

Contracts Outline

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I. Theories of Obligations

A. Obligations: recognized general basis for imposing legal duties

1. Agreement with consideration
2. Promissory estoppel - justified reliance on promise
3. Unjust enrichment
4. Tort obligations
5. Solely from form
6. Statutory warranty

B. 5 Theories:

Theory	Obligation created by:	Damages:
AwC	Party to Bargain	Expectancy
P.E.	Induced Reliance	Reliance, assuming its reasonable
U.E.	Retention of the Benefit	Restitution
M.O.	Subsequent Promise	Avoid Injustice
O.A.T.	Duty of care separate from the contractual Obligation	Duty of Care

C. Contract & Torts

1. Plaintiff can only sue for one, but does not have to decide until trial.
2. Plaintiff would determine which to choose depending on the scope of the damages.

II. Agreement with Consideration: consists of (1) competent and knowing parties entering into a (2) bargain for (3) exchange. Competent parties are free to fix their adequacy in the scope of an agreement. *Hardesty v. Smith* (1851)

A. Competent Parties: mental state of mind, rights to negotiate, maturity to understand their obligations, competent within the context of the bargain. Both parties must be of competent minds.

1. Parties are free to make their own bargains and to fix their own values for consideration
2. Party who establishes value of the consideration to him EXCEPT:
 - a. Fraud
 - b. Duress
 - c. Misrepresentation
 - d. Mistake
3. Cannot be later excused from performance by asserting that the consideration was inadequate.
Hardesty v. Smith

B. Bargained-for Exchange: both parties must be aware of discussion, obligations set forth, and considerations leading to an agreement to exchange promises or performances.

1. An agreement to exchange promises,
 - a. OR to exchange a promises for performance
 - b. OR to exchange performances.
 - 1) *Baehr v. Penn-O-Tex*: Both parties must be aware that a promise or performance is actually occurring.

C. Consideration: an act or item that results from the bargain, if both parties meet their obligations.

1. Something bargained-for and given for the exchange of the promise. **DEFINE Restatement 25 with four consideration**

2. **ELEMENTS:**

a. **Act**

- 1) Unilateral Exchange - a performance for exchange of a promise

b. **A Return Promise**

- 1) Executory (future) Bilateral Exchange - both parties exchange future promises

c. **Forbearance of a legal right**

- 1) A legal right is adequate consideration and is not necessary for the forbearance to directly benefit the promisor. *Hamer v. Sidway (p.56)*

a) **Exceptions:**

- i. Forbearance is NOT valid if the claim is not legitimate. *Springstead v. Nees*
- ii. Forbearance of a legal claim is NOT valid if it is not bargained for. *Baehr v. Penn-O-Tex. (1960)*

b) **Public Policy:** so that ill-founded claims are discouraged. Must show claim is:

- i. Colorable: there's a claim to it
- ii. Without doubt

d. **Creation, modification, or destruction of a legal relation**

III. **Defenses of Agreement of Consideration**

A. **Gift:** An unbargained for benefit. A gift is unenforceable. (Dougherty)

1. ****Counter Defense to Gift:**

a. **Conditional Gift:** a gift that is given only if certain conditions are to be met,

- 1) If the condition benefits the promisor: i.e. if there are detriments to the giftee, then the conditional gift may be considered valid consideration to the promisor.
- 2) If the condition does not benefit the promisor: not valid consideration (Bum v. Restaurateur)

B. **Illusory Contract:** An agreement of consideration is not valid if it is an illusory contract, one that is lacking mutuality of obligation.

1. **No Mutuality of Obligation:** A contract is not enforceable even where there is prior performance under the contract or specification of contract duration without:

a. **Quantity** (De Los Santos v. Sugar)

2. ****Counter Defense to Mutuality of Obligation:**

a. **Exclusivity**

- a) Implies an obligation of good faith in its performance -- contract is not illusory (Wood v. Lady Duff Gordon)

b. **Satisfaction clause:**

- a) does not necessarily invalidate an illusory contract (Mattei v. Hopper)
- b) Reasonable Person/Commercial Test - satisfaction regarding the commercial qualities (objective standard, i.e. bank approval of loan in Mattei).
- c) Honesty/Fancy - satisfaction must be measured in good faith. (subjective standard).
- d) Discretionary Constraint – An agreement where one party's discretion is constrained is enforceable. (*Weiner v. McGraw-Hill, Inc.*)

C. **Invalid Forbearance:**

1. **Unbargained-for:** Good faith forbearance of a legal claim is not adequate consideration if it is not bargained for. *Baehr v. Penn-O-Tex. (1960)*

2. **Invalid claim:** A legal claim is not adequate consideration if the claim was never valid. *Springstead v. Nees (1908)*

D. **Pre-Existing Duty Doctrine:**

1. Consideration itself must actually induce the other party to perform, that is,

- a. if the promisee was already going to perform the action for some reason other than for the initial promise, then the consideration is invalid.
- b. The promise did not induce his action.

2. ****Counter defense to Pre-existing duty:**

a. **Misrepresentation, Fraud, Duress, Unconscionability**

E. **Statute of Frauds**

1. Contracts must be in writing when and are not enforceable unless these agreements are made in

a note or memorandum, signed with specifics.

- a. **Charge any executor to answer damages**
- b. **Charge the defendant to answer for a debt of another person**

1) **Leading Object Rule:**

- a) When the leading object of the promisor is to sub serve some interest or purpose of his own, his promise is not within the statute.
- b) When leading object is to become a guarantor for a third party, the agreement whether made before or after the time of the promise of the principal, within the statute, and not binding unless evidenced by writing.
- c) Original collateral promise test - leading object rule
- d) **Credit test:** calls upon court to decide whom in fact credit was given.
 - i. Disadvantages: forces on the subjective intent and state of mind of promisee who, by the time of trial, will conclude that he extended credit to person who is respond to the damages. Promisee has relied upon the credit of both the promisor and the original debtor.

c. **Charge any agreement made upon the consideration of marriage**

d. **Upon any contract of land or sale of land**

e. **Any agreement not to be performed within the space of one year**

f. **UCC items that are more than \$500**

2. **Form of Signed Agreements:** Restatement Second of Contracts

a. **Contract:** is enforceable if it is evidenced in writing with signatures:

- 1) Reasonably identifies the subject matter
- 2) Made between two parties
- 3) Reasonable certainty of the essential terms

b. **Form:**

- 1) May be in several forms of writing as long as one is signed
- 2) In general, memo can be made at any time before or after the formation of the contract.
- 3) Oral or written evidence may be used if memo incorrectly mistakes a term.

