**Definitions:**

Assumpsit-a cause of action for the breach of a contract

Contract-a legally enforceable agreement

Agreement is a promise

Offer

Something that creates in the Offeree the power to accept, it should be - Clear, Definite, and explicit. Such that a reasonable 3rd person would know what was to be agreed and how to accept the offer.

Acceptance-do what offeror asks

Consideration-Bpor or Dpee &BF

Benefit-when you get something you’re not entitled to

Detriment-when you lose or forego something you were entitled to

Bargained For=action induced contractRescind-mutual cancelation of the contract

**Principles:**

* O + A + C = K
* No Compulsory Contracts (*Hurley v Eddingfield*)
* No one can make another his debtor (*Noble v Williams)*
* Intentions of the parties control
* Symmetry Principle – “until both are bound neither is bound”
* Offeror is the Master of Offer
	+ Power of revocation
* Offeree has power to accept/reject
* Offers Expire in a reasonable amount of time
* Consideration is as much a form as a seal
* CDE
* **Formation**
* Offer
* CDE vs. Requirements/Output Contract or **undefined**
* Revoked
* Firm Offer – Option Contract
* Rejection/Counter Offer
	+ Mirror Image Rule – Services
		- Rejection and Counteroffer
	+ Battle of Forms/Last Shot Doctrine
	+ UCC 2-207 – Goods
		- Clause 1 removes Mirror image rule
			* unless acceptance is expressly made conditional on assent to the new terms.
		- Clause 2 - additions are proposals to add to the contract
			* If between merchants terms become part of the contract, unless:
				+ the offer expressly limits acceptance to the terms of the offer;
				+ they materially alter it; or
				+ notification of objection to them has already been given or is given within a reasonable time after notice of them is received
* Acceptance
	+ By Performance - Unilateral
		- Power of revocation is suspended
	+ By Promise to perform - Bilateral
* Consideration
	+ Bpor or Dpee + Bargained For
		- Check your work
	+ Suffient to establish consideration
		- Not warm Fuzzy
	+ Adequate
		- Proper amount – not used
		- Fungible goods
	+ Nudum Pactum – past consideration
		- Readjustment pg 7, 12
	+ Moral Consideration 2.39(.1-.4)
		- Debts, voidable, and SOF corrections
* Implied Contract
	+ Implied in Fact
		- Formed by conduct, manifestations of assent
* Implied in Law = Unjust Enrichment/Quasi Contract
	+ Offeree would have said yes if they could have (*Cotnam v. Wisdom*)
* No Compulsory K
* 3rd Party Beneficiary
	+ Must have intended 3rd party to benefit at the creation of the K
		- Known by at least promisor, but preferably both parties
		- Any doubt, not intended
		- RPP standard
		- Is the third party designated in the K?
		- Is performance to be made directly to the 3rd party?
		- Does the 3rd party have any rights under the K?
		- Is there a relationship of the third party to the promisee that one could infer their benefit?
	+ Intended – Most Rights
		- Creditor § 143
		- Donee § 142
	+ Incidental – No rights, generally 1 step removed
* Assignment of Rights
	+ Obligor – Assignee = Creditor 3rd party beneficiary
	+ Stand in the shoes of the Assignor
	+ According to restatement coupled with duty unless stated otherwise
* Delegation of Duties
	+ Delectus personae
		- Choice of Person is the inducement
* **Breach**
	+ Not wrong, just is – sometimes beneficial, essentially a K is insurance that if you don’t fulfill you pay
	+ Conditions/promises – section 8
* **Keep it**
* SOF – Has to be in writing, so do modifications unless they remove from SOF
	+ Marriage
	+ Year
		- Not able to be completed within a year
	+ Land
		- Unless C has been exchanged
	+ Executor on behalf of estate
	+ Goods in excess of $500
	+ Surety
		- Induced lender to act
		- Main Purpose Doctrine
* Parol Evidence
	+ To keep out:
		- Merger clause – “This is it”
		- Disclaimer of Representation Clause
			* Must be conspicuous
	+ To get in:
		- Has integration been determined?
			* Fully integrated
				+ Complete and exclusive of the entire agreement between them
			* Partially Integrated
		- Illuminate Fraud
		- Clear up ambiguity?
			* Most exotic definition carries burden of proof
		- After contract was formed?
		- Collateral Matter?
* Section 90 Restatements, Promissory Estoppel
	+ A promise which the promisor should reasonably
	+ expect to induce action or forbearance on the part of the promisee or a third person and
	+ which does induce such action or forbearance is binding
	+ if injustice can be avoided only by enforcement of the promise.
* **Get Rid of It**
* Rescind/modification
* Meeting of the Minds
	+ Mutual Mistake – *Sherwood v. Walker*
	+ Unilateral Mistake
* Illusory Promise
	+ 1 party holds the sole decision
* Impossibility – Implied Condition
	+ K execution is practically impossible – Music Hall burned down
* Frustration – Implied Condition
	+ K purpose is frustrated – King’s coronation
* Repudiation – a clear showing of the intent to breach
	+ 2-609(1) - Right to Assurance
	+ 2-610 – Right to suspend performance or continue, can view as immediate breach or wait a commercially reasonable time before treating as breached.
	+ 2-611 – Permits retraction of repudiation if not canceled, changed in reliance, or indicated final.
* Perfect Tender Rule - requires seller to deliver exactly what is promised any deviation is violation
	+ Cure - opportunity for seller to cure when multiple shipments (UCC)
	+ Substantial Performance - requires Buyer to pay if sub performed
* Unconscionable
	+ Lack of Meaningful
	+ Unreasonably unfavorable terms to 1 party
* **Damages** – Foreseeability pg 14-15
	+ Restitution - paid
		- Out of pocket to D
		- Quantum Meruit – Money for benefits conferred
	+ Reliance – (Had – Got) + paid to others
		- Make whole
	+ Expectancy – (BF – Got)
		- Benefit of the bargain
	+ Gross Economic Waste
* **2 Philosophies**
* Mansfield/Holmes – “Say it do it”
	+ If reasonable then enforced
* Wiliston - “People say a lot without doing, needs formality”
	+ Jump through the hoops - regardless of intentions

