

10-3-2026 | Lecture 6 - The Battle of the Forms, Contract Terms, and Pre-Contractual Liability

What action can a party take when reasonable grounds for insecurity arise regarding the other party's performance under the UCC?	Demand adequate assurance of due performance and suspend own performance until assurance is received.
What is the 'last shot rule' under common law?	The rule that the final form sent before performance constitutes the operative offer, which is accepted by performance.
Under UCC § 2-606(1)(c), what act by a buyer constitutes acceptance of goods?	Any act inconsistent with the seller's ownership (if wrongful against the seller, only if ratified by the seller).

What is the key functional difference between a 'bright-line rule' and a 'malleable standard' in contract formation?

A bright-line rule applies strict binary criteria, whereas a malleable standard relies on judicial evaluation of reasonableness and facts.

What are the three core categories of arguments against enforcing standard form terms?

Surprise (lack of notice), Oppression (lack of meaningful choice), and Unfairness (unreasonable terms).

In material breach analysis, what does the 'A' in HAIL evaluate?

The amount of benefit already bestowed on the non-breaching party.

Under UCC § 2-606(1)(b), when does failure to reject goods constitute acceptance?

When the buyer fails to make an effective rejection after having had a reasonable opportunity to inspect them.

Under UCC § 2-207(2), when do additional terms automatically become part of a contract between merchants?

When the offer does not limit acceptance to its terms, the terms do not materially alter the deal, and no timely objection is given.

What is the relationship between procedural unconscionability and notice defenses?

Procedural unconscionability addresses unfairness in the bargaining process, directly incorporating arguments like lack of notice and surprise.

What primary statutory purpose is served by applying UCC § 2-207 to contract disputes?

It increases contract enforcement when parties intend to deal, preventing a party from reneging due to changing circumstances.

What do the letters in the 'HAIL' acronym stand for regarding material breach analysis?

Hardship on breacher, Amount of benefit bestowed, Innocence of breacher, Likelihood full performance can be achieved.

Under UCC § 2-204(3), when does a contract for the sale of goods survive despite open terms?

When the parties intended to make a contract and a reasonably certain basis exists for giving an appropriate remedy.

In material breach analysis, what does the 'L' in HAIL evaluate?

The likelihood that full performance can eventually be achieved.

What is 'lack of general notice' in the context of standard form contracts?

The non-drafting party did not know or have reason to know that their conduct would be understood as assent to a contract.

In a sale of goods transaction, when does a seller's invoice sent alongside shipped goods constitute a 'written confirmation'?

When an oral agreement or informal arrangement was previously reached, and the invoice formalizes the transaction details.

When does UCC § 2-207(3) govern contract formation?

When the writings of the parties fail to establish a contract, but conduct by both parties recognizes the existence of a contract.

How are the terms of a contract determined under UCC § 2-207(3)?

The contract consists of the terms on which the parties' writings agree, supplemented by UCC default gap-filler provisions.

What is 'super notice' in contract law?

A requirement by statute or judicial ruling for explicit, prominent assent (e.g., separate initials) for particularly onerous terms.

How does UCC § 2-207 modify the common law mirror image rule?

It allows a definite and seasonable expression of acceptance to form a contract even if it includes additional or different terms.

Under common law, how does a material breach affect the non-breaching party's obligation to perform?

It excuses the non-breaching party's future performance obligations under the contract.

Which formatting choices increase the likelihood that boilerplate terms will be legally enforceable?

Conspicuous formatting such as red print, all-capital letters, large font, or mandatory separate signatures/initials.

What constitutes a 'commercial unit' under UCC § 2-606?

A unit of goods treated in commercial practice as a single whole for purposes of sale, impairment of which damages its value.

What constitutes contract repudiation?

A party's words or actions indicating an intention not to perform, or an unconditional refusal to perform required contractual obligations.

Under UCC § 2-606(2), what is the scope of accepting part of a commercial unit?

Acceptance of any part of a commercial unit constitutes acceptance of that entire commercial unit.

