
Table of Contents

Acknowledgments	v
Table of Cases	xxxiii
Table of Statutes	xlvii
Table of Restatements	liii
Table of Uniform Commercial Code.....	lxi
Introduction to Contract Law.....	lxvii
CHAPTER 1: What Is a Contract?	1
I. Overview	1
II. Foundational Rules	2
Restatement (2d) of Contracts § 1. Contract Defined	2
Restatement (2d) of Contracts § 2. Promise; Promisor; Promisee . . .	3
UCC § 1–201. Definitions	4
UCC § 1–201. Definitions	4
III. Scope: Determining Whether Article 2 Applies	5
UCC § 1–103. . . . Applicability of Supplemental Principles of Law.....	6
A. Definitions of “Sale” and “Goods”	7
UCC § 2–102. Scope . . .	7
UCC § 2–106. Definitions: “Contract,” “Agreement,” . . . “Sale” . . .	7
UCC § 2–105. Definitions: . . . “Goods” . . .	7
1. Applying the Definition of “Sale”	9
2. Applying the Definition of “Goods”	11
Questions to Consider While Reading the Cases	12
<i>LOHMAN v. WAGNER</i>	12

Questions to Consider While Reading the Case.....	19
<i>ADVENT SYSTEMS LIMITED v. UNISYS CORP.</i>	19
Questions to Consider After Reading the Case	24
Problem 1.1: Does UCC Article 2 Apply?.....	25
Problem 1.2: Proposed 2022 Amendments to Codify Predominant Factor Test	25
IV. Determining the Enforceability of a Promise	27
Restatement (2d) § 17. Requirement of a Bargain.....	27
PART I: FORMATION.....	31
CHAPTER 2: Mutual Assent.....	33
I. Overview	33
II. Foundational Rules Regarding Mutual Assent in Contract Formation.....	35
A. Contract Formation	36
Restatement (2d) § 17. Requirement of a Bargain	36
Restatement (2d) § 18. Manifestation of Mutual Assent.....	37
Restatement (2d) § 22. Mode of Assent: Offer and Acceptance	37
Restatement (2d) § 24. Offer Defined.....	37
Restatement (2d) § 50. Acceptance of Offers Defined	38
Restatement (2d) § 35. The Offeree’s Power of Acceptance	39
Restatement (2d) § 36. Methods of Termination of the Power of Acceptance	39
Restatement (2d) § 38. Rejection	40
Restatement (2d) § 39. Counteroffers	41
Problem 2.1: Apply Restatement (2d) §§ 24, 50, 38 & 39.....	42
B. Manifesting Mutual Assent.....	42
Questions to Consider While Reading the Cases on Objective Manifestation of Assent.....	44
<i>LUCY v. ZEHMER</i>	44
<i>WILSON v. HUUUGE, Inc.</i>	53
Problem 2.2: Determining Offer & Acceptance from Particular Facts	59

III. Distinguishing Offers from Other Communications	60
A. Willingness to Enter Bargain.....	61
1. Definite Commitment.....	62
Questions to Consider While Reading the Case.....	62
<i>ANDERSON v. DOUGLAS & LOMASON COMPANY</i>	62
Questions to Consider After Reading the Case.....	70
2. Certain Terms.....	71
Restatement (2d) § 33. Certainty.....	71
Questions to Consider While Reading the Case.....	74
<i>ACADEMY CHICAGO PUBLISHERS v. CHEEVER</i>	74
Problem 2.3: Fix Missing Terms in an Academy Publishing Contract.....	78
B. Offer or Mere Negotiation?.....	80
Questions to Consider While Reading the Case.....	81
<i>LEONARD v. PEPSICO</i>	82
Questions to Consider While Reading the Case.....	97
<i>SATERIALE v. R.J. REYNOLDS TOBACCO COMPANY</i>	97
Problem 2.4: Is a Solicitation to Collectors an Offer?.....	105
C. Agreements to Agree.....	107
Restatement (2d) § 27. Existence of Contract Where Written Memorial Is Contemplated.....	110
Questions to Consider While Reading the Case.....	110
<i>QUAKE CONSTRUCTION, INC. v. AMERICAN AIRLINES, INC.</i>	111
IV. Summary of Offer	123
V. Acceptance	124
A. Overview.....	125
B. Foundational Rules: Defining Acceptance.....	125
1. The Elements of Acceptance.....	125
Restatement (2d) § 50. Acceptance of Offer Defined.....	126
2. Manifestation of Assent.....	126
<i>FELDMAN v. GOOGLE, INC.</i>	127
Questions to Consider After Reading the Case.....	136

