# C O N T E N T S

	Preface	xxxi
	Acknowledgments	XXXV
	Authors' Note	xxxvii
1	INTRODUCTION TO CONTRACTS	1
	A. An Introduction to the Study of Contract Law	1
	1. The Legal Definition of Contract	1
	2. The Sources, Nature, and Traditions of Contract Law	2
	3. The Doctrine of Precedent and Case Analysis	6
	4. The Role of Scholarly Commentary	11
	5. Theoretical Perspectives on Contract Law	13
	6. Transnational Perspectives on Contract Law	18
	B. What Makes an Agreement into a Contract	19
	C. The Enforcement of Contracts: An Introduction to Remedies	21
	1. Damages or Specific Performance: An Introduction to the Distinction	
	Between Law and Equity	21
	Kakaes v. George Washington University	23
	Questions	27
	Problem 1.1 Problem 1.2	28 28
	2. Expectation Damages	28 29
	Questions	29 29
	Problem 1.3	30
	Problem 1.4	31
	3. The Method of Enforcing an Award of Damages	31
2	SALES OF GOODS	33
2	SALES OF GOODS	33
	A. An Introduction to Article 2	33
	1. The Creation of the Uniform Commercial Code	33
	2. The UCC Provisions Covered in This Course: Articles 1 and 2	34
	3. Revisions of the UCC	35
		xi

12/17/21 1:14 PM

	4. The Style and Jurisprudence of the UCC	35
	UCC 1-103(a). Construction of [Uniform Commercial Code]	
	to Promote Its Purposes and Policies	36
	5. Working with Article 2	36
	6. The Organization of Article 2 and the Citation of Code Sections	37
	7. The Official Comments to the UCC	38
В.	The Scope of Article 2	38
	1. The Scope of Article 2 Generally	38
	2. The Scope of Article 2 in Hybrid Transactions	39
	Suntrust Bank v. Venable	40
	Questions	44
	Problem 2.1	44
	3. The Applicability of Article 2 to Sales of Intangible Rights, Especially	
	Software and Other Intellectual Property	45
	Pain Center of SE Indiana LLC v. Origin Healthcare Solutions LLC	47
	Questions	51
	Problem 2.2	52
C.	Merchants and Article 2	52
	UCC 2-104(1). Definitions: "Merchant"	52
	Zaretsky v. William Goldberg Diamond Corp.	54
	Problem 2.3	57
D.	International Sales of Goods and the CISG	58
C	ONTRACTUAL ASSENT	
_	ND THE OBJECTIVE TEST	61
	The Objective Standard for Determining Assent and the Reasonale Person Construct	61
		UI

1. The Objective Test of Assent	61
Morales v. Sun Constructors, Inc.	63
2. The Relevance of Subjective Evidence Under the Objective Test	65
SR International Business Insurance Co. v. World Trade Center	
Properties, LLC	66
Problem 3.1	67
3. The Determination of Objective Meaning by the Reasonable	
Person Construct	68
Problem 3.2	68
B. The Duty to Read	69
1. The Duty to Read Standard Terms	69
James v. McDonald's Corp.	69
Questions	72

xii

	Contents	xiii
	2. Arbitration and Forum Selection Provisions in Standard Contracts	73
	<ol> <li>3. Boxtop and Shrinkwrap Terms</li> </ol>	73 76
	Problem 3.3	76
	Problem 3.4	70
	4. The Duty to Read Standard Terms in a Web-Based Transaction:	
	Clickwrap, Browsewrap, and Hybrid (Sign-in) Terms	78
	Nguyen v. Barnes & Noble Inc.	79
	Questions	83
	Feldman v. Google, Inc.	84
	Problem 3.5	85
	Meyer v. Uber Technologies, Inc.	86
	C. Manifestations of Apparent Intent Not Meant Seriously — Bluffs,	
	Hyperbole, and Jokes	90
	Lucy v. Zehmer	91
	Leonard v. PepsiCo, Inc.	94
	Kolodziej v. Mason	98
	Question	104
4	THE OFFER	105
-	A. The Process of Contract Formation	105
	1. The Offer and Acceptance Model	105 106
	2. An Overview of the Process of Contract Formation	100
	B. The Nature and Qualities of an Offer	107
	1. The Definition of "Offer" at Common Law	107
	2. Offers Under UCC Article 2	107
	UCC 1-103(b) Applicability of Supplemental Principles of Law	107
	UCC 2-204. Formation in General	108
	3. Interpreting the Intent of a Communication to Determine	
	Whether It Is an Offer	108
	Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc.	109
	Babcock & Wilcox Co. v. Hitachi America, Ltd.	111
	Questions	117
	Droblom 4.1	118

	Problem 4.1	118
	Problem 4.2	118
C. Is an	Advertisement an Offer or a Solicitation?	118
	Sateriale v. R.J. Reynolds Tobacco Co.	121
	Problem 4.3	125
D. The I	Remedies Illustrated by the Cases in Section C	126
	Question	128