3. **Counter Defenses to the Statute of Frauds:**

- a. Equity powers of the court
- b. Equity courts use their powers to mitigate the harshness of the Statute of Frauds
- c. **Partial Performance and Equitable Estoppel:**
 - 1) Part performance has been reasonable as an equitable doctrine justifying enforcement of an oral agreement where there was reliance by the party seeking to enforce the contract.
 - 2) Modern courts look to policy reasons
 - a) *Monarco v. Lo Greco*

IV. **Promissory Estoppel**

A. **Restatement (Second) of Contracts §90** (109)

- 1. A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires (reliance).

B. **ELEMENTS:**

- 1. Reasonable reliance that does not benefit the promisor.
- 2. The plaintiff must justifiably rely on the promise to her detriment.
- 3. Enforcement of the contract will avoid injustices

C. **Defenses:**

- 1. **Unreasonable reliances**
- 2. **Conditional promises**
 - a. Bar promissory estoppel since parties cannot justifiably rely on promises that may or may not happen. (Local 1330)
- 3. **Specificity:**

- a. Employ a conditional or indefinite promise (illusory)
 - b. Attach a termination date to the promise
 - c. Revoke the promise and promptly communicates this to the promisee
4. **Gift**
- a. *Counter defense to Gift:*
 - b. **Conditional promise:** As long as fulfillment of the condition is a detriment and the promise is not illusory

D. Reliance Damages

- 1. **Reliance:** Puts the promisee in position he occupied before he acted
 - a. Promisee is entitled only to reliance damages because he is partially responsible for failing to bind the promisor to the a legally binding contract.
 - b. Loss of expected profits (expectancy) are not allowed even if the loss can be proven with certainty
 - c. Nothing beyond the foreseeable, substantial, and definite detriment sustained

V. Unjust Enrichment

- A. **Benefits (Restatement):** A benefit is conferred on another if he gives the other some interest in money, land, or possessions:
- 1. Performs services beneficial to or at the request of the other
 - 2. Satisfies a debt of another
 - 3. Or in any way, adds to the others advantages.

B. ELEMENTS:

1. Service is beneficial to recipient

- a. Restitution without enrichment (125):
 - 1) Sometimes a benefit is not conferred. If one party performs a promise with the known expectation that he would be compensated for that performance, he is entitled to recover a remedy for the reasonable value of service regardless of whether the other party benefitted from that service. The key to unjust enrichment seems to be there is a known expectation of compensation at the time of service (*Kearns v. Andree*)
 - a) Example: architect who draws up plans that are never used is entitled to compensation.
 - b) A could not establish that its efforts to raise the building were beneficial to B - used benchmarks that were not previously agreed upon. (*Anderco v. Buildex*)

2. Recipient understands the service is not gratuitous and accepts the benefit

- a. **Kelly v. Hance** - no obligation to pay since form of improvement on property did not give him option to return it
- b. **Sparks:** D should have known that the business nature of the service precluded it from being a gift and the P was entitled to recover damages.
- c. **Gay v. Mooney:** Court ruled that deceased accepted services knowing that P expected compensation in the form of a "dwelling" or a sale for service. Therefore, D is responsible for restitution for room & board.
- d. **Britton v. Turner** - When one party agrees to pay for another party for a contract, knowing in advance that the entire contract might not be fulfilled, and the second party labors day by day, and the first party receives such benefit day by day, the first party implicitly agrees to accept each day's work as an individual unit and is obligated to pay for each unit of work. The issue is one of acceptance. Reasonable value of his work subtract any damages of his breach that he has done to determine balance of damages.

3. Recipient understands that compensation is expected

- a. **Bloomgarden:** court ruled that P did not make it clear to the recipient that he expected compensation, so he was not entitle to recover damages

4. Acceptance of the benefit:

- a. Benefit must be accepted before there is a legal obligation to pay for it.
- b. Has knowledge and is aware of the gift a the time of service that it is intended for him (excludes gifts thrust upon him)

5. Knowledge occurs at Time of Service

C. Defenses:

1. Reasonable opportunity to return/reject/revoke gift

- a. Beneficiary must have reasonable opportunity to reject or return the gift (120)
- b. At the time of receipt, beneficiary must have the opportunity to pay for the benefit or return it.
- c. If the beneficiary does not have the option to return the benefit AND does not have the option to pay for it, the court will not impose an obligation for payment

2. Gift

- a. Counter defense: Conditional gift
- b. Unjust enrichment does not imply the existence of the contract. The obligation to pay is strictly to prevent unjust enrichment, even in situations where there is no intention by each party to legally bind itself to the other. (*Watts v. Watts* - unjust enrichment applies to couple who are not legally married)

3. **Familial relationship:** services rendered between siblings are gratuitous because these services are usually performed out of a sense of family responsibility. *Brown v. Brown*.

a. **Counter Defense: Change of relationship**

Creation, modification or destruction of legal relationship is seen as adequate consideration. *Restatement (First) of Contracts §75(1)(c) (1932)*

- 1) If a party has an unenforceable agreement, the agreement can be used as evidence of a sale that the promisee expected compensation for benefit. *Gay v. Mooney*
- 2) **Termination/deterioration of relationship: Co-habitation:** unmarried cohabitants may raise claims based upon unjust enrichment following the termination (or deterioration) of their relationships where one of the parties attempts to retain an unreasonable amount of the property acquired through the efforts of both. *Watt v. Watt*

4. Lack of notice of compensation for benefit

(1) *Bloomgarden*: Uncommunicated expectations of compensation bars damages

5. **Mutuality:** payment left up the unfettered discretion of recipient

6. **Mutual benefit:** services that were rendered to gain a business advantage bars claims of U.E.

