

- ❑ UCC or Common Law?
  - ❑ Good (identifiable, movable object)? **UCC 2-105(1)**
  - ❑ Services? - *Common Law*
  - ❑ Mixed transaction?
    - ❑ Predominant purpose? - *Predom Purp Test*
    - ❑ Related to goods/services? - *Gravamen Test*

## (I) K Formation

- ❑ Is there a K? §1
  - ❑ B/w family members? - *prob not*.
  - ❑ Is there **Mutual Assent** (*Lucy v. Zehmer*)? §17
    - ❑ 1st person actually agreed to deal? -OR-
    - ❑ 1st person's actions reasonably manif intent?
      - ❑ ORP would believe serious? (*Kolodziej*)
    - ❑ 2nd person believed 1st person intended?
  - ❑ Is the offer an advertisement? §26, cmt (b)
    - *Ads are generally not considered offers, unless:*
      - ❑ Is it clear, definite explicit?
      - ❑ Does it leave nothing open for negotiation?
      - ❑ \*Was the ad revoked in a campaign that was equal in scope to original ad?

### ❑ Is there an offer? §24

- ❑ Manif of willingness to enter into a bargain?
  - ❑ Justifies one that assent will conclude?
  - ❑ Is it a preliminary negotiation? §26
    - ❑ Knows/should person doesn't intend offer?
    - ❑ ORP would take as final (*Lornegan*)?
- ❑ Offer terminated? §36
  - ❑ (1) Rejection/Counter-offer? §§ 38, 39
  - ❑ (2) Lapse? §41
    - ❑ Time left open specified? §41(1)
      - ❑ Yes. - *Leave open for that time*.
      - ❑ No. - *Open for reasonable time*.
        - ❑ Industry standard (*Minn. Linseed*)?
    - ❑ Face-to-face? §41 com. (d) - *instant*
    - ❑ Over mail? §41 com. (e) - *reasonable*
  - ❑ (3) Revocation by offeree? §36(c)
    - ❑ Direct Revocation? §42
      - ❑ It was received? §42 com. (b)

- ❑ Indirect Revocation by the offeree? §43
  - ❑ Offeror action inconsistent w/ intent?
  - ❑ Offeree got reliable info (*Dickinson*)?
- ❑ (4) Death/Incapacity before acceptance? §48
- ❑ Is there an Option K? §§ 25, 37
  - *Even death doesn't term (Beall v. Beall)*
  - ❑ (1) In writing & signed by the offeror? §87(1)
  - ❑ (2) Consideration? §87(1)
    - ❑ Gross disproportion? §87 com. (b)
    - ❑ Actually received (*Board of Control*)?
  - ❑ (3) Fair terms w/in reasonable time? §87(1)
  - ❑ Reasonably induce action/forbear? §87(2)
    - ❑ Actually induces forbearance?
    - ❑ Option needed to avoid injustice?
- ❑ Is there a "firm offer"? UCC §2-205
  - ❑ By a merchant? UCC §2-204
  - ❑ In writing, on separate form?
    - *Left open reasonable time, no >3 mo.*

### ❑ Is there Acceptance? §50(1)

- ❑ Manif of assent to terms? -AND-
- ❑ In manner invited/required by offer?
  - ❑ Form of acc invited by offer? §30
    - ❑ Offer specifies form of acc? §30(1)
    - ❑ If not, manner/med reasonable? §30(2)
    - ❑ Doubt whether manner specified? §32
- ❑ Bilateral - Acceptance by promise? §56
  - ❑ Doubt if bilateral (*Davis v. Jacoby*)?
    - *Usually treated as bilateral*.
  - ❑ Was offeror notified of acceptance? §56
    - ❑ Reasonable diligence to notify? -OR-
    - ❑ To agent (*Hendricks v. Beehee*)?
    - ❑ Acceptance received seasonably?
  - ❑ Was the acceptance by telephone? §64
  - ❑ Was acceptance by mail? - §63
    - ❑ Was it an option contract? - §63(b)
      - ❑ No? - *Effective upon dispatch*. §63(a)
      - ❑ Yes? - *Effective upon receipt*. §63(b)
    - ❑ Was there a rejection sent prior? §40
      - *Race to the mailbox*
- ❑ Acceptance by performance? §54(1)
  - ❑ No adeq means of learning of perf? §54(2)
    - ❑ Offeree diligently attempted to notify?

