

# INTRODUCTION TO CONTRACTS

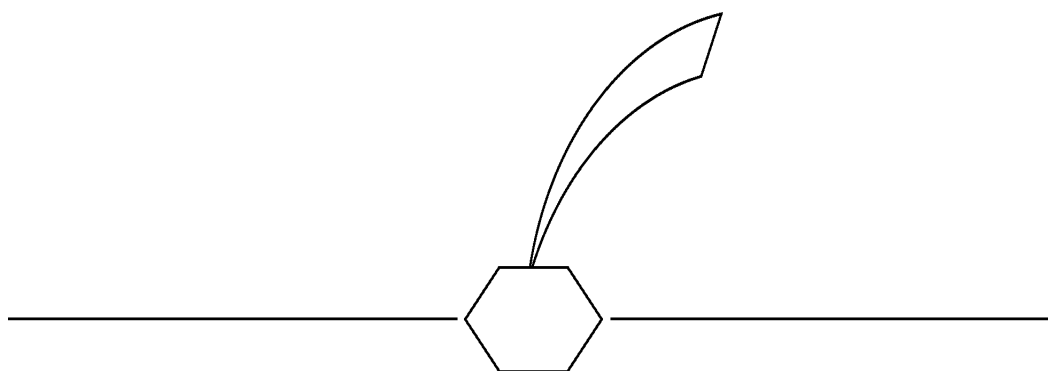
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Fourth Edition

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Instructor Guide

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Since we wrote the first edition of this textbook, we've learned that contract law is taught as a stand-alone course and as a supplement. It is taught by some who insist on case law and others with only an occasional illustrative case. It is taught by not only adjunct instructors who follow instructors' notes as if they were scripture but also full-time professors who need no instructors' notes.

Clearly, we're not going to satisfy all of you.

We're going to talk our way through this fourth edition of the student's textbook giving you our thinking behind what we wrote. We hope these ideas work for you.

The cases preceding each chapter are meant to make the whole thing seem less grim—nobody ever claimed the Uniform Commercial Code was one of life's more entertaining topics. Both of us believe in introducing humor where we can, and we appreciate John McClay and Wendy Matthews' sharing their research with us.

For those of you who can't face the day without case law, we suggest you retrieve truly current ones from FindLaw<sup>®</sup> or your own favorite Internet law-related database. In print, the *National Law Journal* will give decisions on current cases. Introduce these in class for analysis and discussion. You should use your state's equivalent of *AmJur* or *AmJur* itself. Older related cases are listed in this manual.

If you want to use any of our sample quiz and exam questions, they're available on diskette from Pearson.

We want the textbook to help your students be successful in dealing with contracts. If you have comments, please send them to [fbwhites@flash.net](mailto:fbwhites@flash.net) with a copy to our publisher, [pearsonpub@aol.com](mailto:pearsonpub@aol.com).

Thank you.

Diane Baldwin and Frances Whiteside

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**THE STUDY OF  
CONTRACT LAW**

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Your students will have encountered contracts as consumers. Have them recall some of these. Encourage your students to be aware of contracts in their lives and to bring samples to class. Remember to ask for these at the opening of each class; the shy student who has brought a contribution may not otherwise tell you that he or she has a contract to share. As the semester progresses, you can ask your students to analyze the contracts produced in terms of what they have studied to that point.

Explain to your students, particularly if it is early in their studies, that they will encounter contracts in every realm of substantive law. We have given examples on pages 3–5. You may wish to add others from your own experiences. If any of your students currently work in a law office, ask them to share what they can without revealing confidential information.

*Note: This warning concerning confidentiality is another opportunity to teach ethics, which should be worked into the curriculum of each class.*

What dictionaries will your students be using? Note that, while there are several, Black’s Seventh Edition is quoted throughout the textbook. This is a good opportunity to reinforce that students may find several definitions of the same term. The word “contract” itself is a good example. Later you may wish to assign them to research the term “contract” in various dictionaries and treatises.

Discuss the duty to read every word in a contract. Share real-life anecdotes.

We did not stress the Magnuson-Moss Act in this chapter on the advice of a paralegal educator who thought this point was too soon to introduce the topic to the student. If you do not agree, you may want to have your students look up this act and outline its contents.

The UCC in your state is very important. Either tell the students where to find it or assign them to find it, depending on your preferred teaching technique. Stress that the UCC was intended to govern sales of and contracts to sell goods and personal property and is being expanded, however slowly, in deference to the rush of twenty-first century information.

Be alert to contracts that make headlines in the news. Examples are contracts between professional sports teams and athletes, local agencies and their executive directors, and large corporations and their CEOs. When a natural disaster strikes an area, commercial impracticability is clearly demonstrated.

### **Suggested Test Questions for Chapter One**

1. The [your state] Uniform Commercial Code is found at [**your statute**].
2. The Magnuson-Moss Act requires that written warranties be categorized as [**full**] or [**limited**].
3. The UCC is a state law, while the Magnuson-Moss is a [**federal**] law.
4. List [**three, five, or any number you prefer**] sections of the UCC.  
**Sales of Goods and Personal Property**  
**Leases**

**Negotiable Instruments**  
**Bank Deposits and Collections**  
**Funds Transfers**  
**Letters of Credit**  
**Documents of Title**  
**Investment Securities**  
**Secured Transactions**

5. What two associations are responsible for writing and revising the UCC? [**The American Law Institute and the American Bar Association.**]
6. Briefly, trace the history of contracts from the English common law. [**Answer should include writs, assumpsit, misfeasance, nonfeasance, and consideration.**]

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**FOUNDATION OF  
THE CONTRACT**

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This chapter contains most of the major substantive theories in the textbook. If your slower students do not grasp the contents of Chapter Two, they will be confused all semester. Take as long as you need to drill these basics. Review at the beginning of every class.

