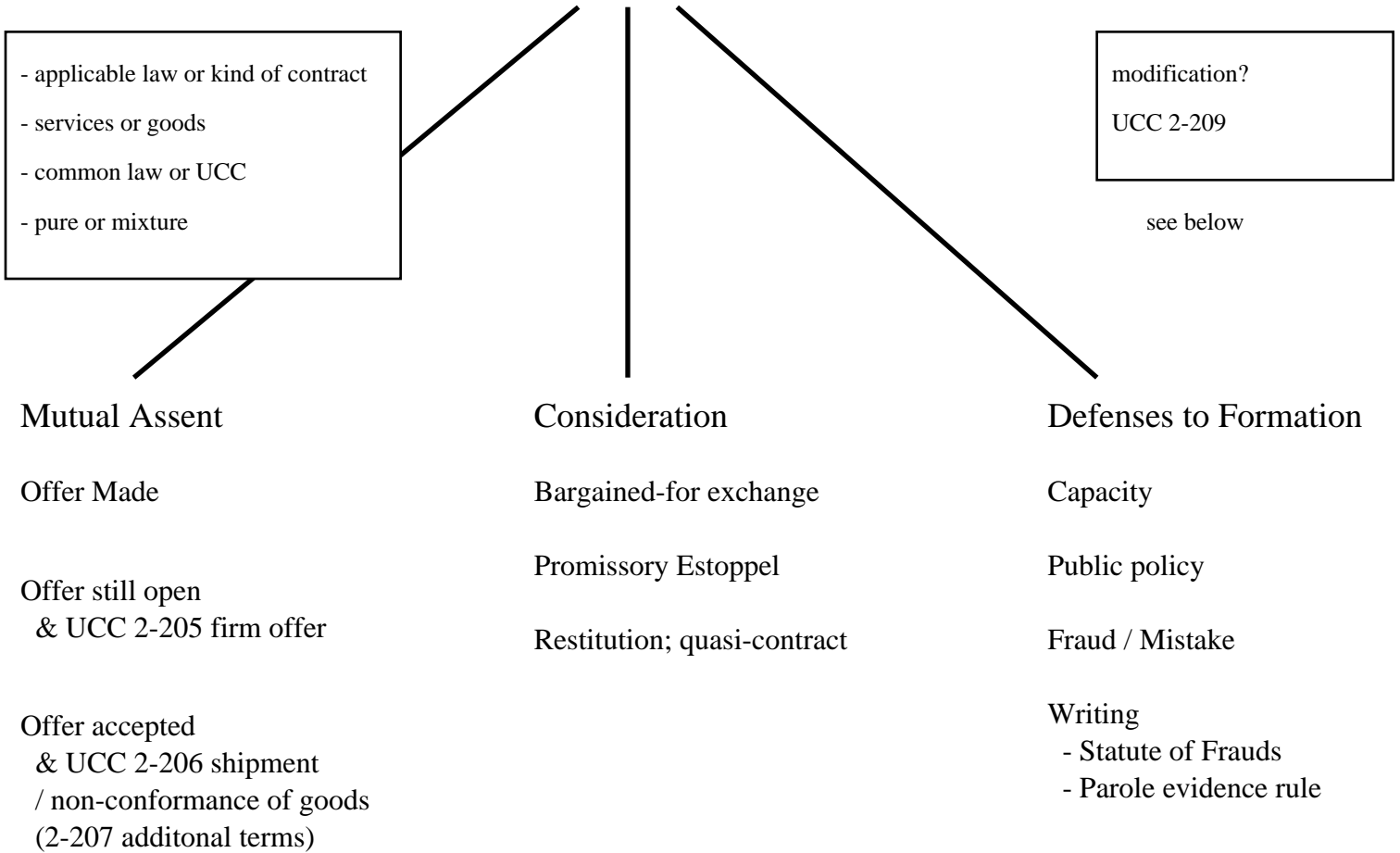


Formation



Modification

Issue	Common Law	UCC
Mutual Assent	Yes	Yes
Consideration	Yes	No
Writing Required (if it was req'd for orig K)	No	Yes (unless K is under \$500)

Performance

Conditions

Are there conditions?

