I. What Promises Are Legally Enforceable and Why?
   A. Some Theories of Promissory Liability
      1. Best v. Southland
         Facts: Best wanted to borrow lumber from Southland, but then Southland reneged on deal.
         Holding/Issue: Unless a promiser asks for and receives a sufficient price for the performance contained in his promise, the law will not hold him to it. Southland’s promise to lend plywood to Best must be held to be unenforceable because it is without sufficient consideration.
         Rehnberg → no consideration and reliance, thus no enforceable promise
         → Represents traditional approach, which says there must be 3 elements: offer, acceptance, and quid pro quo of exchange of something of value
         Blackstone → lacks formality, specificity, and deliberation → it was so informal and non-specific that cannot be a contract
         Mendes → thinks it is a serious contract—business people acting
         O’Stevens → breach of contract should be treated like other liabilities → responsibility for harms committed
         Ohno → says we should take the criteria that both sides made a promise and if these promises would constitute a consideration
   B. Promises That Lack Commitment
      1. Conditional and Illusory Promises
         a. De Los Santos v. Great Western Sugar Co.
            Facts: P entered agreement to transport beets for D. After 2 months, D said they wouldn’t need P to transport any more.
            Holding/Issue: The terms of the contract did not constitute a promise, but merely established the period of time during which the promises which were contained in the contract would be in effect
            General Info:
            → Here one party gave up so much in return for so little → courts will not find a contract when this happens
            → When it looks like one person has left to much room for him to get out of the contract, that contract is illusory and not enforceable
         b. Mattei v. Hopper
            Facts: P had ability to terminate contract if did not find satisfactory leases, while D did not have power to terminate, but did.
            Holding/Issue: Just because the contract was based on satisfaction does not make it illusory or lacking in mutuality of obligation.
         c. Sylvan Crest Sand & Gravel Co. v. United States
            Facts: P was to deliver rock as required, but D refused to request or accept delivery within reasonable time after contract formed.
            Holding/Issue: A promise is not made illusory by the fact that the promisor has an option between two alternatives, if each alternative would be sufficient consideration if it alone were bargained for
         d. Wood v. Lucy, Lady Duff-Gordon
            Facts: P had exclusive right for designs for D, but D put her endorsement on designs not from P.
**Holding/Issue:** The court believes that although plaintiff does not make a promise in so many words, such a promise can be implied. A promise may be lacking and yet instinct with an obligation expressed, which would make a contract.

e. **Charter Township of Ypsilanti v. General Motors Corp.**
   **Facts:** GM operated plants in Ypsilanti, but planned on leaving, which Ypsilanti felt upset about after all the tax abatements they had given GM.
   **General Info:** Almost all the statements that the trial court cited as foundations of promise were, instead, expressions of defendant’s hopes or expectations of continued employment at Willow Run. In short, D made no promises.

2. **Context That Suggests No Commitment—Fun and Games**
   a. **Keller v. Holderman**
      **Facts:** Holderman had watch worth $15, which Keller said he would pay $300 for, but frolic and banter, as neither party meant for transaction to take place.
      **Holding/Issue:** No contract if frolic and banter.
   b. **Brown v. Finney**
      **Facts:** Men met at bar and discussed contract, which D said he would draft the next day, but never did.
      **Holding/Issue:** When people meet to do business they are presumed to mean what they propose, and expect to be taken up; but a proposition made and accepted where no expectation of contracting exists, should be carefully weighed with all the circumstances when the question of assent at the time comes to be questioned, as here

C. **Interpretation of Vague and Indefinite Promises**
   1. **Words are Ambiguous**
      a. **Frigaliment Importing Co. v. B.N.S. International Sales Corp.**
         **Facts:** P and D had differing opinions on what “chicken” meant.
         **Holding/Issue:** Plaintiff has the burden of showing that “chicken” was used in the narrower rather than in the broader sense, and this it has not sustained.
   2. **The Challenge is to Construct a Coherent, Persuasive Interpretation**
      a. **Berg v. Hudesman**
         **Facts:** 99 year lease and after many years, conflict over how much rent should be paid.
         **Holding/Issue:** In discerning the parties’ intent, subsequent conduct of the contracting parties may be of aid, and the reasonableness of the parties’ respective interpretations may also be a factor in interpreting a written contract.
         **General Info:** When a provision is subject to 2 possible constructions, one of which would make the contract unreasonable and imprudent and the other of which would make it reasonable and just, we will adopt the latter interpretation.

