
print name on line above
INSTRUCTIONS:

1. This Exam #3 must be completed within the allocated time
(*i.e., 60 minutes*).
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 return both the student's exam and the answer sheet
and then leave the exam room until after the end of the exam
(*e.g., all students finish in less than 60 minutes*).
4. Grades will be posted to BlackBoard no later than 5:00 PM Friday, December 1.
An email notice of the posting will be sent.
5. This Exam #3 is worth 20% of the course grade.
The True-False form of 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 university identification 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 [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
no later than the start of class on Wednesday, December 6.

QUESTIONS:

1. **T F** To role of precedence in developing the common law (*e.g., contract law*) is the same as the role of precedence in developing code law (*e.g., UCC*). For example, both the common law of contracts **and** the UCC develop the law of **un**conscionable contracts in the same manner.
2. **T F** The Uniform Commercial Code (*UCC*) Article 2 Sale of Goods does **not** cover services, **unless** the predominate nature of the transaction is a sale of goods.
3. **T F** Every natural person is a "consumer". A "merchant" is any person that: deals in goods of that kind, hires an agent who is a merchant; **or** holds self out as a merchant.
4. **T F** The parties to a UCC Sale of Goods contract may disclaim any **and** all terms of the UCC Article 2 except two terms. The parties may **not** disclaim the obligation of good faith **and** may **not** disclaim personal injury proximately caused by consumer goods.
5. **T F** Both the UCC **and** the CISG (*Convention on Contracts for the Sale of Goods*) differ materially from the common law of contracts in that both the UCC **and** the CISG allow many contract terms to be open terms. However, the UCC requires the quantity term to be defined by the contract while the CISG requires the price term to be defined by the contract.
6. **T F** A seller's accommodation of prompt shipment of **non**conforming goods is both an acceptance of, **and** a breach of, the contract.
7. **T F** Both the UCC **and** the CISG reject the Mirror Image Rule **and** allow the parties to expand **and/or** alter their contract **without** requiring new consideration for additional terms **and/or** modifications that are **not** material changes.
8. **T F** A seller identifies goods when the seller designates goods as for the buyer.

9. **T F** A buyer of goods must have *the* risk of loss to have an insurable interest sufficient to purchase an insurance contract.
10. **T F** Both the UCC **and** the CISG use the Statute of Frauds. However, the UCC uses a dollar amount of \$5,000 **and** the UCC implies a merchant's signature following ten days of silence after that merchant's receipt of a signed contract from the other merchant.
11. **T F** An owner of goods entrusts those goods when the owner transfers possession **without** ownership to any merchant. The merchant to whom goods have been entrusted transfers good title to any buyer in the ordinary course of business who purchases for value **and** **without** knowledge that the merchant lacks good title.
12. **T F** The common law of contract rule of perfect tender is eliminated for sales of goods covered by the UCC.
13. **T F** A seller has an absolute right to cure breaches of an installment contract.
14. **T F** The UCC seller has a right of assurance **and** the UCC buyer has a duty of cooperation, **but not** *vice versa*.
15. **T F** The UCC buyer has an absolute right of inspection **and** the UCC buyer must exercise this right prior to the seller's "delivery" to the buyer.
16. **T F** Under both the common law of contracts **and** the UCC Sale of Goods, compensatory damages include incidental damages (*e.g., lost profits*). Both the common law of contracts **and** the UCC treat liquidated damages as an exclusive remedy.
17. **T F** The UCC expands the duty to mitigate damages by adding the duty to cover.
18. **T F** The federal Magnuson-Moss Warranty Act focuses upon the elimination of privity as a requirement for all warranties.

