COMMON LAW CONTRACTS

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1. DEFINE "CONTRACT" IN AN INTRODUCTION. The answer to every contracts question depends on whether there was a contract at all. This raises the question, "What is a contract?"

2. PROVE THE UCC DOES NOT APPLY. You don't know how to answer a contract question until you determine the applicable law. Of course, the common law applies to all contract disputes, so NEVER say that the common law does not apply to a contract question. But the UCC modifies the common law application as applied to sales of goods, so "Does the UCC apply?"

3. NEXT DETERMINE THE TYPE OF CONTRACTS QUESTION. The type of question determines the structure of your answer. There are 6 basic types of contract question.
Ch. 2: The Six Types of Contract Questions

There are six basic types of contract questions: (1) Formation Questions; (2) Term Disputes; (3) Anticipatory Breach; (4) Defenses; (5) Third Party Questions; and (6) Remedies.

1. **FORMATION QUESTIONS** – These raise the question, "Did a contract ever form?"
   These questions are characterized by a series of vague communications between the parties leading up to a supposed agreement.

   **For formation questions only** go through each communication between the parties one-by-one addressing these issues in this order:

   - Was there a valid OFFER? [ALWAYS an issue.]
     - Was there manifestation of INTENT?
     - Not effectively REVOKED?
     - A GENERAL offer?
   - Was there an ACCEPTANCE of an offer? [ALWAYS an issue.]
     - Not REJECTED by offeree?
     - A TIMELY acceptance?
     - MIRROR IMAGE RULE (Common Law)?
     - Accepted by SHIPMENT (UCC)?
   - What were the TERMS of the contract? [a possible issue.]
     - Is it unequivocally clear the offer is for a UNILATERAL contract?
     - Certain as to TERMS?
     - A DIVISIBLE contract (UCC)?
     - A PRODUCTION or REQUIREMENTS contract (UCC)?
     - Is timely performance an express condition or mere covenant?
     - Is personal satisfaction an express condition or is there just a promise to render reasonably satisfactory performance (an implied condition of every contract)?
   - Supported by CONSIDERATION? [Omit if not an issue; watch for MODIFICATION and ILLUSORY PROMISE problems.]
   - Was the contract for a LEGAL PURPOSE? [Omit if not an issue.]
   - Between parties with LEGAL CAPACITY? [Omit if not an issue; watch for MINORS.]

2. **TERMS DISPUTES** – These raise the question, "What were the terms of the contract?" If FORMATION is in doubt, then the TERMS are probably in dispute as well. Look at the total communication and course of dealing between the parties and address these issues:

   - Was the agreement sufficiently CERTAIN that a court can enforce it?
     - Remember for UCC only the quantity and parties must be certain.
Otherwise, were the subject matter, time, price, quantity and parties certain?

- Was there a MODIFICATION that was ineffective because unsupported by consideration? Remember this does not apply to a UCC question!
- Does the PAROLE EVIDENCE RULE exclude extrinsic evidence? (Remember the mnemonic DAM FOIL!)

3. **ANTICIPATORY BREACH QUESTIONS** – These raise the question, "Who breached first?"

Most contract questions involve some allegation of a breach. There are two kinds of breaches, either **breaches in fact** or **anticipatory repudiation**. A breach in fact means a party did not perform at the time they were supposed to perform. An **anticipatory repudiation** means that a party clearly states an intent or inability to perform at some time in the future.

For anticipatory breach questions look at each communication between the parties one-by-one until you find the first clear breach. Remember, only one party can breach a contract at a time. Once the first party breaches, the other party CANNOT breach unless the contract is "reformed" by waiver or an accord of a good faith dispute.

- Was there an ANTI-CIPATORY REPUDIATION -- a clear statement of intent not to perform a future obligation?
- Was there a WAIVER of the anticipatory breach?
- Was there an ACCORD AND SATISFACTION of a good faith dispute?
- Was timely performance an express condition or mere covenant?
- Was personal satisfaction an express condition or is there just a promise to render reasonably satisfactory performance (an implied condition of every contract)?