II. **Remedies: How the Law Enforces Promises**
A. What Do We Mean “Enforce”? Crimes and Punitive Damages
   1. White v. Benkowski
      **Facts:** Ds promised to provide water to Ps, but keep shutting it down.
      **Holding/Issue:** Punitive damages are not available for breach of contract.
      - In a situation where there has been a breach of contract which you find to have damaged the plaintiff but for which the plaintiffs have proven no actual damages, the plaintiffs may recover nominal (trivial) damages.

B. Specific Performance
   1. Northern Delaware Industrial Development Corp. v. E.W. Bliss Co.
      **Facts:** “Contemplated” cause about workers, so P feels that they can make D bring more workers into the project.
      **Holding/Issue:** The point is that a court of equity should not order specific performance of any building contract in a situation in which it would be impractical to carry out such an order, unless there are special circumstances or the public interest is directly involved.
      - To grant specific performance would be inappropriate in view of the imprecision of the contract provision relied upon and the impracticability if not impossibility of effective enforcement.
   2. American Broadcasting Companies, Inc. v. Wolf
      **Facts:** ABC had right of 1st refusal, but during that time, Wolf agreed to contract with CBS.
      **Holding/Issue:** Once the employment contract has terminated, equitable relief is potentially available only to prevent injury from unfair competition or similar tortious behavior or to enforce an express and valid anticompetitive covenant.
      To grant an injunction here would be to unduly interfere with an individual’s livelihood and to inhibit free competition where there is no corresponding injury to the employer other than the loss of a competitive edge.

C. Compensatory Damages
   1. The Financial Equivalent of Performance
      a. Thorne v. White
         **Facts:** Thorne started putting roof on for White, but stopped. White sought damages for finishing job, but was different kind of roof put on.
         **Holding/Issue:** A party damaged by a breach may only recover for losses which are the natural consequence and proximate result of that breach.
         Damages are awarded for the purpose of compensation and the injured party should not be placed in a better position than he would have been had no breach occurred.
      b. Expectation Interest
         **Facts:** P, author, had agreement with D to publish book, but D merged and no longer published hardcover books.
         **Holding/Issue:** Damages are determined by the natural and probable consequences of the breach to the plaintiff, not what defaulting party saved as a result of the breach.
To receive damages, you have to prove damages within a reasonable degree of certainty.

(2) **Sullivan v. O’Connor**

**Facts:** Plastic surgery by D was supposed to fix P’s nose, but didn’t.

**Holding/Issue:** When the contract calls for an operation on the person of the plaintiff, psychological as well as physical injury may be expected to figure somewhere in the recovery, depending on the particular circumstances.

c. **Reliance Interest**

(1) **Anglia Television Ltd. v. Reed**

**Facts:** P making film with D as lead actor, but he backs out after number of expenses had been incurred.

**Holding/Issue:** If wasted expenditure, P can claim expenditure before contract (in addition to after) provided that it was such as would reasonably be in contemplation of the parties as likely to be wasted if the contract was broken.

d. **Restitution Interest**

2. **Avoidable Consequences**

a. **Rockingham County v. Luten Bridge Co.**

**Facts:** Contract to build bridge, but county gave notice to Luten not to build it, but Luten went on and built the bridge anyway.

**Holding/Issue:** The measure of Luten’s damage (upon notice given not to build the bridge) is an amount sufficient to compensate plaintiff for labor and materials (etc.) plus the profit which would have been realized if it had been carried out in accordance with it terms.

- The plaintiff must, so far as he can without loss to himself, mitigate the damages caused by the defendant’s wrongful act.

b. **Sutherland v. Wyer**

**Facts:** P was dismissed from job because of incompetence, but P says it was really because he was not willing to take a paycut.

**Holding/Issue:** It is generally incumbent upon an injured party to do whatever he reasonably can, and to improve all reasonable and proper opportunities to lessen the injury. (Mitigating damages).

c. **Parker v. Twentieth Century-Fox Film Corp.**

**Facts:** P was to star in movie, but cancelled and D offered her same $$ for another role. She declined and wants compensation for lost $$$.

**Holding/Issue:** “The duty of mitigation of damages does not require the plaintiff to seek or to accept other employment of a different or inferior kind.”