D. **Damages**

- A. Entitled to compensation only if it would be just and equitable to require compensation under the circumstances.
- B. **Quantum meruit** - damages, as much as is deserved
 - (1) Market value of services - value of benefits conferred

E. Types of Contract

A. **An implied-in-fact contract:** Contains all the elements of a binding agreement but different because it has not been committed to writing or stated orally in express terms, but is inferred from the conduct of the parties

- (1) Services were carried out under such circumstances as to give the recipient reason to understand.
 - a) Performed for him and not some other person
 - b) Not rendered gratuitously but with expectation of compensation from the recipient
- (2) Services were beneficial to the recipient
- (3) *Commission-fees:* Not implied unless the recipients knows or has reasonable grounds to believe that the beneficial acts were performed in anticipation of remuneration therefor.

A. **A quasi-contract:** Duty thrust under certain conditions upon one party to require another in order to avoid the former's unjust enrichment.

- (1) Plaintiff must show that D was unjustly enriched at the plaintiff's expense, that the circumstances were such that in good conscience D should make restitution.
- (2) Retention of the benefit without compensating the one who conferred it is unjustified.
- (3) No general responsibility to pay for services irrespective of the circumstances

VI. **Moral Obligations**

A. **Restatement Second of Contracts §86**

A promise for a benefit received

1. A promise made in recognition of a benefit previously received by the promisor from the promisee is binding to the extent necessary to prevent injustice.
2. A promise is not binding if
 - a. If the promisee conferred the benefit as a gift or for other reasons, the promisor has not been unjustly enriched
 - b. To the extent that its value is disproportionate to the benefit.

B. **Elements**

1. **Material benefit or past performance:** benefit that was thrust upon another.
2. **Promise of performance for the material benefit/past performance**
3. **Promise is enforced to prevent injustice**
4. The **time lag between performance and promise** allows for the opportunity for **deliberation and exercise of caution**, and an **evaluation of price**.

C. **Difference between PE and MO:**

- a. PE: Promise made before benefit conferred
- b. MO: Promise made after the benefit

D. **Difference between AwC and MO:**

- a. MO: There is no bargained for exchange between knowing parties

E. **Defenses to Moral Obligation**

1. **No actual benefits to promisor**
 - a. Counter defense: Subsequent promises to make restitution remove the reasons to deny relief.
2. **Benefits forced upon beneficiary**
 - a. Windshield washers
3. **Scope of the benefit**
 - a. Promisor is free to establish the value of their benefits. i.e. axe injury case v. payment for lifetime promise.
4. **Past consideration and moral obligations are not used.**
 - a. The mere fact of promise has been thought to create a moral obligation, but it is clear that not all promises are enforced.
 - b. Nor are moral obligations based solely on gratitude or sentiment sufficient of themselves to support a subsequent promise.
5. **Benefit conferred as a gift**
 - a. Does not apply to promises to pay for a past gift

F. **Remedy**

1. Compensation necessary to avoid injustice.
2. Value cannot be disproportionate to the benefit.

VII. **Obligations Arising from a Tort**

A. **Definitions**

1. **Action ex delicto:** an action arising out of tort
2. **Nonfeasance:** the failure to act when a duty to act existed
3. **Misfeasance:** a lawful act performed in a wrongful manner

	Contract	Torts
Conduct Prescribed	Breach of Contract - parties must perform	Breach of Duty of Care
Origin of Interest Protected	Established by party or parties to contract	Established by law or custom
Remedies -	Places party in position as if contract had been	Compensate for scope of

B. Elements:

1. **Duty of care:** Breach of duty of care growing out of the contractual relationship and
2. **Imposed by law:** Duty must be imposed by law
3. **More than express terms:** Not merely a breach of express terms of contract itself
4. You may sue for both tort and contract actions:
 - a. Pursue both until court tells you to pick one
 - b. Depends on whether the damages would overlap or not
 - c. If you breach on part of the contract that is not related you, can sue under a contract action.

C. Remedies under Torts:

1. Compensation for full scope of what you suffered.
2. Including Punitive, which is only provided in the Tort.

C. Differences:

1. **Conduct:** Contract actionable conduct: failure without justification to perform an enforceable promise.
 - a. Strict liability v. fault liability
 - b. Misfeasance: Concept of breach covers a defective promise performance
 - c. Nonfeasance: failure to perform
2. **Tort Actionable Conduct:** affirmative action that causes loss
 - a. Failure to act is not a tort (unless special circumstances)
 - b. Not all conduct causes loss, nor is all conduct actionable
3. **Remedies:**
 - a. Contracts: to protect B's reasonable expectations by giving him value of A's promised performance
 - b. Tort: restore B to position occupied before the tort, and where appropriate, to enjoin future tortious conduct - punishment.

VIII. Warranties**A. Express Warranties:** UCC §2-313: (A) Any affirmation of fact or promise made by the seller which relates to the goods and becomes part of the basis of the bargain. (B) Any description of goods which is made part of the basis of the bargain. (C) Any sample or model which is made part of the basis of the bargain.

1. Any affirmation of facts as to the quality and value of the good that induces a buyer to purchase
 - a. Presumed to be part of the basis of the bargain
 - 1) Presumed to be part of the basis of the bargain
 - a) Seller refutes presumption by proving
 - i. buyer had knowledge or
 - ii. waived the right to inspect
 - b) Buyer wins if defect isn't discoverable
 - b. Not opinion
 - c. Affirmation of fact, promise, or description v. statement of opinion, commendation or value.
 - 1) Statements made during course of negotiation = affirmative fact unless shown that buyer could only have reasonably considered the statement as an opinion.
 - 2) Factors to indicate opinion:
 - a) Lack of specificity in statement
 - b) Statement made in a unequivocal manner
 - c) Statement which reveals goods are experimental in nature
 - d) Lack of verifiable statement
 - 3) Brochure statements can be express warranties