- express
- implied
- constructive

cond prec
concur cond
cond subseq

Have the conditions been satisfied?

If the cond have not been satisfied, are they excused?

- waiver
- breach
- forfeiture

Discharge

Is the performance discharged?

- impossibility
 - illegality
 - death
 - destruction
- impracticability
- commercial frustration

Breach

Anticipatory or prospective?

- adequate assurances (UCC)
- retraction (UCC)

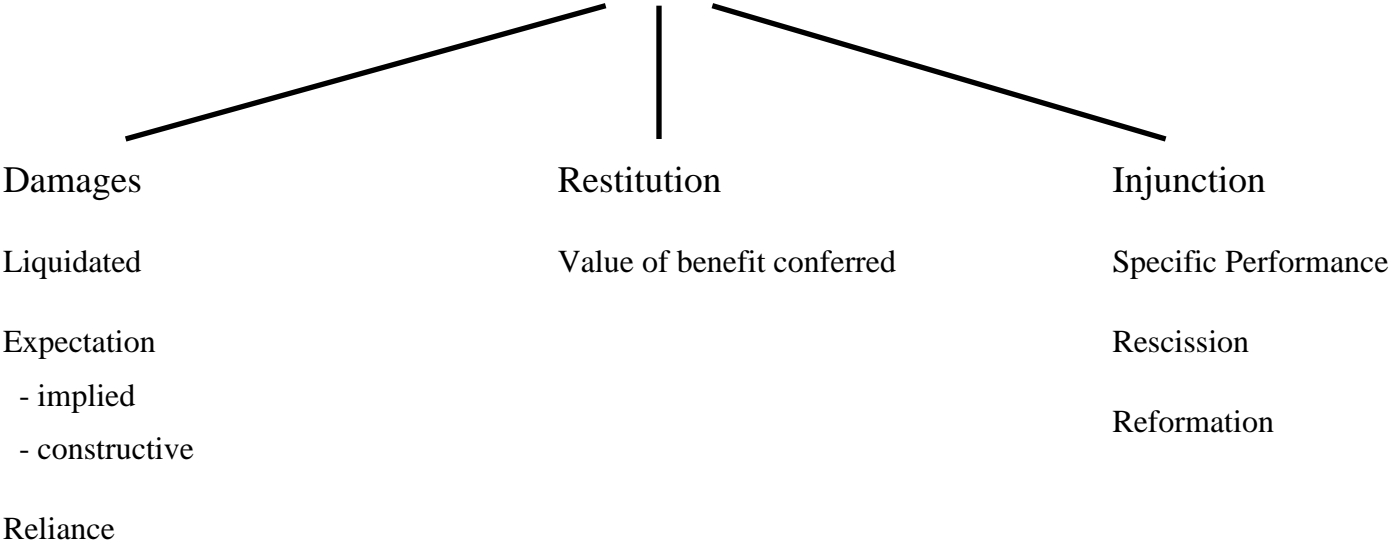
Present

- minor
- material

Relief for the breachor

- minor
 - substantial performance
- material
- time to cure
- total
 - divisible K
 - restitution

Remedies



Damages

Expectation

Natural / Standard

- General measure of damages
- No formula for expectation damages (common sense based on fact)
- Sale
 - Real property
 - Seller (market K)
 - Buyer (market K)
 - Goods
 - Seller
 - Market K (resale)
 - resale and lost value
 - Buyer
 - Market K
 - Cover K
 - Services
 - Employment
 - Employee (lost wages/earnings)
 - Employer (extra cost)
 - Construction
 - Builder (profit & cost)
 - Owner
 - Cost of completion
 - Diminution in value

Consequential

Restitution

Grounds

- Mistake
- Breach
- Unenforceable K

Measure of Recovery

- Breach
 - Aggrieved party (value to breachor)
- Breachor (value conferred minus damages)
- Unenforceable K
- Specific amount
- Reasonable value

