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***print name on the line above as your signature***

**INSTRUCTIONS:**

1. This Exam **THIRD** must be completed within the allocated time  
(*i.e., the 75 minutes between 11:30 AM and 12:45 PM*).  
It is a closed book exam.
2. **Recall the material difference between**  
**e.g. (for example) versus i.e. (that is).**
3. As each student finishes this exam, that student shall
  - [3A] present to the instructor the student's photo ID;
  - [3B] present the student's completed answer sheet;
  - [3C] exchange the completed answer sheet for an answer key;
  - [3D] retain student's marked up copy of the exam; and
  - [3E] then leave the exam room until after the end of the exam  
(*e.g., all students finish in less than the 75 minutes*).

**To find your individual exam grade**  
**you MUST use YOUR marked up exam.**
4. Preliminary exam grades and course grades (*i.e., prior to resolving any appeals*) of the class **but not with individual students identified** will be posted to O'Hara's web site no later than 4:00 PM Thursday, April 9. An email notice of the posting will be sent.
5. This Exam **THIRD** is worth 20% of the course grade.  
The True-False form of this exam has 35 questions graded as if there are 33. Based upon the instructor's statistical analysis of all students' answers, the instructor unilaterally may alter the grading of specific exam questions. Any student may appeal the grading of any other exam questions. However, only if a student successfully appeals the ambiguity of **AT LEAST THREE** questions on this exam will *that* student's exam grade change by the number of successful appeals in excess of **TWO** successful appeal.  
*Appeals only affect the exam grades of those students that appeal.*
6. **All appeals** of this exam's questions must be:
  - [6A] typed;
  - [6B] signed by the student in three ways, typed name, handwritten signature, and typed university identification number;
  - [6C] immediately following the signature, list in sequence, *solely by number*, each of the questions being appealed;
  - [6D] after the [6C] list, argue each question, one at a time;
  - [6E] at the beginning of each question's [6D] appeal, identify two or more reasonable meanings that the question could have had;
  - [6F] argue why one or more of the [6E] identified reasonable meanings is as appropriate or is more appropriate than the meaning used for the answer key answer; and
  - [6G] personally handed to the instructor in the RH 010A classroom  
**no later than the 11:35 AM on Monday, April 13.**

**NOTE #1:** On the blue computer graded answer sheet provide your name (last, first) both in numeral **and in bubble** and provide your NU ID number both in numeral **and in bubble**.

**NOTE #2:** On the computer graded answer sheet, **use A to indicate that the statement is TRUE;** and use B to indicate that the statement is FALSE.

**NOTE #3:** A statement never is false because of a numerical reference to a law (*e.g., UCC section 2-318*). On this exam, all such references are true.

**NOTE #4:** The acronyms "UCC" and "CISG" will be used in this exam rather than their fully spelt out names, respectively, the "Uniform Commercial Code" and the United Nations' "Convention on Contracts for the International Sale of Goods".

### **QUESTIONS:**

1. **T F** The elements of a contract are agreement, consideration, capacity (*i.e., ability to grasp the natural consequences of one's actions*), reality of assent, **and** legal subject matter.
2. **T F** The Uniform Commercial Code (UCC) reverses many rules of the common law of contracts because the UCC imposes on the parties an obligation of good faith.
3. **T F** The UCC focuses upon the parties' objective intent **and** upon the reasonably certain terms of contract. The UCC allows for open terms **and** the court shall supply all missing terms with commercially reasonable terms. **But**, the parties must have specified price.

