
print name

INSTRUCTIONS:

1. The Unit Exam #3 must be completed within the allocated time
(*i.e.*, 10:00 AM - 11:15 AM).
It is a closed book exam.
2. **Recall the material difference between**
e.g. (for example) and i.e. (that is).
3. As each student finishes this exam,
that student will receive the exam's answer sheet
and leave the exam room until after the end of the exam
(*i.e.*, 11:15, unless all students finish earlier, which is likely).
4. Grades will be posted to BlackBoard
no later than 5:00 PM Wednesday, November 24.
An email notice of the posting will be sent.
5. The Unit Exam #3 is worth 20% of the course grade.
This exam has 35 questions graded as if there are 33.
Harmless errors are far more likely than non-harmless errors in this test design.
Based on a statistical analysis of all students' answers,
the instructor unilaterally may alter the grading of specific exam questions
for all similarly situated students.
Any student may appeal the grading of these 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 questions.
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 social security number; [6C] in sequence,
list, immediately following the signature, each of the questions, by number,
being appealed; [6D] after the [6C] list, argue each question, one at a time;
[6E] at the beginning of each question's appeal, identify two or more
reasonable meanings that the question could have had; [6F] argue why one or
more of the 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
no later than 10:01 AM, Tuesday, November 30.

QUESTIONS:

1. **T F** Under the common law of contracts,
neither a consumer
(i.e., natural person buying for personal use)
nor a merchant
*(i.e., deal in goods of that kind,
hire an agent who is a merchant, **or**
hold self out as a merchant)*
may **disclaim** the obligation of good faith.
2. **T F** Goods are tangible **and** movable.
In a mixed transaction
*(e.g., simultaneous sale of goods **and** sale of services)*
the court will determine what is
the predominate nature of the transaction **and**
then apply the appropriate law for interpreting the transaction.
3. **T F** The UCC *(i.e., Uniform Commercial Code)* via
open terms
relaxes the requirements for formation of a contract;
but,
the parties still must agree on the quantity to be sold
*(except for output contracts **and** for requirements contracts)*.
4. **T F** Under the UCC,
acceptance of the buyer's offer may be manifested
by the seller
promptly shipping **non**-conforming goods
(e.g., breach by providing mere substantial performance)
and/or
by the seller
agreeing to the buyer's offer **but**
the seller insisting upon additional terms.
5. **T F** Under the UCC, as contrasted with the common law of contracts,
the courts are more likely to find a contract for the sale of goods to be
unconscionable
and
then to apply a remedy of
reforming, **or** severing, **or** voiding
the offensive term **or** the whole contract.
6. **T F** A fungible good that is commingled can **not** be identified.

7. **T F** Entrustment requires that the bailor of the good be a consumer **and** requires that the bailee of the good be a merchant.
8. **T F** If the goods are identified, then the buyer has an insurable interest in the goods.
9. **T F** Good faith, under the UCC, is a question of fact; **and** for both the consumer **and** the merchant good faith requires honesty in fact **and** commercial reasonableness.
10. **T F** The UCC eliminates the perfect tender rule. While the buyer might expect perfect tender by the seller the seller has the option of providing **non**-conforming goods subject to the buyer's timely rejection **or** revocation of acceptance, **and** subject to the seller's right to cure.
11. **T F** Under the UCC, if the seller has reasonable grounds for **insecurity**, then the seller has the right to demand adequate assurance from the buyer. If the seller demands adequate assurance, then the buyer removes all reasonable grounds for **insecurity** by supplying a Letter of Credit.
12. **T F** Under the UCC, the buyer's right to inspection is a condition precedent to the buyer's duty to pay.
13. **T F** Under the UCC, remedies are cumulative; while the common law of contracts requires an election of remedies.