Problem 2.5: Designing On-Line Forms	136
Restatement (2d) § 30. Form of Acceptance Invited.....	137
Restatement (2d) § 32. Invitation of Promise or Performance	138
Questions to Consider While Reading the Case.....	138
<i>HOUSTON DAIRY, INC. v. JOHN HANCOCK MUTUAL LIFE INSURANCE</i> <i>COMPANY</i>	139
3. Exception: Assent by Silence or Failure to Act	143
Restatement (2d) § 69. Acceptance by Silence Or Exercise of Dominion.....	143
39 U.S.C.A. § 3009. Mailing of Unordered Merchandise.....	145
<i>ROGER'S BACKHOE SERVICE, INC. v. NICHOLS</i>	146
Question to Consider After Reading the Case.....	150
4. Terminating the Power of Acceptance	150
Restatement (2d) § 35. The Offeree's Power of Acceptance	151
Restatement (2d) § 42. Revocation by Communication From Offeror Received by Offeree	154
Restatement (2d) § 43. Indirect Communication of Revocation.....	154
Questions to Consider While Reading the Case.....	155
<i>NORMILE v. MILLER</i>	155
Problem 2.6: Revocation	162
5. Irrevocable Offers	162
UCC § 2-205. Firm Offers.....	164
Restatement (2d) § 45. Option Contract Created by Part Performance or Tender	165
Questions to Consider While Reading the Case.....	166
<i>COOK v. COLDWELL BANKER REALTY CO.</i>	166
C. Time of Acceptance: The Mailbox Rule	170
Restatement (2d) § 63. Time When Acceptance Takes Effect	171
Restatement (2d) § 66. Acceptance Must Be Properly Dispatched	171
UETA § 15. Time and Place of Sending and Receipt	172
Questions to Consider While Reading the Case.....	174
<i>NOWLIN v. NATIONSTAR MORTGAGE, LLC</i>	174
Questions to Consider After Reading the Case	177
Problem 2.7: Applying the Mailbox Rule/UETA § 15	178

D. Different Terms in Offer and Acceptance: The Mirror Image Rule and the Battle of the Forms.....	179
1. Common Law Mirror Image Rule.....	179
<i>ARDENTE v. HORAN</i>	180
Questions to Consider While Reading the Case.....	183
<i>PRINCESS CRUISES, INC. v. NORFOLK SHIPBUILDING & DRYDOCK CORP.</i>	184
Questions to Consider After Reading the Common Law Mirror Image Rule Cases	188
2. UCC Contract Formation and Battle of the Forms.....	189
a. Contract Formation for the Sale of Goods: UCC §§ 2–204 & 2–206.....	190
UCC § 2–204. Formation in General.....	190
Questions to Consider While Reading the Case.....	190
<i>JANNUSCH v. NAFFZIGER</i>	191
UCC § 2–206. Offer and Acceptance in Formation of Contract	195
b. UCC Article 2 Battle of Forms § 2–207	196
i. The Text of UCC § 2–207	196
UCC § 2–207. Additional Terms in Acceptance or Confirmation	197
ii. First Issue: Did the Parties Form a Contract?	198
UCC § 2–207. Additional Terms in Acceptance or Confirmation	199
iii. Second Issue: What Are the Contract’s Terms?	200
UCC § 2–207(2). Battle of the Forms Re: Contract Terms	201
iv. Applying the Battle of the Forms in Case Law	203
Questions to Consider While Reading the Case.....	204
<i>EGAN MACHINERY CO. v. MOBIL CHEMICAL COMPANY</i>	204
Problem 2.8: Battle of the Forms.....	208
 CHAPTER 3: Consideration and Contract Modification	 211
I. Overview	211
II. Foundational Rules Regarding Consideration	212
Restatement (2d) § 71. Requirement of Exchange	212

Questions to Consider While Reading the Case	215
<i>HAMER v. SIDWAY</i>	215
Questions to Consider While Reading the Case	220
<i>CARLISLE v. T & R EXCAVATING, INC.</i>	220
Questions to Consider After Reading the Case	228
Restatement (2d) § 79. Adequacy of Consideration; Mutuality of Obligation	228
Questions to Consider While Reading the Case	229
<i>PENNSY SUPPLY, INC. v. AMERICAN ASH RECYCLING CORP.</i>	230
Questions to Consider After Reading the Case	237
Problem 3.1: Applying the Consideration Requirement	238
III. Situations that Fall Short of Consideration	240
A. Illusory Promises.....	240
Questions to Consider While Reading the Case.....	241
<i>DAVIS v. JOSEPH J. MAGNOLIA, INC.</i>	241
Questions to Consider After Reading the Case	246
Questions to Consider While Reading the Case.....	247
<i>WOOD v. LUCY, LADY DUFF-GORDON</i>	247
Questions to Consider After Reading the Case	249
B. Mutuality of Obligation	250
Questions to Consider While Reading the Case.....	250
<i>DOUGHTY v. IDAHO FROZEN FOODS CORP.</i>	250
Questions to Consider After Reading the Case	253
Drafting Exercise 3.2: The Opening Sections of a Contract	254
C. The Pre-Existing Duty Rule	256
Questions to Consider While Reading the Case.....	257
<i>WHITE v. VILLAGE OF HOMEWOOD</i>	258
Question to Consider After Reading the Case.....	260
IV. Contract Modification	260
Questions to Consider While Reading the Case	261
<i>ALASKA PACKERS' ASS'N v. DOMENICO et al.</i>	261
Questions to Consider After Reading the Case	266
The Fishy History of Alaska Packers	266