Contents
----------

	E. Offer and Acceptance Through Electronic Media, Especially by Automated Means (Electronic Agents)	128
	F. Offers Under the UNIDROIT Principles and CISG	130
5	ACCEPTANCE	131
	A. General Principles of Acceptance	131
	Restatement, Second §30. Form of Acceptance Invited UCC 2-206(1)(a). Offer and Acceptance in Formation of	131 Contract 132
	B. Communication of Acceptance, the Effective Date of Acceptanc and the Mailbox Rule	ce, 133
	Trinity Homes, LLC v. Fang	134
	C. The Acceptance Must Be in Compliance with Any Instructions i Offer Relating to the Manner and Method of Acceptance	in the 136
	D. The Acceptance Must Not Vary the Terms of the Contract Proposed in the Offer	138
	Roth v. Malson	139
	Questions	143
	Problem 5.1	143
	E. The Acceptance Must Occur While the Offer Is Still in Effect:	
	Lapse or Revocation of an Offer	144
	1. Lapse of an Offer	144
	Problem 5.2 2. Revocation of an Offer	145 146
	2. Revocation of an Oner Hendricks v. Behee	140
	Problem 5.3	148
	Dickinson v. Dodds	149
	Questions	151
	Problem 5.4	151
	F. Inadvertent Manifestation of Acceptance	152
	Anderson v. Douglas & Lomason Co.	153
	Questions	156
	G. Silence or Inaction as Acceptance	156
	Pride v. Lewis	157
	Gupta v. Morgan Stanley Smith Barney, LLC	161
	H. Acceptance by Performance: Unilateral Contracts	165
	1. The Distinction Between Unilateral and Bilateral Contracts Problem 5.5	165 167

xiv

	Contents	XV
	Carlill v. Carbolic Smoke Ball Co.	168
	Leonard v. PepsiCo, Inc.	169
	Question	171
	Problem 5.6	171
	Problem 5.7	172
	Wayment v. Schneider Automotive Group LLC	172
	Question	175
	Problem 5.8	176
	Problem 5.9	176
2.	Performance as an Exclusive or Permissive Method of Acceptance	176
	Problem 5.10	177
3.	Shipment as Acceptance of an Offer to Buy Goods	177
	UCC 2-206(1)(b). Offer and Acceptance in Formation of Contract	177
	Problem 5.11	178
4.	Communication of Acceptance by Performance	179
5.	Acceptance of an Offer by an Act That Cannot Be Accomplished	
	Instantaneously	179
	Restatement, Second §45. Option Contract Created by Part	
	Performance or Tender	180
	Restatement, Second §62. Effect of Performance by Offeree	
	Where Offer Invites Either Performance or Promise	180
	Problem 5.12	181
. Th	e Offer and Acceptance Model in Perspective	181
l. Ac	ceptance Under the UNIDROIT Principles and the CISG	182

### 6 CONFLICTING STANDARD TERMS, THE BATTLE OF THE FORMS, AND LATE NOTICE OF STANDARD TERMS

S'	ГА	NDARD TERMS	<b>183</b>
A.		ne Common Law Approach to Conflicting Standard Terms in the arties' Communications	183
B.		ne UCC's Approach to Conflicting Standard Terms in the Parties' Communications: The Battle of the Forms Under UCC 2-207	185
	1.	The Rationale and Aim of UCC 2-207	185
		UCC 2-207. Additional Terms in Acceptance or Confirmation	187
	2.	Some General Observations on Dealing with Offer and Acceptance	
		Under UCC 2-207	187
	3.	UCC 2-207(1): The Determination of Whether the Response Is or Is Not	
		an Acceptance	189
		Problem 6.1	190
		Problem 6.2	190
		Problem 6.3	191

