

Basic structure of K formation

Offer		Acceptance	
<ul style="list-style-type: none"> communicated. Targeted. Intent. circumstances? <ul style="list-style-type: none"> relationship; prior dealing; prior communication; trade usage, certainty. fairness. Uni or bi? see below. firm offer? see below 	<p>Moulton: No quantity, no offer.</p> <p>Smoke ball: ads, limited bonus in bank, yes offer.</p> <p>Pepsi: ads, not targeted, no intent, no offer.</p> <p>Pepsi: ads, intent <u>interpreted objectively</u>, no offer.</p> <p>Pine river (E): handbook recognized as offer.</p>	<ul style="list-style-type: none"> For Uni K: completion of perform. Exclusive manner fixed in the offer. Mail box rule. <ul style="list-style-type: none"> If sent after rejection, receiving controls. <u>Not applicable fore option K.</u> <u>offer provides otherwise.</u> By silence. 69. Implied in fact. <ul style="list-style-type: none"> know charging, can reject, take benefit; offeror allowed, offeree assented; Circumstances require termination notice. Before termination of offer? see below. Mirror image rule. Loosened by UCC2.207. <ul style="list-style-type: none"> Exception: clause crucial to offeror. Allied. Mirror image rule replaced with UCC 2.207. 	<p>Caldwell: 8 days window from receiving.</p> <p>Allied Steel: perform without sending acceptance letter. Accepted!</p> <p>Martin v. Little brown: no intent to charge, barred K implied in fact or in law.</p> <p>Allied Steel: offeror's clause kept because it's crucial (but for).</p> <p>Livingstone: counter offer = rejection. "Cannot" reduce price is renewal, bypass mirror image rule.</p>
Termination of offer		Option K/Firm offer (4 ways)	
<ul style="list-style-type: none"> Rejection. Lapse of time. Counter offer. Death, mental disability of offeror. Revocation. <ul style="list-style-type: none"> Anytime before acceptance. effective at communication to offeree. Indirect revocation from others. 	<p>Davis v. Jacoby: Acceptance valid before death of offeror. K upheld as bilateral. 32+62.</p>	<ul style="list-style-type: none"> Give consideration. CL: writing and signed; purported consideration for making K firm; fair terms within reasonable time. UCC 2.205: assurance; no need for consideration; 3 mon max; double signed by <u>offeror</u>. 87.2.: detrimentally relied on by offeree. <ul style="list-style-type: none"> Only gen and sub contractor. 	<p>Drennan: miscalculated subcontractor's bid is an firm offer.</p>
Unilateral K.	Unilateral K. 45.	Bilateral K. 32+62.	
<ul style="list-style-type: none"> need consideration. no acceptance before starting perform. Promise for action. <ul style="list-style-type: none"> Start of perform forms option K. Completion is acceptance. 	<ul style="list-style-type: none"> clearly only perform, no promise. no need to finish. <u>Caveat: preparation or perform?</u> 	<ul style="list-style-type: none"> 32: no clear action or promise sought? <ul style="list-style-type: none"> offeree choose. 62: offeree can choose? <ul style="list-style-type: none"> perform is acceptance. must finish. 	<p>Pine river (E): unilateral offer recognized when work accepts handbook clause.</p> <p>Smoke Ball: Ads and rewards.</p> <p>I&I: recognized as protection charity.</p>

