

CONTRACTS I OUTLINE

I. **Contract** (R§1): a **promise** or a set of promises for the breach of which the **law gives a remedy**, or the performance of which the law in some way recognizes as a duty.

- a. Mutual assent
- b. Exchange of Consideration
- c. Law can give a remedy

II. Types of Contracts

- a. **Expressed**- clear, definite, explicit- intentionally created by the parties
- b. **Implied in fact**- based on actions, surrounding circumstance
- c. **Implied in law**- contract forced on the parties by the court in order to avoid one party being unjustly enriched at the expense of another- **motive** (policy)

III. UCC- always use good faith and fair dealing standard

- a. UCC 2-105- defines goods
 - i. Movable at time of sale, unborn animals, crops
- b. UCC 2-104- Defines merchants
 - i. Person who **dealings** with the goods of this kind or having **knowledge** or skill with good
 - ii. Someone who **holds themselves** as having skill in those goods
 - iii. **Employment**/agent representing someone dealing goods

Mutual Assent: the space in which two parties can offer and accept

I. R§22: manifestation of mutual assent to an exchange ordinarily takes the form of an **offer** or proposal by one party followed by an **acceptance** by the other party or parties

A. Offer + Acceptance

- i. A **manifestation** of mutual assent may be made even though neither offer nor acceptance can be identified and even though the moment of formation cannot be determined

B. Objective Theory of Contract- what a reasonable person would think in that position

- i. Outward and objectively apparent conduct
- ii. Undisclosed intention is immaterial- Not what the parties were thinking, joking, or mentally intending
- iii. *Lucy v. Zehmer*: Yes, K- wrote a contract to sell house in a bar. One party was joking but conduct and words led a reasonable person to believe that he intended a real agreement.
- iv. *Stepp v. Freeman*: Yes, K- Group agreement implied in fact when a group wins the lottery and the leader of the group tries to kick out one of the members.

C. Exceptions

- i. Too drunk/high to form a contract
- ii. Lacked consciousness to be engaged in contract
- iii. If it was a joking matter in the past
- iv. Out of the blue, strangers talking
- v. Not usually how this type of business takes place
- vi. Not directing a course of action to anyone
- vii. Interpretation of everyone else/reasonable person
- viii. Not a contract if a court can't give remedy

OFFER

- I. R §24: An offer is the **manifestation of willingness to enter into a bargain**, so made as to justify another person in understanding that **his assent** to that bargain is **invited** and will **conclude** it
 - a. Test of a binding obligation: **clear, definite, and explicit**, and leaves nothing up for **negotiation** constitutes an offer
 - i. Terms controlled by Offeror
 - ii. Something that creates a power of Acceptance
 - iii. Becomes immediately bound by acceptance without further negotiation
 - iv. All important terms have been negotiated
 1. *Leeds v. First Allied Connecticut Corp.*: No K, signed a letter of intention which buyer tried to claim was a contract but elements remained to be negotiated

II. Test:

- a. Whether the contract is of a class usually found to be in writing
- b. Whether it is of a type needing a normal writing for its full expression
- c. Few or many details
- d. Large or small amount
- e. Contract is common or unusual
- f. Whether all details have been agreed upon or some remain unresolved
- g. Whether the negotiations show a writing was discussed or contemplated
 - i. *Continental Laboratories v. Scott Paper Co.*: No K- never intended to be bound verbally and then decided not to make the deal. many details, unusual.

III. Exceptions

- a. Surrounding circumstances
- b. Whether a reasonable man conclude that the party intended to be bound
 - i. Course and substance of the negotiation
 - ii. Prior dealings between parties
 - iii. Customary practices in the trade or business involved
 - iv. Formality and completeness of document
- c. Statement of Opinion or Intention
 - ix. I will= present offer
 - i. Thinking about it in the future- consideration, not an offer
- d. Advertisements
 - i. Not offers- too much left unaddressed, vague
 1. Except- with specific terms: **quantity, price, person**
 - ii. *Lefkowitz v. Greater Minneapolis Surplus Store, Inc*: Yes Contract- Store Advertised first come first serve, \$1 each for furs. Lefkowitz showed up and they said they would only sell to women. Offer based on performance.

