

Stages of civil trial

- 1) PL files **complaint** w/ court with **demand for relief**
- 2) Complaint is **served** with **summons**
- 3) D must **answer** complaint, & file point-by-point response denying or admitting each point raised
- 4) If D fails to answer, court will issue **default judgment**
- 5) Both sides then begin **Discovery**, where **interrogatories** (written questions), **depositions** (interviews w/ lawyers present), and **production** (where all important documents are shared)
- 6) Both sides can file **motion to dismiss** - request to terminate suit without going further; if court grants, trials over
- 7) **Trial** – where evidence & testimony is presented before a judge & jury.
- 8) **Burden of proof** in civil trial is on PL to prove, by preponderance of the evidence, that D did as PL claims
- 9) **Motion for Summary Judgment** – If party hasn't produced enough evidence to sustain its claim, & judge feels that no reasonable jury could find otherwise, judge may summarily dismiss claim that issue involved can't be decided otherwise
- 10) **Jury instructions** – judge informs jury of relevant rules of law
- 11) **Verdict** – jury determines who wins & proper damages
- 12) **Appeals** – party may appeal trial court verdict if 1) jury made an error of facts, or 2) judge made an error with procedure or law
- 13) Appeals court reviews only issue in dispute – not re-trial – NOTE: no absolute right to appeal
- 14) Appeals will either **"affirms", "reverses", or "remands"**
- 15) Losing party may appeal to Supreme, but no absolute right of appeal

Rule – Summary Judgment - The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

Rule – Judgment notwithstanding the verdict, also called judgment *non obstante veredicto*, or **JNOV**, A JNOV is appropriate only if the judge determines that no reasonable jury could have reached the given verdict

Rule – directed verdict = A ruling entered by a trial judge after determining that there is no legally sufficient evidentiary basis for a reasonable jury to reach a different conclusion.

Rule - "Bystander's obligation" – Under common law, one has no duty to assist someone in peril unless they created the danger.

Exception - IF bystander is employer, & IF worker suddenly stricken, & IF was emergency, & IF employer present – employer has a duty to aid

Exception - Owner of business liable if employee fails to act when harm foreseeable

Exception - IF special (re: medical/psychiatric) relationship to either a) person whose conduct needs to be controlled, or b) in relationship to foreseeable victim of that conduct, **THEN**: Doc must exercise **REASONABLE CARE** & warn potential victims about known violent tendencies or intentions of patient.

Gov't regulation of free speech

- 4 Part test to test Constitutionality of **Time, Place, & Manner regulations**:
 - 1) Does the regulation serve an important governmental interest?

- 2) Is the government interest served by the regulation unrelated to the suppression of a particular message?
- 3) Is the regulation narrowly tailored to serve the government's interest?
- 4) Does the regulation leave open ample alternative means for communicating messages?

- **Obscenity**
 - A) whether “average person, applying contemporary community standards” would find that the work, taken as a whole, appeals to the prurient (re: showing too much interest in sex) interest;
 - B) Whether work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law;
 - C) & whether work, taken as a whole, lacks serious, artistic, political, or scientific value
- **Commercial Speech** may be regulated if it passes **3-prong Central Hudson** test
 - 1) Govt must assert substantial interest in support of regulation,
 - 2) Gov't interest directly & materially advanced by regulation, &
 - 3) Regulation must be narrowly drawn
- **Due Process**
 - 1) Receives notice of proceeding resulting in deprivation
 - 2) Receives an open & fair hearing
 - 3) Receives opportunity to present claim &/or defense
- **Eminent Domain** - fed govt & states can take private property for "public use".
 - *Takings Clause*, last clause of 5th Amend,
 - Limits power of eminent domain by requiring that "just compensation" be paid if private property taken for public use
 - **Kelo v. City of New London RULE**: A state may transfer property from one private party to another if used for “public purpose.”