4. **DEFENSE QUESTIONS** – These raise the following issues:

- Does the STATUTE OF FRAUDS (or UCC 2-201 in the case of a sale of goods) require a writing?
  - Was the need for a writing satisfied?
- Did the contract (or modification if not a UCC question) lack CONSIDERATION?
- Was the contract for an ILLEGAL purpose (or unconscionable/adhesion contract)?
- Was the contract voidable by a MINOR or other party lacking capacity?
- Was the contract void because it was the product of FRAUD or DURESS?
- Was the contract void because of mutual MISTAKE (a la Peerless)?
- Was the contract void because performance was IMPOSSIBLE or FRUSTRATION OF PURPOSE?

5. **THIRD PARTY QUESTIONS** – These raise the question, "Who has the right to enforce?"

- Were there THIRD PARTY BENEFICIARIES?
6. REMEDY QUESTIONS – These raise the question, "What remedy does each party have?"

- Was there a VALID ASSIGNMENT?
- Was there a VALID DELEGATION?

- Does a party get time to CURE (UCC)?
- What are the UCC remedies (COVER, REJECT, etc.)?
- Did the non-breaching party FAIL TO MITIGATE damages?
- Was there SUBSTANTIAL PERFORMANCE (a MINOR breach) or a MAJOR breach?
- Can a party obtain SPECIFIC PERFORMANCE?
- Can the non-breaching party get CONSEQUENTIAL DAMAGES (LOST PROFITS)?
  - Cite Hadley v. Baxendale.
  - Remember the mnemonic CCCC.
  - Were lost profits Contemplated by the parties at time of execution?
  - Were lost profits Caused by the breach?
  - Were lost profits Certain as to amount?
  - Was the lost profit something that Couldn't be avoided.
- Do the SAVING DOCTRINES of the unilateral contract apply?
- If there is NO VALID ENFORCEABLE CONTRACT can the parties obtain EQUITABLE relief?
- Can promises be enforced based on ESTOPPEL?
Ch. 3: Contract Law Issues

The most common issues bar examinees will be presented with are:

- Does the UCC Govern?
- OFFER on [date]?
- Was it an offer for a UNILATERAL CONTRACT?
- Was the communication [action] of [date] an [implied] ACCEPTANCE?
- Had the OFFER LAPSED before acceptance?
- Was the communication of [date] an EFFECTIVE ACCEPTANCE?
- Was the communication of [date] an EFFECTIVE REJECTION?
- Was the communication of [date] an EFFECTIVE REVOCATION?
- Was there an IMPLIED-IN-FACT CONTRACT?
- Need for a WRITING?
- CONTRACT TERMS?
- Was TIMELY PERFORMANCE a MATERIAL CONDITION?
- Was SATISFACTION a MATERIAL CONDITION?
- Does the PAROL EVIDENCE RULE bar evidence of other covenants and terms?
- LACK OF INTENT as a defense?
- LACK OF CONSIDERATION?
- Was the need for a WRITING SATISFIED?
- Was the contract UNCONSCIONABLE?
- Is DURESS a defense?
- FRAUD, CONCEALMENT of LACK OF DISCLOSURE as a contract defense?
- Can a DEFENSE of INCAPACITY be raised?
- ILLEGALITY?
- COMMERCIAL IMPRACTIBILITY?
- IMPOSSIBILITY?
- FRUSTRATION OF PURPOSE?
- MUTUAL MISTAKE?
- UNILATERAL MISTAKE?
- WAIVER of condition?
- ANTICIPATORY BREACH?
- WAIVER of the breach?
- BREACH OF IMPLIED COVENANT?
- BREACH of contract? MAJOR OR MINOR?
- ACCORD AND SATISFACTION?
- THIRD PARTY BENEFICIARY contract?
- ASSIGNMENT of contract benefits?
- MODIFICATION OF CONTRACT AFTER ASSIGNMENT?
- DELEGATION of contract duties?
- COMMON LAW REMEDY of the NON-BREACHING PARTY?
• COMMON LAW REMEDY of the BREACHING PARTY?
• LIQUIDATED DAMAGES?
• IMPLIED-IN-LAW CONTRACT?
• PROMISSORY ESTOPPEL?
• DETRIMENTAL RELIANCE?
### Ch. 4: Spotting Contract Law Issues

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Ch. 5: Contract Law Rules and Definitions

1. ACCEPTANCE (CONTRACTS): Under the common law MIRROR IMAGE RULE an acceptance is an unequivocal assent to an offer, communicated to the offeror and it can be implied by silent commencement of performance known to the offeror. A response that is equivocal or contains varying terms is a REJECTION AND COUNTER-OFFER and not an effective acceptance. An offer must be accepted within a reasonable period. (see OFFER, LAPSE.)

