
      1. Change in purpose of mutual understanding
         a. ILL: Krell v. Henry
            i. Rented room to view king voidable when the king cancelled
         b. Restatement
            i. If party’s principal purpose is substantially frustrated, remaining duties discharged.
         c. ILL: Scottsdasle v. Kuhn
            i. Mere economic impracticability doesn’t frustrate the purpose of a contract

XVII. Conditions and promises
   a. Intro
      i. Definition of condition: “an event, not certain to occur, which must occur before performance under a contract becomes due”
      ii. Example: Insurance: promise to pay premium for promise to reimburse. Conditions: must refrain from activities or will not be reimbursed.
      iii. Non-events: a not happening can be a negative event
      iv. Past events: past events can be conditional (eg unsure of existence of certain state of affairs).
      v. Conditions precedent: condition must be satisfied before performance
      vi. Concurrent conditions: promises that must be performed simultaneously
      vii. Conditions may be express, or implied by language
      viii. ***Pure condition: any of the conditions negates promise?
      ix. ***Pure promise: no further performance contingent on it
      x. Promissory condition: both promise and condition
      xi. ILL: Koch v. Construction
         1. Courts did not find a condition precedent when not explicit
   b. Express, Implied and Construed conditions
      i. ILL: Oppenheimer v. Oppenheim
         1. Courts found an express, clear condition should be taken exactly as written.
ii. ILL: Jacobs v. Kent
   1. Courts found a conditional breach, not substantive, and with great cost of replacement, damages were instead applicable rather than performance.

c. Various Uses of Conditions
   i. Escaping contracts by conditions
      1. ILL: Meritt v. Windy
         a. A non-fulfillment of a condition warranted voiding the contract
      2. ILL: Fry v. George
         a. A party must use good faith to use the condition or else it is in breach.

   ii. Conditions of satisfaction
      1. If it is a matter of taste or artistry, the condition of satisfaction must be in good faith.
      2. If it is in a commercial sense, the dissatisfaction must be reasonable.
      3. ILL: incomm v. thermo spa
         a. A matter of taste was not shown to be deficient by objective standards, so creator got damages
      4. Alternative performance: could also have conditions such that one condition is one performance, and another condition is alternate performance
      5. Sequential conditions may distribute risk (delivery first, then payment) or provide sequences of payments (payment for each stage of a non-instantaneous contract).

   d. Excuse of conditions
      i. ***Waiver and Estoppel
         1. Waiver—a knowing and voluntary abandonment of a right
            a. Eg: buyer has house inspected, found faulty, but still buys
            b. Unlike estoppel, waiver does not require justifiable reliance and detriment
         2. Estoppel: beneficiary of a condition indicates he will perform despite nonfulfillment of the condition.
            a. Unlike waiver, estoppel does not require a knowingly giving up a right.
      3. ILL: Mercedes v. Morgan
         a. Because of repeated action, Mercedes waived its right to repossess because of that action.
      4. ILL: Gould v. Artisoft
         a. Artisoft waived its rights to an agreement by not including the form

   ii. Obstructive or uncooperative conduct
      1. One cannot work to obstruct a condition from occurring.
      2. ILL: Sullivan v. Bullock
         a. One who completely blocks work on a contract is in breach
iii. Unfair forfeiture
   1. ILL: JNA v. Cross
      a. A restaurant was not notified of renewal date, and would be unfair to not allow them to renew because of improvements

XVIII. Material Breach, Substantial Performance, and Anticipatory Repudiation
   i. Material and total Breach: Breach so serious it allows other party to recover fully with damages. Material breach is a question of fact
   ii. Partial breach: not of the gravity of a total breach. Will give some damages.
   iii. Substantial performance-owner may be obliged to accept the performance but offset with damages.
   iv. Cure-breaching party has an opportunity to fix the contract to make it non-breaching (within the proper time period).
   v. ILL: Seydel v. Ige
      1. Substantially performing party may withhold performance to secure his exchange.