Torts

- Essential elements of every tort: 1) Duty, & 2) breach of that duty results in harm
- Intentional torts – based on reasonable person standard (re: reasonable person would believe D meant it)
- **Defamation** - To establish defamation claim, four elements are required:
 - 1) Defamatory statement (re: statement likely to harm reputation)
 - 2) Falseness (re: statement can't be truth)
 - 3) Communicated (re: statement must be communicated to 1 other person besides PL)
 - 4) Injury: If slander, PL must prove harmed; if libel, injury assumed
- **Defenses – Truth, opinion**
- **Defamation against public persons** – PL must also prove
 - 5) D knew statement false &
 - 6) Acted w/ reckless disregard of truth
- **False Imprisonment**
 - Unlawful detention of person, depriving them of personal liberty against their will
 - PL must either a) have knowledge, or b) suffered actual harm
 - **Shopkeeper's defense** - Must be reasonable basis for suspicion & detention is reasonable
- **Intentional Infliction of Emotional Distress**

- conduct of defendant is serious in nature & results in anguish of the mind
- **No recovery** for mere annoyance, disappointment, or hurt feelings

- **Assault**
 - any intentional act, other than utterance of words, that puts another in apprehension of immediate & harmful conduct
 - NOTE: PL was be aware
- **Battery**
 - An unpermitted, unprivileged, intentional contact with another's person
 - NOTE: PL not required to be conscious at time of battery
- **Trespass**
 - Trespass includes every unauthorized entry upon land of another & any offense or transgression that damages another's personal property
 - Any entry – above or below ground
- **Conversion**
 - Any unauthorized act that deprives an owner of his tangible personal property is conversion
- **Fraud**
 - Intentional misrepresentation of material existing fact,
 - Made by one person to another
 - W/ knowledge of its falsity & for purpose of inducing other person to act,
 - & upon which other person relies
 - Resulting injury or damage.
 - **PL must prove:**
 - 1) D intended for PL to rely upon misrepresentation &/or omission;
 - 2) that PL did in fact rely upon misrepresentation &/or omission;
 - 3) that PL suffered injury or damage as result of the fraud.
- **Damages**
 - **Avoidable harm doctrine:**
 - Person who is injured must use whatever means reasonable in order to avoid or minimize damages
 - **Compensatory damages**
 - Awarded to compensate PL for those pecuniary losses which resulted from D's wrong
 - **Losses may have resulted from either tortious conduct or breach of K**
 - **Future losses** are also recoverable
 - Compensatory damages may be awarded for loss of time or money, bodily pain & suffering, permanent disabilities or disfigurement, injury to reputation, & mental anguish
 - **Punitive Damages**
 - damages awarded in addition to compensatory damages in order to punish D for conduct & deter others from similar conduct
 - **Awarded to PL over & above compensatory amount.**
 - Awarded where wrong was done w/ wanton, reckless, malicious, or oppressive conduct
 - Trial courts must consider 3 things to grant punitive damages:
 - 1) Was D's conduct reprehensible?
 - 2) What is ratio between harm suffered & award? No more than 9:1
 - 3) Difference between punitive award & civil penalties in similar cases

- **Tortious Interference with a Contract** – PL must prove:
 - D maliciously & substantially interfered with performance of valid & enforceable contract
 - **Defenses**
 - No valid contract
 - Interference justified
 - 1) D acted to protect own economic interest
 - 2) D acted to protect public interest
 - 3) Existing K has termination clause that allows either party to terminate @ will
- **Tortious Interference with a Prospective Advantage**
 - Occurs where tortfeasor acts to prevent PL from successfully establishing or maintaining business relationships.
 - This tort may occur when 1st party's conduct intentionally causes 2nd party not to enter into business relationship w/ 3rd party that otherwise would probably have occurred.

Negligence

- **Elements**
 - 1) a duty or standard of care recognized by law,
 - 2) a breach of the duty or failure to exercise the requisite care,
 - 3) the occurrence of harm proximately caused by the breach of duty,
 - 4) the harm = foreseeable, &
 - 5) PL actually injured
- **NOTE:** it = unintentional failure to live up to community's ideal of reasonable care
 - It is NOT based on moral fault.
 - Involves an unreasonable risk of harm to those who are within the zone of foreseeable danger.
 - Absence of intent to inflict injury = distinguishing characteristic of negligence
- **Duty**
 - Common-law duty found by courts where kind of relationship exists between 2 parties requires legal recognition of duty of care
 - **General rule** – law doesn't impose duty to aid or protect another.
 - **Duty & alcohol**
 - Rule: When an adult causes harm because of intoxication, the act that gives rise to liability is the consumption of alcohol – not furnishing
 - Exception: When supplier provides thing to minor in a manner involving unreasonable risk of physical harm to self & others is subject to liability for physical harm resulting to others.
 - **Land occupier/possessor's duty**
 - **Invitee duty**
 - Landowner owes invitee duty to exercise ordinary care under usual principles of negligence liability.
 - RE: must take action to prevent harm
 - **Licensees**
 - One who is privileged to enter/remain upon land by virtue of possessor's implied or express consent
 - Possessor land = under duty to give warning to known dangers
 - **Trespassers**
 - Landowner has NO duty to protect or warn
- **Proximate Cause**

