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print name

**LAWS 3910, Introduction to Business Law and Ethics**

Spring 2003

**Exam #3, Chapters 1 - 23; 49 - 52**

35 questions scored as if there are 33

20% of course grade<sup>1</sup>

**INSTRUCTIONS:**

1. This Exam #3 must be completed within the allocated time (*i.e., start at 7:00 PM and end by 8:00 PM*). It is a closed book exam.
2. **Recall the material difference between i.e. (*that is*) and e.g. (*for example*).**
3. **Use answer sheet option "A" to indicate True and use "B" to indicate False.**
4. At the conclusion of the exam, each student shall exchange that student's answer sheet for an answer key. Each student may write on and may keep that student's copy of the exam.
5. This Exam #3 is worth 20% of the course grade (*but see footnote 1*). This Exam #3 has 35 questions graded as if there are 33. Harmless errors are far more likely than non-harmless errors in this test design. Any student may appeal the grading of exams questions. However, only if a student **successfully appeals the ambiguity of AT LEAST THREE questions on this Exam #3** will that student's exam grade change. *Appeals only affect the exam grades of those students that appeal.* Based on a statistical analysis of all students' answers, the instructor may unilaterally alter the grading of specific exam questions for all similarly situated students.
6. **All appeals of Exam #3 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] at the beginning of the appeal of each question appeal, **identify** two or more meanings that the question reasonably could have had; [6E] **argue** each question, one at a time, argue why one or more of the identified meanings is *as* appropriate or *more* appropriate than the meaning used for the answer key answer;
  - and [6F] **submitted in paper copy to O'Hara's RH 502 mailbox no later than 4:00 PM on Friday, May 2.**
7. Grades will be posted to O'Hara's web site (*i.e., <http://cba.unomaha.edu/faculty/mohara/web/ohara.htm>*) by 5:00 PM Friday, May 2 so earners of course grades of "A" know in a timely fashion. A BlackBoard email notice of the posting will be sent.

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<sup>1</sup> Unless the student has an "A" average after the third exam, when weight of Exams #1, #2, and #3 each is 33%.

**QUESTIONS:**

1. **T F** If the vast majority of the States adopt a uniform law (*e.g., Uniform Commercial Code [UCC]*) then the States reduce the federal power of preemption.
2. **T F** The UCC defines "goods" (*i.e., tangible **and** moveable*) **and** defines "services".  
If a transaction is predominantly a sale of goods, even though that transaction contains a substantial amount of services, then that transaction is a sale of goods.
3. **T F** A merchant is a person who deals in goods of that kind, **or** hires an agent who is a merchant, **or** holds self out as a merchant.
4. **T F** The UCC increases the ease of forming a contract by imposing an obligation of good faith on all covered contracts. The UCC allows consumers, **but** does **not** allow merchants, to disclaim the obligation of good faith. Consequently, open terms (*e.g., time, price, quantity*) that would prevent contract formation at common law, result in a UCC contract that is completed using commercially reasonable terms.
5. **T F** Under common law, modification of the terms of a contract requires consideration. Under the UCC, additional terms modifying the contract that do **not** materially alter the contract may be added when a merchant is dealing with a merchant; **but no** additional terms may be added when dealing with a consumer.

6. **T F** The UCC repeals the Statute of Frauds.  
If  
a contract is covered by the Statute of Frauds,  
then  
it must be signed by the party who is sued.  
A selling merchant's signature is obtained  
if  
the buying merchant sends a signed contract **and**  
then  
the selling merchant does **not** object within ten days.
7. **T F** The Parol Evidence Rule  
does **not** bar all oral testimony if there is a written contract.  
If  
the written contract contains ambiguous terms,  
then  
the court will allow oral testimony on consistent, additional terms.
8. **T F** The UCC denies enforcement contract terms that are **unconscionable**.  
An adhesion contract helps prove the existence of power.  
With an adhesion contract it is easier to prove abuse of power, **and**  
abuse is **unconscionable**.  
If  
the court finds a contract term to be **unconscionable**,  
then  
the court may void the entire contract, sever the offensive term,  
**or** reform the contract so that its terms are **not unconscionable**.
9. **T F** The CISB  
(*United Nation's Convention on Contracts for the International Sale of Goods*)  
controls transactions involving merchants **and** consumers.
10. **T F** An option contract is a contract.  
Since a merchant's written offer functions like an option contract,  
it must be supported by consideration.
11. **T F** The UCC relies more on the concept of identification than passing of title.

- 12. T F** The risk of loss on a shipment contract between merchants passes from the seller to the buyer before the risk of loss on a destination contract between merchants.
- 13. T F** If the true owner of goods entrusts those goods to a merchant, **and** if the merchant sells those goods in the ordinary course of business, then a good faith purchaser for value obtains good title valid against the true owner.
- 14. T F** The common law has the remedy for breach called cure.
- 15. T F** Under the common law, commercial impossibility discharges both parties from the contract. Using a *force majeure* clause, the parties by contract may create additional conditions subsequent. A *force majeure* clause specifies anticipated **but unforeseeable** events that will discharge the parties from the contract.
- 16. T F** Under the UCC, one party reasonably may demand assurance of performance from the other party. If the party receiving the demand does **not** provide the requested assurance, then that failure is treated as a breach via anticipatory repudiation. However, the **non**-breaching party has, at that moment, a duty to mitigate.
- 17. T F** Under the UCC, the **non**-breaching buyer must in good faith **and without unreasonable** delay, cover.

