Law School Outline

CONTRACTS

SAMPLE
How to Use This Outline

The best way to get a high grade in a law school class is to create your own outline. However, this outline can be a helpful resource to you. We recommend you use your class notes as a foundation and pull what you find helpful from this outline. The bottom line is: your class notes are your best resource!

If you use this outline as a foundation instead, please remember to make this outline your own! That means you should:

- incorporate cases your professor discusses in class

  (Note: we have some important cases in our outline, but your professor will certainly discuss others!)

- incorporate rules your professor discusses in class

  (Note: We purposely did not include every potential rule you could be tested on—we included the basics so that our outline is manageable and easy to use. So please incorporate any rules that you discussed in class that are not in this outline!)

- incorporate hypotheticals or examples from class into your outline
Table of Contents: Contracts and Sales

I. Introduction to Contracts
   1) What is a contract? ................................................................. 1
   1) Types of contracts .................................................................. 1
   2) Article 2 of the Uniform Commercial Code (UCC) vs. common law .................. 3

II. Contract Formation ...................................................................... 4
   1) Offer ..................................................................................... 4
   2) Acceptance ........................................................................... 8
   3) Consideration (and substitutes) ............................................... 13

III. Interpretation of a Contract: What Are the Terms? ...................... 16
   1) Sources for the court to look at: the UCC and gap fillers ....................... 16
   2) Keeping terms out: the parol evidence rule ........................................... 17
   3) Warranties ............................................................................ 19

IV. Performance Obligations ............................................................. 21
   1) Payment obligations .............................................................. 21
   2) Conditions and duties ............................................................ 21
   3) Excusing conditions ................................................................ 26
   4) Discharging duties ................................................................ 28

V. Defenses ..................................................................................... 31
   1) Defenses to the enforcement of a contract .......................................... 31
   2) Defenses based on lack of capacity ................................................. 35
   3) Defenses based on lack of contract formation .................................... 36

VI. Remedies for Breach .................................................................. 37
   1) General damages for breach of contract: expectation damages .............. 37
   2) Special rules for specific kinds of contracts ......................................... 39
   3) Liquidated damages provision ...................................................... 40
   4) Attorney fees ......................................................................... 40
   5) Equitable remedies ................................................................... 40
   6) Restitution and reliance recoveries .................................................. 41

VII. Third-Party Rights .................................................................... 42
   1) Third-party beneficiaries ........................................................... 42
   2) Delegation of duties ................................................................ 43
   3) Assignment of rights ................................................................ 44

Some main differences between UCC and common law ................... 47
Primary “merchants” exceptions under the UCC .............................. 48
Different or additional terms in the acceptance or confirmation—blank chart .... 49
Contracts and Sales Mini Outline .................................................... 50
I. Introduction to Contracts

1) What is a contract?
   a) A contract is a legally enforceable promise.
   b) What is a promise?
      i) Ex.: Hawkins v. McGee: Hawkins burned his hand; McGee (doctor) promised that he could fix it and give Hawkins a “100% good hand.” The skin graft did not work. Doctor’s promise was enforceable. (The “hairy hand” case.)
   c) Elements of a contract: offer + acceptance + consideration (mnemonic = K = OAC)

\[ K = O + A + C \]

1) Types of contracts
   a) Contracts can be classified based on method of acceptance:
      i) Unilateral contract
         (1) This type of contract requires full performance as the only acceptable method of acceptance.
         (2) There are only three situations where a unilateral contract exists:
             (a) Rewards
             (b) Prizes
             (c) When the offer expressly requires performance as the only means of acceptance
ii) **Bilateral contract**
   
   (1) An offer to enter into a bilateral contract can be accepted in two ways:
   
   (a) promising to perform, or
   
   (b) beginning performance.
   
   (2) The vast majority of contracts are bilateral. When it is unclear whether the contract is bilateral or unilateral, courts will interpret it to be bilateral.

b) Contracts can be classified based on how they are created (express or implied).

   i) An **express contract** results from two parties agreeing to do something orally or in writing.

   ii) **Implied in fact contract** results from conduct.