b. Consequences of Substantial Performance
   i. Other party’s damages may be cost of completing performance or fixing performance.
   ii. If breach is non-material, and cost of rectification too high, may only be damages
   iii. ILL: Lyon v. Belosky
      1. Court found a material partial breach resulted in damages which were the cost to fix the problem.
   iv. Breaching party can sue for unjust enrichment for the benefit it conferred on the non-breaching party.
      1. If breach is non-material, breaching party may receive all contract, less offsetting damages.
      2. ILL: Carrrig v. Gilbert
         a. Discrete units of performance warranted payment for those units

c. Breach and Substantial Performance under UCC: Perfect Tender, Cure, installment contracts
   i. Perfect Tender
      1. Under UCC: goods must be exactly as ordered or:
         a. Buyer may reject the whole
         b. Accept the whole
         c. Accept any unit or units and reject the rest
      2. ILL: Printing v. Super
         a. Not exactly conforming, so correctly rejected
   ii. Right to cure
      1. UCC:
         a. Where tender or delivery rejected (by nonconformance, knowingly or unknowingly), seller may seasonably notify buyer of intention to cure, within the time of the contract
2. ILL: Ramirez v. Autosport
   a. Seller had legitimate time to correct problem, and buyer rightly rejected.

iii. Installment Contracts
   1. UCC
      a. “Installment contract”=delivery of goods in separate lots
      b. Buyer may reject and non-conforming installment, but seller may attempt to cure
      c. Whenever non-conformity of one or more installments substantially impairs the whole, breach is of the whole. However, buyer reinstates the contract is he accepts a non-conforming contract without notifying seller

2. ILL: Graulich v. Hans
   a. Two consecutive installments defective, so rightfully discontinued contract

XIX. Contract Remedies
   a. Goal: to make aggrieved party whole
      i. Restatement: Purposes of remedies
         1. “Expectation interest”: have the aggrieved party put in as good a situation as had the contract been performed
         2. “Reliance interest”: reimburse aggrieved party to put in as good a situation as had the contract not been made
         3. “Restitution interest”: aggrieved party is restored any benefit he has conferred to the other party.
      ii. Generally: Expectation>Reliance>Restitution
      iii. ILL: Freund v. Washington
         1. Expectation damages in terms of lost future opportunities too vague to compute (eg must be foreseeable).
      iv. Theory of efficient breach: if it is more cost effective for the party to breach, it should do so to promote economic well being, so long as the non-breaching party is adequately compensated.

b. Expectation Interest
   i. “Direct” damages: damages to compensate directly from the contract.
      1. If substantial performance, then damages=contract-benefit received
   ii. “Indirect” damages
      1. “Consequential”: arise as a consequence of breach (eg lost profits, injury to property, etc)
      2. “Incidental”: damages from II’s coping with loss.
   iii. Measurement of expectation interest (Restatement)
      1. Loss in value of contract to aggrieved party, plus
      2. incidental or consequential loss, minus
      3. costs avoided
   iv. Measurement by reference to market value
      1. ILL: G.P.P. Restaurants, Inc.
         a. Difference in price must reflect actual market price, not just the proximate selling price
v. Measurement by substitute transaction
   1. ILL: Handicapped v. Lukaszewski
      a. II can choose replacement, and does not have to be superior

vi. Measurement with deficient performance
   1. Diminution of value to property values damages
   2. ILL: Peevyhouse v. Garland
      a. Courts found diminution in value correct damages, rather than repair damages.