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| T1 | T2 | T3 | T4 | T5 | T6 | T7 | T8 | T9 | T10 | T11 | T12 | T13 | T14 | T15 | T16 | T17 | T18 |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |

**Restatements**:

**Promissory Estoppel §90**

(1) A promise which the promisor should reasonably

  (2) expect to induce action or forbearance on the part of the promisee or a third person and

  (3) which does induce such action or forbearance is binding

  (4) if injustice can be avoided only by enforcement of the promise.

**Donee §142**

Promisor - Promisee - Donee

Unless reserved,

(1)the duty to the promisor to the donee beneficiary cannot be released by the promisee or affected by any agreement between the promisor and promisee.

But

(2) if the promisee receives consideration for an attempted release or discharge of the promisor's duty , the donee beneficiary can assert a right to the consideration so received, but loses his right against the promisor.

**Creditor §143**

Promisor - Promisee - Creditor

A discharge of the promisor by the promisee is effective if

(1) the creditor beneficiary does not bring suit upon the promise or otherwise materially change his position in reliance thereon before he knows of the discharge or variation

And

(2) the promisee's action is not fraud on creditors

**UCC Statutes:**

**§ 2-207. Additional Terms in Acceptance or Confirmation.**

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the [contract](http://www.law.cornell.edu/ucc/2/2-106.html#contract_2-106). [Between merchants](http://www.law.cornell.edu/ucc/2/2-104.html#Between Merchants_2-104) such terms become part of the contract unless:

 (a) the offer expressly limits acceptance to the terms of the offer;

 (b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a [contract](http://www.law.cornell.edu/ucc/2/2-106.html#contract_2-106) is sufficient to establish a [contract for sale](http://www.law.cornell.edu/ucc/2/2-106.html#Contract for sale_2-106) although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Act.

