Contract- a promise that, when breached, is given a remedy by the law. Four elements necessary to form a contract: **offer, acceptance, consideration, and intent**. Also must be mutual assent, or a “**meeting of the minds**,” which can be shown through an offer and acceptance.

**Offer**- the manifestation of willingness to enter into a bargain that justifies and invites assent. **Acceptance**- an expression of assent to an offer, which typically takes the form of a **promise or performance**. **Intent** to be legally bound by the contract, **does not have to be manifested in order for a contract to be formed**. However, the manifestation of a **lack of intent to be legally bound may prevent the formation of a contract**. **Consideration**- requires the exchange of something of value.

**\*Two basic types of contracts**:

1) **bilateral**- agreement between two parties, in which the offeror makes a promise, and the offeree accepts by making a promise, 2) **unilateral**- agreement between two parties, in which the offeror makes a promise, and the offeree accepts by rendering a performance.

**Invalid offers**: 1) **made in jest** is invalid if the offeree knew or should have known that the offer was a joke, 2) **preliminary negotiations**, including invitations to bid, price quotations, and proposals, & 3) **advertisements** are invalid, unless they contain a reasonably certain promise that leaves no room for negotiation.

**\*4 ways to** **terminate** an offer **before it has been accepted**: 1) if the offeree rejects the offer or gives a **counteroffer** that proposes different terms relating to the same matter as the initial offer, 2) by **lapse of time**, either specified or, if unspecified, reasonable under the surrounding circumstances, 3) by the death or legal incapacity of either the offeror or the offeree, 4) by the **offeror’s revocation** of the offer, which must be communicated to the offeree **before acceptance**.

**\*Irrevocable contracts:** 1) **Option** contracts- offeror keeps an offer open for a **limited amount of time, in exchange for the offeree’s consideration**. Cannot revoke offer during time. **Partial performance in a unilateral contract may serve as consideration**. **2) Firm** offers- a merchant who deals in goods provides a signed writing to the offeree, explicitly assuring an offer to buy or sell goods will be held **open for a limited amount of time-** only irrevocable for **up to first 3** **months.** The **offeree does not have to provide consideration.**

**\*Mailbox rule:** acceptance is effective the moment it leaves the offeree’s possession to be given to the offeror, i.e. **acceptance is effective upon dispatch**. If acceptance is lost- still effective if it was properly addressed.  If acceptance is improperly addressed- considered effective only if it is received within the time that a properly addressed acceptance would have been received. **Exceptions to mailbox rule**: 1- offeror can prescribe a time of acceptance that is not the moment of dispatch, 2- unilateral contracts, which are accepted upon full performance, 3- option contracts, which are accepted upon receipt.

**-Modes of Acceptance**: performance (even partial) OR promise…generally NOT silence unless: 1) **offeree receives the benefit** of offered services, despite reasonable opportunity to reject those services, 2) **offeree exercises dominion** over offered property by acting inconsistently with the offeror’s ownership of that property, 3) there are **prior dealings** that make it reasonable for the offeror to expect to be notified of a rejection and, in the absence of a rejection, to conclude acceptance, 4) **offeror and offeree intend** for the offeree’s silence or nonverbal conduct to constitute an acceptance- result is known as an “**implied-in-fact**” contract.

**-Mirror Image Rule**: requires an acceptance to be an **unconditional** assent to the exact same terms that were stated in the offer. Any acceptance that adds to or changes the terms of an offer is considered a **counteroffer that rejects and terminates the initial offer**. Regarding sale of goods, Section 2-207 of the **UCC rejects the mirror image rule**.

**-Under Section 2-207**: a response to an **offer that states additional or different terms is generally considered to be an acceptance and not a counteroffer**. Thus, a contract is formed, and the **non-matching terms** are treated as **proposals** for additions to the contract. In many jurisdictions, expressly conflicting terms simply fall away and don’t become part of the transaction at all. 1)a response isn’t an acceptance if it **expressly conditions acceptance** on the other party’s agreement to the non-matching terms, 2) a response isn’t an acceptance if the non-matching terms **are essential** terms of the contract, such as price or quantity.

