**Contracts Key Terms**

**Acceptance** - A required component of a valid contract. Acceptance occurs when an offeree assents to the term of an offer and communicates that assent to the offeror.

**Acceptance by Performance** - When an offeror requests an act in return for his promise and the offeree fully performs the act, this full performance constitutes sufficient acceptance of the offer to form a binding contract.

**Accommodation** - An offer of an alternative or partial performance in response to another party’s request when full compliance with the request is not possible or agreeable.

**Adequate Consideration** - The comparative value of the promises and acts exchanged in the making of an agreement between two contracting parties.

**Admiralty** - A body of law specifically dedicated to resolving disputes that arise in relation to maritime activities, such as overseas transportation.

**Arbitration Clause** - A provision of a contract by which the parties agree to submit some or all disputes arising from the contract to binding arbitration instead of proceeding with an action in court.

**Assent** - An intention of a party to a contract to accept all terms and conditions listed in the contract.

**Bilateral Contract** - A promise by one party in exchange for a promise to perform by another party.

**Commencement of Performance** - When an offer permits acceptance by commencement of performance, an offeree may accept the offer by beginning the work specified in the offer. Once the offeree begins performance according to the terms of the offer, a binding contract is formed and the offeror may not revoke the offer without breaching the contract.

**Consideration -** Something given, whether money, a return promise, or forbearance, by a promisee to a promisor.

**Demurrer** - A pleading that seeks dismissal of a claim on the grounds that the claimant is not entitled to legal relief even if all alleged facts are true.

**Detrimental Reliance** - A legal principle used to force one party to perform its obligations under a contract on the ground that nonperformance would leave the other party in a prejudicial position. It is applied when the second party’s reliance on performance was reasonably foreseeable, actual reliance occurred, the result of reliance was prejudicial to the relying party, and injustice can only be prevented by enforcing the contract.

**Equitable Estoppel** - Bars a party from asserting a claim or defense where that party’s representations or conduct induced another party’s action or inaction.

**Execute** - To sign a document or otherwise complete all the necessary formalities to form an enforceable contract.

**Expectancy Damages** - Contract damages awarded for breach that seek to put the plaintiff in the position she would be in if the contract had been performed.

**\*\*Express Contract** - A contract in which the terms of the agreement are expressly set out by the parties in a writing or oral agreement.

**Forward Sales Contract -** A contract between a buyer and seller of goods which will be produced in the future by the seller. The parties agree upon the terms of the contract before the goods are produced. A change in circumstances following entrance into a forward sales contract does not make the contract unenforceable.

**Gratuitous Promise** - A promise to do or refrain from doing something that is made without the expectation of or actual compensation.

**Illusory Promise** - An apparent promise that does not amount to consideration because the promisor reserves a choice for alternative performance.

**Implied Acceptance** - Conduct by the offeree that objectively manifests intent to be bound by the terms of the offer and enter into a binding contract with the offeror. The offeree’s acceptance is not expressly stated, but may be inferred from the offeree’s actions or failure to act.

**Implied in Fact Contract** - An agreement between the parties that is implied from the facts and circumstances. A court may imply a contract, even if the parties never entered one, if (1) one party provides another with valuable services, property, or money; (2) the recipient has reason to know of this; (3) the circumstances reasonably indicate that the services, property, or money was provided with the expectation of compensation; and (4) the recipient manifests assent, as by knowingly using or retaining the benefit of the services, property, or money or failing to object under circumstances in which silence would suffice as acceptance of an offer.

**Implied Promise** - A contractual promise that is held to exist despite a lack of express terms or agreement stating the promise. The failure to comply with an implied promise may constitute breach of contract.

**Intent to be Bound** - A component of a valid and enforceable contract required on the part of all parties to the contract. All parties must simultaneously assent to the terms of the contract as evidenced by their conduct when interpreted by a reasonable person.

**Knock Out Rule/Doctrine** - A rule courts apply in cases of conflicting contract terms, under which, if an expression of acceptance contains terms that are additional to or different from those in the offer, the conflicting terms in both the offer and acceptance are knocked out of the contract and replaced by UCC gap-filler provisions.

