

UCC SECTION: 1-107-a claim or right may be forgiven or released w/o consideration by a written waiver or release signed by aggrieved party;

1-201-Good Faith-honesty in conduct/transactions; Signed-includes symbols executed/adopted to authenticate a writing; Written-includes printing or any other reduction to tangible form; **1-203**— every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement; **1-205(1)**-course of dealing is the history of previous conduct between parties forming a common basis of understanding (practicability of performance); **1-205(2)**-usage of trade is practice or method of dealing in an industry or trade which would justify expectation that would govern a present transaction (may be used to interpret contract); **1-207**-party may perform a contract & reserve its right to contest the other party's performance by utilizing words such as "without prejudice" or "under protest" (reservation of right).**2-104-Merchant – person who deals in goods, holds himself out as having knowledge or skill peculiar to practices or goods involved in the transaction; between merchants – both parties are chargeable with the skill & knowledge of merchants; contract & agreement**-present or future sale of goods; **sale**-passing of title from seller to buyer for a price; **2-201**-statute of frauds; sale of goods in excess of \$500 must be in writing signed by the party to be charged, authorized agent or broker; between merchants, a confirming memo sent by a party can be sufficient unless objected to within 10 days of receipt; **2-202**-(parol or extrinsic evidence); party cannot contradict the writing but may add consistent additional terms; Terms included in a writing or not objected to are the final expression of the parties but; may be explained or supplemented by course of dealing or usage of trade and by evidence of consistent additional terms unless a court finds that the writing excludes same.**2-204 – a contract for the sale of goods may be in any manner sufficient to show agreement including conduct; even if some term is left out, an agreement is enforceable if a court can find a basis to fashion a remedy; a contract for sale does not fail for indefiniteness if the parties have intended to make a contract & there is a reasonably certain basis for giving an appropriate remedy.**

2-205-offer by merchant which is in writing and states it will be held open, is not revocable even if no consideration given; offer is available for up to 90 days if no earlier date is stated (firm offer). **2-206**-offer to make contract may be accepted by any manner or medium reasonable (differs from mirror image rule). **2-207**; Additional Terms in Acceptance of Confirmation (Note - Differs from Mirror Image Rule). A written confirmation or definite acceptance sent within a reasonable time of offer operates as an acceptance even with additional or different terms unless acceptance is expressly conditioned on assent to the additional or different terms. The additional terms are to be construed as proposals for addition to the contracts and between merchants they will become part of the contract unless (a) the offer expressly limits acceptance to the terms of the offer, (b) the additional terms materially alter the offer or, (c) notification of objection to them is given. Conduct by the parties which recognize the existence of a contract is sufficient to establish a contract even though the writings of the parties do not appear to establish a contract. In that case, the terms of the particular contract consist of the terms agreed upon and filled by other provisions of the UCC.**2-208**-course of performance, courts of dealing & usage of trade shall always be construed as consistent with each other & may be used as an aid in interpreting the contract; expressed terms shall control course of performance & course of performance shall control both course of dealing & usage of trade. **2-209 – abolished pre-existing duty rule; agmt modifying contract needs no consideration to be binding as long as statute of frauds (201) requirements must be met. 2-210-party may perform duty through a delegate; unless spec. agreed, all rights of either party can be assigned** **2-302**-unconscionable; **2-305**-Open price term; if the parties so intend, a contract for sale can be concluded even though the price is not settled; in such a case, the price is a reasonable price at the time of delivery so long as the price is fixed in good faith; **2-306**-defines applicable requirements & exclusive dealing contracts; these types of contracts are enforceable so long as the actual output or requirements may be determined in good faith & no quantity unreasonably disproportionate to any stated estimate or prior comparable output or requirements is demanded.; **2-309**-absence of specific time provisions; the time for shipment or delivery is not otherwise provided for shall be reasonable time. Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party; **2-312**-implied in a contract for sale is that title shall be good & its transfer rightful. **2-313**-Express warranties are created by a statement of fact, description of goods or sample or model; **2-314 – implied warranty of merchantability; warranty that goods shall be merchantable is implied in a contract for their sale; 2-315 – implied warranty of fitness for a particular purpose; have to be fit for the service that seller reasonably knows they are required for;** when you have an express warranty & a disclaimer – the disclaimer is ineffective; the express warranty covers; **2-316**-exclusion or modification of warranties-words or conduct relevant to the creation of an express warranty & words or conduct which negate or limit warranty shall be construed whenever reasonable as consistent with each other; unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like – as is, without fault, or other language which causes the buyer's attention to the exclusion; **2-319**-defines common shipping & placement of shipping terms; **2-320**-defines insurance & freight terms.**2-601- Buyers rights on improper delivery;** **2-602**-Manner and effect of rightful rejection; **2-603**-buyers duties as to rightfully rejected goods such as accounting to the seller for reasonable expenses of caring for and selling goods if required; **2-606- What constitutes acceptance of goods_- Acceptance of goods occurs when the buyer, after reasonable opportunity inspects the goods, signifies to the seller that the goods are conforming or fails to make an effect of rejection.;** **2-607_-Acceptance of Non-Conforming Goods - Acceptance of goods by the buyer precludes rejection of the goods as non-conforming if buyer discovers the defect before acceptance. However, buyer still may have remedies for breach;** **2-608**-Revocation of Acceptance; buyer may revoke acceptance within a reasonable time of discovery of defective goods; **2-609**-Right to Adequate Assurance of Performance; when reasonable grounds exist for a party to believe itself insecure, the party may demand in writing assurance of due performance and may suspend its own performance. After 30 days w/o assurance of due performance, the party may consider the contract repudiated; **2-610**-Anticipatory Repudiation; if a party repudiates its perf under a contract, the victim may 1) wait for performance; 2) resort to any remedy for breach even if he said he would not; 3) suspend perf; **2-611-Retractio**n of Repudiation; a party may retract its repudiation before the victim accepts the repudiation or acts on it; **2-615**-Excuse by failure of pre-supposed condition; incorporates impracticability, frustration and force majeure into 1 section to excuse perf; **2-702-Seller's Remedy on Discovery of Buyers – Insolvency;** **2-703-Sellers Remedies for Buyers Breach by rejection or non-payment of delivered goods a) withhold further delivery, b) resell & recover damages, c) cancel;** **2-708**-Sellers Damages for Repudiation – difference between market price at time & place of tender & the unpaid contract price along with incidental damages or Lost Volume Damage – profit from full perf; **2-709**-action for price of delivered goods or goods that cannot be resold; **2-710**-incidental damages due seller; **2-711 – buyers general remedies – 1) cover & recover down payment; 2) specific performance; 2-712 – cover def; cost of cover less contract price together with incidental damages + expenses saved;** **2-713 – buyers remedies where seller repudiates- diff between contract price & market price + incidental damages but less exp saved;** **2-714- buyers damages for breach of warranty;** **2-715- incidental & consequential damages; 2-716-specific performance;** **2-718-** liquidated damages – amt which is reasonable. UNDER UCC- wait commercial reasonably time.