**§ 2-609. Right to Adequate Assurance of Performance.**

(1) A [contract for sale](http://www.law.cornell.edu/ucc/2/article2.htm#Contractforsale) imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) [Between merchants](http://www.law.cornell.edu/ucc/2/article2.htm#BetweenMerchants) the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After [receipt](http://www.law.cornell.edu/ucc/2/article2.htm#Receipt) of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the [contract](http://www.law.cornell.edu/ucc/2/article2.htm#contract).

**§ 2-610. Anticipatory Repudiation.**

When either party repudiates the [contract](http://www.law.cornell.edu/ucc/2/article2.htm#contract) with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

 (a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (Section [2-703](http://www.law.cornell.edu/ucc/2/article2.htm#s2-703) or Section [2-711](http://www.law.cornell.edu/ucc/2/article2.htm#s2-711)), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this Article on the [seller's](http://www.law.cornell.edu/ucc/2/article2.htm#Seller) right to identify [goods](http://www.law.cornell.edu/ucc/2/article2.htm#Goods) to the [contract](http://www.law.cornell.edu/ucc/2/article2.htm#contract) notwithstanding breach or to salvage unfinished goods (Section [2-704](http://www.law.cornell.edu/ucc/2/article2.htm#s2-704)).

**§ 2-611. Retraction of Anticipatory Repudiation.**

(1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Article (Section [2-609](http://www.law.cornell.edu/ucc/2/article2.htm#s2-609)).

(3) Retraction reinstates the repudiating party's rights under the [contract](http://www.law.cornell.edu/ucc/2/article2.htm#contract) with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

**§ 2-703. Seller's Remedies in General.**

(1) A breach of contract by the buyer includes the buyer's wrongful rejection or wrongful attempt to revoke acceptance of goods, wrongful failure to perform a contractual obligation, failure to make a payment when due, and repudiation.

(2) If the buyer is in breach of contract the seller, to the extent provided for by this Act or other law, may:

(a) withhold delivery of such [goods](http://www.law.cornell.edu/ucc/2/article2.htm#Goods);

(b) stop delivery of the goods under Section [2-705](http://www.law.cornell.edu/ucc/2/article2.htm#s2-705);

(c) proceed under Section [2-704](http://www.law.cornell.edu/ucc/2/article2.htm#s2-704) with respect to goods unidentified to the contract or unfinished;

(d) reclaim the goods under Section [2-507(2)](http://www.law.cornell.edu/ucc/2/article2.htm#s2-5072) or [2-702(2)](http://www.law.cornell.edu/ucc/2/s2-7022);

(e) require payment directly from the buyer under Section 2-325(c);

(f) cancel;

(g) resell and recover damages under Section [2-706](http://www.law.cornell.edu/ucc/2/article2.htm#s2-706);

(h) recover damages for non-acceptance or repudiation under (Section [2-708(1)](http://www.law.cornell.edu/ucc/2/article2.htm#s2-708) or in a proper case the price (Section [2-709](http://www.law.cornell.edu/ucc/2/article2.htm#s2-709));

(j) recover the price under Section [2-709](http://www.law.cornell.edu/ucc/2/article2.htm#s2-709);

(k) obtain specific performance under Section [2-716](http://www.law.cornell.edu/ucc/2/article2.htm#s2-716);

(l) recover liquidated damages under Section [2-718](http://www.law.cornell.edu/ucc/2/article2.htm#s2-718);

(m) in other cases, recover damages in any manner that is reasonable under the circumstances.

(3) If the buyer becomes insolvent, the seller may:

(a) withhold delivery under Section [2-702(1)](http://www.law.cornell.edu/ucc/2/article2.htm#s2-7021);

(b) stop delivery of the goods under Section [2-705](http://www.law.cornell.edu/ucc/2/article2.htm#s2-705);

(c) reclaim the goods under Section [2-702(2)](http://www.law.cornell.edu/ucc/2/article2.htm#s2-7022).