4. UCC 2-207(2): The Treatment of Additional and Different Terms in an	
Acceptance	191
Ridgelawn Cemetery Ass'n v. Granite Resources Corp.	194
Problem 6.4	197
5. UCC 2-207(3): Conduct Recognizing a Contract in the Absence of a	
Contract Formed By Communications	197
Niagara Bottling, LLC v. Rite-Hite Co.	198
Problem 6.5	200
Problem 6.6	201
6. Confirmation Distinguished from Acceptance in UCC 2-207	201 202
<i>Lively v. IJAM, Inc.</i> Questions	202 205
Problem 6.7	205 205
	203
C. Standard Terms Revealed After Goods or Services Are Ordered: Shrinkwrap	
Terms, Rolling Contracts, and Unilateral Postcontractual Amendments	206
1. Shrinkwrap Terms and Rolling Contracts	206
ProCD, Inc. v. Zeidenberg	207
Dye v. TAMKO Building Products, Inc.	211
Questions	217
	910
2. Unilateral Postcontractual Amendments	218
<ul><li>D. The UNIDROIT Principles and CISG Provisions on the Battle of the Form</li></ul>	
D. The UNIDROIT Principles and CISG Provisions on the Battle of the Form	
D. The UNIDROIT Principles and CISG Provisions on the Battle of the Form	
D. The UNIDROIT Principles and CISG Provisions on the Battle of the Form PRELIMINARY, INCOMPLETE, AND INDEFINITE AGREEMENTS	s 219 221
D. The UNIDROIT Principles and CISG Provisions on the Battle of the Form PRELIMINARY, INCOMPLETE, AND INDEFINITE	s 219
D. The UNIDROIT Principles and CISG Provisions on the Battle of the Form PRELIMINARY, INCOMPLETE, AND INDEFINITE AGREEMENTS	s 219 221
D. The UNIDROIT Principles and CISG Provisions on the Battle of the Form PRELIMINARY, INCOMPLETE, AND INDEFINITE AGREEMENTS A. The Scope of This Chapter	s 219 221
<ul> <li>D. The UNIDROIT Principles and CISG Provisions on the Battle of the Form</li> <li>PRELIMINARY, INCOMPLETE, AND INDEFINITE AGREEMENTS</li> <li>A. The Scope of This Chapter</li> <li>B. Binding and Nonbinding Preliminary Agreements and Agreements to</li> </ul>	s 219 221 221
<ul> <li>D. The UNIDROIT Principles and CISG Provisions on the Battle of the Form</li> <li>PRELIMINARY, INCOMPLETE, AND INDEFINITE AGREEMENTS</li> <li>A. The Scope of This Chapter</li> <li>B. Binding and Nonbinding Preliminary Agreements and Agreements to Continue Bargaining in Good Faith</li> </ul>	s 219 221 221 221
<ul> <li>D. The UNIDROIT Principles and CISG Provisions on the Battle of the Form</li> <li>PRELIMINARY, INCOMPLETE, AND INDEFINITE AGREEMENTS</li> <li>A. The Scope of This Chapter</li> <li>B. Binding and Nonbinding Preliminary Agreements and Agreements to Continue Bargaining in Good Faith Brown v. Cara</li> </ul>	s 219 221 221 221 221
<ul> <li>D. The UNIDROIT Principles and CISG Provisions on the Battle of the Form</li> <li>PRELIMINARY, INCOMPLETE, AND INDEFINITE AGREEMENTS</li> <li>A. The Scope of This Chapter</li> <li>B. Binding and Nonbinding Preliminary Agreements and Agreements to Continue Bargaining in Good Faith Brown v. Cara Questions Problem 7.1</li> </ul>	s 219 221 221 221 222 229
<ul> <li>D. The UNIDROIT Principles and CISG Provisions on the Battle of the Form</li> <li>PRELIMINARY, INCOMPLETE, AND INDEFINITE AGREEMENTS</li> <li>A. The Scope of This Chapter</li> <li>B. Binding and Nonbinding Preliminary Agreements and Agreements to Continue Bargaining in Good Faith Brown v. Cara Questions Problem 7.1</li> <li>C. Unenforceable Agreements to Agree: Deferred Agreement on Essential</li> </ul>	<ul> <li>s 219</li> <li>221</li> <li>221</li> <li>221</li> <li>222</li> <li>229</li> <li>230</li> </ul>
<ul> <li>D. The UNIDROIT Principles and CISG Provisions on the Battle of the Form</li> <li>PRELIMINARY, INCOMPLETE, AND INDEFINITE AGREEMENTS</li> <li>A. The Scope of This Chapter</li> <li>B. Binding and Nonbinding Preliminary Agreements and Agreements to Continue Bargaining in Good Faith Brown v. Cara Questions Problem 7.1</li> <li>C. Unenforceable Agreements to Agree: Deferred Agreement on Essential Contract Terms</li> </ul>	<ul> <li>219</li> <li>221</li> <li>221</li> <li>221</li> <li>221</li> <li>222</li> <li>229</li> <li>230</li> <li>230</li> </ul>
<ul> <li>D. The UNIDROIT Principles and CISG Provisions on the Battle of the Form</li> <li>PRELIMINARY, INCOMPLETE, AND INDEFINITE AGREEMENTS</li> <li>A. The Scope of This Chapter</li> <li>B. Binding and Nonbinding Preliminary Agreements and Agreements to Continue Bargaining in Good Faith Brown v. Cara Questions Problem 7.1</li> <li>C. Unenforceable Agreements to Agree: Deferred Agreement on Essential Contract Terms Alaska Fur Gallery, Inc. v. Tok Hwang</li> </ul>	<ul> <li>s 219</li> <li>221</li> <li>221</li> <li>221</li> <li>222</li> <li>229</li> <li>230</li> <li>231</li> </ul>
<ul> <li>D. The UNIDROIT Principles and CISG Provisions on the Battle of the Form</li> <li>PRELIMINARY, INCOMPLETE, AND INDEFINITE AGREEMENTS</li> <li>A. The Scope of This Chapter</li> <li>B. Binding and Nonbinding Preliminary Agreements and Agreements to Continue Bargaining in Good Faith         <ul> <li>Brown v. Cara</li> <li>Questions</li> <li>Problem 7.1</li> </ul> </li> <li>C. Unenforceable Agreements to Agree: Deferred Agreement on Essential Contract Terms         <ul> <li>Alaska Fur Gallery, Inc. v. Tok Hwang</li> <li>Questions</li> </ul> </li> </ul>	s 219 221 221 221 222 229 230 230 231 234
<ul> <li>D. The UNIDROIT Principles and CISG Provisions on the Battle of the Form</li> <li>PRELIMINARY, INCOMPLETE, AND INDEFINITE AGREEMENTS</li> <li>A. The Scope of This Chapter</li> <li>B. Binding and Nonbinding Preliminary Agreements and Agreements to Continue Bargaining in Good Faith Brown v. Cara Questions Problem 7.1</li> <li>C. Unenforceable Agreements to Agree: Deferred Agreement on Essential Contract Terms Alaska Fur Gallery, Inc. v. Tok Hwang</li> </ul>	<ul> <li>s 219</li> <li>221</li> <li>221</li> <li>221</li> <li>222</li> <li>229</li> <li>230</li> <li>231</li> </ul>