UCC Section 2-207, **transactions between merchants**: non-matching terms become part of the contract unless:

* 1) the **response expressly conditions acceptance** on agreement to the non-matching terms;
* 2) the **non-matching terms materially alter the contract**; or
* 3) the **other party timely notifies the responding party that the non-matching terms are unacceptable**.

\*ENFORCEABILITY:

**-Consideration**: something bargained for; promise for a promise; benefit or detriment to other party; adequacy of consideration **is irrelevant** **to the enforceability** of the contract…BUT inadequacy of consideration **may support a defense to enforceability**, such as duress, and a nominal amount of consideration will typically render a contract unenforceable.

**-Unenforceability: \*Gratuitous promise**- act while expecting nothing in return; court will not enforce. \***Past consideration-** given before the contract was formed does not constitute consideration. \***Illusory promises**- promisor makes no commitment and reserves the discretion to choose between alternative performances also lack consideration unless each of the alternative performances would sufficiently constitute consideration on its own. **\*Preexisting duty rule**- an already-existing legal obligation or lack of legal entitlement does not constitute consideration. Modification **unenforceable unless one of three exceptions**: **1)** **unforeseen circumstances that were not anticipated by the parties when the contract was formed**. **2)** **alters the parties’ duties under the existing contract**. **3)** is for the **sale of goods**. **U.C.C. rejects the preexisting duty rule entirely**- modification does not require consideration to be enforceable.

**-Promissory estoppel**: a promise not supported by consideration; may be partially or fully enforced. 3 elements: 1) promise, 2) reliance, and 3) detriment. Fact specific- case by case determination.

**-Statute of Frauds**- requires 6 types of contracts to be in writing to be enforceable (**MYLEGS**): 1) **m**arriage, 2) contracts that cannot be fully performed within 1 **y**ear, 3) **l**and contracts (except if P reasonably relied, made significant repairs, & injustice not to enforce), 4) **e**xecutor/admin contracts, 5) sale of **g**oods over $500 (except: specially manuf. Goods, or D admits to agreement, or payment/goods already made/received), 6) **s**uretyship (except main purpose rule). \*Affirmative defense you have to raise yourself.

**-Defenses to enforceability**: 1) **lack of capacity** (infancy, mental illness/defect, intoxication), 2) **duress**, 3) **illegality** (asserted by either party if violates public policy), 4) **unconscionability**, and 5) **misrepresentation** (can rely on opinion if special relationship, ex. realtor).

**\*TERMS:**

**-Interpretation**: 1) **minor indefinite** term, such as time of performance or price, by supplying a customary or reasonable term. 2) **ambiguous** term by following parties’ meaning or, in the case of a misunderstanding, one party’s meaning if the other party knew of the misunderstanding. 3) **omitted** term by filling in the gaps and supplying a reasonable term under the circumstances, including a duty of good faith.

**-Parole Evidence rule**: additional proof outside original writing that tends to explain/clarify terms; court may not consider such evidence; Writing ambiguous- evidence IN; Writing integrated (entirely/partially) if evidence contradicts- evidence OUT; **4 exceptions**: 1) to establish writing as integrated, completely or partially 2) clarify ambiguous term 3) support a defense to enforceability, such as illegality 4) determine whether a remedy should be granted or denied to one of the parties.

**-Condition**- an uncertain event that must occur before a party can be required to perform. Can be express or constructive. Express- the parties explicitly agree. Constructive- implied by law to avoid injustice. General effect of a condition is that the **obligor must perform only if the condition occurs**. However, there are times when performance can be required even if a condition fails to occur. In these situations, the failure, or **nonoccurrence,** is said to be **excused.**If the condition is excused, thenthe obligor must perform regardless of the condition. Example:  the **duty of good faith** and **fair dealing** is **an implied condition** of every contract; a party who **causes a nonoccurrence in bad faith** will still be required to perform. Can also be excused if the condition isn’t a material part of the agreement and occurrence is **impracticable**.

