

Torts – One Sheet

<p>Negligence Duty – Standard Duty of Care Duty – Special Duty Trespasser Attractive Nuisance Licensee Invitee Breach Res Ipsa Loquitur Causation Actual Cause Proximate Cause Intervening Cause Dependent Forces Independent Forces Supervening Cause Damages General Damages Special Damages Contributory Negligence Last Clear Chance Comparative Negligence Pure Comparative Partial Comparative Assumption of the Risk Negligence Per Se (ICI) Violation of a Statute Negligent Infliction of Emotional Distress (NIED) Bystander Rule Joint and Several Liability Contribution Indemnity Vicarious Liability Respondeat Superior Independent Contractors Joint Enterprise Permissive Use (ex. Vehicle) Assault Battery Conversion False Imprisonment Intentional Infliction of Emotional Distress (IIED) Trespass to Chattel Trespass to Land Transferred Intent</p>	<p>Products Liability Proper Plaintiff Proper Defendant Strict Liability in Tort Implied Warranty UCC 2-314 – normal use UCC 2-315 – particular purpose Negligence Duty Breach – the Defect Res Ipsa Loquitur Causation (Actual and Proximate) Damages (General and Special – possible Punitive) Contributory Negligence (Last Clear Chance) Comparative Negligence (Pure and Partial) Assumption of the Risk Misuse of the Product Alteration of the Product Defective Design / Manufacturing / Warning Nuisance – Private / Public Defamation (PUD): Published – Understood - Damages Consent Truth Privileges Absolute – Government, Spouses Conditional – Good Faith, Lost if Bad Faith Slander Per Se (CLUB) Injurious Falsehood Interference with Prospective Economic Advantage Damages: General / Special / Nominal / Punitive Strict Liability Animals Abnormally Dangerous / Ultra Hazardous Activities Defense of Self Defense of Others Defense of Property Necessity Thin Skull Plaintiff Guardian Ad Litem Immunity Firefighters Rule Emergency Doctrine – Non Professionals Good Samaritan Law – Professionals Misrepresentation (Intentional and Negligent) Balance Pre Existing Duty</p>
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Negligence: Defendant's breach of a duty of care, owed to the plaintiff, which is the actual and proximate cause of the plaintiff's damages.

Duty – Standard Duty of Care: Conduct which is measured against a reasonable person under the same or similar circumstances.

Duty – Special Duty: Imposed by statute or case law, which may be in addition to, or in place of, the standard duty of care.

Trespasser: Land occupier has a duty to exercise reasonable care to warn a known trespasser of artificial conditions that involve a risk of death or serious bodily harm.

Attractive Nuisance: Land occupier has a duty to exercise reasonable care to warn or protect children from artificial conditions that involve a risk of death or serious bodily harm.

Licensee: (Social Guests) Land occupier has a duty to exercise reasonable care to warn the licensee of known dangerous conditions.

Invitee: In addition to Licensee requirements, land occupier must inspect for - and repair - dangerous conditions.

Modernly, courts apply negligence principles as opposed to the titles of trespasser, licensee or invitee.

Breach: Failure to exercise a duty of care, owed to the plaintiff. [Consider **Res Ipsa Loquitur**, definition on page 4.]

Causation: Plaintiff must show that the defendant is the actual and proximate cause of the plaintiff's damages.

Actual Cause: But for the actions of the defendant, the harm to the plaintiff would not have occurred. Thus, the defendant is the actual cause of the plaintiff's damages.

Proximate Cause: It is foreseeable that the actions of the defendant would cause harm to the plaintiff. Thus, the defendant is the proximate cause of the plaintiff's damages.

Intervening Cause: An event that comes between the initial event in a sequence, and the end result, altering the natural course of events which might have connected a wrongful act to an injury.

Dependent Intervening Forces: The **foreseeable** responses to the defendant's actions.

Independent Intervening Forces: Forces which act upon the defendant's negligence, but are neither a response, nor reaction thereto (**unforeseeable results**).

Supervening Cause: An unforeseeable intervening cause which may relieve the defendant of any liability.

Damages: Plaintiff **must** show actual damages to person or property.

General Damages: Awarded for pain and suffering stemming from plaintiff's damages.

Special Damages: Awarded for all economic expenses stemming from plaintiff's damages. (medical, lost wages)

Contributory Negligence: Plaintiff's contribution to their own injury is a complete bar to recovery.