 		 	 -	
Problem 7.3				239
Questions				239
Baer v. Chase				236

# E. The Tort of Interference with Contract Relations: Liability for Enticing<br/>a Party to Breach a Contract or a Preliminary Agreement241

xvi

	Contents	xvii
8	THE STATUTE OF FRAUDS	243
	A. The Basic Principle	243
	B. The Requirements of the Statute	244
	Restatement, Second §131. General Requisites of a Memorandum	245
	1. Writing or Record	245
	2. Signature	246
	<ol> <li>Content</li> <li>The Consequences of Failure to Comply With the Statute</li> </ol>	247 247
		247 248
	C. The Methodology of Applying the Statute	240
	D. The Statute of Frauds Relating to Sales and Transfers of Land	249
	Problem 8.1	249
	St. John's Holdings, LLC v. Two Electronics, LLC	250
	E. The Statute of Frauds Relating to Contracts Not Performable Within	
	a Year of Execution	256
	Holloway v. Bucher Problem 8.2	257 262
	F. The Statute of Frauds Relating to the Sale of Goods	262
	UCC 2-201. Formal Requirements; Statute of Frauds Problem 8.3	263 264
	Vanguard Energy Services, LLC v. Shihadeh	204 264
	Problem 8.4	269
	Problem 8.5	269
	G. The Approach of the CISG and UNIDROIT Principles	
	to the Statute of Frauds	270
)	CONSIDERATION	271
	A. Consideration — The Basic Doctrine	271
	1. Introduction	271
	Hamer v. Sidway	273
	Questions	275
	Restatement, Second §71. The Requirement of Exchange;	077
	Types of Exchange Problem 9.1	$277 \\ 278$
	2. The Distinction Between "Bargained for" Exchanges and Gratuitous	210
	Promises	278
	Congregation Kadimah Toras-Moshe v. DeLeo	279
	Questions	280

Pennsy Supply v. American Ash Recycling Corp.	281
Questions	286
Carlisle v. T&R Excavating, Inc.	286
Questions	292
Problem 9.2	292
B. What Suffices as Consideration	292
1. Adequacy of Consideration	293
Kessler v. National Presto Industries	294
2. Preexisting Duties	297
Restatement, Second §73. Performance of Legal Duty	298
White v. Village of Homewood	298
Questions	300
Problem 9.3	301
Problem 9.4	301
Problem 9.5	303
3. Agreements to Settle Disputed Claims or Defenses	304
Holt v. Holt	305
Questions	309
Problem 9.6	310
Problem 9.7	310
C. The Doctrine of Mutuality of Obligation and Its Application to Illuso	ry
Promises	311
1. Performance as Consideration	311
Problem 9.8	312
2. Promises as Consideration	313
National Federation of the Blind v. Container Store, Inc.	314
Wood v. Lucy, Lady Duff-Gordon	321
Questions	323
D. Consideration in the International Context	323

#### **10 PROMISSORY ESTOPPEL**

325

A. An Overview of Promissory Estoppel	325
1. The Origins and Nature of Promissory Estoppel as a Theory of Recovery	325
Restatement, Second §90. Promise Reasonably Inducing Action	
or Forbearance	328
Problem 10.1	328
2. The Theoretical Context of Promissory Estoppel and Why It Matters	329
Cohen v. Cowles Media Co.	331
Questions	335

xviii

	Contents	xix
B.	Use of Promissory Estoppel to Enforce Promises in the Absence of a	
	Clear Bargain	336
	Conrad v. Fields	336
	Questions	339
	Problem 10.2	340
	In re Morton Shoe Co.	342
	Questions	344
	Thomas v. Archer	345
~	Questions	351
C.	Promissory Estoppel in the Broader Context of a Bargain	351
	Problem 10.3	353
	1. Promissory Estoppel in Commercial Negotiations Problem 10.4	354 354
	Garwood Packaging, Inc. v. Allen & Co.	354 356
	Question	360
	2. Promissory Estoppel and the Statute of Frauds	360
	DK Arena, Inc. v. EB Acquisitions I, LLC	360
	Questions	366
D	Remedies in Promissory Estoppel Actions	367
	Tour Costa Rica v. Country Walkers, Inc.	368
	Questions	374
	Problem 10.5	374
0	PTIONS AND FIRM OFFERS	377
A.	Option Contracts	377
	Problem 11.1	379
B.	Promissory Estoppel and Offers	380
	LAHR Construction Corp. v. J. Kozel & Son, Inc.	383
	Questions	387
C.	Firm Offers Under the UCC	387
	UCC 2-205. Firm Offers	387
	Problem 11.2	388
	Problem 11.3	388
D	Provisions in the UNIDROIT Principles and CISG	
	on the Revocability of Offers	389
	Question	389