**Dissent:** Should not be whether there is a difference (as there has to be one) but if there is a difference in kind of employment or whether the substitute employment is of an inferior kind.

d. **Neri v. Retail Marine Corp.**

**Facts:** Neri agreed to buy boat and then back out. Marine seeks damages, although boat was sold later, because they said they would have been able to sell 2 instead of 1 but for Neri’s breach.
**Holding/Issue:** The buyer’s breach, in such a case, depletes the dealer’s sales to the extent of one, and the measure of damages should be the dealer’s profit on one sale.

   a. *Hadley v. Baxendale*
      **Facts:** D’s delay in returning shaft caused P’s mill to not work and lose money.
      **Holding/Issue:** Breaching party not responsible for lost profits that they were not aware of because of special circumstances of non-breaching party
   b. *Globe Refining Co. v. Landa Cotton Oil Co.*
      **Facts:** D did not inform P for 12 days that they would breach. If P had known, they would have gone elsewhere for oil.
      **Holding/Issue:** Breaching party responsible for damages that they could have contemplated at the time of the contract, and no others.
   c. *Postal Instant Press, Inc. v. Sealy*
      **Facts:** Sealys failed to pay franchise fees, which constituted a breach.
      **Holding/Issue:** We conclude that franchisee’s breach was not the “proximate” or “natural and direct” cause of the franchisor’s loss of future royalties. These damages are “excessive,” “oppressive,” and “disproportionate” to the loss.
      **Facts:** Mears won contest to win 2 Mercedes, but D did not give them to him.
      **Holding/Issue:** A contract that is facially ambiguous can be made certain by subsequent actions or declarations of the parties.
   e. *Center Chemical Co. v. Avril, Inc.*
      **Facts:** Avril seeks damages for loss of future profits for the remaining 16 years of the contract that Center breached after 4 years.
      **Holding/Issue:** All damages recovered for a breach of contract must be proven with certainty.
      **Facts:** Contract for airplanes was late due to supply shortages associated with Vietnam War.
      **Holding/Issue:** Where practical, a trial judge should exclude particular assumptions or other aspects of an expert’s testimony which considered individually do not meet the “minimum of probative value.”

III. Countervailing Influences on Contract Remedies
   A. Restitution as an Alternative Contract Remedy
         **Facts:** P entered contract to sink a shaft 8 by 11 feet down to the “ledge” and to be paid $10 per foot. When they were almost done, Capt. Carlin of Ds company told them to stop, although Carlin denies that he said that.
**Holding/Issue:** When plaintiffs are prevented from performing the contract, they are entitled to recover if at all what their work and labor is worth, whether it was of value to the defendant or not. Someone had rendered services with expectation that they have been paid and someone had been enriched by those services—2 key elements to restitution

2. *Sparks v. Gustafson*
   **Facts:** Gustafson managed place for Sparks for free and even used his own expenses at times. Sparks’ heirs promised to sell to Gustafson, but reneged.
   **Holding/Issue:** The services he provided were not one would normally expect to receive from a friend as a mere gratuity, so entitled to recover those.

B. Tort as an Alternative to Contract Remedies
      **Facts:** P bought vines from D, which were supposed to be healthy, but were not.
      **Holding/Issue:** It does not follow that because acts constitute a breach of contract they cannot also give rise to liability in tort.

2. *J’Aire Corp. v. Gregory*
   **Facts:** D’s work was not completed within a reasonable time, which caused J’Aire to suffer loss of business and resulting loss of profits.
   **Holding/Issue:** This court finds that respondent had a duty to complete construction in a manner that would have avoided unnecessary injury to appellant’s business, even though the construction contract was with the owner of a building rather than with appellant, the tenant.
   - All persons are required to use ordinary care to prevent others from being injured as a result of their conduct.

   **Facts:** P fired for supposedly working too slowly, but really seems to be to avoid paying retirement benefits.
   **Holding/Issue:** Tort claim should be independent of contract to proceed in torts.

   **Facts:** P went on vacation of Ds and was very disappointed in it.
   **Holding/Issue:** The statements in the brochure were representations or warranties. The breaches of them give Mr. Jarvis a right to damages.
   - If the contracting party breaks his contract, damages can be given for the disappointment, the distress, the upset and frustration caused by the breach.

IV. Limits on Promise Imposed by the Law’s Command or in the Name of Overriding Relationship
   A. Positive Law as a Limit on Contract
      1. *McConnell v. Commonwealth Pictures Corporation*
         **Facts:** Parties had agreed in writing that if P should succeed in negotiating a contract with a motion picture producer whereby D would get distribution rights to movies, D would pay P $10,000 and then percentage of gross receipts. P received the $10,000, but nothing after that, because D claims P bribed party to get contract.
**Holding/Issue:** No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime. Consistent with public morality and settled public policy, we hold that a party will be denied recovery even on a contract valid on its face, if it appears that he has resorted to gravely immoral and illegal conduct in accomplishing its performance.