Last Clear Chance: If the defendant had the last clear chance to avoid the plaintiff's injury, plaintiff **may** recover damages.

Comparative Negligence: Apportions the negligence of the plaintiff and defendant accordingly.

Pure Comparative: Plaintiff may recover a percentage of their damages, even though their negligence exceeds that of the defendant.

Partial Comparative: Plaintiff may be barred from recovery if their negligence equals or exceeds that of the defendant.

Assumption of the Risk: A complete bar to recovery for a plaintiff who placed themselves at risk with knowledge and acceptance thereof.

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Negligence Per Se: (ICI) Statutes which create a specific duty of care so that violation of the statute may establish both a **duty and a breach** in negligence actions.

Violation of a Statute: Intent by the legislature to protect a **Class** of plaintiff from a specific type of **Injury**.

Negligent Infliction of Emotional Distress (NIED): Courts will allow a plaintiff to recover damages for emotional distress if the defendant's conduct results in **physical contact**, or if the plaintiff was in the "zone of danger."

Bystander Rule: In NIED, a person **may** recover for emotional distress at seeing another person in the zone of danger injured.

Joint and Several Liability: Liability which may be apportioned among two or more parties.

Contribution: Joint tortfeasors are required to pay their apportioned share of damages.

Indemnity: A defendant who is sued and forced to pay a judgment is entitled to indemnification against the joint tortfeasor who was primarily responsible for causing the injury.

Vicarious Liability: One who is liable for the actions of another, based on the relationship between the parties.

Respondeat Superior: Employer is vicariously liable for the tortious acts of their employees within the course and scope of employment, and for failure to exercise reasonable care in hiring, training and supervising their employees.

Independent Contractor: Generally, employers are not held responsible **unless** the independent contractor is involved in an inherently dangerous activity.

Joint Enterprise: An undertaking by two or more persons, as a result of which, one participant's negligence may be imputed to the other(s).

Permissive Use: Granting authority for the use of, as an example, a vehicle, the owner of the vehicle may be held liable for the tortious acts of the borrowing user.

Assault: Intentional placing of another in apprehension of an imminent harmful or offensive touching without privilege or consent.

Battery: Intentional harmful or offensive touching of another without privilege or consent.

Conversion: Intentional exercise of dominion and control over the personal property of another without privilege or consent.

False Imprisonment: Intentional unlawful physical, or psychological, confinement of another without privilege or consent.

Intentional Infliction of Emotional Distress (IIED): Intentional and outrageous conduct by the defendant, which causes severe emotional distress in the plaintiff.

Trespass to Chattels: Intentional interference with the personal property of another without privilege or consent.

Trespass to Land: Intentional entry upon the land in possession of another without privilege or consent.

Transferred Intent: Liability transfers from intended plaintiff to the actual plaintiff of an unlawful act actually committed.

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Products Liability: *Manufacturers are liable to all foreseeable plaintiff's which result from a defect in the design, manufacturing, or warning of products they place in the stream of commerce.*

A plaintiff may seek recovery under the theories of Strict Liability in Tort, Implied Warranty, or Negligence.

*In Products Liability suits, there must be a **Proper Plaintiff** and a **Proper Defendant**, headnote, or identify, who they are and move on.*

Strict Liability in Tort: *Any party who causes a product to enter the stream of commerce, or passes it along, may be held strictly liable (liability imposed without regard to fault).*

Implied Warranty: *The assurances implied in law, that the product is generally fit for normal use (**UCC 2-314**), and where a seller knows of a purchaser's intended use, fitness for a particular purpose (**UCC 2-315**).*

Negligence: *Defendant's breach of a duty of care, owed to the plaintiff, which is the actual and proximate cause of the plaintiff's damages.*

Duty: *A manufacturer has a duty to inspect for, and correct, defects in design, manufacturing, and warning.*

Breach: *Failure of the product to meet the expectations of a reasonable consumer, demonstrated by a defect in design, manufacturing, or warning.*

Res Ipsa Loquitur: *The Thing Speaks for Itself. [Consider this under **Negligence** on page 2, as well.]*

*When the plaintiff's harm would not have occurred but for someone's negligence, the source of the negligence is within the scope of the duty of care owed by the defendant, and the plaintiff, or a third party, had not caused the plaintiff's harm - **breach** may be inferred.*

Causation: *Plaintiff must show that the defendant is the actual and proximate cause of the plaintiff's damages.*