   *Ex.: A woman goes to a nail salon and gets a manicure. Price is never discussed. But it’s understood that she has to pay for the manicure. Look at the facts from the perspective of a reasonable person.*

   iii) **Implied in law contract** (also called a constructive contract or quasi-contract)
(1) An implied in law contract is constructive because it is not a real contract and usually the parties do not intend to undertake the duties in question (thus, there is no need to prove that there is an offer, acceptance, and consideration). Rather, an implied in law contract is based on principles of equity.

(2) Elements (mnemonic = BRU):
   (a) plaintiff has conferred a benefit on the defendant,
   (b) plaintiff reasonably expected to be paid, and
   (c) defendant would be unjustly enriched if the plaintiff is not compensated.

(3) Damages: plaintiff recovers the reasonable value of the services rendered, or the extent to which the other’s property has been increased in value or his interests advanced.

2) Article 2 of the Uniform Commercial Code (UCC) vs. common law

a) Article 2 of the UCC applies to transactions in goods. UCC § 2-102. Common law applies to everything else.
   i) Definition of transaction: a sale. UCC § 2-106.
      (1) A sale is not a lease.
      (2) A sale is not a security interest.
   ii) Definition of goods: tangible objects that are moveable at the time of identification to the contract for sale. UCC § 2-105.
      (1) This includes:
         (a) Unborn young of animals
         (b) Crops
      (2) This does not include:
         (a) Real estate
         (b) Services
         (c) Money to pay the purchase price
   iii) Note: It does not matter if the seller is a merchant to determine whether the UCC controls. Nor does the price of goods matter. The UCC applies to all transactions in goods.

   Ex.: The UCC would apply to Ks arising out of buying food at a store. Common law would apply to Ks arising out of ordering food at a restaurant.

b) Hybrid contracts: sale of goods + services
   i) To determine whether common law or the UCC applies, use the predominant purpose test: What is the main purpose of the contract—goods or services?
   ii) Some factors to consider are: the money spent on the goods and services, the time on services, labor sophistication, and the language of the contract.
II. Contract Formation

1) Offer
   a) What is an offer?
      i) Definition: An offer is a manifestation of intent to enter into a contract. Restatement (Second) of Contracts (Rest.) § 24. Ask yourself: Would a reasonable person in the position of the offeree believe that an offer was made and that her assent would create a contract?
      ii) An offer is created when three elements are present: intent, essential terms, and communication.

(1) **Manifestation of intent** to enter into a contract with the understanding that an acceptance would create a contract.
   (i) It is not an offer if a reasonable person would understand the “offer” to be a joke.
       1. *Ex.: Lucy v. Zehmer*: Court enforced land-purchase contract over seller’s contention that he and buyer had been joking. Court found that past dealings between the parties made it reasonable for the buyer to believe that the seller was serious, which the seller should have known.
   (ii) An advertisement is generally not an offer (but it is an invitation to make an offer).
   (iii) A price quotation is not an offer **unless** it was in response to a specific inquiry.
       1. *Ex.: Owen v. Tunison*: Though manifesting a sufficient intent to open negotiations, a seller’s letter to buyer indicating that it was not possible for seller to sell certain property for less than $16,000 held to lack the intent required to constitute an offer.
       2. *Ex.: Fairmount Glass Works v. Crunden-Martin Wooden Ware Co.*: In response to purchaser’s inquiry concerning seller’s lowest price for mason jars, seller sent a letter to purchaser with a list of prices. The court held that seller’s letter was not a mere price quotation, but a definite offer to sell the jars for the prices indicated.

(2) **Essential terms**: These usually include:
   (a) **Identification of the offeree**
(i) An advertisement is not an offer (only an invitation to make an offer!) because it does not identify the offeree.
   1. Exception: “first come, first served” identifies the offeree.
   2. Exception: an offer to pay a reward is considered an offer because it identifies the offeree.

(b) Price to be paid
   (i) Price is necessary for **real estate contracts**.
   (ii) Price is not necessary for contracts that fall under the **UCC**.
      1. The UCC will fill in a *missing* price term with a reasonable price on the basis that this is what the parties truly intended.
      a. However, the UCC will not fill in a *vague term* with a reasonable price because the intent of the parties cannot be determined.
      2. Courts may also fill in a reasonable price term in common law contracts if there is a reasonable basis for doing so.