- PL must prove injuries were actual/factual result of D's actions
- Majority of courts use "But For" test to measure D's conduct (re: "But for" D's actions)
- **Joint Torfeasors** – acts of multiple tortfeasors = proximate cause of harm (re: inseparable)
- **Res Ipsa Loquitur**
 - Latin for "the thing speaks for itself,"
 - **Doctrine of law that one is presumed to be negligent if he/she/it had exclusive control of whatever caused the injury even though there is no specific evidence of an act of negligence, and without negligence the accident would not have happened.**
 - Ex: a) Load of bricks on roof of building being constructed by falls & injures Pedestrian below; Builders = liable for Pedestrian's injury even tho no one saw load fall.
 - PL must prove:
 - **Inference of Negligence** PL's injury must be of type that does not ordinarily occur unless someone has been negligent.
 - Ex. falling of elevators, presence of dead mouse in soda bottle, or streetcar careening through restaurant.
 - **Exclusive Control by the Defendant** PL's injury or damage must have been caused by an instrumentality or condition that was w/in exclusive control of D.
 - Some courts interpret this requirement to mean that exclusive control or management must have existed @ time of injury.
 - **Freedom from Contributory Negligence** Event in question must not have been attributable to any cause for which PL responsible.
- **Defenses to Negligence**
 - **Contributory Negligence** – if PL's own negligence proximately contributed to own injuries
 - Even if D negligent, PL denied recovery if they also negligent
 - **Two types:**
 - If **contributory negligence state** = D not liable if PL even slightly negligent
 - If **comparative negligence state** = PL may recover even if partially responsible
FYI: MA = comparative
 - **Assumption of risk**
 - When PL = **1) actually had knowledge** of risk
 - & **2) made free choice** of exposing themselves to it.

Strict liability

- Imposes legal responsibilities for injuries caused by certain dangerous instrumentalities w/out proof of lack of due care.
- One who is responsible for care of dangerous instrumentalities that would be applicable in all jurisdictions is impossible.
- Poisons, explosives, airplanes, & vicious animals = types of items in category
- Possessor of dangerous instrumentality is = insurers of safety of others.
- If harm reasonably linked to dangerous instrumentality, court imposes absolute liability.

LSB227 Review Day 2

Crimes

- **Criminal procedure**
 - Similar to civil procedure **EXCEPT** Prosecution (re: state) must prove D committed crime
 - Burden of Proof = **Beyond a reasonable doubt**

- Gov't cannot use **Duress**
- Gov't cannot **Entrap D**
- Criminal Trial
 - **1) Arrest**
 - **2) Indictment**
 - Grand jury determines if there is probable cause that D committed crime
 -
 - **3) Arraignment**
 - Before a judge, clerk reads charges; **D** has opportunity to plead guilty or not guilty
 - If guilty, receives sentence
 - If not guilty, trial begins
 - **4) Discovery**
 - Less formal than civil discovery, but similar
 - **5) Plea Bargaining**
 - Lawyers meet to bargain (re: D admits to lesser charge to expedite process)
 - **6) Trial**
 - **7) Verdict**
 - **8) Punishment**
 - **9) Appeal**
- **Crimes require:**
 - 1) *actus reus* (re: guilty act) – D must have committed crime
 - 2) *mens rea* (re: guilty mind) – D must have meant it
- **M'Naghten Rule**
 - D = "too mentally unbalanced to know right from wrong"
- **Crimes that harm businesses**
 - **Larceny** = trespassory taking of personal property with intent to steal it.
 - **Fraud** – deception of another person for the purpose of obtaining money or property from him
 - Types of fraud
 - Bank fraud – using deceit to obtain \$\$\$, assets, securities, etc.
 - Wire fraud/mail fraud – use of interstate mail, telegram, telephone, radio, or TV to obtain property by deceit.
 - Insurance fraud – perpetuating fraud to illicit insurance funds
 - Medicare fraud – using false statements, bribes, or kickbacks to obtain Medicare payments from Fed or State gov'ts
 - **Arson** – malicious use of fire or explosives to damage or destroy real estate or personal property.
 - **Embezzlement** – fraudulent conversion of property already in D's possession
 - KEY – must have legal permission to gain possession.
 - Commonly occurs when people who have access to money misappropriate some or all proceeds.
 - **Computer Crime** – technology and internet has led to rise in cybercrime
 - Hacking, viruses, fraud, identity theft are all too common
- **Punishing a Corporation**
 - Fines = most common punishment
 - **Rule:** Corporation = criminally responsible for offenses "authorized, requested, commanded, or performed, by the board of directors or by a high managerial agent acting within the scope of his employment."