Actual Cause: *But for the product's defect, the plaintiff's harm would not have occurred. Thus, the defendant is the actual cause of plaintiff's damages.*

Proximate Cause: *It is foreseeable that the product's defect would cause the plaintiff's harm. Thus, the defendant is the proximate cause of plaintiff's damages. [Consider **Intervening Cause**, etc., from page 2.]*

Damages: *Plaintiff **must** show actual damages to person or property.*

General Damages: *Awarded for pain and suffering stemming from plaintiff's damages.*

Special Damages: *Awarded for all economic expenses stemming from plaintiff's damages. (medical, lost wages)*

Contributory Negligence: *Plaintiff's contribution to their own injury is a complete bar to recovery.*

Last Clear Chance: *If the defendant had the last clear chance to avoid the plaintiff's injury, plaintiff **may** recover damages.*

Comparative Negligence: *Apportions the negligence of the plaintiff and defendant accordingly.*

Pure Comparative: *Plaintiff may recover a percentage of their damages, even though their negligence exceeds that of the defendant.*

Partial Comparative: *Plaintiff may be barred from recovery if their negligence equals, or exceeds that of the defendant.*

Assumption of the Risk: *A complete bar to recovery for a plaintiff who placed themselves at risk, with knowledge and acceptance thereof.*

Misuse of Product (item): *A party who uses a product, not as intended, shall not have a cause of action in product liability.*

Alteration of Product: *The alteration of a product after sale removes liability of the manufacturer.*

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Design Defect: *The product was designed in such a way that it presented an undue risk of harm in normal use.*

Manufacturing Defect: *The product does not conform to the manufacturers own standards.*

Warning Defect: *Inadequate instructions, warnings, labels, etc.*

Nuisance – Private: *Defendant's non trespassory interference with plaintiff's enjoyment or use of their land.*

Nuisance – Public: *Defendant's interference with the public's enjoyment or use of public property.*

*Recovery for a private party is based on a showing of **special harm, unique** from that of the general public.*

Defamation: (PUD) *A false defamatory assertion of fact, which is **published** to a third person, **understood** as defamatory by that third person, and causes **damage** to the plaintiff's reputation.*

Consent: *Consent is a complete defense. (defamation).*

Truth: *Truth is almost a complete defense, based on the scenario in the fact pattern.*

Privilege:

Absolute: *Complete defense for official government scenarios within the course and scope of duties - and discussions between spouses.*

Conditional: *Complete defense under good faith, privilege can be lost by bad faith or abuse.*

Slander Per Se: (CLUB) *Spoken defamation regarding **crimes** of moral turpitude, **loathsome** disease, imputing **unchastity** of a woman, or **business**.*

Injurious Falsehood: *False and injurious statement that discredits or detracts from the reputation of another's **character, product, or business**.*

Interference with Prospective Economic Advantage: *Intentional, damaging intrusion on another's potential **business** relationship, **opportunity, or employment**.*

General Damages: *Awarded for pain and suffering stemming from plaintiff's damages.*

Special Damages: *Awarded for all economic expenses stemming from plaintiff's damages.*

Nominal Damages: *A declaration of the plaintiff's rights, and a determination that the defendant has wrongfully infringed upon them.*

Punitive Damages: *A sum of money, in addition to compensatory damages, to punish the defendant for willful, wanton, or malicious conduct, and to deter such conduct.*

Strict Liability: *Liability imposed without regard to fault.*

Animals: *Dangerous animals, the injury must be from the dangerous propensity of the animal. Zoos and common carriers are exempt.*

Abnormally Dangerous / Ultra Hazardous Activities: *Foreseeable plaintiff as they apply to the propensity of the abnormally dangerous / ultra hazardous activity.*

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Defense of Self: Reasonable force necessary to protect ones self, up to and including the use of deadly force.

Defense of Others: Reasonable force necessary to protect others, with whom the defendant has a special relationship, up to and including the use of deadly force. Modernly, to protect anyone.

Defense of Property: Reasonable non deadly force necessary to protect ones chattel.

Necessity: A person is privileged to enter the land, or interfere with the chattels of another, if it is necessary to protect a person from death or serious bodily harm.

Thin Skull Plaintiff: A defendant is liable for a plaintiff's unforeseeable and uncommon reactions to the defendant's act.

Guardian Ad Litem: Usually an attorney, appointed by the court, to appear on behalf of an incompetent party, or a minor.

Immunity: Traditionally, government units were not subject to suit unless they had already consented to such.