- ❑ Offeror learned of perf in reasonable time?
- ❑ Offer indicates that notification not req'd?
- ❑ Partially perf'd before learning of offer? §51
  - ❑ Contrary intention manif'd by offeror?
- ❑ Unilateral K?
  - ❑ Reward offer (*Carlill v. Carbolic*)?
  - ❑ Classic Rule? -*revocable until perf complete*
  - ❑ Modern Rule? -*beginning perf create option*
    - ❑ Option K created by partial perf? §45(1)
      - ❑ Performance completed? §45(2)
- ❑ Did offer say invite perf or promise to perf? §62
  - ❑ Beginning of performance tendered? §62(1)
  - ❑ Part of promise tendered? §62(1)
    - *Operates as promise to complete perf.*
- ❑ Purported acc alters/adds terms? §59
  - ❑ Substantively different terms?
    - ❑ Traditional? - *Mirror Image Rule*
    - ❑ Modern? - *Immaterial change okay*.
  - ❑ Acceptance depends on alteration? §61
- ❑ Offer specifies place, time, manner of acc? §60
- ❑ Is it an adhesion contract? UETA 15(a)-(b)
  - ❑ Evidence user aware of binding to more?
  - ❑ Site design makes terms readily available?
  - ❑ Importance of K details obscured/minimized?
  - ❑ Clearly drew attention to terms that alter what reasonable understand as default rights?
  - ❑ Browsewrap? - *passive, cts closely examine*
  - ❑ Clickwrap? - *more active role*
  - ❑ Scrollwrap? - *questionable*
  - ❑ Sign-in wrap? - *new, supported by FB*
- ❑ Is the offer too indefinite to accept? §33
  - ❑ Quantity? Price? Subject Matter?
  - ❑ Time, place, and parties of perf?
  - ❑ Reasonable degree of certainty (*Varney*)?

### ❑ Is there a Consideration? §17

- ❑ Is there a "bargained-for exch"? §71(1)
- ❑ Sought by promisor in exch? §71(2)
- ❑ Given by promisee in exch? §71(2)
  - ❑ Act, forbearance, mod of legal right §71(3)
  - ❑ Even if beneficial (*Kirksey v. Kirksey*)?
- ❑ Is it an "Illusory Promise"?
  - ❑ Appears on face to be insubstantial?

- Expression doesn't require commitment?
  - Makes perf optional for one party?
    - Any loss of rights (*Keena v. Groupon*)?
  - Was there a pre-existing duty? **§73**
    - Owed, not in doubt or subj to honest dispute?
    - Doesn't differ from what req'd by duty?
      - Reflects more than pretense of bargain?
    - Perf not complete by 1 side (*Angel v. Murray*)?
      - *Pre-existing duty is not consideration.*
  - Is there a K modification? **§89(a)**
    - Fair & equitable in view of circumstances?
    - Not anticipated when K made?
    - Mod occurs before completion of perf?
    - Parties agreed to mod terms?
  - Was their past consideration? **§86**
    - Moral obligation (*Harrington v. Taylor*)?
      - Cares for, improves, and preserves?
        - *Then consid (Webb v. McGowan)*
    - Promise for benefit previously received? **§86(1)**
      - must be binding prevent injustice?
      - Gift/other reason unjust enrichment? **§86(2)**
      - Value is disproportionate to benefit? **§86(2)**
      - Promisor d/n receive? **§86 com. (a) ill.1**
  - Is there Promissory Estoppel? **§§ 87(2), 90**
    - (1) Reasonably expected action/forbearance?
      - Forbearance of *legal right*?
      - Reliance on subcontractor (*Weitz*)?
      - Mere puff (*Garwood*)?
    - (2) Did induce such forbearance?
      - Forbears work elsewhere (*Ricketts*)? **§90 ill. 4**
    - (3) Injustice can only be avoided by enforcing?
- 
- (1) Is the K within the **Statute of Frauds**? **§110**
    - Executor for decedent? Suretyship? Marriage?
      - Land?
      - Can't be perf'd 1 year?
        - Logically impossible to perform w/in a year?
      - Goods > \$500?
  - (2) Is the Statute satisfied?
    - Is the K evidenced by writing? **§131**
      - Merchant?
        - Yes? **UCC §2-201(2)**
          - Confirm Memo, not objected 10 days?

