Contract Exam Outline – Professor Kull – Fall 2008

Contract Formation = *Mutual assent* + *Exchange* + *Consideration*

(Contract Formation) → Contract as Voluntary transaction

- Classic case: *Hurley v. Eddington* ➔ Doctor had no obligation to treat patient.
    - *Concise Rule of Law* ➔ *A person has complete freedom not to contract with someone else (Unless there is a statute requiring it, ➔ Civil Rights Act).*

    - Changed Circumstances: If the doctor was the family physician then an implied legal duty could be given as a compelling argument in favor of requiring doctor to enter into contract.

(Contract Formation) → Contract as Agreement

- Classic case: *Continental Forest v. Chandler Supply* ➔ Chandler ordered from North America, departing employee took order to Continental who delivered goods to Chandler who refused to pay Continental, because of existing credit they were seeking to "cash in" with North America.
    - *Concise Rule of Law* ➔ *A party has a right to choose whom they contract with.*

    - Other Issues:
        - Unjust Enrichment = Obligation to compensate only for how much you are enriched → DO NOT HAVE TO PAY FOR THE ENTIRE VALUE OF GOODS OR SERVICES.

        - Explicit vs. Implicit contract → How do we reconcile in this case?
            - Explicit → Chandler & North America → Debt & order for wood
            - Implicit → Continental & Chandler → Delivery of wood = Product & services rendered = contract → Especially, when fraud or a breach of duty is the source of the lack of contractual obligation.
            - Both are valid → Thus a remedy is required. Enter **Subrogation**.
        - Subrogation = Doctrine of Equity → If I pay your debt under justified circumstances it is not meddling. Further, in the interest of fairness, justice, and avoiding unjust enrichment, I can enforce the claim of your creditor = "Stand in the shoes of another."
            - Practical Remedy to resolve the issues regarding the conflict of the existing explicit and implicit contract issues between
- Changed circumstances:
    - If Continental had notice that order was never filed with them then they could not profit unilaterally filling the need for another and then just bill them for product/service.
    - If Chandler had notice that delivery was a mistake from the outset then they are prohibited from taking advantage of that mistake.

(Contract Information) → What is Consideration? Most of the time it is functional → allows us to identify bargains,

- Classic case: *Davis & Co. v. Morgan* → Not yet expired Contract employee receives better offer. Employer promises of bonus at year's end. Employee fired for travelling to Florida.
    - *Concise Rule of Law* ➔ *A Promise without consideration does not constitute a binding contract.*

    - Other Issues:
        - Forms of Consideration ➔ The actual things exchanged
            - Valid

        - A Promise
        - At-will employment → Difference of tasks or responsibilities in exchange for pay
        - Rescission of an existing agreement & renegotiation of a new contract ← *Schwatrzreich v. Bauman-Basch*
        - Promise modifying a duty under contract not fully performed on either side is binding, if MODIFICATIONS are FAIR & EQUITABLE in VIEW OF CIRCUMSTANCES NOT ANTICIPIATED WHEN THE CONTRACT WAS MADE. ← R2K
    - Invalid
        - Gifts
        - Contract employment → Performance of pre-existing task contractual duty ← *Davis & Co. v. Morgan*
        - Performance of legal duty owed to a promisor if it differs from what is required by the is more than a "pretense of bargain"
- Policy Issues → Georgia court is concerned with employees forcing renegotiations of previously made deals under duress or coercion. This, new deals must require new tasks or responsibility in exchange for higher wages.

- Kulltracts → Other profs feel consideration is everything, but if consideration must be an all **or** nothing proposition then it's a **nothing**.

- Variations on the theme:
    - Classic Case → *Wood v. Lady Duff* → I give you exclusive rights → You give me nothing → You are supposed to be working for Lady Duff → Not Lady Duff working for you.
        - *Concise Rule of Law* ➔ *(1) Where actions of parties can **only** be explained by the existence of a contractual relationship, a contract will be implied (2) A mutuality of promises need not be express, it can be implied by reasonable inferences drawn from contractual language and circumstantial evidence.*

        - Other Issues:
            - Offensive Attacks:
                - π has acted in good faith and detrimentally relied on representations
            - Defensive Moves:
                - Δ claims no consideration present, because π's duties are not expressly articulated. Theoretically, he could accomplish nothing and still fulfill contract.
            - Court Opinion: Rejects consideration argument.
                - The whole basis of the contract was an implication that π would do something (i.e. marketing), which π has done

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(Fairness) → What is Rescission? & Unequal Exchanges, Fairness, Mistakes

- Classic Case: *Wood v. Boynton* → Neither party knew it was a diamond. Exchanged for $1. When true value becomes known, original owner wants it or the value back. Her actions betray legal advice in the manner she tries to rescind contract with $1 plus interest.

- *Concise Rule of Law* ➔ Rescission will be granted **only** if vendee was (1) ***fraudulent*** in procuring the product/service, or (2) vendor made a ***mistake*** in delivering an article that was not the actual thing sold.

- Other Issues:
  - Grounds for Rescission:
    - **Fraud** → *Jeweler did not know it was a diamond either → Not Present*
    - **Warranty** → This what court exams in this case → *Not present*
      - **Express vs. Implied**
    - **Fairness/Disproportion** → *UCC § 2-203/8 permits if K is unconscionable → Generally unforced by judges*
    - **Mistake** → *Did not go to substance of the contract.*
  - Connections
    - Executory contracts → Terms to be performed in the future
    - Warranty → Collateral promise of value and nature of goods or future performance, etc.
    - Restatement of Contracts (R2K) §152 → Mutual mistake regarding basic assumption or material effect by both parties at time of contract formation makes contract voidable → **unless *one*** party bears the risk due to (1) allocation by agreement, (2) He is aware of his limited knowledge of facts & mistake is related, (3) allocation by court order
    - Other Areas of Law: Torts & Property claims
    - Fraud: Inadequacy of price due to superior knowledge
  - Court Opinion:
    - Courts do not care about inequality of a transaction for contract validity.
    - Courts do **not *push*** through **incomplete** contracts, and they do **not *undo* completed** ones.

- Changed Circumstances:
  - If the woman had relied on his expertise as a jeweler & he had been more authoritative in his statements, then there may have been an implied warranty.

(Fairness) → What is Fraud?