14. T F Generally,
under the UCC,
the **non**-breaching party is entitled to contract damages
(*i.e., difference between the contract price **and** the market price*)
plus incidental damages, **and**,
consequential damages (*e.g., lost profits*):
unless the consequential damages are **disclaimed or** forfeited.
15. T F Under the UCC,
the **non**-breaching buyer's duty to mitigate damages
includes the duty to cover
(*i.e., upon anticipatory repudiation **or** upon failure to perform,*
*buyer enters the market **and** obtains substitute goods*).
16. T F The buyer's rejection of the seller's goods
must be made within a **reasonable time and**
the buyer must provide the seller with notice of both
the rejection **and** the good's defects within a **seasonable time; or**
the buyer forfeits some of the buyer's UCC rights.
17. T F **Neither** a bailment, **nor** an agency, **nor** a warranty
need be a contract.
Also, privity
need **not** be required for standing to sue on a warranty.
18. T F A seller's
affirmation of fact that becomes the basis of the bargain
creates an express warranty in the sale of goods.
19. T F All sellers, by the act of selling goods,
create an implied warranty that the goods are reasonably fit
for the ordinary purpose for which such goods are used.
20. T F The personal property owner's objective intent
determines whether personal property has become a fixture.
Accordingly,
a trade fixture usually is a fixture.

21. T F A gift exists as soon as the donor gives the donee notice of the gift **and** the donee accepts the gift.
22. T F If the bailed property is controlled by a negotiable document of title, then the bailor has strict liability if the bailed property is damaged during the bailment.
23. T F Adverse possession is the primary means of gaining ownership of an easement **or** a profit; while a quit claim deed is the primary means of ending an easement **or** a profit.
24. T F If the use of the legislative power of zoning is too restrictive, then the zoning becomes a taking via eminent domain rather than a mere regulation.
25. T F A tenant of a commercial property may successfully sue the landlord for constructive eviction alleging the landlord breached the implied warranty of habitability.
26. T F A tenant of a commercial property may successfully sue the landlord for negligence alleging the landlord either did **not** inspect **or** did **not** repair portions of the property under the landlord's control.
27. T F A tenant of a commercial property may successfully sue the landlord for negligence alleging the landlord objectively knew of a risk of crime by third parties **and** the landlord did **not** take reasonable corrective action.

28. T F The purpose of insurance is for the insureR to pool similar risks **and** then to allow the insureD to pay a policy premium equal to the average cost of the insureD's risk (*plus administrative costs and insureR's profit*) instead of the insureD setting aside the total cost of the risk via self insurance.
29. T F All contracts for insurance require the insureD to have an insurable interest (*e.g., co-insurance*). Property insurance requires an insurable interest at the time of contract. Life insurance requires an insurable interest at the time of loss.
30. T F Because nearly all insurance contracts are adhesion contracts, an ambiguity in an insurance contract is interpreted against the insureD.
31. T F Generally, a will is a signed (*i.e., any mark with the current intent to authenticate the document*) writing witnessed by two disinterested persons who can attest to the testator's capacity (*i.e., testator's intent to create a will, and testator comprehends the testator's property and comprehends the natural objects of the testator's bounty*).

32. T F The legislature sometimes needs to estimate a deceased's objective intention for distribution of the deceased's property **without** the benefit of a will. For example, the UPC (*i.e., Uniform Probate Code*) imposes a spousal election (*i.e., a one-third minimum share of the estate*); **and**, alternatively, the law's distribution with grandchildren uses either *per capita* (*i.e., divide equally at the level of the deceased's children*) **or** *per stirpes* (*i.e., divide equally by number of heirs*).
33. T F A trustee owes a fiduciary's level of good faith. A trust is created when the donor delivers the corpus of the trust to the trustee for the benefit of the beneficiary **and** the trustee accepts that corpus **and** duty. A trust must be express.
34. T F Depending upon the jurisdiction, third parties do **or** do **not** need privity to have standing to sue a State license professional (*e.g., accountant, attorney*) for negligence. The traditional rule, the *Ultramares* Rule, requires the third party have privity (*e.g., incidental third party creditor beneficiary known to detrimentally rely upon the professional's actions*). The majority rule, the *Restatement* rule, merely requires that the professional has foreseen the third party. Nebraska uses the *Ultramares* Rule.
35. T F The client, **not** the professional, owns **and** controls the confidence **and/or** the privilege. A court has the power to compel the professional's testimony revealing a confidence. A court lacks the power to compel the professional's testimony revealing a privilege. Most communications related to the professional representation between the client **and** the professional are confidential if the professional is an accountant, **and** privileged if the professional is an attorney.