B. Implied Warranties

1. If a merchant sells a particular product, he assumes the responsibility of being knowledgeable of

- goods of that type
2. Merchantability: usage of trade
 - a. Unless excluded or modified - a warranty shall be merchantable is implied in a contract for sale if the seller is a merchant with respect to goods of this kind.
 - b. Merchant means a person who can deal in goods of a kind and has knowledge or skills peculiar to the trade, knowledge may be attributed by his employment.
 3. Exclusion or modification of warranties
 4. Fitness for a particular purpose
 - a. Where seller has a reason to know the purpose of the good and relying
 - b. Buyer is relying on the seller to select and furnish the goods

REMEDIES:

1. **Expectancy damages:** Expectation damages are awarded to put the plaintiff in the position she would have been in had the contract been performed.
 - a. **D = LoV + OL – [LA + CA]**
 - i. LoV = loss of value; deprive party of value of performance
 1. CoP + P
 - ii. OL = other incidental or consequential loss; cause other loss (incidental or consequential)
 1. ID
 2. CD (also includes incidental reliance)
 - iii. LA = resources reallocable due to breach
 - iv. CA = expenditures precluded by breach
 - b. **Cost of Completion vs. Loss of Value**
 - i. **Gross disproportion (4 views)**
 1. **Cost of completion:** Plaintiff is entitled to the reasonable cost to him of doing the work called for by the contract which defendant left undone. (cost of performance vs. value of land had the contract been performed). *Groves v. John Wunder Co.*
 - a. Plaintiff can recover for the cost of completion even if the failure of completion does not diminish the market value of the plaintiff's land. *Radford v. De Froberville.*
 2. **Loss of value:** Where the economic benefit which would result to lessor by full performance of the work is grossly disproportionate to the cost of the performance, the damages which lessor may recover are limited to the diminution in value resulting to the premises because of the non-performance. *Peevyhouse v. Garland Coal & Mining Co.*
 - a. **Exception:** When a property owner contracts for improvements that reduce the value of his property, the measure for damages for breach would ordinarily be the cost of performance. *Peevyhouse v. Garland Coal & Mining Co.*
 - b. **Statute changes it to cost of completion:** The statute of Oklahoma declares that the operator of a strip mine has a duty to reclaim the land and that the state may contract for the work to be done if the operator defaults. *Rock Island Improvement Company v. Helmerich & Payne, Inc.* (Note: Peevyhouse rule no longer applies)
 3. **Specific Performance:** Instead of measuring damages, court could have grant a decree of specific performance. If P really wants completion, he will enforce a decree. If he does not, he will make a settlement that divides the windfall at some level between the amount at which he subjectively values the performance and the contractor's cost of completion.
 4. **Intermediate figure** Suppose that the value the P assigns to the difference between the existing and promised states of the subject matter, although less than the cost of completion, is higher than the market-value differential. In principle, the P's recovery should be measured by this intermediary figure. (The jury in *Peevyhouse* may have done just that).

- ii. **Restatement (Second) of Contracts §347, Comment B:** The first element that must be estimated in attempting to fix a sum that will fairly represent the expectation interest is the loss in the value to the injured party of the other party's performance that is caused by the failure of, or deficiency in, that performance. In principle, this requires a determination of the value of that performance to the injured party himself and not the value to some hypothetical reasonable person or on some market. The value of performance therefore depends on his own particular circumstances or those of his enterprise.
- iii. **Limitations**
 - 1. **Subsequent contracts:** In a situation where D breached a contract and P entered into a subsequent contract, P may recover for the difference in contract price if the second contract did not call for additional work not contemplated by nor included in the first one. *Thorne v. White*
 - 2. **Profits need to be defined:** To account for damages based on profit, profit must be defined or have instructions given as to how these profits are to be estimated. *Warner v. McLay*
 - a. Profits cannot be determined when total CoP cannot be determined:
LoV = CoP + Profit. If profit cannot be determined, the party can seek either restitution or reliance damages, since expectancy damages cannot be calculated.
 - 3. **Proper mitigation – additional costs:** If the party properly mitigated its damages by hiring the least expensive, qualified replacement available, then the party is **entitled to have the benefit of the bargain restored**, therefore, entitling the party to recover from the additional cost of hiring a replacement. *Handicapped Children's Education Bd. of Sheboygan County v. Lukaszewski.*

c. **Market Based Damages**

- i. **Buyer's Damage:** The measure of damage to be recovered of an **executory contract** is the difference between the contract price and the actual or market value of the property at the time and place of the breach of contract. If the market value is the same as the contract price when the contract is breached, then only nominal damages can be recovered. *Cooper v. Clute.*
 - 1. **Executory contract:** A contract composed of promises yet to performed (executed)...aka bilateral contract.
- ii. **Seller's Damage:** If a seller had the opportunity to sell more than one item, and the buyer breached, but the seller eventually sold the item to another buyer, then the seller can recover lost profit and incidental damages. *Neri v. Retail Marine Corp.*
 - 1. **Limit:** If the seller were a private party and only had one item to sell, and the buyer breached, but the seller eventually sold the item to another buyer, then the seller cannot recover lost profits because he only had one item to sell.
- iii. **UCC:**
 - 1. **Definitions:**
 - a. **Sale:**
 - i. The U.C.C. defines a "sale" as "the *passing of title from the seller to the buyer for a price.*" UCC 2-106(1).
 - b. **Goods:**
 - i. The U.C.C. defines goods as "*all things . . . which are movable at the time of identification to the contract for sale.*" UCC 2-105(1).
 - ii. "The definition of goods is based on the concept of moveability[.] It is not intended to deal with things which are not fairly identifiable as moveables before the contract is performed." UCC 2-105.
 - iii. **Mixed: goods and services:** Where a sale of goods additionally requires the seller to perform services, the contract may be classified as "mixed" and the law requires courts to apply a "predominant purpose" test to determine whether the U.C.C. governs the contract.

