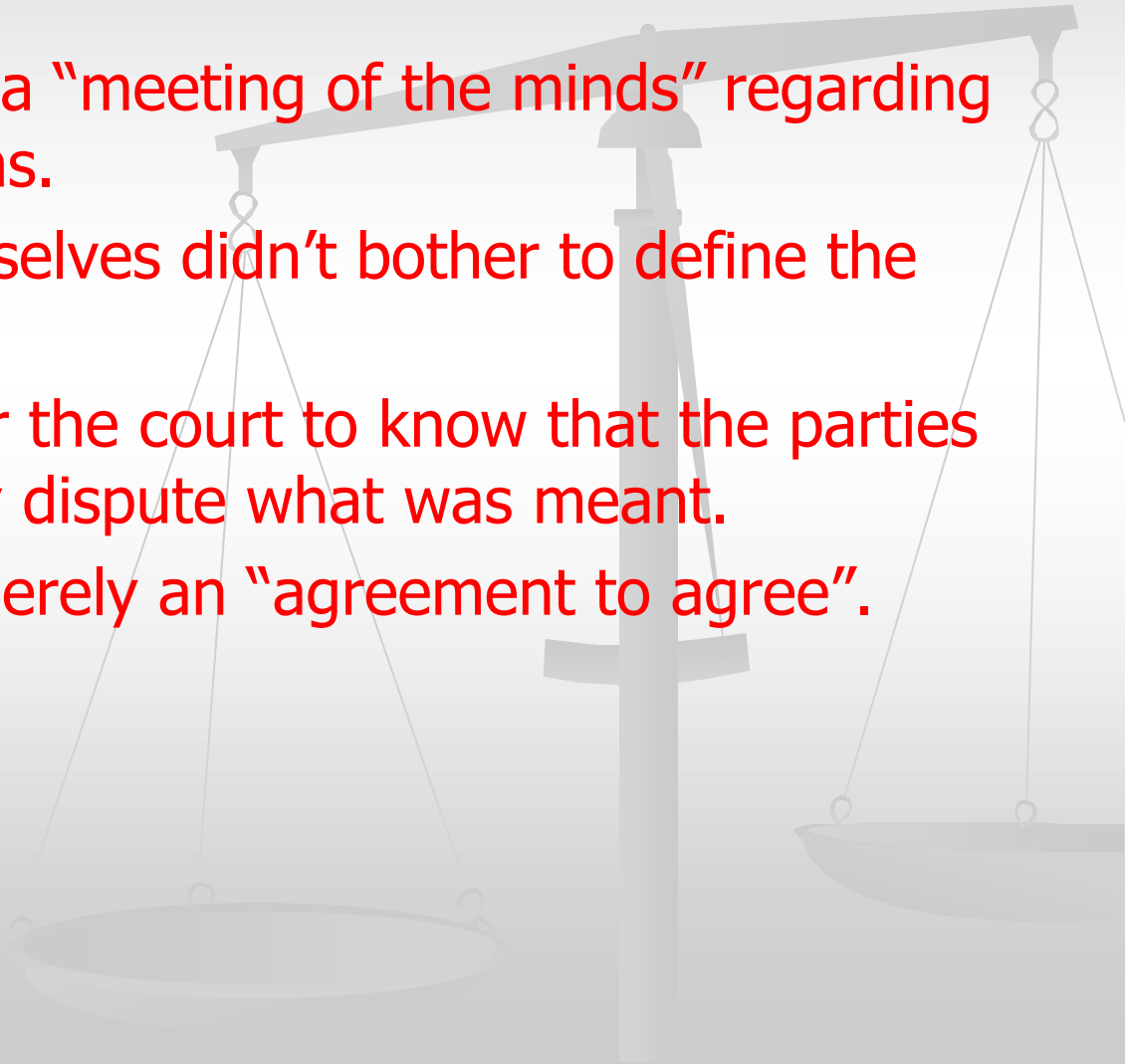
Indefiniteness

- **Contracts are void if:**
  - There was never a "meeting of the minds" regarding key contract terms.
  - The parties themselves didn't bother to define the key terms.
  - It's impossible for the court to know that the parties meant when they dispute what was meant.
  - The contract is merely an "agreement to agree".