12	<b>OBLIGATION BASED ON UNJUST ENRICHMENT</b>	
	AND MATERIAL BENEFIT	<b>391</b>
	A. Unjust Enrichment	391
	1. The Relationship Between Unjust Enrichment and Contract	391
	2. The Elements of Unjust Enrichment	392
	3. Terminology	396
	4. The Distinction Between Factually and Legally Implied Contracts	396
	Martin v. Little, Brown & Co.	398
	Questions	400
	Problem 12.1	401
	Problem 12.2	401
	Feingold v. Pucello	402
	Questions 5. Volunteers and Intermeddlers	403 404
	3. Volumeers and intermedulers Birchwood Land Co. v. Krizan	404
	Problem 12.3	403
	B. The Application of Unjust Enrichment Principles to Promises for Past	
	Benefits: The "Moral Obligation" and "Material Benefit" Doctrines	409
	Restatement, Second §86. Promise for Benefit Received	411
	Questions	412
	Problem 12.4	412
10		415
13	IMPROPER BARGAINING	415
	A. General Introduction to the Doctrines in This Chapter	415
	B. Fraudulent Misrepresentation	416
	1. The Nature of Misrepresentation and the General Principles and	
	Elements of Fraud	416
	Restatement, Second §162(1). When a Misrepresentation Is	
	Fraudulent	418
	2. Affirmative Fraud	420
	Hodge v. Craig	420
	Questions	425
	Problem 13.1	425
	3. Silence as Fraud: Fraudulent Nondisclosure and the Duty to Speak	426
	Problem 13.2 Valati Enterprises, Inc. y. Vallagg Salag Co.	427 427
	Kaloti Enterprises, Inc. v. Kellogg Sales Co. Milliken v. Jacono	427 433
	Questions	433 438
	Problem 13.3	430
		105

	Contents	xxi
	4. Misrepresentation of Fact, Opinion, or Prediction	440
	Rodi v. Southern New England School of Law	440
	Problem 13.4	445
	5. Misrepresentation of Intent	446
	Problem 13.5	446
	6. Disclaimers and Contracting Out of Fraud	447
	Psenicska v. Twentieth Century Fox Film Corp.	448
	Questions	452
	7. Remedies for Fraud: Rescission or Damages	452
	8. Fraud in the Inducement Distinguished from Fraud in the Factum Question	453 454
C.	Duress	454
	1. The Elements of Duress	454
	Germantown Manufacturing Co. v. Rawlinson	456
	Questions	460
	2. Distinguishing Hard Bargaining and External Pressures from Duress	461
	Zuckerman v. Metropolitan Museum of Art	462
D.	Duress and Bad Faith in Relation to Contract Modification	467
	1. The Interaction of Consideration and Duress Doctrines	467
	<i>City of Scottsbluff v. Waste Connections of Nebraska, Inc.</i> 2. Supervening Difficulties as a Basis for Upholding a Modification	469
	Without Consideration	472
	3. Contract Modifications Under UCC Article 2	473
	Problem 13.6	474
E.	Undue Influence	475
	Moore v. Moore	476
F.	Unconscionability	481
	1. The Derivation and Meaning of "Unconscionability"	481
	UCC 2-302. Unconscionable Contract or Clause	482
	Restatement, Second §208. Unconscionable Contract or Term	482
	2. The Remedy Where a Contract or Term Is Found to Be Unconscionable	482
	3. The Elements of Unconscionability	483 485
	Problem 13.7 Feldman v. Google, Inc.	485 <i>487</i>
	Lhotka v. Geographic Expeditions, Inc.	487 491
	Zuver v. Airtouch Communications, Inc.	497
	Questions	503
	4. The Range of Unconscionability Doctrine	505
	Problem 13.8	505
	5. Unconscionability and the Prohibition of Class Actions	506
G.	An International Perspective	507

\_

14	ILLEGALITY, VIOLATION OF PUBLIC POLICY, AND LACK OF CONTRACTUAL CAPACITY A. Introduction				
	<ul> <li>B. Illegality</li> <li>Problem 14.1</li> <li>Problem 14.2</li> <li>Danzig v. Danzig</li> <li>Questions</li> <li>C. Contracts in Violation of Public Policy</li> </ul>	<b>511</b> 513 514 <i>515</i> 517 <b>517</b>			
	Brigance v. Vail Summit Resorts, Inc. Problem 14.3 Problem 14.4 Syncom Industries, Inc. v. Wood Questions Problem 14.5	518 523 523 525 529 529			
	<ul> <li>D. Incapacity Based on Minority <ol> <li>General Principles</li> <li>Disaffirmance and Ratification </li> <li>I.B. v. Facebook, Inc. </li> <li>Problem 14.6</li> </ol> </li> <li>Misrepresentation </li> <li>Topheavy Studios, Inc. v. Doe</li> <li>Contracts Entered into by a Minor with Parental Assistance or Executed by a Parent on Behalf of a Minor </li> <li>Woodman v. Kera LLC</li> </ul> <li>Exceptions to a Minor's Lack of Capacity, Especially Contracts for <ul> <li>Necessaries</li> <li>Problem 14.7</li> </ul> </li> <li>Restitution on Disaffirmance</li>	<b>530</b> 531 532 535 536 536 536 537 539 542 543 544			
	E. Incapacity Based on Mental Illness or Defect In re Seminole Walls & Ceilings Corp. Spangler v. Spangler Question	<b>545</b> <i>547</i> <i>549</i> 554			
15	CONTRACT INTERPRETATION AND CONSTRUCTION				
	A. The Content of Contractual Obligations	<b>555</b> 555			
	B. Interpretation	557			