c. Expectation Damages under UCC
   i. Buyer’s remedies
      1. UCC-remedies liberally administered
         a. Aggrieved parties put in same position had contract been performed
      2. UCC: buyer’s remedies in general
         a. When seller fails to deliver or repudiates, buyer may cancel and:
            i. Recover “cover” and damages of affected goods; or
            ii. Damages of non-delivery; or
            iii. Specific performance, when applicable
      3. UCC: “Cover”
         a. Reasonable substitution
         b. Buyer may recover damages between cover and contract, as well as incidental and consequential damages, less costs saved
         c. Failure to receive cover does not bar recovery of damages
      4. UCC: Buyers damages: market measurement
         a. Measure of damages is difference between market price and contract, less expenses saved.
      5. Buyer who finds favorable substitute contract may find cover yields less damages than market measure
   6. ILL: Chronister v. Unocal
      a. Breach in which non-breaching party saved money is not entitled to damages, except nominal ones
   7. UCC: Breach with accepted goods (must give notice of non-conformity)
      a. May recover damages from non-conformity that result
      b. Breach of warranty: measure of damages difference between value of goods and value of goods if properly warranted
      c. Also incidental and consequential damages

ii. Seller’s remedies
   1. Seller has action for full contract price for delivering conforming goods
   2. Repudiation: seller doesn’t get full contract price, but instead contract price less value of goods still in possession.
      a. Value: substitute sale or market price
3. UCC: Seller’s Remedies in general
   a. If buyer wrongfully rejects or repudiates, seller may:
      i. Withhold delivery
      ii. Resell and recover damages
      iii. Recover damages for nonacceptance
      iv. Cancel

4. UCC: Sellers resale
   a. Seller may in good faith resell the goods and receive damages of the contract less resale value, plus incidental costs

5. UCC: Sellers damages for nonacceptance or repudiation
   a. Damages=contract-market price+incidental-costs saved
      b. If (a) is inadequate, damages are profit+incidental-costs avoided-proceeds of resale

6. “Lost Volume Seller”-has more product than buyers, so damages accurately measured by profits.

7. ILL: New v. Dairy
   a. Lost volume seller only as long as could service other customers

   d. Limitations on recovery of expectation damages
      i. Reasonable certainty of damages
         1. II must prove damages within a reasonable certainty
         2. ILL: Mears v. National
            a. Winner of contest deserved reasonable damages which were calculable by cheapest versions of contest prize.
      3. ILL: Locke v. United States
         a. Loss of contract calculable by approximate measurement of other business, divided by share of plaintiff
      4. Standard of proof for consequential damages
      5. ILL: ESPN v Office
         a. II failed to demonstrate any reasonable damage figures

   ii. Foreseeability of Damages
      1. ILL: Hadley v. Baxendale
         a. Δ did not know or could reasonably foresee its failure would hamper II’s profits, and need not pay these damages
      2. ILL: Wull v. Jenny
         a. Making a particular product was foreseeable, so expectation damages appropriate
      3. ILL: Kenford v. County
         a. Expectation damages asked for were outside any reasonable contemplation of breaching party

   iii. Mitigation Principle
      1. Reasonable effort to mitigate: non-breaching party must attempt reasonable mitigation.
         a. ILL: Parker v. Twentieth
i. Non-breaching party need not take different/inferior job to mitigate damages

b. ILL: Marchesseault v. Jackson
   i. Mitigation only need by reasonable and Δ must prove it was not.

2. UCC:
   a. UCC: Buyer
      i. Buyer can only receive incidental and consequential damages that are reasonable
   b. UCC: Seller
      i. Only receive reasonable incidental damages

e. Reliance Damages
   i. Intro
      1. Reliance damages=damages to put party in place as though contract didn’t exist.
      2. Usually use reliance when expectation damages difficult to prove
      3. Reliance damages also require reasonable foreseeability (reasonable=not excessive or avoidable).
   ii. Reliance when expectation damages inappropriate
      1. ILL: Sullivan v. O’Connor
         a. Botched cosmetic surgery. II was entitled to out of pocket expenses, worsening of condition, and pain and suffering. (Court notes these could have been found on either expectation or reliance)
   iii. Reliance when Expectation cannot be established
      1. ILL: Hollywood v. Gabor
         a. Only reliance (out of pocket expenses) found, expectation too speculative
      2. ILL: Sullivan v. Oregon
         a. Expectation based on hourly wages of equivalent workers inappropriate. Only reliance for out of pocket expenses
   iv. Reliance damages in a losing contract
      1. Restatement: Reliance interest
         a. Reliance damages=expenses in preparation of the contract minus loss avoided (shown with reasonable certainty).
      2. Important distinction:
         a. Expectation: breaching party shows reasonable certainty of profits
         b. Reliance: breaching party shows reasonable certainty of losses

