Contracts

I. APPLICABLE LAW

A. COMMON LAW

The common law applies to all questions regarding land conveyances and the sale of services.

B. UNIFORM COMMERCIAL CODE

The Uniform Commercial Code (UCC) applies to the sale of goods.

1. Definition of Goods

Goods are movable property other than money, such as growing crops, unborn animals, and merchandise.\(^1\)

---

\(^1\) UCC 2-105.
II. CONTRACT FORMATION

A. DEFINITION OF A CONTRACT

A contract is an agreement between two or more parties where there is a promise to act in return for a valuable gain.²

1. Types of Contracts

a. Bilateral

A bilateral contract is when a promise is exchanged for a promise.³

b. Unilateral

A unilateral contract is when a promise is exchanged for an act.⁴

2. Types of Formation

a. Implied Formation

An implied contract is formed by the behavior of the parties as opposed to written or oral communication.

b. Express Formation

An express contract is explicitly asserted by written or oral communication.

c. Quasi-Contract Formation

A quasi-contract is created by a trier of fact to prevent unjust enrichment.

B. OFFER

An offer is conduct that indicates a present intent to create a binding agreement and creates the power of acceptance.\(^5\)

1. An offer **must create a reasonable expectation** that the offeror is willing to form a binding agreement.

   a. An objective test is used to determine the reasonableness of an offeree’s expectation.

      (1) Comments made in anger or jest are not effective offers.

2. The more sweeping the channel of communication, the more likely the statement is a solicitation for an offer as opposed to an offer.

3. Under common law, an offer must contain the essential terms of the agreement.

   a. Essential Terms

      (1) Identification of the parties to the contract;

      (2) The time of performance of the contract;

      (3) The subject matter of the contract;

      (4) The quantity of the subject matter involved; and
(5) The price for performance.

b. Land Conveyances

The price and the description of real property must be provided for a land conveyance contract to be effective.

c. Uniform Commercial Code

Under the UCC, a reasonable price and a reasonable time for performance will be inferred.6

4. Invitation for an Offer

An invitation for an offer is a statement made during preliminary negotiations that is not an indication of a present intent to create a binding agreement. An invitation for an offer lacks definite terms.

6 UCC 2-305 and UCC 2-309.
a. Language

(1) Phrases, such as "Would you consider $35," or "I am seeking $75.00 for my item," are indicative of invitations to make an offer.

b. Examples

(1) An auction without reserve is an offer to sell.

   (a) An auction without reserve occurs when the auctioned item may not be withdrawn unless if a bid for the item is not made within a reasonable time.

   (b) An auction with reserve is an invitation for parties to make an offer on the item because the auctioneer may reject or accept the bid.

(2) Advertisements in newspapers.

   (a) A posted reward for finding a lost item is an offer because the terms of acceptance are definite.
(b) A statement published in a newspaper, such as "One top hat to the first person that arrives at my store," is an offer because there are definitive terms expressed in the statement.

C. TERMINATION OF AN OFFER

Illegality, revocation, rejection, incapacity, destruction of the contract's subject matter, and a lapse of time may terminate an offer. An offer is irrevocable for a reasonable time if the offeror could reasonably expect the offeree to detrimentally rely on the offer.

1. Illegality

An offer is terminated if the subject matter of the contract becomes illegal.

2. Revocation

An offer is terminated if the offeree obtains notice of the offeror's revocation or if the offeree is aware of the offeror's conduct that is not consistent with the offer.

a. An offer made through a publication may be revoked if the revocation is published through similar means.
b. An indirect revocation of an offer is effective if the offeree receives accurate information from a credible source that the conduct of the offeror would suggest to a reasonable person that the offer had been revoked.

c. A merchant's firm offer is irrevocable for a reasonable time.\(^7\)

(1) A firm offer is an offer that is combined with a written, express promise signed by the merchant to keep the offer open.

(2) The offeree may be a non-merchant and the merchant's firm offer to sell or buy goods is irrevocable for a reasonable time or the time stated in the offer.

3. Rejection

A counter-offer or rejection terminates an offer under common law.

a. Receipt of Rejection

The offer is terminated when the offeror receives the counter-offer or rejection.

\(^7\) UCC 2-205.
b. Inquiry

A counter-offer must be distinguished from an inquiry about additional issues concerning the contract. A reasonable person test is used to determine if a statement is a counter-offer or inquiry about additional issues.