**Latent Ambiguity** - A term or statement in a contract that appears clear on its face but is unclear in the context of the contract or in its application to particular circumstances.

**Mailbox Rule** - A legal principle, which varies in its details by jurisdiction, providing that an acceptance becomes effective when properly mailed unless a different method of acceptance is mandated.

**Manifestation of Assent** - Words or acts that show, objectively, mutual consent to a contract.

**Material Benefit Rule** - A promise made in recognition of a benefit previously received by the promisor from the promisee is binding to the extent necessary to prevent injustice. A promise is not binding, however, if the promisee conferred the benefit as a gift or for other reasons the promisor has not been unjustly enriched; or to the extent the value of the promise is disproportional to the benefit.

**Meeting of the Minds -** A “meeting of the minds” occurs when both parties to the contract have the same understanding of and mutually assent to the terms of an agreement at the same time. It is sufficient to form a valid contract.

**Merchant** - As defined under the Uniform Commercial Code, a party in the business of selling particular goods or who has particular skill or knowledge relating to the business in which the goods are sold.

**Mirror Image Rule** - A common-law contracts principle that treats an offeree’s acceptance as a counteroffer, rather than an acceptance, if the acceptance does not exactly mirror the terms of the offer.

**Mutual Assent** - Both parties to a contract agreeing to the same thing.

**Mutuality of Obligation** - Both parties to a contract must be bound to perform or neither is.

**Nominal Consideration** - Consideration offered by one party to an agreement which has very little or virtually no value, particularly in relation to the consideration offered by the other party to an agreement. Nominal consideration may sometimes be found to support the existence of an enforceable contract, provided the consideration is still “sufficient” based on the terms and circumstances of the contract.

**Novelty** - A requirement of patentability mandating that an invention must not have been known to the public before the filing date of the patent.

**Offer** - An action indicating willingness to enter into an agreement, done so that one would understand that acceptance is invited and would result in an agreement.

**Option Contract** - The right, for which one has paid money, to purchase or sell certain goods at an agreed-upon price within an agreed-upon period of time.

**Parol Evidence** - Evidence that is external to a will or a contract, offered to vary or explain the terms of the will or contract.

**Preexisting Duty** **Rule** - Provides that an initial contract cannot be modified unless additional consideration is provided beyond the preexisting duties assigned to both parties under the initial contract. The rule does not apply when unexpected or unanticipated difficulties arise during the course of performance of a contract that prompt parties to voluntarily modify the terms of the initial contract.

**\*\*Promissory Estoppel -** Doctrine that makes enforceable a definite promise that is not otherwise enforceable under contract law.

**Quasi Contract** - A legal fiction employed by the court to provide a remedy to a party even though there is no evidence of an agreement between the parties.

**Ratification** - With respect to negotiable instruments, ratification occurs when a party, with full knowledge of the forgery or alteration, accepts the benefits of or actively assents to the wrongful activity. Ratification of agency status occurs when a person has apparent authority due to the principal’s actions or inactions.

**Reasonable Person** - A hypothetical person used to establish a standard of care that a sensible, prudent person would exercise under like circumstances and condition.

**Reasonably Foreseeable Damages** – A measure of recovery for breach of contract consisting of any damages that could be expected by both parties at the time of contract formation to “arise naturally” from the breach.

**Reliance Damages** - Contract damages awarded for breach that seek to return the plaintiff to the position she would be in if she had not relied on the promises of the breaching party.

**Restatement (Second) of Contracts** - A treatise published by the American Law Institute that provides guidance to legal professionals on the common law of contracts.

**Revocation** - In the context of wills, an action taken by a testator to revoke some or all of the provisions of a will, making the revoked will or revoked portion inoperative and void.

**Specific Performance** - An equitable remedy that requires a specific action when monetary damages are inappropriate or too difficult to ascertain.

**Statute of Limitations** - A specified period of time, usually prescribed by statute, in which a party has to bring a lawsuit after the party has incurred or sustained injury.

