
Table of Contents

STEP-BY-STEP STUDY GUIDE SERIES	III
INTRODUCTION	V
What Is the Step-by-Step Contracts Study Guide?	v
Introduction to the Contracts Approach	v
Chapter One. Formation.....	1
Formation—Overview Step 1: Did the parties mutually agree to certain basic terms?	1
Mutual Assent—Step 1: Was an offer made?.....	2
Offer—Step 1a: Did the offeror appear to have the requisite intent?	2
Offer—Step 1b: Are there any problems with the content (terms) of the offer?	3
Offer—Step 1c: Communication Requirement	5
Mutual Assent—Step 2: Is the offer still open?	5
Mutual Assent—Step 3: Was the offer accepted?	8
Acceptance—Step 1: Does the person accepting the offer have the capacity to accept?	9
Acceptance—Step 2a: If this is a bilateral contract, is there acceptance by a return promise?	9
Acceptance—Step 2b: If this is a unilateral contract, is the acceptance by performance of the act requested?	9
Acceptance—Step 3: Was the acceptance unequivocal?	10
Formation—Overview Step 2: Was there consideration or some consideration substitute?.....	12
Consideration—Step 1: Was there a bargained-for exchange?	12
Consideration—Step 2: If consideration is lacking, can the promise be enforced through promissory estoppel?	14
Consideration—Step 3: Has there been a benefit conferred which will result in unjust enrichment if not compensated?	14
Formation—Overview Step 3: Are there any valid formation defenses?	15
Formation Defenses—Step 1: Is there a problem with the capacity of either party?	15
Formation Defenses—Step 2: Are there any public policy concerns?.....	16
Formation Defenses—Step 3: Are there problems of fraud, duress or mistake?	16
Formation Defenses—Step 4: Does the contract fall within the Statute of Frauds?	17

Statute of Frauds—Step 1: Does the contract fall within the Statute of Frauds?.....	17
Statute of Frauds—Step 2: Is there a sufficient writing to satisfy the statute?	17
Statute of Frauds—Step 3: Is there an exception or defense that will make the contract enforceable?	18
Test Yourself Questions.....	19
Test Yourself Answers.....	24
Chapter Two. Post-Formation Problems	27
Modification—Step 1: Is the modification valid?	27
Modification—Step 1a: Did the parties mutually agree to modify the agreement?.....	27
Modification—Step 1b: Is consideration necessary to enforce the modified agreement?.....	27
Modification—Step 1c: Are there applicable enforcement defenses?.....	28
Modification—Step 2: Did the parties enter into a valid accord and satisfaction?	29
Test Yourself Questions.....	31
Test Yourself Answers.....	33
Chapter Three. Performance of the Contract.....	35
Performance—Overview Step 1: Are there any express, implied or constructive conditions to performance?.....	36
Conditions—Step 1: If there are conditions, have they been satisfied?	37
Conditions—Step 2: If the condition has not been satisfied, has it been excused?.....	37
Performance—Overview Step 2: Discharge of duty: impossibility, impracticability and frustration of purpose.....	39
Discharge—Step 1: Has performance become impossible?	39
Discharge—Step 2: Has performance become impracticable?.....	40
Discharge—Step 3: Has the main contractual purpose been totally frustrated?.....	41
Discharge—Step 4: Is either side charged with assuming the risk?.....	41
Performance—Overview Step 3: Has there been a breach or failure to perform as expected?.....	42
Breach—Step 1: Is the breach prior to the time B's performance is due (prospective)?.....	43
Breach—Step 2: If B is in present breach, is that breach minor or material?	43
Breach—Step 3: Are there any theories under which the breaching party ("B") can recover?	44
Test Yourself Questions.....	46
Test Yourself Answers.....	48

