			Page
P	REFACE	€	V
T	ABLE O	of Cases	XXVII
		CONTRACTS	
		CHAPTER 1. INTRODUCTION	
			0
§	1.1	Scope of this Nutshell—Contract	
		Law and Sales Law	1
§	1.2	Basis for Enforcement of Promises	3
§	1.2.1	Enforcement of Promises Not Made	
		as Part of a Bargain	4
§	1.2.2	Quasi-Contract—Unjust Enrich-	
		ment—Restitution	6
§	1.3	Sale of Goods and the Uniform Com-	
		mercial Code	8
§	1.3.1	Defining Goods	10
§	1.3.2	Merchants: Special Duties; Good	
		Faith	13
§	1.4	Contracts Which Constitute a Bar-	
		gained Exchange	15

# CHAPTER 2. CONTRACTS FORMATION

A.	MUTUAL ASSENT TO A BARGAIN	
	1. OFFER	1
	Manifestation of Assent to Be Bound	1
	Subjective and Objective Intent	1
2.1.2		2
2.1.3	Letters of Intent	2
2.2	Certainty of Terms in the Offer	2
2.2.1	Certainty of Terms Under the U.C.C.	3
2.2.2	Effect on Intent To Be Bound if	
	There is a Failure of External	
	Standards Used to Establish	
	Terms	3
2.3	Advertisements, Mass Mailings, and	
		3
	_	3
2.4.1	Communication in the Intended Manner	3
2.4.2	Assignment of Offers; Who May Accept an Offer	3
2.5	Duration of an Offer	4
	Termination of the Offer by Death or Insanity	4
2,5.2	Termination of the Offer by Death or Destruction of a Person or Thing	4
253		4
4.0.0		4
254		4
	The state of the s	4
	2.1 2.1.1 2.1.2 2.1.3 2.2 2.2.1 2.2.2 2.3 2.4 2.4.1 2.4.2 2.5 2.5.1 2.5.2	2.1 Manifestation of Assent to Be Bound 2.1.1 Subjective and Objective Intent 2.1.2 Agreements That Contemplate a Future Writing 2.1.3 Letters of Intent 2.2 Certainty of Terms in the Offer 2.2.1 Certainty of Terms Under the U.C.C. 2.2.2 Effect on Intent To Be Bound if There is a Failure of External Standards Used to Establish Terms 2.3 Advertisements, Mass Mailings, and Price Quotations 2.4 Receipt of the Offer 2.4.1 Communication in the Intended Manner 2.4.2 Assignment of Offers; Who May Accept an Offer 2.5 Duration of an Offer 2.5.1 Termination of the Offer by Death or Insanity 2.5.2 Termination of a Person or Thing Essential to Performance

			Page
§	2.5.6	Revocation by Indirect Communica- tion of Facts Inconsistent With In-	
		tent to Be Bound	47
8	2.5.7	Time When Revocation Is Effective	48
	2.6	Irrevocability of Offers	49
	2.6.1	Irrevocability by Virtue of Option Contracts	49
8	2.6.2	Irrevocability Due to Reliance on	
Ü		Promise Not to Revoke	50
S	2.6.3	Irrevocability by Statute	51
	2.6.4	Irrevocability of Offers for Unilateral	
		Contracts	52
		2. ACCEPTANCE	55
§	2.7	Offeror's Control Over Manner and	
		Medium of Acceptance	55
Ş	2.8	Medium of Acceptance: Electronic Communications	58
§	2.9	Manner of Acceptance (by Promise or by Conduct): Alternative Approaches	60
§	2.9.1	The Traditional Approach: Bilateral and Unilateral Characterization	62
8	2.9.2	Effect of Traditional Unilateral-Bi-	02
3	2.0.2	lateral Determination Upon Attempted Acceptance	65
§	2.9.3	Modern Approach to Manner of Ac-	
Ü		ceptance	67
§	2.10	Acceptance by Promise or by Perfor-	
		mance; When the Parties Are Bound	68
8	2.10.1	Notice of Acceptance	72
	2.11		
υ		Unilateral Contracts)	74