Restatement (2d) § 89. Modification of Executory Contract	268
Questions to Consider While Reading the Case	268
<i>ANGEL v. MURRAY</i>	268
Questions to Consider After Reading the Case	273
Questions to Consider While Reading the Case	273
<i>3637 GREEN ROAD CO., LTD. v. SPECIALIZED COMPONENT SALES CO., INC.</i>	273
Questions to Consider After Reading the Case	282
A. UCC Contract Modification.....	282
UCC § 2–209. Modification, Rescission and Waiver.....	283
CHAPTER 4: Equitable Claims for Promissory Estoppel and Unjust Enrichment	285
I. Overview	285
II. Foundational Rules: Promissory Estoppel	287
A. Foundational Rule.....	288
Restatement (2d) § 90. Promise Reasonably Inducing Action or Forbearance.....	288
B. Gratuitous Promises	291
Questions to Consider While Reading the Case.....	292
<i>HARVEY v. DOW</i>	292
Questions to Consider After Reading the Case	298
<i>HAYES v. PLANTATIONS STEEL COMPANY</i>	299
Questions to Consider After Reading the Case	305
<i>KATZ v. DARE, INC.</i>	305
Questions to Consider After Reading the Case	310
Problem 4.1: Apply Promissory Estoppel Doctrine	310
C. Promissory Estoppel and Irrevocable Offers.....	311
Questions to Consider While Reading the Cases	312
<i>JAMES BAIRD CO. v. GIMBEL BROS., INC.</i>	313
<i>DRENNAN v. STAR PAVING CO.</i>	316
Questions to Consider After Reading the Cases.....	322
Restatement (2d) § 87. Option Contract	323

D. Pre-Contractual Reliance.....	323
Questions to Consider While Reading the Cases.....	323
<i>HOFFMAN v. RED OWL STORES, INC.</i>	324
<i>KENNETH J. PRENGER v. CYRIL BAUMHOER</i>	334
Questions to Consider After Reading the Cases.....	339
III. Unjust Enrichment.....	339
A. Foundational Rules.....	340
Restatement (3d) of Restitution § 1.....	341
Restatement (2d) Contracts § 86. Promise for a Benefit Received.....	342
B. Applying Unjust Enrichment Rules.....	343
Questions to Consider While Reading the Cases.....	344
<i>WEBB v. MCGOWIN</i>	344
<i>HARRINGTON v. TAYLOR</i>	349
Questions and Notes to Consider After Reading <i>Webb v. McGowin &</i> <i>Harrington v. Taylor</i>	350
Questions to Consider While Reading the Case.....	351
<i>COMMERCE PARTNERSHIP 8098 LIMITED PARTNERSHIP v. EQUITY</i> <i>CONTRACTING COMPANY</i>	352
Questions to Consider After Reading the Case.....	358
Question to Consider While Reading the Case.....	359
<i>GRIFFITH BLACKTOP, INC. v. RICHARD DILLON</i>	359
Questions to Consider After Reading the Case.....	363
CHAPTER 5: Written vs. Oral Contracts.....	365
I. Overview.....	365
II. Common Law Statute of Frauds.....	366
Restatement (2d) § 110. Classes of Contracts Covered.....	367
A. Agreements Within the Statute.....	370
1. The Land Contract Provision.....	370
Questions to Consider While Reading the Case.....	370
<i>DEPUGH v. MEAD CORP.</i>	371
Questions to Consider After Reading the Case.....	377