- Corporation = criminally responsible whenever any of its high managerial agents possesses requisite mental state & is responsible for criminal offense while acting within scope of his employment.
- **Agents**
 - Corp can be found liable for crime committed by agent
 - Agency applies to relationship in which:
 - 1) By mutual consent (formal or informal, express or implied)
 - 2) One person or entity (called agent)
 - 3) Undertakes to act on behalf of another person or entity (principal)
 - 4) Subject to principal's control
- **4th Amend**
 - Prevents illegal searches & seizures
 - **General rule** = police must obtain a warrant before conducting a search.
 - Warrant must specify w/ reasonable certainty – place to be searched & items to be seized.
 - Magistrate only issue warrant if there = probable cause
 - **NOTE: Prob Cause** means that, based on info presented, it is likely that evidence of crime will be found in place to be searched.
 - **Exception: Warrantless searches** – 7 circumstances
 - 1) Plain View; 2) Stop and Frisk; 3) Emergencies; 4) Automobiles; 5) Lawful Arrest; 6) Consent & 7) No Expectation of Privacy.
 - **Exclusionary Rule**
 - Under exclusionary rule, evidence obtained illegally may not be used at trial
 - 2 Exceptions to Exclusionary rule
 - **Inevitable Discovery Exception** – Evidence may be used if it would inevitably have been discovered even w/out illegal search.
 - **Ex. D admits** to location of buried body w/out attorney present @ time when police searching nearby
 - **Good Faith Exception** – If police office reasonably believed defective warrant is valid, it is a legal search.
 - **Ex. If judge** puts wrong address on warrant, & search turns up drugs – drugs admissible
- **5th Amend**
 - Self-incrimination
 - Bars gov't from forcing any person to testify against himself.
 - Police may not use mental or physical coercion to force confession or any other information out of someone.
 - **Miranda Rights** – police cannot legally force suspect to provide evidence against himself.
 - Prior to questioning
 - 1) must be warned he has right to remain silent,
 - 2) that any statement he does make may be used as evidence against him, &
 - 3) that he has right to presence of an attorney, either retained or appointed.
 - **NOTE:** D may waive rights, provided waiver = voluntarily, knowingly & intelligently.
- **6th Amend**
 - **Right to lawyer**
 - @all important stages of criminal process.

- Govt' must **appoint a lawyer** to represent, free of charge, any defendant who cannot afford one.
- **5th Amend**
 - **Double jeopardy**
 - D may be prosecuted only once for a particular criminal offense.
- **8th Amend**
 - **prohibits cruel & unusual punishment**
 - Cruel – nature of punishment doesn't not equal severity of the crime
 - Unusual – flogging, burning at stake, etc.

