

Contracts – Baker

Formation - Was a K formed? – offer and acceptance

Terms - What are the terms?

Breach - Was there a breach according to terms?

Remedy - What is appropriate remedy?

I. APPLICABLE LAWS

A. Common Law –

1. Decisions of the Courts
2. Apply – generally everywhere except sale of goods

B. Statutes

1. Article 2 of the UCC –
2. Apply - Sale of Goods (moveable personal property)
anything from a t-shirt to a company

II. FORMATION OF CONTRACTS - Bargaining

A. Offer

Two Requirements – Manifestation & Legal Intent

1. What is an offer? - Definitions

a. Manifestation

Manifestation of the willingness to enter a contract

1. Objective – conduct
 - Impression on promisee from promisor
 - In a reasonable person, would an impression create acceptance?
 - Williston – conduct crucial – intent unimportant
 - Sets standard of consistency
 - a. Express
 - b. Course of Dealing
 - c. Course of Performance

2. Subjective – intent

- Focused on intent
- Creates ambiguity
- Not really important

b. Legal Intent - Characteristics:

1. Promises - futurity
2. Power- confer a power on offeree to contract
3. Terms of K

← Terms →

← Contract →

4. Commitment
 offeror's state of mind
 intends to follow through
 willingness to contract at a given time

2. What is **not** an offer? - distinguishing from offers

- A. Solicitations to do business –
Jenkins Towel Service, Inc. v. Fidelity-Philadelphia Trust Co.

- Poor precedent for offer & acceptance
- Fidelity is offeree because it maintains power to contract
- Fidelity lacks commitment - ∴ not an offer
- Trust – donor gives property to co. which pays dividends to beneficiaries
- Why would Fidelity take a more onerous offer?

Fiduciary Duty

- B. Expressions of opinion

- C. Jest –

Armstrong v. M'Ghee

Take this damn horse! Claims he was joking

- No contract
- Did not intend contract
- No consideration, price unreasonable

- D. Solicitations of filial or familial affection –

Hertzog v. Hertzog

Son worked for father; father died;

son suing for wages during life

- No Contract Implied, Express or otherwise
- Testimony as to father indicated he specifically had not intent to pay wages
- Not wage earner; Not slave; Dutiful son

E.

- E. Preliminary Negotiations - GM

lacking commitment

lacking fixed purpose

- F. Price Quotations

standing alone

3. Special Types of Offers

- A. Standing Offers

- Specific to one person
- Can not be revoked if order outstanding

B. Firm Offers - §2-205

Firm Offer §2-205

- an offer that can not be revoked
- mini-contract to contract
- common law – offeree has paid to keep offer open
- consideration required to keep offer open
- **Option** – right to enter a contract
- §2-205 – **merchant may sign without consideration and offer becomes unrevokable**
- Mini contract with all terms – signing sub for consideration
- Abolishes Dickinson v. Dodds which requires consideration for separate irrevocable for maximum of 3 months
- **Formality of Consideration** – a writing (formality) may be substituted for consideration in an option k of option (offer)

C. Unilateral

- Differs on offer and not performance
- Offer that requires performance instead of promise
- If ambiguous → bilateral
- **Unilateral/Bilateral Sliding Scale**

Unilateral

- ↓ Offer – Must be Specific
- ↓ Acceptance – Begin Performance
- ↓ Notice of Beginning Performance
(Express?)
- ↓ Must Act Diligently/Can Not Provoke
(Promise ↔ Promise)
- ↓ Performance → Consideration

Bilateral

- Once notice of beginning performance given, can not revoke
 - Wormser – Key Bridge
- Crook v. Cowan
- White v. Corlies
- Unilateral Contract Trick –
 - Performance rendered and non-conforming party acts as if actually performing a counter-offer
 - §2-206 (1)(b)
 - worded to prevent unilateral k trick

- shipment of non-conforming goods not an acceptance if notified that offered as accommodation

B. Acceptance

1. What is an acceptance?
Manifestation of offeree to accept offer
 - A. Promise
 - B. or Act
 - C. Creates liability or vulnerability in offeror
 - D. Commitment equals liability
2. Who is accepting?
 - A. Person accepting must be person to whom offer was made
 - B. Only in reward, prize or contest – Offeree must know of offer at time of acceptance
 - Taft v. Hyatt
black man assaulted white woman;
masons could not collect because they were unaware of reward at time of acting

