
print name on the line above as your signature

INSTRUCTIONS:

1. This SECOND Exam must be completed within the allocated time
(*i.e., the 75 minutes between 10:00 AM and 11:15 AM*).
It is a closed book exam.
2. **Recall the material difference between
e.g. (for example) versus i.e. (that is).**
3. As each student finishes this exam, that student shall
[3A] present to the instructor the student's photo ID;
[3B] present the student's completed answer sheet;
[3C] exchange the completed answer sheet for an answer key; and
[3D] then leave the exam room until after the end of the exam
(*e.g., all students finish in less than the 75 minutes*).
***To find your individual exam grade
you must use your marked up exam.***
4. Preliminary exam grades and course grades (*i.e., prior to resolving any appeals*) of the class ***but not with individual students identified*** will be posted to O'Hara's web site no later than 4:00 PM Tuesday, March 10. An email notice of the posting will be sent.
5. This SECOND Exam is worth 20% of the course grade.
The True-False form of this exam has 32 questions graded as if there are 33. Based upon the instructor's statistical analysis of all students' answers, the instructor unilaterally may alter the grading of specific exam questions. Any student may appeal the grading of any other exam questions. However, only if a student successfully appeals the ambiguity of **AT LEAST TWO** questions on this exam will *that* student's exam grade change by the number of successful appeals in excess of ONE successful appeal.
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] immediately following the signature, list in sequence, *solely by number*, each of the questions 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 or the instructor's suite secretary in RH 502 no later than the 11:00 AM on Wednesday, March 11 .

NOTE #1: On the blue computer graded answer sheet provide your name (last, first) both in numeral *and in bubble* and provide your NU ID number both in numeral *and in bubble*.

NOTE #2: On the computer graded answer sheet, **use A to indicate that the statement is TRUE;** and use B to indicate that the statement is FALSE.

NOTE #3: A statement never is false because of a numerical reference to a law (e.g., *UCC section 2-318*). On this exam, all such references are true.

NOTE #4: The acronyms "UCC" and "CISG" will be used in this exam rather than their fully spelt out names, respectively, the "Uniform Commercial Code" and the United Nations' "Convention on Contracts for the International Sale of Goods".

NOTE #5: Answer question #33 prior to answering any other question.

QUESTIONS:

1. **T F** A negotiable instrument can be in the form of:
a maker promises to pay the payee
(*i.e., a promissory note*)
or
a drawer orders drawee to pay the payee
(*e.g., a check [i.e., bank is the drawee of the draft]*).
2. **T F** A negotiable instrument
(*hereinafter "instrument"*
is used interchangeably with "negotiable instrument")
requires
a signed
(*i.e., any mark with the current intent to authenticate the document*)
written
unconditional promise or order to pay
a fixed amount of money
on demand **or** at a definite time
to the order of the payee **or** to bearer.
3. **T F** The face of the instrument must be **unconditional,**
but
the back of the instrument may contain express conditions.

4. **T F** A document is **not** an instrument because its amount of money is **not** fixed if the money is stated in numerals as "\$100" **and** in words as "twenty five dollars".
5. **T F** The issue of an instrument occurs when the maker **or** drawer delivers the instrument to the payee. Negotiation of an instrument occurs when the instrument is transferred in such form (*i.e., delivery with all necessary indorsements*) that the transferee becomes a holder.
6. **T F** A qualified indorsement (*i.e., **without** recourse*) allows the indorser to negotiate the instrument **without** taking on any liabilities (*i.e., **no** signature liabilities, **no** transfer warranties, **and** [if applicable] **no** presentment warranties*) related to the instrument.
7. **T F** Any person in possession of a bearer instrument is a holder
8. **T F** A maker can, **but** a drawer can **not**, become a holder in due course (*HDC*) of the instrument they issue.
9. **T F** A holder in due course (*HDC*) must give value. At least some forms of pre-existing consideration can be value.
10. **T F** To have the "notice" that prevents a holder from becoming a holder in due course (*HDC*) the holder must have receipt of notice.
11. **T F** **No** one has primary liability on an **un**accepted personal check.
12. **T F** The indorsement of a fictitious payee is a valid indorsement for the purpose of triggering the maker's **or** the drawer's liability to pay.
13. **T F** Transfer warranties require transfer for consideration (*i.e., **not** merely value*). Transfer warranties may be **dis**claimed for a promissory note **but not** for a draft.