**Dissent:** The contract which plaintiff is seeking to enforce is perfectly valid, and it was not intended or even contemplated that plaintiff would perform the contract by illegal or corrupt means.

2. *Pendleton v. Fireman*

**Facts:** Husband and wife before they married agreed that neither would seek spousal support from the other if they divorced. 4 years later when they divorced, the wife sought substantial spousal support, claiming her waiver was unenforceable because it was contrary to California’s public policy.

**Holding/Issue:** Court finds that pre-marital waivers do not violate public policy.

B. **Relationships That Limit and Give Meaning to Promises**


**Facts:** John Woods provided services, consisting of personal attention and in assisting her in managing her property, to his mother before her death and seeks to recover for these services.

**Holding/Issue:** No promise, implied in law or fact, arises from the performance of personal services by a son for the benefit of his mother.

2. *Favrot v. Barnes*

**Facts:** Husband and wife executed a pre-marital agreement stipulating separateness of property.

**Holding/Issue:** Alimony to a divorced wife is not a “claim to the property” of the husband; it is a claim against the husband, limited by his “income.”

3. *Watts v. Watts*

**Facts:** Couple had de-facto marriage and P says she should share equally in the increased wealth of the couple because she helped contribute to it.

**Holding/Issue:** Many courts have held and we now so hold, that unmarried cohabitants may raise claims based upon unjust enrichment following the termination of their relationships where one of the parties attempts to retain an unreasonable amount of the property acquired through the efforts of both.

4. *Maglica v. Maglica* (didn’t brief)

**Facts:** Similar to Watts—held themselves out as married, but were not.

**Holding/Issue:** Recovery in “quasi-contract” is measured by reasonable value of services, not by value of benefits that result from services.

V. **Promises Tainted by Failures of Voluntary Assent**

A. **Lack of Capacity**

1. *Ortelere v. Teachers’ Retirement Board of New York*

**Facts:** Mrs. Ortelere changed her retirement plan selecting the maximum retirement allowance payable during her lifetime with nothing payable on or
after death. Her husband files suit claiming her mental illness did not allow her to fully comprehend what she was doing.

**Holding/Issue:** In Restatement, other side needs to be fully aware of condition. Board of Education was or should have been aware, as they knew of her leave of absence for medical reasons.

**Dissent:** The reasonable expectations of those who innocently deal with persons who appear rational and who understand what they are doing should be protected.

2. *Ellis v. Mullen*

**Facts:** After car accident, Plaintiff replied that he was illiterate, those releases were never explained to him, and he never intended to release defendant.

**Holding/Issue:** It is the general rule that one who signs a contract is presumed to know its contents, and an illiterate person signing an instrument without request that it be read to him is chargeable with negligence for which the law affords no redress, unless he has been lulled into security or thrown off his guard and deceived.

B. Duress

1. *S.P. Dunham & Co. v. Kudra*

**Facts:** D had fur coats and said they wouldn’t turn over the garments unless P paid money 3rd party owed D. Eventually P gave in and paid the full amount.

**Holding/Issue:** In New Jersey, the test now is simply this—has the person complaining been constrained to do what he otherwise would not have done?

2. *Selmer Company v. Blakeslee-Midwest Company*

**Facts:** P agreed to act as subcontractor on construction project for which D was general contractor. D was late and P could have terminated contract but agreed to complete the work if paid extra costs. After job was completed, P demanded $120,000 and D would only offer $67,000, which P in desperate financial straits accepted.

**Holding/Issue:** The fundamental issue in a duress case is therefore not the victim’s state of mind but whether the statement that induced the promise is the kind of offer to deal that we want to discourage, and hence that we call a “threat.”

- Financial difficulty cannot by itself justify setting aside a settlement on grounds of duress.

3. *Andreini v. Hultgren*

**Facts:** P was to have corrective surgery for problem caused by D from first operation, a Holy Cross employee asked P to sign a release, which would release Dr. Beck and the hospital from future liability. P eventually signed it and procedure was unsuccessful.

**Holding/Issue:** We held that a critical factor in determining whether an alleged victim had suffered duress was whether he or she “had no other viable alternatives.”

