**What Law Applies?**

* UCC (UCC 1-103: If no UCC rule, default to common law)
* Common Law (Cases, Restatement; services and real property)
* Predominant Factor Test (UCC 2-105; for Hybrid Ks; which predominates, service or good?)

**Is There an Enforceable Contract?**

* **Consideration (2RK §75)**
	+ Bargained-For Exchange (2RK §71.1)
		- *Hamer* (uncle and gambling nephew; forbearance is enough)
	+ External Manifestation before Intent (2RK §71 v 2RK §81)
		- *Kirksey* (creepy brother-in-law; gratuitous; reliance is not enough)
	+ Unilateral K (promise for performance); Bilateral K (promise for promise)
* Special Cases of Consideration:
	+ **Invalid Claims** (2RK §74) (no consideration)
		- *Hartle v. Stahl* Test (surrender of forbearance to assert invalid claims are not consideration)
		- *Fiege* (bastard kid; who’s the father?; court says K enforceable because made in good faith)
	+ **Gratuitous Promises** (no consideration)
		- *Feinberg* (retirement; company can’t get back retirement annuity)
		- *Kirksey* (creepy brother-in-law)
	+ **Past Performance** (2RK §71.2) (no consideration)
		- *Feinberg* (retirement)
	+ **Employment Agreements**
		- *Lake Land* (at-will employee and noncompetition agreement; consideration here-debatable)
		- *Pine River State Bank* (employee handbooks are unilateral contracts)
	+ **Illusory Promises** (2RK §77) (no consideration)
		- *Strong* (Rard; wife as surety; loan; until he wants money)
	+ **Conditional Promises** (2RK §76) (consideration)
		- *Mattei* (land deal; satisfaction clause; court says consideration because of good faith)
		- Satisfaction Clauses: Policed by Good Faith
			* “Fancy Taste in Judgment”: subjective; individual satisfaction
			* Commercial value or quality: objective; reasonable person
	+ **Requirements Contracts** (UCC 2-306) (opposite: Outputs Contracts) (consideration)
		- Good Faith (UCC 1-201)
		- *Eastern Air Lines* (posted price for fuel; requirements contract)
	+ **Implied Promise** (consideration)
		- *Wood v. Lucy* (market fashion brand)
			* Exclusive Agency Contract (UCC 2-306.2)
* **Substitutes for Consideration:**
	+ **Reliance** (2RK §90) (limits recovery “as justice so requires”)
		- *Feinberg* (retirement; relied on payment because “disabled)
	+ **Promissory Estoppel** (1RK §90) (old standard for reliance)
		- *Ricketts* (grandfather pays granddaughter to stop working)
	+ **Restitution:**
		- Assumpsit (“he has undertaken”, cost avoided)
			* *Cotnam* (doctor helps unconscious man; court awards cost avoided bc dead)
		- Quasi/Constructive K (unjust enrichment, benefit conferred)
			* *Callano* (shrubbery on dead guy’s house; no benefit conferred to co but can sue dead)
			* *Pyeatte* (asshole husband makes wife pay for law school; remanded- wifely duties?)