**§ 2-708. Seller's Damages for Non-acceptance or Repudiation.**

(1) Subject to subsection (2) and to Section [2-723](http://www.law.cornell.edu/ucc/2/article2.htm#s2-723):

(a) the measure of damages for nonacceptance by the buyer is the difference between the contract price and the market price at the time and place for tender together with any incidental or consequential damages provided in Section [2-710](http://www.law.cornell.edu/ucc/2/article2.htm#s2-710), but less expenses saved in consequence of the buyer's breach; and

(b) the measure of damages for repudiation by the buyer is the difference between the contract price and the market price at the place for tender at the expiration of a commercially reasonable time after the seller learned of the repudiation, but no later than the time stated in paragraph (a), together with any incidental or consequential damages provided in Section [2-710](http://www.law.cornell.edu/ucc/2/article2.htm#s2-710), less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the [seller](http://www.law.cornell.edu/ucc/2/article2.htm#Seller) in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the [buyer](http://www.law.cornell.edu/ucc/2/article2.htm#Buyer), together with any incidental damages provided in this Article (Section [2-710](http://www.law.cornell.edu/ucc/2/article2.htm#s2-710)), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

**§ 2-709. Action for the Price.**

(1) When the [buyer](http://www.law.cornell.edu/ucc/2/article2.htm#Buyer) fails to pay the price as it becomes due the [seller](http://www.law.cornell.edu/ucc/2/article2.htm#Seller) may recover, together with any incidental damages under the next section, the price

(a) of [goods](http://www.law.cornell.edu/ucc/2/article2.htm#Goods) accepted or of [conforming](http://www.law.cornell.edu/ucc/2/article2.htm#conforming) [goods](http://www.law.cornell.edu/ucc/2/article2.htm#Goods) lost or damaged within a commercially reasonable time after risk of their loss has passed to the [buyer](http://www.law.cornell.edu/ucc/2/article2.htm#Buyer); and

(b) of [goods](http://www.law.cornell.edu/ucc/2/article2.htm#Goods) identified to the [contract](http://www.law.cornell.edu/ucc/2/article2.htm#contract) if the [seller](http://www.law.cornell.edu/ucc/2/article2.htm#Seller) is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the [seller](http://www.law.cornell.edu/ucc/2/article2.htm#Seller) sues for the price he must hold for the [buyer](http://www.law.cornell.edu/ucc/2/article2.htm#Buyer) any [goods](http://www.law.cornell.edu/ucc/2/article2.htm#Goods) which have been identified to the [contract](http://www.law.cornell.edu/ucc/2/article2.htm#contract) and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the [buyer](http://www.law.cornell.edu/ucc/2/article2.htm#Buyer) has wrongfully rejected or revoked acceptance of the [goods](http://www.law.cornell.edu/ucc/2/article2.htm#Goods) or has failed to make a payment due or has repudiated (Section [2-610](http://www.law.cornell.edu/ucc/2/article2.htm#s2-610)), a [seller](http://www.law.cornell.edu/ucc/2/article2.htm#Seller) that is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section.

**§ 2-711. Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods.**

(1) A breach of contract by the seller includes the seller's wrongful failure to deliver or to perform a contractual obligation, making of a nonconforming tender of delivery or performance, and repudiation.

(2) If the seller is in breach of contract under subsection (1), the buyer, to the extent provided for by this Act or other law, may:

(a) in the case of rightful cancellation, rightful rejection, or justifiable revocation of acceptance, recover so much of the price as has been paid;

(b) deduct damages from any part of the price still due under Section [2-717](http://www.law.cornell.edu/ucc/2/article2.htm#s2-717);

(c) cancel;

(d) cover and have damages under Section [2-712](http://www.law.cornell.edu/ucc/2/article2.htm#s2-712) as to all goods affected whether or not they have been identified to the contract;

(e) recover damages for nondelivery or repudiation under Section [2-713](http://www.law.cornell.edu/ucc/2/article2.htm#s2-713);

(f) recover damages for breach with regard to accepted goods or breach with regard to a remedial promise under Section [2-714](http://www.law.cornell.edu/ucc/2/article2.htm#s2-714);

(g) recover identified goods under Section [2-502](http://www.law.cornell.edu/ucc/2/article2.htm#s2-502);

(h) obtain specific performance or obtain the goods by replevin or similar remedy under Section [2-716](http://www.law.cornell.edu/ucc/2/article2.htm#s2-716);

(i) recover liquidated damages under Section [2-718](http://www.law.cornell.edu/ucc/2/article2.htm#s2-718);

(j) in other cases, recover damages in any manner that is reasonable under the circumstances.

