

CONTRACTS MAIN ISSUE SPOTTING CHECKLIST

1. FORMATION OF THE CONTRACT

2. COVENANT, CONDITIONS & EXCUSES

3. THIRD PARTY BENEFICIARY

4. ASSIGNMENTS & DELEGATIONS

5. BREACH



6. REMEDIES

2 CONTRACTS

CONTRACTS INNER ISSUE SPOTTING CHECKLIST



1. FORMATION OF THE CONTRACT

**(UNLESS MOM PROVIDES ONLY TWO APPLES,
CALL DAD)**

- **UCC MERCHANTS**
- **PRELIMINARY NEGOTIATIONS**
- **OFFER**
- **TERMINATION OF OFFER: (OLD RR)**
- **COUNTER OFFER**
- **LAPSE OF TIME DEATH OR DESTRUCTION**

- **REJECTION**
- **REVOCACTION**
- **ACCEPTANCE**
- **CONSIDERATION**

DEFENSES: (FARM MUSIC D)

- **FRAUD**
- **AMBIGUITY**
- **PAROLE EVIDENCE RULE**
- **MISTAKE**

- **MODIFICATION**

- **UNCONSCIONABLE**

STATUTE OF FRAUDS: (RED GYM)

- **REALTY & EXCEPTIONS**
- **EMPLOYMENT & EXCEPTIONS**
- **DEBT OF ANOTHER**
- **& EXCEPTIONS**

- **SALE OF GOODS & EXCEPTIONS**
- **ONE YEAR & EXCEPTIONS**
- **MARRIAGE & EXCEPTION**

- **ILLEGALITY**

- **CAPACITY**

- **DURESS**

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2. COVENANT, CONDITIONS & EXCUSES

COVENANT

TYPE THE CONDITION:

- **EXPRESS**
- **IMPLIED BY LAW**
- **IMPLIED BY FACT**

APPLY THE EXCUSE FOR NONPERFORMANCE:

(I SWIM FOR DAVE W.)

IMPRACTICABILITY



- **SUBSTANTIAL PERFORMANCE**
- **WAIVER**
- **IMPOSSIBILITY**
- **MODIFICATION**

- **FRUSTRATION OF PURPOSE**
- **OCCURRENCE OF CONDITION SUBSEQUENT**
- **RESCISSION**

- **DIVISIBILITY**
- **ANTICIPATORY REPUDIATION**
- **VOLUNTARY DISABLEMENT**
- **ESTOPPEL**

WRONGFUL PREVENTION

3. THIRD PARTY BENEFICIARY:

(DO PRISONERS IN CELLS VISIT SILENTLY?)

- DEFINE PRIVACY INTENT TO BENEFIT?**
- CLASSIFY DID THE RIGHT VEST?**
- STEP INSIDE SHOES**

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4. ASSIGNMENTS & DELEGATIONS:

ASSIGNMENTS: (DO PLAYERS IN VEGAS EARN DOLLARS?)

- DEFINE PRIVITY**
- IS RIGHT ASSIGNABLE?**
- VALID PRESENT ASSIGNMENT EFFECT OF ASSIGNMENT?**

DEFENSES

DELEGATIONS: (DIANE)

- **DEFINE IS DUTY DELEGABLE?**
- **ASSUMPTION OF DUTY?**
- **NOVATION EFFECT OF DELEGATION?**

5. BREACH:

- MAJOR**
- MINOR**
- ANTICIPATORY REPUDIATION**

6. REMEDIES: (DICK RECITES RIP ROARING STORIES)

- DAMAGES**
- RESTITUTION**
- RESCISSION**
- REFORMATION**
- SPECIFIC PERFORMANCE**

(Cognac Is For Major Drinkers)

- Create the Contract
- Inadequacy Of the Legal Remedy
- Feasibility
- Mutuality of Remedy:
- Defenses (BLU)