- Classic case: *Laidlaw v. Organ* → War of 1812 Tobacco was bought without divulging knowledge of peace treaty to seller ➔ price adjustment
  - *Concise Rule of Law* ➔ *(1) There is no duty to disclose information to which both parties in a transaction have equal potential access. (2) Silence as fraud is a question for the jury.*

  - Other Issues:
    - FRAUD → intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right; a statement of fact that is false, known to be false, done with intent to deceive, and was relied upon the other party to their detriment.
    - Suppression of material circumstances, within the knowledge of one party, but not accessible to the other ← FRAUD
      - If means obtaining info are equal → there is **no obstacle** preventing your research that the resulting **differences in knowledge is fair**

        - Knife's edge of fraud → silence = tacit misrepresentation
            - May be required to reveal information if it is inquired for
    - Policy Issues:
        - If we create a duty for those with knowledge to share it:
            - Then it would create massive unfairness for the party that duly gained the info;
            - Massive litigation by sellers trying to prove their buyers had more info than them and did not share it.

(Fairness) → What are the dividing lines between unequal information, a mistake and fraud?

- Classic Case: *Irmen v. Wrzesinski* → 12 year old bought baseball card, price read $1200, seller's agent mis-judged price, there's evidence kid new true value = implication of FRAUD
    - ***Concise Rule of Law*** ➔ *Cannot fraudulently accept an offer made due to agent's error when the actual seller knows and intends to offer item/service at true value.*

    - Changed Circumstances:
        - If the card had been sold at a 10¢ at a rummage sale instead of $1,200 then there would be no ability to recover due to error in judgment → No intention to sell at a different price. ← Individualist theory → One cannot recoup what you might have gotten, because you made a mistake in assigning a value to an object.

(Fairness) → What is a warranty? How do you make one?

- Classic case: Daughtrey v. Ashe → Tennis bracelet advertised with VVS diamonds, appraisal ticket slipped into box without negotiations for with an over appraisal for "insurance purposes only," but without qualifying diamond grade as opinion not fact
    - ***Concise Rule of Law*** ➔ *Warranty must be part of the basis of the bargain to be enforced. Typically, reliance is required for it to be basis of bargain.*

    - Other Issues:
        - UCC § 2- 313 → Express Warranties by *Affirmation*, *Promise*, *Description*, *Sample* → Any of these elements that is the **basis of the bargain** = WARRANTY
            - Opinion vs. Representation
                - Opinions are not binding
                - Representations are binding
        - UCC §2-314 → Implied Warranties by Merchantability and Usage of Trade
    - Kulltracts →
        - Clear signals: It would be acceptable to hold Jeweler accountable if he made warranty/discount for jewelry known at the beginning, and not slipped into box afterwards.
        - Court Opinion: Trying to inspire better business practices. Seller is buying customer goodwill at the expense of another (insurance co.)
        - No reliance by buyer on seller's statements → Needs this to prove existence of warranty
        - UCC § 2-313: does not compel you to make a warranty you don't want to make → warranty must be something bought and paid for, *even if only implicitly*.
        - Changed Circumstances: If quality had come important issue after the purchase, and Daughtrey would have returned the jewels as permitted by the seller, but for his

reliance on the enclosed description, then in that case Kull says he would agree with the decision. → Again reliance seems to be the showstopper.

(Intent to Contract) → Who is within the realm of typical contracting principles?

- Classic case: *Balfour v. Balfour* → Husband and wife agree to monthly stipend → Consideration for the promise to pay was his *spousal duty* → since they were described as couple in "amity" they could **not** be characterized at "Arms length"
    - *Concise Rule of Law* ➔ *(1)* ***Agreements between married couples*** *are assumed to be agreements* ***not*** *intended to have* ***legal consequences****; (2) Spouses in good relations cannot make contracts, unless they specifically and explicitly opt in.*

    - Other Issues:
        - Then/Now → Look at parties intentions/Look at Reliance
        - Exception: Married couples at odds are at arm's length with one another can make an enforceable contract.
        - R2K § 21 → Intention can't form a contract, but it can prevent one
        - Intent is inconsequential with exceptions *(The courts waiver on this)*

(Intent to Contract) → Can you opt out of a contract?

- Classic case: *Davis v. General Foods Corp*. → Lady sends in pudding idea, compensation at discretion of company → have same product come out → no pay
    - *Concise Rule of Law* ➔ *A meeting of the minds will not be inferred unless it is clear as to what terms and agreements the minds met over.*

    - Other Issues:
        - Indefinite → DOOM: Letter from General Foods that Davis relies on to establish contract is so indefinite that it cannot give rise to binding contract
            - Performance: General Foods retained unlimited discretion as to their performance
            - Reliance: No reliance/change of position as a result of *alleged* contract
        - Then/Now: Courts at this time were likely to dismiss Davis' complaint, now they would be reluctant.
    - Policy Issues:
        - In regards to issue submission, the likelihood and costs of litigation can get too high to prevent companies like General Foods from opting to deal outside legal realm.
    - Kulltracts → Due to the reluctance of courts to dismiss such complaints, companies won't even open the letter today

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(Intent to Contract) → Intention, Consideration & Reliance

- Classic case: *Mabley & Carew Co. v. Borden* → Work for us for your whole life and we'll pay your sister $780! You thought we really meant that?!? Sucka…
    - *Concise Rule of Law* ➔ *Consideration can be in the form of forbearance of exercising right.*

    - Other Issues:
        - Offering Type: Unilateral
        - Consideration: ***Kull Agrees***
            - Forbearance of at-will employment status.
            - Conscientious work till the end of her life.

        - Reliance:
            - That benefits would be paid to beneficiary.
        - Failed Options: Company could have opted out before death, but didn't.
        - Legal Rights: Certificate did not grant Ms. Work rights, but it did grant rights to her sister.
        - Defensive Moves:
            - Mabley claims no legal obligation or promise of future employment
    - Court Opinion: → No legal obligation for future employment, but there is a legal obligation to honor the certificate ← Offer & Acceptance = "If you die in our employment, then we will pay your beneficiary."

    - Kulltracts →
        - Implied Contract: Look at conduct of parties and then the relationship between them for exceptions.
        - Just Words: Saying something is gratuitous doesn't make it so.
        - Similarities: Frequent Flyer Programs ➔ Reliance ➔ Change of Position
        - Common Sense: At some point you need to rely on what is written without having to verify that every point is read and understood by the other party.