* **Offer and Acceptance:**
	+ Assent (objective v. subjective)
		- *Lucy v. Zehmer* (drunkies accidentally sell farm; outward manifestation matters)
	+ Intent to be Bound
		- *Consarc* Test (1. Mutual assent to exchange acts/promises sufficient to create binding K; 2. To avoid K, party must express intent not to be bound)
		- *Winston* Factors Test (whether there has been…express reservation of right not to be bound; partial performance; all terms agreed upon; type of K usually committed to writing)
* **Offer (2RK §29) (UCC 2-206) (Test: can offeree create K just by saying “I accept”?; specific)**
	+ **Invitation to Deal** (not offers)
		- *Owen* (land owner says impossible to sell for less than $16K)
		- **Price Quotes**
			* *Fairmount* (order for carloads of glass; K formed b/c intent to be bound, price and quantity agreed to in price quote carry over)
		- **Auctions** (UCC 2-328) (2RK §28) (invitations to deal unless selling “without reserve”)
		- **Advertisements** (generally invitations to deal unless clear, definite, specific quantity term)
			* *Lefkowitz* (man wants to by lady stole; first come first serve restricts offer to ltd number)
	+ **General Offers**
		- **Rewards** (offers because restricted usually to one person)
	+ **Construction Contracts**
		- Rescission
			* *Kemper* Test (1. Mistake is material 2. Mistake not a result of legal duty 3. Enforcement is unconscionable 4. Other party can be placed in status quo 5. Party seeking relief gives prompt notice (discovery) 6. Party seeking relief restores/offers to restore everything)
		- *Elsinore* (contractor discovers missing plumbing bill; rescission okay)
			* *Lamoge* (5%, not enough); *Kemper* (30%); *Kastorff* (10%)
* **Acceptance (2RK §30) (UCC 2-206)**
	+ **Notification:**
		- Bilateral (necessary)
			* *International Filter* (Conroe Gin; acceptance upon signing by executive bc this was contracted)
		- Unilateral (not necessary unless person wouldn’t know)
		- Silence is not acceptance
		- By Performance (2RK §53.1) (new rule: only if offer invites such acceptance)
			* *Allied Steel* (Ford starts performing; indemnity K; court says this is acceptance; old rule)
	+ **Nonconforming Goods as** **Accommodation** (UCC 2-206) (acts as counteroffer)
		- *Corinthian Pharmaceuticals* (more expensive vaccine shipped at cheaper price; court says accommodation not performance on K because of notice)
* **Termination of the Power of Acceptance:**
	+ **Lapse** (reasonable time; face to face)
	+ **Revocation** (common law—revocable up until accepted; from perspective of reasonable offeree)
		- **Direct Revocation** (2RK §42)
		- **Indirect Revocation** (2RK §43)
			* *Dickinson* (“leave offer open until 9am”; *Hoover* test; court says no K because knew he was selling to someone else)
			* *Hoover* Test (telling someone else is considered indirect revocation)
		- **Options Contracts** (2RK §257) (leave offer open; consideration or reliance required)
			* *Dickinson* (“leave offer open until 9am”; *Hoover* test; court says not an options K)
			* Options Contracts Created by Part Performance/Tender (2RK §45) (only for unilateral K)
				+ *Ragosta* (forkshop and bank loan; no K because loan is not part of performance)
		- **Firm Offers** (UCC 2-205)
		- General Offers (2RK §46) (acceptance terminated when notice of termination given publicly)
	+ **Death/Incapacity** (exception: options Ks)
	+ **Offeree’s Rejection** (2RK §37)
* **Mailbox Rule:**
	+ Conditions:
		- Acceptance and offer made in the same form (2RK §63)
		- Acceptance effective upon dispatch (2RK §62)
		- Offers effective upon receipt
		- Rejection effective upon receipt (2RK §40)
		- Offer irrevocable and acceptance effective upon receipt
	+ Special Cases:
		- **Overtaking Rejection** (ARRA)—no K formed
		- **Overtaking Acceptance** (RAAR)—K formed
		- **Weird Situation** (RARA)—no K formed; later A is counteroffer
* **Battle of the Forms:**
	+ **Mirror Image Rule**
		- **Last Shot Rule** (mitigated in practice; implied or precatory/suggestive terms)
* **Transcending the Mirror Image Rule (UCC 2-207)**
	+ **Materiality and Surprise Test** (based on industry standard)
		- *Northrop v. Litronic* (defense K for wiring boards with different warranty terms; material)
	+ **Additional Terms**:
		- *Dorton* (carpet man; arbitration is additional term and material under UCC)
		- *Itoh* (steel coils; expressly conditional acceptance)