2. ACCORD AND SATISFACTION (CONTRACTS): An ACCORD AND SATISFACTION is a binding agreement settling a reasonable, good faith dispute over the terms and/or performance of a contract.

3. ADHESION CONTRACT (CONTRACTS): An adhesion contract is a "take it or leave it" offer that courts will not enforce if there is a lack of reasonable contractual intent on the part of the offeree. (see UNCONSCIONABLE CONTRACT.)

4. ANTICIPATORY BREACH (CONTRACTS): An anticipatory breach is a clear statement of intent by a party to a contract, prior to the time performance is due, that they will not perform when performance is due. An anticipatory breach is a MAJOR breach (see BREACH) that excuses the non-breaching party from performance and accelerates the breaching party's duty of performance to the immediate unless the non-breaching party WAIVES the breach by letting the breaching party continue performance. (compare to REASONABLE ASSURANCES.)

5. ASSIGNMENT (CONTRACTS): An assignment is the transfer of contractual rights from the promisee/assignor to the assignee based on a clear statement of intent by the promisee. The assignment becomes effective when the promisor is given notice of the assignment. Once the assignment is effective the promisor has a duty to deliver the benefits of the contract (pay) directly to the assignee and the rights of the original promisee/assignor are extinguished. The promisee/assignor has secondary liability to the assignee if the assignment is in exchange for consideration. (see DELEGATION.)

6. BREACH (CONTRACTS): A contract breach is a failure to perform a contractual duty that is currently due to be performed. Under the common law it can be MAJOR or MINOR. A MAJOR breach is one that substantially deprives the non-breaching party of the EXPECTED BENEFIT OF THE BARGAIN (which see). A major breach excuses the non-breaching party from all contractual duties and waives conditions on other contractual duties of the breaching party accelerating them to become present duties. A breach is MINOR if the breaching party has SUBSTANTIALLY PERFORMED (which see). A minor breach entitles the non-breaching party to compensation in the form of damages, but it does not excuse the non-breaching party from performance or accelerate performance by the breaching party.

7. CONDITION (CONTRACTS): A contract condition is something that must happen or a condition that must exist before performance of a contractual duty becomes due.

**Express and Implied.** Conditions may be EXPRESS, agreed upon between the parties or they may be IMPLIED by the circumstances.

**Constructive.** If one of the parties is to perform a duty in exchange for payment, the performance of the duty is an implied CONDITION that must be fully performed before the duty to pay becomes due, and such conditions are called CONSTRUCTIVE CONDITIONS.
Material Conditions. A condition is MATERIAL if it is so important that its failure will deny the parties the benefit of the bargain. Failure of a material condition excuses the parties from further performance. If a condition is NOT MATERIAL its failure does not deny a party the benefit of the bargain and does not excuse the parties from performance.

Timely Performance. If the parties agree "time is of the essence" timely performance is an EXPRESS MATERIAL CONDITION, and failure to perform in a timely manner is a MAJOR BREACH. Otherwise time may be deemed to be an IMPLIED MATERIAL CONDITION by the nature and circumstances of the contract and the consequences of tardy performance, without any such agreement of the parties. If the parties do not expressly agree timely performance is "of the essence" and the circumstances do not indicate it is an implied material condition, it is not material and failure to perform in a timely manner is a MINOR BREACH.

8. CONDITION CONCURRENT (CONTRACTS): A CONDITION CONCURRENT is a condition that must be satisfied at the same time a contractual duty to perform ripens. This is rare and effectively means both parties to a contract must perform contractual duties at the same time and neither has any duty to perform unless the other party simultaneously tenders performance. Real estate sales contracts create conditions concurrent. (see CONDITION PRECEDENT, CONDITION SUBSEQUENT).

