

Differences: (not Ginuwine) but between the UCC and Restatements

UCC	Common Law
<p>A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.</p> <p>(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:</p> <ul style="list-style-type: none"> • (a) the offer expressly limits acceptance to the terms of the offer; • (b) they materially alter it; or • (c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received. <p>(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Act.</p>	<p>Battle of the Forms Offer is given- i) invites acceptance, ii) definite, and iii) communicated</p> <p>Mailbox Rule:</p> <ul style="list-style-type: none"> i) acceptance must be in like manner that offer was given (i.e. mail for mail, fax for fax, note for note, roughly) ii) Acceptance counts from the time it is put in the mailbox, or rough equivalent if there isn't a mailbox. iii) Doesn't matter if offeror revokes, doesn't count if the acceptance is in the mail. <p>But, what if the acceptance has a different term? General Rule is that an acceptance with a different term isn't an acceptance at all.</p> <ul style="list-style-type: none"> i) New addition of term = new offer, which means that ii) It is both a rejection of the first offer, and a counter-offer in itself. But iii) If they go ahead and act upon that counter-offer, then they have accepted by performance. AND iv) The terms will be those of the counter-offer (the last correspondence) UNLESS v) The term is a material one (oh yeah, you remember this, the old circular argument of materiality)
<p>Statute of Frauds If it falls within the Statute of Frauds then it must have a writing to be enforceable.</p> <p>Exception: Part Performance in Subsection 3; a K that does not satisfy [a writing and <\$500]; but which is valid in other respects, is enforceable in respect to goods for which payment has been made and accepted, i.e. buyer has sent payment and seller accepted payment; or seller sent goods and buyer accepted them.</p>	

- 1) Is it for the **transfer of land**? (this can include leases, renting, or buying)
 - i) If yes, then is there a sufficient writing (or writings)?
 - ii) If no, then go to something outside of Statute of Frauds to enforce the promise, here, **Past Performance Doctrine**:
 - When there was no writing for the sale of land,
 - but there was a K between the parties, AND
 - the party seeking to enforce it partially performed it, AND
 - the party's performance was induced by the other party's misrepresentation, which may include acquiescence or silence. *Sullivan*—in this case, **specific performance** was the remedy for breach.

- 2) Is the promise for a **sale of goods over \$500** and **between merchants**? (goods are movable commodities) (**merchants** means a person who deals in [goods](#) of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.)
 - i) Is there a sufficient writing? If yes, then... (if no, go down to ii)
 - a) Is it **signed** by the **person** (or agent) who **claims** there is **no K**? Then it is **enforceable**. To find out **remedies**, ask:
 - b) Does the writing have a **quantity term**?
 - i) K is **not enforceable** beyond the **quantity of goods** shown in writing.
 - ii) If it states that it is for the

