

**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**

**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 **O**ffer

**L**apse of Time

**D**eath or Destruction

**R**ejection

**R**evocation

**A**cceptance

**C**onsideration

**Defenses: (FARM MUSIC D)**

**F**raud

**A**mbiguity

Parole Evidence **R**ule

**M**istake

**M**odification

**U**nconscionable

**Statute of Frauds: (RED GYM)**

**R**ealty & Exceptions

**E**mployment & Exceptions

**D**ebt of Another & Exceptions

Sale of **G**oods & Exceptions

One **Y**ear & Exceptions

**M**arriage & Exception

**I**llegality

**C**apacity

**D**uress

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.**)

**I**mpacticability

**S**ubstantial Performance

**W**aiver

**I**mpossibility

**M**odification

**F**rustration Of Purpose

**O**ccurrence Of Condition Subsequent

**R**escission

**D**ivisibility

**A**nticipatory Repudiation

**V**oluntary Disablement

**E**stoppel

**W**rongful Prevention

3. **Third Party Beneficiary:** (**Do Prisoners In Cells Visit Silently?**)

**D**efine

**P**rivity

**I**ntent To Benefit?

**C**lassify

Did The Right **V**est?

Step Inside **S**hoes

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)**

# **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

**Death 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

**Revocation:** **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

**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 with the Offer cancel each other – only agreed on terms apply plus gap fillers court may add.

Knockout

Drop out

2 Minority Views:  
**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 (includes forbearance to sue and new promise to pay past existing debt)

Illusory:

Output: Whatever Seller produces, Buyer must buy - Look to good faith  
**or**

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

## 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**

**Realty:** 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

**Employment:** Contract for employment over one year

### **Exceptions:**

**Sufficient Memo:** Contains essential terms signed by party to be charged

**Estoppel:** Based on reliance by conduct

**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



## 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)

**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?**

**Define:** Contract entered into for the benefit of a 3<sup>rd</sup> party (who may or may not know of benefit)

**Privity:** No privity 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 bring 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

#### 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 privity 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 3<sup>rd</sup> party substituted in place of one of the original parties

**Effect Of Delegation?** Delegor's obligation not excused but donee acquires primary responsibility to perform  
Donee also acquires same rights and defenses as same rights as the delegor

## 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)

## 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

**M**utuality 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

### Defenses: **BLU**

BFP: Purchase for value without notice

Laches: Unreasonable delay that prejudices Defendant

Unclean Hands: Pari delicto