Page			
	Common Law Requirement that an Acceptance Must Conform to the	2.12	§
75	Terms of the Offer		
76	Acceptances Which Merely Suggest or Propose New Terms	2.12.1	§
	Impact of the U.C.C. Upon Acceptances that Contain Terms Additional or Different From Those	2.12.2	§
78	Found in the Offer	0.10	e
	tance with Additional or Different	2.13	8
87	Terms	0.10.1	e
	Contract Terms if Offeree's "Different" Terms Are Not to be Ana-	2.13.1	Ş
94	lyzed Under 2–207(2)		0
95	The "Knock-Out" Rule		-
101	Effect of Confirming Memoranda Sent After an Informal Contract is Formed	2.14	§
101		2.15	2
103	Application of U.C.C. Section 2–207(3)	4.10	8
	Acceptance by Conduct under U.C.C.	2.16	§
108	Section 2–206		0
111	Impact of U.C.C. Upon Common Law Rules of Contract Formation	2.17	§
11/	Prospective Amendments to U.C.C. Article 2: Focus Upon 2–206 and	2.18	§
114	2–207	0.10	e
115	Time When Communications Are Effective	2.19	8
121	What Constitutes "Receipt" of Com- munications	2.20	§

			Page
8	2.21	Acceptance by Silence	122
	2.22	Acceptance by Exercise of Dominion	
Ü		and Control Over Goods or by Re-	
		ceipt of Benefits or Services	123
8	2.23	Auctions: Finding the Offer and Ac-	
9	4.20	ceptance	125
		coptaire	120
		3. CONSIDERATION	129
		9. CONSIDERALITON	120
8	2.24	Consideration: An Introduction	129
-	2.25	Requirement of a Bargained Ex-	120
2	4.20	change	132
8	2.25.1	Detriment, Benefit and Preexisting	102
2	4.4U.1	Legal Duty	136
2	2.26	Compromise of Disputed Claims	142
	2.27	Partial Payment in Exchange for a	144
3	4.41	Discharge (Payment or Promise to	
		Pay a Lesser Sum In Discharge of	111
2	0.00	a Claim to a Greater Sum)	144
8	2.28	Condition to Gift and Bargained Ex-	140
e	0.00	change Compared	149
8	2.29	Alternative Promises; Multiple	150
0	0.00	Promises	152
-	2.30	Illusory Promises	154
3	2.30.1	Promises Subject to a Condition	1 50
0	2 22 2	That Cannot Occur	158
8	2.30.2	Voidable and Unenforceable Prom-	4 20
0		ises	159
8	2.31	Implied Promise to Use Best Efforts	
		or to Act in Good Faith	160
§	2.32	Requirements Contracts and Output	
		Contracts	162
§	2.33	To Whom and From Whom Consider-	
		ation Must Be Given	164
§	2.34	Adequacy of Consideration	165

			Page
§	2.35	Non-bargained Detriment	166
§	2.36	Nominal Consideration: Sham Bar-	105
0		gains	167
	2.37	False Recitals of Consideration	172
Ş	2.38	Option Contracts: Nominal Consider- ation or False Recitals of Consider-	
		ation	173
§	2.39	Subsequent Promises to Perform Un-	
		enforceable Contracts	176
§	2.39.1	A New Promise to Pay a Debt En-	
		forceable but for the Statute of	
		Limitations	177
8	2.39.2		178
	2.39.3		110
2	4.00.0	Statute of Frauds	170
2	0.00.4		179
8	2.39.4	8	150
0	0.40	Were Voidable	179
8	2.40	Promise to Pay for Benefits Previ-	
		ously Conferred	180
		B. PROMISSORY ESTOPPEL	
0	0.11		
3	2.41	Enforcement of Promises That In-	
_		duce Reliance	181
§	2.42	Reliance as a Basis for Holding Of-	
		fers to be Irrevocable	185
§	2.43	Remedies for Reliance in a Commer-	
		cial Context	187
	CH	APTER 3. STATUTE OF FRAUDS	
		CONTENT A CITIC THAT THE COME I WAS A	_
	A. (	CONTRACTS WITHIN THE STATUTE	<b>Ľ</b>
§	3.1	Statute of Frauds; History	191