- No? **§131, UCC §2-201(1)**
    - Signed by party against whom enforced?
      - Letter or equivalent (*Radke*)?
      - Email that satisfies signature req?
  - Exception? **UCC §2-201(3)**
    - Specially manufactured good? **§2-201(3)(a)**
      - *Gets purch price*
    - Testimonial admission? **§2-201(3)(b)**
      - Admission under oath (*DF Activities*)?
    - Goods/payments received? **§2-201(3)(c)**
      - Partial perf?
  - Identifies the subject matter of K? **§131(1)**
  - Sufficient to indicate K made/offered? **§131(2)**
  - Essential terms reasonable certainty? **§131(3)**
  - Is the K evidenced by several writings? **§132**
  - (3) Reason to enforce despite not satisfied? **§139**
    - Relied on to move to Hawaii (*McIntosh*)?
    - Reasonably induces action/forbearance? **§139(1)**
      - (a) Avail/adeq of other remedies?
      - (b) Def/subst character or action/forbearance?
      - (c) Forbearance/terms corroborates w/ ev?
      - (d) forbearance reasonable? (e) foreseeable?
- 
- Is K unconscionable? **§208**
    - Absence of meaningful choice? (procedural)
    - Terms unreasonably favorable? (substantive)
  - Was there **Mistake** that makes K voidable? **§151**
    - (1) Mistake of both parties? **§152**
      - Basic assumption of K?
      - Material effect on agreed exchange?
      - Adversely affected d/n bear risk?
        - Negligence v. honest mistake (*Deprince*)?
          - *K voidable.*
    - (2) Mistake of one party? **§153**
      - Basic assumption upon which K was made?
      - Material effect on agreed exchange?
      - Did party *bear the risk*? **§154**
        - (1) Alloc by agreement of parties?
        - (2) Aware of lim knowledge but treats as suff?
          - "Conscious ignorance" (*Estate of Nelson*)
        - (3) Alloc by court based on reasonability?
      - Life expectancy (*Grenall*)? **§154 ill. 3**
    - Mistake makes K unconscionable? **§153(1)(a)**

- Other party reason to know/caused? **§153(1)(b)**
  - *K voidable by adversely affected.*

## (II) K Interpretation

- K language disputed?
  - How are terms defined/ranked?
    - (1) Express Terms?
    - (2) Course of performance? **§221**
    - (3) Course of dealings? **§222**
    - (4) Usage of trade? **§223**
  - Is there an implied term? **§205**
    - Duty of GFFD discharged?
    - Duty in illusory promise (*Wood v. Lucy*)?
    - Contradicts express term (*Stokes v. Dish*)?
- Is there Parol Evidence? **§213**
  - (1) Is the agreement integrated? **§209**
    - Writing or writings?
    - Constituting a final expression?
    - One or more terms of an agreement?
  - (2) Completely or partially integrated? - **§210**
    - Integration Clause? - *more likely complete*
    - Strict approach?
      - Appears final based on 4-corners rule?
    - R.2d approach?
      - Consistent additional term? **§216**
        - (a) For separate consid? **§216(2)(a)**
        - (b) Might have been omitted? **§216(2)(b)**
  - (3) Does it supplement/contradict the writing?
    - Contradiction of integrated terms? **§215**
  - (4) Is it a PER exception?
    - (a) Post-execution agreement?
    - (b) Collateral agreement? **§213(2)**
    - (c) Oral conditions precedent? **§217**
    - (d) Defenses? **§214(d)**
    - (e) Meaning of Writing? **§214(c)**
- Is there an ambiguous term?
  - Evidence of meaning?
    - (a) Contract itself?
    - (b) Negotiations?
    - (c) Post-contract conduct?
    - (d) Trade usage?
    - (e) Other circumstances (e.g. price)?

### (III) Performance and Breach

#### ❑ Is there a Breach?

##### ❑ Non-occurrence of condition? §225(1)

- ❑ Duty that the condition occurs? §225(3)
- ❑ Is there a risk of forfeiture? §227(1)
  - ❑ Event w/in obligee's control?
  - ❑ Obligee circumstantially assumed risk?
- ❑ Was there an unforeseen event? §261
  - ❑ (1) Makes occurrence impossible? §261
    - ❑ Death makes perf impracticable? §262
  - ❑ (2) Party is w/o fault? §261
  - ❑ (3) Frustration of purpose (*Krell*)? §265
    - ❑ Law passed (*ChemBro*)?
      - ❑ Still some value?
      - ❑ Assumed the risk?