Contracts

- **Elements of K**
 - To be enforceable, these key characteristics must be present.
 - *Offer*
 - *Acceptance*
 - *Consideration*
 - *Legality*
 - *Capacity*
 - *Consent*
 - *Writing (only certain types of contracts must be in writing.)*
- **Reasonable Terms**
 - **Rule** – terms of the contract must be reasonable to be enforceable
- **Types**
 - **Bilateral contract** = both parties make promise (**re: bargain = promise for promise**)
 - **Unilateral contract** – one party makes promise that other party can accept only by actually doing something.
 - **Executory contract** – one (or both) party has yet to fulfill obligation
 - **Executed contract** – when parties have fulfilled their obligations
 - **Express contract** = 2 parties explicitly state all important terms of agreement
 - **Implied contract** = words & conduct of parties indicate they intended to be bound
- **Promissory Estoppel**
 - Even if no K, PL may use promissory estoppel to enforce D's promise if he can show that:
 - 1) D made promise knowing that PL would likely rely on it;
 - 2) PL did rely on promise; &
 - 3) Only way to avoid injustice is to enforce promise.
 - If court finds element present, court will award **reliance damages**
- **Quasi-Contract**
 - Even if no K, court may use quasi-K to compensate PL if can show that:
 - 1) PL gave some benefit to D
 - 2) PL reasonably expected to be paid for benefit & D knew this; &
 - 3) D would be unjustly enriched if he did not pay.
 - If court finds elements present, court will award **quantum meruit** (value of goods & services that PL conferred)
- **Valid Offer**
 - Offeror makes offer; offeree makes contract by accepting offer
 - To be binding, offeree must understand & accept offer on same terms as offeror.
 - There must be **Meeting of the Minds**
 - **Offeror** must:

- 1) intend to make offer, &
 - 2) provide definite terms (re: both parties know what they need to do to execute K)
 - **NOTE: intent can be implied**
- Price quotes, letters of intent, ads, auctions – are not offers
- **UCC & Open Terms**
 - Only need quantity
 - Rest – price, time, delivery, signature, etc., not required – court will use **Gap Fillers**
 - **Reasonable price, time, etc....**
- **Termination of Offer**
 - **Revocation**
 - **Rule:** Revocation of firm offer is effective if offeree receives it before he accepts
 - **Exception: Options contract = where buyer purchases right to have offer held open**
 - Offeror can't revoke if accepts consideration for option
 - **Termination by rejection**
 - Rejection may be clearly stated, & immediately terminates the offer.
 - Counteroffer also terminates the original offer.
 - **Termination by expiration**
 - Offeror set a time limit on an offer
 - If not set limit, time = reasonable period
 - **Termination by Operation of Law**
 - offer terminates if the offeror dies or becomes mentally incapacitated
 - Or subject matter destroyed
- **Acceptance**
 - Acceptance makes contracts irrevocable
 - Offeree must clearly express acceptance
 - **Offeree must communicate his acceptance** for it to be effective
 - Method & manner of acceptance depends:
 - If offeror requires specific method & manner, offeree must comply
 - If not requirement, method & manner = reasonable
 - **Mirror Image Rule**
 - Offeree can only accept what is offered.
 - Any change would be a counter-offer, which terminates original offer
 - **The Mailbox Rule**
 - Acceptance is generally effective upon dispatch - meaning moment it is out of the offeree's control.
 - **Under UCC, offeree may:**
 - 1) **Accept terms as is** - makes contract based on original terms
 - 2) **Include additional terms** - will become part of K unless offeror expressly rejects
 - 3) **Include different terms** – different terms cancel each other out, & court uses Gap Fillers
 - **Rule:** Terms contained within **clickwrap/shrinkwrap contracts** are binding, so long as the offeree is placed on notice of those terms.

Sales

- UCC Article 2
 - Exists to simplify the sale of goods between merchants
- Mixed Contracts
 - **Rule** - With Mixed Contracts, UCC will govern if predominant purpose is the sale of goods.