2.	The One-Year Provision	377
	Questions to Consider While Reading the Case.....	378
	<i>BROWNING v. POIRIER</i>	378
	Questions to Consider After Reading the Case	382
	Problem 5.1: Application of the One-Year Provision	382
B.	A Writing That Satisfies the Statute	383
1.	The Writing Requirement.....	383
	Restatement (2d) § 131. General Requisites of a Memorandum	383
	Questions to Consider While Reading the Case.....	384
	<i>STERLING v. TAYLOR</i>	384
	Questions to Consider After Reading the Case	395
	Restatement (2d) § 132. Several Writings	396
2.	Signature Requirement.....	396
	Restatement (2d) § 134. Signature	396
	Questions to Consider While Reading the Case.....	397
	<i>DURHAM v. HARBIN</i>	397
	Questions to Consider After Reading the Case	400
C.	Exceptions	400
1.	Reliance	400
	Questions to Consider While Reading the Case.....	401
	<i>ALASKA DEMOCRATIC PARTY v. RICE</i>	401
	Questions to Consider After Reading the Case	405
2.	Admission.....	405
	Questions to Consider While Reading the Case.....	405
	<i>GIBSON v. ARNOLD</i>	405
	Questions to Consider After Reading the Case	410
III.	UCC Statute of Frauds	410
	UCC § 2–201. Formal Requirements; Statute of Frauds	411
A.	UCC Writing Requirement	412
	Problem 5.2: Scope of the UCC Statute of Frauds	413
	Questions to Consider While Reading the Case.....	414
	<i>LOHMAN v. WAGNER</i>	415

Questions to Consider After Reading the Case	418
B. UCC Signature Requirement	418
UCC § 1–201(b). General Definitions	419
Drafting Exercise 5.3: Signature Blocks.....	419
C. UCC Exceptions	420
1. Specially Manufactured Goods and Part Performance.....	421
UCC § 2–201(3). Subsection on Exceptions.....	421
Questions to Consider Before Reading the Case.....	422
<i>BUFFALO v. HART</i>	422
2. Admission.....	428
3. Confirming Merchant Memorandum.....	429
UCC § 2–201(2). Subsection on Confirming Merchant Memorandum Exception	429
Questions to Consider While Reading the Case.....	430
<i>ST. ANSGAR MILLS, INC. v. STREIT</i>	430
Questions to Consider After Reading the Case	436
IV. The Parol Evidence Rule.....	437
A. UCC Parol Evidence Rule	439
UCC § 2–202. Final Written Expression: Parol or Extrinsic Evidence	440
UCC § 1–303. Course of Performance, Course of Dealing, and Usage of Trade.....	441
Questions to Consider While Reading the Case.....	443
<i>MIDDLETOWN CONCRETE PRODUCTS, INC. v. BLACK CLAWSON CO.</i>	443
Questions to Consider After Reading the Case	454
Questions to Consider While Reading the Case.....	454
<i>CARTER BARON DRILLING v. BADGER OIL CORP.</i>	455
Questions to Consider After Reading the Case	462
B. Common Law Parol Evidence Rule.....	463
Restatement (2d) § 209(1). Integrated Agreements	463
Restatement (2d) § 210. Completely and Partially Integrated Agreements.....	464
Restatement (2d) § 216(1). Consistent Additional Terms.....	465
Restatement (2d) § 216(2). Consistent Additional Terms	465

Questions to Consider While Reading the Case.....	466
<i>MATTHEWS v. DREW CHEMICAL CORP.</i>	467
Questions to Consider After Reading the Case	471
Problem 5.4: Applying the Parol Evidence Rule.....	472
C. No Oral Modification (NOM) Clauses	472
CHAPTER 6: Defenses to Enforcement	475
I. Overview	475
II. Lack of Capacity	477
Restatement (2d) § 12. Capacity to Contract.....	478
A. Minority	479
Restatement (2d) § 14. Infants	479
<i>WEBSTER STREET PARTNERSHIP, LTD. v. SHERIDAN</i>	480
Questions to Consider After Reading the Case	486
B. Mental Disability	487
Restatement (2d) § 15. Mental Illness or Defect	487
Question to Consider While Reading the Case	488
<i>SPARROW v. DEMONICO</i>	488
Questions to Consider After Reading the Case	497
C. Intoxication	497
Restatement (2d) § 16. Intoxicated Persons.....	498
<i>LA BARBERA v. WYNN LAS VEGAS, LLC</i>	498
Questions to Consider After Reading the Case	502
III. Problems in the Bargaining Process	503
A. Mistake.....	503
1. What Constitutes a Mistake	504
Restatement (2d) § 151. Mistake Defined	504
2. Mutual Versus Unilateral Mistake	504
Restatement (2d) § 152. When Mistake of Both Parties Makes a Contract Voidable	505
Restatement (2d) § 153. When Mistake of One Party Makes a Contract Voidable	505

