CONTRACTS ESSAY

- **TYPE OF LAW** – Common Law or UCC. If the contract has both goods and services, FL will determine whether the main purpose of the contract is goods or services.

- **CONTRACT FORMATION** – In order to have a valid contract there must be an offer, acceptance, and consideration and no valid defenses.
  - Offer – an invitation to enter into a contract.
    - Revocability of Offer – An offer is revocable unless:
      - Common Law – Consideration was paid to keep the offer open for a certain period of time. (“Real property option contract”) Florida courts require “valuable” consideration.
      - UCC – It was a merchant’s “firm offer” under the UCC.
  - Acceptance – a manifestation of intent to enter into an agreement.
    - Common Law – “Mirror Image Rule” acceptance must be identical to the offer. Otherwise, no K.
    - UCC – A contract is formed even if the acceptance contains additional or different terms.
  - Consideration – There must be a “bargained for exchange” between the parties of something of legal value. FL follows the MINORITY rule that consideration is a benefit to one party or a detriment to the other party.
    - EXAM TIP – Discuss meeting of the minds, intent to be bound, mutual promises, etc.
  - Divisible Contract – created when
    - The performance by each party is divided into 2 or more parts under the contract
    - The number of parts due by each party is the same
    - The performance of each part by one party is equal to the corresponding part by the other party.

- **DEFENSES** – Usually 2-3 in fact pattern
  - The elements of the K are not satisfied (ie. K is illusory). A condition precedent has not been satisfied.
  - Statute of Frauds – A contract w/n the statute must be 1) in writing, 2) signed by party to be charged, AND 3) contain the essential terms of the contract. The following contracts are w/n the Statute of Frauds
    - Land – promises creating an interest in land must adequately describe the land, identify the parties to the contract, and value to be paid.
    - Sale of Goods over $500
  - Unconscionability – A contract may be VOIDABLE where its clauses are extremely one-sided or unfair when made.
  - Mistake – A contract will be ENFORCED if there was a UNILATERAL MISTAKE unless it is unconscionable or the other party knew or should have known of the mistake.
  - Misrepresentation of a Material Fact – results in a RESCISSION of contract
  - Incapacity to Contract – Minors, Intoxication, Mental Capacity.
  - Duress and Undue Influence
  - Impossibility – EXCUSES a party’s performance. It is an OBJECTIVE std. (ie. No one could have performed according to the terms of the contract.) The impossibility must arise AFTER the contract was entered into. Examples include:
    - Impracticability – EXCUSES a party’s performance. Requires that a party encounter “extreme and unreasonable difficulty” or expense take wasn’t anticipated. A mere change in difficulty or expense due to normal risks that could have been anticipated is not enough.
  - Frustration of Purpose
  - Anticipatory Repudiation – Words or conduct that UNEQUIVOCALLY indicate an inability or an unwillingness to perform when time comes. The alternatives for the non-repudiating party are:
    - Treat the anticipatory repudiation as a total repudiation and sue immediately
    - Suspend his own performance and wait to sue until the performance date
    - Treat as an offer to rescind and treat the contract as discharged
Ignore the repudiation and urge performance

- **Breach** – occurs when there is an absolute duty to perform and the duty has not been performed or has been performed inadequately or improperly.
  - **Minor Breach** – One party receives substantial benefit of bargain and gives rise to claims for damages.
  - **Material Breach** – discharges non-breaching party’s duty to perform.
  - **UCC Perfect Tender** – a buyer is said to have the right to a perfect tender and can reject goods for ANY NONCONFORMITY – even a minor one. A seller has the right to cure in the following situations:
    - If there is time left under the contract to perform and seller gives notice of intent to cure and does cure
    - After the time for performance has passed if the seller had grounds to believe that the nonconforming goods would be acceptable but the buyer rejects.

- **Parol Evidence** – Renders any evidence of prior or contemporaneous understanding inadmissible if offered to CONTRADICT or MODIFY the terms of the written agreement that was intended as a final integration. It DOES NOT exclude evidence offered to prove fraud, duress, mistake, misrepresentation, or illegality.

- **Promissory Estoppel** – promise, reasonable reliance on promise to their detriment, and party suffers a legal detriment. Remedies are RESTITUTION and RELIANCE damages. RESCISSION allowed if there is fraud or misrepresentation.

- **Tortious Interference W/Contract** – FL: Interference w/Business Relationship 1) contract b/w the parties 2) 3rd party knew of the relationship 3) 3rd party causes the breach 4) Damages (ie. Money Lost)

- **DAMAGES** – The plaintiff MUST MITIGATE DAMAGES
  - **Expectation Damages/ Compensatory damages** – put the party in the rightful position
    - Difference b/w contract price and market price
    - Difference b/w contract price and resale price
    - If seller has an unlimited supply and has lost volume in sales, the seller can recover lost profits.
  - **Incidental Damages** – expenses the non-breaching party incurs responding to breach (ie. Costs of substitute performance)
  - **Consequential Damages** – ANY damages reasonably foreseeable as a result of breach such as lost profits recoverable if:
    - Reasonably foreseeable when contract was made or notice to breach and party
    - Unavoidable through reasonable efforts
    - Provable with reasonable certainty
  - **Specific Performance** – Awarded when contract is for something rare or unique such as real property. Not usually given in personal service contracts because that is like involuntary servitude. However, the breaching party can be enjoined from performing services for someone else during the term of the contract.
  - **Punitive Damages** – Generally not awarded in contractual situations
  - **Liquidated Damages** – reasonable estimation of the damages that is closely related to the actual damages. Cannot be a penalty.