9. CONDITION PRECEDENT (CONTRACTS): A CONDITION PRECEDENT is a condition that must be satisfied before a contractual duty to perform ripens. This is very common and means that there is no contractual to perform until the condition is satisfied. (see CONDITION CONCURRENT, CONDITION SUBSEQUENT).

10. CONDITION SUBSEQUENT (CONTRACTS): A CONDITION SUBSEQUENT is a condition that must be satisfied while a contractual duty to perform exists, and if the condition fails the ripened duty to perform is excused . (see CONDITION CONCURRENT, CONDITION PRECEDENT).

11. CONSEQUENTIAL DAMAGES (CONTRACTS): Under Hadley v. Baxendale damages for lost profits caused by a breach of contract will only be awarded, absent express contract provisions otherwise, where the damages were 1) CONTEMPLATED by (known to) the breaching party at the time of the contract, 2) can be measured with CERTAINTY, 3) were CLEARLY CAUSED by the breach and 4) COULD NOT BE AVOIDED by the non-breaching party. [mnemonic = CCCC]

12. CONSIDERATION (CONTRACTS): Under contract law consideration is a bargained for exchange of value posing sufficient legal detriment that the law will enforce an agreement. Separate consideration is required to support a modification of an existing contract except under the UCC where no additional consideration is required to support contract modification.

13. CONSTRUCTIVE CONDITIONS (CONTRACTS): CONSTRUCTIVE CONDITIONS are implied conditions that must be satisfied before contractual duties ripen. They are implied by the nature of a contract and the express covenants within it. If a contract party promises to perform duties in exchange for payment by the other party, the duty to pay is subject to an implied CONSTRUCTIVE CONDITION PRECEDENT that the duty to pay does not ripen until the other party has completed performance. (see CONDITION PRECEDENT).

14. CONTRACT (CONTRACTS): A contract is a promise or set of promises, the performance of which the law recognizes as a duty and for the breach of which the law will provide a remedy.
Every valid contract is based on OFFER, ACCEPTANCE, and LEGAL CONSIDERATION.

15. DECEIT (CONTRACTS): Deceit is a defense to enforcement of a contract which is also called FRAUD (which see.)

16. DELEGATION (CONTRACTS): A delegation is a transfer of contractual duties from the promisor/delegator to a delegatee based on a clear statement of intent by the delegator and acceptance of the duty by the delegatee. The promisor/delegator retains primary liability to the promisee. If the delegatee accepts contractual duties in exchange for consideration, a contract between the promisor and delegatee forms, and the promisee is an intended third-party beneficiary of that contract with standing to enforce it at law against both parties. If the delegatee gratuitously accepts contractual duties the promisee can only enforce the promisor-delegatee agreement at equity based on an argument of detrimental reliance. The delegation of a contract is void if the contract requires the unique personal services or attributes of the original party, the delegator. (see ASSIGNMENT, THIRD-PARTY BENEFICIARY.)

17. DURESS (CONTRACTS): Contracts are always unenforceable against parties that enter into the agreements because of threats of physical harm, and they are generally unenforceable against parties who enter into the agreements because of threats of economic harm that were deliberately created by the party seeking to enforce the contract.

18. ELECTION (CONTRACTS): If a party commits an anticipatory breach by clearly indicating they are not going to perform a contractual duty in the future the non-breaching party may "elect" to treat the breach as minor by negotiating a modification of the contract terms. The non-breaching party is said to have "waived" the breach and cannot later claim the anticipatory breach was a major breach. [See WAIVER]

19. ESTOPPEL (CONTRACTS): Estoppel is an EQUITABLE remedy that may “estop” a party (a respondent) from acting in a way that is contrary to their previous assurances to the moving party (the movant) to prevent an injustice. (see PROMISSORY ESTOPPEL.)

20. EXPECTED BENEFIT OF THE BARGAIN (CONTRACTS): The expected benefit of the bargain is the advantage or benefit that a party reasonably expects to derive from entering into a contract. (see BREACH).

21. EXPRESS MATERIAL CONDITION (CONTRACTS): EXPRESS MATERIAL CONDITIONS are detailed contract specifications the parties expressly agreed upon, and the failure of which completely excuses a party from performance, subject to equitable considerations. Express promises of TIMELY PERFORMANCE or SATISFACTORY PERFORMANCE are often viewed as “mere covenants” rather than express material conditions. (see MATERIAL CONDITIONS).