	+ **Different Terms:**
		- *Northrop v. Litronic* (defense K for wiring boards with different warranty terms; majority rule)
* **Precontractual Liability** (Rare) (UCC does not have a good faith in negotiation requirement)
	+ **Orthodox K Doctrine** (no binding K until O/A; liability can still be incurred beforehand)
	+ **Drennan Rule** (2RK §45 + 1RK §90 = 2RK §87.2); also uses 2RK §32 (choose unilat/bilat if unclear)
		- *Drennan* (subcontractor’s bid too low; court says revocation not allowed bc implied promise that he keeps offer open and contractor relies)
	+ Restitution when party has conferred benefit in negotiations
		- *Songbird* (plane broker company; court says service voluntary and protects self)
		- *Precision Testing* (car test emissions cert do not benefit self)
	+ Reliance for misrepresentation in negotiations
		- *Markov* (warehouse scammer; tried to sell and lease at same time)
	+ Reliance before negotiations (extremely rare)
		- *Red Owl* (franchise scam awards reliance based on 1RK §90)
* **Statute of Frauds:**
	+ Does SoF Apply? (if more than one kind of K, has to satisfy requirements for each category)
		- **Performance can’t be complete in less than one year**
			* Majority Rule: any chance it couldn’t be complete in one year
			* Minority Rule: reasonable/probable performance in one year
			* Exception: full performance has already occurred
		- **Agreement for transfer of real estate**
			* Exception: leases less than one year; part performance (permanent improvements are evidence of K)
		- **Surety agreements** (promise to answer for debt of another)
			* Exception: if main benefit is for surety
		- **Agreement for sale of goods $500 and over (UCC 2-201)**
			* Writing must have quantity term, signature, indicate K for sale has been made; does not need every term or correct terms
			* Exceptions: (UCC 2-201.3)
				+ Special order good with no market
				+ Rule of Effrontery (admits to K; only enforceable to quantity/price admitted)
				+ Payment made/goods accepted
				+ Merchant’s Exception (between merchants; reasonable amount of time; sufficient against sender; received/delivered; can object in 10 days in writing)
			* *St. Ansgar Mills* (grain dealer says no enforceable K because written confirmation not delivered in reasonable amount of time; court says reasonable based on conduct)
	+ Is there a writing?
		- UCC 1-201(b)(43) (can be more than one doc)
		- UCC 1-201(b)(37) (lenience in signature; can be marking or stamp)
	+ Exception?
	+ Reliance prevents enforcement? (2RK §139, §30 must be satisfied) (caution: split on applicability to UCC)
		- Majority Rule: must rely to point that agreement would have been reduced to writing
		- *Monarco* (relative gets screwed out of land after working lifetime for family; court says two factors award reliance—unconscionable injury to P; unjust enrichment to D)
* **Defenses to K Formation:**
	+ **Capacity** (minors—voidable except for necessities; mentally infirm; drunks)
		- *Kiefer* (minor buys car; under 21 clause on K; can’t sue)
	+ **Overreaching/Duress** (2RK §175-176) (must show resistance; exception: threats of legal activity)
		- *Alaska Packers* (workers quit and demand more money; no replacement workers avail; duress)
			* Pre-Existing Duty Rule (2RK §73—consideration required; UCC 2-209—good faith required)
		- *Watkins* (cellar excavation paused, bigger rock more money demanded, no protest; no duress)
	+ **Concealment** (no good faith requirement for negotiation)
		- *Swinton* (termites; no requirement to disclose bc pure concealment; latent defect)
		- *Kannavos* (8 apt unit house against code; concealment bc unpure concealment; patent defect)
		- **Pure Concealment** (no partial disclosure made or allowed)
		- **Latent Defect** (not discoverable)
		- **Patent Defect** (discoverable)
	+ **Misrepresentation** (scienter/malintent and factual material; exception: fiduciary relationship and superior knowledge)
		- *Vokes* (dancing grandma tricked into buying tons of dance lessons; exception case)

**What Does the Contract Mean?**

* **Parol Evidence Rule (says when prior terms make it into a K)**
	+ Exceptions: Later Agreements (2RK §123); extrinsic evidence still used to prove fraud/validity of agree.
	+ **No Oral Modification Clause** (nothing after the writing makes it in; in practice, can use later agree.)