Acceptance- fixes terms of contract

- I. R §50: **manifestation of assent** to the terms in a manner **invited or required** by the offer.
 - a. May only be accepted by the person who the offeror **intends**
 - b. Must have **knowledge** of offer
 - i. If reward offer is made by a government entity, citizens who perform the requested service is entitled to the reward, even without knowledge
 - c. UCC 2-206: offer and acceptance can be **done in any manner**

- i. Must accept according to **unambiguous** terms of offer
 - d. UCC 2-204: can **contract in any manner** that is sufficient to them to understand
 - i. (Flexibility in these rules)
 - a. **Bilateral** Contract: acceptance is a promise
 - a. Acceptance by a **promise** requires that the offeree **complete every act** essential to the making of a promise
 - b. In cases of doubt, bilateral is presumed
 - b. **Unilateral**- accepted though performance
 - a. Acceptance by **performance** requires that at least **part** of what the offer requests be **performed** or tendered and includes acceptance by a performance which operated as a return promise.
- II. Shrink Wrap licenses- licenses not visible at purchase but are bound by
- a. Are enforceable (ProCD) unless their terms are objectionable on grounds applicable to contracts in general.
 - b. Policy: pre-set contracts
 - i. justified by increasing transaction, standardizes contract
 - ii. Transactions where the exchange of money precedes the communication of detailed terms are common
 - iii. accelerating effectiveness and reducing transaction costs
 - iv. Offer accepted when you have had the opportunity to inspect
 - c. Cases: ProCD (Easterbrook)- License limited software use to non-commercial purposes. Δ resold information on a WWW database. There is a K and license was included in offer and accepted by using the software. Agreed to terms without knowing them. Burden on Consumer. Could have returned it if he didn't want to accept.

Manner of acceptance

- a. Conduct can be acceptance when reasonable- when terms not laid out by offeror
- b. mode adopted shall be in accord with the usage and custom of men in similar cases
- c. Clear and unmistakable expression of the offeree's intention to accept
- d. Court looks to see what was said and meant- analysis in the text
- e. *Beard v. Krusa*: No K, no acceptance by signature which offeror required. Based on facts- analyzed text.
- f. *Fujimoto v. Rio Grande Pickle Co.*: Yes, contract was accepted because of conduct. Offeror did not state terms of acceptance.

Silence as Acceptance

- I. R §69- **knowledge** that another was doing **valuable** work for his **benefit** and with the **expectation of payment** when he has the **reasonable opportunity** to accept or reject.
 - a. *Day v. Caton*- Yes K. Silence in the face of facts that clearly call upon him to speak.
 - b. *Davis v. Jacoby*- Yes, k. Offer was to enter a bilateral contract, and she promised she would go but they died before she got there. Began action.
- II. Silence with goods
 - a. UCC §2-205- course of dealings- where terms can be defined even if not all the way laid out
 - b. UCC §2-208- course of performance- terms decided by how they have been performed in the past
- III. Unsolicited mail
 - a. Statute: Unsolicited mail is a gift, not an offer

- b. Have to act in order to not accept- like proCD
- c. Here silence does not equal acceptance

Termination of the Power of Acceptance

R §36: an offeree's power of acceptance may be terminated by

- a. rejection (§38) or counter-offer (§39) by the offeree or
- b. lapse of time (§41) or
- c. revocation by the offeror (§42) or
- d. Indirect revocation (§43) or
- e. death or incapacity of the offeror or offeree.
- f. An offeree's power of acceptance is terminated by the non-occurrence of any conditions of acceptance under the terms of the offer

I. Lapse of Time

- a. R §41: an offeree's power of acceptance is terminated at the time specified in the offer, or, if no time is specified, at the end of a **reasonable time**
 - i. What is reasonable is a question of fact depending on all circumstances when offer and circumstances were made
- b. *Loring*: No K. Π caught arsonist three years later. Not a reasonable time within which an offer can be considered.