22. FRAUD (CONTRACTS): Fraud is a complete defense to enforcement of a contract when 1) a party seeking to enforce the contract MISREPRESENTED material facts with 2) an INTENT to DECEIVE, 3) the party seeking to void the contract REASONABLY RELIED on the misrepresented facts, and 4) the party seeking to void the contract WOULD NOT HAVE ENTERED THE CONTRACT if they had known the true facts. (Also called DECEIT; see NONDISCLOSURE as an alternative theory. For CRIMES see FALSE PRETENSES.)

23. FRUSTRATION OF PURPOSE (CONTRACTS): If a party enters into a contract knowing the specific benefit the other party seeks to gain from entering into the agreement, the continued feasibility of attaining that benefit is an IMPLIED MATERIAL CONDITION of the contract. If subsequent events beyond the control of the parties render that benefit impossible to attain, frustration of purpose causes failure of that implied material condition and the contract becomes unenforceable. (see IMPLIED MATERIAL CONDITION).
24. **ILLEGAL CONTRACT (CONTRACTS):** The court will not generally enforce a contract for a party that knowingly entered into the contract for an illegal purpose because it would impugn the integrity of the court. However, if the party seeking enforcement was not equally guilty (not *in pari delicto*, which see) then the court may order restitution.

25. **IMPLIED-IN-FACT CONTRACT (CONTRACTS):** If a party acts to bestow benefits on another party reasonably expecting to be paid and the other party knowingly accepts those benefits an implied-in-fact contract forms which is enforceable at law.

- **Example:** Work crew shows up at wrong house to install a swimming pool. The owner says nothing as pool is installed. The court will find an agreement to pay for the pool was implied by his behavior.

26. **IMPLIED-IN-LAW CONTRACT (CONTRACTS):** If a party acts to bestow benefits on another party reasonably expecting to be paid a Court of equity may provide an equitable remedy based on an “implied-in-law contract theory” to prevent unjust enrichment to the defendant, prevent unjust detriment to the plaintiff or to protect the public interest. The court only enforce payment on this basis to one who acts for the purpose and with the reasonable expectation they will be paid -- not a volunteer or intermeddler.
  - **Example:** Pedestrian is hit by a car and unconscious. An ambulance takes him to the hospital. The court will order him or his estate to pay the ambulance as a matter of public policy.

27. **IMPLIED MATERIAL CONDITION (CONTRACTS):** All contracts are subject to IMPLIED MATERIAL CONDITIONS that are implied by contract law in general or the nature of the particular contract. (see MATERIAL CONDITIONS).

28. **IMPOSSIBILITY (CONTRACTS):** A court will generally find there has been a failure of an IMPLIED MATERIAL CONDITION that excuses the parties from performance if performance is impossible (not just expensive or difficult) because of events that were beyond the control of the party in default. (see IMPLIED MATERIAL CONDITION).

29. **INCAPACITY (CONTRACTS):** A contract generally cannot be enforced at law against a party who lacked contractual capacity at the time of execution. If the incapacity later ends the contract will become enforceable if the party to be bound expressly RATIFIES (affirms) the contract or otherwise impliedly ratifies it by FAILING TO REPUDIATE it within a reasonable time period (often set by statute). For example, a minor may repudiate a contract at any time before reaching adulthood. If the contract is not repudiated within a reasonable time after attaining adulthood, the contract is impliedly ratified. A contract otherwise unenforceable at law based on lack of capacity may often be enforced at equity if it is for provision of necessities of life. For example, a contract for food, shelter or clothing may be enforceable against a minor at equity. (see RATIFICATION, REPUDIATION.)

30. **IN PARI DELICTO (CONTRACTS):** A court will not enforce an illegal contract or provide any restitution if the party seeking restitution is equally guilty (*in pari delicto*) compared to the party from whom restitution is sought.

31. **INVITATION TO NEGOTIATE (CONTRACTS):** An invitation to negotiate is any communication that fails to qualify as a contract OFFER because there is no manifestation of present contractual intent or else the terms are so vaguely stated no reasonable person would believe assent would form a bargain.