Question the validity of K			
K's term certain enough?		Is there consideration?	
<ul style="list-style-type: none"> • intent to K. • letter of intent is no K. • requires good faith in negotiation. • basis for finding breach. • means of providing remedy. Uni or bi? see below. • firm offer? see below • 33(2) = UCC 2.204(3). 	<p>Moulton: no quantity, no K.</p> <p>Empro: letter of intent. Reliance dam. P.E.</p> <p>Goodman: letter of intent. Reliance dam. P.E.</p>	<ul style="list-style-type: none"> • intent clear? then no question. • bargained for. <ul style="list-style-type: none"> ◦ sought and given for the promises. • can be act; promise. • Legal forbearance. <ul style="list-style-type: none"> ◦ Some court: ok if doubtful and u believed it true. ◦ Other court: must has legal merits. • can be very small. • nominal, moral are no consideration. • Past consideration 86: <ul style="list-style-type: none"> ◦ SoL ran; Bankrupt debtor; minor; ◦ based on past benefit to prevent injustice. ◦ reward lowest of restitution and promise. ◦ no reward if not unjust or disproportional. • No consideration: Illusory and alternative. • 77. Alternative not promise unless: <ul style="list-style-type: none"> ◦ unless all alternative bargained, or, ◦ Parties think probably only one outcome. • Love usually is not consideration. 	<p>I&I: change of position recognized as consideration to protect charity.</p> <p>Hamer: legal forbearance as consideration.</p> <p>Earle: Peace of mind as consideration.</p> <p>Whitten: not bargained for between husband and wife, no consideration.</p> <p>Fiege: Good faith legal forbearance is consideration. Ct. split.</p> <p>Jordan: Bad faith no consideration. Ct. split.</p> <p>Davis v. General Foods Corp.: "We'll pay you if we want to" illusory promise. Condition?</p> <p>Morone: K implied in fact not recognized. rule.</p>
Are Parties proper?			
<ul style="list-style-type: none"> • Agent? • Minor. • rescission. • Only liable for necessities, misrepresentation of age; gross manipulation. • Policy: protect children. • Mentally disabled? Rest. 15. • unable to understand nature and consequences of K. or • Unable to act in a reasonable manner, <u>known to the other.</u> • Cannot recover if: 1) NOT <u>Known to the other.</u> 2) Has so performed in whole or in part (restitution possible). 3) Fair terms. 	<p>Logan: agent of bank may not have the power to make the decision.</p> <p>Webster: minor no liability. renting apt is not necessity since dad's home around.</p> <p>Sharon: Parents signed K on behalf of children, upheld K.</p> <p>Ortelere: Mental breakdown no K. Known to the other. Volitional disability.</p> <p>Faber: <u>cognitive</u> test and <u>volitional</u> test. volitional test met. K rescind.</p> <p>Farnum: knew the old lady's condition and relatives away. undue influence.</p>		

Dispute about interpretation

Steps of interpretation.	Quality of Evidence: Integrated, 4 corner.	What's admissible: Parole evidence Rule	
<ul style="list-style-type: none"> Facts decided by jury on reasonable standard. Start with K term. (Intent may allow PE even if K terms clear). Pacific Gas. Then course of performance. Then the course of dealing. Then trade usage. 	<ul style="list-style-type: none"> Merger clause suggests total integration. Total integration - no inconsistent PaE or any PaE under scope of K. Partial integration - ok for PER. Specifics and details suggest integration. Integration may itself depends on PaE to find the intent of parties. Consider type of doc, type of parties, and presence of lawyer. 	<ul style="list-style-type: none"> collateral; consistent; <ul style="list-style-type: none"> Direct contradiction - out. Exception: written warrantee adhesive, broad. Naturally out. <ol style="list-style-type: none"> Integration bars PaE. PER not applicable when proving fraud mistake or other stuff based on invalidating K. 	<p>Mitchell: not naturally out. No PaE. Icehouse is another K no consider.</p> <p>Hatley Stafford: Partial integration, 3 elements met.</p> <p>Husky Spray: Specific oral warrantee wins over broad disclaimer. Adhesion.</p> <p>LaFazia: specific disclaimer "as is" upheld.</p> <p>Pacific Gas: Words clear, intent still need PaE.</p> <p>Bunge: UCC; "within US" does not need explanation. No PaE.</p>
Parol Evidence Rule POLICY	Cannons of interpretation of the judge.		
<ul style="list-style-type: none"> Intent is of essence and integration needs PaE. Need to exclude unreliable or dishonesty. Control jury's decision making. Promotes efficiency (less frivolous evidence). Encourage better dealing. 	<ul style="list-style-type: none"> Specific prevails general. Choose A, exclude B, C. Interpretation against drafter to encourage better drafting. Literal interpretation nonsense then we choose common sense. Use other clauses in K. Coherence. Good faith assumption. Presumption against forfeiture. 	<p>Hawkins: objectively resolving dispute.</p> <p>Embry: Objective standard applied. Employer gave job extension.</p> <p>NY Trust: exception that parties' subjective illegal thoughts considered and K void.</p> <p>Raffles: Peerless. Equally faulty, no prejudice thus dismiss K for no meeting of minds.</p>	<p>Nitrogen: UCC 2.202 lenient approach "to explain". Course of dealing. Impracticality.</p> <p>Frugaliment: Objective evaluation. Intent needs PaE. K - course of performance - course of dealing - trade usage.</p>
Standardized terms			
<ul style="list-style-type: none"> Saves time, reduce cost, optimized. Has to be <u>conspicuous</u> and specific. Upheld unless: <ul style="list-style-type: none"> Unconscionable; or Beyond reasonable expectation of parties. 	<p>Agricultural Ins. Co.: not reasonable expectation that little vale ticket would have disclaimer of liability.</p> <p>Weisz: "as is" disclaimer for fake painting upheld because in leading and prominent place.</p> <p>Broemmer: uterus. Arbitration clause adhesive and unexpected. Knocked down.</p>	<p>Richardson: battle or forms: knock out different terms.</p> <p>ProCD: standardized terms are enforceable even if not known initially.</p>	