		Contents	xxiii
		Sources of Contract Meaning	557
		Problem 15.1	559
		Problem 15.2	559
		Terry Barr Sales Agency, Inc. v. All-Lock Co.	560
		Questions	566
		Interpretation of Written Agreements	566
		Right Field Rooftops, LLC v. Chicago Baseball Holdings, LLC	570
		Questions	575
		Problem 15.3	576
		Pacific Gas & Electric Co. v. G.W. Thomas Drayage & Rigging Co.	576
		Questions	579
		White City Shopping Center, LP v. PR Restaurants, LLC	579
		Questions	582
		Problem 15.4	582
		Interpretation of Standard Contracts	582
		Atwater Creamery Co. v. Western National Mutual Insurance Co.	583
		Questions Hahn v. Geico Choice Insurance Co.	588 589
		Hunn V. Geico Choice Insurance Co.	309
	C.	onstruction of Contract Obligations	593
		Gap Fillers	<b>59</b> 4
		UCC 2-311. Options and Cooperation Respecting Performance	595
		Family Snacks of North Carolina, Inc. v. Prepared Products Co.	595
		Questions	599
		The Example of Exclusive Dealings and Output and Requirement Contracts	599
		UCC 2-306. Output, Requirements and Exclusive Dealings	600
		Problem 15.5	600
		Problem 15.6	601
		The General Obligations of Good Faith and Fair Dealing	602
		<i>United Airlines, Inc. v. Good Taste, Inc.</i> Questions	<i>603</i> 609
			009
	D.	e Doctrine of Misunderstanding and Its Relation to Contract	
		terpretation and Construction	610
		Konic International Corp. v. Spokane Computer Services, Inc.	611
		Questions	614
16	Т	E PAROL EVIDENCE RULE	615
IU			
	А.	troduction to the Parol Evidence Rule	615
	В.	oplication of the Parol Evidence Rule	620
		Masterson v. Sine	625
		Questions	630
		Myskina v. Condé Nast Publications, Inc.	631

	Questions	635
	Problem 16.1	638
C. Applicati	on of the Parol Evidence Rule Under the UCC	639
	UCC 2-202. Final Written Expression: Parol or Extrinsic Evidence	639
	Segal Wholesale, Inc. v. United Drug Service	640
	Questions	644
	Problem 16.2	644
D. The Scop	e of the Parol Evidence Rule	645
	Problem 16.3	646
	Sound Techniques, Inc. v. Hoffman	649
	Sound reciniques, me. v. mojjinan	0.5
	Problem 16.4	653
E. Contract		
	Problem 16.4	

#### 17 MISTAKE AND EXCUSE DUE TO CHANGED CIRCUMSTANCES

A.	Mi	istake	656
	1.	Mutual Mistake	657
		SCI Minnesota Funeral Services, Inc. v. Washburn-McReavy	
		Funeral Corp.	657
		Questions	663
		Problem 17.1	665
		Problem 17.2	666
		Restatement, Second §154. When a Party Bears the Risk of a Mistake	667
		Estate of Nelson v. Rice	667
		Problem 17.3	670
		Cherry v. McCall	671
		Questions	673
	2.	Unilateral Mistake	673
		Bert Allen Toyota, Inc. v. Grasz	674
		Problem 17.4	677
	3.	Mistake in Expression and Reformation	678
B.	Ex	acuse Due to Changed Circumstances	679
	1.	Impracticability	680
		CNA International Reinsurance Co. v. Phoenix	681
		Questions	683
		UCC 2-615. Excuse by Failure of Presupposed Conditions	684
		Clark v. Wallace County Cooperative Equity Exchange	684
		Questions	686
		Problem 17.5	686

	Contents	XXV
2. Frustration of Purpose		687
<i>Lindner v. Meadow Gold Dairies, Inc.</i>		688
Questions		693
1600 Walnut Corp. v. Cole Haan Company Store		693
Questions		695