-Duress can often result from situations in which time is of the essence

C. Contracts of Adhesion and Unjust Terms

**Facts:** P defaulted on stereo bought from D, who has an obscure provision that allows D to repossess all the items previously purchased by the consumer if they default on payments.

**Holding/Issue:** We hold that where the element of unconscionability is present at the time a contract is made, the contract should not be enforced.
- Law has moved from caveat emptor to caveat ventor, where seller has to tell buyer some things

**Dissent:** Performing public function by allowing people with bad/no credit to get goods, so not all bad

2. **K.D. v. Educational Testing Service**

**Facts:** P accused of cheating on LSAT, but refused to take another one.

**Holding/Issue:** Just because it is contract of adhesion does not necessarily make it void.

3. **Perdue v. Crocker National Bank**

**Facts:** P says fee for checks drawn against insufficient funds is too high.

**Holding/Issue:** We hold as a matter of law that the card is a contract authorizing the bank to impose such charges, subject to the bank’s duty of good faith and fair dealing in setting or varying such charges.

D. Fraud and Misrepresentation

1. **Stambovsky v. Ackley**

**Facts:** Plaintiff discovered that house he contracted to buy was widely reputed to be possessed by ghosts and seeks rescission of the contract of sale.

**Holding/Issue:** Having undertaken to inform the public at large, to who she has no legal relationship, about the supernatural occurrences on her property, she may be said to owe no less a duty to her contract vendee.

**Dissent:** Caveat Emptor is the law in NY.

2. **Cushman v. Kirby**

**Facts:** P bought house from D and claim that D misrepresented water quality.

**Holding/Issue:** If you have full information and disclose part of it only, and other side thinks it was full disclosure, then guilty of fraud.
- Where material facts are accessible to the vendor only, and he knows them not to be within the reach of the diligent attention, observation and judgment of the purchaser, the vendor [of real estate] is bound to disclose such facts and make them known to the purchaser.

E. Misunderstanding and Mistake

1. **Stare v. Tate**

**Facts:** In negotiation of divorce settlement, Joan’s attorney made a big calculating error, which Tim’s accountant and attorney noticed. Their counter-offer was prepared in a way to minimize danger of Joan or her attorney discovering the mistake.

**Holding/Issue:** The rule that the party who misleads another is estopped from claiming that the contract is anything but what the other is led to believe, appears to be quite generally accepted.

2. **Raffles v. Wichelhaus**

**Facts:** Confusion, because two ships named Peerless leaving from same place.
**Holding/Issue:** There was no consensus ad idem, and therefore no binding contract.

UCC—unless name of ship is a matter of the contract, then does not really matter--merely a covenant and not a condition of the contract.

3. *Beachcomber Coins, Inc. v. Boskett*
   **Facts:** Plaintiff bought an expensive coin from defendant, which he later found out was counterfeit. The mistake was mutual in that both parties were laboring under the same misapprehension as to this particular, essential fact (that the coin was real).
   **Holding/Issue:** That plaintiff may have been negligent in his inspection of the coin (a point no expressly found but implied by the trial judge) does not, as noted above, bar its claim for rescission.

4. *Lenawee County Board of Health v. Messerly* (didn’t brief)
   **Facts:** Ps purchased land, then property was condemned, because sewage tank had been installed in violation of health codes.
   **Holding/Issue:** Court says one of two innocent parties has to pay for the mistake and puts in on P, although really does not say why.

A court need not grant rescission in every case in which the mutual mistake relates to a basic assumption and materially affects the agreed performance of the parties.

VI. Consideration: Bargains and Action in Reliance
   **A. Bargain and Exchange**
   **B. Bargain Promises v. Gift Promises**
   1. *E.J. Baehr v. Penn-O-Tex Oil Corp.*
      **Facts:** The rent was not paid and P sued upon the grounds that D was in possession of the stations and had contracted to pay the rent during the period.
      **Holding/Issue:** There is no evidence that either of the parties took defendant’s assurances seriously or acted upon them in any way. There was, therefore, no consideration, and the promises did not amount to a contract.

   **C. Past Consideration**
   1. *Passante v. McWilliam*
      **Facts:** Upper Deck needed $100,000 for a deposit to buy special paper. Passante, their corporate attorney, found the money. In exchange, the company agreed that Passante should have 3% of the firm’s stock.
      **Holding/Issue:** In a business transaction, a lawyer is obligated to give his client all the reasonable advice against himself that he would have give him against a third person.
      -There was no bargaining. Clearly all of Passante’s services had already been rendered by the time the idea of giving Passante some stock was proposed.