II. Death or incapacity

- a. R §48- offer power of acceptance is terminated if either party dies or is incapacity
- b. Doesn't mentally have ability to enter contract: young, drunk, mentally ill
- c. Can also be incapacitated by law- judge order

III. Termination by Rejection

- a. R§38- Initial rejection terminates power to accept
- b. original offer cannot be revived unless offeror manifests contrary intention

IV. Counter offer- implied rejection

- a. §39- Something involving same matter as original contract but a different bargain
 - i. ends original offer and terminates power of acceptance
 - 1. except if the offeror manifests a contrary intention
- b. §39(2)- proposal
 - i. Tentative, indefinite, new matter, keeps offer open
 - ii. Keeps offer open
 - iii. Not an acceptance or a rejection
 - iv. Does not terminate power of acceptance
 - v. Counter offer v. proposal- laws and facts

V. Revocation by Offeror

- a. R §42: Power of Acceptance is terminated when offeree **receives** from offeror **manifestation**(articulation, apparent) to not enter into contract
 - i. Requires meeting of the minds
 - ii. Revocation must be communicated
- b. *Patterson v. Pattberg*: No, K. Offer withdrawn before it became a binding promise. Letter was a unilateral contract.
- c. **EXCEPT**: Partial Performance
 - i. §45- when the offeror requires acceptance by performance (unilateral), an **option contract** is created when the offeree begins the invited performance
 - ii. Offeree is not bound to complete performance

- iii. Offeror is bound to keep contract open, but does not have a duty to perform until offeree completed performance
- iv. Beginning preparation is not enough
- v. *Marchiondo v. Sheck*: Yes, K. had begun performance

VI. Indirect revocation: doesn't need to inform offeree that there has been a withdrawal

- a. R §43: (higher barrier, harder to prove than §42) Power of acceptance is terminated when offeror makes **definite action** against the offer **inconsistent** with wanting to enter a contract
- b. *Dickinson v. Dodds*: No K. no meeting of the minds. Offeree acquired info from a reliable agent.

Exceptions- 3 examples of irrevocable offers

I. **Option contract**: promise to keep an offer open for a stated period of time

- i. R §45: Create a duty for the offeror to keep contract open and **eliminates revocability**
- ii. Offeror only need to completely perform if offeree completely performs
- iii. Must have its own separate consideration- apart from contract
- iv. Power to accept does not terminate until end of option contract- even if holder said he was not interested
- b. Mail box rule does not apply with options.
- c. Not cut short by action that would terminate a normal offer

II. **Firm offer Rule**: UCC 2-205

- a. An option can be kept open when dealing with **merchants and goods** only when assigned **written** time stated, **signed**, cannot exceed **3 months**
 - 1. Between merchants
 - 2. In writing
 - 3. Signed
 - 4. Give assurance to offeree that it will be held open
 - 5. No consideration needed for an option contract to exist for 3 months

III. **UNCISG**: International goods

- a. Art 16- when there is an irrevocable offer for international transactions
 - i. 16(1)- may be revoked if you have not sent acceptance
 - ii. 16(2)(a)- cannot be revoked if states cannot be revoked with in a time (different than firm offer rule)
 - iii. 16(2)(b)- or reasonable for offeree to believe it was irrevocable- context, what's reasonable
- b. Art 1- only applies for transactions of goods between parties that are countries agreed in contract (p. 307-1)
- c. Art 2- explains when it applies
 - i. Not personal things, auctioned things, aircraft or ship

Mail Box Rule

- I. R§63: Acceptance is operative as soon as out of offeree's possession without regard and manifests mutual assent
 - a. Acceptance effective upon dispatch, put in "stream of commerce"
 - b. Only with non-instantaneous
 - i. §64- telephone- Sufficient or potentially instantaneous
 - c. §65- medium of acceptance is the one used by offeror or the typical thing, unless stated otherwise- what's customary

- d. Unless
 - i. the offeror states otherwise, has ability to contract away mailbox rule
 - ii. Option contract, or firm offer- acceptance effective when received
 - iii. If acceptance is dispatched after counter offer or rejection is made
 - iv. Not acceptance (ie. Revocation, rejection)- effective on receipt
 - v. §66- only applies if letter has been properly addressed with sufficient precautions
 - 1. Intent of mailing is genuine: Needs stamp, right address
 - 2. Improper dispatch: proper time if there was an error is still ok
- e. *Morrison*: Yes, contract when mailed. Π accepted a contract and placed it in the mail. After mailing contract but before it was received by Δ, Π called Δ and cancelled. Upon receipt, Δ recorded it.