4. Incapacity

An offer that has not been accepted is terminated when the offeree is notified of the offeror's incapacity.

a. Insanity and Death

Insanity and death are examples of incapacities.

5. Lapse of Time

An offer that is not accepted may expire after a reasonable time has elapsed or within the time limits set by the offer.

6. Destruction of the Contract's Subject Matter

An offer is terminated when the subject matter of the offer is destroyed.
D. ACCEPTANCE

An offer is accepted if it is reasonable for the offeree to believe that the offeror has invited the offeree's acceptance. The power of acceptance may not be assigned to a third party.  

1. Mirror Image Rule

Under common law, a valid acceptance must contain the same terms of the offer.

a. Counter-Offer and Rejection

If an attempted acceptance does not contain the same terms of the offer, the attempted acceptance is deemed a counter-offer and rejection of the original offer.

(1) Under common law, if an offeree asks the offeror to consider alternative terms but is clear in that she is not rejecting the offeror's offer, an acceptance has not occurred. However, the offeree may still accept the original offer if the offer has not been revoked.

---

(2) Under common law, an offeree's reply to an offeror that makes an implied term definitive is not a counter-offer or a rejection.

2. Mail Box Rule

Under the mail box rule, an offer sent via mail may be accepted by mail and the acceptance is effective when the acceptance is dropped in the mail box to be sent to the offeror. However, if an option contact is concerned or if the offer specifies that the acceptance is not effective until the acceptance is received by the offeror, the acceptance is not effective. Further, an acceptance sent through improper methods may still form a contract if the offer is still open and the offeror receives the acceptance.

a. Opposing Mailings

(1) Acceptance Followed By Withdrawal

(a) If the offeree's acceptance is only effective upon receipt, then the communication that reaches the offeror first prevails.

---

(b) If the offeree's acceptance is effective upon being sent, a contract is formed upon dispatch and a subsequent communication withdrawing acceptance is not effective.

3. Battle of the Forms

a. Merchant

Under the UCC, when a merchant attempts to accept an offer, additional terms contained in the attempted acceptance become part of the contract unless:

(1) The offeror objects to the additional terms within a reasonable time;

(2) The offer explicitly limits acceptance to the terms contained in the offer;
   or

(3) The additional terms materially alter the contract.\(^{10}\)

b. Non-Merchant

When a non-merchant responds to an offer with additional terms, an acceptance has occurred along with an offer to modify the original offer.

\(^{10}\) UCC 2-207.
c. Revocation of Acceptance by Purchaser

A purchaser may revoke her acceptance of goods if the goods are defective and the defect materially diminishes the worth of the goods.

(1) Requirements

The purchaser must have accepted the goods because of a complication in discovering the goods' defect, accepted the goods with a reasonable belief that the defect would be cured or the seller must have promised the purchaser that the goods were conforming with the terms of the contract.

d. Rejection by the Purchaser

Under the perfect tender rule, a purchaser may reject the entire shipment, accept the entire shipment or accept a commercial unit and reject the rest of the shipment.\(^\text{11}\)

(1) The seller may cure the defect prior to the scheduled delivery date.

\(^{11}\) UCC 2-601.
4. Silent Acceptance

Generally, an offeree's silence will not be viewed as an acceptance of an offer unless if the offeree had an obligation to respond.

a. Offeree's Conduct

An offeree's conduct combined with her not objecting to a definitive offer may be viewed as an effective acceptance.

b. Previous Business Transactions

An offeree's silence will be interpreted by a court as an effective acceptance if the offeror and the offeree have had previous business transactions in which the offeree has allowed her silence to be regarded as an acceptance.

c. Waiver

An offer may waive the need for an offeree to communicate her acceptance of an offer.
5. UCC - Shipment of Nonconforming Goods

Under the UCC, the shipment of nonconforming goods is an acceptance of a contract and a breach of the contract.

6. Bilateral Contract Peculiarities

Words or conduct may constitute a valid acceptance of an offer.

a. Invalid contractual terms

Terms that are considered objectively oppressive by a reasonable person may constitute a valid defense to the formation of a bilateral contract.

b. UCC

Under the UCC, notice of an acceptance of a bilateral contract is required within a reasonable time.

(1) If notice is not provided within a reasonable time, the offer is considered to be expired.
7. Unilateral Contract Peculiarities

An offeree must be aware of an offer and be compelled to act based on her awareness of the offer.

a. Notice

Ordinarily, an offeree does not have to notify the offer of her acceptance of an offer unless there is a duty to notify the offeror of the offeree's acceptance.