    - Changed Circumstances:
        - What if Anna had been fired the day before her death?
            - Mabley would have had problems, because there was sufficient consideration present from Anna.
    - Variations on the Theme:
        - Classic Case: *Hamer v. Sidway*. → Consideration is also a forbearance of a right. → There, the right to be a smoker and a hustler.
            - Kulltracts:
                - Court Opinion: Although court finds consideration in nephew's abstaining but they don't actual enforce Uncle's promise. Instead they find a trust was created, and the trust would be just as valid if Uncle did not owe Nephew.
                - At-Arms-Length: If uncle had written him back to say he could not pay, he would have gotten himself an out by saying that "he could not believe his affectionate words of encouragement were taken to be treated in law as if they were a business transaction."
        - Classic Case: *Embry v. Hargadine* → Boss we need to talk! → Can't you see I'm busy? → I want more $$$ or I'm out. → I can't deal with this now, get your men out and you'll be taken care of. → What do you mean I'm fired?!? → I'm supposed to be getting a raise!
            - Kulltracts:
                - Mailbag:
                    - In A Nutshell: The jury should have been instructed that a contract could be formed on the basis of McKittrick's statements, without the need to prove what KcKittrick intended by them → Subjective/Objective issue in a nutshell.
                    - Court Relies on Reliance: Reliance is relevant because we *suspect* that the court might enforce an involuntary contract if necessary to protect reliance.

- Real Change: Refraining from drinking, smoking, gambling, etc. cannot seriously be considered a change of position.

- Classic Case: Armstrong v. M'Ghee → my horse sucks so bad you can have it for 5£, wait just kidding, oh it's dead…
  - *Concise Rule of Law* ➔ *In a transaction where both sides know that one is joking, there is no legally binding intent.*
  - Other Issues:
    - Clear Signals: The party that creates the ambiguity bears the risk
    - Meeting of the Minds: Not voluntary by Armstrong → understood M'Ghee to be in the same frame of mind
  - Policy Issues:
    - Deals go better if you can give the other party the benefit of the doubt
    - Don't want people opting out all the time because they were "joking"
  - Changed Circumstances: What if M'Ghee really didn't now it was a joke?
    - Not full damages. Jury's decision seems to reflect this concern.

(Intent to Contract) → What are Implied Contracts?

- Classic Case: Hertzog v. Hertzog → I worked for dad all my life and all I got was this lousy T-shirt?!?
  - *Concise Rule of Law* ➔ *Courts will assume a contractual relationship where an express contract is absent, but only as a last resort.*
  - Other Issues:
    - Constructive contract:
      - Statutory duty →Breached duties → Paying Damages
      - "FICTIONS OF THE LAW"
        - Restitution claims
        - Unjust enrichment →*Benefit transferred by claimant to defendant who had no apparent legal justification for it.*
    - Implied Contracts: Relations & conduct of parties
    - Express contracts: Formal & written
    - Family Ties: Familial bond assumes a lack of an implied contract, requiring an explicit contract, because of the nature of the relationship.
    - Matters of Proof:
      - Only difference between express and implied contracts is the type of evidence needed to prove each.
      - Joint accounts, pay stubs, ledger with wage entries → Evidence
  - Policy Issues:
    - When people work they should get paid ➔ Implied Contract.
  - Changed Circumstances:
    - What if it hadn't been two strangers?
      - Implied Contract = Labor for Wage
  - Through the Years:
    - Freeloading Nobleman Case (1587):
      - Rationale: **No definite agreement = no debt**

- Policy Issue: At some point, with certain relationships law is going to assume parties know what they are doing and hold them to that
- Lap Dance Case (2005):
  - Rationale: There was an implied agreement to offer & purchase services; only the price had not been decided.
  - Policy Issue: Reasonable indication to existence of club's policy → Defendants owe the debt

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(Quasi-Contracts) → What is Restitution? What are "Quasi-contracts"? Implied Contract?

- Classic Case: *Cotnam v. Wisdom* → Man flown & thrown from street car, Doctors try to put humpty dumpty back together, but all the king's horses and all the king's men, wanted to leave them with no restitution in the end.
  - *Concise Rule of Law* ➔ *A party is entitled to fair, objective value for their services when rendering aid to hapless victim.*
  - Other Issues:
    - Then/Now: Quasi-Contract/Liability in Restitution
    - Restitution: A case where actions taken without any indication of a promise whatsoever and the court creates a legal obligation from the evidence provided by the conduct of the parties.
    - Express Contract: documented, acknowledged somehow
    - Implied Contract: use conduct/analyze actions of the parties
    - Implied-in-law contract: obligation imposed because of conduct of parties or special relationship or unjust enrichment by one ➔ not actually a contract ➔ remedy to recover conferred benefits
    - Clear Signal: When life of unconscious or incapacitated party is at risk, those rendering aid will be reasonably compensated.
    - Consideration: Is the chance to recover.
  - Policy Issues:
    - Normally, we want people to assent to a benefit. Otherwise, people will run around giving benefits then suing.

(Quasi-Contracts) → How much does unjust enrichment cost?

- Classic Case: *Michigan Central v. Indiana State* → Indiana is locked into a year contract for coal at a set price, mutual mistake by both parties leads to wrong, more expensive coal being dropped off → then used off.
  - *Concise Rule of Law* ➔ *(1) In cases of restitution the value of the benefit conferred is subjectively measured by the perceived value of Δ. (2) Innocent party will not be left worse off than if transaction never happened.*
  - Other Issues:
    - By the numbers:
      - Recovery for only what party was actually enriched, not what was lost.
      - In *Michigan Central*, it means the contract price prevails over market value.
    - Hairsplitting: Why don't they split the difference?
      - It just isn't done. → There lacks a principle explaining how we would split the difference.
    - Bargain Values: The value of the bargain is determined by the "benefit received."

- Variations on the Theme:
  - *Vickery v. Ritchie* → *Build me a Turkish bathhouse.*
    - Rule of Law: When one party is unjustly or fraudulently enriched at he expense of another, the enriched party is liable for the full, objective value of that enrichment.
    - Restitution: is appropriate because materials and labor were brought at Δ's request.
      - Restitution was fair market value of labor & materials of the bathhouse → What was put into the deal by harmed party.
    - Implied Contract: THIS IS NOT AN IMPLIED CONTRACT
    - Meeting of the Minds: Was prevented by FRAUD.
  - *Continental Forest v. Chandler Supply:* Restitution is only the $ amount in excess of Chandler's set-off with North America. ***(See earlier citation under Contract Formation for more details)***

(Offer & Acceptance) → Who was the offer made to? How do we decide a contract has been formed?

- Classic Case: *Lefkowitz v. Minneapolis Surplus Store.* → Man in search of free fur finds out its Ladies only at counter even though the ad didn't say anything. → Undeterred he comes back a week later for more "mano-a-mano" with the manager over this Ladies only policy that is never mentioned in the ads.
  - *Concise Rule of Law* ➔ *Clear, definite and nothing left to negotiate in ads so that they are an* ***offer*** and **cannot** be **construed** as an ***invitation*** to offer.