II. UNCISG

- a. 18(2)- acceptance is effective when received
- b. 18(3)- permits offeror to permit other forms of acceptance, for example of dispatch
- c. *essentially UNCISG and Restatement provide same thing, just different defaults

Battle of the Forms

- I. Mirror image- offeree must commit to terms of offer without variation
 - a. Acceptance must look exactly like offer, or else it becomes a counter-offer
 - b. Offeror can create offer to be flexible enough to not require mirror image
 - c. Last Shot Rule: favors whoever wrote last counteroffer, because last counter offer makes that person the offeror and in control
 - 1. Gives incentive to counter offer
 - d. *Livingston*: Yes, K. offer stands. Δ offered to sell his land and said “cannot reduce price” which reinstated the original offer. Termination by Counter-offer. Offeree must commit to terms of offer without variation

II. UCC (less rigid)- Only when dealing with goods and merchants

- a. UCC §2-207(1)- explains what operates as acceptance
 - i. Definite **expression of acceptance operates as acceptance** even if it states additional or different terms
 - 1. Expression that is **definite and seasonable** (timely)
 - 2. Written confirmation
 - 3. **Unless** acceptance states they will only accept if the offeror is ok with the new terms- must expressly state this
 - a. **Proviso clause**: acts like a railroad switch
 - i. if it is not used, then there is a K and directed to (2)
 - ii. if the proviso is used, no K made in writing, go to (3)
- b. UCC §2-207(2)- explains what happens to additional terms
 - i. **Additional** terms should be seen as a proposal, not a contract
 - 1. *Klocek*: no K. Silence does not equal acceptance
 - a. Not aware of terms
 - b. Places burden on consumer
 - c. Disagrees with ProCD focuses on offer
 - ii. **Unless Between merchants** (both parties) then terms are included in contract unless,
 - 1. Offeror expressly limits terms to offer
 - 2. Materially alter: if alters what person expects out of contract

- a. Surprise, creates hardship, uncommon, unfair
- 3. If objection to terms given within reasonable time- what offeror says/writes
- c. UCC §2-207(3)- conduct which recognizes a contract is sufficient to establish a contract, although the writings may not
 - i. May be bound by terms that are not aware of
 - ii. Gap fillers- automatically included, unless contracted out
 - 1. 2-314: **Implied Warranty of Merchantability**- goods have to be merchantable
 - 2. 2-315: **Implied Warranty of Fitness for Particular Purpose**- buyer relying on the seller's skill or judgment to select suitable goods, then they goods shall be fit for such purpose
 - 3. 2-308: Absence of Delivery Location- seller's place of business
 - 4. 2-309: Absence of Specific Time Provision- then when reasonable
 - iii. Minority rule- terms of offer control, offeree has the power to reject
 - iv. Majority rule (knock out rule)- terms are what both parties have agreed to
 - 1. merchants are frequently willing to proceed with a transaction even though all terms have not been assented to
 - v. *Commerce*: No k. conduct creates contract. No prior course of dealing.

Indefiniteness- renders contract void

- I. §33- An agreement, in order to be binding, must be sufficiently definite to enable a court to give it an exact meaning
 - a. Only need to know enough to define what would be a breach and a remedy
 - b. Essential terms have to be reasonably certain
 - i. Common required elements: parties, subject, time of performance, price
 - ii. *Walker*: No K. cannot agree to agree in the future on essential term
 - iii. *Rego*: Yes K. can leave out terms that are not essential
 - c. Can supplement contract by acts or conduct
 - d. Silence does not equal uncertainty
- II. UCC 2-204(3)
 - a. Even though a term is left open, there is a contract if remedy can be provided
 - b. Need the parties to have intended the contract
 - c. Open Terms-ok if that's what the parties intend.