	+ **Merger/Zipper Clause** (nothing before the writing makes it in)
	+ **Integrated Agreement Test** (2RK §209.2, 210.3)
		- **Unintegrated** (add and contradict terms, including subtractions)
		- **Partially Integrated** (can add; can’t contradict)
		- **Completely Integrated** (can’t add or contradict)
	+ *Gianni* (no tobacco, no soda not included in K; terms stay out)
		- Test: (restrict.) naturally and normally would have been included? Yes🡪not allowed in, completely integrated
	+ *Masterson* (ranch w/ buyback provision, gov. scammers; terms let in)
		- Test (1RK): could term be made as separate agreement? Yes 🡪 partially integrated, allowed in
	+ **2RK 216(2)(b) Test**: Naturally would have been omitted? Yes 🡪 partially integrated; allowed in
	+ **UCC Test** (least restrict.): terms certainly would have been included? Yes 🡪 not allowed in, completely integrated
	+ In cases of left out terms due to Mutual Mistake, parol evidence rule does not apply!
		- *Bollinger* (construction topsoil replacement; court says have to honor bc performed)
* **Plain Meaning Rule/ Four Corners Rule (question of law; scope of review-erroneous)**
	+ Test:
		- Is the term ambiguous? (can use dictionary, referenced docs, UCC trade usage)
		- If so, use extrinsic evidence to determine meaning.
	+ **New York Jurisdictions:** only use the document to determine if term is ambiguous
	+ **Traynor’s Rule/California Jurisdictions**: use extrinsic evidence to determine if the term is ambiguous
	+ *Pacific Gas* (indemnity clause for property loss; Traynor rule created) (CA)
	+ *Greenfield* (Ronnettes, synchronization record rights, not ambiguous) (NY)
	+ *Trident* (loan repayment; have to apply CA rule, reverse and remand) (CA)
	+ Extrinsic Evidence in UCC (UCC 2-202) (Ranked by import)
		- **Express Terms**
		- **Course of Performance** (UCC 1-303a) (performing on K in question)
		- **Course of Dealing** (UCC 1-303b) (regards to other Ks between parties)
		- **Usage of Trade** (UCC 1-303c) (trade behavior; exception: if person is new to trade, not applicable unless should have known; jury question)
		- *Frigaliment* (Friendly’s “what is chicken?”) (NY)
		- *Hurst* (50% horse meat not really 50%) (CA)
		- *Nanakuli* (requirements K for asphalt; “price” includes price protect as industry standard)
		- *Columbia Nitrogen* (options K for sulfur w/ merger clause; can use UCC w/ this if not negated)
* **Limits on Objective Interpretation:**
	+ Old Rule:
		- **Latent Ambiguity** (does not readily appear in document; arises from application)
			* *Raffles* (cotton sales referred to 2 diff shipments on 2 diff ships with same name)
			* *Oswald* (swiss coins v swiss coin collection) Rule: no meeting of the minds, no K
		- **Patent Ambiguity** (ambiguity that appears on face of K; arising from language)
			* *Colfax* (union printing press sent to arbitration b/c ambiguity was patent)
	+ New Rule: If neither side can prove what the other is thinking, equally blamable, no K (2RK §201)
* **Implied Warranties and Gap Filling (Can generally K around default terms; quantity is essential and must be included) (UCC 1-302)**
	+ **Caveat Emptor** (buyer beware; contract for quality)
	+ **Implied Warranty of Merchantability** (UCC 2-314)
		- *Koken* (fire blanket used as welding shield; failed to prove ordinary use via expert)
	+ **Implied Warranty of Fitness** (UCC 2-315)
		- *Lewis v. Mobil* (wrong fluid for hydraulic system; subjective standard; judgment for P)
	+ **Express Warranties** (Test: affirmation of fact or promise, relates to goods, basis of bargain) (UCC 2-313)
		- *Bayliner* (sale of ship; “gets you to prime fishing grounds” considered opinion)
	+ **Excluding Implied Warranties** (UCC 2-316)
		- *South Carolina Electric and Gas* (warranty after fire; disclaimer not satisfied under subsect 2)
		- *Henningsen* (auto accident, sued Chrysler warranty of merch; court says no K bc not conspic)
* **Required Terms: Good Faith (UCC 1-304, 2RK §205)**
* **Limits on Bargain and Performance:**
	+ **Unfairness** (overbearing provision conflicts with public policy; esp specific performance)
		- *McKinnon* (jerk neighbor loans money for no building on land)
	+ **Standard Form Contracts/ Boilerplate**
		- Do we have standard form K? Probably enforceable
		- Do we have a K of adhesion? Maybe enforceable
		- How have courts addressed?