Chapter Four. Remedies	51
Part One—Damages	51
Damages—Overview Step 1: Is there a liquidated damages provision?	51
Liquidated Damages—Step 1: Are the anticipated damages in the event of a breach uncertain or difficult to prove?	52
Liquidated Damages—Step 2: Do the figures reflect a reasonable estimate made at the time of formation of what losses would likely result should a breach occur?	52
Liquidated Damages—Step 3: If the provision is valid, then damages would be awarded according to those terms. However, if the provision is invalid, then analyze the amount of actual damages the aggrieved party should be awarded.	53
Damages—Overview Step 2: What is the general measure of expectation damages?	53
Expectation Damages—Step 1: What is the standard measure of damages for this type of contract?	53
Expectation Damages—Step 2: Are there any consequential damages that can be recovered?	55
Expectation Damages—Step 3: Can the amount of damages be measured with sufficient certainty?	55
Expectation Damages—Step 4: Is there a duty to mitigate damages?	56
Damages—Overview Step 3: If expectation damages are unobtainable, are reliance damages available?	56
Part Two—Restitution	57
Restitution—Step 1: Does Restitution Apply?	57
Restitution—Step 2: If restitution applies, how should recovery be measured?	58
Part Three—Specific Performance	59
Specific Performance—Step 1: Did the plaintiff establish the breach of a definite and enforceable contract?	59
Specific Performance—Step 2: Did the plaintiff establish that the legal remedy was inadequate?	59
Specific Performance—Step 3: Did the plaintiff establish specific performance is feasible?	60
Specific Performance—Step 4: Did the plaintiff establish that there was mutuality of remedy?	60
Specific Performance—Step 5: Do any equitable defenses prevent awarding specific performance?	60
Part Four—Reformation	61
Test Yourself Questions	63
Test Yourself Answers	66
 Chapter Five. Third Party Contracts	 69
Third Party—Overview Step 1: Is there a third party promisor and is that promise enforceable?	69

Third Party—Overview Step 2: Is there a third party guarantor, which raises a statute of frauds analysis?	70
Third Party—Overview Step 3: Is there a third party beneficiary contract?	70
Third Party Beneficiaries—Step 1: What type of beneficiary is involved? ...	71
Third Party Beneficiaries—Step 2: Have the original parties tried to modify or rescind the original contract terms, and, if so have the third party beneficiary’s rights vested?	72
Third Party Beneficiaries—Step 3: What are the rights and liabilities of the parties?	72
Third Party—Overview Step 4: Is there a purported assignment of contractual rights?	73
Assignments—Step 1: Did the assignor have a present intent to transfer the right assigned?	74
Assignments—Step 2: Is the assignment valid?	74
Assignments—Step 3: Has the assignor attempted to revoke the assignment?	75
Assignments—Step 4: What are the rights and liabilities of the parties?	76
Third Party—Overview Step 5: Is there a purported delegation of contractual duties?	77
Delegation—Step 1: Did the delegator have a present intent to transfer the duty delegated?	77
Delegation—Step 2: Is the delegation valid?	78
Delegation—Step 3: Has the delegatee assumed the obligation of performance?	78
Delegation—Step 4: What are the rights and liabilities of the parties?	78
Delegation—Step 5: Has the delegation produced a novation?	79
Test Yourself Questions	80
Test Yourself Answers	83
Appendix A. Selected Contracts Essay Questions and Sample Answers.....	85
Question 1	85
Question 2	86
Question 3	87
Question 4	88
Question 5	89
Question 6	90
Question 7	91
Question 8	92
Question 9	93
Question 10	94
Question 11	95
Question 12	96
Sample Answer 1	97
Sample Answer 2	101
Sample Answer 3	104

Sample Answer 4.....	107
Sample Answer 5.....	110
Sample Answer 6.....	113
Sample Answer 7.....	115
Sample Answer 8.....	118
Sample Answer 9.....	120
Sample Answer 10.....	123
Sample Answer 11.....	125
Sample Answer 12.....	127
Appendix B. Glossary of Selected Contracts Terms.....	131