   2. *Mills v. Wyman*
      **Facts:** Defendant wrote a letter to the plaintiff, promising to pay for expenses incurred by plaintiff in helping his son.
      **Holding/Issue:** A mere verbal promise, without any consideration, cannot be enforced by action, is universal in its application, and cannot be departed from
to suit particular cases in which a refusal to perform such a promise may be disgraceful.

-If there was nothing paid or promised for, the law, leaves the execution of it to the conscience of him who makes it.

3. **Webb v. McGowin**

   **Facts:** To save McGowin from injury, Webb held onto block and diverted its course and in the process injured himself. McGowin agreed to give Webb $15 every two weeks for the rest of Webb’s life and did so until his own death.

   **Holding/Issue:** D’s agreement as disclosed by the complaint to compensate P for saving him from death or grievous bodily injury is valid and enforceable.

D. Preexisting Duty (Modification of Ongoing Contract)

1. **Schwartzreich v. Bauman-Basch, Inc.** (didn’t brief)

   **Facts:** P had contract with D, then got better offer, so D agreed to pay more for same services, but never did.

   **Holding/Issue:** Consideration for new contract by giving up rights of old one.
   - A contract may be cancelled by mutual consent and a new one made.

2. **Watkins & Son, Inc. v. Carrig** (didn’t brief or highlight)

   **Facts:** Defendant contracted with plaintiff to excavate cellar and once began, came across solid rock, which had not been expected—defendant agreed to pay 9x the price and decided didn’t want to pay it

   **Holdings:** Circumstances had changed, so 2nd contract enforceable
   - Changes to meet changes in circumstances and conditions should be valid if the law is to carry out its function and service.

3. **Autotrol Corp v. Continental Water Systems Corp.**

   **Facts:** Parties agreed that specifications would be added to contract, but date for specifications came and went with no agreement. It wasn’t until a year later that Continental declared the contract terminated.

   **Holding/Issue:** D is liable for Ps overhead costs when breaching contract.
   - A modified contract is as much a contract as the original and must meet all requirements (but modified contract needs no consideration to be binding).

E. Action in Reliance

1. **Ricketts v. Scothorn**

   **Facts:** Ricketts, Scothorn’s grandfather, promised to pay her $2,000 as he said none of his grandchildren worked and he didn’t want her to have to work, so he was giving her the money to enable her to quit her job.

   **Holding/Issue:** The instrument, being given without any valuable consideration, was nothing more than a promise to make a gift in the future of the sum of money therein named. However, the decision is generally put on the ground that the expenditure of money or assumption of liability by the donee on the faith of the promise constitutes a valuable and sufficient consideration.
   - When he made statement, he should have known that it would induce contract and thus should be recovery.

2. **Mazer v. Jackson Insurance Agency**
**Facts:** Homeowners contend that defendants are estopped from developing the property in a manner inconsistent with the assurances they gave the homeowners in a memorandum, which misrepresented the situation.

**Holding/Issue:** Equity estoppel is to prevent injustice and to guard against fraud by denying to a person the right to repudiate his acts, admissions, or representations, when they have been relied on by persons to whom they were directed and whose conduct they were intended to and did influence.


**Facts:** In 1950, made an oral contract that P would be exclusive distributor of D’s beer in Minneapolis area. In reliance upon this, P discontinued all competitors’ products, purchased inventories, sales, advertising, etc., and P was to remain exclusive distributor as long as they performed.

**Holding/Issue:** Minnesota has long recognized the principle that where a contract is supported by valuable consideration, then a right of one party to terminate it at will does not render it invalid for lack of mutuality.

VII. Formation: The Creation of Contractual Obligation

A. The Importance of Determining the Moment When a Promise Becomes Binding

B. Operative Offer of Invitation to Negotiate?


   **Facts:** D advertised sale on fur coats and two occasions for first come, first serve gets the coats for $1. Both time P was first one there, but D refused to sell furs to him, because they said it was intended for females only.

   **Holding:** Where the offer is clear, definite, and explicit, and leaves nothing open for negotiation, it constitutes an offer, acceptance of which completes the contract.

C. Completeness as the Indicator of an Operative Offer—Open Terms

D. The Duration of Offers: The Vulnerability of the Offeror and the Use of Options

1. Power to Revoke an Offer and Restrictions on It

   a. *Great Northern Railway Co. v. Witham*

      **Facts:** D seeks to excuse himself from the performance of his agreement, because it was unilateral, the company not being bound to give the order.