#### **18 CONDITIONS AND PROMISES**

A.	The Components of a Contract: Conditions and Promises	697
	1. Identification of Promises and Conditions	698
	2. The Requirement That the Event Must Be Uncertain	700
	3. The Reasons for Including Conditions in a Contract	701
	4. The Sequencing of Performance: Conditions Precedent and Concurrent	
	Conditions	702
	5. The Arcane Distinction Between Conditions Precedent and Conditions	
	Subsequent	702
	6. The Distinction Among Express Conditions, Implied Conditions, and	
	Construed Conditions	703
	Medical Recovery Services, LLC v. Neumeier	704
	7. Promises, Conditions, and Terms That Are Both Conditions and	
	Promises (Promissory Conditions)	708
	8. Problems on the Classification and Function of Conditions and Promises	710
	Problem 18.1	710
	Problem 18.2	710
	Problem 18.3	711
	Problem 18.4	711
	Problem 18.5	712
	Problem 18.6	712
	9. Interpretation to Determine if an Event Referred to in a Contract Is	
	Intended as a Condition	712
	Problem 18.7	713
B.	A Promise to Take Action to Try to Satisfy a Condition	713
	Problem 18.8	714
	Problem 18.9	715
C.	Strict Compliance with Express Conditions and the Substantial	
	Compliance Doctrine Where a Condition Is Construed	716
	Problem 18.10	717
	Jacob & Youngs, Inc. v. Kent	718
	Questions	723
D.	Conditions of Satisfaction	724
1.	Problem 18.11	725
	r 1001e111 10.11	(23

#### Contents

E.	The Use of Conditions to Provide for Alternative Performances	726
	Problem 18.12	726
F.	The Use of Conditions to Sequence Performances Where the	
	Performance of the Parties Will Not Be Instantaneous and Simultaneous	727
	Problem 18.13	729
	Problem 18.14	729
G.	Excuse of Conditions	
	1. Waiver	730
	Problem 18.15	732
	2. Estoppel	733
	Problem 18.16	733
	3. Obstructive or Uncooperative Conduct	734
	Sullivan v. Bullock	735
	4. Unfair Forfeiture	737
	United Properties Ltd. v. Walgreen Properties, Inc.	737

#### **19 MATERIAL BREACH, SUBSTANTIAL PERFORMANCE, AND ANTICIPATORY REPUDIATION**

A.	Material Breach, Total Breach, and Cure	743
	Al Hirschfeld Foundation v. Margo Feiden Galleries Ltd.	744
	Questions	747
	Raymond Weil, S.A. v. Theron	748
	Questions	752
	Problem 19.1	753
	Problem 19.2	754
B.	Substantial Performance and Its Consequences	754
	1. The Distinction Between Material Breach and Substantial Performance	754
	Problem 19.3	755
	2. The Measure of Relief for Substantial Performance	755
	Landis v. William Fannin Builders, Inc.	757
	Problem 19.4	762
C.	The Recovery of the Breaching Party: Unjust Enrichment or Recovery	
	Under the Contract	763
	Menorah Chapels at Millburn v. Needle	765
	Questions	768
D.	Breach and Substantial Performance Under UCC Article 2: The Perfect	
	Tender Rule	769

xxvi

Contents	xxvii
1. Perfect Tender Under Article 2	769
UCC 2-601. Buyer's Rights on Improper Delivery	769
Problem 19.5	770
2. Limitations on the Perfect Tender Rule	770
Problem 19.6	771
E. Anticipatory Repudiation and Prospective Nonperformance	773
1. Anticipatory Repudiation	773
UCC 2-610. Anticipatory Repudiation	775
Princes Point LLC v. Muss Development LLC	775
Question	777
Problem 19.7	778
2. Retraction of Repudiation	778
3. Prospective Inability to Perform	779
UCC 2-609. Right to Adequate Assurance of Performance	779
Problem 19.8	780
Problem 19.9	781

## 20 INTRODUCTION TO CONTRACT DAMAGES AND THE "BENEFIT OF THE BARGAIN"

A.	Th	e Goal and Fundamental Principles of Contract Damages	783
	1.	The Distinctions Among the Expectation, Reliance, and Restitution	
		Interests	784
		Restatement, Second §344. Purposes of Remedies	785
		Questions	786
		Problem 20.1	786
		Problem 20.2	787
	2.	Theoretical Perspectives on "Benefit of the Bargain" Damages	789
B.	Th	e "Benefit of the Bargain" at Common Law	792
	1.	Components of Expectation Damages	792
	2.	Introduction to Measurement of the Expectation Interest	794
		Restatement, Second §347. Measure of Damages in General	794
	3.	Measurement of the Expectation Interest When Neither Party Performs	796
		Handicapped Children's Education Board v. Lukaszewski	798
		Questions	802
		Problem 20.3	802
		Problem 20.4	803
		Problem 20.5	803
		Problem 20.6	804
	4.	Measurement of the Expectation Interest When the Breaching Party	
		Performs in Part	804
		Problem 20.7	806