CONSIDERATION (1) bargain (2) exchange (3) exchange has value

- I. Bargain theory: reciprocal, conventional inducement
 - a. Both parties give something up which induces them into making the promise
- II. §71: (1) a performance or a return promise must be bargained for
 - a. Sought by promisor in exchange for promise (inducement)
 - b. Given by promisee in exchange for promise (actual exchange)
 - i. right, interest, profit, or benefit accruing to the one party, or
 - c. Forbearance §74: giving up something you had the right to do
 - i. needs to be in good faith, objectively and subjectively reasonable
 - ii. *Fiege*: Yes, K. gave up right to sue, it was in good faith.
 - iii. *Hammer*: Yes, K. Uncle promised \$500, Abandoned his legal right to drink
- III. Sufficiency: Consideration must be something that has value in the eyes of the law
 - a. Whether what is being offered has any value at all
 - b. When offer has no value, that it is a gift and no inducement

- c. Love and affection are not sufficient consideration
- d. *Schell*: No K. One cent will not support promise of \$200. Merely nominal

IV. Adequacy: quantity of the amounts exchanged

- a. Will not be looked at by the court unless
 - i. nominal or symbolic
 - ii. fungible- exchange of identical goods
 - 1. no consideration because no inducement if no reason
 - a. ok if different types or values
 - iii. Needs to induce you to perform
 - iv. *Batsakis*: Yes K. Consideration, surrounding circumstance may place different values on things ie. Currency at war time

Illusory Promise- one sided contract, no consideration

I. §77: a promise is not consideration if the terms allow one party the choice of alternative performance

- a. Unless: each alternative performance has consideration
- b. Must have mutual obligation
 - i. both parties must be bound or neither is bound
 - ii. I will do it if I want to- illusory
 - iii. Must be in good faith, honest
- c. Court looks at
 - i. Implied promise, context, intent
 - ii. Rather give a contract operation then render it inoperative
 - iii. *Wood v. Lucy, Lady Duff Gordon*: Yes, k. exclusive dealings arrangement. A promise can be implied.

V. Requirement and Output Contract (2-306)

- a. Requirement: Buyer buys as much as they want
 - i. *Sylvan Crest Sand and Gravel*: Yes k, no illusory promise because there is consideration in each performance and good faith.
 - ii. *McMichael*: Yes K. terms not specifically laid out, court looked at context.
- b. Output: Buyer agrees to buy as much as the seller can produce
- c. Must be in good faith
- d. Cannot be unreasonably disproportionate to a stated estimation
- e. Quantity does not have to be stated
- f. Can be terminated by 1 party with reasonable notification

Past Consideration/Moral Obligation

I. Past consideration: Benefit first, then promise second

- a. No consideration
- b. Consideration has no legal effect when rendered in the past and apart from an alleged exchange in the present
- c. *Hayes*: No K. Quit his job before he was guaranteed a pension.

II. §86- Moral obligation (exception to the rule)

- a. Promises made in recognition of previous benefit is binding to the extent to prevent injustice
- b. Different then the promise leads to justice
- c. Not binding if a gift
- d. Huge reliance on what the promisor intended based on his actions
- e. Life and preservation of body have measurable value.

- i. *Mills*: No K. Father responsible to person who took care of his sick adult son.
- ii. *Webb*: Yes K. Saved his boss's life by diverting a log

III. Restitution

- i. Court enforces a promise so no party is unjustly enriched
- ii. Used to enforce a contract when no mutual assent

Preexisting Duty Rule (§73)

- a. Performance of a preexisting duty is not consideration
 - a. *Harris, Stilk*- no k. already a duty to care for the boat.
 - b. *Lingenfelder*- no K. Can't make a new promise for something they have already promised to do.
- b. Except
 - i. when supervening difficulties affect original contract
 - ii. if it differs from the original duty, it may be consideration
- b. §89- Modified contract is binding if
 - 1. Fair in circumstances not anticipated
 - a. Subjective context: what people involved could anticipate
 - b. Objective context: what could reasonably be anticipated based on discussions
 - 2. Provided by statute
- c. UCC §2.209(1)- looks at good faith
 - iii. No need for consideration to be binding if modification is done under good faith (honesty, what parties meant)
 - iv. Much more flexible
 - v. Encourages informality because they don't care about what is inducing them into a contract

