In Brief: Decision Tree for Contract Analysis

**IS THERE A VALID CONTRACT?**
- Offer, acceptance, and consideration (is consideration an illusory promise?)
- Meeting of the minds
- Intent to be bound
- Mutuality (if bilateral)
- Terms still not negotiated

**IS THERE AN INJURIES?**

**WHAT ARE THE TERMS?**
- Express terms
- Implied terms (e.g., duty of good faith and fair dealing)
- Contract modifications
- Conflicting or additional terms (e.g., battle of the forms)
- Parol evidence (clarifying intentions)

**IS THE CONTRACT ENFORCEABLE GIVEN THE TERMS?**
- Fraud
- Duress
- Illegality
- Unconscionabiltiy (procedural or substantive)
- Ambiguity/mistake of fact
- Capacity (minor or insane person)
- Statute of Frauds (Is there a writing?)

**IS THERE A PRELIMINARY AGREEMENT?**
- Intent to be bound
- Definiteness of the terms

**IS THERE A PRE-BREACH EXCUSE FOR THE BEHAVIOR?**
- Changed Circumstances:
  - Impossibility
  - Impracticability
  - Frustration of Purpose

**IS THERE A PRE-CONTRACTUAL LIABILITY?**
- Unjust enrichment
- Misrepresentation
- Specific promise

**TRY PROMISSORY ESTOPPEL**

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- Promise
- Reliance
- Foreseeability

**RELIANCE DAMAGES**

**TRY PROMISSORY ESTOPPEL**

**SPECIFIC PERFORMANCE**
- Unique goods
- Real property
- Amount of loss is uncertain

**PUNITIVE DAMAGES**
- Breaching party denies that contract exists. in bad faith
- Oppressive, malicious, or fraudulent conduct

**CONSEQUENTIAL DAMAGES**
- Losses reasonably foreseeable

**EXPECTATION DAMAGES**
- Benefit of the bargain

**RESTITUTION DAMAGES**
- Party receives benefit without paying

**NO DAMAGES**