      **Holding/Issue:** There is ample consideration for the promise. So, the company having given the defendant an order at his request, his acceptance of the order would bind them.

2. Options

   a. *Marsh v. Lott*

      **Facts:** P had option to buy, but D revoked it.

      **Holding/Issue:** SC said that any money consideration, however small, paid and received for an option to purchase property at its adequate value is binding upon the seller thereof for the time specified therein, and is irrevocable for want of its adequacy.

3. Firm Offer Statutes

   a. *Mid-South Packers, Inc. v. Shoney’s, Inc.*
Facts: P raised price in violation of 45-day notice clause, but said that according to UCC §2-205, the offer expired 3 months after letter and therefore they could increase the price without notice.

Holding/Issue: No rational theory of law of contracts could permit D to manifest acceptance of P’s new offer, thus inducing performance, and then revoke that acceptance and demand compliance with the terms of the prior, withdrawn offer.

4. Options Purchased by Beginning Performance
5. Action in Reliance as Option Creator
      Facts: P accepted Ds bid as subcontractor. D contends there was no enforceable contract between the parties on grounds that it made a revocable offer and revoked it before P communicated his acceptance.  
      Holding/Issue: The very purpose of Section 90 of Restatement is to make a promise binding even though there was no consideration “in the sense of something that is bargained for and given in exchange.” As between subcontractor who made the bid and general contractor who reasonably relied on it, the loss resulting from the mistake should fall on the party who caused it.

6. Additional Offer Terminators
   E. The Binding Event: Acceptance
      1. Beard Implement Co. Inc. v. Krusa
         Facts: Plaintiffs never signed agreement and when D backed out of the deal, he said he could because P had never signed.  
         Holding/Issue: It is obvious that the parties intended the agreement to be bilateral and that the offer by the plaintiff to purchase (the combine) be deemed accepted by the defendant only when he or his authorized representative signed the order.  
         -If offeree changes the terms of the offer, then it is considered a counter-offer and original offeror can choose whether or not to accept it.
      2. Acceptance Must Match the Offer: Counteroffers, Modified, Qualified, Conditional and Equivocal Acceptances
         a. United States v. Braunstein
            Facts: D agreed to buy raisins at 10 cents per pound to convert into alcohol. U.S. meant to accept, but instead wrote 10 cents per box (which had 25 pounds). 
            Holding/Issue: The mention of a price foreign to the negotiation renders the effect of the telegram uncertain and ambiguous. Furthermore, the mere use of the word “accept” does not automatically make a communication an acceptance.
            -“Mirror image doctrine”—acceptance must mirror offer in all respects
      3. UCC and Battle of Forms (from notes—seems to have been abandoned)
   F. Bargaining Over Distance
      1. Adams v. Lindsell
         Facts: Because of mail problem, P did not get offer when should have and accepted, but D had already sold to someone else.
**Holding/Issue:** Mailbox Rule--The defendants must be considered in law as making, during every instant of the time their letter was traveling, the same identical offer to the plaintiffs; and then the contract is completed by the acceptance of it by the latter.

G. Pre-Contractual Liability
1. **Empro Mfg. Co. v. Ball-Co Mfg., Inc.**
   - **Facts:** Parties signed a letter of intent, but never actually signed contract.
   - **Holding/Issue:** The letter recites twice that it contains the “general terms and conditions”, implying that each side retained the right to make (and stand on) additional demands.
     - Must negotiate in good faith, but doesn’t necessarily mean exclusive negotiations only
2. **Hoffman v. Red Owl Stores, Inc.**
   - **Facts:** Lukowitz, an agent for Red Owl, represented and agreed with Ps that Red Owl would build a store and stock it with merchandise for P to operate in return for which Ps were to put up $18,000.
   - **Holding/Issue:** Contract does not have to be finalized in order for a party to recover damages based on reliance.