(1) **Examples:** When an offeror would not ordinarily become aware of the offeree's acceptance of the offer within a reasonable time or if the offeror demands notice of the offeree's acceptance.

(a) The offeree is obligated to notify the offeror of the offeree's acceptance within a reasonable time following the acceptance.

III. CONSIDERATION

Consideration describes a legal detriment or value resulting from a bargained for exchange and is necessary for a contract to be enforceable.\(^\text{12}\)

A. LEGAL DETRIMENT

A legal detriment is when the promisee performs an act that she is not legally obligated to fulfill or forbears from lawful conduct.

1. Illusory Promises

An illusory promise does not create a legal detriment. An illusory promise is a promise that does not burden the promisor with an obligation.¹³

a. Example: "I will fix your house if I feel like fixing the house."

(1) A contract is enforceable if one contracting party has the power to cancel the contract. However, the canceling party must be obligated to give notice of her cancellation.

(a) Qualified Right to Cancel

Consideration is valid if the contracting party's right to cancel the contract is qualified in some way. For example, the right to withdraw from the contract is limited to 90 days prior to performance.

(b) Unqualified Right to Cancel

Consideration is not valid when the contracting party's right to cancel the contract is unrestricted because the contract could be viewed as an illusory promise.

(c) UCC

The UCC will imply a reasonable notification of termination if the notice of termination is not specified within the contract.\(^{14}\)

(2) A contract is enforceable if one contracting party has the choice to perform.

(a) Conditional Promise

A conditional promise is a promise that is conditioned on an occurrence and is enforceable unless if the condition is completely within the power of the promisor. For example, "I promise to buy your house on March 17 if my inspector approves the house's electrical system," is enforceable unless if the promisor completely

\(^{14}\) UCC 2-309(3).
controls whether the inspector approves the house's electrical system.

(b) Output, Requirements, and Exclusive Dealings Contracts

Consideration exists for output, requirements, and exclusive dealings contracts.

(c) An output contract's quantity is predicated on the vendor's output.

(d) A requirements contract's quantity is predicated on the vendee's requirements.

(e) An exclusive dealings contract creates either an exclusive right to sell goods or an exclusive right to buy goods. The seller or buyer is obligated to use their best efforts to honor the contract.\footnote{UCC 2-306.}

B. LEGAL VALUE

Legal value describes when consideration provides some type of gain.
1. Preexisting Duty Rule

Generally, the performance of a preexisting duty is not legally sufficient consideration to support a contract.

a. Exceptions to the Preexisting Duty Rule

(1) Ratification

Ratification is when a party adopts or confirms a prior act.\(^1\)

(a) New consideration is not required when ratification occurs.

(b) Example: A minor may ratify a contract when she reaches the age of majority. Although the contract was initially void when created by the minor, the minor may adopt the contract when she reaches the age of majority and the contract is effective even without new consideration.

(2) New Consideration

New consideration is when a promisee provides additional value or further forbearance than she already owes in exchange for an obligation.

(3) Promises Not to Litigate

A promise not to litigate may constitute sufficient consideration if the cause of action is valid.

(a) Invalid Claim

If a party believes in good faith that she has a claim and the claim is invalid, a promise not to litigate is still sufficient consideration to support a contract. However, if a party has knowledge that a claim is invalid, then the claim does not constitute sufficient consideration.

(4) Outstanding Debts

An offer to pay a smaller amount of money owed does not constitute sufficient consideration. However, payment of money owed in a different form or earlier than the due date would constitute sufficient consideration.

2. Generally, a court will not probe into the adequacy of consideration.

a. Consideration that has a probability of value is legally sufficient.
b. Fraudulent and token consideration are not usually deemed legally sufficient
consideration.