(c) Quantity and subject matter
   (i) Quantity is necessary for contracts that fall under the UCC.
   (ii) There is a special rule for **requirement** or **output** contracts.
      1. These contracts do not need a “set” quantity. A seller and a buyer can agree that the buyer will buy everything the seller makes (output contract) or everything the buyer requires (requirement contract).
      2. The amount sold or requested must be:
         a. in **good faith**, and
         b. not “**unreasonably disproportionate**” to the stated estimate or a comparable prior output or requirement. **UCC § 2-306**

(d) Note: If enough essential terms are missing, then it is likely too indefinite to be an offer. It might just be “preliminary negotiations.”

(3) **Communication**: the offer must be communicated to the offeree to be accepted.

b) Termination of an offer
   i) Rule: if an offer is terminated, it cannot be accepted.
   ii) There are a few ways to terminate an offer:

**TERMINATION OF AN OFFER**

- **LAPSE**
- **REJECTION**
- **REVOCATION**
- **DEATH/INCAPACITY**

(1) **Lapse of time**
(a) An offer lapses after a reasonable time. **Rest. § 41.**

(b) If an offer is stated face-to-face or in a conversation, it generally lapses at the end of the conversation.

(2) **Rejection**—includes counteroffer

(a) An offer cannot be accepted after it has been rejected. Any purported “acceptance” is actually a counteroffer.

(b) A rejection sent through the mail is effective when *received.*

(c) A counteroffer, just like a rejection, terminates the right to accept an offer. **Rest. § 39**

   (i) Check to see if the statement is a counteroffer or “mere inquiry”/bargaining.

   1. Look for words like “only if,” “if,” “provided,” “so long as,” “but,” etc.

   (ii) An “acceptance” that is actually a rejection:

   1. Under common law, this is when there are additional terms in the “acceptance.” (This is discussed below.)

   2. Under the UCC, this is when an acceptance is expressly conditioned on assent to additional or different terms. (This is discussed below.)

(d) **Exception: option contract. Rest. § 25.** Rejection or counteroffer does **not** terminate the right to accept an option contract (unless there is reliance on the rejection. (Note: In an option contract, the offeree is paying or giving other consideration for the right to accept the offer until a stated time, so a rejection does not generally terminate that right!)

(3) **Revocation**

(a) Ask yourself two questions to see if an effective revocation was made:

   (i) **Can the offeror revoke the offer?**

   1. General rule: an offer can generally be revoked before it is accepted unless an exception applies.

   2. Exceptions: (mnemonic = **FOUR**)

   **REVOCATION - EXCEPTIONS**

   (Exceptions to general rule that offer may be revoked prior to acceptance)

   | Firm offer under Article 2: An offer in a signed writing for the sale of goods by merchant that gives assurance that it will be held open cannot be revoked. If no stated time, a reasonable time will be implied. Either way, it cannot be over three months. | Option K: A promise plus consideration. Beginning performance on unilateral K (“option K’’): An offer may not be revoked and must be held open for a reasonable time if the offeree has begun performance on a unilateral K. | Reasonably foreseeable substantial reliance on offer: An offer may not be revoked if there has been reasonably foreseeable detrimental reliance on the offer by the offeree. Note: this almost always comes up in a bidding situation. |
a. **Firm offer under Article 2. UCC § 2-205.**
   i. An offer may not be revoked if: (mnemonic = MASSS)
      (a) the offer is made by a **merchant**;
      (b) it gives **assurance** that the offer will be held open;
      (c) it is a contract for the **sale of goods** (UCC);
      (d) there is a **signed writing**; and
      (e) it is held open for a **stated time, or a reasonable time** will be implied (either way, it **cannot be over three months**).
         (i) Even if the firm offer states it is held open for five months, it will only be held open for three. *(Unless consideration is given in exchange for the offer being held open, because in that case it would be an option contract rather than a firm offer. There is no time limit on an option contract.)*
         (ii) Note: if the form is supplied by the offeree, it must be separately signed by the offeror.