We constructed the definition of a contract on page 11. If there is another you prefer, use it. Better still, use yours, and ours, and Williston's, and Black's, and Oran's.

Ask your students for examples of an agreement that is not a contract. Compare borrowing a book from a friend and checking out a book from the library. Flip the scenario by giving the book monetary value, as a signed first edition. (You could resurrect this example in a future chapter under mutual mistake in a contract.) Encourage your students to think in terms of analysis, not right answer/wrong answer/please the teacher answer.

Start pounding that the contract is an abstract legal obligation, not the paper on which words to describe and memorialize the obligation are written. This should naturally lead you to sharing the information that valid contracts may be verbal. An experienced educator told us this was the hardest thing to get her students to accept. They were convinced that written is good, verbal is worthless. Reinforce at every opportunity that verbal contracts are valid (unless, of course, the Statute of Frauds is involved).

We use the phrase “unless otherwise noted” to describe general concepts that are true every single time ... unless there is an exception.

The five concepts on page 13 are vital to your students' basic understanding. At this point, they must build their vocabulary. We find the most difficult concept for students has been bilateral/unilateral. Teach it in terms of the number of promises given, not the number of parties involved.

We teach that void contracts are void from the git-go, but then we're from Texas. If you like the expression, feel free to borrow it. Students remember it.

If your state does define the term “contract,” don't leave this chapter without having your students find the definition.

Depending on the size of your class, have the students work in pairs for research consideration number two on page 18. Suggest they find illustrations in news events and personal experiences.

In your locale, is it customary for an employer to give a newly hired employee a written agreement upon hiring? If not, can you find an example of an oral contract or an implied contract based on the statement of a personnel manager? If you don't use that example here, consider it for detrimental reliance later.

Concerning research consideration number 3 on page 18, each of the four appendices is a bilateral, express, executory, written contract — the kind, in point of fact, that we anticipate your students will encounter in the workplace.

**Suggested Test Questions for Chapter Two**

1. Define “contract,” giving the source of your definition. (This is best used in an open-book quiz, the type we prefer.)
2. Williston defined a contract as a [**promise**] or set of [**promises**] for the [**breach**] of which the law gives a [**remedy**] or the [**performance**] of which the law in some way recognizes a [**duty**].
3. Name at least three vital aspects of a contract. [**Agreement, consideration, capacity, legal obligation.**] (If you are into extra credit, offer it for naming four.)
4. Briefly, explain the difference between a contract and an agreement. [**At a minimum, the students should distinguish between a legal obligation and a social obligation. Better: have them list the elements of a contract.**]
5. True or false: To be valid, a contract must be in writing. [**False.**]
6. A contract must both be [**enforceable**] and binding on the parties.
7. Other names for a contract implied in law are a [**constructive**] contract and a [**quasi**]-contract.
8. Briefly, explain the difference between a void contract and a voidable contract. [**Void contracts are never valid and are not enforceable; voidable contracts may be valid and may be enforced if affirmed. A void contract depends on the capacity of the parties.**]
9. True or false: Verbal contracts are never valid. [**False.**]
10. The number of [**promises**] is the pivotal factor in deciding whether a contract is bilateral or unilateral.
11. A contract that requires a future act before the transaction is completed is called an [**executory**] contract.
12. An [**express**] contract is an actual agreement evidenced by either the written or oral statements of the parties.
13. True or false: an express contract must be in writing. [**False.**]
14. Explain the difference between a contract implied in fact and a contract implied in law. [**Contract implied in law is enforced on the parties due to circumstances that require the enforcement of legally recognized obligations, while contract implied in fact is inferred by the acts or conduct of the parties in light of their surrounding circumstances.**]
15. Explain the concept of unjust enrichment, giving an example. [**Answer should include explanation that unjust enrichment is the retention of a benefit that belongs to another for which the law requires the first party to pay the reasonable value or make restitution — or words to that effect — plus example.**]
16. Are void contracts enforceable? Explain your answer. [**Not enforceable because never valid.**]
17. A party to a voidable contract may have the right to affirm or [**reject**] the contract.

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**ELEMENTS OF  
FORMATION, PART I**

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*Or “It ain't just offer, acceptance, and consideration.”*

Offer + acceptance = mutual agreement. This chapter is also major. Unless the student absorbs and can drone “agreement/consideration/capacity/legal obligation,” he or she will have difficulty.

There is little “extra” to suggest to you concerning this chapter because it is so utterly basic. Stress definitions and concepts. Encourage students to contribute examples concerning advertisements, opinions, and prenegotiations on page 22 — concepts with which most consumers have had experience.

Explain that “reasonable” is a frequently used adjective in contract law. Example: what is “reasonable” in the furniture industry is not “reasonable” in the fresh flower industry. Ask your students why not — some points to consider are that

- the floral industry deals with perishable goods
- the standard means of delivery would vary; flowers must stay chilled
- floral goods are more seasonable than furniture (Valentine’s Day, Mother’s Day), so potential damage to retailer is greater
- the floral industry is more apt to market on a daily basis at a central physical location.

On pages 24–25, we usually talk about stock options given to employees as incentives. You may prefer another illustration. Options on real property come to mind, as do options involved in a lease-to-own arrangement. Ask if any student has encountered lease-to-own as a consumer.

The term “detrimental reliance” is so much more clear and self-explanatory than “promissory estoppel” that we teach the latter as a historic term. Use the term with which you are most comfortable, but do stress that the terms are synonymous.

When you reach acceptance on page 25, you have another opportunity to stress that verbal acceptance can be just as much a commitment as written acceptance — unless, of course, there is an exception such as Statute of Frauds or the original terms stating that an acceptance must be in writing to be valid.

The mirror image rule on page 25 offers an opportunity to contrast common law with the codified UCC. Under common law, an acceptance must mirror every term of the offer or be considered a counteroffer. The UCC allows for responses between merchants to be negotiation, rather than counteroffer.

