
As your signature, ***legibly*** PRINT your name on the line above: ***minus 1% if fail to do so***
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 shall 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, April 20.
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.
Via an appeal in equity any student may appeal the grading of any of the 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 Thursday, April 26.

QUESTIONS:

1. **T F** Both the Uniform Commercial Code Article 2 (*hereinafter, UCC*) **and** the CISG (*United Nations' Convention on Contracts for the International Sale of Goods*) cover contracts for the sale of goods (*i.e., tangible **and** moveable property*). Both the UCC **and** the CISG allow for open terms. However, the UCC requires quantity term to be specified, while the CISG requires the price term to be specified.
2. **T F** All consumers **and** all merchants are natural persons.
3. **T F** Any merchant may disclaim any provision of the UCC except for good faith.
4. **T F** Both the UCC **and** the CISG reject the common law Mirror Image Rule. Accordingly, both the UCC **and** the CISG permit a merchant seller selling to a merchant buyer to modify a sale of goods contract with **no** new consideration.
5. **T F** The UCC modifies the Statute of Frauds. For example, a merchant's signature can be implied from a buying merchant's ten day silence in response to a selling merchant's prompt shipment of conforming goods as an accommodation.
6. **T F** Motivated both by ethics **and** a pursuit of commercial efficiency, the legislature has adopted as statutory remedies some equitable remedies (*e.g., **unconscionable contracts, specific performance***).
7. **T F** If a good has been identified (*i.e., in existence **and** designated by the seller*), then both the buyer **and** the seller have **-a-** risk of loss, **but**, only the seller has **-the-** risk of loss **and**, thus, an insurable interest.
8. **T F** An entrustment of goods is a bailment.
9. **T F** Both the UCC **and** the CISG retain the common law rule requiring perfect tender. However, only the UCC has the seller's right to cure.
10. **T F** Because of the UCC's obligation of good faith (*i.e., honesty in fact **and** commercial reasonableness*), all parties have a Right to **and** a Duty of Cooperation. Fewer than all parties to a UCC sale of goods have a Right of Assurance.

11. **T F** Both the seller **and** the buyer have an absolute Right to Inspection.
12. **T F** A breaching seller's duty to mitigate damages includes the duty to cover.
13. **T F** Lost profits are incidental damages under the UCC.
14. **T F** All retail sellers of UCC goods make the implied warranty of merchantability.
15. **T F** If a merchant seller makes both warranties, then the buyer (*whether consumer or merchant*) must make an election between the express warranty (*i.e., seller's affirmation of fact that is the basis of the bargain*) **and** the implied warranty of fitness for a particular purpose (*i.e., seller knows of the buyer's justifiable reliance upon the seller*).
16. **T F** If the defect is a latent defect, then to recover for breach of warranty requires the recovering party to have privity.
17. **T F** A trade fixture (*e.g., built-in oven in a leased commercial kitchen*) is **not** a fixture (*i.e., personal property owner's objective intent is to firmly affix the personal property to the real property*).
18. **T F** Confusion of fungible goods creates tenants in common.
19. **T F** "Finders keepers" is the common law rule for abandoned personal property.
20. **T F** If the owner of personal property bails it to a common carrier, then the common carrier is liable for destruction of the personal property during carriage even if the protection offered by the common carrier was far more than commercially reasonable under the circumstances.

21. T F An easement in gross is a profit;
but,
an easement appurtenant is **not** a profit.
22. T F Today, in Nebraska,
if
a life estate owner of real property is to avoid wasting that ownership right,
then
that life estate owner must farm (*as contrasted with mine*) the ground water.
23. T F To transfer an ownership interests in real property
the first owner must execute either a license **or** a deed to the second owner.
24. T F Nebraska recognizes
an urban residential consumer renter's implied right to habitability;
but
Nebraska does **not** recognize
an urban residential consumer buyer's implied right to habitability.
25. T F Zoning is a taking,
unless
there is an existing public nuisance.
26. T F If
an insurer avoids adverse selection,
then
the insurer has **not** necessarily avoided the moral hazard.
27. T F Property insurance requires an insurable interest at the time of loss.
28. T F An insurance contract is an adhesion contract
whose ambiguities are interpreted against the insurER
even if
the insurER provides the insurED with more than a reasonable opportunity
both to discover **and** to object to any ambiguities.
29. T F The witness to a will is a witness to the testator's
capacity, intent, signature, **and** publication of the will.
30. T F In Nebraska,
when a person dies **without** a will the deceased's property passes *per capita*.

31. **T F** A trustee owes the grantor of the trust a duty of utmost good faith (*i.e., honesty in fact **and** personalized objective*).
32. **T F** When imposing liability on a State licensed professional arising from contracts Nebraska uses the *Restatement of Torts'* majority rule (*i.e., the Ultramares Rule*).
33. **T F** Security law fraud requires a **misrepresentation** of a material (*i.e., big enough to have changed the mind of a reasonably prudent investor*) fact.
34. **T F** If an account has scienter (*i.e., actual knowledge*) of the client's security law fraud via **misrepresentation** of a material fact in the prospectus, then the accountant can **not** ethically, **but** can legally, satisfy the due diligence defense.
35. **T F** Both legally **and** ethically, a client's disclosure to an accountant of the client's future criminal actions is **neither** confidential **nor** privileged.