C. CONSIDERATION ALTERNATIVE

1. Promissory Estoppel

Promissory estoppel provides for the enforcement of promises that are not
supported by valid consideration. Under the theory of promissory estoppel, if a
promisor should reasonably expect a promisee to rely on a promise and the
promisee relies on the promise to her detriment, the promise may be enforced to
prevent injustice.\(^\text{17}\)

a. When Promissory Estoppel Forms Irrevocable Option Contracts

Irrevocable option contracts are tested regularly on the MBE. An example of
an irrevocable option contract is when a subcontractor tenders a bid to a
general contractor for a project. In order to prevent injustice, a court will most
likely deem that an irrevocable option contract is formed when a
subcontractor submits a bid to a general contractor because the general
contractor is relying on the subcontractor’s bid to obtain work. In most cases,
the court will find that the subcontractor should reasonably foresee that the

general contractor will justifiably rely on the subcontractor's bid. However, if the subcontractor's bid is unreasonable inexpensive, then the general contractor may not benefit from the bargain.

D. BARGAINED FOR EXCHANGE

A bargained for exchange is a performance that is bargained for an act or promise.

1. The legal detriment or value must bring about the promise or act and the promise or act must bring about the legal detriment or value.

2. Past consideration does not normally constitute sufficient consideration.

E. DEFENSES TO CONTRACT FORMATION

1. Statute of Frauds

Contracts that deal with goods worth more than $500, promises to be performed for longer than one year, answering for the debt of another party, land conveyances, and marriage are governed by the statute of frauds.
GOAL - M

a. Goods Over $500

Contracts for the sale of goods valued more than $500 must be in writing unless if an exception to the statute of frauds is applicable.

b. One-Year

An agreement that may not be performed within one year must be in writing. However, if there is even the slightest chance that the promise may be completed within one year, the statute of frauds does not apply, even though the promise may take longer than a year to be performed.

c. Answering For Another's Debt

A promise to assume the debt of another party must be in writing.

d. Land

An agreement for the sale of real property must be in writing.
(1) An agreement authorizing a party to act as a representative of a land seller may also be covered by the statute of frauds if the land conveyance is covered by the statute.

e. Marriage

An agreement predicated on the consideration of marriage must be in writing.

f. Exceptions

(1) Specially Manufactured Goods

If the goods covered in the contract were manufactured specially for the vendee and the goods are not suitable to be sold to other parties within the vendor's normal course of business, an oral contract for goods worth more than $500 is enforceable.

(a) The vendor must have substantially started the manufacture of the goods or made commitments to obtain the goods prior to the vendee's repudiation of the contract. Further, the governing factors must reasonably indicate that the goods are for the vendee.\(^1^8\)

\(^1^8\) UCC 2-201(3).
(2) Part Performance of Land Contracts

An oral contract for the sale of land is enforceable if the vendee has made valuable improvements to the land and/or enjoys complete or partial possession of the land.\(^\text{19}\)

(3) Plaintiff's Full Performance

If a plaintiff has completed the performance of a contract within a year, the statute of frauds will not govern the contract.

(4) Main Purpose Rule

Under the main purpose rule, if a promise to vouch for the debt of another party is made principally for the promisor's own benefit, the promise does not need to be in writing.

2. Duress

Duress is the use of force to induce a victim's acceptance of a contract.

\(^{19}\) Restatement (Second) of Contracts section 129 cmt. a (1981).
a. Physical Coercion

Physical coercion is a personal defense that occurs when physical duress is directed at a victim or parties affiliated with a victim to induce the victim's assent to an agreement.

b. Economic Coercion

Economic coercion is a personal defense that occurs when a culprit performs an unlawful act that creates a despondent predicament for a victim or exacerbates a victim's predicament and the victim has no reasonable choice but to comply with the terms demanded by the culprit.

3. Fraud

a. Fraud in the Inducement

Fraud in the inducement is a personal defense that allows a victim to void a contract if she chooses to do so and occurs when deliberate falsehoods or misleading statements influence a victim's agreement to a contract.
b. Fraud in the Factum

Fraud in the factum is a real defense that voids a contract when a victim unknowingly enters into a contract based on a culprit's deceitful tactic.

c. Fraud in the Execution

Fraud in the execution occurs when an oral agreement is fraudulently committed to writing incorrectly.

4. Ambiguity

Ambiguity describes when a term is used in the contract that has more than one reasonable meaning and the misunderstanding between the contracting parties compromises the reasonable expectations of the contracting parties.\(^{20}\)

a. Essential Term

The ambiguity must relate to an essential term of the contract.

---

5. Mistake

a. Mutual Mistake

A mutual mistake regarding a material fact results in a rescission of the contract or a reformation of the contract.

(1) A material fact is a basic assumption upon which an agreement is based.

(2) A rescission annuls or cancels a contract and restores the parties to the agreement to their precontractual positions.