Affirmative assertions against K (1)

Meet Statute of Frauds ?	Misrepresentation: Fraud element.	Nondisclosure is fraud if: 161. 162: if no confidence in its truth or no known basis in fact (Jordan).	
<ul style="list-style-type: none"> • Suretyship agreement; marriage provision; land K; one-year provision; sale of goods over \$500. • One-year: if possibly fully performed in one year, then no need. • Fixed term employment need writing. • Covenant not to compete no need. • Oral K one party fully performed then no need. • <u>Exception: P.E. Unilateral K.</u> • can be met by any piece of writing. 	<ul style="list-style-type: none"> • Dishonest intent to <u>induce K</u>. • Knowingly false claim. <ul style="list-style-type: none"> ◦ Not an opinion. • Offeree justifiably relied on it. <ul style="list-style-type: none"> ◦ Disclaimer cut against this. ◦ Inquired? ◦ Intel. Prop. of the other? • (Materiality). • 162: can be fraud if no confidence in truth or no known basis in fact. 	<ul style="list-style-type: none"> • Knows disclosure necessary to correct a prior assertion. or • Relationship of trust. or • If nondisclosure fails fair dealing to correct a major wrong assumption. • To correct a mistake in a writing of K. • Statutes say so. <ol style="list-style-type: none"> 1. Fair dealing standard (Laidlaw jury). 2. Fraud current interpretation: if you said something that derails other party from reaching the truth. 	<p>Lipsit (E): fraud trumps PER. expectation S.P.</p> <p>Sabo: fraud cannot be used to contradict K or prove K.</p> <p>LaFazia: "as is" disclaimer trumped fraud. Fraud cannot contradict K - extrinsic ok, intrinsic no.</p> <p>Laidlaw: Freedom to K and knowledge nondisclosure upheld.</p>
Mistake		Impossibility, Impracticality, frustration of purpose	
<ul style="list-style-type: none"> • Substance and material. • Shared assumption for K formation. • The party seeking it did not bear the risk. • Error of facts. <ul style="list-style-type: none"> ◦ Not error in judgment. • <u>Uni mistake</u>: only affects one. Rest. 153. Couter: risk assumption. 	<p>Sherwood: shared mistake by ct. can be assumption of risk by P.</p> <p>Beachcomber: mutual assumption mistaken. Even if buy's professional.</p> <p>Laidlaw: buyer assumed the risk.</p> <p>Drennan: Unilateral K held between Gen/Sub contractors.</p>	<ul style="list-style-type: none"> • <u>Supervening</u> cause. • Risk not assumed. analysis of risk: <ul style="list-style-type: none"> ◦ Language; circumstances. • <u>Foreseeability</u>? • Basic <u>assumption</u> for K. • Not <u>caused</u> by the party. <ol style="list-style-type: none"> 1. Death of party: essential then dismissed, not essential then estate. 2. Remedy: restitution can be available. 3. If governmental regulations prevent K, then perform excused but cannot sue D. 	<p>Caldwell: Burned down building, impossibility.</p> <p>Bunge: Wheat burned. Language controls "within US", still perform.</p> <p>Snipers: Potato burned. Act of God, mutual understanding from the field.</p> <p>Westinghouse: dramatic change in price is not enough for impracticality.</p> <p>Krell: rescission for frustration.</p> <p>Wolf: divorced couple threat to get deposit back.</p> <p>Prescott: government bars sending 300 crates. Performance excused but cannot sue D for the unshipped ones.</p>
<p>Exculpation clause</p> <ul style="list-style-type: none"> • Constured narrowed. • Unexpected/unconspicuous/inadequate notice. (standardized terms). • Unconsionability. (UCC makes it unconsionable per se to waive personally injuries. 			