Identify: Offer; Offeree; Bilateral or Unilateral; Acceptance (common law – mirrored or UCC); Consideration – benefit conferred or detriment suffered; Good Faith. **Contract** is a promise or set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty; **express** (by language oral or written) or **implied** (by conduct); **Elements: Mutual Assent: Offer & Acceptance; Consideration: Bargained-for-exchange or Substitutes (promissory estoppel/detrimental reliance); No Defenses: Mistake, Lack of Capacity, Illegality, Statute of Frauds; Bases of Promissory Liability; Bargain Contract: Promise + Consideration; . Bilateral**-exchange of promises; **Unilateral**-exchange of act for promise; limited to circumstances: where offeror indicates performance is the only manner of acceptance or where it is an offer to the public. **Bargain Requirement;** promise to make a gift is not enforceable for lack for consideration because the promise not part of the bargain & no detriment is suffered by the promisee. **Sufficiency of Exchange; Adequacy of consideration; bargain or legal value; Any good faith agreement modifying a contract subject to the U.C.C. needs no consideration to be binding. A promise to refrain from suing may constitute consideration if the claim is valid or in good faith believed the claim was valid. Must be Mutual not illusory. Consideration must exist on both sides (although the benefit of the consideration generally need not flow to all parties. No requirement that all consideration be valid. Bargained for exchange – The parties must exchange something. In bilateral contract, they exchange promises. In unilateral contract they exchange a promise for an act. Moral Obligation: Promise Plus Antecedent Benefit. Past or moral consideration- A promise given in exchange for something already done does not satisfy the bargain requirement. Exceptions** Where a past obligation is unenforceable because of a technical defense (e.g., statute of limitations), that obligation will be enforceable if a new promise is made in writing or is partially performed. Note: Remember the peppercorn theory of consideration. The majority of courts require that a party incur a detriment (by doing something he is not legally obligated to do or by refraining from something he has a legal right to do). **Pre-existing duty rule;** if party does or promises to do what already legally obligated to do or if forbears or promises to forbear from doing something which he is not legally entitled to do – no consideration; need to modify with new/diff. or add consideration); Exceptions – 1. New or different consideration is promised 2. Promise is to ratify a voidable obligation 3. Preexisting duty is owed to a third party rather than the promisor. 4. There is an honest dispute as to the duty; or 5. There are unforeseen circumstances sufficient to discharge a party. **Mutuality of obligation;** each party must furnish consideration to the other, or the entire agmt fails to be enforceable by either; each party must undergo a detriment which was bargained for by the other. **Promissory Estoppel: Promise Plus Unbargained-for Reliance; R90** An act or forbearance by the promise will be sufficient to form a bargain if it benefits the promisor. The promisor should reasonably expect his promise to induce action or forbearance of a definite and substantial character and such action or forbearance is in fact induced. If a legal obligation is not enforceable under law (e.g. barred by statute of limitations) a new promise to fulfill the legal obligation is enforceable if in writing. It will be enforceable only according to the new terms. **Options:** common law- requires consideration or estoppel vs UCC 2-205; **Silence –does not constitute acceptance unless there is some sort of invitation & accept. Promises:** Not all promises are conditions but all conditions are promises. **Statute of Frauds:** marriage, if not performed within 1 year, land, executor, sale of goods over \$500, surety (R116, R198, R207); **Exceptions to Statute of Frauds – specially manufactured goods, written merchants agmt, admission (of contract), partial performance; Void–without any legal effect; Voidable–party may elect to void or ratify; Unenforceable–otherwise valid but defense exists; Contracts implied in law;** Avoids unjust enrichment (quasi-contract); **Contract Implied in Fact –** contract where the conduct of the parties and surrounding circumstances indicate they intended to enter a mutually binding agreement.. **Bargain Relationship;** Agreement process/manifestation of mutual assent; elements of offer: manifestation of present contractual intent; certain & definite terms – expressly stated or implied; communication to the offeree. **Ascertainment of assent;** the objective test; **Offer;** creation of power of acceptance in offeree; offer must be an expression of promise, undertaking or commitment to enter into a contract with definite and certain terms and communicated to the offeree. Factors: language used, surrounding circumstances, prior relationships of parties, method of communication, industry custom, and degree of definiteness and certainty of terms; must sufficiently identify offeree; Real estate transactions require ID of land and price term; Sale of goods needs minimum quantity