3.	Bearing the Risk of the Mistake	506
	Restatement (2d) § 154. When a Party Bears the Risk of a Mistake	506
	Questions to Consider While Reading the Case.....	507
	<i>LENAWEE COUNTY BOARD OF HEALTH v. MESSERLY</i>	507
	Questions to Consider After Reading the Case	515
	Problem 6.1: Applying Mistake Doctrine	516
B.	Improper Means for Obtaining Assent.....	517
1.	Misrepresentation	517
	Restatement (2d) § 159. Misrepresentation Defined	518
	Restatement (2d) § 164. When a Misrepresentation Makes a Contract	
	Voidable	518
	Restatement (2d) § 162. When a Misrepresentation Is Fraudulent or	
	Material	519
	Questions to Consider While Reading the Case.....	520
	<i>VOKES v. ARTHUR MURRAY, INC.</i>	520
	Questions to Consider After Reading the Case	526
2.	Concealment and Nondisclosure.....	526
	Restatement (2d) § 160. When Action Is Equivalent to an Assertion	
	(Concealment)	527
	Restatement (2d) § 161. When Non-Disclosure Is Equivalent to an	
	Assertion	527
	Questions to Consider While Reading the Case.....	529
	<i>L & N GROVE, INC. v. CHAPMAN</i>	530
	Questions to Consider After Reading the Case	535
	Questions to Consider While Reading the Case.....	536
	<i>OBDE v. SCHLEMEYER</i>	537
	Questions to Consider After Reading the Case	541
	Problem 6.2: Applying the Misrepresentation Doctrine	542
3.	Duress.....	543
	Restatement (2d) § 174. When Duress by Physical Compulsion Prevents	
	Formation of a Contract	543
	Restatement (2d) § 175. When Duress by Threat Makes a Contract	
	Voidable	544
	Questions to Consider While Reading the Case.....	545

<i>EVERBANK v. MARINI</i>	545
Questions to Consider After Reading the Case	557
Questions to Consider While Reading the Case.....	558
<i>CABOT CORP. v. AVX CORP.</i>	559
Questions to Consider After Reading the Case	567
4. Undue Influence	567
Restatement (2d) § 177. When Undue Influence Makes a Contract	
Voidable	568
Questions to Consider While Reading the Case.....	568
<i>RUSSO v. MILLER</i>	568
Questions to Consider After Reading the Case	574
IV. Violation of Public Policy and Unconscionability	574
A. Violation of Public Policy.....	575
Restatement (2d) § 178. When a Term Is Unenforceable on Grounds of Public	
Policy	578
Restatement (2d) § 195. Term Exempting from Liability for Harm Caused	
Intentionally, Recklessly or Negligently	579
Questions to Consider While Reading the Case.....	580
<i>BERLANGIERI v. RUNNING ELK CORP.</i>	581
Questions to Consider After Reading the Case	595
Problem 6.3: Drafting Exercise	595
B. Unconscionability.....	596
UCC § 2–302. Unconscionable Contract or Clause	596
Restatement (2d) § 208. Unconscionable Contract or Term	597
<i>WILLIAMS v. WALKER-THOMAS FURNITURE CO.</i>	598
Questions to Consider After Reading the Case	603
Questions to Consider While Reading the Case.....	604
<i>STATE EX REL. KING v. B & B INV. GROUP</i>	605
Questions to Consider After Reading the Case	622
V. Changed or Unknown Circumstances	622
A. Impracticability	623
Restatement (2d) § 261. Discharge by Supervening Impracticability	623

Questions to Consider While Reading the Case.....	624
<i>LANNUCCILLO v. MATERIAL SAND AND STONE CORP.</i>	624
Questions to Consider After Reading the Case	630
Restatement (2d) § 266. Existing Impracticability or Frustration	630
Questions to Consider While Reading the Case.....	631
<i>WORLD OF BOXING LLC v. KING</i>	631
Questions to Consider After Reading the Case	636
B. Frustration of Purpose.....	637
Restatement (2d) § 265. Discharge by Supervening Frustration.....	637
Restatement (2d) § 266. Existing Impracticability or Frustration.	638
Questions to Consider While Reading the Case.....	638
<i>UMNV 205-207 NEWBURY v. CAFFÉ NERO AMERICAS</i>	639
Questions to Consider After Reading the Case	644
Problem 6.4: Applying Changed Circumstances Doctrines.....	645
PART II: PERFORMANCE AND BREACH	649
CHAPTER 7: Determining a Contract’s Terms	651
I. Overview	651
II. Ambiguity	652
A. Identifying Ambiguity	653
Questions to Consider While Reading the Case.....	655
<i>WARD v. INTERMOUNTAIN FARMERS ASS’N</i>	656
Questions to Consider After Reading the Case	663
Problem 7.1: Drafting Exercise.....	666
B. Ambiguity’s Effect on Assent.....	666
Questions to Consider While Reading the Case.....	666
<i>OSWALD v. ALLEN</i>	667
Questions to Consider After Reading the Case	672
Restatement (2d) § 20. Effect of Misunderstanding	674
Comment b to Restatement (2d) § 20	674