Under common law, how does a non-material breach affect the non-breaching party's duty to perform?

The non-breaching party must still perform, but may recover damages for the partial breach.

Under common law, when does an option contract prevent revocation of an offer?

When supported by consideration given to keep the offer open for a specified period.

What is 'untimely notice' in standard form contract enforcement?

Notice provided after assent, preventing the party from learning specific terms until it is too late to reasonably decline.

What is a preliminary agreement to negotiate in good faith?

A binding commitment where parties agree to pursue definitive contract negotiations expeditiously and in good faith.

What is a UCC § 2-205 'Firm Offer'?

A signed written offer by a merchant to buy or sell goods that gives assurance it will be held open, irrevocable without consideration for up to 3 months.

What is the relationship between substantive unconscionability and unfairness defenses?

Substantive unconscionability focuses on the content of the terms themselves, addressing overly one-sided or unduly burdensome terms.

Under UCC § 2-204(3), what occurs if quantity is omitted in a sale of goods contract?

The contract generally fails for indefiniteness because courts cannot determine a remedy without a specified quantity.

Under UCC § 2-204(2), is precise identification of the exact moment of contract formation required?

No, an agreement sufficient to constitute a contract may be found even if the exact moment of making is undetermined.

Which standard statutory warranty is incorporated as a supplementary term under UCC § 2-207(3) via UCC § 2-314?

The implied warranty of merchantability.

What constitutes a 'merchant' under UCC § 2-104 for the application of UCC § 2-207(2)?

A person who deals in goods of the kind or holds themselves out as having knowledge or skill peculiar to the practices involved.

What outcome occurs under UCC § 2-207(3) when forms are exchanged containing conflicting terms, but performance is completed?

A contract is formed by conduct; agreed terms are retained, and conflicting terms are replaced by UCC statutory gap fillers.

What is the legal status of an offeree's purported acceptance that adds conditions but does not state those conditions are mandatory?

It operates as an acceptance, and the proposed conditions are evaluated under UCC § 2-207(2).

What legal dispute scenario is referred to as the 'Battle of the Forms'?

A situation where both commercial parties agree a binding contract exists, but disagree on whose standard terms apply.

How does Restatement (Second) of Contracts § 59 approach non-matching acceptances?

It retains the mirror image rule by treating acceptances conditional on assent to new terms as counter-offers.

What constitutes 'pre-contractual liability'?

Legal obligations or damages arising from negotiations before a formal contract has been executed (e.g., promissory estoppel, bad faith negotiations).

According to UCC § 2-204(1), how may a contract for the sale of goods be formed?

In any manner sufficient to show agreement, including conduct by both parties recognizing the existence of a contract.

What is the legal effect of an offeree's repudiation of an acceptance?

It acts as a communication stating that the offeree refuses to abide by or be bound by the previously established contract.

What is the legal effect of an offeror's death or mental incapacity prior to acceptance?

It automatically terminates the offeree's power of acceptance.

Under UCC § 2-207 Comment 4, what defines a 'material alteration' of a contract term?

A term that would result in unreasonable surprise or hardship if incorporated without express awareness by the other party.

How does UCC § 2-207 eliminate the common law 'last shot rule'?

By forming contracts on initial agreement terms rather than adopting all terms in the final form delivered during performance.

Why is UCC § 2-207 often described as replacing the 'last shot rule' with a 'first shot rule'?

Because the offeror (sender of the first form) sets the core terms, while the offeree's additional terms are limited in inclusion.

Under the Mailbox Rule, when does an offer become effective?

When it is received by the offeree.

Why does UCC § 2-207 create greater certainty over contract formation than over contract terms?

It prioritizes finding a valid contract despite minor term variations, leaving the specific contested terms to judicial standard interpretation.

What constitutes an 'unreasonable surprise' in standard form contract enforcement?

Inclusion of an unexpected, onerous term that a reasonable consumer would not anticipate in that type of contract.

What is a standard form contract?

A contract where one party pre-drafts a standardized set of terms used repeatedly across multiple transactions.