5 CONTRACTS

CONTRACTS DISSECTION CHECKLIST



1. FORMATION OF THE CONTRACT

**TESTABLE ISSUES: UNLESS MOM PROVIDES
ONLY TWO APPLES, CALL DAD**

TRANSACTION IN GOODS: IDENTIFIABLE AT THE FORMATION OF THE CONTRACT

**UCC OR PREDOMINANT FACTOR:
PREDOMINANCE OF THE CONTRACT
TRANSACTION IN GOODS & SERVICES:
OR**

**GRAVAMEN TEST :
WHAT CAUSED THE INJURY/COMPLAINT?**

MERCHANTS:

DEAL IN GOODS OF THE KIND IN THE CONTRACT OR HAVE SPECIAL KNOWLEDGE OR SKILL

PRELIMINARY NEGOTIATIONS: INVITATION TO DEAL

OFFER:

**OUTWARD MANIFESTATION OF PRESENT
CONTRACTUAL INTENT**

DEFINITE AND CERTAIN TERMS* (QTIPS)

***IF TERMS ARE MISSING, UNDER UCC THE COURT WILL USE GAP FILLERS:**

**E.G., A REASONABLE TIME OR AMOUNT OR -
COURSE OF PERFORMANCE**

- COURSE OF DEALING

- TRADE USAGE

COMMUNICATED TO THE OFFEREE

TERMINATIONS OF OFFER: OLD RR

**COUNTER OFFER: REJECTION OF ORIGINAL
OFFER AND CREATION OF NEW OFFER**

**LAPSE OF TIME: OFFER OPEN FOR
REASONABLE TIME FOR ACCEPTANCE BY
OFFEREE**

D EATH OR DESTRUCTION:

**WHERE EITHER PARTY DIES BEFORE
ACCEPTANCE, OR SUBJECT MATTER IS
DESTROYED**

REJECTION:

**STATEMENT BY OFFEREE SHOWING INTENT
NOT TO ACCEPT**

**CAN BE EITHER EXPRESSED, BY CONDUCT OR
BY A COUNTER OFFER**

R EVOCATION:

DIRECT:

**STATEMENT BY OFFEROR PRIOR TO
ACCEPTANCE**

**Indirect: Offeree learns from reliable source
offeror can't perform**

Note: Offeror cannot revoke:

- **option contracts**
- **unilateral contracts**
- **contracts where party detrimentally relies on the offer**

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ACCEPTANCE:

**UNEQUIVOCAL: MIRROR IMAGE REQUIRED BY
COMMON LAW**

**– BEWARE OF FORMS/LAST SHOT DOCTRINE
METHOD OF**

**ACCEPTANCE: OFFEROR CAN DICTATE HOW
OFFER SHOULD BE ACCEPTED**

**MAILBOX RULE: OFFER IS ACCEPTED UPON
DISPATCH.**

DOESN'T APPLY TO OPTION CONTRACTS

UCC: ANY REASONABLE MANNER

BATTLE OF THE FORMS:

BETWEEN NON-MERCHANTS:

NEW TERMS ARE PROPOSALS.

BATTLE OF THE FORMS:

BETWEEN MERCHANTS:

NEW TERMS BECOME PART OF THE CONTRACT UNLESS: NEW TERMS:

- MATERIALLY ALTER THE CONTRACT**
- OFFEREE OBJECTS WITHIN A REASONABLE TIME**
- OFFER EXPRESSLY LIMITED ACCEPTANCE TO THE TERMS OF THE OFFER**

DIFFERENT TERMS: WHERE ACCEPTANCE IS DIFFERENT THAN THE OFFER:

MAJORITY FOLLOWS KNOCKOUT RULE:

TERMS IN ACCEPTANCE THAT CONFLICT KNOCKOUT WITH THE OFFER CANCEL EACH OTHER

• ONLY AGREED ON TERMS APPLY PLUS GAP FILLERS COURT MAY ADD.