Jural Acts – not a contract – reward

 - object for performance rendered
 - gets benefit
 - can collect independently of knowledge
3. How are they accepting?
 - A. Hierarchy of Contracts
 1. Look for a bilateral first
 2. If none, then go to unilateral
 3. Look at Language and Course of Dealing
 - B. Hierarchy of Acceptance - §2-208
 1. **Express**
Mailbox Rule – only applicable for acceptance
 - if reasonable to respond by mail → acceptance effective at time sent
 - Langelier
 2. **Course of Performance**
 - single k with multiple or ongoing performance
 3. **Course of Dealing**
 - Multiple k's between same parties
 - §1-205
 4. **Usage of Trade - §2-208**
 - both parties belong to the same trade and have dealt with each other → course of performance
 - C. Silence

- Silence can not be stipulated as a form of acceptance; unless parties have a course of dealing which indicates that silence was previous for of acceptance
 - National Union Fire Insurance Co. v. Ehrlich held onto policy for 2 months before rejecting
 - Austin v. Burge – newspapers by mail-took home
- Offeror may make silence acceptance, but must accept ambiguity of silence
- Restatement § 69
 1. Offeree can not assent by silence without monetary exchange unless it was obviously intended as gratuitous
 - 2.
 3. Because of previous dealings – silence can be acceptable according to custom or trade
- D. Start of Performance – look to nature of offer
 - If offer says only by performing – unilateral
 - No K
 - Offer can not be revoked once notified
 - If reward –
 - communication of start of action not necessary
 - Carlill v. Carbolic Smoke Ball Co. lady bought ball to guard against flu
 - no need to notify until time to collect
 - actual use (performance) constitutes acceptance
 - getting flu was not part of the performance but a condition
 - If not stipulated – bilateral
 - Performance creates acceptance and K

II. Defenses to Contract Formation

A. Termination

1. Termination of Offers

A. Lapse of Time

Los Angele Traction Co. v. Wilshire – k to build streetcar

B. Death Prior to Acceptance

Jordan v. Dobbins – k for future died before accept

C. Revocation

1. How does revocation happen?

A. Statement that offeror has changed his mind

B. Conduct indicating change of mind

EX: Selling to someone else

Dickinson V. Dodds

sold house to other party before could accept

- C. Offeree must be aware of what was done to revoke the offer. **Offeree awareness.**
- For ex, if I change my mind in the shower, is the offeree there to witness it?
 - Elsinore Union Elementary School District v. Kastorff - knew of mistake at time of acceptance ∴ revoked prior to acceptance
 - Cole-McIntyre-Norfleet Co. v. Holloway order for meal; store unaware of revocation

2. When does revocation become effective? Two rules with respect to timing:
- A. Must complete revocation before acceptance occurs.
- B. If revocation is sent through the mail, it is not effective until **received**. (different from mailbox rule of acceptance).
3. When not
- A. Option – not governed by §2-205 because involves items other than trade
Promising that I will keep offer open, and I am receiving consideration for that promise to keep it open. K to k
- B. Promissory Estoppel
Restatement §90
Foreseeably relied upon: offer can't be cancelled if there is foreseeable and reasonable reliance. Where bids falls into the situation, subcontractors submit bids that higher subcontractors have relied on in making their main bid.
Promissory Estoppel

2. Termination of Contracts at will
§2-309 “Termination Clauses and Contracts At Will”
- Notice
 - Notice must be Reasonable
 - Can Not Be Unconscionable
 - equitable idea
 - offends the conscience of the court
 - oppressive in some way
 - Strong policy against waste and forfeiture

3. Indirect Revocation – usu. in acceptance
 - A. Counter Offers
 - B. Conditional - I accept if
 - C. Addition of terms - I accept and
 1. Common Law
Mirror Image Rule –
 - Adding any terms is a rejection
 - Best acceptance – “I accept”- do not repeat
 - Langellier v. Schaefer
 2. Sale of Goods – UCC §2-207
Battle of Forms
can add terms in acceptance
Art. 2 –
 1. Both parties must be business people
 2. Do new terms materially alter deal?
 - a. Is adding new terms? – K
 - b. Insisting on new stuff? – No K - rejection
 3. “Seasonable Expression of Acceptance”
 4. What is the deal?
 5. Were new terms objected to?
if yes – only original offer accepted