When you discuss the mailbox rule, point out that many written contracts specify in the “Notice” section whether a notice is effective upon mailing, upon receipt, or after a designated period of time has passed.

Starting on page 26, you have another opportunity to pound in the concept that bilateral and unilateral contracts are determined by the number of promises given, not the number of parties participating in the contract.

Your students should be able to produce examples of illusory promises from their experiences as consumers. This gives the shy non-speaker another opportunity to participate in class discussion.

It is difficult for some students to get beyond the concept of cash as consideration. We suggest the litany “Consideration may consist of an action, or a promise to act, or forbearance, or a promise to forbear.”

Here's an example of preexisting duty (see page 28) with which most persons can identify (either as the parent or as the child): "I don't have to pay you to clean your room/take out the trash/do your homework. You are obligated to clean your room/take out the trash/do your homework as a duty."

In discussing promissory estoppel/detrimental reliance, we use the chilling illustration of the person who quits one job relying upon the promise that he or she has another. We tell our students that before giving notice to one's current employer, one should consider drafting a letter agreement. The letter memorializes the terms and conditions agreed upon verbally. If the letter is accurate, the representative of the employer who made the verbal commitment should have no trouble signing the letter agreement. If the representative refuses, think twice before going to work at that firm or corporation.

Students seem to confuse "legal detriment" with "detrimental reliance." We can't add much to the illustration on page 29. Money out of the pocket: legal detriment. Product received in return for the money: legal benefit.

Our discussion of capacity is focused on natural persons. You might want to note that statutory persons may lack capacity as well. An example would be a corporation that is not in good standing with the state in which it was incorporated or qualified to do business. Another example would be a former partner who no longer has authority to act on behalf of a partnership.

**ELEMENTS OF  
FORMATION, PART II**

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Ask the students to suggest contracts based upon illegal transactions or promises. Obvious examples are contracts to kill, promises to dump toxic waste, or an arrangement to open a gambling casino in a state where gambling is legalized.

All of us have been faced with adhesion contracts (pages 35–36). This is an opportunity to coax participation out of the most silent, withdrawn student you have. We consider the lease in Appendix D an example of an adhesion contract, with the landlord dominating every clause. Perhaps your class would enjoy briefly debating why the residential lease is not an adhesion contract, with someone pleading the side of the downtrodden landlord whose property is continually trashed by unfeeling tenants.

The oral surgery patient on page 36 was a Texas lawyer who returned to the office in pain, but with an unbroken jaw. We did not share the precise language with which he (for it was a man) declined to execute the contract, but this is a true anecdote.

The suggestion to use the school's releases as an example of exculpatory clauses on page 36 came from a paralegal educator who was tired of signing away her children's rights.

When discussing noncompete contracts, you must consult your state's laws to see what is acceptable. For this reason we deliberately omitted the noncompete aspect from our sample employment contract in Appendix C. Teach what is lawful in your state.

Severability, on page 37, is one of the concepts your students should be able to recite automatically along with offer/acceptance/consideration.

When you get to page 37, bring your state's Statute of Frauds into class, or have the students retrieve a copy. It may be on the Internet in your state.

Another rule: plain meaning, page 39. Point out that it has become more common to write consumer contracts in plain language. Produce a contract in class, or ask your students to produce one in which "you" and "we" are used in place of "party of the first part" and "party of the second part."

We think the rules of interpretation are important. Point out that the advent of the laptop computer has made almost obsolete the page with deletions and initials of the parties. If there is a last-minute revision, it is likely that a clean page will be printed and substituted.

Students sometimes associate the parol-evidence rule with extrinsic oral evidence only. Point out that the rule refers to all extrinsic evidence, whether written or verbal.

The research considerations are self-explanatory, and we hope you will benefit from having the same language readily accessible to every student.

Depending on the size of your class, have the students work in pairs or teams on the research considerations. We do recommend that you use the research considerations before moving on past this chapter.

## Suggested Test Questions for Chapters Three and Four

1. Define “offer,” giving your source(s). **[This is best used on an open-book test, which is our personal favorite.]**
2. The party making the offer is called the [offerer] or the [promisor].
3. True or false: The offeree makes the offer. **[False.]**
4. List three elements of a valid offer. **[It must clearly demonstrate an intent to contract, must be definite as to its terms, and must be communicated to the offeree.]**
5. Is an advertisement considered an offer? **[No.]** Explain your answer. **[It lacks specificity and definiteness. It is considered a general invitation to the public at large to come to store and negotiate.]**
6. Explain this statement: An offer lapses due to either expiration of time or operation of law. **[Answer should mention that an offer remains open until it lapses or is revoked, rejected, or accepted. Expiration of time relates to a specific period set forth in the offer. Operation of law refers to loss of capacity, subsequent illegality of the transaction, or subsequent destruction of the subject matter of the contract.]**
7. What are the two exceptions to the rule that an offer can be terminated or revoked by the offeror at any time before acceptance after being communicated to the offeree? **[Offers with options and promissory estoppel.]**
8. What is the modern term for “promissory estoppel?” **[Detrimental reliance.]**
9. Explain the mirror image rule. **[Answer should include the requirement that the acceptance “mirror” every provision of the offer term for term. Under common law, any variation creates a counteroffer. The UCC allows for negotiation.]**
10. Discuss variations on the mailbox rule. **[Answer should include that generally acceptance is effective upon dispatch, not upon receipt. A variation is that acceptance is effective a certain period of time after dispatch, which period of time should be stated in the terms of agreement.]**
11. If the manner of acceptance is not stated, the offeree may use any [reasonable] method that notifies the offeror of the acceptance within a reasonable time.
12. What makes a promise “illusory?” **[Answer should include some version of “the false appearance of a commitment,” “a gratuitous statement without value,” “unenforceable because there is actually no consideration.”]**
13. Explain the difference in “legal detriment” and “detrimental reliance.” **[Answer should include definitions you have covered in class, plus the statement that legal detriment does not have the negative aspect of detrimental reliance.]**
14. In the context of contract law, what is “capacity?” **[The ability that the law requires of each party to make the binding promises that forms an enforceable contract. For an open-book test, you may also want your students to contribute definitions from Black’s or your dictionary of choice. If you want to expand this into a discussion question, request a full**