2 MINORITY VIEWS:

DROP OUT

**EITHER DIFFERENT TERMS ARE CONSIDERED
ADDITIONAL TERMS OR DIFFERENT TERMS IN
THE ACCEPTANCE ALWAYS DROP OUT; THUS,
TERMS OF OFFER GOVERN**

CONSIDERATION*:

**A BARGAINED-FOR EXCHANGE AND LEGAL
DETRIMENT/BENEFIT TO BOTH**

ILLUSORY: OUTPUT:

WHATEVER SELLER PRODUCES,

BUYER MUST BUY

**• LOOK TO GOOD FAITH
(INCLUDES FORBEARANCE TO SUE AND NEW
OR PROMISE TO PAY PAST EXISTING DEBT)**

**REQUIREMENTS CONTRACT : WHATEVER
BUYER REQUIRES, SELLER MUST SUPPLY –
LOOK TO GOOD FAITH**

OR

SUBSTITUTIONS:

PROMISSORY ESTOPPEL:

**PARTY CAN FORESEE RELIANCE OF OTHER
PARTY DID RELY TO HIS DETRIMENT**

OR

DETRIMENTAL RELIANCE: PARTY RELIES TO HIS DETRIMENT

***BEWARE OF PRE-EXISTING DUTY RULE**

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**DEFENSES: FARM MUSIC D FRAUD
(INDUCEMENT):**

**INTENTIONAL MISREPRESENTATION OF A
MATERIAL FACT WHERE ONE RELIES TO HIS
DETRIMENT**

MAKES CONTRACT VOIDABLE

**FRAUD (EXECUTOR): SIGNING OF A WRONG
CONTRACT MAKES IT VOID**

AMBIGUITY:

TERMS HAVE MULTIPLE MEANINGS –

**NO CONTRACT UNLESS BOTH PARTIES
INTENDED THE SAME MEANING OF THE
TERMS**

**PAROLE EVIDENCE RULE: ORAL OR WRITTEN
AGREEMENT**

**MADE PRIOR TO OR CONTEMPORANEOUS
WITH AGREEMENT**

CANNOT ALTER THE AGREEMENT

EXCEPTIONS : FARM MUSIC

UCC:

- COURSE OF DEALINGS**
- PERFORMANCE**
- AND TRADE USAGE**

MISTAKE: MUTUAL:

**BOTH PARTIES ARE UNDER WRONGFUL BELIEF
ABOUT A MATERIAL FACT**

- **CONTRACT VOIDABLE BY EITHER PARTY**

UNILATERAL:

**WHEN ONE PARTY IS UNDER WRONGFUL
BELIEF, GENERAL RULE NO DAMAGES**

•IF UNJUST, THEN CONTRACT IS VOIDABLE

MODIFICATION:

CHANGE IN TERMS OF AN EXISTING

**CONTRACT REQUIRES MUTUAL ASSENT AND
CONSIDERATION UNDER COMMON LAW**

(BEWARE OF STATUTE OF FRAUDS)

UNCONSCIONABLE:

**TERMS OF CONTRACT ARE AGAINST PUBLIC
POLICY**

- **CONTRACT IS VOID**

STATUTE OF FRAUDS: RED GYM

R EALTY:

**CONTRACT FOR THE SALE OF LAND OR AN
INTEREST THEREIN**

(LAND SALES CONTRACT OR LEASE)

EXCEPTIONS:

SUFFICIENT MEMO :

**CONTAINS ESSENTIAL TERMS SIGNED BY
PARTY TO BE CHARGED**

FULL OR PART PERFORMANCE

ESTOPPEL:

BASED ON RELIANCE BY CONDUCT

- **SPECIALLY MANUFACTURED GOOD ARE GOODS THAT ARE UNUSUAL AND NOT SUITABLE FOR SALE TO OTHERS**

E MPLOYMENT:

**CONTRACT FOR EMPLOYMENT OVER ONE
YEAR**

EXCEPTIONS:

SUFFICIENT MEMO :