			Page
§	3.2	Contracts Within the Statute of Frauds	195
§	3.2.1	A Contract That, by Its Terms, Can-	
		not Be Performed Within One	
		Year	198
§	3.2.2	A Promise to Discharge the Duty of	201
0		Another; Exceptions Thereto	201
Ş	3.2.3	A Contract in Consideration of Mar-	000
c	0.0.4	riage	203
8	3.2.4	A Contract for the Transfer of an	വാ
2	205	Interest in Realty An Oral One–Year Lease	
200	3.2.5	A Contract That Cannot Be Per-	204
8	3.2.6	formed During the Lifetime of the	
		Promisor	205
8	3.2.7	A Contract for the Sale of Goods for	200
2	0.2.1	the Price of \$500 or More	205
	B. S.	ATISFACTION OF THE WRITING RE	1
	<b>D</b> . 02	QUIREMENT	1-
		•	
	3.3	Sufficiency of the Written Memo	
-	3.4	The Signature	209
Ş	3.4.1	Signed Confirmation Sent by One	210
0	0 F	Merchant to Another Merchant	210
8	3.5	Proposed U.C.C. Revisions: the "Rec-	011
		ord"	211
	C.	AVOIDANCE OF THE WRITING RE- QUIREMENT	
8	3.6	Rosis for Assoidance of Writing Po	
3	0.0	Basis for Avoidance of Writing Requirement	212
		dan emem	414

			Page
§	3.6.1	Effect of Part Performance; Sale of Goods	213
§	3.6.2	Effect of Part Performance; Real	
§	3.6.3	Property	214
8	3.6.4	Reliance as a Basis for Avoiding the	215
		Statute of Frauds	215
8	3.7	Judicial Approach to Enforcement of the Statute of Frauds	219
§	3.8	Effectiveness of the Unenforceable Oral Agreement	221
§	3.9	Enforcement of Admitted Oral Contracts Under the U.C.C.	
		PTER 4. CONTRACT INTERPRETATION	
	A. (	GENERAL INTERPRETATION PROB- LEMS	-
§	4.1	Basic Considerations: Subjective and Objective Intent	224
§	4.1.1	Subjective and Objective Intent:	230
§	4.2	Objective Intent: The Search for	
§	4.3	Some Answers	232
§	4.4	tom)	<ul><li>234</li><li>238</li></ul>

		B. PAROL EVIDENCE RULE	
8	4.5	When the Parol Evidence Rule Applies	240
§	4.6	Determining the Question of Integration	249
§	4.7	Merger Clauses	252
§	4.8	Use of Extrinsic Evidence to Aid in the Interpretation of the Contract	252
		Language	<i>400</i>
	C.	IMPLIED TERMS AND TERMS IM- POSED BY LAW	
8	4.9	Terms Found by Implication or Con-	
υ	210	struction	255
§	4.10	Mandatory Terms, Permissive	
e	4 11	Terms, and Default Rules	260
	4.11 4.11.1	Duty of Good Faith and Fair Dealing Bad Faith Torts Distinguished	<ul><li>262</li><li>263</li></ul>
2	4.12	Defining Good Faith and Fair Dealing	265
§	4.13	Impact of the Good Faith and Fair	200
		Dealing Obligations	267
§	4.13.1	Carrying Out the Parties' Intentions	O W 4
		or Imposing Obligations	271
		CHAPTER 5. DEFENSES	
	A.	DEFENSES AFFECTING ASSENT	
§	5.1	Defenses Affecting Assent to Be Bound	273
§	5.2	Capacity to Contract	

			Page
§	5.2.1	Infants (Minors)	275
§	5.2.2	Parties With Mental Defects or Ill-	
		ness	278
8	5.2.3	Persons Under the Influence of	
		Drugs or Intoxicants	280
§	5.3	Duress; What Must Be Threatened	281
§	5.3.1	Duress; Sufficient Gravity to Induce	
		a Manifestation of Assent	285
§	5.4	Undue Influence	285
§	5.5	Mistake Defined	287
§	5.5.1	Mutual Mistake	290
§	5.5.2	Unilateral Mistake	293
§	5.5.3	Allocation of Risk of Mistake	297
§	5.5.4	Fault in the Mistake Context	299
§	5.5.5	Mistake Resulting From Failure to	
		Read	301
§	5.6	Mistakes or Misunderstandings That	
		Prevent Formation of a Contract	
		(As Distinguished from Merely	
		Providing Grounds to Rescind or	
		Reform a Contract)	302
§	5.6.1	Vagueness and Ambiguity Distin-	
		guished	304
§	5.7	Avoidance of Contract on Basis of	
		Misrepresentation; Misrepresenta-	
		tion Defined	305
§	5.7.1	Fraudulent Misrepresentation and	
		Material Misrepresentations	307
§	5.7.2	Reasonableness of Reliance; Misrep-	
		resentations of Fact, Opinion, Law	
		and Intention	308