- **Merchants**
 - o UCC defines merchant as someone who:
 - 1) Routinely deals in particular goods involved, or
 - 2) appears to have special knowledge or skill in those goods, or
 - 3) uses agents w/ special knowledge or skill in those goods
- **Good Faith**
 - o **Rule:** For non-merchants: **Good faith** means honesty in fact;
 - For merchants: **Good faith** means honesty in fact PLUS must exercise of reasonable commercial standards of fair dealing.
 - o If court finds one party acted **unconscionable (re: K = shockingly one-sided & fundamentally unfair)**, court will not enforce
 - o Less likely w/ merchants
- **Contract formation under Article 2**
 - o 1. Parties may make K in any manner sufficient to show that they reached an agreement.
 - o 2. UCC will enforce deal even tho difficult, in common law terms, to say exactly when formed.
 - o 3. Under UCC, court may enforce bargain even tho one or more terms were left open.
- **Essential terms under UCC**
 - o Quantity of specific goods to be sold
- **Statute of Frauds**
 - o UCC requires that all Ks for sale of goods \$500+ must be in writing
 - o Doesn't have to be complete, formal K
 - o Only sufficient to show parties intended to bargain (re: quantity)
 - o **Merchant exception**
 - 1) When 2 merchants make an oral contract, &
 - 2) one sends confirming memo to other w/in reasonable time, &
 - 3) memo is sufficiently definite that it could be enforced against sender
 - **Then:** memo = valid against merchant who receives it, unless objects writing w/in ten days.
 - o **Specialty Goods Exception. If :**
 - 1) buyer orders goods that are to be specially manufactured for buyer, &
 - 2) arent suitable for sale to others in ordinary course of seller's business,
 - **Then:** verbal agreement is enforceable even if it exceeds \$500.
 - o **Judicial Admission Exception. If:**
 - D admits in pleading, testimony or otherwise in court that K for sale made,
 - **Then:** the contract he admitted to is enforceable against him.
- **Additional Terms under UCC**
 - **Additional terms** - generally become part of K unless offeror expressly rejects
 - Ex.
 - **Different terms** - generally cancel each other out
 - Ex. different delivery dates; court will knock out & use gap fillers

Consideration

- **What is Consideration?** - three rules of consideration:
 - o 1) Both parties must get something of measureable value from the contract..
 - o 2) A *promise* to give something of value counts as consideration.
 - o 3) Parties must have bargained for whatever exchanged & struck deal: "If U do this, I'll do that"
- **Rule:** Consideration constitutes a bargained for exchange between to parties to do something they are otherwise not legally obligated to do.

- **Bargain & Exchange**
 - Consideration **does not require counteroffers.**
 - BUT, both parties must do something they are not otherwise legally obligated to do
- **NOTE:** must ask “did offeree make a promise OR tender performance in response to offer”
- **Peppercorn Rule**
 - Consideration must be adequate
 - Even tiniest bit of consideration = adequate
- **Illusory Promises**
 - Where promisor retains right to back out of deal for any reason at all.
 - **Not consideration** because no commitment to deal.
- **Requirements K**
 - Buyer agrees to purchase 100% of goods from one seller.
- **Output K**
 - Seller guarantees to sell 100% of its output to one buyer, & buyer agrees to accept entire quantity
- **UCC permits requirements & output K for two reasons: - NOT Common Law**
 - 1) merchants value these contracts; makes no sense for law to “protect” people from something they wish to use.
 - 2) Code considers good faith to be consideration.
- **Past consideration**
 - **Rule:** is generally not consideration.
- **Preexisting Duty**
 - **Rule:** Promise to do something that party is already obligated to do isn't consideration.
 - **Additional Work Exception** – promise to do something above & beyond what one is obligated to do is generally valid consideration.
 - **Modification Exception** – if both parties to K agree to either modify existing terms or rescind (re: cancel) K, courts will allow w/out consideration
 - **Unforeseen Circumstances Exception** – if something unforeseen arises causing party to make promise regarding unfinished project, courts view as valid consideration.
- **Rule: For K to be binding, there must be a definite offer & complete acceptance, for consideration.**
- **Accord and Satisfaction**
 - Fulfillment of debt
 - Most states payment by check that has “full payment” notation creates an accord & satisfaction unless creditor is an organization that has notified debtor that full payment offers must go to a certain officer.
 - **Rule:** Accord and satisfaction requires a bona fide dispute, an agreement to settle the dispute for a certain sum, and performance of that agreement.

Statute of frauds:

- PL may not enforce certain agreements w/out writing & signed by party to be charged (re: D)
 - For any interest in **land**
 - That **cannot be performed within one year**
 - To pay the **debt of another**
 - Made by an **executor of an estate**