  - Other Issues:
    - Performance: **Specific performance** (like being the first one to show up to collect a free fur that was advertised for the first person to show up) **restricts** the **number of people** to accept, thereby **changing** the ad **from** an **invitation to make an offer** to an **offer**.
    - Offers:
      - Generally, an ad is not an offer if it exposes party to unlimited liability.
      - Clear, definite, explicit and leave no room for negotiation.
        - Some are clearly not, "Help Wanted."
      - Offer can be revoked before it is accepted.
        - *L* says he accepted before they could or did revoke.
      - The author must resolve ambiguity in any terms during negotiations.
    - Contract Formation: Contracts are supposed to be voluntary? Why make them give the fur to *L* if they didn't want to?
      - They placed an open ad to anyone who could specifically perform the task → thus they wanted to contract with the FIRST person in line, who was Lefkowitz. ← Specified Performance helps narrow from *invitation* to **offer**.
  - Policy Issues:
    - We need to establish a point where the "minds meet" and a contract is formed.
  - Kulltracts →
    - Court got the decisions wrong. *L* should of **won** the **first** claim and **lost** the **second** one, **because** he **definitely knew** at that time about the **house policy**. Not the other way around.

- Policy Issue: We would force the store to sell to *L* even if they didn't want to, because we are concerned with how people take things (*Armstrong v. M'ghee)*. If it looks like an offer, we want the offeree to be able to take it at face value and act accordingly.
    - How long should the reasonable expectation in *Lefkowitz* need to be protected?
        - First week is fine, but the second is too much.

(Offer & Acceptance) → Which was the offer?

- Classic Case: *Jenkins Towel v. Fidelity Philadelphia*. → Yo, I got some property you can bid on. → Best offer meeting *our* terms wins. → What you mean I didn't make the most ***acceptable bid?!?*** I met your terms, but I didn't get the bid?!? I'll cut you. Naw that would be too quick a death. I'll sue you instead!!!
    - *Concise Rule of Law* ➔ *Where an offer contains* ***sufficient restrictions*** *in what constitutes an acceptance, these restrictions* ***can operate to change an invitation into an offer.***

    - Other Issues:
        - Inviting Offers: Δ claims letter was an invitation.
        - Court Opinion: Ambiguous language in the letter should be interpreted against its author.
        - Interested parties: Δ letter is sent to a select group of interested parties → implies an offer.
        - Remedy: Specific Performance
        - R2K § 28: At an auction when goods are put up without reserve, auctioneer solicits offers to buy from highest bidder, a bidder may with draw his bid until the auctioneer's announcement of sale's completion.
    - Kulltracts →
        - Make A Bid for the Truth:
            - The conduct of the parties suggests auction
                - Sealed Bids
                    - Specific date of opening sealed envelopes
                    - Not the normal bidding process that based on back and forth between offers and counteroffers.
                    - *Fidelity Philadelphia* wants to get the highest price. → Tried normal back & forth → No $
                    - History between the parties suggestive that given previous failures, it was clear that *Fidelity Philadelphia* was **inviting highest bids to be offered** to settle matter once and for all.
                    - Dissent: Δ reserved right to accept only "acceptable" bids & therefore was free to reject any it found lacking for any reason. This was an **invitation** and **not** an **offer**.
    - Variations on the Theme:
        - *Langellier v. Schaefer* → Man's long letter writes himself out of acceptance of a deal.
            - Rule of law: Material alterations to the offer are a counter-offer.
            - Changed Circumstances: What did Langellier have to do to accept this deal?
                - Not make any revisions or stipulations mandatory, accepted the terms given, deliver cash and pick up deed.
        - *Butler v. Foley* → Stock swap goes sideways due to telegraphic snag.

- Agency Rules: Telegrapher's errors are the responsibility of the party that uses to offer or counter-offer
- Court Opinion:
  - Foley's reply was not an acceptance, rather it was a counter offer since it changed the terms *(amount of stock ordered)*
  - Butler's request for delivery that day did not introduce a new binding term that would invalidate deal
  - Foley had right to insist on payment at site, but he never raised the issue prior to the controversy

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(Offer & Acceptance) → What was the offer?

- Classic Case: *Fairmount Glass v. Crunden Martin* → Yo, yo, yo. I got mad jars son, mad jars starting at $4.50 per, son. → Good, let me get 10 assorted carloads of them jars, kid. → Stop playing yo, where am I gonna get all them jars from?
  - ***Concise Rule of Law*** ➔ *Price quotation constitutes an offer to sell.*

  - Other Issues:
    - Court Opinion: The more terms left open, the less intention for agreement to be binding. Vice versa.
    - Clear Signals: Intention of the parties is vital in evaluating case.
    - More than Words: "For immediate acceptance" language used by seller makes his statement an offer
    - Defensive Moves:
      - Δ claims the order was ambiguous as to what assortment jars was requested → Not an issue here → reasonable market standards is an acceptable assumption of assortment → not raised at original trial → that was the time to do it
      - Δ claims mirror-image rule was violated, but difference is immaterial → does not change a material part of the bargain
    - UCC →
      - §2-204: How do you know if a contract exists?
        - (1) Look at parties conduct
        - (2) Agreement does not need knowledge of exact moment of contract/sale to be valid
        - (3) One or more open terms does not cause a contract to fail for indefiniteness → Look to conduct/intentions
      - §2-207: Additional Terms in Acceptance or Confirmation
        - (1) ***Acceptance needs to be reasonably timely, but if it includes additional terms that must be accepted then it is an invalid acceptance***
        - (2) Additional terms are construed as proposals. Between merchants they become binding if:
          - (a) The offer expressly limits acceptance to the terms in the offer;
          - (b) They materially alter the agreement;
          - (c) Objection notification has already been given or is reasonably give after notice is received.

        - (3) Conduct of parties will fill in gaps in any written agreement and any remaining gaps will be filled by the UCC code.
    - Variations on the Theme:
        - *Moulton v. Kershaw* → Salty swap where the seller says no after too big of an order.
            - Rule of law: *Where an offer is ambiguous as to the amount offered, there is no contract.*
            - Court Opinion:
                - Adopting Moulton's view that Kershaw was offering him all the salt he could want would introduce problematic uncertainty making contract enforcement difficult.
                - Further, such uncertainty would require an inquiry into nature, extent of each party's business practices and relative knowledge of each party to be determined by jury outside of what was written ➔ **TOO MUCH FOR COURTS!**
                - Court views Kershaw's letter just to say he had salt to sell
            - Just Words: Intentions are irrelevant, because there are only the telegrams exchanged back and forth as evidence.
            - Then/Now: Case would come out differently today.
        - *United States v. Braunstein* → *Raisin Brandy gone bad.*
            - Rule of Law: (1) The author must resolve ambiguity in any terms during negotiations. (2)Material alterations to the offer are a counter-offer.