<p>buyer's output, then look to what the past output was.</p> <p>iii) If the quantity term was decided orally, and not written down, then the K is not enforceable beyond</p> <ul style="list-style-type: none"> • the goods for which payment has been made and accepted OR • goods which have been received and accepted <p>ii) If there is no writing, is it oral?</p> <p>a) Then, is the sale between merchants? (be careful, what is considered a merchant can be tricky)</p> <p>b) If it is oral and between merchants then,</p> <p>i) Was there a written confirmation of the K that was received within a reasonable time (goes to context of the industry), sufficient against the seller, AND</p> <p>ii) The party receiving it has reason to know its contents</p> <p>c) If yes, then it is enforceable...</p> <p>d) UNLESS written notice of objection is sent within 10 days after written confirmation is received.</p> <p>If the promise doesn't fall within any of these things, it can still be enforceable. Ask:</p> <p>3) Are they specialty made goods</p> <p>i) Are they specially made for the other party, AND</p> <p>ii) Cannot be sold to anyone else, AND</p> <p>iii) Has party A started production or made commitments to start their manufacturing</p> <p>iv) Before a cancellation notice from the other party Then it can be enforceable</p> <p>4) Has one party admitted under oath that</p>	
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<p>there was a K?</p> <ul style="list-style-type: none"> i) Then, only enforceable up to the quantity term the party admits. <p>5) Have goods already been paid for, AND payment has already been accepted.</p> <ul style="list-style-type: none"> i) Then enforceable. 	
<p>Remedies UCC 2-711-717</p> <p>One big difference is that Buyer gets consequential (and incidental) damages, whereas Seller gets only incidental.</p> <p>1) Buyer's Remedies for Seller's Breach Includes</p> <ul style="list-style-type: none"> a) Wrongful failure to deliver or perform a contractual obligation b) Not tendering delivery or performance c) Repudiation (refusal of performing a duty) <i>If you notice, we've mostly focused on failure to deliver</i> <p>THEN...</p> <ul style="list-style-type: none"> 2) Buyer can deduct all or any part of damages from the price if <ul style="list-style-type: none"> a) It results from the breach of the K, AND b) Still due under the same K, AND c) The buyer has notified the seller of his intention to do so <p>OR, if Seller doesn't deliver (which in this class is likely to be the case), THEN...</p> <ul style="list-style-type: none"> 3) Buyer can cover (which means) <ul style="list-style-type: none"> a) With good faith, AND b) Without reasonable delay c) Purchase goods in substitution of those due from the seller AND damages/ <ul style="list-style-type: none"> i) Damages are the difference between the cost of cover and the K price, together with Incidental and consequential damages ii) (incidental damages-cost of transportation, care, custody) iii) Consequential damages— loss resulting from needs that a reasonable person in the shoes of the seller had a reason to know at the time of K-ing. <ul style="list-style-type: none"> a) Goes to what was told to 	<p>Recourses for Breach Monetary Remedies:</p> <p>Sometimes, there is no contract, but there still may be Restitution.</p> <p>If there is or isn't a contract, the party that performed by still be entitled to Resitution damages if</p> <ul style="list-style-type: none"> i) P conferred a benefit on D AND ii) That it would be unjust to allow D to retain to benefit. <p>Then, P is entitled to the reasonable value that he conferred.</p> <p>This can take the form of a quasi-contract, or an implied-in-fact-contract.</p> <p>Cardozo opinion regarding implied-in-fact-K's"</p> <ul style="list-style-type: none"> 1) "where D requests P to perform work, AND 2) P expected d to compensate him for those services, AND 3) D knew or should have known that P expected compensation" <p>An implied in fact contract can be found to give restitution recourse.</p> <p>If there is a contract that is breached though, Reliance is a recourse for damages.</p> <ul style="list-style-type: none"> a) Goal is to put P into status quo ante b) Can't do this if D can prove that she would have been at a loss had the K gone through c) This will get P back the general damages, (remember the Sears tires?) <p>Also, there is a recourse for expectation damages</p> <ul style="list-style-type: none"> a) But the level of damages must be proved by P. b) This goes to foreseeability: that is she can prove the damages that D could foreseeably discern at the time of K-ing, either because of words said or context.

<p>seller, AND</p> <p>b) What could be reasonably inferred.</p> <p>OR (if Seller doesn't deliver) THEN damages are</p> <p>a) The market price/ at the time of tender/ under the K, AND</p> <p>b) The price of the K, AND</p> <p>c) Any incidental or consequential damages</p>	<p>There's also reliance and expectation damages though.</p> <p>These can kind of overlap—courts will look to expectancy, and if the breach is an economic one, the expectation damages will be negative, (that is both parties will lose money if the contract if the contract is enforced), therefore it is very unlikely that reliance will be used as a recourse for damages. –Cosse Theorem</p> <p>If there is no adequate monetary compensation for the breach, then the court may order specific performance. (this is pretty serious though)</p> <p>Court generally does not order specific performance.</p> <p>a) Usually used for property. We looked at a case where P had made improvements to the land, and also given D a down payment.</p>
<p>What if Buyer is in Breach?</p> <p>1) Buyer in Breach, Buyer has Goods (presumably buyer didn't pay seller)</p> <p>Seller can recover</p> <p>a) The price of goods at the time of the acceptance (not the time of the K, although could be the same)</p> <p>b) And incidental damages (notice not consequential)</p> <p>2) Buyer in Breach, Seller has goods</p> <p>Maybe Seller made Buyer a special item, (I dunno, we went over it in class) or Buyer fails to pay the price as it comes due.</p> <p>Seller can recover the price</p> <p>a) Of goods identified to the contract IF</p> <p>b) The seller is unable, after reasonable effort, to resell them at a reasonable price</p> <p>OR IF</p> <p>c) The circumstances reasonably indicate that such effort will be unavailing (seller can keep goods and get K price)</p> <p>AND</p> <p>d) Seller gets incidental damages</p>	