b. **Option contract**
   i. The offeror has:
      (a) **promised** to keep the offer open, and
      (b) this promise is supported by **consideration. Rest. § 87.**

c. **Beginning performance on unilateral contract ("option contract")**
   i. An offer may not be revoked if the offeree has begun performance on a unilateral contract. If the offeree has begun performance, the offeror must leave the offer open for a reasonable amount of time to allow the offeree to complete performance.

d. **Reasonably foreseeable substantial reliance on offer:**
   i. An offer may not be revoked if there has been **reasonably foreseeable detrimental reliance** on the offer by the offeree.
   ii. This almost always comes up in a bidding situation.

(ii) **Did the offeror revoke the offer?**
   1. To revoke an offer, two things need to happen:
      a. the offeror needs to **act inconsistent with the intent to make the offer**;
      b. the offeree needs to receive **true reliable information to this effect. Rest. § 43.**
   2. What are some ways the offeror can revoke its offer?
      a. The offeror can simply tell the offeree that the offer is revoked.
      b. If the offeree hears true, reliable information (e.g., rumors) or sees the offeror doing something that would be inconsistent with his offer (e.g., see example below), the offer is revoked.
      c. Note: The offeror cannot revoke his offer simply by changing his mind. There needs to be some kind of reliable indication to the offeree.
i. For this reason, a revocation of an offer sent through the mail is not effective until received. However, the message of revocation sent to the offeree **need not be read** by the offeree to be effective.

d. Offers made to the public: An offeror revokes an offer made to the public (e.g., an offer that was published in a newspaper) by publishing a notice of termination. This is effective when it is published. *Rest. § 46.*

(4) **Death or incapacity of offeror**

(a) An offeree’s power to accept an offer is terminated when the offeree or offeror dies or becomes insane (even if the offeree does not know the offeror is dead/insane).

(i) Exceptions:

1. Option contract (consideration is paid to keep the offer open)
2. Beginning performance on an offer to enter into unilateral contract

2) **Acceptance**

a) Definition: manifestation of assent to the offer.

i) Note: **Objective** (rather than subjective) assent is necessary. Courts look at the acceptance from the viewpoint of a reasonable person.
b) Effectiveness of acceptance
   
i) Acceptance is effective as soon as it is out of the offeree’s possession (the “mailbox rule”). Thus, an acceptance sent through the mail is effective when it is sent. Rest. § 63(a). This is regardless of whether it ever arrives, as long as it was properly addressed and mailed.
   
   (1) Exceptions:
      
      (a) Option contract: acceptance is effective upon receipt. Rest. § 63(b).
      
      (b) Special rules when both an acceptance and rejection are sent: Rest. § 40:
         
         (i) Rejection mailed first, then acceptance is mailed: whichever one is received first by the offeror is the effective communication.
         
         (ii) Acceptance mailed first, then rejection sent: the mailbox rule applies (acceptance is effective) unless the offeror relied on the letter of rejection before the acceptance was received—then the offeree will be estopped from enforcing the contract.
   
   c) Methods of accepting an offer
   
i) Who can accept an offer?
      
      (1) General rule: only the person to whom the offer is made may accept the offer. Rest. § 52
      
         (a) Ex.: Boulton v. Jones: Defendant, a previous customer of a company, sent the company an order. Unknown to defendant, plaintiff had purchased the company. Plaintiff accepted defendant’s offer. The court held that there was no contract between the parties because defendant intended the offer for the company, not plaintiff.
      
         (2) Exception: the power to accept an option contract can be assigned unless otherwise stated. Rest. § 320.
How is an offer accepted?

(1) The offeror can mandate the method of acceptance: “Offeror is master of his offer.”
   Rest. § 30.
   (a) However, if it is unclear whether the offer “suggests” a way to accept or proscribes
       the manner to accept, it will be treated as a suggestion and the offeree can accept
       in any manner that is reasonable under the circumstances.

(2) Unilateral contracts (rewards, prizes, or the offer expressly states the only method to
    accept is full performance)—full performance is the only method of acceptance.