VIII. Performance and Breach
   A. The Impact of Events After Formation on the Continuing Obligation of Performance
      1. Express Conditions
         a. **Howard v. Federal Crop Insurance Corp.**
            - **Facts:** FCIC denied their claims on the ground that Ps had violated a portion of their policy which provides that the stalks on any acreage with respect to which a loss is claimed shall not be destroyed until the corporation makes an inspection.
            - **Holding/Issue:** When it is doubtful whether words create a promise or a condition precedent, they will be construed as creating a promise.
              - Condition vs. Promise
                -- Difference in remedies—failure of condition voids contract, while failure of promise causes breach
         b. Limitations on Express Conditions
            1. **Margolin v. Franklin**
               - **Facts:** Manager of Essco Motors (plaintiff) testified that Ds asked to make a late payment for April, while Ds say that manager changed the date each month from 15th to 27th.
               - **Holding/Issue:** The law in Illinois is clear that a vendor may not establish a pattern of accepting time payments which may be slightly late and then suddenly insist on a strict compliance of the time provisions of the contract.
                 - The vendor must give reasonable, definite and specific notice of his changed intention
         c. Conditions Precedent, Concurrent and Subsequent
      2. Implied and Constructive Conditions
a. Promises Implied by Social Expectations and Good Faith

(1) *Parev Products Co. v. I. Rokeach & Sons*

**Facts:** P sold rights to Parev Schmaltz and its secret formula to D. D began to distribute a similar product to Schmaltz.

**Holding/Issue:** An injunction not issued to enforce an implied negative covenant.

b. Supervening Events

c. Impossibility

(1) *Oneal v. Colton Consolidated School District No. 306*

**Facts:** Oneal signed contract to teach, but wanted to resign because of eye problems. Eventually District accepted his resignation but refused to pay accumulated sick leave benefits.

**Holding/Issue:** For these purposes, impossibility may be defined not only as strict impossibility, but also impracticality arising from extreme and unreasonable difficulty, expense, injury, or loss involved.

(2) *Canadian Industrial Alcohol Co, Ltd. v. Dunbar Molasses Co.*

**Facts:** D only delivered about 1/5 of what they said they would D and says its own duty to deliver was proportionate to the refinery’s willingness to supply and that the duty was discharged when the output was reduced.

**Holding/Issue:** So far as the record shows, D put its faith in the mere chance that the output of the refinery would be the same from year to year, and finding its faith vain, it tells us that its customer must be expected to take a chance as great.

**Rule—** Can’t claim impossibility when reason for impossibility is under your own control

(3) *Whitman v. Anglum*

**Facts:** Contract where P agreed to purchase (and D sell) at least 175 quarts of milk every day for a year. P was to come get the milk at D’s farm. Eventually, all D’s cattle and products of his farm were quarantined and all the cows were eventually killed, so D stopped having milk for P to pick up.

**Holding/Issue:** While it may be true that the P could not enter D’s house or go upon other parts of the premise which were under quarantine, it does not follow that the contract could not be performed substantially if not literally. The contract was not to deliver milk produced on the premises.

d. Impracticability

(1) *Mineral Park Land Co. v. Howard*

**Facts:** Ds agreed to take all of the gravel and earth necessary for their project from Ps land, but only ended up talking half the gravel they used from Ps.

**Holding/Issue:** Performance is excused to the extent that the thing ceases to exist or turns out to be nonexistent.
“A thing is impossible in legal contemplation when it is not practicable; and a thing is impracticable when it can only be done at an excessive and unreasonable cost.”

IX. The Impact of the Contract on Nonparties
   A. The Obligation of Third Parties to Respect Contract Relationships
      1. *Mitchell v. Aldrich* (half brief)
         **Facts:** D deprived P of advantageous agreement for purchase of cattle. P had agreement, subject to bank approval. D, for bank but not bank representative, instead got seller to sell cattle to him and friend.
         **Holding/Issue:** P had a rightful interest in having seller’s promise performed free from other outside interference which might make performance more difficult or impossible.
      2. *Della Penna v. Toyota Motor Sales, USA, Inc.* (half brief)
         **Facts:** P, an automobile wholesaler, brought action against D for intentional interference. D had made a “no export” deal, but P exported in violation and was put on “offenders” list.
         **Holding/Issue:** P seeking to recover for alleged interference with prospective economic relations has the burden of pleading and proving that D’s interference was wrongful “by some measure beyond the fact of the interference itself.”
      3. *Adler, Busch, Daniels, Levin and Creskoff v. Epstein* (half brief)
         **Facts:** D basically breached professionalism/implied non-compete covenant.
         **Holding/Issue:** Unless otherwise agreed, after the termination of the agency, the agent has a duty to the principal not to take advantage of a still subsisting confidential relation created during the prior agency relation.
         **Dissent:** Clients were informed, no arm-twisting, and letter contained no false or misleading statements.