C.	Whose Meaning Prevails	675
1.	Weight of the Evidence	676
	Questions to Consider While Reading the Case.....	676
	<i>FRIGALIMENT IMPORTING CO., LTD. v. B.N.S. INTERNATIONAL</i>	
	<i>SALES CORP.</i>	677
	Questions to Consider After Reading the Case	683
	Problem 7.2: Ambiguity in a Life Insurance Policy	684
	Problem 7.3: Drafting Exercise; Draft Definitions	685
2.	Construing Against the Drafter.....	686
	Restatement (2d) of Contracts § 206	686
	Questions to Consider While Reading the Case.....	687
	<i>JOYNER v. ADAMS</i>	687
	Questions to Consider After Reading the Case	692
3.	Information Asymmetry.....	692
	Restatement (2d) § 201(2). Whose Meaning Prevails	693
	Questions to Consider While Reading the Case.....	694
	<i>JOYNER v. ADAMS</i>	694
	Questions to Consider After Reading the Case	697
III.	Incomplete or Indefinite Contracts and Implied Terms	699
A.	In General: Big vs. Little Gaps for Courts to Fill	699
	Restatement (2d) § 204. Supplying an Omitted Essential Term	700
	Questions to Consider While Reading the Case.....	700
	<i>SUN PRINTING AND PUBLISHING ASS'N v. REMINGTON PAPER AND</i>	
	<i>POWER COMPANY, INC.</i>	701
	Questions to Consider After Reading the Case	707
	Questions to Consider While Reading the Case.....	708
	<i>DENBURY ONSHORE, LLC v. PRECISION WELDING, INC.</i>	708
	Questions to Consider After Reading the Case	718
B.	Indefinite Terms.....	718
	Questions to Consider While Reading the Case.....	720
	<i>VOHS v. DONOVAN</i>	720
	Questions to Consider After Reading the Case	726

C.	Implied Duty of Good Faith.....	726
	Restatement (2d) § 205. Duty of Good Faith And Fair Dealing.....	726
	UCC § 1–304. Obligation of Good Faith.....	727
	UCC § 1–201. General Definitions.....	728
	Questions to Consider While Reading the Case.....	728
	<i>MARKET STREET ASSOCIATES LIMITED PARTNERSHIP v. FREY</i>	729
	Questions to Consider After Reading the Case	739
D.	UCC “Gap Fillers”.....	740
CHAPTER 8: Warranties and Conditions.....		745
I.	Overview	745
II.	Warranties	746
A.	Express Warranties.....	747
	UCC § 2–313. Express Warranties by Affirmation, Promise, Description, Sample	747
	Questions to Consider While Reading the Case.....	750
	<i>CBS INC. v. ZIFF-DAVIS PUBLISHING CO. et al.</i>	750
	Questions to Consider After Reading the Case	759
	Drafting Exercise 8.1: Representations & Warranties.....	759
B.	Implied Warranties.....	760
	UCC § 2–312. Warranty of Title.	761
	UCC § 2–314. Implied Warranty: Merchantability; Usage of Trade.....	761
	UCC § 2–315. Implied Warranty: Fitness for a Particular Purpose.....	762
	Questions to Consider While Reading the Case.....	762
	<i>BULLINGTON v. PALANGIO</i>	763
	Questions to Consider After Reading the Case	765
	Questions to Consider While Reading the Case.....	766
	<i>BAYLINER MARINE CORP. v. CROW</i>	766
	Questions to Consider After Reading the Case	772
C.	Excluding Warranties.....	773
	UCC § 2–316. Exclusion or Modification of Warranties	774
	Questions to Consider While Reading the Case.....	775

<i>AMERICAN AERIAL SERVICES, INC. v. TEREX USA, LLC</i>	776
Questions to Consider After Reading the Case	781
Problem 8.2: Oral Warranty Excluded from Written Contract	782
III. Conditions	782
Restatement of Contracts (2d) § 224. Condition Defined	783
A. Express Conditions.....	783
1. Distinguishing an Express Condition from a Promise	784
Restatement of Contracts (2d) § 225(3). Effects of the Non-Occurrence of a Condition	784
Questions to Consider While Reading the Case.....	786
<i>MORRISON v. BARE</i>	786
Questions to Consider After Reading the Case	793
Problem 8.3: Drafting Exercise	794
2. Excusing the Failure of an Express Condition.....	794
Questions to Consider While Reading the Cases	795
<i>J. N. A. REALTY CORP. v. CROSS BAY CHELSEA, INC.</i>	795
<i>UTAH COAL AND LUMBER RESTAURANT, INC. v. OUTDOOR ENDEAVORS UNLIMITED</i>	801
Questions to Consider After Reading the Cases.....	807
Problem 8.4: Express Conditions	807
Problem 8.5: Best Efforts and Express Conditions	808
B. Implied Conditions.....	808
Questions to Consider While Reading the Case.....	811
<i>PISANI CONSTRUCTION, INC. v. KRUEGER</i>	811
CHAPTER 9: Breach, Non-Performance, and Cure	817
I. Overview	817
II. Common Law Rules Regarding Breach	818
A. Material Breach vs. Substantial Performance.....	818
Restatement of Contracts (2d) § 241. Circumstances Significant in Determining Whether a Failure Is Material.....	820
Questions to Consider While Reading the Case.....	823