**discussion of the element of capacity in a binding contract and the ways in which one may lack capacity.]**

15. Define and contrast rescission of a contract and ratification of a contract. **[Answer should include a definition of each word, from either textbook or an accepted legal dictionary. Answer should include that rescission is withdrawing from a contract and ratification is affirming a contract. You may also wish to give a fact situation similar to Tiffany buying the CD player (on page 31) and ask how one would rescind the contract and how one would ratify the contract.]**
  16. Give three examples of contracts that are illegal because they violate public policy. **[Adhesion contracts, contracts with exculpatory clauses, and — depending on your state’s law — covenants not to compete.]**
  17. List [three/five/you choose] examples of contracts that must be in writing to be binding. **[Base this answer on your state’s Statute of Frauds. It will probably include suretyship agreements, contracts for the sale of real property, contracts not to be performed within one year, contracts in consideration of marriage, and contracts for the sale of goods valued at \$500 or more.]**
  18. Explain the difference in a suretyship agreement and a guaranty agreement. **[The guarantor simply insures the ability of the principal debtor to pay, while the surety insures the actual payment.]**
  19. Name three elements that must be found in a binding written contract. **[Three of the following: the names of the parties, a description of the transaction involved, all material terms and conditions, and the signature of the party against whom enforcement of the contract is sought.]**
  20. Define “course of dealing” as defined in the UCC, citing your source. **[A sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct. UCC § 1-205(1).]**
- Note: Use this question for an open-book test during which your students have access to the textbook or to your state’s UCC. If they have neither, you could ask them to explain “course of dealing.”*
21. Define “usage of trade” as defined in the UCC, citing your source. **[Any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. UCC § 1-205(2).]**
  22. What is a totally integrated contract? **[One which contains the entire agreement of the parties, the final and complete representation of their agreement.]**
  23. Explain the parol-evidence rule. **[Answer should include references to totally or partially integrated contracts. Answer should include the word “evidence” preceded by “extrinsic” or some term you can understand to mean evidence beyond what is set forth in the contract. If a student notes that extrinsic evidence can be either written or oral, give that student a star. You will find many students equate “parol” with “oral.”]**

24. What is the difference in an express condition and an implied condition? [**An express condition is specifically stated in the written or verbal contract. An implied condition is presumed by law from the nature of the transaction and the conduct of the parties.**]

#### **Case Law for Chapters Three and Four**

*Arzani v. People*, 149 N.Y.S.2d 38 (1956)

*Central Adjustment Bureau, Inc. v. Ingram*, 678 S.W.2d (Tenn. Sup. Ct. 1984)

*Columbia Nitrogen Corp. v. Royster Co.*, 451 F.2d 3 (4th Cir. 1971)

*Cundick v. Broadbent*, 383 F.2d 157 (10th Cir. 1967)

*C.R. Fedrick, Inc. v. Borg-Warner Corp.*, 552 F.2d 852 (9th Cir. 1977)

*Gianni v. R. Russell & Co.*, 281 Pa. 320, 126 A. 791 (1924)

*Henningsen v. Bloomfield Motors, Inc.*, 32 N.J. 358, 161 A.2d 69 (1960)

*Hicks v. Bush*, 10 N.Y.2d 488, 180 N.E.2d 425 (1962)

*Kiefer v. Fred Howe Motors, Inc.*, 39 Wis. 2d 20, 158 N.W.2d 288 (1968)

*Luttinger v. Rosen*, 104 Conn. 45, 316 A.2d (1972)

*McConnell v. Commonwealth Pictures Corp.*, 7 N.Y.2d 465, 166 N.E.2d 494 (1960)

*Monarco v. LoGreco*, 35 Cal. 2d 621, 220 P.2d 737 (1950)

*Nanakuli Paving & Rock Co. v. Shell Oil Co., Inc.*, 664 P.2d 772 (9th Cir. 1981)

*O'Callaghan v. Waller and Beckwith Realty Co.*, 15 Ill.2d 436, 155 N.E.2d 545 (1958)

*Pacific Gas & Elec. Co. v. G.W. Drayage & Rigging Co.*, 69 Cal. 2d 33, 442 P.2d 641 (1968)

*Schwartzreich v. Bauman-Basch, Inc.*, 231 N.Y. 196, 131 N.E. 887 (1921)

*Second Nat'l Bank v. Pan-American Bridge Co.*, 183 F. 391 (6th Cir. 1910)

*Watkins & Son v. Carrig*, 91 N.H. 459, 21 A.2d 591 (1941)

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**PROBLEMS OF  
FORMATION**

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Here are more terms for your students to recite as a litany: duress, undue influence, unconscionability, mistake, misrepresentation, and fraud.

We cannot suggest a great deal other than what we put into the textbook. Ask your students to think of examples of each defense.