32. **LAPSE (CONTRACTS):** An offer lapses if not accepted in the time stated, or if no time is stated within a reasonable period as indicated by the means by which the offer is transmitted. An
oral offer lapses at the end of the conversation. A written offer lapses at the end of the time established by the means of dispatch.

33. LIQUIDATED DAMAGES (CONTRACTS): A liquidated damages clause is an agreement that in the event of breach the remedy of the non-breaching party will be limited to a specified quantity of money damages. Liquidated damages clauses are unenforceable unless 1) at the time of execution the potential damages from breach were uncertain, 2) the liquidated damages specified were reasonable at the time of execution, and 3) the liquidated damages specified are reasonable at the time of breach. If a contract is for sale of UNIQUE PROPERTY money damages are inadequate and SPECIFIC PERFORMANCE is appropriate. Therefore a liquidated damages clause is unreasonable and unenforceable in such cases.

34. MAILBOX RULES (CONTRACTS): Under the broadly adopted common law all contract communications are effective upon receipt by the offeror with the exception that ACCEPTANCES are generally effective upon dispatch by the offeree if they are sent by the means specified in the offer or by the same or faster means than the offer if the offer does not specify a means of communication. HOWEVER if an offeree dispatches both an acceptance and a rejection the rejection will be effective, not the acceptance, if the rejection is received first and the offeror changes position in reliance upon it.

35. MAJOR BREACH (CONTRACTS): A major breach of contract is one that substantially deprives the non-breaching party of the EXPECTED BENEFIT OF THE BARGAIN. It excuses the non-breaching party from all contract duties, accelerates the duties of the breaching party, and waiving all remaining conditions on the duties of the breaching party. (see BREACH).

36. MATERIAL CONDITION (CONTRACTS): A MATERIAL CONDITION is one that must be satisfied for the parties to a contract have any duty to perform. A material condition may be expressly stated by the parties or implied by contract law in general or by the nature of the specific agreement. The failure of a material condition generally denies one or both parties the EXPECTED BENEFIT OF THE BARGAIN, excusing them from the contract. (see EXPECTED BENEFIT OF THE BARGAIN).

37. MUTUAL MISTAKE (CONTRACTS): Under the common law doctrine of Peerless, if both parties enter into a contract because each suffers a misunderstanding of material fact the contract is void because there was no “meeting of the minds” and no valid contractual intent. (see UNILATERAL MISTAKE.)

38. NONDISCLOSURE (CONTRACTS): A defense to enforcement of a contract based on

1. Duty of a party to reveal material facts,
2. Concealment of material facts by the party with the duty,
3. Reasonable reliance on appearances by the party seeking to invalidate the contract.

The difference between NONDISCLOSURE and FRAUD is that the later requires an intentional act of misrepresentation while the former relies on a negligent failure to disclose. (see FRAUD as alternative theory.)

39. OFFER (CONTRACTS): A contract offer is a manifestation of present contractual intent communicated to the offeree so certain in terms that an objective person would reasonably believe assent would form a bargain. Under common law an offer must generally specify the parties, subject matter, quantity, price, and time of performance. An offer LAPSES if not accepted within a reasonable period of time. (see LAPSE, ACCEPTANCE.)
40. **OPTION (CONTRACTS)**: An option at common law is a contractual agreement under which an offeree exchanges consideration for a contract offer and a promise from the offeror that the offer will not be revoked for an agreed period of time.

41. **ORAL CONDITION PRECEDENT (CONTRACTS)**: An ORAL CONDITION PRECEDENT is an oral agreement that a condition precedent must be satisfied or else a contractual duty to perform under the terms of a separate contract agreement will not be binding. It is an exception to the PAROL EVIDENCE RULE. (see PAROL EVIDENCE RULE, CONDITION PRECEDENT.)

42. **PAROL EVIDENCE RULE (CONTRACTS)**: Evidence concerning PRIOR or CONTEMPORANEOUS agreements can not be introduced to VARY or CONTRADICT the terms of a FULLY INTEGRATED WRITING unless they are offered to show evidence of [DAM FOIL] Duress, Ambiguity, Mistake, Fraud, Oral condition precedent, Illegality, or Lack of consideration.