(Offer & Acceptance) → What does it mean to agree to agree?

- Classic Case: *Sun Printing v. Remington Paper* → "The Paper Chase Case"→ 16 month contract for paper supply → price fixed for first 4 months → then it goes no lower than CBEC price → but for how long is that price good for? → there is no agreement about ongoing price or time limits.
    - *Concise Rule of Law* ➔ *(1) When the terms of agreement considering time and price are not both established, there is no valid contract because no actual offer was made. (2) When there is a material term missing from a contract the courts will not enforce it by applying a reasonable substitute.*

    - Other Issues:
        - Crazy Cardozo: Shoots down argument that "reasonable time" standard should govern when the parties expressly left the issue of time open. COURTS SHOULD NOT REVISE OR REWRTIE CONTRACTS!

        - Changed Circumstances:
            - All that the contract needed to be valid was a default clause for length of time.
            - π should have approached Δ and let Δ set time length.
        - Dissenting View:
            - Parties clearly negotiated for service over 16 months. A price maximum was set, and there is no reason that the courts cannot set time limits. Letting Δ get away without paying is a breach of legal duty!
        - UCC
            - § 1-203: Obligation of good faith
            - § 1-205: Course of Dealing and Uses of Trade

        - (1) Previous conduct is a good reference for interpreting current behavior;
        - (2) Regular Business practices are acceptable measures for proof and remedy
    - §2-204: How do you know if a contract exists?
        - (1) Look at parties conduct
        - (2) Agreement does not need knowledge of exact moment of contract/sale to be valid
        - (3) One or more open terms does not cause a contract to fail for indefiniteness → Look to conduct/intentions
- Variations on the Theme: *Itek v. Chicago Aerial*. → We agree to agree. → Encourage future negotiations. → But no contract. → *Chicago Aerial* accepts a better offer that was solicited by its shareholders despite its board having signed a letter of intent to make a deal with *Itek*.
    - Court Opinion: Letter of intent was binding.
    - Policy Issue: Letters of Intent became very cautiously written after this case.
    - UnFairness: If *Chicago Aerial* could not walk way from agreement to agree then it had no leverage in its dealings with Itek.

(Estoppel & Reliance) → What is Estoppel? Change of Position?

- Classic Case: *Prescott v. Jones* → If you like your fire coverage so much that you want to keep it, just keep your mouth shut, and we'll take care of it. → <SILENCE> → A month later the place gets burned crispy. → See, what had happen was that when you didn't say anything, we didn't do anything. → So you don't have any fire insurance.
    - ***Concise Rule of Law*** ➔ *(1) Offeror is a master of his own offer, but he may not select silence as a means of acceptance.*

    - Other Issues:
        - Court Opinion: ***Estoppel doctrine does not apply to a promise of future actions*.**
        - Consideration: Must be bargained for! Does not include detriment!
        - Estoppel:
            - Doctrine when one party engages in action based on a reliance on a expectation of a representation made by another party and experiences a detrimental change of position.
            - Used to be based solely on misrepresentations about states of affairs, not promises about what people say and do.
            - Estoppel does not apply here, because at this time it did not apply to misstatements about intentions to a contract not yet formed
                - Now there is PROMISSORY ESTOPPEL to change that.
    - Kulltracts:
        - Estoppel: (1) a misrepresentation and (2) change of position by the other person in reliance on the misrepresentation.
        - Court could have redefined consideration to include detriment if it wanted → more stable decision
        - The rules barring silence as acceptance are designed to protect the offeree. Here they are harming the offeree. The offeror is free to give up there right to notification of acceptance if they wish, but offeror should then be **bound**. *(unilateral offers → Carbolic Smoke Ball)*

- Insurance company did not make an **offer** rather they made an **assertion**.

- Variations on the theme:
  - *Kirksey v. Kirksey* → *Man invites sister-in-law to come live with him for free in reaction to his brothers death → Two years later he kicks her out*
    - Court Opinion: Reliance not enough.
    - Then/Now:
      - Consideration should be limited to the bargain not gratuities.
      - Gratuitous promise is not binding even if it is unjust/Court has a different view these days.
      - No award for Antillico/$ for claim she abandoned was worth or access/value of house he had given her to stay
    - Estoppel: Makes detriment no longer part of consideration, just leaves benefit to promisor.
    - Kulltracts:
      - Detriment to Promisee = Benefit to Promisor; to say anything different is semantics.
      - Dissent defining consideration was ahead of its time, foreshadowed redefinition of it by legal scholars.
  - *Devecom v. Shaw* → nephew takes European vacation at uncle's offer to pay expenses → but uncle dies while he is on the trip → uncle's estate refuses to pay
    - Court Opinion: Recovery due to reliance is appropriate, because incurring debt was a change of position
    - Then/Now: Reliance ahead of its time.
  - *Goodman v. Dicker* → Emerson Radio franchise loses its tune as after D encouraged P to pursue franchise and P relies on promise and has no franchise.
    - Court Opinion:
      - Detrimental reliance is seen as a right to an estoppel
    - By the Numbers: Estoppel only replaces your real losses, not anything you might have gained. → Returns you to the position where the deal never happened.
  - *Hamer v. Sidway* → Nephew forfeited right to drink and gamble until 21 years old
    - Consideration: forbearance of a right is consideration
    - Following their Wishes: Courts like to enforce contracts that they believe the decedent would have fulfilled or wanted fulfilled if they were still alive → enforcement of gift promises.
  - *East Providence v. Geremia* →Standard R2K § 90 case. → Similar to *Prescott v. Jones* → except this time there is explicit communication about renewal issue.
    - Promissory Estoppel: Makes *East Providence's* promise to pay insurance fee enforceable → additional obligation that becomes binding due to estoppel.
      - ***P**romise*
      - ***R**easonable **E**xpectation* of and ***E**vidence*
      - ***I**nduced **A**ction*
      - ***I**njustice* can only be avoided with this remedy
    - R2K § 90:
      - Was it reasonable for promisor to believe that promise would induce action or forbear action?