(3) Bilateral contracts can be accepted by a promise or beginning performance (“implied
    promise”).
   (a) If an offeree begins performance, he has accepted the offer and must finish
       performing or he is breaching. (Note how this is different from unilateral contracts.)

**BILATERAL V. UNILATERAL CONTRACTS**

i) A note on silence as acceptance: Silence is not generally acceptance. However, watch for
   prior dealings or circumstances that make it reasonable to believe that the offeree’s silence
   constitutes acceptance (e.g., if the offeree takes the benefit of offered services with
   reasonable opportunity to reject them and knows they were offered with the expectation of
   compensation). Rest. § 69.

ii) Special rules for the UCC seller of goods. UCC § 2-206.
   (1) The seller of goods can accept an offer by:
       (a) promising to ship the goods (“promising to perform”), or
       (b) shipping the goods (“beginning performance”).
HOW TO ACCEPT UNDER THE UCC

(1) Promising to ship the goods  (2) Shipping the goods

(1) Promising to perform,   OR  2. (in the case of shipment of goods) shipping the goods.

Acceptance UNDER THE UCC

Under the UCC one can accept in one of two ways

If it comes with an accommodation letter before acceptance occurs, it is a counteroffer that the offeror can accept or reject.

What if the seller ships the wrong goods?

If it does not come with an accommodation letter, it is an acceptance and a breach!

Note: if the seller does not make any promises but ships nonconforming goods, this constitutes an acceptance and a breach.

(ii) Note: If the seller seasonably notifies the buyer that he is sending the nonconforming goods as an “accommodation” before accepting the offer, that is a counteroffer. The buyer does not have to accept the accommodation but cannot sue for breach.

d) Acceptance with different or additional terms
   i) Common law: mirror-image rule (also mentioned above)
      (1) The acceptance must be the mirror-image of the offer or it operates as a rejection. Rest. § 59. If there are additional or different terms, the “acceptance” is actually a counteroffer and no contract is formed by the papers alone.
(2) Last shot rule: if the parties proceed to act like a contract was formed, look to see which party sent the last piece of paper before performance to determine what the terms are.

**MIRROR IMAGE RULE UNDER COMMON LAW**

- **YES**: A contract is formed.
- **NO**: No contract is formed. The mirror-image rule applies. The “acceptance” is treated as a counteroffer and if the parties act like a contract exists, then whoever sent the last piece of paper gets their terms in (“last shot rule”).

**ii) Battle of the forms. UCC § 2-207.**

1. **Acceptance with additional terms**
   - **(a)** Unlike common law, there is no mirror-image rule, and a definite and seasonable acceptance that contains different or additional terms will **still constitute an acceptance unless the “acceptance” says that acceptance is expressly made conditional on assent to the additional or different terms.**
     - **(i)** However, if the parties still act like a contract occurs (even though the writings do not establish a contract—e.g., the seller sends the goods and the buyer pays for them), the terms that govern are the terms that **both the writings agree upon and gap fillers** by the UCC (discussed further below).
   - **(b)** Assuming there is no “expressly conditional” language in the acceptance, the additional terms become part of the contract if both parties are **merchants**, unless:
     - **(i)** the offer **expressly limits acceptance** to the terms of the offer,
     - **(ii)** the additional terms “**materially alter**” the contract, or
     - **(iii)** the **offeror has already objected** or objects within a reasonable time after receiving the terms.
   - **(c)** Otherwise, the additional terms are mere “proposals” for addition, which must be separately accepted by the other party.

2. **Acceptance with different terms**
   - **(a)** A few approaches:
     - **(i)** Majority rule: knockout rule—courts will “knock out” any different terms and then use the default terms (the “gap fillers” of the UCC) to fill in the gaps.
     - **(ii)** Minority rule: treat different terms the same as additional terms (see above).
Different or Additional Terms in the Acceptance or Confirmation

- Does the transaction fall under the UCC?
  - Yes
    - Did the “acceptance” say that the acceptance was expressly made conditional on assent to the different or additional terms?
      - No
        - A contract is formed (so long as there was a definite and seasonable expression of acceptance).
      - Yes
        - No contract is formed by the writings. It was a “fake acceptance” (counteroffer). However, if the parties still acted like they had a contract, the terms of the contract are the writings that both parties agree upon and UCC gap fillers.
  - No
    - Common law: Mirror-image rule applies. The “acceptance” is treated as a counteroffer and if the parties act like a contract exists, then whoever sent the last piece of paper gets their terms in (last-shot doctrine).