Promissory Estoppel- Takes the place for consideration

- I. §90 Promissory Estoppel- reasonable expectation
 - a. Promise
 - i. *Allegheny College*: Yes, K. donation in exchange for scholarship in her name.
 - b. Promisor has reason to expect reliance (foreseeable)
 - c. Promise actually induced reliance
 - i. What the person receiving the promise thought
 - ii. *Hoffman*: yes k. Reliance is reasonable to obtain franchise.
 - d. Injustice can be avoided only by enforcing the promise
 - i. *Universal computer systems*: Yes, K, relied on promise, suffered an injustice
 - ii. *Branco*: yes k. injustice because of reasonable reliance

II. Except

- a. Charitable subscription or marriage settlement does not require the proving of absolute inducement
- b. Promissory estoppel cannot be used to require someone to keep an offer open
 - i. *Baird*: no k. not a substitute for offer and acceptance.

IV. R1st §90- require forbearance to be definite and substantial- less test, less evidence needed

- a. R2nd adds the element that reliance can be by a 3rd party or promise
 - i. Limits remedy as justice requires
 - ii. Adds charitable subscription and marriage

DAMAGES

- I. Goal: to put injured party in as good of a position as if the contract was fully performed

- II. Injunctive relief: Require party to specifically perform
- III. Restitution interest: Return the value gained, prevent unjust enrichment
- IV. Reliance v. Expectation
 - a. Expectation interests (§347)
 - i. Difference between what was promised and what was received
 - ii. *Hawkins- hairy hand*
 - b. Reliance interests (§349)
 - i. Expenses incurred in preparation of performance
 - ii. Reasonably contemplated by parties to exist
 - 1. What was offer and acceptance actually about
 - iii. Essential reliance- directly done in preparation
 - 1. *Anglia: backed out of play*
 - iv. Incidental reliance- done because of contract
 - 1. Caused by non-performance
 - 2. In consequence of breach
 - 3. *Sullivan: nose job*
- V. Consequential v. Incidental
 - a. Consequential- beyond the loss, but wouldn't have incurred if it weren't for the breach
 - i. Naturally and proximately flow from the breach
 - b. Incidental- happened because of the breach
- VI. Limitation:
 - a. Can't recover more than if the contract was actually performed
 - i. Excessive or unjustly enrich a party
 - ii. *Peevyhouse- coal mine*
 - b. Foreseeability
 - i. Needs to be aware, or have reason to know what damages would possibly include at time of the contract
 - ii. Natural damages
 - 1. Reasonable contemplation that damages will arise
 - 2. Easily predictable
 - iii. If special damages
 - 1. need to communicated them at time of contract
 - iv. Look at: Economic incentive of parties
 - 1. Foreseeable consequences
 - 2. Helps to relate to causation and foreseeability
 - v. *Handley*: not foreseeable that the broken shaft stopped all mill operation
 - vi. *AM/PM*: foreseeability of primary, secondary and good will losses
 - c. Avoidability
 - 1. Doesn't dishonestly cause more damages
 - 2. How could the victim have avoided the consequences
 - d. Certainty
 - i. Need to be able to determine what the damages are based on a measurement, objective, mathematic equation
 - ii. *Freund: future book sales uncertain*

UCC and Damages

- I. Buyer damages (buyer is suffering, seller did wrong)
 - i. I.e. Seller didn't tender conforming goods
 - b. 2-714: difference between what was purchased from the seller and what was promised by the seller
 - c. 2-712: Substitute performance
 - i. Difference between what was bought from someone else and what was promised by the seller
 1. Commercially usable
 2. reasonable substitute
 - a. Doesn't have to be identical
 - b. Just what the market would permit
 - c. Done in good faith
 - d. 2-713: Hypothetical Repurchase
 - i. Market price at time of breach
 - ii. Produce, fruit, gold- all change in price
 - e. 2-715: Can add incidental (done to prevent breach or prevent losses) and consequential (wouldn't have happened if it weren't for breach) losses to any of the above
- II. Seller damages (seller is suffering, buyer did wrong) (*Teradyne*)
 - i. I.e. Buyer did not accept or pay for goods
 - b. 2-706: Substitute performance
 - i. Difference between contract price with buyer and resale price to someone else
 - ii. Good faith and commercially reasonable standards
 - iii. Limit losses up front when there is urgency based on business or market conditions
 - c. 2-708: Hypothetical Resale
 - i. Difference between contract price and market price, at time and place where it was supposed to be bought
 - ii. Limit by good faith and reasonability
 - d. 2-710: incidental damages
 - e. 2-709: specific performance
 - i. Forcing buyer to buy these goods if they are incapable of resale
 - ii. I.e. Antique, collector item, specially manufactured
 - f. Lost volume seller
 - i. Allowed to recuperate losses from 2nd sale because it would have happened anyways
 - ii. Just because there made a later sale, doesn't limit sellers damages