- 18. T F** Remedies for breach of contract, under the common law, are alternatives requiring an election; while under the UCC remedies are cumulative. Under the UCC, the parties by contract may limit remedies for breach of contract, subject to the UCC prohibition against **un**conscionable contract terms.
- 19. T F** Under the UCC, the typical measure of damages is the difference between the contract price **and** the market price.
- 20. T F** A warranty, like an agency **or** a bailment, is **not** necessarily a contract; **but** can be a contract if both parties have capacity **and** both parties exchange consideration.
- 21. T F** If the terms of an express warranty conflict with the terms of an implied warranty for a particular purpose, then the express warranty controls.
- 22. T F** If goods sold contain latent defects (*i.e., defects discoverable with a reasonable inspection*) then the implied warranty of merchantability creates liability for the selling merchant.
- 23. T F** If a merchant's written contract contains a conspicuous **and** effective disclaimer of all express **and** implied warranties under the UCC, then, under federal law, that contract still can contain a limited warranty **but not** contain a full warranty.

- 24. T F** A contract for insurance, lacking an insurable interest, is an **illegal** contract for gambling.  
The insurable interest on a life insurance policy must exist at the time of contract;  
while the insurable interest on a property insurance policy must exist at the time of loss.
- 25. T F** Because of the risk pooling feature of insurance, all insurance contracts are adhesion contracts.  
Accordingly,  
ambiguities in insurance policies are interpreted against the insurer.
- 26. T F** Because an insurance contract has risk allocation as its central feature, if  
the insured commits fraud about the type of risk (*e.g., fire versus life*), then  
the policy is void.  
However,  
if the fraud goes **not** to the type of risk,  
**but** to the magnitude of risk (*e.g., fraud about age on life policy*), then  
the policy is **not** void,  
instead the premiums owed are adjusted **and**  
any **unpaid** premiums are subtracted from any pay out on a covered loss.
- 27. T F** Typically,  
a will is a written, signed, **and** witnessed document.  
A codicil is a second **or** subsequent will that expressly refers to a prior will.  
A codicil materially alters **or** completely repeals the prior will.
- 28. T F** Person "A" has two children, "B" **and** "C".  
"B" has two children (*i.e., B1 and B2*); "C" has one child (*i.e., C1*).  
"A" dies with a will leaving "A's" property to "B" **and** to "C" equally.  
Both "B" and "C" have died before "A".  
"A", "B", "C", B1, B2, **and** C1 all reside in the State XYZ,  
along with all of "A's" property.  
B1 gets more  
if State XYZ's probate uses *per capita* rather than *per stirpes*.

- 29. T F** A grantor creates a trust by designating a beneficiary **and** designating a trustee, **as well as** by owning **and** making actual delivery of the trust assets (*i.e., corpus or principal*) to the trustee. The trustee holds legal title, while the beneficiary holds beneficial, **or** equitable, title.
- 30. T F** Grantor "G" creates a trust with stocks **and** bonds as the corpus (*i.e., principal*) of the trust. "G" appoints "T" as the trustee, **and** "L" is the life estate beneficiary entitled to the annual income. "R" is the residual beneficiary. However, the financial markets suffer a substantial fall, **and** annual income is less than reasonable operating expenses of the trust. "T" breaches the fiduciary duty to avoid "waste" if "T" pays the reasonable operating expenses out of the corpus **and** thus reduces the principal.
- 31. T F** The majority of jurisdictions hold accountants liable to third parties. The majority of jurisdictions use the *Restatement* Rule for imposing liability (*i.e., the account must have foreseen the third party's reliance upon the accountant*). The *Restatement* Rule, in this instance, rejects proximate causation. Nebraska, however, uses the *Ultramares* Rule requiring near privity.
- 32. T F** Common law fraud exists when the defendant knowingly **and** intentionally **misrepresents** a material fact inducing the plaintiff's justifiable reliance **and** causing the plaintiff's injury. It is much easier to prove security law fraud. Security law fraud exists when the defendant misrepresents **or** omits a material fact causing the plaintiff's injury.

- 33. T F** An Act of State  
is an action by a sovereign government within its own jurisdiction.  
Judicial branches of different sovereign governments  
will examine the validity of such public act.
- 34. T F** Sovereign immunity  
is the right of a sovereign government to be free from lawsuit.  
The sovereign government maintains its immunity  
if  
it acts by through an instrumentality.  
Within the USA,  
a sovereign government waives its immunity  
if  
it engages in commerce that is ordinary for private persons.
- 35.** Which of the following is/are true?
- a.** All countries make dumping **un**lawful.
  - b.** Selling below the cost of production in a foreign market is dumping.
  - c.** Dumping exports **un**employment.
  - d.** All of the above.
  - e.** None of the above.