4. **T F** If a product is tangible, than that product is "goods".  
If a sale includes both goods **and** services, then the law reacts according to the predominant nature of the transaction.
5. **T F** A sale passes title from seller to buyer for a price.  
A lease sells the right to possess.
6. **T F** A consumer is any person purchasing goods primarily for personal **or** household use.
7. **T F** Any person can be a merchant.  
A merchant is a person who:  
[i] deals in goods of that kind (*i.e. has reason to know*); **or**  
[ii] hires an agent who is a merchant (*i.e., vicarious knowledge*); **or**  
[iii] holds self out as a merchant (*i.e., estopped to deny knowledge*).
8. **T F** The UCC is the parties' default written contract for the sale of goods.  
Parties may disclaim all terms of the UCC except UCC 1-202 (19) **and** a fraction of UCC 2-318.  
That is, the parties may **not** disclaim the obligation of good faith; **and** may **not** disclaim liability for personal injury from consumer goods.
9. **T F** A merchant creates a firm offer with a signed writing.  
**Without** the consideration, a merchant's firm offer is an enforceable option contract.
10. **T F** The UCC allows a seller to accept with a prompt shipment of goods, either conforming (*i.e. complete performance*) or **non**-conforming good (*i.e., breach*).  
If the seller wishes to ship **non**-conforming goods only upon the condition that the buyer waives the breach, then the seller ships with the counter offer of shipped as an accommodation.

- 11. T F** Both the common law **and** the UCC use the Mirror Image Rule.  
A **non**-merchant does **not** make a counter offer  
if  
the **non**-merchant makes an definite acceptance.  
Also, a merchant's acceptance of a merchant's offer may include  
additional terms  
that do **not** material alter  
(*e.g., expressly limited; timely objection*) the offer.
- 12. T F** Both the common law **and** the UCC allow contract modifications  
**without** requiring new consideration  
if  
made in good faith.  
However, under the UCC  
an offer may expressly require modifications to be in a writing; **and**  
a writing is required  
if  
consumer's contract with a merchant is being modified.
- 13. T F** The common law governing the sale of goods focuses upon title.  
While only one person has title at a time,  
knowing with certainty which person in practice has title  
can be objectively very difficult.  
Legally,  
a sale transfers title from seller to buyer  
upon the seller's physical delivery to the buyer.  
**But**, many questions surround the words seller, buyer, **and** delivery.  
Accordingly, the Uniform Commercial Code  
has shifted from the objectively difficult title to the objectively easy  
identified.
- 14. T F** The UCC replaces the common law focus on title  
with the UCC's focus on identification.  
Goods are identified when the goods are designated by the seller.
- 15. T F** A person with an insurable interest may enter into a valid insurance  
contract.  
A person with \_\_\_the\_\_\_ risk of loss may recover on an insurance contract.  
Once the goods are identified  
both the seller **and** the buyer may have an insurable interest.  
As long as a party has \_\_\_a\_\_\_ risk of loss that party has an insurable  
interest.
- 16. T F** The UCC separates the passage of title from the risk of loss.  
Upon identification the buyer has at least \_\_\_a\_\_\_ risk of loss.  
\_\_\_The\_\_\_ risk of loss passes upon identification plus delivery.

- 17. T F** Physical delivery by the seller to the buyer may occur:
- [i] at the seller's front door  
(*e.g., to consumer buyers*);
  - [ii] at the seller's back door  
(*e.g., to merchant buyers*);
  - [iii] at a location selected by the buyer  
(*i.e., transportation contract*); **or**
  - [iv] by delivery **without** movement of the goods  
(*i.e., documents of title*).
- 18. T F** Transportation contracts can be either a destination contract  
(*i.e., seller delivers goods into the hands of a carrier*);  
**or**  
a shipment contract  
(*i.e., seller delivers goods to a location*).  
The seller has \_\_\_the\_\_\_ risk of loss during all transportation contracts.
- 19. T F** All sellers of goods transfer valid title if the buyer buys via a contract  
(*i.e., includes consideration, **not** just value*).
- 20. T F** The UCC's entrustment rule provides that if the true owner entrusts goods to a merchant **and** if a buyer buys for value **and** in good faith and **without** knowledge of any claims or defenses, then the buyer obtains good title.
- 21. T F** Both the common law **and** the UCC require perfect tender  
(*i.e., the implied concurrent condition of ready, willing, **and** able*).