B. Duty to Bargain in Good Faith

1. Indications of Bad Faith

(need several for proof)

- A. Breaking off negotiations for outside offer
Itek
- B. Failing to bargain due to changes in market
Sun Printing
- C. Proposal of extravagant term or demand
Hoffman v. Red Owl
- D. Rejecting boilerplate without rationale
- E. Shifting bargaining positions when agreement is near –
(e.g. – Re-open discussion on previously bargained for items)
- F. Dilatory tactics – delay or postponement of agreement
- G. Withholding agreement on trivial matter
- H. Ultra-hard bargaining – taking on extreme position and rejecting out of hand all solutions – take it or leave it
- I. Party needs X for Y, but won’t give info re nature of XorY
- J. Reneging on prior agreed to term
- K. Entering an impasse and failing to return to negotiation
- L. Requesting a bid which has no intention of seriously considering

- Heyer Products v. United States

2. Fraud

Knowing or intentional misrepresentation of material fact which was relied on and reliance caused injury

A. Elements

1. knowing or intentional
2. misrepresentation - (lie)
3. material fact – (important fact)
4. reliance on misrepresentation
5. reliance causes injury

MUST HAVE ALL 5!

B. Types & Remedies

1. Innocent Fraud – person believes fact to be true
Rescission – return parties to previous position
2. Breach of Warranty – Breach of Contract
strict liability
3. Something less than fraud –
e.g. Cropsey v. Sweeney; gave impression he was eligible to be married
liable without regard to intent
4. Express Warranty – UCC
 - innocence less important than liability
 - unless expressly bargained for, quality of goods/services not implied

3. Law of Conveyances

GFP	A→B	B ⇒ A
Assignment	A→B	B ⇔ A
Fraudulent Conveyance	A→B	B ← A

Fraudulent Conveyance –

Attempt to evade creditors by transferring money owed elsewhere

EX: put assets in child’s name so creditor’s can’t get to it

**Courts look for bargains not gifts; gifts have lower priority
A bargain can claim as a creditor, and claim first.**

4. Abuses in Bargaining – Bid Abuses

A. Pre Acceptance

1. Bid Peddling
Sub finds out other bids and goes lower

B. Post Acceptance – can NOT claim reliance

1. Bid Shopping
General contractor takes his bid around and asks subs – “Can you beat this price?”

2. Bid Chopping
General contractor goes back to sub and asks –
“Can you lower this price?”
5. Commercial Bribery
 - Purchasing Agents – most vulnerable
Duty to get quality goods and services at lowest price
 - Conflicts of Interest and Self Dealing
6. Collusion
7. Role of Fiduciary

C. Consideration

1. What is consideration?

A. Bargained for legal detriment

What is legal detriment?

1. Doing something not obligated to do by law
2. Promising to do something that you have a legal right to do
3. Forebearance
 - a. refraining from doing something that you had a legal right to do
Haver v. Sidway -
nephew didn't drink, smoke, curse until 21
 - b. promising to refrain from something

B. Formality

- Consideration is at the most basic level – a formality
- Formality of consideration separates American Contract law which opposes any moral implications and allows for efficiency and capitalism – efficient breach is acceptable and need not cast shadow over party breaching

C. Peppercorn Theory

- Consideration can be symbolic especially where donative intent is strong
- Courts do actually compare value of consideration and a peppercorn or a dollar is not always sufficient to create a legally binding obligation (k)

2. What is NOT consideration?

A. Moral Consideration

- A promise by itself is not enforceable regardless of its moral nature
- Courts will often emply reliance or manipulate the law to find actual consideration where the moral nature of the promise makes it beneficial

B. Past Performance

Actions completed prior to the promise is not sufficient to legally enforce a promise

Promises are for futurity

C. Partial Payments**D. Pre-Existing Legal Duty**

1. Common Law

- Doing something already obligated to do – not consideration
- Can not be paid or paid more to do something already obligated to do by