- 19. T F** The UCC requires the merchant buyer to choose between an express warranty
(*i.e., seller objectively knows of buyer's reliance*)
and
an implied warranty of fitness for a particular purpose
(*i.e., affirmation of fact that is the basis of the bargain*).
If
a merchant seller wants to disclaim all warranties
(*e.g., merchantability*),
then
the merchant seller's disclaimer must be conspicuous.
If
a merchant seller's disclaimer is **not** conspicuous,
then
the merchant seller's disclaimer is
unconscionable against the merchant buyer.
- 20. T F** The objective intent of the personal property owner determines whether that personal property is a fixture. However,
all trade fixtures are fixtures.
- 21. T F** The original owner of mislaid personal property transfers ownership to the finder (*i.e., finder's keepers*) via a constructive gift.
- 22. T F** A bailment can be, **but need not** be, a contract. Each of the following is an example of a bailment:
[i] entrustment, [ii] warehousing, **and** [iii] a consignment seller.
- 23. T F** The owner of an easement **and** the owner of a profit owns an interest in real estate that is a fee simple absolute.
- 24. T F** The owner of a life estate is capable of committing waste as is the owner of a leasehold estate (*e.g., periodic tenancy*);
but
the owner of a tenancy by the entirety is **not** capable of committing waste.
- 25. T F** The common law of nuisance is a judicial solution. The legislative solution to the same problem is zoning. Both, however,
are subject to the substantive due process limitation of a "taking".

- 26. T F** A merchant seller of residential real property grants an implied warranty of habitability to a consumer buyer; **but**, because a lease is license, a merchant lessor of commercial real property does **not** grant an implied warranty of habitability to a consumer tenant.
- 27. T F** To collect on a life insurance contract the insurED must have had an insurable interest at the time of contract. To collect on a property insurance contract the insurED must have an insurable interest at the time of loss.
- 28. T F** If an insurER avoids adverse selection, then the insurER **also** has avoided the moral hazard.
- 29. T F** Necessarily, an insurance contract is an adhesion contract. An insurance contract is more likely to be viewed by the courts as **unconscionable** if the insurance contract was selected for the insurED by an insurance agent (*i.e., insurER is the principal*) versus by an insurance broker (*i.e., insurED is the principal*).
- 30. T F** The capacity required by the law for a transaction is different for different transactions (*i.e., crime > contract > tort > will*). Testamentary capacity requires a person to grasp the natural consequence of one's actions; for example, to know the natural objects of that person's bounty.
- 31. T F** A Totten trust trustee receives from the grantor constructive delivery of the corpus of the trust. A Totten trust trustee owes a fiduciary duty (*i.e., utmost good faith*) to the grantor with respect to **neither** the corpus **nor** income of the trust; however, a Totten trust trustee does owe a fiduciary duty (*i.e., honesty in fact and personalized objective*) to the beneficiary with respect to both the corpus **and** the income.

- 32. T F** Each of the following is a will that is enforceable as created by the testator:
- [i] a witness of the testator's signature is a beneficiary under the will;
 - [ii] the will is express, signed, witnessed, **and** published, **but** the will is handwritten; **and**
 - [iii] the will is typewritten **or** machine printed with the same two witnesses of the testator's signing **also** witnessing the testator's oral revocation of the will six months later.
- 33. T F** The liability of State licensed professionals is greater than the privity based liability of torts **and** of contracts. Depending upon the jurisdiction, the State licensed professional has
- [i] the minimum increase of liability per the *Ultramares* Rule (*i.e., near privity and person receives the ultimate benefit of the professional's service [e.g., the rule used in Nebraska]*);
 - [ii] the Majority Rule (*i.e., rule proposed by the Restatement of the Law: Torts of professional liability for all persons foreseen by the professional as relying on the professional's service*);
 - [iii] the maximum increase of liability per the Minority Rule of all reasonable foreseeable persons.
- 34. T F** Common law fraud exists when the plaintiff can prove by a preponderance of the evidence that the defendant knowingly **and** intentionally **misrepresented** a material fact thereby proximately causing the plaintiff's justifiable reliance **and** injury. Security law fraud is far easier to prove because the legislature directs the courts to remove the three subjective elements of common law fraud (*i.e., knowing, intentional, and reliance*); significantly reduce the definition of material (*i.e., security law material is what a reasonable prudent investor would want to know prior to making a decision*); **and** add an affirmative duty to speak the truth (*i.e., adds "or omission"*).
- 35. T F** Both an accountant **and** a lawyer preparing the disclosure statements required for the issue **or** trading of a security have the safe harbor protection of the Due Diligence Defense. Thus, violation by a professional requires proof of the professional's scienter (*i.e., actual knowledge*) of the material misrepresentation **or** material omission. Because of the difference between confidential **and** privileged, accountants **and** lawyers have different safe harbors.