Firefighter's Rule: Police and firefighters are barred from pursuing recovery against those rescued, as injury during a rescue is one of the occupational hazards of the job.

Emergency Doctrine – Non Professionals: Exempts a person from the ordinary standard of care, if that person acted instinctively to meet a sudden and urgent need for aid.

Good Samaritan Law – Professionals: Exempts from liability, a person, such as an off duty physician, who voluntarily renders aid to another in imminent danger, but negligently causes harm while rendering such aid.

Misrepresentation: Making a false representation of fact without regard to truth, intended to induce a party to detrimentally rely upon it.

Balance: The measure of competing interests, and appropriate offset to achieve balance.

Preexisting Duty: A duty which one is already legally required to perform.

Contracts – One Sheet

<p>Formation UCC v. Common Law Merchant Merchant Firm Offer (UCC 2-205) Preliminary Negotiations Mail Box Rule Advertisement Offer (QTIPS) Counter Offer Termination / Revocation Indirect Revocation Lapse Rejection Acceptance By Conduct Of Non Conforming Goods Perfect Tender Rule Consideration Detrimental Reliance Promissory Estoppel 3rd Party Beneficiary (PICV) Privity – <u>Lawrence v. Fox</u> Intent – to Benefit Class – Donee, Creditor, Incidental Vesting – how, when Assignment / Delegation / Personal Services Anticipatory Repudiation Demand for Assurances Breach – Major, Minor <u>Defenses to Formation (SoF – PIAMIUD):</u> Statute of Frauds Sufficient Memo Performance Parol Evidence - Integration Clause Indefiniteness Ambiguity Mistake – Mutual, Unilateral Incapacity Unconscionability Duress Battle of the Forms (UCC 2-207) Limit / Material / Objection (L/M/O) Knock Out / UCC GAP Fillers (KO / GF) Drop Out</p>	<p>Conditions Express Implied Fact Law Precedent Concurrent Frustration of Purpose Impracticability / Impossibility Modification Waiver Novation Rescission General / Expectation Special / Consequential – <u>Hadley v. Baxendale</u> Specific Performance Restitution / Quasi Contract Reliance Damages Avoidable Consequences – Cover Incidental Damages Liquidated Damages Lost Volume Sales Express Warranty Promise / Description / Sample Requirement / Output Contracts Installment Contracts Service Contracts Unilateral Contracts Bilateral Contracts Option Contracts <u>Miscellaneous Tort Issues:</u> Course of Dealings Pre Existing Duty Implied Warranty of Merchantability UCC 2-314 Fitness for normal use. UCC 2-315 Fitness for particular purpose. Voidable Contract Undue Influence Illusory Promise Excuse of Condition / Waiver Substantial Performance Injunction Breach of Warranty Bona Fide Purchaser / Good Faith Purchaser</p>
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Contracts – Definitions, Page 1 of 5

Formation: *A contract consists of an offer, acceptance, and consideration.*

UCC v. Common Law: *Where a contract is for the sale of goods, movable chattel identifiable at the time of contract, the UCC shall govern. Contracts for services are governed by common law.*

Merchant: *One who regularly deals in this type of good, or one who holds themselves out as having special skills or knowledge regarding this type of good (pertaining to the contract).*

Merchant's Firm Offer: *Under 2-205 of the UCC, a signed writing which is not revocable for lack of consideration during the time stated, a reasonable time, but in no event to exceed three months.*

Preliminary Negotiations: *Communications between parties prior to an offer being tendered.*

Mailbox Rule: *An **offer** is effective upon **receipt**. An **acceptance** is effective upon **dispatch**.*

Advertisement: *Unless sufficient to invoke an acceptance, an advertisement is an invitation to deal rather than an offer.*

Offer: *Manifestation of present contractual intent, with certain and definite terms, communicated to the offeree.*

Terms (QTIPS): *Quantity, Time of Performance, Identity of Parties, Price and Subject Matter – The UCC only requires Quantity.*

Counter Offer: *A termination of the power of acceptance of the original offer - and a new offer.*

Termination / Revocation: *An offer is freely revocable by the offeror **unless** it is **accepted** prior to the termination / revocation, the offeree **detrimentally relied** on the offer, or there was an **option** contract.*

Indirect Revocation: *An offer is deemed revoked, despite direct communications between the parties, if the offeree obtains reliable notice that the offeror has changed their mind.*