(3) A reformation modifies an agreement to reflect the actual intent of the contracting parties.

b. Unilateral Mistake

A unilateral mistake is a mistake about a contract that is made by one party only. The contract is enforceable unless if one of the parties was aware or had reason to be aware of the fact that the other party had made a mistake or if there was a duty to reveal the mistake.
IV. THIRD-PARTY BENEFICIARIES

A. DEFINITION

A third-party beneficiary is a party that is poised to benefit from a contract but is not a party to the contract. A third-party beneficiary may file an action against the promisor to enforce the contract.

1. Intended Beneficiary

An intended beneficiary is a party that is intended to benefit from a contract and has the ability to enforce the contract once the intended beneficiary's rights have vested.

a. Donee Beneficiary

A donee beneficiary is a party that intentionally receives the benefit of a contract's performance as a gift.

(1) Rights Against Promisee

A donee beneficiary may not file an action against the promisee because the promisee's contractual duties are voluntary.
(a) Promissory Estoppel

Under the theory of promissory estoppel, the promisee is liable to the donee beneficiary if the promisee notifies the donee beneficiary of the contract, the donee beneficiary reasonably relies on the contract, and the promisee should have foreseen the donee beneficiary's reliance.

b. Creditor Beneficiary

A creditor beneficiary is party that is owed a debt that will be satisfied by the contract's performance.

(1) Rights Against Promisee

A creditor beneficiary may file an action against the promisee for performance under the contract.

c. Vesting

An intended beneficiary's rights vest when:

(1) The beneficiary justifiably relies on the contract and materially changes her position;
(2) The beneficiary makes known her agreement to the contract's performance in a way solicited by the contracting parties; or

(3) The beneficiary files an action to enforce the contract.

2. Incidental Beneficiary

An incidental beneficiary is a party that is not intended to benefit from a contract and may not file an action if the contract is breached.

V. DELEGATIONS AND ASSIGNMENTS

A. DELEGATION

1. Definition

A delegation is a transfer of a party's duties under a contract. The delegator must show an immediate intention to make the delegation.
2. Delegable Duties

In general, all duties are delegable except if:

a. A contractual clause forbids delegation;

b. The duties involve unique skills; or

c. The delegate's performance will substantially alter the obligee's expectations.

B. ASSIGNMENT

1. Definition

An assignment is a transfer of a party's rights under a contract.
2. Effective Assignment

The assigned right must be:

a. Adequately described; and

b. The assignor must objectively intend to transfer her rights immediately and completely.

c. Interests in real property, assignments for security interest purposes, and wage assignments must be in writing.

3. Transferable Rights

Most rights are transferable. However, the following assignments are not effective:

a. Assignments that are restricted by legal process;

b. Assignments that substantially change the obligor's risk;

c. Assignments of output and requirement contracts under common law;
(1) However, the UCC allows the assignment of output and requirement contracts if the quantity of the contractual terms is not changed in an unreasonably disproportionate way.\textsuperscript{21}

d. Contracts that expressly forbid assignment;

(1) A clause that restricts assignment only bars the delegation of the assignor's performance unless the surrounding circumstances suggest otherwise.\textsuperscript{22}

e. Assignments of personal service contracts that involve unique services as opposed to standard services.

(1) Unique services include services provided by individual artists, doctors or attorneys.

4. Revocation

An assignment may be revoked by:

a. A subsequent assignment of the assignee's right to another party;

\textsuperscript{21} UCC 2-306.
b. The obligor performing for the assignor;

c. The assignor's bankruptcy;

d. The assignor's death; or

e. The assignor's notification of revocation to the obligor or assignee.

5. Revocable and Irrevocable Assignments

a. Revocable Assignments

An assignment that is not supported by consideration is usually revocable unless if:

(1) The assignor should have reasonably foreseen that the assignee would detrimentally rely on the assignment and the assignee detrimentally relies on the assignment; or

(2) The obligor has completed performance of her obligation;

22 UCC 2-210(3).
b. Consideration

An assignment supported by consideration is irrevocable.

VI. PAROL EVIDENCE

The parol evidence rule helps determine the terms of a contract. In general, if contracting parties have embraced a written document as their complete understanding of each party's rights and obligations, evidence may not be admitted to alter the rights and obligations stated in the written document. Whether complete, partial or a lack of integration exists is determined by a trier of fact. Generally, merger clauses are viewed as evidence of the contracting parties' intention to integrate.