1. **The central query test:** The central query of the test is “whether the purpose of the agreement is the rendition of service, with goods incidentally involved (e.g., contract with artist for painting) or is a transaction of sale, with labor incidentally involved (e.g., installation of a water heater in a bathroom).”
 - a. If the primary purpose is the sale of goods, the UCC applies.
2. **Calculating damages under the UCC**
 - a. **UCC §1-106. Remedies to be Liberally Administered**

(1) The remedies provided by this Act shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed.
 - b. **UCC § 2-713. Buyers Damages for Non-Delivery or Repudiation**

(1) The measure of damages for non-delivery or repudiation by the seller is the difference between market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Article (Section 2-715), but less expenses saved in consequence of the seller’s breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.
 - c. **UCC §2-712. “Cover”; Buyer’s Procurement of Substitute Goods**

(1) After a breach within the preceding section the buyer may “cover” by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2-715), but less expenses saved in consequence of the seller’s breach.
 - d. **UCC §2-708. Seller’s Damages for Non Acceptance or Repudiation**

(1) Subject to subsection (2), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Article (Section 2-710), but less expenses saved in consequence of the buyer’s breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article (Section 2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.
 - e. **UCC §2-706. Seller’s Resale Including Contract for Resale**

(1) Under the conditions state in Section 2-703 on seller’s remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (Section 2-710), but less expenses saved in consequence of the buyer’s breach.
 - f. **UCC §2-714. Buyer’s Damages for Breach in Regard to Accepted Goods**

(1) Where the buyer has accepted goods and given notification (subsection (3) of Section 2-607) he may recover as damages for any non-conformity of tender and loss resulting in the ordinary course of events from the seller’s breach as determined in any manner which is

reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

i. **What the courts have said about §2-714:**

1. 2-714: Establishes a remedy for Buyer after the goods have been accepted and revocation of acceptance is not possible. In such a case, the seller is given credit for the value to the buyer of the accepted goods, and normally the measure of damages should be the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had conformed to the contract.
2. **The value of goods "as warranted" has been interpreted to encompass two different standards:**
 - a. The primary standard is the fair market value of the goods at the **time of acceptance**. In using the fair market value, the courts ensure that the buyer is only recovering his actual damages and does not gain a windfall from a fluctuating market.
3. **When the fair market value cannot be easily determined, or the parties do not raise it as a measure of "value"**, courts have generally relied on the **contract's purchase price** as strong evidence of the value of the nonconforming goods as warranted.

d. **Consequential Damages:** Damages are not recoverable for loss that was not reasonably foreseeable by the party in breach at the time of contracting. Damages are recoverable if they arise naturally.

i. **3 views:**

1. **Foreseeable:** When D does not know of a special circumstance of P, breach of contract such as a delay in delivery, will not make D liable for loss profits which were not reasonably foreseeable. *Hadley v. Baxendale (1854)*
 - a. **UCC §2-715:** Consequential damages resulting from the seller's breach include any loss resulting from general or particular requirements and needs of which the seller at the time of contracting **had reason to know** and which could not reasonably be prevented by cover or otherwise.
 - i. **Official Comment:**
 1. Rejects tacit agreement test
 2. Particular needs (seller needs to know) vs. General needs (does not need seller to know)
 - b. **Restatement (Second) of Contracts §351(3):** A court may limit damages **foreseeable loss** by excluding recover for loss of profits, by allowing recovery only for loss incurred in reliance, or otherwise if it concludes that in the circumstances justice so requires in order to avoid disproportionate compensation.
 - c. **Convention on Contracts for the International Sale of Goods, Article 74:** Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach **foresaw or ought to have foreseen** at the time of the conclusion of the contract, in the light of the facts and matters of which

- he then knew or ought to have known, as a possible consequence of the breach of contract.
2. **Tacit Agreement (Note: not really followed anymore):** When D is in the business of a certain trade and P enters into contract with him to do such a trade, the contract contains an implied undertaking (tacit agreement) to perform the work in a reasonably skillful and workmanlike manner. *Armstrong v. Bangor Mill Supply Group (1929)*
 - a. **Note:** The court does not always follow the *Hadley* decision. Courts generally disregard the tacit agreement test when the breaching party receives relatively insignificant consideration even if the injured party communicated special circumstances to the breaching party.
 3. **Insignificant consideration to the breaching party:** If the breaching party receives relatively insignificant consideration (such as \$20 for a lighting accessory when the consequential damages are \$450), the court will not find that the breaching party is liable for consequential damages. *Lamkins v. International Harvester Co.*
- e. **Mitigation of Damages (LA +CA):** Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract. *Convention on Contracts for the International Sale of Goods. Article 74.*
- i. **Performance after a breach – service contract:** If one party breaches a contract, then the other party has a duty to mitigate damages. The performing party cannot recover for performance after the other party has breached (requested work to stop). *Clark v. Marsiglia*
 - ii. **Reasonable mitigation:** The duty to mitigate must be reasonable, not vague and not conditional. *Schiavi Mobile Homes, Inc. v. Gironda*
 - iii. **Employment Contracts:** The general rule is that the measure of recovery by a wrongfully discharged employee is the amount of salary agreed upon for the period of service, less the amount which the employer affirmatively proves the employee has earned or with reasonable effort might have earned from other employment. *Parker v. Twentieth Century-Fox Film Corp.*
 - iv. **Qualifications:**
 1. **Comparable, substantially similar:** The employer must show that the other employment was comparable, or substantially similar. *Parker v. Twentieth Century-Fox Film Corp.*
 2. **Breaching party cannot receive profit from the non-breacher's subsequent K:** A party injured by breach of a personal services contract prior to contract completion must deduct whatever value the party can receive for his/her services during the unexpired term of the K. *Olds v. Mapes – Reeves Construction Co.*
- f. **New Business Rule**
- i. **Established Business:** Loss of profit is a definite element of damages in an action for the breach of contract or in an action for harming an **established business** which has been operating for a sufficient length of time to afford a basis of estimation with some **degree of certainty** as to the probable loss of profits. *Evergreen Amusement Corp v. Milstead (1955)*
 1. **Defense: New Business Rule:** Loss of profits from a business which **has not gone into operation** may not be recovered because they are merely speculative and incapable of being ascertained with the requisite degree of certainty. *Evergreen Amusement Corp v. Milstead (1955)*
 - a. **Note:** The new business rule is in decline because some courts find it unfair to deny recovery of lost profits where P has been prevented from establishing the amount of lost profits because of D's actions; encourage parties contracting with such new business to breach. For these courts, all that may be required for recovery is a reasonably certain factual basis

computation of probably loss.

