**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)