Lapse: *The expiration of time stated in the offer or, if not stated, a reasonable time thereafter.*

Rejection: *Unequivocal **non** assent to the terms of the offer.*

Acceptance: *The unequivocal assent to the terms of the offer.*

Acceptance by Conduct: *The offeree performs an act which would be considered "acceptance," with the intention of accepting the offer.*

Accepting Non Conforming Goods: *Non conforming goods are an acceptance and a breach, or a counter-offer.*

*If the non conforming goods are **merely shipped**, it is both an **acceptance and a breach**.*

*Where a shipment is accompanied by notice that the goods are merely an **accommodation**, and no contract is formed, it is a **counter offer**.*

Perfect Tender Rule: *Recipient may accept all, some, or none - returning what they do not wish to keep.*

Consideration: *That which is bargained for and given in exchange for a return promise, requiring detriment and benefit.*

Detrimental Reliance: *Reasonable reliance on the representations of another, causing the worsening of one's position.*

Promissory Estoppel: *A promise which induces reasonable reliance, may be enforced to avoid injustice.*

Contracts – Definitions, Page 2 of 5

3rd Party Beneficiary: *A person who is neither the promisor, nor promisee, who benefits from the performance of the contract.*

Privity: *From the fact pattern. No longer vital ~ Lawrence v. Fox*

Intent to Benefit: *From the fact pattern.*

Classification: **Donee** (gift), **Creditor** (debt), **Incidental** (no rights).

Vesting: *From the fact pattern, how and when they vested.*

Assignment: *Authorization for another to **receive the rights** from the contract.*

Delegation: *Authorization for another to **render performance** of a legal duty.*

Personal Services: *Service which is too personal may not be delegated.*

Anticipatory Repudiation: *Express communications repudiating a duty to perform under the terms of the contract.*

Demand for Assurances: *If reasonable grounds for insecurity of performance arise, a party may make a written demand for assurances of performance, suspending their own performance until such assurances are tendered.*

Breach of Contract: *An unjustified failure to perform an absolute duty.*

Major Breach: *Excuses the non breaching party from continued performance.*

Minor Breach: *Continued performance is required, non breaching party may sue for defective performance.*

Defenses to Formation: (SoF – PIAMIUD)

Statute of Frauds: *Certain types of contracts must be evidenced by a writing of sufficient detail to describe the essential terms. (Marriage, Real Estate, Debt of Another, One Year, Goods over \$500). The following take it out of SoF.*

Sufficient Memo: *A writing containing the essential terms of the agreement, signed by the party to be charged.*

Performance: *A party's performance in reliance on opposing party's oral promise, for which a court may hold that the Statute of Frauds does not apply.*

Parol Evidence: *A writing by the parties intended to be a final embodiment of the agreement may not be contradicted.*

Integration Clause:

Total Integration: *A final writing which may not be contradicted.*

Partial Integration: *A writing which may be supplemented by consistent additional terms, but may not be contradicted.*

Indefiniteness: *When terms are so uncertain that a court cannot fill in the missing terms.*

Ambiguity: *Uncertainty of meaning or intention.*

Mistake:

Mutual – *No meeting of the minds.*

Unilateral – *If one party knew, or should have known of the mistake.*

Incapacity: *A contract entered into by a person lacking mental capacity is voidable by them (or their guardian), but not by the other party.*

Unconscionability: *Where a contract, or a term within a contract, is unconscionable, the court may refuse to enforce it.*

Duress: *When plaintiff's consent is induced by physical force, threats of force, or even wrongful acts by the defendant, causing economic loss.*

Contracts – Definitions, Page 3 of 5

Battle of the Forms (Different Terms UCC 2-207): *If both parties are merchants, under the majority view, the additional terms shall become part of the contract unless:*

*The offer expressly **limits** the terms of the offer,
The additional or different terms **materially** alter the offer, or...
The original offeror notifies the offeree that they **object** to the terms within a commercially reasonable time.*

Knock Out Rule: *Minority rule which states that different terms knock each other out of the contract, UCC GAP Fillers prevail.*

UCC Gap Fillers: *The UCC will imply all open terms except quantity.*

Drop Out Rule: *Minority rule which states that different terms **always** drop out of the contract.*

Conditions: *An act or event, the happening of which, makes an absolute duty arise.*

Express Conditions: *Contained in the contract.*

Implied (Constructive) Conditions: *Inferred by the express conditions.*

In Fact: *Conditions such as good faith, cooperation, and work performed in a workmanlike manner, as judged by a reasonable person.*