##### ❑ Material Breach/Total Breach?

- ❑ Non-perf of a duty under a K? §235
  - ❑ Did non-perf constitute material breach?
    - ❑ Non-perf discharges duties of injured? §237
      - ❑ Enough to be considered total breach?
    - ❑ Injured party deprived benefit? §241(a)
    - ❑ Injured can be adeq compensated? §241(b)
    - ❑ Will non-perf party suffer forfeiture? §241(c)
    - ❑ Will non-perf party will cure failure? §241(d)
      - ❑ Reasonable assurances?
    - ❑ GFFD of non-perf party? §241(e)
  - ❑ Divisible K? §240
    - ❑ Can be apportioned into *equivalents*? §240
      - *recovery lim'd to division unperf'd*

##### ❑ Anticipatory Repudiation? - §250

- ❑ Unequivocal statement of future breach?
- ❑ Vol act renders unable/apparently to perf?
- ❑ Does repud discharge other party's duty? §253
- ❑ Nullification of the anticipatory repud? §256
  - ❑ Retraction of statement that lead to? §256(1)
    - ❑ Material change before nullification? §256(1)
  - ❑ Obligee indicated considered final? §256(2)
- ❑ Is there a right to adeq assurance? UCC 2-609
  - ❑ Common law similar to good (*Norcon*)?
  - ❑ Reasonable ground for insecurity? 2-609 (1)

- ❑ b/w merchants? 2-609 (2)
- ❑ Acc of improper delivery? 2-609 (3)
- ❑ Failure to provide in 30 days? 2-609 (4)
  - ❑ Reasonable time if Common Law? §251

### (IV) Remedies

#### ❑ Does breach give rise to damages? §344

##### ❑ (1) Expectation damages? §344(a)

- *Diff b/w where are and where would be if no breach* (*Hawkins v. McGee*)

##### ❑ (a) Loss in value by failure/deficiency? §347(a)

- ❑ Disprop to cost to complete? §348(2)
- ❑ Incomplete construction? §348 com. (3)
  - ❑ Econ waste from tear down (*Groves*)?
  - ❑ Importance in K (*Peevyhouse*)?

##### ❑ (b) Incidental/consequential loss? §347(b)

- ❑ Lost business (*Manoucheri*)?
  - ❑ Evidence to support w/ reasonable certain?
- ❑ Direct result of breach (*Penncro*)?

##### ❑ (c) Cost avoided by non-perf? §347(c)

#### ❑ Reliance Damages? §344(b)

- *Diff b/w where are and where would be if no contract* (*Merry Gentlemen v. Keaton*)

- ❑ Expenditures in-prep/during perf? §349
- ❑ Loss prevented by non-perf? §349

#### ❑ Restitution Damages? §344(c)

- ❑ Does breach delay the use of property? §348(1)
- ❑ Breached based defective construction? §348(2)
  - *May recover based on (a) diminution in mkt price, and (b) reasonable cost of completing.*
- ❑ Event *may have* occurred w/o breach? §348(3)

#### ❑ (2) Could damages have been mitigated?

- ❑ Avoidable w/o risk, burden, humil? §350(1)
  - ❑ Burden in light of reliance (*R.R. Donnelly*)?
- ❑ Reasonable efforts to *mitigate*? §350(2)
  - ❑ Same/similar role, location (*Parker*)? §350 ill. 11

#### ❑ (3) Damages of breach unforeseeable? §351

- ❑ Follows from ordinary course of events?
- ❑ Special circ that breaching should know?
  - ❑ Did D know "time of essence" (*Hadley*)?

#### ❑ (4) Can't establish w/ reasonable certainty? §352

#### ❑ Entire loss by breach (*Merry Gentlemen*)?

#### ❑ Liquidated damage provision? §356(1)

- ❑ Reasonable in light of:
  - ❑ anticipated/actual loss?
  - ❑ Duplicative/punitive (*Dobson Bay*)?
  - ❑ difficulties of proof of loss?

#### ❑ Does breach give rise to Specific Performance?

- ❑ For land that is unique (*Oliver*)? §360 com. (e)
- ❑ Damages would be inadeq? §359(1)
  - ❑ Diff proving w/ reasonable certainty? §360(a)
  - ❑ Diff procuring subst perf w/ money? §360(b)
  - ❑ Likely damages couldn't be collected? §360(c)
- ❑ Would injunction be unfair? §364
  - ❑ (a) K induced by mistake/unfair practices?
  - ❑ (b) Would cause unreasonable hardship/loss?
  - ❑ (c) Exchange grossly inadeq, or terms unfair?
  - ❑ Denial of injunction unfair anyway? §364(2)
- ❑ Would it be difficult to enforce? §366