			Page
§	5.7.3	Misrepresentation and Mistake Compared	312
§	5.8	Misrepresentation, Duress or Undue Influence by a Third Party	314
§	5.9	Misrepresentation That Prevents	
		Formation of a Contract	319
	B.	DEFENSES BASED UPON POLICY	
§	5.10	Unconscionability as a Defense; Procedural and Substantive	317
8	5.11	Public Policy or Illegality as a De-	OII
U		fense (in pari delicto)	322
§	5.11.1	Enforcement When Parties Are Not	
		in Equal Fault; Laws Designed to Protect One of the Parties	327
8	5 11 2	Exculpatory Clauses	328
		Violation of Licensing Requirements	330
-	5.11.4	9 1	331
§	5.11.5	Restitution Where Public Policy Pre-	
		cludes Enforcement	332
	СНА	PTER 6. EVENTS THAT EXCUSE PERFORMANCE	E
	A.	IMPOSSIBILITY OR IMPRACTICABILITY	
§	6.1	Impracticability ("Impossibility") of Performance	334
§	6.1.1	Impracticability as a Basis for Excuse	
	6.2	Factors Necessary to Support Im-	
		practicability as a Defense	338

		B. FRUSTRATION OF PURPOSE	
§	6.3	Frustration of Purpose; "Economic Frustration"	342
§	6.4	Relief Afforded in Cases of Impracti-	
		cability or Frustration	344
	CF	IAPTER 7. CONTRACT MODIFICA- TION	
§	7.1	Requirements for Modifying a Contract	346
§	7.2	Consent Required for Modification	348
§	7.3	The Consideration Requirement	350
§	7.4	Promissory Estoppel as a Basis for Enforcement Despite Absence of	
		Consideration	355
§	7.5	Writing Requirements: Imposed by Statute or by Agreement of the	
		Parties	356
§	7.6	If the Modification Is Required to Be in Writing, Does a Sufficient Writ-	
		ing Exist or Is There an Exception?	360
§	7.7	Promissory Estoppel As a Basis For	
2	70	Enforcing Oral Modifications	360
8	7.8	Ineffective Attempt to Modify; Oper-	201
e	7.0	ation as a Waiver	361
3	7.9	Retraction of a Waiver	365

# CHAPTER 8. PERFORMANCE

# A. PROMISES AND CONDITIONS

8	8.1	Introduction; Promises and Conditions	368
e	011	Sources of Conditions	370
-	8.1.1		
	8.1.2	Enforcement of Conditions	372
-	8.1.3	Labeling of Conditions Effect of	014
3	8.2	Substantial Performance; Effect of Breach	382
§	8.2.1	Finding Occurrence of Substantial Performance	384
8	8.3	Enforcement of Conditions (Contin-	
3	0.0	ued)	389
8	8.4	Guidelines to Identify Promises and	
		Different Types of Conditions	392
§	8.4.1	Alternative Vocabulary to "Construc-	
		tive Conditions"	395
§	8.5	Conditions Subsequent	396
		B. EXCUSE OF CONDITIONS	
§	8.6	Excuse of Conditions	399
§	8.6.1	Excuse of Condition by Tender	399
§	8.6.2	Excuse of Condition by Failure of a	
		Prior Condition	400
§	8.6.3	Excuse of Condition by an Anticipa-	
		tory Repudiation of a Promise, or	
		by Voluntary Disablement or Pro-	
		spective Inability to Perform	401
§	8.6.3a	Prospective Inability, Demand for	
		Assurances, and Repudiation Un-	
		der the U.C.C	404

			Page
§	8.6.3b	Necessity to Demonstrate the Ability to Perform	406
§	8.6.4	Excuse of Condition by Waiver or	200
		Estoppel	407
§	8.6.5	Excuse of Condition by Impossibility	409
§	8.6.6	Excuse of Condition to Avoid a For-	
_		feiture	410
	8.7	Effect of Severability	413
Ş	8.8	The Condition of Approval by a	
		Third Party or by a Principal Par-	4-4-4
c	0.01	ty to the Contract	414
8	8.8.1	The Condition of Approval; Requir-	410
		ing Good Faith	418
		C. SALE OF GOODS	
§	8.9	Performance of Contracts for the Sale of Goods	419
Ş	8.10	Warranties Arising From the Sale of	110
Ü		Goods and From the Sale of Other	
		Property	423
§	8.10.1	Warranties in Non-Goods Transac-	
		tions	426
§	8.10.2	Disclaimer of Warranties	429
	D.	GOOD FAITH AFFECTING PERFOR-	
	D.	MANCE	
		1/11/11/10/12	
§	8.11	Good Faith and Contract Perfor-	
		mance	431