In Law: *Constructive Conditions (inferred by the express conditions).*

Precedent: *a condition which must occur to create an absolute duty of performance.*

Concurrent: *conditions must be performed simultaneously.*

Frustration of Purpose: *When unforeseeable events undermine the purpose for entering into the contract.*

Impracticability / Impossibility: *When circumstances change to the extent that continued performance becomes extremely impracticable / impossible, continued performance **may** be excused. (Impracticability is subjective, Impossibility is objective).*

Modification: *A change in terms of the original contract requiring mutual assent and new consideration under common law. Under the UCC, only mutual assent and good faith are required.*

Waiver: *A party's voluntary relinquishment of a right.*

Novation: *A new party is substituted into the contract with the agreement of all parties involved, extinguishing the rights and duties of the substituted party.*

Rescission: *Termination of liability and a restoration of the parties to their former positions, extinguishing the contract.*

General / Expectation Damages: *Awarded for loss of expectation under the terms of the contract.*

Special / Consequential Damages: *Above and beyond General / Expectation Damages, which flow from a breach, when there is sufficient reason for the defendant to foresee those damages at the time of contract ~ **Hadley v. Baxendale**.*

Specific Performance: *Equitable remedy compelling a party to perform a contract according to the agreed upon terms. (Unique Subject Matter).*

Reliance Damages: *Costs incurred by the non breaching party in reliance on the contract.*

Restitution Damages / Quasi Contract: *A remedy implied in law to prevent unjust enrichment of a benefit conferred.*

Avoidable Consequence Rule (Mitigation of Damages): *Losses which could have been avoided by the use of reasonable means are not recoverable.*

Cover: *Substitute goods, purchased on the open market, for those promised but not delivered.*

Incidental Damages: *Costs incurred in finding substitute performance, including costs incurred in unsuccessful attempts.*

Liquidated Damages: *A reasonable forecast of damages, provided for in the contract.*

Lost Volume Sales: *A seller may recover their lost profits if they have unlimited inventory and a limited customer base, even if the subject matter has been sold to another customer.*

Contracts – Definitions, Page 4 of 5

Express Warranty: *Under the UCC, an express warranty is created by any of the following:*

*An affirmation of fact or **promise** made by the seller to the buyer relating to the goods,
A **description** of the goods, or,
A **sample** or model...*

which become part of the basis for the bargain.

Requirements / Output Contracts: *Preferred under the UCC, as long as in good faith - but limits liability to reasonable demands of the other party. Good Faith is Consideration.*

Requirements Contract: *There is a good faith effort on the part of the buyer to have requirements.*

Outputs Contract: *There is a good faith obligation on the part of the seller to have output.*

Installment Contract: *Perfect Tender Rule does not apply. If a non conformity in one or more installments **substantially** impairs the value of the entire contract, then the entire contract is regarded as in breach, and the buyer can not only reject the installment(s), but also cancel the entire contract.*

Service Contracts: *Contracts for services fall under the rules of the common law, not the UCC.*

Unilateral Contract: *A contract whereby the offeror is bargaining for performance rather than a return promise.*

Bilateral Contract: *A contract whereby parties bargain for exchange promises of performance.*

Option Contracts: *An option contract is a promise to hold an offer open for a fixed amount of time. Nominal consideration may make an option binding.*

Contracts – Definitions, Page 5 of 5

Miscellaneous Contracts Issues:

Course of Dealings: *Sequence of previous conduct between parties to a particular transaction which establishes a common basis of understanding for interpreting their intentions.*

Pre Existing Duty: *A duty which one is already legally bound to perform.*

Implied Warranty of Merchantability: *Unless the agreement expressly provides otherwise, assurances implied in law, that a product will do no harm in normal use, is generally fit for normal use and where a seller has reason to know of purchasers intended use, fitness for a particular purpose.*

UCC 2-314 – Generally fit for normal use.

UCC 2-315 – Fitness for a particular purpose.