**CONTAINS ESSENTIAL TERMS SIGNED BY
PARTY TO BE CHARGED**

ESTOPPEL: BASED ON RELIANCE BY CONDUCT

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**DEBT OF ANOTHER: CONTRACT THAT IS
ASSURING A PARTY'S PAYMENT OF ANOTHER'S
DEBT UNDER A CONTRACT**

EXCEPTIONS:

SUFFICIENT MEMO :

**CONTAINS ESSENTIAL TERMS SIGNED BY
PARTY TO BE CHARGED**

MAIN PURPOSE DOCTRINE:

**FOR PARTY'S OWN PURPOSE NOT TO BENEFIT
CREDITOR**

ESTOPPEL: BASED ON RELIANCE BY CONDUCT

**SALE OF GOODS: CONTRACT FOR THE SALE OF
GOODS OVER \$500 OR MORE**

EXCEPTIONS:

SUFFICIENT MEMO :

**CONTAINS ESSENTIAL TERMS SIGNED BY
PARTY TO BE CHARGED**

**UCC-WRITTEN CONFIRMATION WRITING
INDICATES CONTRACT FOR SALE, QUANTITY**

**BETWEEN MERCHANTS: IT BINDS PARTY
UNLESS HE OBJECTS WITHIN 10 DAYS EVEN
WITHOUT HAVING SIGNED THE WRITING**

FULL OR PART PERFORMANCE

ESTOPPEL:

BASED ON RELIANCE BY CONDUCT –

**SPECIALLY MANUFACTURED GOODS ARE
GOOD THAT ARE UNUSUAL AND NOT
SUITABLE FOR SALE TO OTHERS**

**ONE YEAR: CONTRACT THAT BY ITS TERMS
CANNOT BE PERFORMED WITHIN ONE YEAR,
E.G, COMPLETE CONSTRUCTION IN 3 YEARS**

EXCEPTIONS:

**SUFFICIENT MEMO: CONTAINS ESSENTIAL
TERMS SIGNED BY PARTY TO BE CHARGED**

FULL PERFORMANCE

ESTOPPEL: BASED ON RELIANCE BY CONDUCT

MARRIAGE: CONTRACT TO PROMISE TO MARRY

EXCEPTION:

SUFFICIENT MEMO :

**CONTAINS ESSENTIAL TERMS SIGNED BY
PARTY TO BE CHARGED**

**ILLEGALITY: IN PARI DELICTO – AGAINST
PUBLIC POLICY – UNENFORCEABLE**

CAPACITY: MINORS:

CONTRACT WITH MINORS VOIDABLE UNLESS

“NECESSITIES” (RENT, GROCERIES)

**MENTAL: INABILITY TO COMPREHEND OR
UNDERSTAND**

- **CONTRACT IS VOIDABLE**

DURESS: OVERCOMING THE FREE WILL OF THE CONTRACTING PARTY

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2. COVENANTS, CONDITIONS & EXCUSES

COVENANT:

LOOK FOR A PROMISE BY PARTIES

IF NO PROMISE, RAISE A CONDITION

TYPE THE CONDITION:

CONDITION:

WHERE A DUTY TO PERFORM ARISES IN A CONTRACTUALLY BOUND PARTY

PRECEDENT: ACT/EVENT MUST OCCUR OR FAIL TO OCCUR BEFORE A PARTY'S PERFORMANCE IS DUE

SUBSEQUENT: OCCURRENCE OF ACT/EVENT EXTINGUISHES DUTY TO PERFORM THAT ALREADY BECAME DUE

CONCURRENT: PERFORMANCE OF CONDITIONS ARISE AT SAME TIME

TYPE:

EXPRESS: EXPLICITLY STATED IN THE TERMS OF THE CONTRACT:

- **SATISFACTION CLAUSE**
- **“TIME IS OF THE ESSENCE” CLAUSE**

OR

IMPLIED BY LAW:

OR

IMPLIED IN FACT:

- **GOOD FAITH**
- **COOPERATION**
- **WORKMAN LIKE MANNER**

**APPLY THE EXCUSE FOR NONPERFORMANCE:
I SWIM FOR DAVE W.**

- **IMPRACTICABILITY: CONTRACT BECOMES UNENFORCEABLE BECAUSE OCCURRENCE OF AN EVENT WAS THE BASIS OF THE AGREEMENT AND NON-OCCURRENCE OF IT MAKES IT UNCONSCIONABLE TO ENFORCE**

- **SUBSTANTIAL PERFORMANCE:**

**NEVER APPLIES TO EXPRESS CONDITIONS –
LOOK FOR:**

**PLAINTIFF GOT WHAT WAS SUBSTANTIALLY
BARGAINED FOR
REIMBURSEMENT AVAILABLE FOR WHAT HE
DID NOT RECEIVE**

**DEVIATION WAS NOT WILLFUL
REIMBURSEMENT TO OTHER PARTY FOR
WHAT OTHER PARTY DID NOT RECEIVE**

• **WAIVER:**

**VOLUNTARY RELINQUISHMENT OF A KNOWN
RIGHT**

- **IMPOSSIBILITY:**

**AN ACT OR EVENT OCCURS AND CHANGES
CIRCUMSTANCES WHICH MAKES
PERFORMANCE OBJECTIVELY IMPOSSIBLE**

- **MODIFICATION:**

**CHANGE IN TERMS OF AN EXISTING
CONTRACT WHICH REQUIRES MUTUAL
ASSENT AND CONSIDERATION
(BEWARE - STATUTE OF FRAUDS)**

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- **FRUSTRATION OF PURPOSE:**

DUE TO A REASONABLY UNFORESEEABLE EVENT THE PURPOSE OR VALUE OF THE CONTRACT IS DESTROYED.

PARTIES MUST HAVE CONTEMPLATED EVENT AT TIME OF AGREEMENT.

- **OCCURRENCE OF CONDITION SUBSEQUENT:**

OCCURRENCE OR NON-OCCURRENCE OF AN EVENT THAT TERMINATES A PARTY'S DUTY TO PERFORM THAT PREVIOUSLY AROSE, E.G., X AGREES TO SHARE AN APARTMENT AND RENT WITH Y FOR ONE YEAR UNLESS X GETS A JOB TRANSFER OUT OF STATE

- **RESCISSION:**

**THIS WILL PUT PARTIES BACK TO THEIR ORIGINAL POSITION - MUST TENDER BACK AND GIVE NOTICE TO UN-DO THE CONTRACT
NEED GROUNDS TO RESCIND: FRAUD, MISTAKE AND AMBIGUITY IF NO PARTY PERFORMED YET THEY CAN MUTUALLY RESCIND BY AGREEMENT WHERE EACH GIVES CONSIDERATION OF NOT REQUIRING THE OTHER TO PERFORM.**

- **DIVISIBILITY:**

**CONTRACT CAN BE DIVIDED BY PRICE, UNIT,
AND PERFORMANCE WAS NOT BARGAINED
FOR AS A WHOLE;**

**PARTY IN BREACH CAN RECOVER FOR UNITS
PERFORMED**

• ANTICIPATORY REPUDIATION:

EXPRESS REPUDIATION OF CONTRACT

**E.G., A CALLS B AND REFUSES TO PERFORM
THEIR CONTRACT**

• VOLUNTARY DISABLEMENT:

**THROUGH CONDUCT PARTY REPUDIATES
CONTRACT**

**E.G., X BUYS Z'S CAR AFTER AGREEING TO
BUY Y'S AND Y FINDS OUT**

- **ESTOPPEL:**

**PARTY RELIES ON AGREEMENT WITH
ANOTHER PARTY AND CHANGES POSITION –
AND THE OTHER PARTY**

**REASONABLY EXPECTED PARTY TO BE
INDUCED.**

•WRONGFUL PREVENTION:

**PARTY WRONGFULLY HINDERS
PERFORMANCE OF ANOTHER PARTY**

**3. THIRD PARTY BENEFICIARY:
DO PRISONERS IN CELLS VISIT SILENTLY?**

DEFINITION:

**CONTRACT ENTERED INTO FOR THE BENEFIT
OF A 3RD PARTY (WHO MAY OR MAY NOT
KNOW OF BENEFIT)**

PRIVITY: NO PRIVACY REQUIRED

INTENT TO BENEFIT?