STATUTE OF FRAUDS

- I. If an agreement falls within the scope of the statute of frauds, it must be in writing to be enforceable in court (R§110)
- II. Scope:
 - a. Land
 - b. One Year
 - i. If unclear if performance can be completed within one year of the formation of a contract:

- ii. Majority: If contract does not state the performance will take more than 1, not within the statute of frauds
 - iii. Minority rule- if the reasonable time for completion is over one year, the contract must be in writing
 - iv. *Satterfield*- not certain if K can be completed within one year, no k.
 - c. Sale of Goods over \$500 (UCC)
 - d. Suretyship- answering for the debts of another
 - i. No action will be charged on a person upon a promise to answer for debt of another
 - 1. Except when protecting own monetary interest
 - 2. *Yarbo*- yes k, suretyship, his economic interest= consideration
 - e. Marriage
 - f. Executor of an estate
- III. For services and land: Memo must include (§131)
 - i. Reasonably identifies the subject matter
 - ii. Reasonable evidence of an agreement
 - iii. Reasonable certainty of essential terms
 - 1. ID parties
 - 2. Nature of the exchange
 - 3. All material terms
 - 4. What is essential depends of the context and subsequent conduct
 - iv. Signed by the person who is breaching (R§134)
 - 1. Symbol, any made or adopted with intention to authenticate the writing by the signer
 - 2. Electrical proof is sufficient
 - 3. All you need is party who doesn't want to perform to have signed
 - 4. Piece of letterhead can be sufficient as a signature
 - v. Several Documents (R§132)
 - 1. Memo may consist of multiple writings as long as one is signed and they are all related to the same transaction
 - 2. Essential term
 - vi. Time (R§ 136)- Any time before or after formation of contract
- IV. For goods: Memo requirements (UCC 2-201)
 - a. Doesn't matter if it is between merchants or not
 - b. 2-201: Memo, stating quantity, and signed
 - i. (1) if contract is over \$500, need to have writing indicated contract
 - 1. If writing is wrong about a term, the only thing to enforce is quantity
 - 2. Only need a basis to know there is a contract between these parties
 - 3. Memo is required to state that the contract is for a sale of goods
 - 4. Signature requirement detailed 2-201(n.39)
 - a. Id the party
 - b. Any symbol executed by party with intention
 - i. Printed, stamped, written
 - ii. Broad interpretation
 - iii. Something to identify them by- letter head

- ii. (2) if between merchants
 - 1. Need to answer a written confirmation within 10 days
- iii. (3) exceptions
 - 1. If goods are specially manufactured, then doesn't need a written requirement
 - a. Not suitable for sale to others
 - b. Notice of repudiation is after time of beginning of production
 - c. Self-resolving, more open
 - 2. One of the parties admits there was a contract in testimony
 - 3. With respect to goods that you have already paid for
- iv. *Eastern dental*- no k, goods, memo does not state quantity

PRO CD v. Klocek

- a. What the law says in terms of its normative values
- b. Look at different areas of the law, so have different holdings
- c. Buyer needs to be aware of terms when you accept them (klocke)
- d. If buyer can click, then aware (pro)
- e. Terms, facts, are very different
- f. One focus on acceptance, the other on the response to the acceptance
- g. Pro- terms are enforced, buyer accepts when they take product off store shelf
 - i. Because they can return it
- h. Klocek- does not focus on acceptance, but instead battle of the forms, which is a response to the acceptance
 - i. Negates automatic inclusion of terms
 - ii. 2-207- negate mirror image rule
 - iii. Not between merchants, so not automatically included
 - iv. Instead, they are proposals