Affirmative assertions against K (2)

Unconscionability		Undue influence 177	
<ul style="list-style-type: none"> Procedural unconscionability. Substantive unconscionability. No meaningful choice. Factors: adhesion; small \$\$; inferior bargaining power. Arbitration: efficient; knowledge; speed; privacy; cheap. 	<p>Williams: cross-collateral clause unconscionable.</p> <p>Jones: Arbitration clause valid, but “not out of her employment”, can sue.</p> <p>Concepcion: Arbitration.</p>	<ul style="list-style-type: none"> relationship of dependence, trust. dominance and possible to impose. abuse, unfair, damaged interests. 	<p>Farnum: Old lady sold property for half price.</p> <p>Levine: imposed modification or rent. 89 today.</p> <p>Alaska: economic duress for salary.</p> <p>Schwartzreic: bypassed doctrine by mutual rescission first. 89(c) today.</p> <p>Wolf: A threat can be legal yet still a threat (selling to God father).</p>
Illegality & Public policy		Duress	
<ul style="list-style-type: none"> illegal: in pari delicto, ignore them. Policy: enforcing K, tortfeasor liable (disclaimer), health of market (noncompeting). Policy source: legislature’s intent. 	<p>NY trust: illegal, no enforcing.</p> <p>In Re baby M: against law and public policy of NJ.</p> <p>Monroe: legislature abolished CL marriage.</p>	<ul style="list-style-type: none"> Threat. Improper. Causation. “induced the party to enter K.” Can be economic. 	
Remedies			
<p>SoF: Never a K. Restitution. P.E.</p> <p>Fraud: Voidable.</p> <p>Mutual/unilateral Mistake/misrepresentation: Rescission. Restitution.</p> <p>Impracticability/frustration of purpose: Rescission. Restitution.</p> <p>Rescission only for executory K (no one performed). Usually with restitution, not executed K (fully or partial). <u>Hard to rescind a nearly fully performed K (Oliver, LaFazia).</u></p>	<p>Boone: SoF, restitution failed.</p> <p>Lipsit: fraud, expectation.</p> <p>Sabo: fraud, rescission.</p> <p>Sherwood: mistake, rescission.</p> <p>Beachcomber: mistake, rescission.</p> <p>Taylor: Impossibility, restitution.</p> <p>Snipes: Impracticability. Void.</p> <p>Knell: frustration. Void. Restitution.</p>	<p>Duress/Unconscionability: Voidable.</p> <p>Undue influence: Voidable.</p> <p>Illegality: Voidable.</p>	?
<p>Waiver (supporting modification)</p> <ul style="list-style-type: none"> Intentional relinquishment of a right. Waiver can be retracted unless the other party relied on it. Usually the waiver works on <u>minor stuff but not the heart of K.</u> NOM usually waived by conducts by parties in CL. 	<p>Alaska: waiver didn’t work because it’s the core of K.</p> <p>Universal Builder: Waiver of NOM when constructor</p>	<p>Rest. 89. A promise modifying a duty under a contract not fully performed on either side is binding</p> <p>(a) if the modification is <u>fair and equitable in view of circumstances not anticipated</u> by the parties when the contract was made; or</p> <p>(b) to the extent provided by statute; or</p> <p>(c) to the extent that <u>justice</u> requires enforcement in view of <u>material change of position in reliance</u> on the promise.</p>	