- 14. T F** Defenses to enforcement of a negotiable instrument can be either personal defenses **or** universal defenses.
Typically,
personal defenses render a transaction voidable
while
universal defenses render a transaction void.
For example,
fraud in the inducement is a personal defense that is good against a holder,
whereas
fraud in the execution is a universal defense that is good against an HDC.
- 15. T F** A bank signs **and** has primary liability
for its cashier's checks **and** for its certified checks.
- 16. T F** A check presented six **or** more months after its issue is a
stale check.
A bank breaches its duty to its depositor the drawer
if
the bank honors a stale check.
- 17. T F** The death of the maker **or** the death of the drawer
prior to
issue of the instrument is treated the same:
the instrument is void.
The death of the maker **or** the death of the drawer
following the
issue of the instrument is treated the same:
presentment within ten days of the date of death will be honored.
- 18. T F** The depositor/drawer of checks has an affirmative duty to speak
with respect to forgeries reasonably discoverable
in the depositor/drawer's monthly statement from the bank/drawee,
and
the depositor/drawer's silence is acceptance **and** ratification
of subsequent **and** similar forgeries.
- 19. T F** Floating a check is lawful.
Kiting checks is criminal.
The difference between float **and** kite depends upon the drawer's intent.
- 20. T F** In Nebraska,
a mechanic's lien
attaches to real property, is a super lien, **and** might **not** be filed.
An artisan's lien
attaches to personal property **and** is a possessory lien.

- 21. T F** Procedural due process is required because of substantive due process if attachment is via a writ of attachment;
but,
neither substantive due process **nor** procedural due process typically are involved in attachment via a security agreement.
- 22. T F** Some co-signers of contracts have secondary liability;
but,
all co-signers of negotiable instruments have primary liability.
- 23. T F** A debtor owes that debtor's surety the rights of subrogation, reimbursement, **and** contribution;
but,
a debtor's guarantor only is owed the right of reimbursement.
- 24. T F** To be collateral the property must be tangible property: either personal **or** real.
- 25. T F** The debtor grants a security interest in the collateral to the creditor.
- 26. T F** Attachment can come into existence upon execution of a valid security agreement.
Perfection can come into existence upon execution of a valid financing statement.
- 27. T F** Based upon each creditor's priority, creditors may recover their due from the property of the debtor.
Priority is determined first by time of attachment **and** second by time of perfection.
- 28. T F** Bankruptcy is an exclusive power of federal government.
The USA States granted this power to the federal government via Article I, section 8, clause 4
(i.e., Congress shall have the power ... to Establish ... uniform Laws on the subject of Bankruptcies throughout the United States)
as well as took this power away from the individual State governments via Article I, section 10
(i.e., No State shall ... pass any ... Law impairing the Obligations of Contracts).

- 29. T F** The filing of a petition in bankruptcy
(*e.g., involuntary Chapter 7 liquidation;*
voluntary Chapter 11 business reorganization)
acts as an
automatic stay
against all other judicial actions against the debtor's estate
and
vests the Bankruptcy Court with exclusive jurisdiction.
However, that
automatic stay
may be waived by the Bankruptcy Court.
For example,
a secured creditor may seek adequate protection
by foreclosure on the collateral;
but,
for any deficiency that secured creditor will be a mere general creditor.
- 30. T F** The Bankruptcy Court, especially the bankruptcy trustee, has
extraordinary powers.
For example,
the trustee has avoidance powers.
The trustee may avoid
executory contracts deemed **unbeneficial** to the debtor's estate;
or,
the trustee may reverse preferential transfers
without the need for proving common law fraud.
- 31. T F** Typically,
at the conclusion of the bankruptcy proceedings,
any deficiency is
discharged.
However,
some debts are excepted from discharge
(*e.g., domestic support obligations*);
and
some debtors suffer objection to any discharge of any deficiency
(*e.g., fraud by debtor on the Bankruptcy Court*).
Also,
as part of those proceeding the debtor may, with the court's approval,
reaffirm
a debt that otherwise would have been discharged.

- 32. T F** A voluntary Chapter 7 liquidation petition will be dismissed due to a presumption of substantial abuse if when averaging of the debtor's six months of income prior to filing, the debtor's income exceeds the median family annual income in that USA State plus \$6,000; whereupon, the debtor must either successfully rebut that legislatively created presumption **or** file a voluntary Chapter 13 individual repayment plan petition. Under Chapter 13, the individual pays past debts out of the debtor's future income (*i.e. as much as the next five years of income*). Technically, this is **not unconstitutional slavery, but** instead is voluntary servitude.
- 33. T F Answer question #33 with the answer E.**