**-Estoppel**- an obligor must perform if: 1) obligor promised to perform despite the nonoccurrence; 2) obligee changed his or her position in reasonable, foreseeable, and detrimental reliance on that promise; and 3) enforcing the condition would unfairly harm the obligee.

**-Waiver**- an express statement to that effect or by accepting performance despite knowing of the nonoccurrence; doesn’t excuse nonoccurrence if condition is material.

**--Disproportionate forfeiture**- requires the obligor to perform despite nonoccurrence if: 1) condition is not a material part of the contract; 2) obligee has substantially relied on the expectation of the parties’ exchange; and 3) obligee’s loss if the condition were enforced would be much greater than the obligor’s loss if the nonoccurrence were excused.

**-Warranties**: **1-** **express, 2- implied warranty of merchantability, and 3- implied warranty of fitness for a particular purpose**. 1) an **express** warranty guarantees or affirms that the goods conform to a stated fact or condition, including a description, sample, or model, but not “mere puffery.” 2) an **implied** **warranty of merchantability** warrants that the goods sold by a merchant are merchantable, or fit for ordinary purposes. 3) an **implied warranty of fitness for a particular purpose** warrants that the goods are fit for the buyer’s particular purpose, if the seller knows that the buyer is relying on his skill or judgment to select suitable goods. **Explicit disclaimers** consist of clear and reasonable words or conduct for express warranties, explicit language mentioning “merchantability” for implied warranties of merchantability, and written language for implied warranties of fitness for a particular purpose**.**

**Implicit disclaimers**, on the other hand, result from the language of the sale or the buyer’s examination of the goods and may only affect implied warranties.

**\*PERFORMANCE:**

-**Breach**- when a party has failed to fully perform by the due date of the performance; total- can sue; partial- may still sue, but only if material; If breaching party substantially performed, then not a material breach.

-**Anticipatory repudiation-** two forms: 1) repudiating party may give a statement clearly indicating the intention to breach, 2) repudiating party may take an action that renders him unable to perform; action must be voluntary and affirmative; can be **retracted-** injured party must receive notice or know events causing the repudiation cease to exist. Repudiation final, and cant be retracted, when: 1) injured party has materially changed position in reliance on the repudiation, 2) injured party has indicated anticipatory repudiation is considered final. Party can suspend own performance and demand **adequate assurance** if there are reasonable grounds to believe that the other party may be unable to perform. If a reasonable time has passed without assurance, the party may sue for a remedy.

**-Mistake**- a belief not in accordance with the facts at the time of the contract; adversely affected party may avoid performance.

--**Mutual mistake**- both parties have the same mistaken belief & consists of 3 elements: **basic assumption, material effect, and not bearing the risk** of the mistake due to allocation by parties or court, or conscious ignorance.

--**Unilateral mistake-** only one party has mistaken belief & consists of 4 elements**: basic assumption, material effect, not bearing the risk** of the mistake, **and unconscionability** or party knowledge or fault.

**-Changed Circumstances**- may affect performance; 3 types: 1**) impossibility** 2) **impracticability** 3) **frustration of purpose**.

**--Under the doctrine of impossibility**, a party may avoid performance if: 1) **it becomes impossible** to perform due to changed circumstances; performance has become impossible if it cannot be performed by anyone, not just the specific party to the contract due to 3 types of events: death/incapacity, destruction of the subject matter, or performance is prevented by law; 2) **performance has become impractical** if it will cause extreme and unreasonable difficulty, expense, injury, or loss to one of the parties; 3) under **frustration of purpose**, a party may avoid performance if principal purpose is substantially frustrated due to changed circumstances- other party’s performance has become virtually worthless, even if it is still possible or practical.