term (can be requirement or output contracts to qualify); Employment contract needs duration. **Acceptance;** exercise of power of acceptance; legal effect of offer is to create a power in the offeree to enter into a contract; offeree enters the contract by making his acceptance; silence does not constitute acceptance; mirror-image: must accept offer in the manner the offeror requires or not valid acceptance. Under UCC-an acceptance need not mirror the offer's terms. **Non Merchants-** Terms of Offer Governs-If one or both parties are not a merchant the terms of the offer controls. New or different terms are considered mere proposals. **Merchants-** Acceptance terms usually included-When both parties are merchants additional terms proposed in the acceptance become part of the contract unless they materially alter the agreement (usually a disclaimer of warranties), the offer expressly limits acceptance to the terms of the offer, or the offeror objects in a reasonable time to the additional terms. Additional terms that materially alter the agreement do not prevent contract formation, but become part of the contract only if the offeror expressly assents to inclusion. **Unilateral** contract is accepted by performing the stipulated act. **Bilateral** contract the offeree accepts by promising to do a stipulated act. Modern courts generally interpret an offer as unilateral only if its terms clearly warn that an act is required for acceptance. If the offer is ambiguous 2nd Restatement and UCC allows acceptance by act or promise. **Mailbox Rule- If acceptance is by mail or similar means and properly addressed and stamped, it is effective upon dispatch; Does not apply if 1) the offer stipulates that acceptance is not effective until received or 2) if an**

option contract is involved (option effective upon receipt). If the offeree sends a rejection and then sends an acceptance, which ever arrives first is effective. If the offeree sends an acceptance & then a rejection, the acceptance is effective unless the rejection arrives first and the offeror detrimentally relies on it. Acceptance transmitted by unauthorized means is effective if it is actually received by the offeror while the offer is still open. **Termination of offer:** May be terminated by act of either party or operation of law; Revocation is effective when received. Offers not supported by consideration or detrimental reliance can be revoked at will by the offeror even if he has promised not to revoke for a certain period of time. Offers are limited if: 1. there is an option contract supported by consideration 2. There is a firm merchant's offer under the UCC 3. The offeree has detrimentally relied on the offer and the offeror could have reasonably expected such reliance. 4. In the case of Unilateral contract if the offeree has began performance. **Rejection** – an offeree can reject and offer expressly or by making a counter offer. Rejection is effective when received. The following will terminate an offer 1. Death or Insanity of either party 2.Destruction of the subject matter 3.Supervening illegality. **Defective formulation & expression of agreement;** if both parties think they are agreeing to the same terms yet each has a different subj. belief about what the deal is; if discrepancy is suff. major – may prevent a contract from existing at all.**Contract Construction:** A contract is construed as a “whole,” and according to the ordinary meaning of words. If there is an inconsistency between provisions, written or typed provisions prevail over printed provisions. Ambiguities are construed against the party preparing the contract, absent evidence of the intention of the parties.**Avoidance of Contract; Capacity to Contract: Infancy** – any contract he entered into is voidable at his option; **Mental Incompetence** – insane, drunk, mentally retarded. **Unilateral Mistake;** only 1 party has acted on the mistaken belief; **Mutual Mistake;** both parties have acted on the same mistaken belief – the party seeking rescission must show basic assumption, material effect, allocation of risk; **Duress;** if show he was unfairly coerced into entering into the contract or into modifying it; any wrongful act or threat which overcomes the free will of the party; subj. standard used; remedy – generally restitutionary. **Unconscionability;** provisions of contract are so grossly unfair as to shock the conscience of the court; Consumer trans – adhesion contracts are standardized business contracts; drafter has not really consented to the bargain. Commercial trans – courts usually assume a contract between 2 business people, each is capable of protecting own interests. **Illegality: Agreements Unenforceable on Grounds of Public Policy;** a contract is illegal if subj matter is unlawful regardless if barred by statute or against public policy; neither party may enforce; illegal contract is void; **Interpretation**-deals with looking at a contract and terms and decide whether extrinsic proof is necessary to define the terms. **Parol evidence rule:** contracts don't have to be in writing but if an agreement is put in writing, the ability of the parties to vary the terms of that writing with contemporaneous or pre-existing agreements is limited (R241, R211) (inside BOX). Evidence of prior