Voidable Contract: *A contract which can be affirmed or rejected at the option of either one of the parties; a contract that is void as to the wrongdoer, but not void as to the wronged party, unless that party elects to treat it as void.*

Undue Influence: *The improper use of power or trust in a way which deprives a person of free will.*

Illusory Promise: *Statements which lack the substance of a promise.*

Excuse of Condition / Waiver: *Conditions are excused by:*

Failure to cooperate

Waiver

Anticipatory Repudiation

Voluntary Disablement

Estoppel

Substantial Performance: *Performance of the primary, necessary terms of the agreement.*

Injunction: *A court order commanding or preventing an action.*

Breach of Warranty: *Breach of an express or implied warranty relating to the title, quality, content or conditions of goods sold.*

There is, in every contract for the sale of goods, a warranty that the seller has good title to the goods.

In addition, a merchant seller impliedly warrants that goods sold are merchantable, including the fitness for their normal use (UCC 2-314) and particular purpose where the seller knows of the buyers intended use (UCC 2-315).

Bona Fide Purchaser (BFP): *A purchaser who has, in good faith, paid valuable consideration for property without notice of prior adverse claims. (Good Faith Purchaser).*

Criminal Law – One Sheet

Vicarious Liability
Accomplice
Accessory

Solicitation
Attempt (SLAP)
Conspiracy
Pinkerton's Rule
Wharton's Rule
Withdrawal / Abandonment

Homicide
Actual Cause
Proximate Cause
Murder (4 Malice)
First Degree Murder (IDP)
Second Degree Murder
Mitigation: Heat of Passion (Provocation / Cool Off)
Voluntary Manslaughter
Involuntary Manslaughter
Misdemeanor Manslaughter

Assault
Battery
Kidnapping
False Imprisonment
Rape

Arson
Burglary (Inner Door)

Larceny (by Innocent Agent)
Larceny by Trick (with the victim's permission)
Embezzlement
False Pretenses
Robbery
Receiving Stolen Property

Merger Rule
Misprision: Concealment of a known felony of another.
Forgery

Misrepresentation
Malicious Mischief
Actus Reus
Mens Rea
Uttering

Insanity (MIMDI)
M'Naghten Rule
Irresistible Impulse
Model Penal Code (MPC)
Diminished Capacity
Infancy

Intoxication
Involuntary
Voluntary: Used to negate specific intent.

Consent
Crime Prevention
Imperfect Defense of Self
Defense of Self
Defense of Others
Defense of Property
Necessity
Mistake
Of Fact
Of Law

Duress

Criminal Law – Definitions, Page 1 of 3

Vicarious Liability: *One who is liable for the actions of another, based on the relationship between the parties.*

Accomplice: *A person who aids, in any way, in the commission, or concealment of a crime (active participation).*

Accessory: *Usually liable as a principal only if the crime is a felony (not generally at the scene).*

Solicitation: *When one entices, encourages, or requests another to do an unlawful act.*

Attempt (SLAP): *A substantial act towards completion of a crime - requiring **specific** intent, **legal** or factual impossibility, and apparent **ability** - beyond mere preparation, toward actual **perpetration** of committing the intended crime.*

Conspiracy: *Agreement between two or more persons to commit an unlawful act, or a lawful act by unlawful means.*

Pinkerton's Rule: *Conspirators are held liable for all offenses committed in furtherance of the conspiracy.*

Wharton's Rule: *For crimes which require a minimum of two parties to commit the offense, there can be no conspiracy if only two parties are involved.*

Withdrawal / Abandonment: *Defendant terminates participation prior to the crime, and their actions had not contributed to the crime – or the defendant notified law enforcement in time to prevent the crime.*

Homicide: *The killing of one human being by another human being.*

Actual Cause: *But for the defendant's acts, the result would not have occurred. Thus, the defendant is the actual cause of the victim's death.*

Proximate Cause: *It is foreseeable that the defendant's acts would have created the result. Thus, the defendant is the proximate cause of the victim's death.*

Murder: *Unlawful homicide with malice aforethought. Malice may be demonstrated by:*

Intent to kill.

Intent to cause serious bodily harm.

Reckless and wanton disregard for the high risk to human life (Depraved Heart).

The Felony Murder Rule, whereby an unintentional death occurs during the commission of an inherently dangerous felony.