2. UCC §2-207 (2) – Changes and Modifications

Ignores Pre-Existing Duty Rule

Changes or modification of a sale of goods becomes a question of good faith

- Duress
- Undue Influence

3. Promissory Estoppel – Reliance as Consideration

A. Reliance can act as a Consideration Substitute

Always look for consideration FIRST

B. Elements of Promissory Estoppel – Restatement §90

1. Promise

- Ricketts v. Scothorn

Grandchild shouldn't have to work

2. Change of Position in Reliance

- The Mabley & Carew Co. v. Borden

Anna Work worked till death

3. Reliance Must Be:

A. Reasonable

- Fischer v. Jackson

“permanent” position with newspaper

B. Detrimental

C. Foreseeable

4. Enforcement is necessary for justice

C. Hierarchy of Estoppel

1. Estoppel in Pais

person can not remain silent when they have a duty to speak

2. Equitable Estoppel

duty to speak truthfully; can not knowingly misrepresent facts or state of mind

3. Promissory Estoppel

reasonable reliance

D. Capacity

1. Classes
 - A. Infants –
 - Persons under 18
 - Does not matter what age other party thought they were
 - B. Mentally Incompetent –
 - Lacks the ability to understand what is is that he or she has agreed to
 - C. Intoxicated
 - Fact of Intoxication
 - Other parties reason to know of intoxication
2. Rule for Necessaries
 - A. Food, clothing, shelter, means of living
 - B. Even person lacking capacity may K for necessities
 - C. Liability not a k obligation, but a quasi-contract
Can only recover value of performance to incapacitated

E. Statute of Frauds

1. Purpose
 - To prevent frauds and perjuries on the court
 - Requires parties to produce reliable evidence of transaction
 - Gets the case to the jury – not dispositive
2. Types of Contracts that fall within SOF
 - A. Suretyship
 1. Types
 - A.
 - B.
 2. Which parties must have a writing?

A. Surety → Creditor	Yes
B. Surety → Debtor	No
C. Debtor → Creditor	?
D. Debtor → Surety	?
 3. Reasoning
To protect benevolent donors against being forced to perform wreckless promises
 - B. Sale of Goods over \$500
 - Custom made items may not require writing
 - Regular goods – part performance satisfies SOF but only to extent of part
 - C. In Contemplation of Marriage
 - K to transfer property in regards to a marriage
 - NOT marriage itself
 - D. Transfer of an Interest in Land
 - Offers to sell or lease (term of 1 year or more)

- Improvements on land or a transfer accompanied by improvements do not require writing because the improvements serve as good evidence
- E. Services Not Capable of Being Performed Within a Year
- 3. Writings
 - A. What must the writing include?
 - 1. Common Law
 - 2. UCC
 - A. Quantity
 - B. Signature
 - C. UCC supplies the rest
 - B. Who signed the writing?
 - 1. Common Law
Must be signed by party trying to enforce against
 - 2. UCC
If merchant is aware of what is in the acknowledgement, he is as responsible as if he signed it
- 4. SOF and Reliance
- 5. Related Issues
 - A. Equal Dignity Rule
 - When is it necessary that a person have written authority to act for someone else in contract?
 - Authorization must have the same dignity as the contract the person is entering into?
 - Agent or person acting on behalf, must have written permission to act on your behalf when action on your behalf falls under the SOF.
 - B. Modification of Contracts
When does a modifying agreement have to be in writing?
Tests: Look to Contract as Modified
 - A. If after you've made change, still falls under SOF, Agreement must be in writing
 - B. If after change, no longer falls under SOF
Does not need to be in writing

F. Unconscionability

shocks the conscious of the court

1. Generally
 - A. Court can refuse to enforce all or part of an agreement if
 1. Oppressive terms
 2. Surprise – presented in such as way as to cause surprise
 - B. Unconscionability is tested at the time the K was entered
 - C. Issues of unconscionability ALWAYS go to judge

2. Contracts in Restraint of Trade
 - A. Industrial/Commercial Organization
 1. Vertical Integration
 - Requires enormous capital investment
 - Contracts – output – exclusive dealings
 - Own everything from raw materials to retail sale
 2. Horizontal Integration
 - Contracts – exclusive dealing arrangements
 3. Anti-Trust Legislation Acts:
 - Clayton Act
 - Sherman Anti-Trust Act
 - To Prevent contracts, conspiracies, combinations and trusts in restraint of trade
 - Federal Trade Commission Act
 4. General:
 - Is k unrealistically in restraint of trade?
 - Being a monopoly not illegal
 - How you become a monopoly → illegal
 - Tying products generally illegal
 - Example – Microsoft
 - B. Tying Products
 1. Tying Product
 - trademark
 - tradename
 - goodwill – reputation
 - main interest – e.g. Microsoft Operating System
 2. Tying Element
 - all requirements
 - the thing you get “stuck” with
 3. Getting Around – (AntiTrust)
 - May purchase equivalent goods elsewhere as long as meets franchisers standards
 - If uses goods of lessor quality cuts franchise b/c could destroy goodwill/reputation
3. Duress
4. Undue Influence
5. Unconscionability in Modifications