A. COMPLETE INTEGRATION

A contemporaneous oral agreement or prior oral or written agreement may not alter a contract that is deemed the final declaration of the contracting parties' understanding.

1. Parol evidence that contradicts a written agreement may be admissible if the trier of fact finds that the evidence represents separate issues not covered by the written agreement.

---

B. PARTIAL INTEGRATION

Partial integration is when a written agreement is the final declaration of issues covered in the agreement but is not the final declaration of the complete understanding between the contracting parties.

1. Evidence that supplements a written agreement is admissible if there is partial integration and the evidence does not contradict the terms of the written agreement.

C. LACK OF INTEGRATION

A lack of integration exists when a written agreement is not intended to symbolize the complete understanding between the contracting parties.

1. Generally, evidence that contradicts a written agreement is not admissible unless if there is a lack of integration.

D. EXCEPTIONS TO THE PAROL EVIDENCE RULE

Extrinsic evidence is allowed to prove formation defects within a written agreement or to clear up ambiguous terms contained within a written agreement.
1. Fraud

Fraud is the knowing concealment or misrepresentation of a material fact. An agreement that is formed as the result of fraud is defective and not a valid binding contract.\(^\text{24}\)

2. Illegality

A contract that is formed for an illegal purpose is not valid.\(^\text{25}\)

3. Duress

A contract that is the result of duress is not valid. Duress describes when a party is physically confined, threatened or when a defendant detains a party’s property.\(^\text{26}\)

4. Oral Condition Precedent

If a contracting party makes an assertion that there was an oral agreement that a written agreement would not become effective until a condition transpired, then all evidence of the oral agreement is admissible.\(^\text{27}\)

5. Ambiguity

Evidence is admissible to help determine ambiguous terms contained in a written agreement.

a. Patent Ambiguity

Patent ambiguity describes when the language of the written document is readily unclear. An example of a patent ambiguity is when two different quantities are mentioned in the same written agreement.28

b. Latent Ambiguity

Latent ambiguity describes when the application of the written document's terms creates uncertainty. An example of a latent ambiguity is when a written document contains reference to the arrival of goods on a ship named Yukon but there are two ships named Yukon.29

---

29 Id.
6. Mistake

A mistake may make a contract voidable by either of the contracting parties, create a right of reformation, create a right of restitution or prevent the formation of the contract.

a. Unilateral Mistake

A unilateral mistake is made by one party to a contract and is not generally grounds to prevent the formation of the contract unless if the other contracting party is aware of the party's mistake or should have reasonably known of the party's mistake.

b. Mutual Mistake

A mutual mistake is when both contracting parties make a mistake about a fundamental assumption on which the contract is based that has a material effect on the agreement and the party seeking to void the contract did not assume the risk of the mistake.
VII. CONDITIONS

A condition is a future and uncertain occurrence that must happen to trigger an obligation to perform or forbear from activity, as opposed to a promise, which is simply an obligation to perform or forbear from activity. The distinction between a condition and a promise is determined by the prior conduct of the parties, general custom, and the contract's content.

A. CONDITION CONCURRENT

A condition concurrent exists when both parties to a contract perform simultaneously.

1. Example

Peter and Debra signed a written agreement that stated, "Peter will pay Debra $12,000 for her motorcycle." The written agreement is silent regarding the issues of place and time of performance. However, since both Peter and Debra can perform at the same time, Peter and Debra's promised performances are conditions concurrent.

30 Restatement (Second) of Contracts section 224 (1981).
B. CONDITION PRECEDENT

A condition precedent is an event that must happen prior to another party becoming obligated to perform.\textsuperscript{31}

1. Example

Paula and David agreed that David would purchase Paula's motorcycle if David was employed by August 1. David was not obligated to purchase Paula's motorcycle unless if David was employed by August 1. Thus, David's obligation is subject to the condition precedent of obtaining employment.

C. CONDITION SUBSEQUENT

A condition subsequent extinguishes an obligation to perform under a contract if a specified event occurs.\textsuperscript{32}

1. Example

Pam and Dale signed a written agreement that stated, "Dale promises to pay Pam $350,000.00 to purchase Pam's house. Dale also promises to allow Pam to stay in

the house until August 7 on condition that William inspects the plot of land next to the house and finds that the plot is suitable for a pool." William subsequently inspected the plot of land and found that the land was not suitable for a pool. Consequently, Dale's promise to allow Pam to stay in the house until August 7 was extinguished because the condition subsequent of William's inspection had matured.