**Suggested Test Questions for Chapter Five**

1. Name and give examples of three types of duress. [**Physical, mental, emotional. You can decide if the student's examples are relevant.**]
2. What must be present for the allegation of fraud, as opposed to undue influence or mistake? [**Intent to misrepresent a material fact.**]
3. List the elements of fraud. [**Misrepresentation of material fact, scienter, intent, reliance, and damages.**]
4. Explain the difference in a mistake of fact and a mistake of law. [**Mistake of fact may result in rescission of contract. Mistake of law does not result in rescission of contract. Mistake of law occurs when one party, possessing complete knowledge of the facts of the transaction, comes to an erroneous conclusion as to the legal effect of the transaction.**]
5. True or false: Silence may be construed as a misrepresentation. [True.]
5. The meaning of "scantier" is
  - (a) intent to defraud
  - [b] **guilty knowledge**
  - (c) misrepresentation
7. In order to prove fraud, one must link misrepresentation of a material fact to a deliberate intent to [deceive].
8. List three elements of misrepresentation. [**Material fact, reliance thereon, and damages resulting therefrom.**]
9. In order to prove undue influence, one must prove a [fiduciary relationship] existed between the parties involved.
10. A [material] mistake is one that is so fundamental that the parties could not have consented to the essential facts surrounding the agreement.

**Case Law for Chapter Five**

*Beachcomber Coins, Inc. v. Boskett*, 166 N.J. Super. 442, 400 A.2d 78 (1979)

*Bollinger v. Cent. Pennsylvania Quarry Stripping & Constr. Co.*, 425 Pa. 430, 229 A.2d 741 (1967)

*Raffles v. Wichelhaus*, 2 H. & C. 906, 159 Eng.Rep. 375 (Ct. Exc. 1864)

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**DISCHARGE OF  
THE CONTRACT**

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At this point, your students may be wondering if any contract is ever executed. So remind them that the good faith element of the UCC is based on the concept that each party wants the contract to succeed and that each party enters into the contract with the goal of its being carried out as planned.

Then you can segue into the most common discharge: performance. Each party performs as expected, and all is well. We like to teach complete and substantial performance with the examples of goods packaged differently. While complete performance may be delivery of five 10-pound bags, delivery of ten 5-pound bags may be accepted, if the buyer agrees, as substantial performance. You should explain that buyer may also treat this substitution as a breach.

As we mentioned earlier, news of the day is a good source of examples of impossibility and commercial frustration. Ask the students to bring an example to the next class.

Breach of the contract is a term with which most students will be familiar. You will have to explain the terms “complete breach” and “anticipatory breach.”

**Suggested Test Questions for Chapter Six**

1. What are four ways in which a contract may be discharged? [**Performance, nonperformance, agreement, and operation of law.**]
2. List and discuss three examples of nonperformance. [**Impossibility, commercial frustration, and breach.**]
3. True or false: A release should be in writing and supported by consideration. [**True.**]
4. Explain the difference between a release and a rescission. [**One party may unilaterally release. All parties must consent to a rescission. A release should be in writing, whereas a rescission might be verbal, depending on Statute of Frauds and UCC requirements.**]
5. True or false: All parties involved must agree to a release. [**False.**]
6. True or false: All parties involved must agree to a rescission. [**True.**]
7. True or false: All parties involved must agree to an accord and satisfaction. [**True.**]
8. True or false: All parties involved must agree to a novation. [**False.**]
9. Which of the following may be made unilaterally by one party?
  - (a) Accord and satisfaction
  - (b) Rescission
  - [c] **Release**
10. A novation requires all of the elements listed below except
  - (a) consent of the obligee
  - (b) consent of the new obligor

- [c] **consent of the old obligor**
- (d) consideration

11. The person who transfers rights is called
  - (a) the appellant
  - (b) the assignee
  - [c] **the assignor**
12. A contract transferring rights is called an [**assignment**].
13. True or false: Only rights, not duties, under a contract may be assigned. [**True.**]
14. True or false: Duties under a contract may be delegated. [**True.**]
15. Give three examples of rights under a contract. [**Payment, title, proceeds, receipt of services, and receipts of goods.**]
16. Third parties who receive rights under the agreement between the promisor and the promisee are called [**third party beneficiaries**].
17. List and explain two examples of discharge by operation of law. [**Bankruptcy of a party to the contract and expiration of any statute of limitations involved.**]

### **Case Law for Chapter Six**

*Allhusen v. Caristo Constr. Corp.*, 303 N.Y. 446, 103 N.E.2d 891 (1952)

*Canadian Indus. Alcohol v. Dunbar Molasses Co.*, 258 N.Y. 194, 179 N.E. 383 (1932)

*Chemical Bank v. Rinden Professional Ass'n*, 126 N.H. 688, 498 A.2d 706 (1985)

*Davis v. United Air Lines*, 574 F. Supp. 677 (E.D.N.Y. 1983)

*Kingston v. Preston*, 2 Doug. 689, 99 Eng.Rep. 437 (1773)

*Lawrence v. Fox*, 20 N.Y. 268 (1859)

*Lonsdale v. Chesterfield*, 99 Wash. 2d 353, 662 P.2d 385 (1983)

*Plante v. Jacobs*, 10 Wis. 2d 567, 103 N.W.2d 296 (1960)

*Rouse v. United States*, 215 F.2d 872 (D.C. Cir. 1954)

*Seaver v. Ransom*, 224 N.Y. 233, N.E. 639 (1918)

*Stees v. Leonard*, 20 Minn. 494 (1874)

*Taylor v. Caldwell*, 3 B.& S. 826, 122 Eng.Rep. (1863)

*The British Waggon Co. and the Parkgate Waggon Co. v. Lea & Co.*, 5 Q.B.D. 149 (1880)

*Transatlantic Fin. Corp. v. United States*, 363 F.2d 312 (D.C. Cir. 1956)

*Waldinger Corp. v. CRS Group Engineers, Inc.*, 775 R.2d 781 (7th Cir. 1985)



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**REMEDIES: WHEN THE  
CONTRACT IS NOT HONORED**

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Chapter Seven amplifies on the breach cited in Chapter Six as an example of nonperformance of the contract.

Common examples we use with respect to specific performance are contracts for the sale of a particular piece of realty and contracts for appearance by a performing artist. A substitute does not atone for lack of specific performance.