**-Perfect Tender Rule**: buyer who receives **nonconforming delivery** can reject (by notification w/in reasonable time) or accept entire delivery or accept some units and reject the rest. upon rejection, the seller can promptly notify the buyer that it intends to cure the nonconformity. If the time for performance **has not expired**, seller merely needs to make timely, conforming delivery. If the time for performance **has** **expired**, seller has a reasonable time to make conforming delivery, provided seller reasonably believed original delivery would be acceptable. Buyer can revoke acceptance (w/in reasonable time) if the goods are substantially impaired by their nonconformity & one of three circumstances exist: 1) buyer reasonably assumed the seller would cure the nonconformity but the seller didn’t, 2) buyer discovered the nonconformity after acceptance due to the difficulty of detection, or 3) buyer discovered the nonconformity after acceptance due to the seller’s assurances. A buyer can **reject a nonconforming installment only** if the **nonconformity substantially impairs the value** of the installment and cannot be cured. A buyer can cancel an installment contract if a nonconforming delivery substantially impairs the value of the entire contract.

**-Third parties-** as an **intended** beneficiary, **may sue** to enforce the contract. A merely an **incidental** beneficiary **may not sue** to enforce. Generally, any rights may be **assigned**, unless they materially change other party’s duty or impair or devalue return performance to other party. Duties may be delegated, unless other party has a substantial interest in delegator’s performance & not forbidden by law or contract itself; delegation does not discharge the delegator’s liability.

**\*REMEDIES:**

**-Damages**- monetary remedy for breach; amount may be: 1) set by the **parties** in the contract as **liquidated** damages, or 2) by the **court** as **nominal, expectation**, or **reliance** damages. A provision for **liquidated damages** will **only be enforced if the amount is reasonable** in light of the anticipated or actual loss caused by the breach. Generally, when a breach **did not cause any loss**, or when the **loss is not provable**, the court will **award a small sum as nominal damages**.

**--Expectation damages**- based on the injured party’s interest in having the benefit of the bargain. When awarding expectation damages, court will set an amount that **places the injured party in the position that he would have been in had the contract been fully performed**. Amount calculated by considering- loss in value of the breaching party’s performance, any incidental or consequential loss suffered by the injured party as a result of the breach, and any loss avoided by the injured party as a result of not having to fully perform.

**--Reliance damages**- alternative to expectation damages; awarded when injured party relied on the contract but cannot prove any lost profits. The court will award an amount that places injured party in the position that he would have been in had the contract never been made. To **calculate the amount of reliance damages**, the court will consider the **loss incurred by the injured party in reliance on the contract, including expenditures made while performing or preparing for the contract.**

Expectation and reliance damages limitations: 1) avoidability, or the duty to mitigate loss, 2) foreseeability, & 3) certainty.

**-Restitution,** or the **prevention of unjust enrichment**- to receive restitution, the party seeking restitution, who may be either the injured or breaching party, **must have** **already rendered partial performance**. An injured party may also receive restitution **after full performance**, but **only if** the **breaching party still owes non-monetary performance**.

--Two types of restitution: 1) **damages** ($$$) or 2) **specific restitution** (thing not $$$). **NOTE: breaching party may not sue for specific restitution**.

**\*Quasi-contract**- If one party confers a benefit onto the other, courts may imply a contract for the purpose of **preventing unjust enrichment**. A party may be able to recover restitution, even if there is not an enforceable contract or even any contract at all. This **allows the party that conferred the benefit to recover restitution**; **may also be implied** even **with no intent to form a contract,** as long as the party **has a restitution interest and acted in good faith**.

**\*Specific performance:**only granted against a party who **has committed or is threatening to commit a breach of the contract**; **requires breaching party to perform a duty to act**. \*\* As a general rule, **contracts for personal services are not subject to specific performance**, ex. actors, singers, athletes, or employees.

**\*Injunction:** requires breaching party to **refrain from taking an action**.

**--Requirements** for specific performance or injunction: 1) **damages must be inadequate** based on consideration of several significant circumstances, such as the difficulty of proving damages with reasonable certainty, the difficulty of using damages to procure substitute performance, and the likelihood of collecting damages, 2) terms must be definite, i.e. **sufficiently certain enough to provide a basis for an appropriate order of specific performance or injunction**, & 3) order of specific performance or injunction must not be disproportionately burdensome for the court to enforce.