or contemporaneous negotiations and agreements that contradict, modify, or vary contractual terms is inadmissible if the written contract is intended as a complete and final expression of the parties. A “merger clause” strengthens the presumption that the written document is final. **Parol evidence cannot contradict what the contract says. Exceptions:** Evidence of the following is admissible: 1. **Formation defects** (e.g., fraud, duress, mistake, illegality); the existence of a condition precedent to a contract; the parties' intent regarding ambiguous terms; consideration problems (e.g., consideration stated in the contract was never paid); a prior valid agreement which (as by mistake) is incorrectly reflected in the writing; a collateral agreement if it does not contradict or vary the main contract and if it is not so closely connected as to be part of the main contract; Subsequent modifications. **Performance of the Contract; A Condition (R224)** is an event or circumstance that a party's duty to perform is contingent upon. **Condition Precedent** can trigger a party's duty to perform. Normally indicated by words such as “if”, “on the condition that”, “subject to”, or “provided”. **Condition Subsequent** can extinguish a party's duty to perform that had already become absolute. Normally indicated by words such as “The contract will be void if...”. **Condition Concurrent** – those that are capable of occurring together & the parties are bound to perform at the same time. **Express** (R209, R229) conditions must be complied with literally. For **Implied** conditions the parties must have agreed on impliedly; **Constructive conditions** (R241), the court constructs the condition in the interests of justice if the other party breaches a promise, and the breach is material, you can cancel the contract and sue that party for breach. Conditions read into the contract by the court; Conditions can be discharged unless: it is independent covenant; contract is divisible; condition has been substantially performed; quantum meruit relief; Failure of a condition means you don't have to perform; you can't sue. **Rest. 2d 269: If the contractual provision purports to be the words of the party of whom performance is required, the performance is a promise; if it's supposed to be the words of the other party, it's a condition. Modification** requires new consideration, unless it's under UCC § 2-209, and **waiver** requires known relinquishment of a known right. You have got to know that you have a right to waiver. **Excuse of conditions; Waiver** - The party who's duty is subject to the condition wrongfully interferes with the occurrence of that condition, the condition is excused and the party has to perform anyway. **Note:** If a condition does not occur and it's not excused, the party whose performance was contingent on the condition **doesn't have to perform. Discharge of Duties.**As soon a contract becomes absolute (i.e., either it's not conditional, or the condition has been satisfied or excused), the duty must be discharged. **Discharging contractual duties are:** 1. **Mutual rescission** (i.e., rescinding the contract); 2. **Release** (i.e., a party is formally released from his duties under a contract by the party to whom performance is due); 3. **Accord and satisfaction;** 4. **Impossibility** (due to death of a person necessary for performance, supervening illegality, or destruction of the subject matter); 5. **Frustration** (must be caused by a supervening act or event; which was unforeseeable when the parties entered into the contract; the act or event destroys or almost destroys the purpose of the contract; and both parties realized this purpose when the contract was formed. **Modification (Rest. 2d 87)** increasing payments will be enforceable where there are: unanticipated circumstances, which make readjustment fair and equitable. **UCC 2-209, 1-203** Modifications are binding as long as they are undertaken in “**Good Faith**”. **Modifications** have to comply with the Statute of Frauds only if the contract as modified fits within the statute. **Accord** – 1. substitutes for the original contract unless the original promise in question involved and undisputed bill; that is, an undisputed duty to pay a fixed sum of money. 2. Before the accord is supposed to be performed, the party who's entitled to performance had his rights suspended, according to most courts; that is, if he tries to sue on the original contract, the other party can successfully block his attempt. 3. If the performance due under the accord is tendered and refused, that constituted breach of an accord. 