- Made **in consideration of marriage**; and
- For the **sale of goods worth \$500 or more**.
- **Must contain**
 - Must state w/ reasonable certainty name of each party,
 - Subject matter of agreement, &
 - All essential terms & promises
- **Collateral promises** (re: promise to pay debt of another)
 - **Rule:** Collateral promises must be in writing to be enforceable.
 - **Exception: Leading Object Rule**
 - When promisor guarantees to pay debt of another & leading object of promise is some benefit to promisor, K will be enforceable even if unwritten.
- **Incompleteness**
 - **Under Common Law**
 - **In most cases:** contract is not enforceable
 - **Exception: Reformation** = process in which court can partially “rewrite” contract
 - Under UCC:
 - UCC requires that all Ks for sale of goods \$500+ must be in writing
 - Doesn’t have to be complete, formal K
 - Only sufficient to show parties intended to bargain (re: quantity)
 - **Merchant exception**
 - **1)** When 2 merchants make an oral contract, &
 - **2)** one sends confirming memo to other w/in reasonable time, &
 - **3)** memo is sufficiently definite that it could be enforced against sender
 - **Then:** memo = valid against merchant who receives it, unless objects writing w/in ten days.
 - **Specialty Goods Exception. If :**
 - 1) buyer orders goods that are to be specially manufactured for buyer, &
 - 2) arent suitable for sale to others in ordinary course of seller's business,
 - **Then:** verbal agreement is enforceable even if it exceeds \$500.
 - **Judicial Admission Exception. If:**
 - D admits in pleading, testimony or otherwise in court that K for sale made,
 - **Then:** the contract he admitted to is enforceable against him.
- **Parol Evidence**
 - **Rule:** when two parties make an integrated K, neither one may use parol evidence to contradict, vary, or add terms.
 - **Parol evidence** = anything said, done, or written before parties signed or as they sign agreement
 - **Integrated K** = writing parties intend as final, complete, expression of agreement

Remedies

- **Breaching a Contract**
 - Breach occurs when someone fails to perform duty w/out valid excuse.
- **Four principal contract interests** that court may seek to protect:
 - **1) Expectation Interest** = what injured party reasonably thought she would get from K
 - Goal = put in position had there been no breach
 - (1) **direct** (or “compensatory”) damages, which represent harm that flowed directly from the contract’s breach

- **Rule:** injured party must prove breach caused damages that can be quantified w/ reasonable certainty
- (2) **consequential** (or “special”) damages, which represent harm caused by the injured party’s unique situation.
 - **Rule:** When there is breach of K, damages which other party ought to receive should 1) arise naturally from the contract itself, & 2) must be reasonably foreseeable as consequence of breach.
- (3) **incidental** damages, which are minor costs such as storing or returning defective goods, advertising for alternative goods, and so forth.
- **2) Reliance Interest** = injured party may be unable to demonstrate expectation damages, perhaps because it is unclear he would have profited.
 - But may still prove that spent money in reliance on agreement & that in fairness he should receive compensation.
 - **Rule:** Reliance interest puts party in position he would have been in had parties never entered into a K.
- **3) Restitution Interest** = injured party may be unable to show expectation interest or reliance.
 - But perhaps has conferred benefit on other party.
 - Here, objective = restore to injured party benefit has provided.
 - **Often goes hand-in-hand w/ rescission**, which means to “undo” Kt & put parties where they were before made agreement.
 - **Rule:** Restitution is an appropriate remedy when the injured party has conferred a benefit on the other party and it would be inappropriate for the other party to keep it.
 - **Rule:** rescission = unmaking of contract between parties & returning them to position they were in before made agreement.
- **4) Equitable Interest** = In some cases, money damages will not suffice to help the injured party.
- Something more is needed, such as an order to transfer property to injured party (specific performance) or an order forcing party to stop doing something (an injunction).
 - **Rule: Specific performance** forces parties to perform K. Court awards only in cases involving sale of land or other unique item
 - **Rule: to receive injunctive relief,**
 - 1) Likelihood of success on the merits,
 - 2) Irreparable harm,
 - 3) Denying injunction would cause greater injury, &
 - 4) Injunction restored parties to status quo.
- Courts typically divide **expectation damages** into three parts:
- **UCC and Damages**
 - Under UCC, remedies similar to general rules found in common law
 - **Seller’s Remedies** – If buyer breaches, seller has two remedies:
 - 1) Seller may resell goods elsewhere
 - If acts in good faith, seller awarded difference between original K price & price was able to obtain in open market
 - 2) Seller may choose not to resell & settle for difference of K price & market value
 - **Buyer’s Remedies** – If it is seller who breaches, buyer has two remedies:
 - 1) Buyer may cover by purchasing substitute goods & entitled to original K price and cover price
 - 2) If Buyer doesn’t cover, may receive difference between original K & market value of goods