Since the terms “rescission,” “restitution,” and “reformation” are so similar, you may wish to reinforce them by having the students produce an example for each. Point out that the court is involved in reformation, whereas the parties themselves may work out rescission and restitution.

Your students will probably be familiar with “injunction.” If you can find an example in your current news, ask them to identify such use of injunction in contract law.

Point out that some damages, such as disclosure of trade secrets, are well-nigh irreparable.

“Mitigate” is an important term. Ask the students to construct a scenario based on each of the contracts in the appendices that illustrates how a party could mitigate that party’s potential damages.

Alert your students to look in contracts for liquidated damages.

**Suggested Test Questions for Chapter Seven**

Aside from the cut-and-dried “list equitable damages” and “list legal damages,” you may wish to try some analysis questions. Here are some scenarios, or you may wish to develop your own.

1. Emily Employee leaves Edgar Employer and forms a new company in a non-related field. For two years, Emily does not use any trade secrets she learned while in Edgar’s employ. During the third year, Edgar suspects Emily is using such trade secrets in her product. Should Edgar sue?

Answer should discuss: Was there any sort of employment contract between Emily and Edgar? If so, did it have a noncompete or trade secret clause? Was it in writing? If so, can Edgar produce a copy executed by Emily? Was a specific period of time mentioned? Were liquidated damages mentioned? Is it significant that Emily now works in another field?

2. Anthony Agent books Shirley Superstar into [biggest arena in your area] for a one-night concert. Paul Promoter sells many tickets. Three days beforehand Anthony advises Promoter that Superstar will be unavailable, but Agent can furnish Patty Potential, an unknown whom Agent assures Promoter is extremely talented. What can Promoter do?

Answer should mention various options open to Promoter. Three-day period gives Promoter opportunity to mitigate damages. Promoter could insist on specific performance by Superstar. Promoter could accept Potential but require restitution from Agent for all returned tickets. Promoter could sue Agent and Superstar for breach of contract. Student might also wish to discuss situation vis-à-vis Promoter and the big arena in your area.

## **Case Law for Chapter Seven**

*Dave Gustafson & Co. v. State*, 83 S.D. 160, 156 N.W.2d 185 (1968)

*Hadley v. Baxendale*, 9 Ex. 341, 156 Eng.Rep. 145 (Ct. Exc. 1854)

*Jacob & Youngs v. Kent*, 230 N.Y. 239, 129 N.E. 889 (1921)

*Lake River Corp. v. Carborundum Co.*, 769 F.2d 1284 (7th Cir. 1985)

*Parker v. Twentieth Century-Fox Film Corp.*, 3 Cal. 3d 176, 474 P.2d 689 (1970)

*Peevyhouse v. Garland Coal & Mining Co.*, 382 P.2d 109 (Okla. 1962), *cert. den'd*, 375 U.S. 906 (1953)

*Rockingham County v. Luten Bridge Co.*, 35 F.2d 301 (4th Cir. 1929)

*Spang Indus. Inc. v. Aetna Cas. & Surety Co.*, 512 R.2d 365 (2d Cir. 1975)

*Sullivan v. O'Connor*, 363 Mass. 579, 296 N.E.2d 183 (1973)

*Vitex Mfg. Corp. v. Caribtex Corp.*, 377 F.2d 796 (3d Cir. 1967)

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**FORMATION OF  
THE SALES AGREEMENT**

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Heretofore, we have dealt with traditional contracts. We now wish to focus students on the UCC as written in the statutes of your state. This chapter deals with Article 2. You may wish to expand this chapter and the ones to follow by lecturing from the statute of your state.

Ask the students for examples of merchants so they will realize the sole proprietor is a merchant just as much as is the monster chain store. Introduce your students to the business term “sophistication.” Explain that the merchant is assumed to be more sophisticated than the consumer is.

Point out that the UCC allows for one or more terms of an agreement to be left open a significant difference from common law.

This chapter offers you the chance to stress again the significant terms “reasonable” and “seasonable,” important terms in contract law.

Explain there are various categories of goods and ask the students to name examples of each. Durable goods are those having a long life. Fungible goods are interchangeable, such as a pound of rice. Hard goods are durable goods sold to consumers, and soft goods are non-durable goods sold to consumers.

**Suggested Test Questions for Chapter Eight**

1. Section 2-105(1) of the UCC defines **[goods]** as “all things ... which are movable at the time of identification to the contract for sale.”
2. Section 2-106(1) of the UCC defines **[a sale]** as a “passing of title from the seller to the buyer for a price.”
3. Section 2-103(1)(a) of the UCC defines the buyer as **[the person who buys or contracts to buy goods]**.
4. Section 2-103(1)(d) of the UCC defines the seller as **[the person who sells or contracts to sell goods]**.
5. Section 2-104(1) of the UCC defined a merchant as a person who deals in **[goods]** of the kind or otherwise by his occupation holds himself out as having **[knowledge]** or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his **occupation [holds himself out]** as having such knowledge or skill.
6. What is the significance of a buyer or a seller being a merchant? **[Status as a merchant or non-merchant affects application of the UCC.]**
7. According to UCC § 2-103(1)(b), the standard for determining good faith if the parties are merchants is
  - (a) repeated performance by either party to which an objection has not been made
  - (b) any practice or method that is regularly observed by a place, vocation, or trade

**[c] honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade**

**Case Law for Chapter Eight**

*Harry Rubin & Sons v. Consolidated Pipe Co.*, 396 Pa. 506, 153 A.2d 472 (1959)

*Masterson v. Sine*, 68 Cal. 2d 222, 436 P.2d 561 (1968)

*Warder & Lee Elevator, Inc. v. Britten*, 274 N.W.2d 339 (Iowa 1979)

*Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965)

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**DISCHARGE OF THE  
SALES AGREEMENT**

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If your state has warranty laws, you will want to discuss them at this point. The textbook is based on the UCC warranty provisions.