**Summary Judgement** - A final ruling that there is no genuine issue of material fact in dispute and that the moving party is entitled to judgment as a matter of law.

**Unconscionability** - A determination that a contractual term was so procedurally or substantively unfair and offensive that the harmed party should be relieved from its consequences.

**Uniform Commercial Code** - A comprehensive set of laws designed to promote the uniformity of commercial transactions among the states.

**Unilateral Contract** - A contract that is formed when one party makes a promise in exchange for the action of another party, and the other party performs that act.

**MIDTERM**

**A fortiori** - Because a stronger reason exists.

**Aleatory Promise/Contract** - An **aleatory** contract is an agreement whereby the parties involved do not have to perform a particular action until a specific event occurs. The trigger events of **aleatory** contracts are those that cannot be controlled by either party, such as natural disasters or death

**Anticipatory Repudiation** - A contract law principle that consists of a breach of a contract prior to its completion.

**Anticipatory Breach of Contract -** A breach of contract caused by the breaching party’s repudiation of its contractual obligations prior to the time for performance.

**Arbitration Clause** - A provision of a contract by which the parties agree to submit some or all disputes arising from the contract to binding arbitration instead of proceeding with an action in court.

**As Is** - A term used to disclaim certain types of implied warranties. Conveys that the item is being sold in whatever condition it presently exists, regardless of faults.

**Assignment -** Transfer to another person of one’s right to receive benefits that are anticipated to accrue under a contract or other agreement.

**At-will Employment** - An employment having no specified term may be terminated at the will of either party by providing notice to the other party.

**Blue-Pencil Rule** - A legal doctrine providing that if words in an overbroad covenant not to compete can be deleted in a way to render the covenant enforceable, then the court may do so. This approach is criticized as valuing the wording of the contract over its substance, and it is thus used in only a minority of U.S. jurisdictions.

**Boilerplate** - Standard or form contractual provisions that can be applied to many types of transactions and are typically not heavily negotiated.

**Breach of the Insurer’s Duty of Good Faith -** An independent tort cause of action applicable to circumstances where an insurer has used bad faith in handling a policyholder’s claim. When the insured demonstrates more than merely a denial of benefits promised under a policy of insurance, but instead, that the insurer’s denial of the claim was deliberately made in bad faith, with knowledge of the lack of a reasonable basis for the denial, the insured may be entitled to compensatory tort damages. This tort cause of action is recognized by a majority, but not all, of states.

**Breach of Warranty** - breach of a promise made by a seller of property or other goods when the purchaser has relied upon the promise and the truth of the statement is necessary to the validity of the contract.

**Collateral Source Rule -** If an injured party receives compensation for his injuries from a source wholly independent of the tortfeasor, this payment cannot be deducted from the damages that the party would otherwise collect from the tortfeasor.

**Condition Precedent** - An event that must occur before a party's promised performance is due; the party may avoid performance if the condition has not occurred and the nonoccurrence is not excused.

**Conversion -** The intentional assertion of dominion over the property of another, to the exclusion of the property owner's rights.

**Course of Dealing** - Pattern of conduct between the parties to a transaction which may be necessary to explain the parties’ understanding of the terms of the written agreement.

**Covenant not to Compete** - An agreement where one party agrees that upon termination of his services, he will not engage in a similar trade or profession in unfair competition with his former employer or principal.

**Delegation -** In contract law, the transfer from a promisor to a third party of the obligation of performance under a contract.

**De Minimus** - Something that is too minor to be considered.

**Dependent Covenants** - Where the parties’ mutual promises in a contract are so interrelated that performance or the offer of performance by one party operates as a condition precedent to the other party’s performance.

**Difference in Value Rule -** A rule of damages that applies when a builder’s failure to perform under a construction contract is both trivial and innocent. In this circumstance, the measure of damages is the diminution in value of the building rather than the cost of tearing apart the structure and properly completing the contract. When, however, the damage is so substantial as to render the finished building partially unusable and unsafe, the difference in value rule does not apply, and the correct measure of damages is instead the market price of completing or correcting the performance.