Specific Performance

Definite & Certain K

Inadequate remedy at law

Feasible Decree

- jurisdictional problems
- supervision problems

Mutuality of remedy

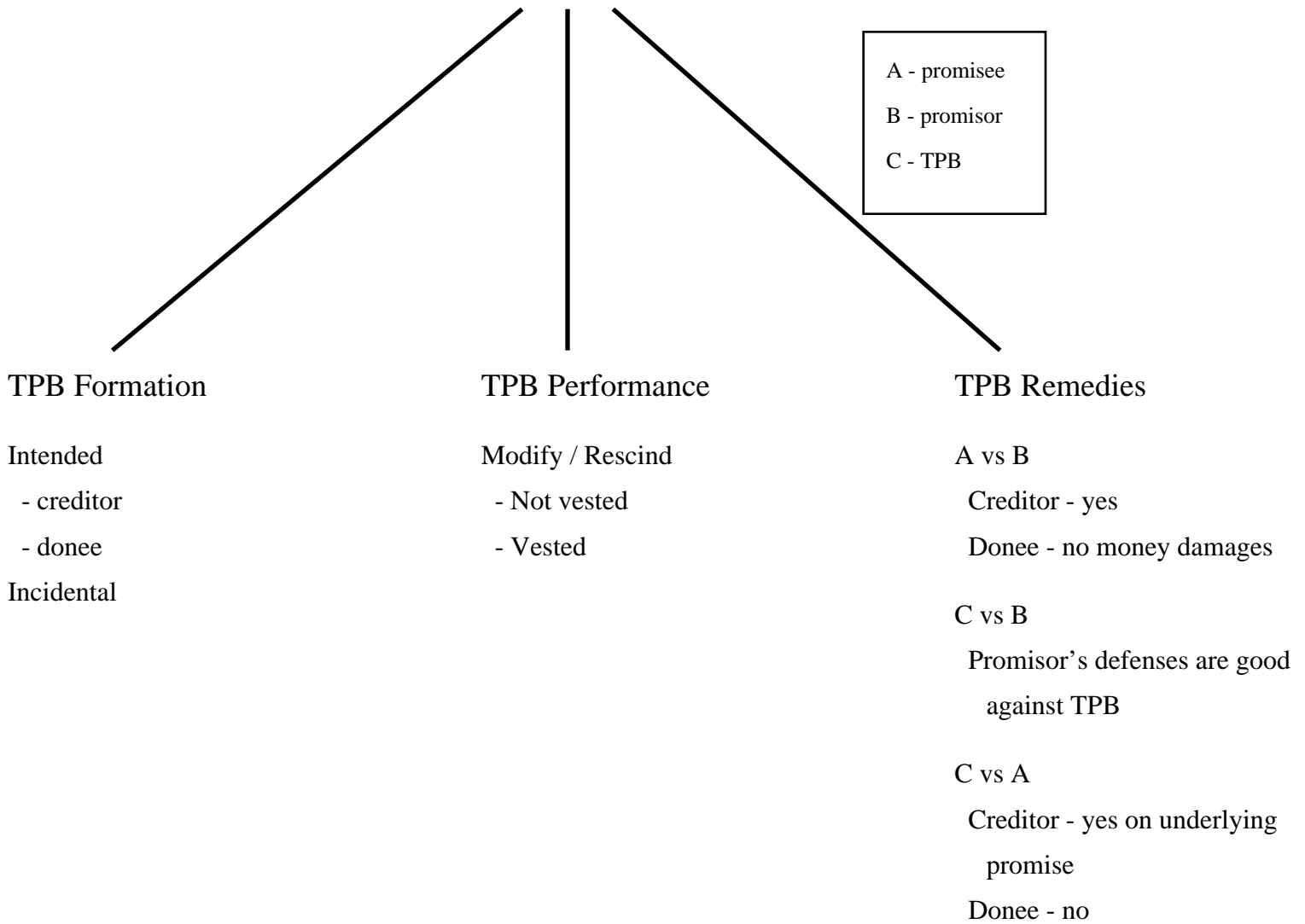
- Traditional
- Modern
 - Need for security for performance