# CHAPTER 9. REMEDIES

A.	REMEDIES	<b>AVAILABLE</b>	AT COMMON
		LAW	

§	9.1	An Overview of Possible Remedies	
		for Breach of Contract	433
8	9.2	Expectation Damages (Benefit of the	
		Bargain)	439
8	9.2.1	Limitations on Expectation Dam-	
		ages; The Requirements of Cer-	
		tainty and Foreseeability	445
8	9.2.2	Other Limitations on Expectation	
Ü		Damages	452
8	9.2.3	Avoidance of Damages	455
	9.3	Reliance Damages	
-	9.4	Measuring Recovery in Restitution	
_	9.5	Stipulated Damages (Liquidated	
		Damages)	459
8	9.6	Specific Enforcement (Specific Per-	
		formance)	462
8	9.7	Remedies Available in Actions Based	
		Upon Promissory Estoppel	463
	В.	REMEDIES IN SALES OF GOODS	
8	9.8	Buyer's Rejection, Acceptance, and	
		Revocation of Acceptance of Goods	465
§	9.8.1	Legal Affect of Acceptance; Revoca-	
		tion of Acceptance	469
§	9.9	Seller's Right to Cure After Buyer's	
		Rejection	473
§	9.10	Seller's Remedies for Breach	475
§	9.11	Buyer's Remedies for Breach	478
	9.11.1		480
		-	

	CITAI		Page
	CHAI	PTER 10. RESTITUTION (UNJUS' ENRICHMENT)	<b>1</b> '
§	10.1	Restitution	482
§	10.1.1	Benefits Conferred by Mistake	483
§	10.1.2	Benefits Derived From the Commission of a Tort	485
§	10 1 2	Rendition of Services	486
8			
8		Performance of a Contract or Pur-	488
		ported Contract	490
§	10.2	Measure of Recovery in Restitution	491
		PTER 11. THIRD PARTY BENEFI CLARIES WHAT PARTIES MAY ASSERT CON-	<b>:-</b>
	Α.	TRACT RIGHTS	
§	11.1	Third Party Beneficiary Contracts	495
§	11.2	Identification of the Third Party	497
§	11.3	Intended Beneficiaries in Special Sit- uations: Government Contracts	500
8	11.4	Rights of the Promisee Against the	500
2	11.1	Promisor	502
	В.	PROMISORS' DEFENSES AGAINST THIRD PARTIES' CLAIMS	
§	11.5	Contract Modification or Rescission; Vesting of Third Party's Rights	502
§	11.6	Defenses Assertable Against the Third Party Beneficiary	505

		HAPTER 12. ASSIGNMENT OF TS AND DELEGATION OF DUTIE	Page
	RIGH	IIS AND DELEGATION OF DOTTE	
		A. ASSIGNMENT OF RIGHTS	
§	12.1	Assignment of Rights; Delegation of Duties Distinguished	508
§	12.2	What Rights Are Assignable; Effect of Prohibitions Against Assign-	
		ment	512
8	12.3	Requisites of an Assignment	515
§	12.4	Assignment of Rights Embodied in a Tangible Object	517
§	12.5	Revocability of Gratuitous Assignments: Events That Revoke	518
8	12.6	Partial Assignments	521
_	12.7	Multiple Assignments of Same Right; Coverage and Impact of U.C.C. Article 9	521
§	12.8	Defenses Available to the Obligor Against the Assignee	525
		B. DELEGATION OF DUTIES	
§	12.9	Delegation of Duties: What Is Delegable	528
§	12.10	0	
		CHAPTER 13. DISCHARGE	
§	13.1	Discharge by Performance, Rescission, Release or Contract Not to Sue	534

			Page	
§	13.2	Discharge by Substitute Contract or		
		by Satisfaction of an Accord Agree-		
		ment	538	
§	13.3	Discharge by Novation	540	
§	13.4	Discharge by Account Stated	543	
§	13.5	Miscellaneous Concepts That May		
		Serve as Methods of Discharge	545	
CHAPTER 14. CONTRACTS QUES-				
TIONS				
	CITTAI			
CHAPTER 15. A FRAMEWORK FOR RE-				
VIEW				
Index			621	
TNDEX				