			* *Henningsen* (strict construction against drafter; construe favorable to recipient, whether or not they knew)
			* *Klar* (adequate notice and assent)
			* *Graham* (not enforceable if doesn’t conform to reasonable expectation of parties)
	+ **Contract of Adhesion** (concerned with whether party to a standard K can reasonably asset) (2RK 211.3)
		- **Informed minority view** (informed minority will make consumer choices based on K)
		- *Henningsen* (auto accident sued Chrysler; not at arm’s length)
		- *Graham v. Scisssor Tail* (boilerplate records K w/ “surprise” arbitration clause)
		- *Klar* (parcel room claim ticket only $25 in damages for expensive package)
	+ **Duty to Read** (K enforceable even if not read or understood by party; exception: K is unintelligible)
	+ **Duty to Disclose** (major consumer protection through disclosure laws)
	+ **Unconscionability** (question of law; subjective standard (UCC 2-302)
		- **Procedural** (unfairness in bargaining process; proof of defect in process of K formation or incompetence of party against whom agreement is to be enforced; required by Eppstein)
		- **Substantive** (unfairness in outcome/terms)
		- *Williams v. Walker Thomas Furniture* (woman bought stereo and defaulted; store repo all items; court says unconscionable)
			* Rent to Own Term
			* Cross-Collateralization Term (default on last item; store can repossess all)
			* Repossessions
		- *Jones v. Star Credit* (super expensive fridge; court says price to high; use cost/profit ratio)
		- *Eastern Air Lines* (fuel freighting; court says within reasonable elasticity of requirements K)

**Was the Contract Breached?**

* **Duty** (obligation)
* **Condition** (event that triggers/negates a duty maturation)
	+ **Condition precedent** (event occurs before performance; most common)
	+ **Condition subsequent** (performance until an event)
	+ **Condition concurrent** (condition runs alongside performance)
* **Express Condition (stated in contract; perfect performance required)**
	+ *Luttinger* (land purchase conditioned on obtaining mortgage rate; express condition, no duty to buy)
	+ *Peacock* (no payment unless payment by owner; not expressly conditional; courts don’t like reading conditions into Ks)
	+ *Gibson* (portrait of dead daughter; fancy taste in judgment satisfaction clause; condition not satisfied)
* **Constructive Condition (imposed by law/ read into contract by judge; requires substantial performance)**
	+ **Independent Covenant** (duty doesn’t depend on prior performance; separate suit for breach)
	+ **Dependent Covenant** (duty depends on other party’s prior performance; self-help remedy)
	+ *Kingston* (apprentice; did not pay sufficient security; duty to hand over business never matured)
	+ **UCC Implied Concurrent Conditions** (UCC 2-511)
		- Tender (duty to pay; duty to deliver) (UCC 2-503, 2-507)
	+ **Substantial Performance** (default if perfect performance not specified; jury question)
		- Subjective standard to determine whether failure is material (Factors listed in 2RK §241)
		- *Jacobs & Young* (Reading pipe; substantial performance because not willful)
* **UCC Perfect Tender Rule (UCC 2-601)**
	+ 3 ways to mitigate: **Cure** (UCC 2-508), **Revocation** (UCC 2-608), **Installment Ks** (UCC 2-612)
* **Divisibility/Severability (common law installment Ks; Test: distinct items/performance, separate payment; if payment is whole, not severable)**
	+ *Gill v. Johnstown Lumber* (logs, what does “feet” mean, flood; severable)
* **Repudiation of Duty/Termination of K**
	+ **After acquired evidence** (evidence discovered after suspension justifies repudiation; except.-employment)
	+ **Material Breach** (factors listed in 2RK §241)
		- **Time is of the essence clause** (2RK §242c) (late tender is material breach)
		- *Walker* (sign rental and tomato issues not enough to make material breach)
	+ **Assurance** (2RK §251, UCC 2-609) (right to suspend until assurance; failure to assure is repudiation; if assurance is given and breach occurs, normal recovery; can also sue for inadequate assurance)
* **Defenses to Breach:**
	+ **Mutual Mistake** (Test: mutual mistake, material fact, essential part of bargain—higher standard than concealment)
		- Remedies: Restitution (2RK §376, 384), Unjust Enrichment (2RK §376)
			* Exception: later discovery of valuable attribute not grounds for rescission (2RK §154)
		- *Renner* (no wells on jojoba land; both parties thought there was water)