43. **PROMISSORY ESTOPPEL (CONTRACTS)**: Promissory estoppel is an equitable doctrine that may bar a party from revoking a promise if 1) the party made a promise, 2) intending to induce or reasonably knowing that it would induce reliance, 3) there was reasonable reliance by the other party seeking enforcement of the promise, and 4) injustice would result otherwise. (see ESTOPPEL).

44. **QUANTUM MERUIT (CONTRACTS)**: Quantum meruit is used by different people to mean different things. Generally it is used to mean RESTITUTION or the award of damages in restitution to prevent UNJUST ENRICHMENT (which see). But this term is also used at times to mean an implied-in-law contract or even implied contract s in general.

45. **RATIFICATION (CONTRACTS)**: Ratification is the act of contract parties who lack contractual capacity at the time of execution (e.g. minors) affirming otherwise voidable contract s after attaining contractual capacity. (see INCAPACITY, REPUDIATION.)

46. **REASONABLE ASSURANCES (CONTRACTS)**: A contract party that has reasonable doubts about the other party's ability or willingness to perform future duties under a contract may demand REASONABLE ASSURANCES from the other party in the form of a financial guarantee or payment to escrow. If the requested party fails to provide reasonable assurances that may be treated as an anticipatory repudiation of the contract.

47. **RESCISSION (CONTRACTS)**: Rescission is the act of declaring a contract void. If a party legally declares the contract void it is a LEGAL RESCISSION. If a Court declares the contract void it is an EQUITABLE RESCISSION.

48. **REMEDY OF NON-BREACHING PARTY (CONTRACTS)**: Under common law a non-breaching contract party has a right to an award of a money judgment measured by the DAMAGES caused by the breach of a valid, enforceable contract or in the alternative for RESTITUTION in the amount the breaching party would otherwise benefit from the breach. If the contract was for unique property or services the non-breaching party may plead in equity for SPECIFIC PERFORMANCE (which see). But the 13th Amendment bars courts from ordering performance of personal services. And there is no “right” to specific performance.

49. **REMEDY OF BREACHING PARTY (CONTRACTS)**: At common law a seller that substantially performs has a right to be paid the contract price less an offset for the damages caused by the breach. A seller that has committed a major breach can only plead for EQUITABLE RESTITUTION which will generally be limited to the amount their performance benefited the non-breaching party.

50. **REPU DIATION (CONTRACTS)**: Repudiation is the act of a party declaring an intention to not perform contractual duties. A repudiation is a LEGAL RESCISSION if it is based on a legal basis (e.g. pursuant to a contract option, because of failure of an implied material conditions, etc.). If there is no legal basis for the repudiation it is a major breach of the contract.
51. RESTITUTION (CONTRACTS): Restitution is a Court award of a remedy (e.g. a money judgment) to a contract party to prevent UNJUST ENRICHMENT, to restore the STATUS QUO or to protect the public interest by preventing FRUSTRATION OF REASONABLE EXPECTATIONS. A non-breaching party has a right to demand an award of LEGAL RESTITUTION instead of an award based on damages resulting from a breach of contract. A breaching party may request an award of EQUITABLE RESTITUTION. When a contract is void or becomes void because of a failure of condition EQUITABLE RESTITUTION is the only remedy for either party.

52. REVOCATION (CONTRACTS): A revocation is a withdrawal or cancellation of an offer by the offeror, and it is effective if received by the offeree before the offer has been effectively accepted. An offeror cannot revoke an option contract for the time agreed as long as the option contract is properly supported by consideration. Under modern SAVING DOCTRINES a UNILATERAL CONTRACT OFFER may not be revocable if the offeror is aware the offeree has commenced performance of the requested act (see SAVING DOCTRINES).

53. SAVING DOCTRINES (CONTRACTS): Under the modern view a UNILATERAL CONTRACT OFFER generally cannot be revoked if the offeror is aware the offeree has commenced performance of the requested act necessary for acceptance until the offeree has been given a reasonable time to complete performance. Some States allow revocation but require restitution to prevent unjust enrichment.

54. SPECIFIC PERFORMANCE (CONTRACTS): If money damages are an inadequate legal remedy because unique property (land, art objects, etc.) are in dispute a Court of equity may order enforcement of a contract promise, but parties never have a “right” to specific performance.

