**Contracts**

**Common law** – Common law governs contracts for services.

**UCC** – Contracts for the sale of goods are governed by Article 2 of the UCC. Goods are all things moveable at the time they are identified to the contract. Under Article 2, some special rules apply to merchants. A merchant is one who deals in goods of the kind sold or who by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction.

**Contract formation** – A valid contract requires an offer, acceptance and consideration.

**Mutual assent** – While a contract often consists of an offer and acceptance, there can be the requisite manifestation of mutual assent even though neither an offer nor acceptance can be identified.

**Offer** – An offer requires a (1) present intent to be bound, (2) definite and certain terms, and (3) an identifiable offeree.

**Termination of offer** – An offer may be terminated by the offeree’s failure to accept within the time specified by the offer or, if no deadline was specified, within a reasonable period of time. An offer may also be terminated by the death of either party and the death need not be communicated to the other party.

**Option (CL)** – If an offeree gives consideration for the promise to hold an offer open, the offer is irrevocable for the period stated.

**Merchant’s firm offer (UCC)** – Under Article 2, if a merchant offers to buy or sell goods in a signed writing and the writing gives assurances that it will be held open, the offer is not revocable for lack of consideration during the time stated. This period is limited to no more than three months.

**Acceptance** – An acceptance is an unequivocal assent to the terms of the offer made by one with the power of acceptance. The common law requires the absolute and unequivocal acceptance of each and every term of the offer (the mirror image rule). Any different or additional terms in the acceptance make the response a rejection and counteroffer.

**Acceptance by performance** - In a unilateral contract, only full performance can constitute an acceptance in the absence of verbal or written acceptance. In a bilateral contract, then beginning performance can constitute an acceptance.

**Mailbox Rule** – Generally an acceptance by mail is effective upon dispatch and a revocation of an offer is effective only when received.

**Consideration** – Courts will enforce a promise as a contract only if it is support by consideration or a substitute for consideration. Consideration requires a bargained-for exchange of legal value between the parties. Bargained-for exchange requires that the promise induce the detriment and the detriment induce the promise. One promise can be consideration for another promise. There must be consideration on both sides.

**Gift** – If either party intends to make a gift, that party was not bargaining for consideration.

**Past or moral consideration** – A promise given in exchange for something already done does not satisfy the bargain requirement.

**Promissory estoppel** – A promise is enforceable without consideration if necessary to prevent injustice if (1) the promisor should reasonably expect to induce action or forbearance and (2) action or forbearance is actually induced. In such cases, the modern view is to award the promise reliance damages rather than expectation damages.

**Statute of Frauds** – To be enforceable, certain agreements must be evidence by a writing signed by the party sought to be bound. Agreements that must be evidenced by a writing under the Statute of Frauds include promises that by their terms cannot be completed within one year, agreements concerning an interest in land, and a contract for the sale of goods at price of $500 or more.

**Statute of Frauds – writing requirement (CL)** – Under the common law, there must be one or more writings signed by the party to be bound that reflect the material terms of the contract. A memorandum signed by the party to be charged is adequate, and it need not contain all of the terms of the contract but must evidence that there is a contract and state the essential terms with reasonable certainty. In the case of a land sale contract, a description of the land, the parties, and price are required. If the writing does not include the essential terms, it does not satisfy the SOF and extrinsic evidence cannot be submitted to supply the missing terms.

**Statute of Frauds – writing requirement (UCC)** – The UCC requires only a signed writing indicating that a contract has been made and specifying the quantity.

**Statute of Frauds – performance exceptions** – Full performance of a contract that cannot be performed within one year will usually take the contract out of the Statute of Frauds. Similarly, there is an exception for part performance of land sale contracts if the performance unequivocally indicates a contract for the sale of land and two of the following are present: payment in whole or part, possession, and valuable improvements.

**Statute of Frauds – estoppel** – Estoppel is sometimes applied in cases where it would be inequitable to allow the Statute of Frauds to defeat a meritorious claim. When a defendant’s conduct or promise foreseeably induces a plaintiff to change position in reliance on an oral agreement, courts may use the doctrine of estoppel to remove the contract completely from the SOF. Thus, to prevent injustice, the defendant is estopped from raising it as a defense.

**Mistake (mutual)** – Mistake by the parties can mean there was no true mutual assent and thus no contract. When both parties entering into a contract are mistaken about existing facts relating to the agreement, the contract may be voidable by the adversely affected party if (1) the mistake concerns a basic assumption on which the contract was made, (2) the mistake has a material effect on the agreed-upon exchange, and (3) the party seeking avoidance did not assume the risk of the mistake.

**Mistake (unilateral)** – If only one party was mistaken about facts relating to the agreement, the mistake generally will not prevent formation of a contract. The contract is voidable by the mistaken party only if (1) the mistake had a material effect on the exchange, (2) the mistaken party did not bear the risk of the mistake, and (3) the non-mistaken party knew or had reason to know of the mistake.

**Fraud/misrepresentation** – Misrepresentation, a false assertion of fact, is a valid defense (to formation and SP) if the party justifiably relied on the misrepresentation. However, nondisclosure without concealment is usuall not misrepresentation. A party is not required to tell the other party everything she knows, but if the nondisclosure is material or fraudulent, the contract is voidable for misrepresentation.

Illegal subject matter

Incapacity – One whose mental capacity is so deficient that he is incapable of understanding the nature and significance of a contract may disaffirm when lucid or by his legal representative. The contract is voidable.

Unconscionable

Interpretation – general

**Parol evidence rule** – Under the parol evidence rule, if parties intended the writing to be the final expression of their agreement, the writing is an integration. Any other expressions made prior to the writing or oral expressions made contemporaneously with the writing are not admissible to vary the terms of the writing.

Parol evidence exceptions

Delivery obligations and risk of loss

Modification (UCC)

Modification (CL)

Warranties and disclaimers

Performance due – CL (substantial performance)

Performance due – UCC (perfect tender)

Satisfaction of conditions – express, satisfaction, constructive

Anticipatory repudiation

Reasonable grounds for insecurity

**Duty of good faith** – Article 2 requires all parties to a sale of goods contract to act in good faith, which means acting honestly and observing reasonable commercial standards of fair dealing.

Discharge of duty – impossibility, impracticability, frustration

Discharge of duty – modification, rescission, novation, accord

**Breach** – A breach occurs when the promisor is under an absolute duty to perform and fails to do so.

Breach – CL (material or minor) – The breach is considered material if the obligee has not received the substantial benefit of his bargain. If the breach is material, the nonbreaching party may treat the contract as at an end and may sue immediately for remedies.

Breach – UCC (perfect tender) -

Compensatory damages – policy – Damages should put the nonbreaching party in the position he would have been in had the contract been performed.

Expectancy (UCC, CL)

Reliance

Foreseeable consequential damages

Liquidated

Incidental damages

Avoidable damages – A nonbreaching party cannot recover avoidable damages.

Restitution – Restitution prevents unjust enrichment by awarding the value of the benefit conferred.

**Specific performance** – Specific Performance is an equitable remedy in which a court orders a breaching party to perform that which he has promised to perform under the contract. It is available when damages are an inadequate remedy. This remedy is available only if (1) there is a valid contract between the parties with definite and certain terms, (2) the plaintiff has already performed or is ready and able to perform, (3) the legal remedy is inadequate, (4) the court can feasibly enforce the order, and (5) the defendant has no defenses.

Third party beneficiary – vesting

Assignment - gratuitous

Delegation