
print name

INSTRUCTIONS:

1. The Unit Three Exam must be completed within the allocated time (*i.e.*, 11:00 AM - 12:45 PM). It is a closed book, solo exam.
2. **Please read carefully.** Sentence structure influences the meanings of words. **Recall the material difference between e.g. (*for example*) and i.e. (*that is*).**
3. As each student finishes this exam, that student will exchange the student's answer sheet for a answer key and leave the exam room until after the end of the exam (*i.e.*, 12:45 PM, unless all students finish earlier, which is likely).
4. Grades distribution statistics will be posted to BlackBoard no later than 5:00 PM, Friday. An email notice of the posting will be sent.
5. **The Unit Three Exam 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. *An appeal only affects the exam grade of the student who has made 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 the argument 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 11:01 AM on Tuesday, April 19.*

QUESTIONS:

1. **T F** The USA States adopted the Uniform Commercial Code (UCC) after the significant 1937 broadening of the judicial interpretation of the federal Commerce Clause. The UCC significantly reduced the federal power of preemption on the issue of the sale of goods.
2. **T F** The UCC often uses the legal categories of "consumer" and of "merchant". Every human is a "consumer" **and** every corporation is a "merchant".
3. **T F** The UCC statute is the default express contract for the sale of goods. The parties are free, however, to use terms other than the UCC provisions in their contract. There only are two provisions of the UCC, however, that the parties to the contract for the sale of goods may **not** eliminate: the obligation of "good faith" **and** a merchant's liability for personal injury of a consumer from those goods. The UCC uses the same definition of "good faith" for both consumers **and** merchants: honesty in fact **and** commercial reasonableness.
4. **T F** Under the UCC, all "goods" are personal property, **but, not** all personal property is "goods". If both services **and** goods are included in the sale, then the entire transaction is categorized as a sale of "goods".
5. **T F** For the sale of goods, the UCC radically changes the common law of contracts. For example, under the common law of contracts a contract would **not** form, because there is **no** meeting of the minds in an enforceable agreement, if open terms remained; **and** the common law of contracts would see a counter offer rejecting the offer if the offeree proposed any additional terms. Whereas, the UCC authorizes all open terms **and** authorizes all additional terms.

6. **T F** A seller's prompt shipment of **non**-conforming goods
*(accompanied by notice that the shipment
is as an accommodation to the buyer)*
is both the seller's acceptance of the buyer's offer
(thus forming a contract) **and**
a material breach by the seller
that empowers the buyer to
recover consequential damages due to the **non**-conforming goods.
7. **T F** If
the goods that are the subject of a UCC sale of goods are
specially manufactured goods,
then
the buyer might both
have access to the remedy of specific performance
(if the seller breaches)
and
have access to an exception to the parol evidence rule.
8. **T F** Under the UCC,
as soon as the seller identifies the goods
the buyer has an insurable interest **and**
the risk of loss transfers from the seller to the buyer.
9. **T F** Commingling fungible goods of like grade **and** quality
transforms
those commingled goods into **non**-fungible goods.
10. **T F** Entrustment of goods to a merchant
*(i.e., deals in goods of that kind,
hires an agent who is a merchant, **and/or**
holds self out as a merchant)*
by the true owner
empowers the merchant to,
by lawful transfer **and/or** by **unlawful** transfer,
create good title in
a good faith purchaser who pays value in the ordinary course of business.
11. **T F** The common law of contracts requirement of
perfect tender
is eliminated by the UCC's duty to cure.