First Degree Murder: *Murder committed with specific **intent** to kill, **deliberation** and **premeditation**.*

Second Degree Murder: *Murder which is not murder in the First Degree.*

Mitigation: **NOTE – ANY AND ALL DEFENSES NEED TO BE LOOKED AT FOR MITIGATION!**

Heat of Passion: *Killing must have followed **provocation** before the defendant had the opportunity to **cool off**.*

Provocation: *A reasonable person would have been provoked, and the defendant must have been provoked.*

Cool Off: *A reasonable person would not have been able to cool off, and the defendant must not have cooled off.*

Voluntary Manslaughter: *Intended unlawful homicide without malice aforethought.*

Involuntary Manslaughter: *Unintended killing without malice aforethought (accidental homicide).*

Misdemeanor Manslaughter: *A killing without malice, committed during an unlawful act, not amounting to a felony.*

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Assault: *Intentional placing of another in apprehension of an imminent harmful or offensive touching without privilege or consent.*

Battery: *Intentional harmful or offensive touching of another without privilege or consent.*

Kidnapping: *Intentional moving of a person from one place to another without privilege or consent (any distance counts!).*

False Imprisonment: *Intentional physical or psychological confinement of another without privilege or consent.*

Rape: *Unlawful sexual intercourse committed by a man with a woman not his wife, through force, without consent. Modernly, marital status and gender are often irrelevant.*

Arson: *Malicious burning of the dwelling house of another. Modernly, any structure.*

Burglary: *Breaking and entering into the dwelling house of another in the nighttime with the specific intent to commit a felony therein. Modernly, trespassory entry into any structure with intent to commit any crime, larceny will do.*

Inner Door: *Example: I grant you access to my home, you break into my hallway closet.*

Larceny: *The trespassory taking and carrying away of the personal property of another with the specific intent to permanently deprive.*

By Innocent Agent: *Have an innocent person commit larceny for you. (They would be ignorant as to the deed.)*

Larceny by Trick: *Larceny which is **non trespassory in nature, with the victim's permission**, obtained by deceit.*

Embezzlement: *Fraudulent conversion of rightfully entrusted personal property.*

False Pretenses: *Obtaining title by means of false representation of fact, with the intent to defraud.*

Robbery: *Larceny from the person by means of force or intimidation.*

Receiving Stolen Property: *Acquiring or controlling property known to have been stolen.*

Merger Rule: *Lesser included offenses merge into the greater offense.*

Misprision: *Concealment of a known felony of another.*

Forgery: *The fraudulent making or altering of a writing with intent to defraud or deceive.*

Misrepresentation: *Making a false representation of fact without regard to truth, intended to induce a party to detrimentally rely upon it.*

Malicious Mischief: *Malicious destruction or defacement of another's property.*

Actus Reus: *The physical aspects of the crime.*

Mens Rea: *Defendant's state of mind at the time they commit a crime.*

Uttering: *Offering, as genuine, an instrument known to be false, with the intent to deceive.*

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Insanity: (MIMDI)

M'Naghten Rule: *Defendant does not know the **nature or quality of their act**, or **does not know that the act was wrong** (legal or moral aspects).*

Irresistible Impulse: *Defendant lacks the **ability to control their conduct**.*

Model Penal Code (MPC): *Due to **mental disease or defect in reasoning**, the defendant lacks substantial capacity to conform their conduct to the law or appreciate the wrongfulness of their conduct.*

Diminished Capacity: *An impaired mental condition – short of insanity – which is caused by intoxication, trauma or disease, and which prevents a person from having the mental state necessary to be held liable for a crime.*

Infancy: *Due to age, incapacity to commit a crime (0-6), rebuttable presumption (7-14) or juvenile / adult (over 14).*

Intoxication:

Involuntary: *An affirmative defense to any criminal or negligence charge. (not **just** specific intent).*

Voluntary: *Used to negate **specific intent**.*

Consent: *Because consent was given freely, there was no crime.*

Crime Prevention: *Reasonable use of non deadly force to prevent a crime.*

Imperfect Defense of Self: *The use of force by one who makes an honest but unreasonable mistake that force was necessary to counter an attack.*

Defense of Self: *Reasonable force necessary to protect ones self, up to and including the use of deadly force.*

Defense of Others: *Reasonable force necessary to protect others with whom the defendant has a special relationship, up to and including the use of deadly force. Modernly, to protect anyone.*

Defense of Property: *Reasonable non deadly force necessary to protect ones chattel.*

Necessity: *A person is privileged to enter the land, or interfere with the chattels of another, if it is necessary to protect a person from death or serious bodily harm.*

Mistake:

of Fact: *May be used to mitigate the required mens rea necessary to be held liable for a crime.*

of Law: *No defense under common law, possible defense under the MPC.*

Duress: *Defendant reasonably believed that unless they committed the crime, that they, or some third person would suffer imminent death or serious bodily harm by the perpetrator.*