How does wrongful exercise of ownership over delivered goods affect a buyer's legal rights under UCC § 2-606?

It constitutes acceptance of the goods if the seller ratifies the wrongful act.

Under UCC § 2-207(1), what two types of written communications operate as acceptances?

A definite and seasonable expression of acceptance and a written confirmation sent within a reasonable time.

Under the default Mailbox Rule, when is an acceptance generally effective?

Upon dispatch (when sent by the offeree).

In standard form contract defense, how does the strength of 'no general notice' compare to 'no specific notice'?

No general notice is a strong defense to term inclusion; no specific notice is generally weak on its own.

What three factors support a claim that a standard form contract is 'oppressive'?

It is adhesive, market competitors offer identical terms, and it involves a necessary good or service.

What standard obligation does a contract drafter bear regarding consumer comprehension of terms?

The drafter must make the contractual terms intelligible to a reasonable consumer.

What specific clause in a purported acceptance prevents UCC § 2-207(1) from forming a contract?

A proviso expressly making acceptance conditional on assent to the additional or different terms.

What is the primary rationale for enforcing standard form contracts despite limited negotiation?

They dramatically reduce transaction costs and streamline mass commercial distribution.

What is 'lack of specific notice' regarding standard form terms?

The non-drafting party knew a contract was being formed, but lacked notice of specific terms contained within it.

How does a rejection of an offer differ fundamentally from a repudiation of a contract?

A rejection prevents a contract from forming, whereas a repudiation is a breach of a contract that has already been validly formed.

What defines a contract of adhesion?

A standardized agreement presented to the non-drafting party on a strict 'take-it-or-leave-it' basis with no opportunity to negotiate.

How do statutory provisions protect car rental customers regarding insurance waiver terms?

By mandating specific prominent disclaimers and requiring separate explicit initials or signatures.

Under UCC § 1-205, what is the meaning of a 'seasonable' communication?

A communication taken within the agreed-upon time frame or, if no time is specified, within a reasonable time.

How are additional terms in an acceptance treated under UCC § 2-207(2) when at least one party is a non-merchant?

They are construed as mere proposals for addition to the contract and do not become part of it without express consent.

Under the Mailbox Rule, when does a revocation of an offer become effective?

When the offeree receives or learns of the revocation from the offeror or a reliable source.

Under UCC § 2-207 Comment 5, what is an example of a term that does NOT materially alter a contract?

A clause setting reasonable customary interest rates on overdue invoices or limiting remedies in a standard, customary manner.

In material breach analysis, what does the 'I' in HAIL evaluate?

Whether the breaching party acted innocently or willfully.

In material breach analysis, what does the 'H' in HAIL evaluate?

The degree of hardship imposed on the breaching party if the breach is deemed material.

Under UCC § 2-606(1)(a), how does a buyer accept goods after inspection?

By signifying to the seller that the goods are conforming or that they will be retained despite non-conformity.

What requirement must a response meet to qualify as a 'definite expression of acceptance' under UCC § 2-207(1)?

It must agree with the offer on key bargained-for ('dickered') terms, such as subject matter and price.

What requirement must a buyer meet to effectively reject non-conforming goods under UCC § 2-602?

The buyer must reject within a reasonable time after delivery and seasonably notify the seller.

What is an anticipatory breach of contract?

An unequivocal statement or act by a party before performance is due indicating they will not perform.

What qualifies as 'notification of objection' under UCC § 2-207(2)(c)?

An express objection given prior to contract formation or within a reasonable time after notice of additional terms is received.

What rule governs when an offeree dispatches a rejection first, but then changes mind and dispatches an acceptance?

The Mailbox Rule is suspended; whichever communication reaches the offeror first governs.

What is the common law mirror image rule?

The requirement that an acceptance must match the offer exactly with no additions, deletions, or modifications.

How do courts resolve different or conflicting terms under UCC § 2-207?

Conflicting terms cancel each other out (the 'knockout rule') and are replaced by statutory UCC gap fillers.