Gap Fillers

- Courts are reluctant to say a contract is unenforceable; so, if possible, the court will fill in gaps with "gap-fillers" terms so they don't have to say it's unenforceable. This is true even with terms so important as **price**!

- The UCC goes through some gap fillers (only applicable if not spelled out in the contract):
  - 2-305: reasonable price
  - 2-308: place of delivery - seller's place of business
  - 2-309: reasonable time
  - 2-310: time for payment - when buyer receives the goods

UCC § 2-305. Open Price Term

- (1) The parties if they so intend may conclude a contract for sale even if the price is not settled. In such a case the price is a reasonable price at the time for delivery if:
  - (a) nothing is said as to price;
  - (b) the price is left to be agreed by the parties and they fail to agree; or
  - (c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.
- (2) A price to be fixed by the seller or by the buyer means a price to be fixed in good faith.

UCC § 2-305. Open Price Term, cont'd

- (3) If a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at the party's option treat the contract as cancelled or the party may fix a reasonable price.

- (4) If, however, the parties intend not to be bound unless the price is fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable to do so must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

UCC § 2-308
Absence of Specified Place for Delivery

- Unless otherwise agreed
  - (a) the place for delivery of goods is the seller's place of business or if none, the seller's residence; but
  - (b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and
  - (c) documents of title may be delivered through customary banking channels.

UCC § 2-309: Absence of Specific Time Provisions; Notice of Termination

- (1) The time for shipment or delivery or any other action under a contract if not provided in this Article or agreed upon shall be a reasonable time.

- (2) If the contract provides for successive performances but is indefinite in duration, it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

- (3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable. A term specifying standards for the nature and timing of notice is enforceable if the standards are not unreasonable.

UCC § 2-310. Open Time for Payment or Running of Credit; Authority to Ship Under Reservation.

- Unless otherwise agreed
- (a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery;
- (b) if the seller is required or authorized to send the goods, the seller may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless the inspection is inconsistent with the terms of the contract (Section 2-513);

UCC § 2-310. Open Time for Payment or Running of Credit; Authority to Ship Under Reservation, cont'd.

- (c) if tender of delivery is agreed to be made by way of documents of title otherwise than by paragraph (b), then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents, or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

- (d) if the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

Quiz Time!



Mistake 1

- **Key Caveat: A mistake in judgment is NOT grounds for avoiding a contract.**

- Mutual Mistake
  - both parties must be mistaken as to the same assumption that the contract was based on.
  - the assumption must be material (it must be something that both parties intended to be a key part of the deal).
  - the mistake must not be the fault of either party.