        - Did promise induce such action or forbearance?
        - Can injustice be avoided on by enforcement of promise?
    - *Hoffman v. Red Owl* → *Man sells his business to get a franchise, but gets jerked around for year and never gets one.*
        - Court Opinion: Reliance on representations caused π to sell business and purchase property that resulted in a change of position

        - Estoppel:
            - Contract remedies go forward → Benefit of the bargain
            - Estoppel remedies go backward → Starting Point
                - Again, only for damages, not loss profits

(Battle of the Forms) → What do you think all the fine print is for?

- Classic Case: *Klar v. Parcel Room* → A leaves his big furry package at Parcel room → Gets ticket with some limiting language → Never reads it → Hands ticket to Klar → who also doesn't read it → Package isn't there for pick up → Ticket said limited liability for lost items.
    - *Concise Rule of Law* ➔ *A party will not be assumed to have constructive knowledge of all additional terms to a contract.*

    - Other Issues:
        - Court Opinion: It is perfectly fine for Parcel room to limit its liability, but it must make it known.
        - Clear Signals: Attention must be brought to any limitations to the contract.
        - Battle of the forms:
            - Parties do not read forms that have limiting language.
            - Contract is implied through performance, although there is no official agreement.
            - A typical result is a "last shot doctrine" → last exchanged document with *non-material* additions is considered the tacitly accepted and final version of the contract.
            - What defines a material term within the forms is not debatable.
    - Kulltracts:
        - Dissent:
            - Constructive knowledge of terms of the contract is not unreasonable in the given circumstances.
            - Δs provide a service for a very low price, it is reasonable to assume that their liability is limited → Business necessity
                - π should have done so.
            - π had ample opportunity to read the contract
        - Current Events: Now businesses that practice limiting their liability this way must take some action to make their limitations clear in order to provide notice that consumers should be aware of significant limitations. Once they've met the minimum threshold they're protected. After, you're responsible for what you sign.
    - Variations on the theme:
        - *Hill v. Gateway* → *Yo, hook me up with one of them computers.* → *Package arrives* → *30 days elapse* → *Problems arise* → *I wanna sue Gateway, but they said I agreed to go to arbitration* →*What's arbitration?* → *How could I have agreed to something I didn't know I was agreeing to?*

- *Concise Rule of Law* ➔ *A contract need not be read to be effective; people who accept take the risk that the unread terms may in retrospect prove unwelcome.*

- Other Issues:
  - Court Opinion:
    - Avoids the question if arbitration is a material term.
    - Constructive knowledge was available to π because by accepting computer and forms unread, π took the risk that there would be negative repercussions.
    - Refuses to apply UCC § 2-207, because there is only one form.
      - However, this case fits the circumstances this statute was designed to address.
  - Useful Devices: Accept or return devices are effective, efficient and legally binding.

  - R2K § 211:
    - If you sign or assent to enclosed limited liability agreements that are mass distributed you are bound by those terms → unless the party limiting the terms specifically knows that you would not assent to those particular terms.
- Kulltracts:
  - Range for options for dealing with consumers in this situation → *Talk about all terms* vs. *Enforce contract customer doesn't know about & would never agree to*
    - Parties should try to find somewhere in the middle.
  - Gateway is trying to protect itself from millions in lawsuits ← Judge is protecting Gateway ← Kull Agrees → but it is going to lead to a mess studying contracts
    - Can a seller make a contract that is formed at a later time?
      - Yes, but only if the consumer agrees.

- *Curtis v. Ryder Trucks* → *Curtis sues for implied breach of warranty when her rental truck dies on the way to Washington from Tennessee.*
  - *Concise Rule of Law* ➔ *(1) Limitations in liability must not be deceptively hidden. (2) Material or major limitations of liability should be clearly apparent and prominent enough to have its existence brought to the attention of the other party.*

  - Other Issues:
    - Defensive Moves:
      - Δ claims that limited liabilities exclude a warranty.
        - π says that she never saw the clause excluding the warranty.
    - Court Opinion:
      - In order to disclaim warranty must be in writing and conspicuous → court finds clause as such

- Tennessee policy suggest refusal to enforce exculpable clauses → but the court surmises from the law that exculpatory clauses do apply in narrow cases
- Contract is invalid because of "circle of assent"
  - Certain terms are deceptively hidden.
  - Because the issues were not bargained for, does not mean they were immaterial.
  - It is not clear she could have assented to the language as it was constructed.
  - Ryder should make clause more prominent, and put it right by signature line.

(Firm Offers) → Offers that include a promise to keep it open for a specified period, during which it cannot be withdrawn without the offeror being subject to liability for breach of contract.

- Classic Case: *Dickinson v. Dodds* → Okay I'll give you two days to think about it → On second thought I got a better offer & he wants to buy now → I don't care if you told my mama, my manager or me that you accept, its too late!
  - *Concise Rule of Law* ➔ *Knowledge that someone else has accepted an offer is constructive notice of revocation of that offer to all others.*

  - Other Issues:
    - Consideration: For offeror it is the desire to be bound as an inducement for the offeree to accept.
    - Worthless Option: **Offer to hold deal open is** supported by no consideration (gratuitous) and thus **is not binding**.
    - Terminating Acceptance:
      - Revocation
      - Death/Incapacity
      - Lapse
      - Rejection
    - A Matter of Time: If time for offer is indefinite, there should be a stipulated way of notifying that promise is withdrawn.
    - UCC § 2-205: Promise to hold offer open no longer requires consideration.
    - R2K § 45: Performance began in a unilateral contract can bind offeror into an option contract at discretion offeree.
    - Kulltracts:
      - Consideration: Dickinson is giving up something valuable by extending option, so he must be getting something valuable in return.
      - Implied Contracts: If contractors were not subject to implicitly promise to use subcontractor providing the lowest bid that was used in their own bid then the whole bidding system would fall apart → providing proprietary info & service in delivering most competitive bid → is sufficient consideration → for implicit promise → that contractor will use their services if they get the bid
      - Mailbag:
        - In Support of Free Will: The court in Dickinson v Dodds applies the rule that a contract must be voluntary, and once an offeree has notice of the offeror's revocation or change of terms he can

no longer accept because his awareness of the offeror's changed intent voids the voluntariness aspect of the deal.
    - So, a rule is that, generally, an offeror can change terms even seconds after making the offer, as long as he communicates this change prior to acceptance.
  - Court v. Kull:
    - Court: "This was a purported 'firm offer,' but there was no consideration for the promise not to revoke, therefore what you are calling the 'subsidiary promise' has no legal effect."
    - Kull: Our difference is that we would be more imaginative in seeing the consideration for Dodds's postscript promise, or just say "We are going to give effect to these firm offers without wasting any more time arguing about consideration." The latter is the approach of e.g. U.C.C. § 2-205.
  - Changed circumstances: If the offeror is not permitted to revoke, and the offeree accepts, there is a contract that the offeror does not want to perform. In Dickinson v Dodds we might have had specific performance (give him the house in exchange for £800) except that the house has been sold to Allen, so probably the remedy is money damages.
  - Firm Idea: The idea of "firm offer" is that someone has (a) made an offer and (b) promised not to revoke the offer for some period of time. So if the promise is enforceable, the offer cannot be revoked and is therefore capable of being accepted, even when the offeror has changed his mind.
- Variations on the theme:
  - Classic Case: *Jordan v. Dobbins* → Deceased sent out note promising to cover all goods sold to M (line of credit) → π kept extending, found out about death late → wants damages
    - ***Concise Rule of Law*** ➔ *Death acts as a revocation of all offers not acted upon, regardless of their potential reliance.*