4. If the party who is supposed to perform under the accord doesn't tender performance, the other party has a choice of suing under the original agreement or the accord (unless the parties explicitly intended the accord to substitute for the original contract). **Satisfaction:** Satisfaction is the performance of the accord. It discharges both the accord and the original debt. **Acceptance of goods;** cannot revoke accept of goods under common law; you can under UCC if it is within a reasonable time and you discover the defective goods. All representations are required to be true – **creates express warranties; Limitations of warranties and remedies** (UCC 2-719); exceptions- exclusive remedy fails of its purpose; personal injury; **Changed circumstances;** Existing impracticability; & Supervening impracticability – performance may be executed if it is made impracticable by occurrence of event on which the contract is made; **The key is whether or not it was foreseeable. Duty of good faith;** decency, fairness, reasonableness with parties agreed-upon common purposes & justifications; 3 categories: standards of contract formation, at-will employee termination, limits on discretion in performance. **Frustration of purpose;** the purpose of value of the contract has been destroyed by a supervening event that was not reasonably foreseeable at the time the contract was entered into. **Breach.**When a party's duty to perform under a contract is absolute, the failure to perform is a breach. It can be absolute because it wasn't conditional or it was conditional and the condition was fulfilled or excused. For a “material breach” by the promisor, the promise had both affirmative (sue for damages for total breach) and defensive (cancel the contract) remedies. **Anticipatory Breach** When a promisor repudiates a contract, the injured party faces an election of remedies: he can treat the repudiation as an anticipatory breach and immediately seek damages for breach of contract, thereby terminating the contractual relation between the parties, or he can treat the repudiation as an empty threat, wait until the time for performance arrives and exercise his remedies for actual breach if a breach in fact occur at such time... However, it the injured party disregards the repudiation and treats the contract as still in force, and the repudiation is retracted prior to the time of performance, then the repudiation is nullified and the injured party is left with his remedies, if any, irrevocable at time of performance. **Note:** Novation or contract modification requires consideration. **Anticipatory repudiation:** if before time for performance you announce that you will not perform or do some act that makes performance impossible. Remedy: demand performance & then sue when def refuses; ignore breach, demand perf & then sue when performance is due. **Breach or repudiation by payor;** entitled to substitution of performance either \$\$ or in equitable remedies, specific performance. Equitable remedies for breach of contract; prohibitory injunction and specific performance; **Damages: Expectation** (contract damages) – gain or profit that would have been made on full performance; **Reliance** – loss that occurred in reliance on the promise; **Restitution** – restoration of post-contract activity. Duty to mitigate damages at breach as opposed to notice of repudiation. Reliance & Restitution – as if contract had never existed; **Consequential damages;** 1) foreseeability (loss must be foreseeable); 2) mitigation (non-breacher must attempt to mitigate damages); 3)providability – must be able to prove damages with reasonable certainty; 4) speculative (lost profits). **Note:** The law favors legal damages over equitable remedies. **Compensatory** – compensate the aggrieved party for economic losses & gains prevented by the breach. **Standard Measure of Damages:** In most cases, the standard measure of damages will be expectation damages that would permit the plaintiff to buy a substitute. In cases where expectation damages are speculative, the plaintiff may recover reliance damages (i.e., the cost she has incurred by performing). **Contracts for Sale of Goods:** Damages are measured by the difference between the contract price and the market price when the seller tenders the goods or when the buyer learns of the breach. **Assignment of rights;** present transfer of a party's already existing rights under a contract; no consideration required. Contract rights are generally assignable; unless it would materially change the duty of the obligor or materially change contract terms. **Delegation of duties;** present transfer of a party's already existing duties under a contract; **Third party beneficiaries;** person who is not a party to a contract becomes a third party beneficiary at the time the contract is formed, if the parties to the contract intend to confer a benefit on that person. **Covenants: Mutual & independent** – where either party may recover damages from the other for the injury he may have received by a breach of covenants in his favor & where it is no excuse for the def to allege a breach of covenants on thepart of the plaintiff; Covenants which are conditions and **dependent,** in which the performance of one depends on the prior performance of another, and therefore, till this prior condition is performed, the other party is not liable to an action on his covenants; **Mutual** conditions are to be performed at the same time if one party was ready & offered to perform his part, & the other neglected or refused to perform his, he who was ready & offered has fulfilled his engagement, may maintain an action for the default of the other, though it is not certain that either is obligated to do the first act. **Weaver v American Oil;** unconscionability; provisions of contract are so grossly unfair as to shock the conscience of the court; **Rehm v Walker;** mutuality of obligation; **Lucy v Zehmer;** meeting