- Are the terms different or additional?
  - Different
    - Minority rule: Knockout rule applies. The different terms are knocked out and replaced by UCC gap fillers.
    - Majority rule: Knockout rule applies. The different terms are knocked out and replaced by UCC gap fillers.
    - Minority rule: treat the same as additional terms.
  - Additional
    - First question: Are both parties merchants?
      - No
        - Additional terms are proposals, which can be accepted or rejected.
      - Yes
        - Second question: Ask three questions:
          1. Does the offer expressly limit acceptance to the terms of the offer?
          2. Do the additional terms materially alter the contract?
          3. Did the offeror object within a reasonable time?
        - Did you answer “yes” to any of them?
          - No
            - Additional terms are part of the contract.
          - Yes
            - Additional terms are not part of the contract. (They are proposals that can be accepted or rejected.)
3) **Consideration (and substitutes)**
   
a) In order to be enforceable, a contract must contain consideration.
   
b) **Consideration is present when there is a “legal detriment” or a “bargained-for exchange.”**

   Rest. §§ 17, 71.
   
i) **Legal detriment:** The promisee must suffer some “legal detriment,” which can be:
   
   (1) performance (doing something one is not legally obligated to do),
   
   (2) forbearance (not doing something one is legally entitled to do), or
   
   (a) *Ex.: Hammer v. Sidway:* Uncle promised nephew $5,000 if he refrained from drinking and smoking until he turned 21. Nephew complied. Court upheld Uncle’s promise—refraining from an act that one has a legal right to do is consideration.
   
   (3) a promise to perform or forbear.
   
   ii) **Bargained-for exchange:** a promise or performance is provided from each side in exchange for a return promise or performance provided by the other side.
   
   c) **What is not considered consideration?**
   
   **NOT CONSIDERED "CONSIDERATION"**
   
   - **Gratuitous promise** (e.g., a promise to make a gift)
   - **Past consideration**
     
     (1) There is no consideration because nothing is inducing the promise. (“In consideration for you working for me for 40 years, I will give you $10,000” is considered a gift.)
   
   - **Moral obligation**
     
     (1) In general, a moral obligation does not constitute consideration.
     
     (a) *Ex.: Mills v. Wyman:* Mills took care of Wyman until Wyman died. Wyman’s father promised to pay Mills back. Mills sued when Wyman’s father did not pay. Court determined there was no consideration for father’s promise.
   
     (2) Exception—“material benefit” (very limited): Only some courts will find consideration when the following three elements are met:
     
     (a) there is a request or emergency,
     
     (b) a material benefit is received by the promisor, and
     
     (c) the promisee’s act did not constitute a gift. Rest. § 86.
     
     (i) *Ex.: Webb v. McGowin:* McGowin promised to “care and maintain” Webb for the rest of Webb’s life after Webb saved McGowin’s life. The court held that the
material benefit Webb bestowed upon McGowin was sufficient consideration for McGowin’s subsequent agreement to pay Webb for Webb’s services.

iv) Consideration is inadequate
   (1) General rule: Courts do not generally look into the adequacy of consideration (so if someone enters into a contract to pay a price that is way below market value for an item, consideration would still be present). The only exceptions are:
   (a) token consideration (something completely without value), and
   (b) sham consideration ($1.00 and usually never paid).

v) Illusory promises:
   (1) These are “illusions of a promise” because they are completely within the control of the person making the promise. There is no consideration to support an illusory promise because the person making the promise is not obligated to do anything at all!
   (a) Ex.: Strong v. Sheffield: An uncle’s promise not to collect his debt until he wanted the money was illusory.