		- *Sherwood* (pregnant cow; court says this is totally different cow)
		- *Wood* (diamond in the rough; no mutual mistake because compromise/potential in price)
	+ **Impracticability** (Test: (1) contingency occurred; Corbin’s contingency test—How much risk did the promisor assume? (2) risk not allocated by agreement or custom; no express/implied conditions (3) contingency renders performance commercially impracticable; objective unless knowledge by both parties of ltd capabilities; price is not enough) (UCC 2-615, R2K 261)
		- Remedies: *Quantum Meruit* (restitution for quasi-contracts)
		- **Supervening Impracticability**: events that arise after K is formed rendering K impracticable
		- **Existing Impracticability:** events that exist before K is formed that neither party is aware of rendering K impracticable; can also rely on mutual mistake in this case
		- *Taylor* (burned down music hall before party week; impracticable)
		- *Transatlantic Financing* (seizure of Suez Canal forces different shipping route; not impracticable b/c shipper impliedly bore risk)
		- *Wegematic* Note Case (revolutionary technology, undeliverable; risk on seller)
	+ **Frustration of Purpose** (Test: substance of K?; does substance assume existence of particular state of things?) (R2K 261)
		- Remedies: If K is impossible to perform due to nonexistence of state of things, no breach, K void.
		- *Krell* (P rents rooms for coronation of King, who’s a sickie; frustration of purpose)
		- Note Case Derby Day Cab (P hires cab to go to Derby Day races, cancelled; no frustration of purpose)
		- Difference between frustration of purpose and impracticability: value of performance to party (not cost) is different; possible to perform but not desirable.

**Remedies:**

* **Two General Types:**
	+ Compensatory (money damages)
	+ Specific (court order directing promisor to perform)
* **Economics of Remedies:**
	+ **Efficient Breach Hypothesis**
		- **Kaldor Hicks Efficiency** (pareto optimal outcome)
		- **Pareto Improving** (transactions that make no one worse off, while making someone better off)
* **Three Protected Interests (Common Law)**
	+ *Sullivan v. O’Connor* (botched plastic surgery; takes reliance instead of expectation damages)
	+ Expectation (benefit of bargain; puts promisee where he would’ve been w/o breach) (2RK §344a)
		- Disgorgement (D’s profits used as measure of damages when profits define P’s loss)
	+ Reliance (expenses incurred; puts promisee where he would have been before K signed) (2RK 344b)
	+ Restitution (benefit bestowed to breaching party) (2RK §344c)
* **Calculating Expectation (R2K §347)**
	+ Formula A: Damages = Loss in value – Cost avoided + Other losses – Loss avoided
	+ Formula B: Damages = Reliance + Profits + Other losses – Loss avoided
	+ Other Losses:
		- **Incidental** (costs incurred in reasonable effort to avoid loss)
		- **Consequential** (harm to persons or property)
	+ **Overhead/Fixed Costs** (generally divided into profits and naturally reallocated)
		- *Vitex* (cloth processing bailed; D wants overhead in loss avoided category; court says no)
* **Economics of Specific Performance**
	+ **Allocatively Efficient Outcome** (resources end up in hands of party who wants it)
	+ **Coase Theorem** (parties bargain to allocatively efficient outcome; efficiency based on transaction cost)
* **Specific Performance:**
	+ **Injunctions** (creates bilateral monopoly and holdout problems where price negotiations fail)
		- *Walgreen v. Sara Creek* (pharmacy spot to Rite Aid; injunction granted b/c calculating loss hard)
	+ Employment (in general, don’t do this because this is like involuntary servitude)
		- Damages = old salary [– new salary (if job replaced)]
			* New job must be obtained but-for breach; otherwise, recover full salary
			* Collateral Source Rule (damages reduced by employee compensation, unemployment)
			* Expandable Volume Business (ex: construction; can take multiple jobs at one time; breach results in lost volume)
* **Quantum Meruit Recovery** (as much as he deserved; reasonable value of services rendered in quasi-contractual relationship) (2RK §34)
	+ *Algernon Blair* (steel erection; failure to pay for crane)
* **Remedies for Buyers:**
	+ Nondelivery
		- **Cover** (good faith, without unreasonable delay, reasonable substitution) (UCC 2-712)
			* Damages = Cover cost – K price + Incidental + Consequential – Expenses saved
			* *Laredo Hides* (output K; replacing cow hides is expensive; payback!)