of the minds; (objective) expressed intent determines contract formation; **Wood v Lucy;** implied promise – contract wont work w/o implied promise to make reasonable effort; **Clark v West: condition can be waived, promise cannot;** Laidlaw v Oregon; **duty to disclose; silence not fraud if no duty to disclose (fiduciary);** Vokes v Arthur Murray – misrepresentation; can be fraud when parties not dealing on equal terms; Ayer v Western Union: **Mistake – allocation of risk of error in transmission falls on party who chose means of transmission; Pevar v Evans;** UCC allowance for variance of terms between offer & acceptance. UCC2-207; 3 ways to form agmt; oral agmt formed 1st – followed by written acknowledge with other terms added later; if term no material & no objection, then terms become part of the contract; warranty & liability clauses are material; 2nd – performance – if parties behave as it there were an agmt-gap filler provisions from UCC; written agmts where documents had diff terms – perhaps dueling docs if boilerplate terms are diff & material docs may not form agmt. **Boise Jr. College v Mattefs Const** – unilateral mistake; const firm screwed up bid to school; elements to support rescission; mistake is material; enforcement of contract would be unconscionable; mistake did not result from violation of duty or culpable negligence; prompt notice is given; other party will not lose anything except huge unfair bargain. **Taylor v Johnson** – horse breeding; before time of perf, def sold horse and “released” plaint in writing; court holds that the act was repudiation not writing. **Adams v Lindsell;** mailbox rule; offer to sell woll /acceptance not received in time; **Carilll v Carbolc Smoke Ball;** when ad is an offer; ad was an express promise; **Baird v Gimbell;** irrevocable offer – promissory estoppel – sub made offer to be accepted after general had won bid – sub had revoked in time. **Thomas v Thomas;** nominal consideration is fine if there was bargaining; **Hochster v DelaTour** – anticipatory breach; court holds plaint can sue immediately on repudiation or can demand perf, then sue when perf due; If you sue immed – you have duty to mitigate damages; if you demand perf & wait, def can retract repudiation & you are stuck with original contract terms. **Taylor v Caldwell;** impossibility – destruction of subject matter; Mineral Park v Howard; **impracticability – excessive costs; R261: Doctrine of impracticability recognizes the fact that some conditions cannot be met because of unforeseen occurrences. The elements are that:** 1) an event made the performance impracticable; 2) the nonoccurrence of the event was a basic assumption on which the contract was made & 3) the impracticability resulted without the fault of the party seeking to be excused; and the party has not assumed a greater obligation than the law imposes. R230:Where the parties have completed their negotiations of what they regard as essential elements, and performance has begun on the good faith understanding that agreement on the unsettled matters will follow, the court will find and enforce a contract even though the parties have expressly left these other elements for future negotiation and agreement if some objective method of determination is available, independent of either party's mere wish or desire. Such objective criteria may be found in the agreement itself, commercial practice or other usage and custom. If the contract can be rendered certain and complete, by reference to something certain, the court will fill in the gaps. **R89(a) - A promise modifying a duty under a contract not fully performed on either side is binding (a)if the modification is fair and equitable in view of circumstances not anticipated by the parties when the contract was made..... It only enforces a modification if the parties voluntarily agree and if (1) the promise modifying the original contract was made before the contract was fully performed on either side, (2) the underlying circumstances which prompted the modification were unanticipated by the parties, and (3) the modification is fair and equitable. R241-where parties to a writing which purports to be an integration of a contract orally agree, before or contemporaneously with making of writing, then it shall not become binding until a future day or until the happening of a future event, the oral agmt is operative if there is nothing in the writing inconsistent therewith. Cons. Conditions of Exchange - R234- 1) where all of part of the performances to be exchanged under an exchange of promises can be rendered simultaneously, they are to that extent due simultaneously, unless the language or the circumstances indicate the contrary; 2) except to the extent stated in 1) where the performance of only one party under such an exchange requires a period of time, his performance is due at an earlier time than that of the other party, unless the language or the circumstances indicate the contrary. R250-repudiation is a statement by the obligor to the obligee indicating that the obligor will commit a breach that would of itself give the obligee a claim for damages for total breach under S243 or a voluntary affirmative act which renders the obligor unable or apparently unable to perform w/o such a breach.**