(3) On rightful rejection or justifiable revocation of acceptance a [buyer](http://www.law.cornell.edu/ucc/2/article2.htm#Buyer) has a security interest in [goods](http://www.law.cornell.edu/ucc/2/article2.htm#Goods) in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, [receipt](http://www.law.cornell.edu/ucc/2/article2.htm#Receipt), transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved [seller](http://www.law.cornell.edu/ucc/2/article2.htm#Seller) (Section [2-706](http://www.law.cornell.edu/ucc/2/article2.htm#s2-706)).

**§ 2-712. "Cover"; Buyer's Procurement of Substitute Goods.**

(1) If the seller wrongfully fails to deliver or repudiates or the buyer rightfully rejects or justifiably revokes acceptance, the [buyer](http://www.law.cornell.edu/ucc/2/article2.htm#Buyer) may "**cover**" by making in [good faith](http://www.law.cornell.edu/ucc/2/article2.htm#Goodfaith) and without unreasonable delay any reasonable purchase of or [contract](http://www.law.cornell.edu/ucc/2/article2.htm#contract) to purchase [goods](http://www.law.cornell.edu/ucc/2/article2.htm#Goods) in substitution for those due from the [seller](http://www.law.cornell.edu/ucc/2/article2.htm#Seller).

(2) The [buyer](http://www.law.cornell.edu/ucc/2/article2.htm#Buyer) may recover from the [seller](http://www.law.cornell.edu/ucc/2/article2.htm#Seller) as damages the difference between the cost of cover and the [contract](http://www.law.cornell.edu/ucc/2/article2.htm#contract) price together with any incidental or consequential damages as hereinafter defined (Section [2-715](http://www.law.cornell.edu/ucc/2/article2.htm#s2-715)), but less expenses saved in consequence of the seller's breach.

(3) Failure of the [buyer](http://www.law.cornell.edu/ucc/2/article2.htm#Buyer) to effect cover within this section does not bar him from any other remedy.

**§ 2-713. Buyer's Damages for Non-delivery or Repudiation.**

(1) Subject to Section [2-723](http://www.law.cornell.edu/ucc/2/article2.htm#s2-723), if the seller wrongfully fails to deliver or repudiates or the buyer rightfully rejects or justifiably revokes acceptance:

(a) the measure of damages in the case of wrongful failure to deliver by the seller or rightful rejection or justifiable revocation of acceptance by the buyer is the difference between the market price at the time for tender under the contract and the contract price together with any incidental or consequential damages under Section 2-715, but less expenses saved in consequence of the seller's breach; and

(b) the measure of damages for repudiation by the seller is the difference between the market price at the expiration of a commercially reasonable time after the buyer learned of the repudiation, but no later than the time stated in paragraph (a), and the contract price together with any incidental or consequential damages provided in this Article (Section 2--715), less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

**§ 2-715. Buyer's Incidental and Consequential Damages.**

(1) Incidental damages resulting from the [seller's](http://www.law.cornell.edu/ucc/2/article2.htm#Seller) breach include expenses reasonably incurred in inspection, [receipt](http://www.law.cornell.edu/ucc/2/article2.htm#Receipt), transportation and care and custody of [goods](http://www.law.cornell.edu/ucc/2/article2.htm#Goods) rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the [seller's](http://www.law.cornell.edu/ucc/2/article2.htm#Seller) breach include

(a) any loss resulting from general or particular requirements and needs of which the [seller](http://www.law.cornell.edu/ucc/2/article2.htm#Seller) at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.