12. T F The UCC focuses upon the ease of the parties' creating **and** the ease of parties' completing contracts as means of the UCC minimizing litigation. Accordingly, all buyers **and** all sellers must provide the other party with both cooperation **and** assurance when requested by the other party.
13. T F All buyers always have an absolute right of inspection. The buyer's right of inspection ends when the buyer notifies the seller of the buyer's acceptance of the shipment.
14. T F The common law of contracts requires an election of remedies. In stark contrast, the UCC provides for cumulative remedies, **unless** the parties agree that a remedy is to be exclusive. Another major change from common law remedies is that the UCC presumes that the benefit of the bargain includes consequential damages.
15. T F The UCC expands the **non**-breaching party's common law of contracts duty to mitigate damages to include the **non**-breaching party's UCC duty to cover.
16. T F All merchants selling goods provide all of the following implied warranties **unless** the merchant **disclaims** the implied warranty by conspicuous express statements: good title, **no** liens, **no** infringement, **and** merchantability of fitness for the ordinary purpose.
17. T F The federal Magnuson-Moss Warranty Act does **not** require any seller to provide any warranties **and** does **not** require any warranty provided to be express; **but**, the federal Magnuson-Moss Warranty Act does requires all UCC written express warranties to provide privity for all third parties foreseen by the seller.

18. T F Tangible personal property becomes part of the real property (*i.e., fixture*) when the objective intent of the owner of the personal property is that the personal property become a fixture. However, the objective intent for trade fixtures is that the personal property is **not** a fixture.
19. T F All natural persons in Nebraska who share ownership of real property as tenants in common can transform their ownership interest into a tenancy by the entirety by the private transaction of a deed.
20. T F The owner of real property upon which mislaid **or** lost personal property is found becomes the true owner of that mislaid **or** lost property. However, if the personal property was abandoned, then the finder of the abandoned personal property becomes the true owner.
21. T F A bailment, a warranty, **or** an employment agreement may be, **but** need **not** be, a common law contract. Four specific elements of the six elements of a common law contract always must be fully present if a bailment, a warranty, **or** an employment agreement is to be formed.
22. T F The bailee's liability might be slight **or** might be great for damage to the corpus of the bailment during the bailment. A few bailees (*e.g., common carriers, warehouses, innkeepers*) have strict liability.
23. T F An easement is a license that has been recorded like a deed.

24. T F An oral deed must be memorialized by a written memorandum of sufficient definiteness if that oral deed is to satisfy the requirements of the race statute **and** establish the new owner's time priority with respect to all other purported owners.
25. T F The judicial remedy for nuisance has been substantially supplanted by the legislated remedy of zoning. However, an aggressive zoning law with **insufficient** allowance for variances will fail to be mere regulation. Instead, such aggressive zoning will amount to an exercise of eminent domain **and** a taking requiring both a public purpose **and** just compensation.
26. T F Traditional real estate law leaned heavily upon *caveat emptor*. Today, however, a seller of residential real estate has a duty to reveal a material latent defect **and** makes an implied warranty of habitability.
27. T F The landlord's liability is limited to those with privity.
28. T F All insurance contracts, **unlike** all contracts for gambling, have an insurable interest. The insurable interest of the insured must exist at the time of contract for life insurance; **but** must exist at the time of loss for property insurance.
29. T F The moral hazard of insurance law refers to only high risk insureds obtaining insurance coverage.
30. T F The capacity required for a will is large relative to the capacity required for a contract.

31. **T F** A trust is created when the owner of the sufficiently identified corpus of the trust, with the intent to create a trust, actually delivers to the trustee the corpus of the trust for the lawful benefit of the beneficiary. To create a trust additionally requires a writing signed by both the grantor **and** the trustee, because the grantor surrenders ownership of the corpus **and** the trustee takes on a fiduciary duty.
32. **T F** A durable power of attorney is necessary if one natural person is to exercise decision making for life **and** death medical care of another natural person.
33. **T F** The negligence liability of State licensed professionals (*e.g., accountants*) is broadened by the *Ultramares* Rule's relaxation of the common law requirement of privity for this tort liability.
34. **T F** An accountant who fails to perform due diligence during the accountant's client's issuance of a security registered with the USA Securities **and** Exchange Commission (SEC) will avoid liability for that failure of due diligence if that failure was done in good faith **and** the accountant lacked scienter.
35. **T F** Most conversations, between a State licensed professional (*e.g., accountant, lawyer, physician*) **and** that professional's client that deal with the professional engagement (*e.g., medical history*) are both confidential **and** privileged.