Defenses

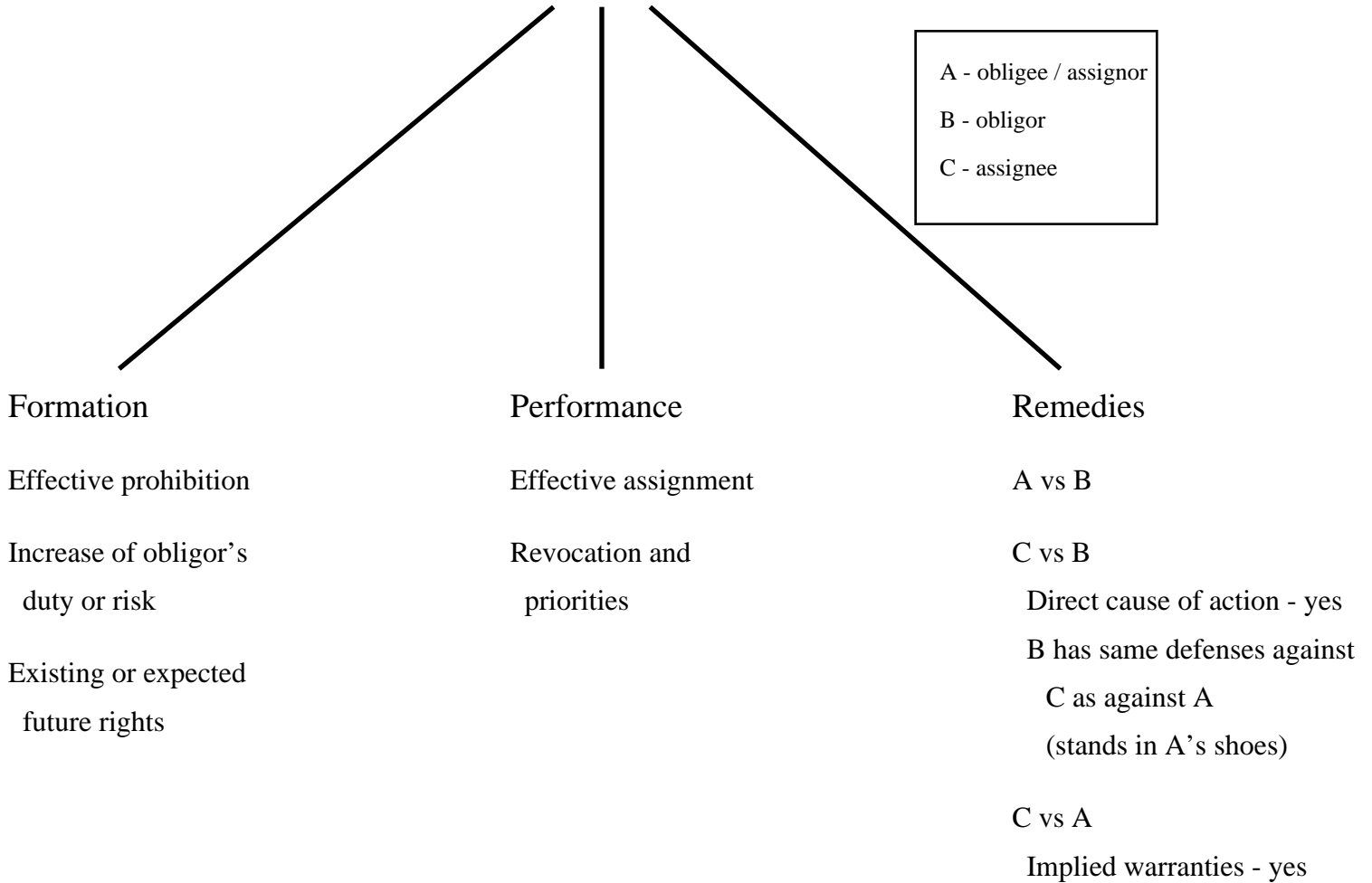
- Statute of Frauds
- Laches (statute of limitations)
- Unfairness
- Unclean hands
- Hardship
- Misrep & mistake
- Bona fide purchasers

General Measure of Damages =
natural + consequential + incidental
- cost avoided - loss avoided (mitigation)

Third Party Beneficiaries



Assignment of Rights



Delegation of Duties