Remind your students that the Seller, not the Buyer, generates the warranty.

**Suggested Test Questions for Chapter Nine**

1. Pursuant to UCC § 2-503(1)–(4), tender of delivery is made under the following circumstances when
  - (a) Seller personally delivers goods to Buyer
  - (b) Buyer personally takes goods from Seller
  - (c) Seller delivers goods to Buyer via a common carrier
  - [d] any of the above
  
2. What is the meaning of each of the following abbreviations:
  - (a) C&F [**Cost and freight**]
  - (b) CIF [**Cost, insurance, freight**]
  - (c) COD [**Collect on Delivery**]
  - (d) FAS [**Free Alongside**]
  - (e) FOB [**Free on Board**]
  
3. What is meant by a “latent” defect? [**A defect not readily apparent or discernible upon reasonable inspection.**]
  
3. Pursuant to UCC § 2-606(1), goods are deemed accepted
  - (a) when Buyer signifies to Seller that the goods are conforming
  - (b) when Buyer signifies to Seller that Buyer will take or retain the goods despite their non-conformity
  - (c) when Buyer fails properly to reject nonconforming goods
  - (d) when Buyer does anything inconsistent with Seller's ownership of the goods.
  - [e] **when any of the above occur.**
  
5. True or false: Pursuant to UCC § 2-606(2), if Buyer accepts a part of any commercial unit, Buyer is deemed to have accepted that entire unit. [**True.**]
  
6. Title is
  - (a) the temporary possession of the goods
  - (b) the permanent possession of the goods
  - [c] **the legal ownership of the goods.**
  
7. The type of [**delivery**] contract determines when title passes.
  
8. Risk of loss is generally borne by
  - (a) Bailee
  - (b) Buyer
  - (c) Seller
  - [d] Whoever holds title.

9. Two types of delivery contracts are [**shipment**] and [**destination**].
10. Explain the basic elements of a shipment contract set forth in UCC § 2-509(1)(a). [**Seller delivers goods to common carrier for delivery to Buyer. Buyer bears risk of loss for goods in transit.**]
11. Explain the basic elements of a destination contract set forth in UCC § 2-509(1)(b). [**Seller bears risk of loss until Seller delivers goods either to Buyer or to the agreed proper delivery point.**]
12. If the type of delivery contract is not specified, it is presumed that the delivery contract is a [**shipment**] contract under which [**Buyer**] bears the risk.
13. True or false: Pursuant to UCC § 2-510(1), if Seller tenders nonconforming goods, the risk of loss remains on Seller until either Seller cures the defect or Buyer accepts the nonconforming goods. [**True.**]
14. What is a “warranty?” [**Black’s definition is: “statement of fact concerning the quality or character of the goods sold.” You may accept other definitions if you wish.**]
15. Pursuant to UCC § 2-313(1), how does Seller create express warranties? [**By affirming that the goods conform, by describing the goods, or by furnishing a sample or model of the goods.**]
16. True or false: Implied warranties cannot be created by law and are therefore not present unless excluded by Seller or modified or deleted by the parties. [**False.**]
17. List three types of implied warranties. [**Merchantability, fitness for an intended use, and title.**]
18. True or false: If Seller is a merchant, the warranty of merchantability will be implied in a contract unless excluded or modified. [**True.**]
19. True or false: If Buyer is a merchant, the warranty of merchantability will be implied in a contract unless excluded or modified. [**False — remember Seller generates warranty.**]
20. What is another name for “warranty of fitness for a particular purpose?” [**Warranty for intended use.**]
21. Pursuant to UCC § 2-312(1), may Seller exclude a warranty of merchantability? If so, how? If not, why not? [**Seller may exclude such warranty by specifically using the term “merchantability.” If the disclaimer is in writing, it must be conspicuous.**]
22. Pursuant to UCC § 2-312(1), may Seller exclude a warranty of fitness for a particular purpose? If so, how? If not, why not? [**Seller may exclude such warranty but only in writing.**]

### Case Law for Chapter Nine

*Eastern Airlines v. Gulf Oil Corp.*, 415 F. Supp. 429 (S.D.Fla. 1975)

*Hays Merchandise, Inc. v. Dewey*, 78 Wash. 2d 343, 474 P.2d 270 (1970)

*Iron Trade Prod. Co. v. Wilkoff Co.*, 272 Pa. 172, 116 A. 150 (1922)

*Pittsburgh-Des Moines Steel Co. v. Brookhaven Manor Water Co.*, 532 F.2d 572 (7th Cir. 1976)

*Swift Canadian Co. v. Ganet*, 224 F.2d 36 (3d Cir. 1955)

*Walker & Co. v. Harrison*, 347 Mich. 630, 81 N.W.2d 352 (1957)

*Wisconsin Knife Works v. National Metal Crafters*, 781 R.2d 1286 (7th Cir. 1986)

*Wood v. Lucy, Lady Duff-Gordon*, 222 N.Y. 88, 118 N.E. 214 (1917)

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**REMEDIES UNDER  
THE SALES AGREEMENT**

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You will want to discuss the concept of “covering” when goods are not available as anticipated.

We like Oran’s definition of “replevin”: a legal action to get back personal property in the hands of another person.