55. STANDING (CONTRACTS): Standing means that a plaintiff has a right to pursue a legal remedy because they have suffered actual damages. STATUS QUO (CONTRACTS): The status quo means the positions of the parties prior to entering into a contract agreement.

56. STATUTE OF FRAUDS (CONTRACTS): Under the Statute of Frauds certain contracts, otherwise valid, cannot be enforced unless supported by a writing. The contracts affected are those for MARRIAGE, those that would necessarily take more than a YEAR to complete, those for the conveyance of an interest in LAND, those by an EXECUTOR of an estate, those for the GUARANTEE of a debt. [MYLEG]

57. SUBSTANTIAL PERFORMANCE (CONTRACTS): Substantial performance means that a breaching contract party substantially provided the non-breaching party with the EXPECTED BENEFIT OF THE BARGAIN (which see.)

58. THIRD-PARTY BENEFICIARY (CONTRACTS): A "third-party beneficiary contract" is a contract between two parties intended to benefit a third party. The intended beneficiary has STANDING to enforce the contract and seek damages for breach if they are vested. Modernly it does not matter if the original contract parties acted to extinguish a debt to the third party (CREDITOR beneficiaries) or acted out of gratuitous motives (DONEE beneficiaries). The third-party beneficiary may enforce the contract after they vest by becoming aware of and relying on the existence of the contract. A party that benefits from a contract that was not established for their benefit is an INCIDENTAL beneficiary with no standing to enforce, even if they have relied on the contract's existence.

59. UNCONSCIONABLE CONTRACT (CONTRACTS): A Court has discretion to decline to enforce a contract that is so one-sided that it implies a lack of reasonable intent to be bound on the part of the offeree or otherwise would be unjust (inequitable). (see ADHESION contract.)

60. UNILATERAL CONTRACT (CONTRACTS): A unilateral contract offer is one that by its own terms unequivocally restricts the means of acceptance to the act of complete performance only. (See SAVING DOCTRINES).
61. **UNILATERAL MISTAKE (CONTRACTS):** Under contract law if a party enters into a contract suffering from a misunderstanding of fact that the other party knew or should have known about, the contract is voidable by the mistaken party. But if the other party did not know or have reason to know of the mistake the contract is legally binding and not voidable in most States. In a minority of States the mistaken party may rescind the contract if 1) the error is discovered before the other party has irrevocably acted in reliance, 2) prompt notice of the error is given, and 3) the other party is reimbursed for all expenses caused by the error and rescission. (see MUTUAL MISTAKE.)

62. **UNJUST ENRICHMENT (CONTRACTS):** A Court may award a remedy (usually a money judgment) in RESTITUTION to prevent an unjust enrichment rather than a remedy based on damages. (see RESTITUTION). A non-breaching party has a right to demand LEGAL RESTITUTION as an alternative to damages. A breaching party can only plead for an award of EQUITABLE RESTITUTION.

63. **WAIVER OF BREACH (CONTRACTS):** A “waiver of a breach” is an ELECTION by a non-breaching party to treat a major breach as a minor breach, allowing the breaching party to continue performing under the contract. Following the waiver of a breach the non-breaching party cannot retract the waiver to claim a major breach.

64. **WAIVER OF CONDITION (CONTRACTS):** A waiver of condition means that a contract party performs a contractual duty that was not due to be performed because it was subject to a CONDITION PRECEDENT that was not satisfied. Following a waiver of a condition the performing party may retract the waiver and refuse to perform the duty in the future unless the condition is satisfied.
Ch. 6: Contract Law MNEMONICS

- **COALL** = The required elements of a valid contract
  - Consideration
  - Offer
  - Acceptance
  - Legal capacity
  - Legal purpose

- **MYLEG** = Contracts that require a writing under the Statute of Frauds
  - contracts for Marriage
  - contracts that necessarily take over a Year from execution to complete
  - contracts for conveyance of an interest in Land
  - contracts by an Executor of an estate
  - contracts for Guarantee of a debt

- **CCCCC** = Consequential Damages Elements
  - lost profits were Contemplated by parties at time of formation
  - lost profits are Certain in amount
  - lost profits were Caused by the breach
  - lost profits Couldn't be avoided
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