- ii. **Rental Value:** Damages are recoverable for profits prevented by breach of contract only to the extent that the evidence affords a sufficient basis for estimating their amount in money with reasonable certainty, and that where the evidence does not afford a sufficient basis, damages may be measured by the **rental value** of the property. *Restatement of Contracts §331.*
- iii. **Modern view – jury decides amount of profits:** If the mind of the court is certain that profits would have been made if there had been no breach by D, there will be a greater degree of liberality in allowing the jury to bring in a verdict for P, even though the amount of profits prevented is scarcely subject to proof at all. *Lakota Girl Scout Council, Inc. v. Havey Fund-raising management, Inc. (1975)*
 1. **Test:** *Lakota Girl Scout Council, Inc. v. Havey Fund-raising management, Inc.*
 - a. Proof that some loss occurred
 - b. Loss flows directly and is foreseeable
 - c. Proof of rationale basis for calculating profits

Evergreen, Lakota and allowance of speculative profits

Evergreen	Lakota
<ul style="list-style-type: none">• New Business beginning operation• Unrelated Expert testifies to loss• Affirm refusal to admit evidence• No lost profits but general damages for lost rental value• Late contractor (very often)• Business	<ul style="list-style-type: none">• New Fund Raising Campaign• Expert/Defendant confirms loss• Affirm decision to admit evidence• No lost profits but restitution and reimbursement expenses incurred• Mismanaged campaign (not often)• Girl scouts

- a. **Mental distress:** Where the contract breached is a personal agreement involving matters of mental concern and solitude, damages for emotional suffering are recoverable. (Rule of Stewart) Damages for mental distress are allowed where the injury suffered is to the person.
 - i. Among other damages the plaintiff could recover, one of them was for the pain and suffering and mental distress to the extent that these exceeded what would have been involved in a successful performance by D (i.e., at least the pain and suffering and mental distress involved in the third operation, attempted solely for restorative purposes). The court declines to determine whether the pain and suffering would have been involved even in a successful operation may be recovered under the reliance theory (though such recovery is arguably required, since the suffering has been “wasted.”) *Sullivan v. O’Connor*
 - ii. **Defenses to mental distress:**
 1. **Commercial contract:** Where an action is for a breach of a commercial contract, damages for mental distress are not recoverable. *Chrum v. Charles Heating and Cooling, Inc.*
 - a. **Exceptions:**
 - i. Where P alleges tortious conduct, independent of any breach of the commercial contract, P can recover mental damages.
 2. **Intangible Claims:** No recovery for damages for mental distress in breach of contract cases involving intangible claims such as failure to pay insurance claims and breach of employment contracts.
 3. **Property loss:** Where property loss is involved, the courts have generally not allowed recovery for mental distress in breach of contract actions. *Chrum v. Charles Heating and Cooling, Inc.*
- b. **Reliance Damages:** When defendant breaches, plaintiff can recover contract price (loss of value) and reliance loss. *Nurse v. Barns*
 - i. **Expenditures incurred before the contract is made:**
 1. **Two views:**
 - a. **Recoverable if likely to have waste:** Plaintiff can recover the expenditures incurred before the contract, provided that it was such as

would reasonably be in the contemplation of the parties as likely to be wasted if the contract was broken. *Anglia Television LTD v. Reed*.

- i. **Limit:** Allowing recovery for foreseeable expenses before the contract depends on the jurisdiction, time and type of business. Look at *Chicago Coliseum Club v. Dempsey* below.
 - b. **Not recoverable:** Items recoverable are such items of expense as were incurred between the date of signing the agreement and the breach of the agreement by the defendant and such as were incurred as a necessary expense in furtherance of the performance. *Chicago Coliseum Club v. Dempsey*.
- ii. **Essential Reliance (Cost of Performance; but not total CoP):**
1. Certain acts in reliance are the “price” of the K’s benefits: Performance of the agreed exchange, preparations to perform, losses involved in entering into the K, i.e. opportunity costs of foregoing other profitable K
 2. Argue K price serves a ceiling on such costs
 3. Argue otherwise would shift burden of loss to D
 - a. **Unknown profits:** Normally a promisee’s damages for breach of contract are the value of the promised performance, less his outlay, which includes, not only what he must pay to the promisor but any expenses necessary to prepare for the performance. When profits are not known, the burden shifts to the promisor to prove that the promisee would not have profited from its business venture. **The promisee may recover his outlay in preparation for the performance, subject to the privilege of the promisor to reduce it by as much as he can show that the promisee would have lost, if the contract had been performed.** *L. Albert & Son v. Armstrong Rubber Co.*
 - i. **D = (net earnings of refiners + refiner scrap value) – [(cost of refiners) + (preparation for performance)]**
 4. **Limit:** essential reliance cannot be greater than expectancy
- iii. **Incidental Reliance: (Consequential Damages) (*Nurse v. Barns* case)**
1. Reliance (laying in stock of goods) followed naturally and foreseeably from K
 2. Distinguish from “price” of performance, not preparation to perform
 3. Such damages not limited by K price, but other doctrines such as foreseeability + mitigation apply
 - a. Incidental reliance that are too remote (such as a wedding presents, wines, other clothes) are not recoverable when the seller breached in delivering two wedding gowns (\$10) by the specified time. *Coppola v. Kraushaar*
 4. Any limits to recovery beyond the K price for incidental reliance? Limit incidental reliance damages with reference to profit or loss reasonably anticipated from K; Incidental Reliance can be greater than expectancy
- iv. **Limits:**
1. **Speculative profits / new business:** When a breach occurs, items recoverable are such items of expense as were incurred between the date of signing the agreement and the breach of the agreement by the defendant and such as were incurred as a necessary expense in furtherance of the performance. *Chicago Coliseum Club v. Dempsey*
 2. **Fixed costs:** the same whether or not the firm does anything. Ex: the fee that a state charges for a corporate charter.
 - a. **Exception:** If the business could show that it had forgone other profitable business, the business can recover the overhead costs for paying engineers who were already employed and spent a certain amount of time on the joint venture project the other party breached. *Autotrol Corp. v. Continental Water Systems Corp.*
 - i. **Note:** Another way of looking at it is that this was not a fixed cost, but actually a variable cost.
 - ii. **Variable Costs:** costs that vary with a firm’s activity; cost that

fluctuate because of activity.