- 22. T F** If a UCC seller of goods delivers a breach to the buyer, **and** if the time for performance has **not** yet arrived, then the seller has the right to remedy (*i.e., cure*) the breach prior to the due date. In effect, the right to cure counteracts the **non**-breaching party's rights during an anticipatory repudiation. However, the right to cure may **not** be exercised if the breach materially impaired the contract.
- 23. T F** The UCC changes the common law's commercial impossibility (*e.g., x10 price change*) to the UCC's commercial impracticability (*e.g., x3 price change*). The parties may specify which risks are **not** foreseen by the parties in a *Force Majeure* clause.
- 24. T F** The UCC uses the Statute of Frauds, however the UCC's application is relaxed relative to the common law. Consistent with the UCC's facilitation of creation of commercial reasonable contracts, the parties' partial performance of an otherwise **unenforceable** oral contract renders the portion that is partially performed enforceable.
- 25. T F** All parties to a UCC contract for sale of goods are bound to an obligation of good faith. Accordingly all those parties have a Duty of Cooperation. A part of the Duty of Cooperation might be honoring a Right of Assurance. If a party has reasonable grounds to believe the other party's performance might **not** be forthcoming, then the party with reasonable grounds may make a written demand for assurance, **and** the other party must then provide adequate assurance.
- 26. T F** All buyers always have an absolute right of inspection.

- 27. T F** The UCC creates a right to cover  
(*i.e., enter the market to obtain reasonable substitute performance*).  
Exercise of the right to cover can discharge the **non-breaching** party's duty to mitigate damages.
- 28. T F** The common law imposes several generic implied warranties  
(*e.g., good title, **no liens, and no infringements***).  
The parties may **not** disclaim these generic implied warranties.
- 29. T F** The UCC allows the parties to make express warranties by an affirmation of fact (*e.g., **sample or model***) that is the basis of their bargain.  
**But** note,  
**neither** statements of puffery **nor** statements of value create an express warranty.
- 30. T F** The UCC creates two implied warranties:  
merchantability **and** fitness for particular purpose.  
All merchants warrant that their goods are fit for the buyer's purpose.  
That is, the goods would pass in the market.  
An implied warranty of fitness for a particular purpose is given by any seller that knows of the buyer's reliance upon the seller.
- 31. T F** Under the UCC there may be multiple warranties; **but** they may **not** overlap.  
Priority of enforcement of multiple warranties is:  
[1st] express; **and** then  
[2nd] implied.  
Also, the priority given to each warranty's terms is:  
[1st] technical specification;  
[2nd] **sample or model**; **and** then  
[3rd] description.
- 32. T F** A written **and** conspicuous disclaimer of a UCC warranty is effective **unless** it is **unconscionable** to disclaim that warranty.  
**Also, no** party may disclaim the obligation of good faith;  
**nor** may any party disclaim liability for property injury from a consumer product.

- 33. T F** Federal regulation tends to focus on causes; while the States' regulation tends to focus on symptoms. The federal Magnuson - Moss Warranty Act defines the words "full" **and** "limited" if a seller of consumer products in commerce chooses to grant a written warranty.
- 34. T F** Product liability attaches both to goods **and** to services as it attaches to products. Product liability can be based on tort (*either negligence or strict liability*) **or** contract. Both the common law **and** the UCC require privity. The *Restatement of Laws, Torts*, section 402 A (*i.e., the common law*) requires:
- [i] a defendant in the business of selling;
  - [ii] that product reaches the consumer **not** substantially changed;
  - [iii] the product is in a defective condition;
  - [iv] that defect makes the product **unreasonably** dangerous; **and**
  - [v] that defect is the proximate cause;
  - [vi] of the plaintiff's physical harm.
- 35. T F** Defects can be design defects, manufacturing defects, **or** labeling defects. A latent defect is a defect **not** known to the seller **and** is **not** reasonably discoverable by the buyer.