Mistake 2

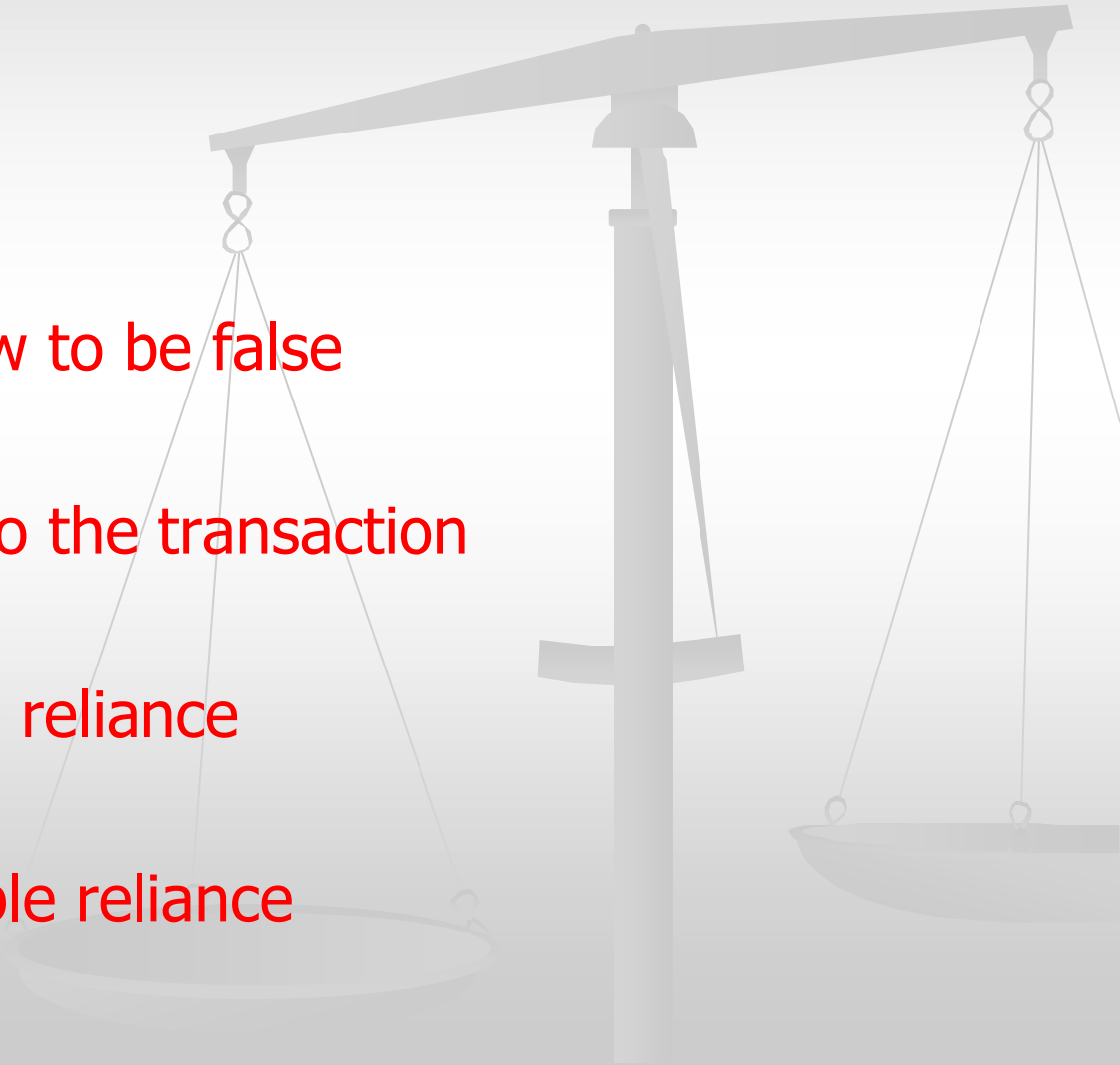
- **Unilateral Mistake:**
  - This is only a defense for the ***mistaken party***, not the party who knew the situation. Even then, it's only a defense if:
  - the mistaken party did not know or should not have known of the mistake (the mistake cannot have been his or her fault).
  - the mistake was not simply a mistake in judgment.
  - the non-mistaken party must have either known or should have known about the mistake on the part of the mistaken party.

- **Mistake in transcription or in transmission from party to party:**
  - Contract can be avoided if it's obvious that it was a mistake.

Misrepresentation / Fraud

Elements:

- False statement
- that the teller knew to be false
- must be material to the transaction
- intended to induce reliance
- did induce justifiable reliance



Misrepresentation 2

- **"Mere Nondisclosure" distinguished:**
  - Historically, this was not a defense. But modern courts are more willing to apply it if it's a key element of a transaction.
  - Also, regarding certain types of purchases (like real estate), states mandate disclosure forms. Lying on those forms can result in the contract being nullified or even in civil or criminal penalties.
- **Lemon Laws**