**Diminution in Value -** A measure of recovery based on the decrease in an item's value as a result of some harm. For example, in the torts context, diminution-in-value damages are awarded based on the difference in the value of property before and after a damaging incident. In the context of a breach of warranty, the UCC allows a buyer to recover diminution-in-value damages based on the difference in the value of goods as accepted and their value if the goods had been as warranted. In the context of a construction contract, diminution-in-value damages are measured by the difference between the value of a structure with a defect and the value of the structure absent the breach.

**Divisible Contract (AKA Severable Contract) -** Also known as a severable contract, an agreement that includes multiple promises subject to separate performance and enforcement.

**Doctrine of Substantial Performance -** When a contract contains dependent promises, a promisor who has substantially performed his obligations is entitled to recover under the contract even if he has failed in some particular manner to comply with his agreement.

**Duty of Good Faith** - A director fiduciary duty falls under the duty of loyalty, a breach of which is usually found through conscious and systematic disregard of directors’ responsibilities.

**Economic Loss Doctrine** - Rule stating that commercial contracting parties may not bring tort claims against one another for pecuniary losses if adequate contract remedies exist. The economic-loss doctrine bars recovery for pure economic loss in a negligence action absent any other injury unless a special relationship existed between the parties.

**Emotional-Distress Damages -** Monetary damages awarded to a party who has suffered either negligent or intentional infliction of emotional distress.

**Entire Contract -** A indivisible contract whose terms require a single payment for the goods to be supplied or work to be performed. Full performance is necessary in order for payment to be due.

**Ex dolo malo non oritur action** - is a Latin maxim which means 'no right of **action** can have its origin in fraud'. No court will lend its aid to a man who founds his cause of **action** upon an immoral or an illegal act.

**Ex Turpi Causa** - is a legal doctrine which states that a claim **will** **not** succeed if it arises in connection with the claimant's own illegal act.

**Exculpatory Clause** - A contractual provision that shields a party from liability for its own negligence or wrongdoing.

**Express Condition** - An explicitly stated event that must occur before a party is subject to a particular obligation or liability.

**Extrinsic Evidence** - At trial, evidence other than questions posed to the witness, including documents or testimony from other witnesses. Extrinsic evidence also refers to evidence external to a will or contract, offered to vary or explain the terms of the will or contract.

**Foreclosure Sale -** A sale of property in which a person’s right of ownership in the property is extinguished, with the resulting proceeds applied to satisfy a debt held by such person.

**Force Majeure -** [literally meaning “greater force” in French] Generally invoked to justify involuntary conduct by a party to an agreement

**Force Majeure Provision -** A contractual provision that excuses performance because of unforeseen events outside the parties’ control. Examples of events covered by a *force majeure* provision include natural disasters, war, rioting, governmental regulations, or labor strikes.

**Frustration of Purpose -** A defense to a breach-of-contract claim, which provides that a party’s performance is excused if circumstances since the contract have changed, such that the principal purpose of the contract is substantially frustrated (*i.e.*, if the other party's performance has become virtually worthless). The event that caused the frustration of purpose must not fall within the possible risks each party assumed by entering into the contract, non-occurrence of the event must be a basic assumption under which the contract was made, and the event's occurrence must not be the breaching party's fault.

**Implied Covenant of Good Faith and Fair** **Dealing** - An implied contractual obligation that requires parties to a contract to deal fairly and honestly with each other and not do anything that will deprive other parties of the benefits of the contract. A breach of this duty gives rise to an action for damages.

**Incidental Beneficiary -** An individual that benefits from a contract, but is not an intended beneficiary.

**Indemnity Clause** - A term requiring one party to pay for the loss suffered by the other party upon the occurrence of a particular event.

**Indemnification -** Payment to an individual who has been held liable for the act of another and as a result, suffered a loss without fault.

**Intended Beneficiary -** An individual that the parties to a contract clearly and definitely intend will benefit from the contract.

**Illegality Defense** - A defense to enforcement of a contract based on the illegality of the transaction.

**Impossibility Defense** - A defense offered by a party seeking relief from his contractual obligations on the ground that he is incapable of performing them.