f. Restitution
   i. Brought into play from unjust enrichment
      1. ILL: Bausch v. Bresller
         a. Breach of exclusive distributorship allowed aggrieved party to restitution of the amount paid for the exclusive distributorship agreement
ii. Measurement of Restitution
   1. Could find as net value at which the breaching party has been enriched
   2. Could also be the market value of the enrichment
   3. ILL: Earthinfo v. Hydrosphere
      a. Court ordered restitution of not only royalties, but royalties of derivative products

iii. Limits on restitution
   1. If II would have had unprofitable contract, will go to restitution to get more back
   2. Some courts refuse to give back more that contract price
   3. Wide Acceptance: if aggrieved party performed all duties, and breaching party only breached a payment, courts will only enforce the payment

iv. Restitution to party in breach-where non-breaching party enriched by breaching party, courts allow limited restitution to the breaching party
   1. ILL: United States v. Cal
      a. Restitution to non-breaching party capped by contract price and damages

   g. Agreed Remedies
      i. Agreed remedies cannot penalize breaching party (against public policy)
      ii. Restatement: Liquidated damages
         1. Agreed damages may only be reasonable damages foreseeable at time of contract

      iii. UCC:
         1. Agreed damages may only be set at a reasonable level with the harm of the breach foreseeable at time of contract

      iv. Restatement and UCC allow liquidated damages to exceed actual damages if they were reasonable at time of contract creation

      v. ILL: Lake v. Carborundum
         1. Courts found liquidated damage clause unreasonable, and instead applied damages of unpaid contract price minus costs avoided.

      vi. Remedy limitations
         1. Wedner v. Fidelity
            a. Court found a liquidated damages clause reasonable, since it is reasonable to contract for lower liability.

         2. UCC
            a. Liquidated damages clause may be ignored if the purpose of the clause has failed or the result unconscionable.

   h. Non-economic and non-compensatory damages
      i. Usually compensation of pain and suffering not allowable.
         1. Are allowable if nature of contract makes emotional damages particularly likely
         2. ILL: Lane v. Kindercare
            a. Breach of contract with child found to be so personal allowing for emotional damages
3. Nature of Breach makes emotional damages particularly likely
4. ILL: Johnson v. Jamaica
   a. Courts found where duty not to 3rd party, 3rd party could not recover for breach

ii. Restatement
   1. Emotional damages excluded unless breach caused bodily harm or the contract or breach is of such kind that serious emotional disturbance will probably result.

iii. Punitive Damages
   1. Restatement
      a. Punitive damages not recoverable unless breach is also a tort

i. Specific performance and Injunctions
   i. Courts prefer not to use this because of slavery and theory of efficient breach
   ii. Inadequacy of damages
      1. Uniqueness of a contract or performance can make damages inadequate
      2. Real estate usually has inadequate damages
      3. ILL: Van Wagner v. S&M
         a. Court found specific performance would place an unfair burden on breaching party, so instead found damages

iii. Discretionary Nature of the Remedy
   1. Courts do not want to unjustly burden any party
   2. ILL: Bloch v. Hillel
      a. Difficulty of continuing a service relationship warrants damages rather than specific performance

iv. Injunctive relief as alternative to specific performance
   1. Positive action=mandatory injunction
   2. Negative action=prohibitive injunction
   3. ILL: Giants v. Chargers
      a. Devious conduct by one party barred any relief
   4. ILL: Ticor v. Cohen
      a. Courts found a non-competitive contract allowed prohibitory injunctive relief on the breaching party.