**AT THE TIME OF FORMATION OF CONTRACT
PARTIES MUST HAVE HAD THE INTENT**

CLASSIFY:

- **CREDITOR: ONE WHO IS DISCHARGING A DEBT**
- **DONEE: ONE RECEIVING A GIFT**
- **INCIDENTAL: NO INTENT TO BENEFIT (CANNOT BRING A SUIT)**

DID THE RIGHT VEST:

**MAJORITY: REQUIRES NOTICE AND ASSENT
OF ANY INTENDED BENEFICIARY FOR RIGHT
TO ENFORCE THE BENEFIT IF VESTED**

OR IF HE BRINGS SUIT ON THE CONTRACT

**OR IF HE MATERIALLY CHANGES POSITION IN
JUSTIFIABLE RELIANCE.**

MINORITY: LOOK TO DETRIMENTAL RELIANCE
• MAY BRING A LAWSUIT

STEP INSIDE SHOES: SAME RIGHTS AND DEFENSES AS ORIGINAL PARTIES

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**4. ASSIGNMENT & DELEGATION:
ASSIGNMENT:**

DO PLAYERS IN VEGAS EARN DOLLARS?

**DEFINE: A TRANSFER OF AN EXISTING RIGHT
WHERE THE ASSIGNEE RECEIVES A
PERFORMANCE DUE TO THE ASSIGNOR
UNDER A CONTRACT**

PRIVITY: NO PRIVACY REQUIRED

**IS RIGHT ASSIGNABLE? TOO PERSONAL IN
NATURE GENERALLY YES**

**UNLESS: PROHIBITED BY CONTRACT
PROHIBITED BY LAW**

**VALID PRESENT ASSIGNMENT: MUST BE A
TRANSFER OF AN EXISTING CONTRACTUAL
RIGHT TO THE ASSIGNEE**

**EFFECT OF ASSIGNMENT? ASSIGNEE HAS THE
SAME RIGHTS AS THE ASSIGNOR**

DEFENSES: SAME RIGHTS AND DEFENSES AS ORIGINAL PARTIES

***NOTE: SUCCESSIVE ASSIGNMENTS ARISE WHEN THE ASSIGNOR ASSIGNS THE SAME RIGHT TO MULTIPLE ASSIGNEES AND ARE GOVERNED BY EITHER THE:**

- NEW YORK RULE : THE FIRST IN TIME PREVAILS – ONCE RIGHT WAS ASSIGNED THE ASSIGNOR HAD NOTHING TO ASSIGN TO ANOTHER**

• ENGLISH RULE: THE FIRST ASSIGNOR TO GIVE NOTICE PREVAILS IF HE PAID VALUE AND HAD NO NOTICE OF PRIOR ASSIGNMENTS

• MASSACHUSETTS RULE : IF THE PRIOR ASSIGNMENT IS REVOCABLE IT IS REVOKED BY A SUBSEQUENT ASSIGNMENT UNLESS IT WAS TAKEN IN GOOD FAITH AND FOR VALUE PLUS HAS A TANGIBLE TOKEN OF THE CLAIM;

OR COLLECTS THE BENEFIT FROM THE OTHER PARTY TO THE AGREEMENT;

OR OBTAINS A JUDGMENT FROM THAT PARTY; OR THERE IS A NOVATION.

DELEGATION: DIANE

**DEFINE: TRANSFER OF AN OBLIGATION TO
PERFORM A DUTY UNDER THE CONTRACT**

IS DUTY DELEGABLE?