**Impossibility of Performance Doctrine** - In contracts in which the performance depends on the continued existence of a given person or thing, a condition is implied that the impossibility of performance arising from the perishing or destruction of the person or thing shall excuse the performance.

**Impracticability** – When an act becomes so expensive or difficult that performance becomes effectively impossible.

**In Pari Delicto** – Latin for “in equal fault,” the characterization of parties as being equally culpable.

**Injunction** - A form of equitable relief in which a party is ordered to perform or refrain from performing a certain act.

**Installment Contract -** A contract providing for goods or real estate to be delivered in separate lots or for payment to be made at separate times.

**Intentional interference with contractual relations -** When the defendant knew of a valid contract between a plaintiff and third party and intentionally acts to interfere with said contract to the detriment of the plaintiff.

**Irreparable Harm -** Harm which cannot be quantified or compensated with monetary damages, and which may justify injunctive relief.

**Locus Poenitentiae** - Literally “place of repentance”; meaning an opportunity to change one’s mind.

**Malum in se** - [Latin for “wrong in itself”] By its very nature the act is illegal because it violates the natural, moral, or public principles of society.

**Material Breach -** A failure to perform a contractual obligation that is important enough that it undermines the agreement and warrants allowing the other party to terminate the contract and bring suit for damages.

**Medical Malpractice -** A cause of action alleging that a medical professional acted negligently or incompetently by failing to conform his or her practice to the standard of care that an ordinary, reasonable medical professional would use under like circumstances.

**Merchants Duty of Good Faith** - In all aspects of a business transaction, a merchant must act in good faith by practicing honesty in fact and observing reasonable commercial standards of fair dealing in that trade.

**Meretricious Relationship** - A relationship in which parties cohabitate in the absence of a legally recognized marriage.

**Misrepresentation** - The act of making a false statement, on which another party relies to his detriment.

**Modification** - A change to the original terms of an agreement.

**Negative Injunction -** A court order, requiring a party not to do something or stop doing something it was engaged in.

**Nonconforming Goods** - Goods that do not satisfy the obligations and requirements of a contract for a sale of goods. Under the UCC, a buyer that does not intend to accept the goods must notify the seller of the buyer’s rejection in a timely manner. A buyer who has had an opportunity to inspect the goods and does not give the seller a timely notice of rejection has accepted the goods.

**Nonperformance** - The failure to perform any obligation of a contract, with or without excuse.

**Non-reliance Clause** - A non-reliance clause is a clause that provides that the parties have not relied on any representations other than those set out in the contract.

**Output Contract** - An agreement whereby one party agrees to purchase all the product of a certain type produced by the other party to the contract.

**Parol Agreement** - An unwritten but verbal contract based on the mutual understanding of both parties.

**Parol Evidence Rule** - A general rule that prohibits the introduction into a court of law of any written or oral evidence to vary or contradict the unambiguous terms of an integrated agreement.

**Partition** - A court order to divide a property into separate portions according to each party’s relative interest in the property.

**Permanent Injunction -** A final order of a court requiring a person or entity to refrain from certain activities permanently or take certain actions (usually to correct a nuisance) until completed. A permanent injunction is distinguished from a “preliminary” injunction which the court issues pending the outcome of a lawsuit or petition asking for the “permanent” injunction.

**Personal Service Contract -** An employment agreement made between an employer and an employee for the provision of specific services or talents by the employee to the employer, in which those services or talents are of the essence and cannot be assigned without the consent of the other party.

**Perfect-Tender Rule** - Provides that in a contract for the sale of goods, the goods and their delivery must conform to the contract in every respect, including the time of delivery. If the goods deviate even slightly from the terms of the contract, then the seller has breached the contract. The buyer may elect to reject or accept the goods in their entirety, or the buyer may accept some goods and reject the rest. The perfect-tender rule is a substantial deviation from the common law.

**Potior Est Conidtio Defedentis** - The condition of the defendant is stronger

**Procedural Unconscionability** – Unfairness in a contract that is the result of unequal bargaining power or unfair surprise to one of the parties.