Performance and modification

Modification (is allowed when) Rest.89 (exception to legal duty rule)		Accord and satisfaction (exception to legal duty rule)	
<ul style="list-style-type: none"> Fair and equitable in view of circumstances <u>not anticipated</u> at K formation. Statute. <u>UCC 2-209</u>. <ul style="list-style-type: none"> 2-209(1) restricted by 1-304 good faith and duress. Relied on. To the extent of justice requires. 	<p>Fried: oral modification agreed when another partner takes over lease. Relied on the oral agreement.</p> <p>Levine: debt not discharged by part payment even if orally agreed with no extra consideration. Different under Rest.89. Can argue <u>executed gift</u>!</p> <p>Alaska: no new consideration. Take advantage of the other party</p> <p>Schwartzreic: bypassed doctrine by mutual rescission first. 89(c) today.</p> <p>Universal Builders: waived NOM.</p>	<ul style="list-style-type: none"> Payment of lesser sum can sometimes extinguish entire debt: <ul style="list-style-type: none"> Unliquidated debts (i.e. exact value unknown) Disputed debts Immature debts Paid with an object. Convenience of payment place. 	<p>Marton: disputed debts, partial pay, accord.</p> <p>School Lines: No bona fide dispute, no accord.</p> <p>Levine: do not satisfy any.</p>
Legal duty rule (duress can limit K2)		Entire or divisible K. 233.240	Conditioned on satisfaction 77?
<ul style="list-style-type: none"> Previously existing duty cannot be a consideration. Counter: (Levine) <ul style="list-style-type: none"> Supervening circumstances; 89 Executed gift. (not working) Accordance and satisfaction. 		<ul style="list-style-type: none"> Presumed to be due at one time, unless language or circumstances indicate the contrary. When one party has part performance, the other should pay apportioned installments if possible. Agreed parties should exchange their part performance. 	<p>Van Iderstine: Veal skin subject to D's approval. A portion rejected. Cannot recover unless bad faith rejection.</p> <p>Fursmidt: D cancelled and P removed from K. Honesty is the standard. Strict condition. D cannot sue P for breach.</p>
Independent of promises and breach			
<ul style="list-style-type: none"> Condition precedent: <ul style="list-style-type: none"> an event which must occur before performance is due. Condition subsequent: <ul style="list-style-type: none"> an event which discharge a duty after it has become absolute. Insurance claim. Concurrent performances: <ul style="list-style-type: none"> the parties to a K are to exchange performances at the same time. 	<p>Conley: Employer denied benefits and violated handbook procedure. Court construed implied condition precedent of informing employee. Found for P.</p> <p>Elder: water supply needs two parties' concurrently performance absent specified performance order.</p>		<p>K&G: knocking down wall in construction is total breach.</p> <p>Wholesale Sand: P keeps promising work but never did. Anticipatory repudiation.</p> <p>Plante: misplaced wall is not total breach. KP-loss value. here replacement is a big waste.</p> <p>Jacob: no total breach even if "any work not in accordance torn down." too broad.</p> <p>Worcester Heritage: delay not severe enough. D will finish.</p> <p>Hathaway: should perform even if the other reasonably may not. Music hall and storm.</p>
Interpreting conditions		Breach and repudiation.	
<ul style="list-style-type: none"> Clause: substantial performance. Condition: strict performance. <ul style="list-style-type: none"> Prevention (government). Impossibility. Waiver. 	<p>Howard: insurance policy interpreted as a term, not condition.</p> <p>Clark: alcoholic writing law book. It's a condition but other party knew, so condition waived.</p>	<ul style="list-style-type: none"> Breach condition. Fails to substantial perform a clause. Anticipatory repudiation: indicates certainly unable or unwilling to perform in the future. 	