G. Legality

1. Illegal Subject Matter
 - e.g. – drugs, prostitution, hitman
 - Not Enforceable
2. Illegal Purpose

- e.g. – cabbie being used as get away car
- Enforceable as long as Π is unaware of illegal purpose

H. Ambiguity

(Right Out of BarBri for Most Party – May Want to Look Over)

Agreement not sufficiently clear

EX: Raffles v. Wiffles House

K for sale of cotton to be delivered on ship P

2 sailings of ship

Each party had a different sailing in mind

1. Necessary Facts
 - A. Ambiguous term
 - B. Each party must have a different meaning in mind
 - C. Neither party knows or has reason to know of the meaning attached by other party
2. Legally enforceable as to terms as understood by other party
3. Any ambiguity is construed against party causing ambiguity (writer)

I. Mistakes in Fact

(Right Out of BarBri for Most Part – May Want to Look Over)

1. Mistakes of Material Facts

Material Fact

 - A. If mistake is about what is being sold → material

EX: Sherwood v. Walker
Sale of Cow – Rose II of Abalon
Thought to be barren
Pregnant
No K – mutual mistake
 - B. If mistake as to value of what is sold → not material
2. Mutual Mistakes

Refer to either Ambiguity, Rescission or Reformation
Depending on at what time mistake is found and what parties want
3. Unilateral Mistake
 - A. Unilateral Mistake is not a basis or defense to K formation
 - B. Exception – If mistake is obvious, where other side knows or has reason to know, it can NOT take advantage

III. Terms

- A. What terms is necessary to form a contract?
 1. Express Terms
 - In a commercial k, QUANTITY MUST BE INCLUDED;
the court will not supple quantity
 2. Rack or Generic Terms
 - Will supply the rest once there is a K
 - Reduces Transaction Costs
 3. Number of Terms Included

- As terms increase, likelihood of a k increases
- ← Terms →
 ← Contract →
- Sun Printing and Pub. Ass'n v. Remington Paper and Power
 - Cordoza the “contract maker”
 - 1 term missing – okay
 - 2 terms missing – are they important?

B. Evidence of Terms

1. Writing
2. Prior dealings
Person Specific
3. Custom and Usage
Information as to how people in same industry contract
4. Parol Evidence Rule – rule of k law
 - A. What is the rule?
Where there is a written contract that is intended by the parties to be their final agreement, you can not use earlier agreements to change the terms of the written contract.
 - B. What facts trigger the rule?
 1. written contract
 2. special - contract intended to be the final agreement
“integrated agreement”
 3. there must have been some earlier agreement
oral, written or otherwise
 4. can not use earlier agreement to change the terms
 - C. Possible issues
 1. Does the parol evidence rule apply?
“integrated agreement”? – judge determined
 - a. Merger Clause - contract provision stating
this is our final agreement”
 - b. If yes –
Is there an applicable exception?
 1. You can always introduce evidence of the earlier agreement to establish a defense to the existence of a contract.
 2. You can introduce the earlier agreement to show a mistake in reducing agreement to final writing.
 3. The earlier agreement does not change the terms of the written agreement, but it adds terms to the written agreement.

I: Was writing intended to be not only their final agreement, but a complete agreement?

Complete or Partial Integration

c. Parol gift of land invalid

D. How does it differ from the SOF?

SOF – defense to contract *formation*

ORAL AGREEMENTS

Parol Evidence – written contracts (complete)

Differ on Facts

C. Article 2 – Sale of Goods – Battle of Forms

1. Facts

A. Sale of Goods

B. Mismatching offer and acceptance
Does not require mirror image

2. What is the deal?

A. Merchants

1. Everything in the offer makes it in – (same)

2. Anything contradictory in the acceptance is rejected
– (different)

C. Additional stuff – makes it if not objected to
(non-material - additional)

B. Not merchants?

3. Source of Terms

A. Custom Terms

1. Express

Words of the parties that either
describe
state facts
state promises

2. Puffing- sales talk

More general
Opinion

EX; good quality construction – puff
all steel construction – warranty

Carbolic Smoke Ball

B. Implied Warranties

1. Implied warranty of merchantability

When you buy something from someone in the
business of selling that kind of stuff, the stuff is fit
for the ordinary purposes.