- c. **Liquidated Damages:** An agreement, made in advance of breach, fixing the damages therefore, is not enforceable as a contract and does not affect the damages recoverable for the breach, unless (a) the amount so fixed is a reasonable forecast of just compensation for the harm that is caused by the breach, and (b) the harm that is caused by the breach is one that is incapable or very difficult of accurate estimation. *Restatement, Contracts §339*.
- i. **Rationale:** A liquidated damages provision has its basis in the principle of just compensation for loss
 - ii. **Elements:** A contractual provision fixing damages in the event of breach will be sustained if the amount liquidated bears a reasonable proportion to the probably loss and the amount of actual loss is incapable or difficult of precise estimation. *Truck Rent-a-Center, Inc. v. Puritan Farms 2nd, Inc.*
 1. **At the time of contracting (not at the time of breach)**
 2. **Reasonable proportion**
 - a. Some courts will find that when the actual loss is incapable or difficult of precise estimation and the liquidated damages are not reasonably proportionate to the damages incurred, the liquidated damage clause is still enforceable. *Better Food Markets v. American Dist. Telegraph Co.*
 - b. **Determining the validity of reasonable proportion:** *Better Food Markets v. American Dist. Telegraph Co.*
 - i. The court should:
 1. Place itself in the position of the parties at the time the contract was made
 2. Consider the nature of the breaches that might occur and
 3. Any consequences that were reasonably foreseeable
 - c. **Distinguished from limitation of damages:** A limitation of damages must be distinguished from a liquidated damages clause. *Rinaldi and Sons, Inc. v. Wells Fargo Alarm Service*
 3. **Actual loss is incapable or difficult of precise estimation.**
 - iii. **Tort claims:** A liquidation clause cannot be avoided by a tort claim if the duty owed to the plaintiff is fixed under the contract. *Better Food Markets v. American Dist. Telegraph Co.*
 - iv. **UCC §2-718 (1):** Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.
 1. **Revised UCC §2-718(a); Discussion Draft, April 2000:** Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach and, in a consumer contract, in addition the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. (Note: deleted last sentence)
 - v. **Suggestions for drafting liquidated damages clause:** *Dunbar, Drafting the Liquidated Damage Clause – When And How.*
 1. **Amount** falls within the upper and lower limits of potential actual damages foreseeable at the time of contract.
 2. **Recitals** to show that the parties actually, seriously negotiated on the question of the amount of measure of the liquidated damages.
 3. **Particular performance** Provide suitable machinery for reasonable extensions to adjust for delays which may result from actions or derelictions of the other party or of third parties.
 4. **Vary** the amount of damages with the extent of the breach, such as duration of the delay or period of default.
 5. **Incorporate** a suitable recital indicating that it was the **intention of the parties to provide for liquidated damages**; at least, characterize by using the words

“liquidated damages.” Before some courts, it may help.

6. Recite the facts which caused the parties to incorporate the provision in the contract, such as that, for stated reasons, the amount of damages upon the breach will be very difficult to ascertain with precision.

vi. **Limits:**

1. **Penalty:**

- a. When a liquidated damages clause does not have a reasonable forecast of just compensation and where the harm is not difficult of actual estimation (such as market price), then the liquidated damages clause is a penalty, hence, unenforceable. *H.J. McGrath Co. v. Wisner*

2. **No actual damage:**

- a. Some courts allow for liquidated damages to be recovered when there are no actual damages because the contractual parties took a calculated risk and is bound by reasonable contractual provisions pertaining to liquidated damages. Furthermore, if the damages exceed the agreed upon amount for liquidated damages, then the party cannot recover more than the liquidated damage amount.
- b. Not all courts award liquidated damages in the absence of actual damages. It may be that actual damage is the qualifier for the recovery of liquidated damages.

3. **Against public policy**

4. **Disproportional**

5. **Unconscionability**

d. **Limits and Qualifications on Lost Expectancy Recovery:**

- i. **Punitive damages:** Punitive damages are not recoverable for a breach of contract unless the conduct constituting the breach is also a tort for which punitive damages are recoverable. *Restatement (Second) of Contracts §355 (1979)*
- ii. **Medical context:** Doctors seldom in good faith promise specific results because of the variations in the physical and psychological conditions of their patients. *Sullivan v. O'Connor*
- iii. **Loss of reputation or goodwill**
 1. Goodwill: the reputation that businesses have built over the course of time that is reflected by the return of customers to purchase goods and the attendant profits that accompanies such sales
 2. Some courts will deny this recovery.
 3. For courts that allow this type of recovery, the party claiming damages for loss of goodwill must provide the trier of fact with a reasonable basis from which to calculate damages.
- iv. **Lost expectancy to attorneys**
 1. Some courts allow wrongfully discharged lawyers only the reasonable value of their services up to the date of discharge.
- v. **Attorneys' fees and interest:** General rule is that a victorious party cannot recover attorneys' fees from the losing party.
 1. **Exceptions:**
 - a. a specific contract clause providing for recovery of attorneys' fees to the extent the fees are reasonable.
 - b. Reliance damages if the P wasted the fees due to the D's breach.
 - c. A few state legislatures authorize the award of attorneys' fees to the prevailing party.
 - d. Federal statutes that induce private enforcement of public policies

1. **Remedies for Detrimental Reliance**

a. **Preparation costs based on reliance:**

- i. A breaching promisor is liable for money which promisee expended in preparing to do business under the promised dealer franchise. *Goodman v. Dicker*.

b. **Profits based on reliance:**

- i. **Foregone opportunity to make profits:** P can recover for profits when it forgone the opportunity to make the profits based on reliance of a promise to perform by D. *D&G*

Stout, Inc. v. Bacardi Imports, Inc.