		- **Market Damages** (UCC 2-713)
	+ Defective Delivery:
		- **Specific Performance** (subjective; money is not adequate) (2-716)
			* *Campbell’s Soup Co* (chantanay carrots-scam; sp. perf. b/c special type and unavailable)
			* *Klein* (Pepsico jet; no sp. perf. b/c cover available, lower price is not good reason)
			* *Morris v. Sparrow* (Keno the horse; sp. perf. b/c special relationship not replaceable)
			* Requirements K’s (more likely than not specific performance)
				+ *Laclede v. Amoco* (natural gas distributed to residential area; court says sp. perf. b/c public good, replacement K not available, difficult to calculate, upfront investment, etc.)
* **Remedies for Sellers:**
	+ **Cover** (UCC 2-706) (note: no consequential damages)
	+ **Market Damages** (UCC 2-708.1)
	+ **Lost Volume Damages** (predictable number of customers; capacity to make 1 additional sale after breach where breach cost seller additional profit; exception: custom goods) (UCC 2-708.2)
		- *Diasonics* (medical equipment resold; damages for lost profit if can prove additional sale would be profitable)
			* **“Due Credit or Proceeds of Retail”:** scrap price (UCC 2-704 scraps calculation)
	+ **Action for the Price** (UCC 2-709) (specific performance for sellers)
* **Limitations to Damages:**
	+ **Duty to Mitigate** (can’t affirmatively act to increase damages)
		- *Luten Bridge* (bridge builder gone wild)
		- Employment (similar replacement; reasonable effort to obtain)
			* *Parker v. Twentieth Century Fox* (Bloomer Girl and Big Country Big Man-inferior)
		- Exception to Replacement: if cost grossly and unfairly out of proportion with good obtained)
			* *Jacobs & Young* (Reading pipe, replace my house)
	+ **Consequential Damages** (standard: foreseeability; natural/probable consequence (2RK §351.1); buyers only can recover, seller had reason to know, objective (UCC 2-715.2)
		- *Hadley* (crankshaft, lost profits; no cons damages; not probable, not natural, weren’t communicated)
	+ **Certainty in Proving Damages** (standard: reasonable certain) (2RK §352, UCC 1-106)
		- New businesses generally can’t claim damages for lost profits because speculative (exception: where proof via expert witnesses)
			* *Fera* (book and bottle shop, no space; lost profits awarded; procedural technicality bc App SOR = abuse of discretion)
	+ **Liquidated Damages** **Clauses** (set up at K time; formula for damages; enforcement is question of law; standard: reasonable forecast of damages)
		- **Two Look View** (Minority/UCC Rule) (reasonable forecast at time of K formation or at time of breach)
		- **One Look View** (Majority Rule) (reasonable forecast at time of K)
		- *Wasserman* (cancelled lease; liquidated damage of gross receipts might be unreasonable)