2. Implied warranty of fitness

A. Buyer has a particular purpose

- B. B is relying on seller
 - C. Seller's awareness of reliance
 - D. Seller's awareness of purpose
- D. Contracts Dependent Upon Terms
1. Requirements Contracts
 - buyers needs – not wants
 - enables both parties to plan
 - usually an Exclusive Dealing Arrangement
 2. Output Contracts
 - take all or an agreed upon percent of production
 - advantages to the seller –
 - guaranteed buyer
 - possibility of sale
 - Standing Offer
 3. UCC §3-306 – Requirement/Output Contracts
 - Usually Exclusive Dealing Arrangements
 - Rarely have Req/Out at same time
 - May give estimates – allows flexibility of contracts
 - Blanket Orders
 - one-sided agreements
 - sellers agree due to profit
 - Ex: auto parts for auto manufacturers
 4. Drafting a Seller/Buyer k in Req/Out
 - Minimums and maximums of production/needs
 May also insure with strike clauses to rpevent against unforeseeabole disasters
 Ex: Not responsible in case of fire, flood, strike, etc.
 - Price
 Tie to an index
 Schedule regular review to protect both parties
 - Exclusive Dealing

IV. Performance Obligation

- A. Conditions
 1. Conditions are facts which must exist before liability arises
 2. Identifying Conditions
 - A. Language (intent)
if, then, provided, subject to
 - B. Content
 3. Types of Conditions
 - A. Conditions Precedent
 1. Hedging Bets
 - Obligated, but not under certain circumstances
 - Reduces Scope of Liability
 - Reduces Risk

- Often part of boilerplate
- 2. For Whose Benefits
 - The Party Benefiting – has right to waive
 - Carlton v. Smith – laundry bus & lease
- B. Arbitrary Conditions - Promisor has no control
arbitrary – e.g. weather
- C. Promissory Condition - Promisor has some control
 - Promissory Condition is an event or fact which both parties agree is necessary and which is a promise within the contract and therefore dependent upon the performance of one of the parties to the contract
 - Implied that party will act in Good Faith to fulfill the condition
 - Reinert v. Lawson – deal to sell gin factory
 - When promissory condition is performed, the Duty is Discharged and becomes alive/vital/real
- D. Conditions Subsequent
 - brings about an end to liability
- B. Sale of Goods
 1. Perfect Tender – general standard
seller obligated to deliver exactly what terms call for
 2. Rejection of the Goods
imperfect tender – buyer has the option of rejecting goods
still a contract – can collect
Buyer acts immediately
 3. Revocation of Acceptance
Substantial problem with goods that was difficult to determine earlier

**V. Excuse for Non-Performance
(Right Out of BarBri for Most Part – May Want to Look Over)**

- A. Failure of Condition – expressly conditioned
- B. Breach
 1. Common Law
Material Breach – question of fact
only excuse
 2. Sale of Goods
Imperfect Tender
- C. Anticipatory Repudiation
Repudiation
I'm no going to do what I agreed to do
Anticipatory
- D. Later Agreement
 1. Novation

- Both parties to first deal agree that someone else can perform contract
Mutually agreed upon new person
2. Accord **and** Satisfaction
Contract between two people
Change deal
EX: X owes Y \$1000
X and Y agree that instead of money. X will paint house
Accord – new agreement
Satisfaction – performance of new agreement
Mutually agreed upon performance
 3. Modification – look to SOF
- E. Later Unforeseen Occurrence
1. Impossibility
EX: Taylor v. Caldwell
T leases music hall from C
Music hall burned down
Where later UNFORESEEN occurrence makes performance impossible, non-performance is excused.
 2. Frustration of Purpose
Later unforeseen performance does not make it possible, but makes it useless.
EX: Krell v. Henry
Wanted to see coronation parade
Rented flat to see parade
Influenza
Parade cancelled
Didn't have to pay rent
EX: K to dig water well
County makes law saying no one can use well water
Frustration of Purpose –
not illegal to have well;
just can't use for water