<i>JACOB & YOUNGS, INC. v. KENT</i>	824
Questions to Consider After Reading the Case	830
Problem 9.1: Material Breach vs. Substantial Performance	834
Questions to Consider While Reading the Case.....	835
<i>ROBERTS CONTRACTING COMPANY, INC. v. VALENTINE-WOOTEN ROAD PUBLIC FACILITY BOARD</i>	835
Questions to Consider After Reading the Case	842
B. Partial vs. Total Breach	843
1. Attempt to Cure by Assurance or Performance	843
Questions to Consider While Reading the Case.....	844
<i>SMARGON v. GRAND LODGE PARTNERS, LLC</i>	844
Question to Consider After Reading the Case.....	859
Restatement (2d) § 242. Circumstances Significant in Determining When Remaining Duties are Discharged.....	859
2. Repudiation	861
Restatement (2d) § 243. Effect of a Breach by Non-Performance as Giving Rise to a Claim for Damages for Total Breach	861
Restatement (2d) § 250. When a Statement or an Act Is a Repudiation.....	862
Restatement (2d) § 253. Effect of a Repudiation as a Breach and on Other Party's Duties.....	862
Questions to Consider While Reading the Case.....	863
<i>WHOLESALE SAND & GRAVEL, INC. v. JAMES DECKER</i>	864
Questions to Consider After Reading the Case	866
Problem 9.2: Determining Whether Repudiation Occurred	866
III. Breach Under the Uniform Commercial Code	867
A. Perfect Tender Rule: UCC § 2-601.....	868
B. UCC Sections Regarding the Perfect Tender Rule	870
UCC § 2-601. Buyer's Rights on Improper Delivery.....	871
UCC § 2-602. Manner and Effect of Rightful Rejection	871
UCC § 2-606. What Constitutes Acceptance of Goods.....	872
UCC § 2-508. Cure by Seller of Improper Tender or Delivery; Replacement.....	872
UCC § 2-607. Effect of Acceptance; Notice of Breach; Burden of Establishing Breach After Acceptance; Notice of Claim or Litigation to Person Answerable Over.....	873

UCC § 2–608. Revocation of Acceptance in Whole or in Part.....	873
C. Illustrating Article 2’s Perfect Tender Rule.....	874
Questions to Consider While Reading the Cases	874
<i>B.P. DEVELOPMENT AND MANAGEMENT CORP. v. P. LAFER</i> <i>ENTERPRISES, INC.</i>	875
<i>RAMIREZ v. AUTOSPORT</i>	877
Questions to Consider After Reading the Cases.....	884
PART III: REMEDIES AND THIRD PARTY INTERESTS.....	887
CHAPTER 10: Remedies.....	889
I. Overview	889
II. Expectation Damages	890
A. Common Law Measure of Damages	890
Restatement (2d) § 347. Measure of Damages in General.....	891
Problem 10.1: Expectation Damages.....	891
Questions to Consider While Reading the Case.....	893
<i>HAWKINS v. MCGEE</i>	893
Questions to Consider After Reading the Case	897
Questions to Consider While Reading the Case.....	899
<i>LYON v. BELOSKY CONSTRUCTION, INC.</i>	899
Questions to Consider While Reading the Case.....	901
<i>SCHNEBERGER v. APACHE CORP.</i>	902
Questions to Consider After Reading the Cases.....	910
B. UCC Article 2 Measure of Damages.....	911
UCC § 1–305. Remedies to be Liberally Administered	911
1. Seller’s Damages	912
UCC § 2–703. Seller’s Remedies in General	912
UCC § 2–706. Seller’s Resale Including Contract for Resale.....	913
UCC § 2–708. Seller’s Damages for Non-acceptance or Repudiation.....	915
UCC § 2–709. Action for the Price	915
Problem 10.2: Seller’s Damages Under Article 2.....	916