(2) What is not an illusory promise?
   (a) Contracts based on satisfaction (“I will buy it if I like it.”)
      (i) Subjective test: if satisfaction is completely subjective (usually artwork of some sort), the buyer has to perform if he honestly in good faith is satisfied.
      (ii) Objective test: If satisfaction is objective (e.g., construction, manufacturing contracts), the buyer does not have to perform if he has a good faith and reasonable dissatisfaction. This is a subjective and objective standard.

vi) Preexisting legal duty: no consideration is present
   (1) General rule: The performance of a preexisting legal duty is not consideration. Rest. § 73. The theory behind this common law rule is to avoid having to enforce contracts that are a product of duress.
   (a) Ex.: Alaska Packers v. Domenico: Workers signed contracts and moved to Alaska. Once there, they demanded more money. The workers had a preexisting duty to perform their jobs. There was no consideration for the additional pay.

(2) Exceptions to the rule: If the new promise falls into one of the exceptions below (mnemonic = CLUSTER), then there is consideration and the promise is not barred by the pre-existing duty rule:

EXCEPTIONS TO PRE-EXISTING DUTY RULE

<table>
<thead>
<tr>
<th>CHANGE DUTY ON ONE SIDE</th>
<th>LAWSUIT SETTLEMENT OR RELEASE</th>
<th>UNFORESEEN DIFFICULTY EXCEPTION</th>
<th>SALE OF GOODS UNDER UCC</th>
<th>TIME-BARRED DEBT</th>
<th>EXTRA PERSON INVOLVED</th>
<th>RELEASE OF PRE-EXISTING DEBTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><img src="https://example.com/balance-scale.png" alt="Balance Scale" /></td>
<td><img src="https://example.com/lawsuit-settlement.png" alt="Lawsuit Settlement" /></td>
<td><img src="https://example.com/unforeseen-difficulty.png" alt="Unforeseen Difficulty" /></td>
<td><img src="https://example.com/sale-of-goods-ucc.png" alt="Sale of Goods UCC" /></td>
<td><img src="https://example.com/time-barred-debt.png" alt="Time-Barred Debt" /></td>
<td><img src="https://example.com/extra-person-involved.png" alt="Extra Person Involved" /></td>
<td><img src="https://example.com/release-of-pre-existing-debts.png" alt="Release of Pre-Existing Debts" /></td>
</tr>
</tbody>
</table>
(a) **Change the duty** on one side. Even a slight change is permissible (e.g., from example above, if Andy agrees to plant one extra tree in exchange for the $50, consideration is present).

(b) **Lawsuit settlement/release**
   (i) There is consideration for settlement of a claim so long as:
   1. the claim is valid, or
   2. the claim is invalid but there is a *good faith belief* the claim is valid.

(c) **Unforeseen difficulty exception**
   (i) If a contract rises to the level of *impracticability*, a court will not require changing both sides of the deal.

(d) **Sale of goods under UCC**: No consideration is required for a modification. Only good faith is required! (E.g., from example above, as long as Andy requested the extra $50 in good faith, if Bob agreed to pay him, this agreement would be enforceable if it were a UCC contract.) UCC § 2-209.

(e) **Time-barred debt**: A written promise to pay a debt barred by the statute of limitations is enforceable without further consideration. However, it is only enforceable to the extent of the new written promise.

(f) **Extra person involved**: Pre-existing duty owed to a third person (duty not owed to person making the promise). There is no consideration issue.

(g) **Release of pre-existing debts**
   (i) Rule: if there is a *good faith payment in full* and a *due and disputed* debt, then the promise to release the debt is enforceable.

(d) **Promissory estoppel: a substitute for consideration**
   i) Elements:
   1. a *promise*,
   2. *reliance* that is foreseeable and justifiable, and
   3. *enforcement* is necessary to avoid injustice. Rest. § 90.
   
   (a) **Ex.**: *Ricketts v. Scothorn*: Grandfather told granddaughter she could quit her job and he would give her $2,000 per year. Even though no consideration (illusory promise), she relied on his promise. Therefore, the promise was enforceable.

   ii) **Exam Tip**: Promissory estoppel is a doctrine that is used if there is no contract. If a contract has been formed, then promissory estoppel is not an issue!

   iii) Measure of damages: generally, only reliance damages are granted.
This sample ends here!

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