    - Other Issues:
      - Contract Type: Unilateral
      - Consideration: None for offers *(not a trick question)*
      - Court Opinion: It was not unreasonable to expect π to find out about Δ's death
      - R2K § 43:
        - An offeree's power of acceptance is terminated when the offeror takes definite action inconsistent with an intention to enter into the proposed contract and offeree acquires reliable information to that effect.
    - Kulltracts:
      - Court Opinion: It **was** unreasonable for π to have to watch at all times for the death of guarantors. It was the responsibility of the estate to inform π of death of Δ and that the contract had been rescinded.

        - Contract Formation: The contract was accepted when π acted in reliance on the credit – that was the starting point of the contract.
    - Classic Case: *Baird v. Gimbel Bros.* → Sub-contractor bids on linoleum → makes mistake by 200% → revoked offer before Contractor bid was submitted → but it was too late to rescind their bid without it costing them
        - *Concise Rule of Law* ➔ *A subcontractor's bid is not accepted until the final bid is awarded and the contractor binds himself to the subcontractor*.

        - Other Issues:
            - Promissory Estoppel: could not be used because the promise in question was only for when π's bid was awarded, not for when initial bids were being made.
                - π could not have relied upon it until that stage had been reached.
    - Classic Case: *Drennan v. Star Paving* → Contractor prepares general bid for school project → took Δ's paving bid → used it → got school project contract → tried to accept paving bid → they attempted to rescind offer
        - *Concise Rule of Law* ➔ *Between contractors who made a bid in reliance on a subcontractor's bid, the loss resulting from a mistake should fall to the party who caused the mistake.*

        - Other Issues:
            - Contract Formation: Acceptance of contract is not until π has been awarded final job.
            - Reliance: Used bid in compiling their own and now such reliance is detrimental.
            - Double Estoppel: The benefit to Δ and the detriment to π are enough to invoke promissory estoppel and bind Δ to the contract.
            - Flagpole Rule: Implied subsidiary promise to let you finish what you started

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(Contracts by Correspondence) → Offer and Acceptance Issues: When is a contract formed?

- Basic Logical Rules:
    - Mailbox Rule: Acceptance is effective on dispatch. *(Subject to major qualifications in option cases*) ➔ *Lewis v. Browning*
        - Helps **offerees** avoid **uncertainty**
        - Helps **offerors** avoid **revocation**
    - Effective on Receipt: What does "receipt" mean? Does it have to just arrive? Does it have to be read? → Lawyers should specify in contract.
        - Helps **offerees** avoid **revocation**
        - Helps **offerors** avoid **uncertainy**
    - Effective on Receipt plus relates back:
        - Risk of miscarriage is placed on offeree
        - Attempts to split the difference of risk between parties
        - Same effective period as Mailbox Rule
    - Just Rules: Having a rule is helpful regardless which one it is → parties can adjust their conduct accordingly → offeror is master of his own offer and specify how acceptance is effective.

Contract Exam Outline – Professor Kull – Fall 2008

(Contracts by Correspondence) → Offer and Acceptance Issues: When is a contract formed?

- Classic Case: *Rhode Island Tool v. United States* → Sent in wrong bid for bolts → now Navy wants to put the screws to them.
    - *Concise Rule of Law* ➔ *An offer or acceptance is not finalized until it is received by the intended party.* ➔ **Minority stance**

    - Other Issues:
        - Mailbox rule: Applies in this case! But court ignores it.
        - Court Opinion: Mistake case → since there was an error → tool company could withdraw its bid → assuming no contract had yet been made.
        - Conflict of Interest**: Cannot have mailbox rule together with power of revocation without creating a free option on the part of the offeree.**
            - *This would allow one party to speculate at the expense of another.*
        - Dissent: Offer was a firm offer for 20 days within which it could not withdraw unless there was fraud or a mutual mistake, neither of which were present. There is no unjust enrichment, because there was a valid contract.
    - Variations on the Theme:
        - Classic Case: *Palo Alto Town & Country Village v. BBTC Company* → Restaurant has two 5 year options → looks to exercise option → sends notice 2 months before it is due → letter never received → now landlord wants to kick out restaurant

            - *Concise Rule of Law* ➔ *Options fall under the mailbox rule.* ➔ **Minority stance** ➔ *Generally, options are not finalized until received.*

            - Other Issues:
                - Court Opinion: Construes option as an irrevocable offer in order to have mailbox rule apply
            - Kulltracts: Mailbox rule is designed to protect offeree, it provides against uncertainty and revocation, Here the offeree does not need these protections → the mailbox rule should not apply.
        - Classic Case: *Postal Telegraph v. Willis* → Sellin' some cotton → hit me back with acceptance via telegraph → <Phone Rings> → No, I didn't get your telegram → Sure, I'll just ignore that binding acceptance you gave me → I'll just sue the telegraph company for the bad deal I'm going to make when you call back later tonight

            - *Concise Rule of Law* ➔ ***Customs** are used to **aid** construction **in ambiguous cases** and **are not applicable** in **unambiguous cases**.*

            - Kulltracts:
                - The fact that there is a rule is more important than what the rule says.
                    - Rule provides default for when acceptance occurs.
                - Mailbox Rule should protect the offeree, but Offeror is master of his own offer

- Mailbox Rule should be circumvented by declarations to the contrary *(Lewis)* or business customs to the contrary *(Postal Telegraph)*

(Acceptance by Performance) → <u>How does it work?</u>

- All three of the cases support the idea that offerors may stipulate the mode of acceptance with their offer.
  - If performance is requested then notification of acceptance is not necessary.
- In unilateral contracts the default acceptance is through performance.
- Once performance occurs, offeror is bound.
- Any ambiguity in distinguishing a bilateral or a unilateral contract is resolved in favor of a bilateral contract.
- UCC § 2-206 → Offer & Acceptance in Formation Contract
  - (1)(a) Offeror can choose any means of acceptance
  - (1)(b) Offer to buy goods for prompt shipment is inviting acceptance by prompt promise or performance of shipping
  - (2) If a reasonable time has gone by without performance contract lapses
- R2K § 62 → Effect of Performance
  - When an offeree chooses between a choice of promising and performing, the start of the performance signifies acceptance.