**Privity of Contract -** A relationship between two entities, usually as the result of being parties to a contract, such that the entities may sue or be sued by one another.

**Public Policy** - A principle that no person can legally act contrary to the state’s current economic needs, social customs, and moral aspirations as determined by the state’s citizens.

**Punitive Damages -** order to punish the defendant and serve as a deterrent.

**Quantum Meruit** - A remedy entitling the provider of services to be compensated for the value thereof.

**Reasonable Expectations Doctrine** - Ambiguity regarding the meaning of terms in an insurance contract may be resolved by ascertaining how a reasonable insurance policy purchaser would construe terms in the insurance policy at the time the insurance contract was entered.

**Repudiate -** A declaration by one party to a contract that he does not intend to perform under the contract.

**Restitution Damages -** Compensation granted to remedy the defendant’s unjust enrichment that occurred at the plaintiff’s expense.

**Rule of Evidence** - A “rule of evidence” in an insurance policy exists when an insurance carrier attempts to define the types of evidence that must be presented by the insured to demonstrate the substantive circumstances warranting recovery under an insurance policy. Rules of evidence may be used to limit the liability of insurance companies to cases only involving actual theft or burglary, rather than “inside jobs.” An insurance company may not, however, assert a rule of evidence in such a manner as to preclude recovery by the insured for justifiable claims.

**Specific Performance** - An equitable remedy that requires a specific action when monetary damages are inappropriate or too difficult to ascertain.

**Special Damages -** The natural, probable, and foreseeable result of a breach of contract.

**Strict Liability** - Imposition of liability upon a defendant regardless of the defendant’s conduct or fault. Under strict liability in the tort context, an actor is liable regardless of whether the actor was negligent or otherwise culpable. Strict liability in the tort context is imposed only in limited circumstances; it may be applied in cases involving abnormally dangerous activities, injuries caused by animals, and products liability. In criminal law, strict liability imposes criminal liability with no proof of fault. Strict liability may extend to all elements of a crime or only to some elements. In many jurisdictions, strict liability is also known as absolute liability.

**Sua Sponte** - Latin term meaning “of its own volition” that generally describes memorandums and orders issued by the court on its own initiative, without motion by the parties.

**Subject to Financing Clause** - A condition added to a contract for sale that makes completion of the sale contingent upon the buyer’s ability to obtain satisfactory financing within a specified time frame. A subject to financing clause imposes upon the buyer an implied obligation to make a reasonable and good faith effort to satisfy the condition by obtaining the requisite financing.

**Substantial Performance -** An equitable defense to breach of contract asserted by a party who has substantially performed their contract obligations prior to breaching the contract.

**Substantive Unconscionability** - Unfairness in a contract that is the result of excessively oppressive or harsh terms in the contract.

**Trade Usage** - Terms having a particular meaning within a trade or industry and which may be considered to determine the parties’ understanding of the terms of the written agreement.

**UCC § 2-508** - A provision of the Uniform Commercial Code permitting a seller to remedy a nonconforming sale of goods by promptly notifying the buyer of the seller’s intent to replace such nonconforming goods with conforming goods either (1) within the contract period or (2) outside the contract period so long as the seller had reason to believe that the buyer would accept the nonconforming goods.

**Unconscionable** - Oppressive or unreasonably favorable to one party.

**Uniform Parentage Act** - A uniform set of laws, adopted by states with modifications in some instances, that delineate the parent-child relationship and set forth rules relating to parentage.

**Unjust Enrichment** - A quasi-contract theory that prevents a party from retaining a benefit conferred on that party to the detriment of the other party, if it would be unjust for the enriched party to retain that benefit.

**Waiver** - Occurs when an individual voluntarily forgoes one of his rights.

**Warranty** - A guarantee by the seller or manufacturer of goods regarding the quality or performance of those goods.

**Writ of Replevin -** A legal process which requires or provides for the recovery of goods which the owner believes were wrongly taken.

**Mentioned in class:**

**Clean Hands Doctrine** - A principle that bars a party who has engaged in wrongful or dishonest conduct from obtaining equitable relief.