	Problem 20.8	807
	Problem 20.9	808
C.	"Benefit of the Bargain" Damages Under the UCC	808
	UCC 1-305(a). Remedies to be Liberally Administered	808
	1. Buyer's Damages Under the UCC	809
	UCC 2-712. "Cover"; Buyer's Procurement of Substitute Goods	810
	UCC 2-713. Buyer's Damages for Non-delivery or Repudiation	811
	UCC 2-714. Buyer's Damages for Breach in Regard to Accepted	
	Goods	812
	2. Seller's Damages Under the UCC	812
	UCC 2-706. Seller's Resale Including Contract for Resale	814
	UCC 2-708. Seller's Damages for Non-acceptance or Repudiation	814
	3. Some Problems Relating to "Benefit of the Bargain" Damages	
	Under the UCC	817
	Problem 20.10	817
	Problem 20.11	818
	Problem 20.12	818
	Problem 20.13	818
	Problem 20.14	819
	Problem 20.15	819
D.	Limitations on Recovery of "The Benefit of the Bargain"	819
	1. Reasonable Certainty of Damages	820
	Rancho Pescado, Inc. v. Northwestern Mutual Life Insurance Co.	821
	Hollywood Fantasy Corp. v. Gabor	825
	Questions	830
	2. Foreseeability of Damages	830
	Hadley v. Baxendale	831
	Problem 20.16	833
	McNaughton v. Charleston Charter School for Math & Science, Inc.	835
	Questions	840
	3. The Mitigation Principle	840
	DeRosier v. Utility Systems of America, Inc.	842
	UCC 2-710. Seller's Incidental Damages	848
	UCC 2-715. Buyer's Incidental and Consequential Damages	848
	Problem 20.17	848

#### 21 CONTRACT REMEDIES IN THE BROADER CONTEXT

A. Noneconomic and Noncompensatory Damages	850
1. Damages for Pain, Suffering, and Emotional Distress	850
Erlich v. Menezes	851
Lane v. Kindercare Learning Centers, Inc.	857

	Contents	xxix
	Questions	859
0	Problem 21.1	859
2.	Punitive Damages	860
	Problem 21.2	861
<b>B.</b> A	greed Remedies	862
1.	The Distinction between Unenforceable Penalties and Enforceable	
	Liquidated Damages Clauses	863
	Kent State University v. Ford	865
	Problem 21.3	872
2.	Contractual Limitations on and Modifications of Remedy	873
	Wedner v. Fidelity Security Systems, Inc.	873
	Questions	876
C. SJ	pecific Performance and Injunctions	876
1.	The Common Law's Preference for Damages	876
2.	Inadequacy of Damages	879
	Van Wagner Advertising Corp. v. S&M Enterprises	880
	Questions	883
	Problem 21.4	884
	Problem 21.5	884
	Problem 21.6	885
3.	The Discretionary Nature of the Remedy	885
	Campbell v. Carr	886
	Questions	888
	Problem 21.7	889
4.	Injunctive Relief as an Alternative to Specific Performance	889
	Systems & Software, Inc. v. Barnes	891
	Questions	895
	Problem 21.8	895
D. R	estitution as a Remedy upon Breach of Contract	895
	Worcester Heritage Society, Inc. v. Trussell	896
	Questions	898
	Problem 21.9	900
TH	E RIGHTS OF NONPARTIES	903
<b>A. T</b>	hird-Party Beneficiaries	903
	Intended and Incidental Beneficiaries: The Intent to Confer Power of	
1.	Enforcement on the Third Party	903
		200

ended and incluental beneficiaries. The intent to comer rower of			
forcement on the Third Party			
Restatement, Second §302. Intended and Incidental Beneficiaries	904		
Restatement, Second §304. Creation of Duty to Beneficiary	904		
Taylor v. Honda Motorcars, Inc.	906		
Question	909		

	Oliverio v. Transdev Services, Inc.	909
	Question	914
	Problem 22.1	914
2.	Nonclients as Third-Party Beneficiaries of a Contract Between an	
	Attorney and a Client	915
	Problem 22.2	916
3.	Vesting of Rights in the Beneficiary and the Power of the Original	
	Parties to Modify the Contract	917
	Restatement, Second §311. Variation of a Duty to a Beneficiary	917
	Problem 22.3	917
4.	Defenses Available to the Promisor Against the Beneficiary	918
	Problem 22.4	918
5.	The Promisee's Rights of Enforcement	919
B. As	ssignment and Delegation	920
1.	The Transfer of Contract Rights and Duties	920
2.	Assignment: General Principles	921
	Restatement, Second §317. Assignment of a Right	923
	UCC 2-210(2) Assignment of Rights	925
	Problem 22.5	926
3.	Assignments That Violate Public Policy	927
	Gurski v. Rosenblum & Filan, LLC	927
	Questions	931
4.	Anti-Assignment Clauses	931
	Problem 22.6	932
5.	The Effect of Assignment, Notice of Assignment, and the Obligor's	
	Defenses Against the Assignee	932
	Problem 22.7	933
6.	The Delegation of Contractual Duties	934
	Restatement, Second §318. Delegation of Performance of Duty	934
	UCC 2-210(1) and (6). Delegation of Performance	935
	Bakke v. Magi-Touch Carpet One Floor & Home, Inc.	935
	Problem 22.8	937
Self_Ac	asessment Auestions	939
Self-Assessment Questions		1049
Table of Cases		
	of Secondary Sources	1053
	of Laws, Regulations, and Model Statutes	1057
Index		1059