VI. Remedies

- A. Money Damages
 1. Types
 - A. Restitution
restores to previous position, no profit – costs only;
unjust enrichment
 - B. Reliance
amount expended or foregone; unjust impoverishment
 - C. Expectation

amount party would have received if cocontract had been executed (profit) – rare because hard to prove

- Chrysler Corp. v. Quimby
 - Example of Bad Faith Bargaining
 - Able to get Expectation because able to establish expected profits in long standing reputable business

2. How They Work

A.	<u>In Law</u>	<u>In Fact</u>	<u>Express</u>
	Restitution	Expectation	Expectation
	Reliance	Reliance	Reliance

B. Hierarchy of Damages

Restitution – prevents self help



Reliance – impoverishment



Expectation – amt if K had been fulfilled

B. Rescission – cuts the contract

Requirements for Rescission

1. Actual Notice
2. Mutual Mistake
3. Material Mistake
4. Mistake Not a Result of Neglect of Legal Duty or Culpable Negligence
5. Prompt Notice

C. Reformation

- Makes the written contract conform to what the parties actually intended or actually did

D. Specific Performance

- The Best You Can Get
- Requires the Parties to Perform the Contract
- Equitable Remedy
- Only allowed if money damages not appropriate –
 - Transfer of interest in land
 - Personal Service Contracts
 - Sale of Goods that are Unique – art, antiques, special made

E. Injunctive Relief

- Opposite of Specific Performance
- Requires that the Parties DO Perform the Contract

F. Liquidated Damages

- Damages which the parties agreed to at the time the contract is made
- Contract where uncertain what damages should be if there is a breach
- Liquidated damages are a measure of what actual damages might be

G. Consequential Damages

- Similar to a Trespass on the Case
- Consequential damages are allowed only if the damages were reasonably foreseeable to both parties at the time the contract was entered

H. Punitive Damages
NEVER ALLOWED IN CONTRACTS

**VII. Contracts to Benefit Third Party –
(Right Out of BarBri for Most Party – May Want to Look Over)**

A. Suretyships

B. Fiduciary Relationships

C. Beneficiaries

1. Definition
Situation in which two people contract with each other with the intent of benefiting a third party
2. Third party has legal rights under contract
3. Example- life insurance, paint Janet Reno's house
4. Vocabulary
 - A. Third Party Beneficiary – person who was not a party to the contract but is still able to enforce the contract because the parties who entered into it do so for his/her benefit
Flavors – always one or the other
 1. Creditor
 2. Donee – generally - **unless** the third party was already a creditor of promisee
 - B. Promissor – person who is promising to do something for third party
 - C. Promisee
5. Canceling or Modifying Rights of Third Party
Any contract provision controls
Contract can be cancelled or modified until the third party knows and assents
6. Who can sue whom?
Third Party Beneficiary can sue Promissor
Third Party can sue Promisee if third party is a creditor
Promisee can sue Promissor

D. Assignments

1. Define
Agreement between two people and one of the parties to the original contract assigns his rights to a third party
2. Assignor – original party
Assignee – steps into the shoes of the assignor, can sue obligor under theory of subrogation

- Obligor -
3. How different?
- Factual –
- 3rd party
 - only one k
 - all three people there from beginning
 - one act play
 - assignment
 - steps - substitution
 - two act play
 - act between assignor and obligor
 - act between assignor and assignee

E. Delegations

1. Definition

Agreement between two people and one of the parties to the original contract assigns his **obligations** to a third party
2. When delegation is possible?
 - A. Contract controls when express
 - B. Can not delegate when:
 1. Special Skills
 2. Special Reputation
 - C. Most duties are delegable
3. Consequences of delegation
 - A. Delegating party remains liable - POC
 - B. Delegatee is legally obligated only if he received consideration
4. Compare – delegation v. novation
 - A. Factually

Delegation – asks someone to do the work

Novation – mutually agreed upon replacement of work
 - B. Legal

Delegation – delegating party still liable

Novation – can not sue delegating party because agreed to release and accept new person
5. Compare – delegation v. 3rd party
 - A. Factually

Delegation – delegation for consideration creates a third party beneficiary situation

Novation
 - B. Legally

Delegation

Novation