(Acceptance by Performance) → <u>How does it work?</u>

- <u>Classic Case</u>: *Carlil v. Carbolic Smoke Ball* → Use 3 times a day for 2 weeks → NO FLU!!! Or You get a £100! → We've even put £1000 in the bank to prove our SINCERITY!
  - *<u>Concise Rule of Law</u>* ➔ *Offers of rewards constitute valid, legally binding contracts.*
  - <u>Other Issues</u>:
    - <u>Clear Signals</u>:
      - Unilateral offers do not require notice of acceptance.
      - Notification is for the benefit of the offeror, therefore he can waive notification either expressly or implied.
      - Notification that acceptance through performance is no longer acceptable is valid, but only to those who haven't begun performance.
    - <u>Consideration</u>:
      - Δ's gain is benefit by widespread use of their products, the benefit of a successful ad
      - π experiences a negative change in position (constant use of 3 times daily) in reliance of a promise for £100.
    - <u>Contract Type</u>: Unilateral → a contract in which only one party makes a promise or undertake a performance.
    - <u>Performance</u>: The successful completion of a contractual duty, usually resulting in the performer's release from any past or future liability.
    - <u>Flagpole Rule</u>: Implied subsidiary promise to let you finish what you started
      - Carbolic could not revoke offer without a reasonable time to perform once begun.
    - <u>Obligation</u>: Carbolic → Yes/Carlil → No
  - <u>Kulltracts</u>: This could also be a warrant case!
    - The ad constituted a £100 warranty on the efficacy of the Smoke Ball.

- The ball failed, entitling her the £100 via warranty.

- Variations to the theme:
  - Classic Case: *Davis v. Jacoby* → Suicidal Whitehead seeks help from niece/nephew for future inheritance → never changes his will → he was wrong about wife's will → niece/nephew perform fully → but left getting NADA!
    - *Concise Rule of Law* ➔ *Where there is ambiguity as to the nature of an offer, it is presumed to be bilateral.*

    - Other Issues:
      - Heart of the Matter: Is this a unilateral or bilateral contract?
      - Court Opinion: Bilateral offer. Orders specific performance.
    - Kulltracts:
      - Broken Promises:
        - Sees no promise here:
          - He says "if you can come, Caro will inherit everything." But he has already said that Caro is going to inherit everything--from Blanche (this turns out to be false). Rupert never promises to make a new will or to leave property to Caro or to do anything at all. Rupert does not have the power to promise that Blanche will do anything with her will. "
      - Sees misrepresentations + change of position ➔ reliance
      - Restitution:
        - Restoration: Just give them their losses on coming down
        - Specific Performance: Unfair, to give them the will.
      - Mailbag:
        - Promises to Keep: An offer by Mr. Whitehead ("come take care of us and you will get an inheritance") w/ an implied subsidiary promise (I will give you enough time to wrap up your affairs in Canada and travel to CA) and once accepted it is a bilateral contract b/c it is a promise (Caro and husband will take care of the Whitehead's until the end) for promise (they get the inheritance) → This is how Cali Supreme Court sees it.
  - Classic Case: *Crook v. Cowan* → Carpetbagger seeking carpets → π makes them but doesn't tell Δ → Δ tries to see is there is a deal or not → <SILENCE> → Δ Orders from someone else → SURPRISE! YOU ALREADY HAD MAIL AT THE EXPRESS!
    - *Concise Rule of Law* ➔ *An offeror is bound by the mode he stipulates for acceptance.*

    - Other Issues:
      - Acceptance: Δ expressly provided for performance as acceptance.
      - Agency: By selecting the Express as the delivery spot, he made them his agents → errors by agents are attributable to those that chose to use them *(Butler v. Foley)*
      - Matter of Time: π's performance was within a reasonable amount of time to form a unilateral contract.
      - Clear Signals:
        - Offeror needs protection that he'll get what he's seeking

        - Offeree needs protection that offer won't be revoked in the midst to perform
    - Dissent: The original letter by Δ was not a unilateral offer, but an offer to purchase which required assent either through written notice or performance. Because Δ had no idea how long it would take for performance, written notice should have been; there was no contract.

(Moral Consideration) → Moral & Past Obligations

- Consideration: something of value given in return for a performance or a promise of performance by another → something bargained for.
- Moral Consideration: based on natural love or affection or on moral duty; such consideration is usually not valid for the enforcement of a contract.
- Past Consideration: an act done or a promise given by a promisee before making a promise sought to be enforced → past consideration is not consideration for a new promise → because it was NOT given in exchange for that promise
    - Generally only enforceable if the new promise revives a past legal obligation as an infant reaching majority and agreeing to pay, bankrupt debtor agreeing to pay a discharged promise, a promise to pay an expired debt due to statute of limitations

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(Moral Consideration) → Moral & Past Obligations

- Classic Case: *Lampleigh v. Brathwait* → Δ was convicted of murder and he asks π to search out the king for a pardon. → After π does this, Δ offers him £100. → Δ refuses to pay
    - ***Concise Rule of Law*** ➔ *When one offers to pay for a service already rendered, though those services were rendered without expectation of payment, the promise is enforceable.*

    - Other Issues:
        - Consideration: Past
    - Variations to the theme:
        - Classic Case: *Mills v. Wyman* → π took in Δ's sick 25-year-old son and cared for him till death → Δ upon hearing this promised to pay π's expenses for care then refused to pay.
            - ***Concise Rule of Law*** ➔ *Moral obligation is not enough consideration to support a legally binding contract.*

            - Other Issues:
                - Duty: Δ had no duty to provide care for son, thus π did not discharge a duty owed by Δ.
        - Classic Case: *Webb v. McGowin* → π was cleaning the upper floor of a mill and was about to drop weight, but noticed Δ → He jumped after weight → saving Δ's life → but crippling himself → Δ agreed to pay $15 bi-weekly for this service → Δ dies and the estate doesn't want to keep paying.
            - ***Concise Rule of Law*** ➔ *Where there is material benefit to the promisor and injury to the promisee, moral obligation is enough consideration to support a promise.*

            - Other Issues:
                - Consideration: Past

- By the Numbers: Restitution is incalculable given that it's the value of Δ's life.