- **TOO PERSONAL IN NATURE**
- **PROHIBITED BY CONTRACT**
- **PROHIBITED BY LAW**
- **ASSUMPTION?**

**PROMISE TO PERFORM THE OBLIGATION
UNDER THE CONTRACT**

NOVATION: AGREEMENT BY ALL THAT A 3RD PARTY SUBSTITUTED IN PLACE OF ONE OF THE ORIGINAL PARTIES

**EFFECT OF DELEGATION? DELEGOR'S
OBLIGATION NOT EXCUSED BUT DELEGEE
ACQUIRES PRIMARY RESPONSIBILITY TO
PERFORM**

**DELEGEE ALSO ACQUIRES SAME RIGHTS AND
DEFENSES AS THE DELEGOR**

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5. BREACH*

**BREACH: MAJOR: UNJUST FAILURE TO PERFORM
WHICH GOES TO THE ESSENCE OF THE CONTRACT**

OR

**MINOR: UNJUST FAILURE TO PERFORM BUT
PARTY GOT SUBSTANTIALLY WHAT HE
BARGAINED FOR**

- **ANTICIPATORY REPUDIATION:
REPUDIATION OF THE CONTRACT WHILE IN
EXECUTORY STAGES**

- **EXPRESS: EXPRESSLY STATED OR BY A
SAMPLE**

- **DISCLAIMERS: ARE NOT A DEFENSE**

***IF UCC WARRANTIES EXIST:**

**IMPLIED: MERCHANTABILITY AND FITNESS
FOR A PARTICULAR PURPOSE**

DEFENSES: ACT AS DISCLAIMERS

**6. REMEDIES:
DICK RECITES RIP ROARING STORIES**

• DAMAGES:

**GENERAL: EXPECTATION UNDER THE TERMS
OF THE CONTRACT**

- **SPECIAL:**

**FORESEEABLE AT THE FORMATION STAGE OF
THE CONTRACT AND NOT TOO SPECULATIVE**

- **LIQUIDATED:**

**DAMAGES BASED ON ANTICIPATED HARM,
CANNOT BE A PENALTY**

(E.G. DISPROPORTIONATE AMOUNT)

- **RELIANCE:**

**IF GENERAL DAMAGES CANNOT BE
RECOVERED, NON-BREACHING PARTY GETS
RELIANCE DAMAGES (HIS COSTS)**

**• RESCISSION:
TENDER BACK PAYMENT AND GIVE NOTICE**

• GROUNDS TO RESCIND:

• MISTAKE

• FRAUD/MISREPRESENTATION

• AMBIGUITY

- **RESTITUTION FOR UNJUST ENRICHMENT:
TO PREVENT UNJUST ENRICHMENT**

- **REFORMATION:**

LOOK FOR MISTAKE: COURTS REFORM THE CONTRACT TO REFLECT THE PARTIES' INTENT

SPECIFIC PERFORMANCE

(COGNAC IS FOR MAJOR DRINKERS)

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CREATE THE CONTRACT



- **INADEQUACY OF THE LEGAL REMEDY:**
- **MUTUALITY OF SUITS:**
- **ADVERSE PARTIES ENTITLED TO THE SAME RELIEF**
- **LAND IS UNIQUE**
- **DAMAGES ARE TOO SPECULATIVE**

- **F EASIBILITY:**

**THE ENFORCEABILITY OF THE COURT TO
ENFORCE THE DEGREE**

- **MUTUALITY OF REMEDY:**

**COMMON LAW: SPECIFIC PERFORMANCE
WAS AVAILABLE TO EITHER PARTY**

- **MODERN LAW :**

**MUTUALITY OF REMEDY IS NO LONGER
REQUIRED**

**COURTS NOW LOOK TO MUTUALITY OF
PERFORMANCE**

**E.G., IF INJURED PARTY CAN'T PERFORM
THE OTHER WON'T BE REQUIRED TO**

D DEFENSES: BLU

BFP: PURCHASE FOR VALUE WITHOUT NOTICE

LACHES:

**UNREASONABLE DELAY THAT PREJUDICES
DEFENDANT**

UNCLEAN HANDS: PARI DELICTO