- ii. **Foregone opportunity to invest elsewhere:** P can recover anticipated profits when it foregone the opportunity to make the investment elsewhere. *Walters v. Marathon Oil Co.*

- 1. **Rationale. Equity:** An equity court possesses some discretionary power to award damages in order to do complete justice. Furthermore, since it is the historic purpose of equity to secure complete justice, the courts are able to adjust the remedies so as to grant the necessary relief, and a district court sitting in equity may even devise a remedy which extends or exceeds the terms of a prior agreement between the parties, if it is necessary to make the injured party whole.

- iii. **Exception:**

- 1. Profits **based on expectancy** are not recoverable under promissory estoppel theory. *Goodman v. Dicker.*

- c. **Illusory contract for at-will employment:** A court can determine that the appropriate theory is promissory estoppel for an at-will employment agreement, which is an illusory contract because of bilateral powers of termination. *Grouse v. Group Health Plan.*

- i. Since the prospective employment might have been terminated at any time, the measure of damages is not so much that the plaintiff would have earned from the defendant as what he lost in quitting the job he held and in declining at least one other offer of employment elsewhere. *Grouse v. Group Health Plan.*

2. Restitution

- a. **Money Damages (quantum meruit = market value of services)**

- i. **Restatement 2nd Section 371: Measurement of Restitution Interest.**

- 1. If a sum of money is awarded to protect a party's restitution interest, it may as justice requires be measured by either
 - a. (a) the reasonable value to the other party of what he received in terms of what it would have cost him to obtain it from a person in the claimant's position, or
 - b. (b) the extent to which the other party's property has been increased in value or his other interests advanced.

- ii. **Where a non-breaching plaintiff conferred a benefit and elects a restitutionary recovery:**

- 1. **Part performance:** The promisee upon breach has the option to forego any suit on the contract and claim only the reasonable value of his performance. *United States for use of Susi Contracting Co. v. Zara Contracting Co.*
 - a. Since it is the defendant who is in default and the plaintiffs' performance is part of the very performance for which the defendant had bargained, it is to be valued, not by the extent to which the defendant's total wealth has been increased thereby, but by the amount for which such services and materials as constituted the part performance could have been purchased from one in the plaintiff's position at the time they were rendered. Restatement Contracts §347, comment c.
 - b. **Exception: Full performance:** The remedy of restitution in money is not available to one who has fully performed his part of a contract, if the only part of the agreed exchange for such performance that has not been rendered by the defendant is a **sum of money constituting a liquidated debt.** *Oliver v. Campbell*

- 2. **Rental value:** A non-breaching party can recover the rental value when the breaching party uses its equipment, without the consent of the non-breaching party, to continue the performance after the breach. *United States for use of Susi Contracting Co. v. Zara Contracting Co.*

- iii. **Where a non-breaching plaintiff conferred a benefit but had a negative expectancy (A "losing" contract)**

- 1. An injured party may recover damages through restitution that is greater than expectancy. **Restatement 2nd of Contracts §373. Comment d.**
 - a. **Acquiesced beyond the specified time:** A party, which has acquiesced to

the other party's further performance after the agreed upon time period, is the breaching party of the contract if it has asked the other party to stop work. The non-breaching party will recover the damages in the amount of the benefit received by the breaching party. *City of Philadelphia v. Tripple*.

- i. **Indebitatus assumpsit:** analogous to quantum meruit, however, it is the claim for a specific value, where as in quantum meruit the claim is for reasonable value. *City of Philadelphia v. Tripple*
 - b. **Good faith.** If a non-breaching party expended money in good faith and in the course of attempted performance, then this is sufficient to give the non-breaching party an equitable claim for reimbursement. *City of Philadelphia v. Tripple*. **(compare with Kelley)**
 - c. **Note:** Courts and commentators are divided over the question of whether restitution should be limited by the contract as the ceiling on restitution. Although in this case, the plaintiff performed 90% of the work. *Johnson v. Bovee*
 - d. **Explanations for restitution damages > contract price**
 - i. **Allocation of the market and other relevant risks in a business transaction:** The breaching parties' own allocation of the market or other risks should be upset because the contract excites expectation and causes reliance, for both of which the law should justly give protection. *Childres & Garamella, The Law of Restitution and The Reliance Interest in Contract*
 - ii. **Punitive remedy:** Some commentators proposed that the court's allowance of recovery under restitution that is greater than expectancy serves as a punitive damage because it strips a defendant of the benefits secured by a contract he has failed to perform (poetic justice). *Kull, Restitution as a remedy for breach of contract*
- iv. **Where a non-breaching plaintiff conferred a benefit but cannot prove lost expectancy**
1. **Prepaid royalty:** When a non-breaching party has had an exclusive right to a product for a lesser amount of time as agreed upon in the contract, the non-breaching party is not entitled to the entire prepaid royalty it paid to the breaching party. The amount recoverable is the value that the non-breaching party enjoyed of exclusive rights to a product until the breach. *Bausch & Lomb, Inc. v. Bressler*.
 - a. **Calculation in the absence of readily available market price:** The value that the parties ascribed to a benefit in their contract may be the best valuation measure available to the court. (contract price is important evidence of value of performance to defendant). *Bausch & Lomb, Inc. v. Bressler*.
 2. **Partial performance in a service contract:** The non-breaching party is entitled to the difference of the contract price and the reasonable value of services provided by the breaching party. *Osteen v. Johnson – country singer case*.
- v. **Where the plaintiff has materially broken the contract after conferring a benefit**
1. **Day-to-day performance:** If promisee breached contract without just cause, promisee can recover quantum meruit for market value of service performed if the service performed is one that is looked at as a day-to-day performance (such as farming). *Britton v. Turner*
 2. **Buyer and seller:** If the buyer has materially broken the contract and the seller was able to mitigate damages by selling to another buyer at a lower price, the plaintiff buyer can recover partial costs paid for the item subtracted by the difference of the contract price and the subsequent price the item sold for. *De Leon v. Aldrete*.

b. **Specific Performance**

i. **Application**

1. To contracts relating to land
2. When there are no other adequate remedies at law.