Questions to Consider While Reading the Case.....	917
<i>PEACE RIVER SEED CO-OPERATIVE, LTD. v. PROSEEDS MARKETING, INC.</i>	917
Questions to Consider After Reading the Case	929
2. Buyer’s Damages.....	930
UCC § 2–711. Buyer’s Remedies in General; Buyer’s Security Interest in Rejected Goods	930
UCC § 2–712. “Cover”; Buyer’s Procurement of Substitute Goods.....	931
UCC § 2–713. Buyer’s Damages for Non-delivery or Repudiation.....	932
UCC § 2–715. Buyer’s Incidental and Consequential Damages	932
Problem 10.3: Buyer’s Damages Under Article 2.....	933
Questions to Consider While Reading the Case.....	934
<i>KGM HARVESTING COMPANY v. FRESH NETWORK</i>	934
Questions to Consider After Reading the Case	944
III. Limits on Contract Damages	945
A. Mitigation	946
Questions to Consider While Reading the Case.....	946
<i>IN RE WORLDCOM, INC.</i>	947
Questions to Consider After Reading the Case	960
B. Foreseeability	961
Questions to Consider While Reading the Case.....	961
<i>HADLEY v. BAXENDALE</i>	962
Questions to Consider After Reading the Case	966
Restatement (2d) § 351. Unforeseeability and Related Limitations on Damages	966
Questions to Consider While Reading the Case.....	967
<i>SUNNYLAND FARMS, INC. v. CENTRAL NEW MEXICO ELECTRIC COOPERATIVE, INC.</i>	967
Questions to Consider After Reading the Case	974
C. Certainty	975
Restatement (2d) § 352. Uncertainty as a Limitation on Damages.....	975
Questions to Consider While Reading the Case.....	976
<i>V.A.L. FLOORS, INC. v. WESTMINSTER COMMUNITIES, INC.</i>	976

Questions to Consider After Reading the Case	984
D. Punitive Damages	984
IV. Liquidated Damages	986
Restatement (2d) § 356. Liquidated Damages and Penalties	986
Questions to Consider While Reading the Case	987
<i>DOBSON BAY CLUB II DD, LLC v. LA SONRISA DE SIENA, LLC</i>	987
Questions to Consider After Reading the Case	1001
Problem 10.4: Liquidated Damages for Breach of Non-Disclosure Agreement	1002
V. Exceptional Remedies	1003
A. Specific Performance	1004
Restatement (2d) § 360. Factors Affecting Adequacy of Damages.....	1005
Questions to Consider While Reading the Case.....	1005
<i>OLIVER v. BALL</i>	1005
Questions to Consider After Reading the Case	1012
Questions to Consider While Reading the Case.....	1013
<i>HOUSEMAN v. DARE</i>	1013
Questions to Consider After Reading the Case	1018
B. Alternative Measures of Money Damages.....	1019
1. Reliance	1019
Restatement (2d) § 349. Damages Based on Reliance Interest.....	1020
Questions to Consider While Reading the Case.....	1021
<i>HOLLYWOOD FANTASY CORP. v. ZSA ZSA GABOR</i>	1021
Questions to Consider After Reading the Case	1027
2. Restitution	1028
Questions to Consider While Reading the Case.....	1028
<i>LANCELLOTTI v. THOMAS</i>	1029
Questions to Consider After Reading the Case	1034
Problem 10.5: Hole Digging Damages	1035
 CHAPTER 11: Assignment, Delegation, and Third-Party Beneficiaries	 1039
I. Overview	1039

II. Assignment of Rights and Delegation of Duties	1040
A. Assignment Is Different from Delegation.....	1040
B. Assignment as a General Rule.....	1043
Restatement (2d) § 317. Assignment of a Right.....	1044
Restatement (2d) § 318. Delegation of Performance of Duty.....	1045
Problem 11.1: Diagram Assignment in <i>Hamer v. Sidway</i>	1046
Questions to Consider While Reading the Case.....	1047
<i>TRAFFIC CONTROL SERVICES, INC. v. UNITED RENTALS NORTHWEST, INC.</i>	1047
Questions to Consider After Reading the Case	1053
Questions to Consider While Reading the Case.....	1053
<i>HERZOG v. IRACE</i>	1054
Questions to Consider After Reading the Case	1057
C. Delegation	1058
III. Third-Party Beneficiaries	1059
A. Distinguishing Between Intended and Incidental Beneficiaries.....	1059
Restatement (2d) § 302. Intended and Incidental Beneficiaries.....	1060
Restatement (2d) § 304. Creation of Duty to Beneficiary.....	1060
B. Case Illustrations	1061
Questions to Consider While Reading the Cases	1061
<i>DOE I v. WAL-MART STORES, INC.</i>	1062
<i>FLORES v. BACA</i>	1066
Questions to Consider After Reading the Cases.....	1073
Problem 11.2: Third-Party Beneficiaries.....	1074
Appendix.....	1077
Index.....	1083