D. EXCUSE OF CONDITIONS

A condition that creates an obligation to perform or refrain from conduct does not become absolute until the condition has matured or been excused.

1. Breach

If a material breach occurs, the nonbreaching party is excused from performing.

2. Prevention

If a party unlawfully prevents a condition from happening, the preventing party's obligation becomes absolute.

3. Anticipatory Repudiation

Anticipatory repudiation is when a promisor, prior to the time for performance, 
unequivocally indicates that she will not perform.\(^{33}\)

a. Responses to Repudiation Under Common Law

(1) Disregard the repudiation and ask the repudiating party to perform;

(2) View the party's actions as a total repudiation and file an action against the 
    party;

(3) View the repudiation as an offer to rescind the contract and deem the 
    contract discharged; or 

(4) Postpone performance, wait until the agreed upon date of performance, 
    and immediately file an action against the nonperforming party.

b. Responses to Repudiation Under the UCC

(1) Wait for performance;

\(^{33}\)Restatement of Contracts section 318 (1932).
(2) Apply breach remedies;

(3) Suspend performance; or

(4) Ascertain the identity of goods and recover unfinished goods.\textsuperscript{34}

VIII. PERMISSIBLE NONPERFORMANCE

A party is excused from performing if her performance has become impracticable, impossible or the purpose of the contract has become frustrated.

A. IMPRACTICABILITY

Nonperformance is excused when an unexpected incident happens after the formation of the contract that makes the performance of the contract impracticable.

1. The impracticability must make performance extremely and unreasonably difficult.

\textsuperscript{34} UCC 2-610.
B. IMPOSSIBILITY

Nonperformance is excused when circumstances occur after the formation of a contract that makes the performance of the contract impossible.

1. Performance of the contract must be objectively impossible by any party.

C. FRUSTRATION OF PURPOSE

A frustration of purpose occurs when an unforeseen incident happens that destroys the value of a contracting party's performance.

1. Aftereffect of a Frustration of Purpose

The performing party may recover the reasonable value of her performance via quasi-contract.

IX. REMEDIES FOR BREACH OF CONTRACT

A nonbreaching party to a contract is entitled to damages but must mitigate her damages to prevent excessive losses.
A. TYPES OF DAMAGES

1. Specific Performance

Specific performance mandates the performance of the obligations under the disputed contract.35

2. Reliance Damages

Reliance damages returns the party that has not breached the contract to her precontractual position.36

3. Expectation Damages

Expectation damages places the party that has not breached the contract in the position that she would have attained if the contract was fulfilled.37

4. Restitution Damages

Restitution damages are equal to the market value of the rendered services.38

35 G.W. Keeton, An Introduction to Equity 304 (5th ed. 1961).
5. Consequential Damages

Consequential damages are the reasonably foreseeable injuries suffered by a party.

B. COMMON LAW REMEDIES

1. Rescission

A rescission annuls or cancels a contract and restores the parties to the contract to their precontractual positions.39

2. Reformation

Reformation modifies a contract to reflect the actual intent of the contracting parties.

C. UCC REMEDIES

1. Buyer's Entitlement

The buyer is allowed to recover damages if a seller repudiates the contract or fails to deliver the goods covered by the contract. Further, a buyer is entitled to damages if the buyer lawfully rejects the delivery of goods or revokes acceptance.\(^{40}\)

a. Buyer's Remedies

(1) Receive specific performance;

(2) Recover the difference between the market price and contract price plus consequential and incidental damages;

(3) Cancel the contract; and

(4) Recover damages.

---

2. Seller's Entitlement

A seller of goods is entitled to remedies when the buyer unlawfully rejects goods or unlawfully revokes acceptance of goods. Further, a seller of goods is entitled to remedies when the buyer repudiates the contract or declines to pay for goods when payment is due.\(^{41}\)

a. Seller's Remedies

(1) Withhold delivery of the goods;

(2) Stop delivery by any bailee;

(3) Identify goods to the contract or salvage unfinished goods;

(4) Resell and recover damages;

(5) Recover damages for non-acceptance; or

(6) Cancel the contract.\(^{42}\)

\(^{40}\) UCC 2-711.
\(^{41}\) UCC 2-703.
\(^{42}\) UCC 2-703.