**Suggested Test Questions for Chapter Ten**

1. What are the two major issues in determining remedies under a UCC sales agreement? **[Whether Buyer has accepted the goods and which party is the breaching party.]**
2. List three to five possible remedies provided Seller under the UCC. **[Any of the following: withhold delivery, stop delivery in transit, identify good to determine amount of damages, resell goods, sue for damages, cancel the sales agreement.]**
3. Give an example of incidental damages that Seller can collect. **[Any of the following: commercially reasonable charges, commercially reasonable expenses, loss of commissions incurred in stopping delivery, charges incurred in the transportation or care or custody of the goods.]**
4. List two to three possible remedies provided Buyer under the UCC. **[Any of the following: cover and sue for damages, demand specific performance, resell goods, cancel sales agreement.]**
5. Give an example of consequential damages that Buyer can collect. **[Any of the following: loss resulting from requirements that cannot be compensated by cover, damages resulting from Seller’s breach of warranty.]**

**Case Law for Chapter Ten**

*Cosden Oil & Chem. Co. v. Karl O. Helm Aktiengesellschaft*, 736 F.2d 1064 (5th Cir. 1984)

*Internatio-Rotterdam, Inc. v. River Brand Rice Mills, Inc.*, 259 F.2d 137 (2d Cir. 1958), cert. den’d 358 U.S. 946 (1959)

*Laredo Hides Co. v. H & H Meat Products Co.*, 513 S.W.2d 210 (Tex.Civ.App. 1974)

*Wilson Trading Corporation v. David Ferguson, Ltd.*, 23 N.Y.2d 398, 244 N.E.2d 685 (1968)

**UCC FINANCING  
STATEMENTS**

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In the workplace, your students will encounter UCC forms, and everybody assumes someone else has shown them how to draft, search, and file. The chapter is here to help your students complete a UCC form or initiate a UCC search when they get into the workplace.

You may wish to amplify this chapter with information on Article 9 from your state's UCC and explain how a security interest attaches.

From your Secretary of State's home page, have each student download blank Forms UCC used in your state. Point out the numbering system for your state.

Invite a local representative of an on-line search firm to come to the class and demonstrate a search.

Ask for demonstration diskettes of UCC software from companies that manufacture these. You will find advertisements directed to working paralegals in magazines such as National Paralegal Reporter.

This is also the time to take your students on a field trip to the office of the county clerk and, if you live in a capitol city, the Secretary of State. Demonstrate how to make a search, if that is allowed, or how to initiate one. If possible, review the hard copies, microfiche, or whatever is open to the public and show the students how to make a search.

**Suggested Test Questions for Chapter Eleven**

The best test questions for this chapter are to create a scenario for each and have the students select and complete the appropriate form. Other possible test questions are:

1. Article 9 of the UCC provides for public filing of financing statements in order to **[perfect]** the security interest of a secured party.
2. List three to five changes that can be accomplished by filing a Form UCC-[# in your state]: **[Any of: amend, assign, continue, partially release, totally release, terminate.]**

**REVIEWING A  
CONTRACT**

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We cannot add much about this chapter. The purpose of the chapter is to help the student understand what to do when, in the workplace, a supervisor says, “Review this contract.”

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**CONTRACT  
LANGUAGE**

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In spite of our and your best efforts, some students may try to use this language in their personal lives. Urge them not to do so, and emphasize the importance of professional counsel.

It is your responsibility to explain the thinking behind this language and why each excerpt might be used in a contract.

This is a good chapter to use the four appendices and look for examples of language in each. You may have a sample contract you wish to bring to the class.

We have also brought into class photocopies of a judgment in a suit for breach of contract and reviewed the issues. At this point, the students should be familiar with the terms used in a pleading for breach of contract.

Point out to your students that the checks in their checkbooks read “to the order of,” thereby making them an order instrument.

**Suggested Test Questions for Chapter Fourteen**

1. Explain and give examples of two categories of negotiable instruments. [**Promise paper = promissory notes and certificates of deposit. Order paper = checks and drafts.**]
2. What are the two parties involved in promise paper? [**Maker and payee.**]
3. What are the three parties involved in order paper? [**Drawer, drawee, and payee.**]
4. What is the major difference between a check and a draft? [**Check is a demand instrument payable on demand. Draft may be either a demand instrument or a time instrument payable either on demand or at some future date.**]
5. An endorsement is
  - (a) a promise to pay on demand
  - (b) a promise to pay on order
  - [c] **a signature on an instrument for the purpose of negotiating the instrument**
  - (d) a signature on an instrument for the purpose of identifying the endorser
6. To be a holder in due course means
  - (a) that one is an honest person
  - [b] **that one accepted a negotiable instrument in good faith**
  - (c) that one is the next in line to receive a negotiable instrument
  - (d) that one’s name is written on the instrument
7. When an instrument is presented for payment and payment is refused, pursuant to UCC § 3-502 the instrument has been [**dishonored**].

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## MID TERM EXAMINATION

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Below is a sample subjective, take-home mid-term examination.

***Section A, worth 50 points:***

Based on the methods developed in class, analyze in depth the contract you have selected. Use the information you have acquired since the first of the semester to point out what concepts are illustrated and what are missing. Unless you are using a contract that is an appendix to the textbook, attach a legible photocopy. If you are using a contract from the textbook, clearly identify which contract.

***Section B, worth 50 points:***

Define and discuss each term below as it applies to contracts. Each accurate definition with its precise source is worth 1.5 points. Each full, complete and thorough discussion in your own words is worth 3.5 points.

1. Adhesion contract
2. Fraud
3. Totally integrated contract
4. Substantial performance
5. Mirror image rule
6. Reasonable
7. Scienter
8. Parol-evidence rule
9. Course of dealing
10. Assignment

Below is a sample cumulative, objective, open-book, final examination for an exam period lasting 1 hour and 50 minutes.

**On your own paper, clearly write the word(s) necessary to complete each blank. Number each answer carefully to be sure it matches the statement you are completing. Each correct answer is worth one point; the total number of points possible is 100 points.**

The elements necessary to form a valid contract are (1), (2), (3), and (4).

Under the UCC, the basic duty of the seller is (5), while the basic duties of the buyer are (6) and (7).

When a party fails to perform a promise that is the basis of the contract, that party has (8) the contract.

Misrepresentation differs from fraud in that two elements of fraud are missing. They are (9) and (10).

Rights under a contract may be (11), but duties under a contract may only be (12).

Consideration may take the form of (13), (14), (15), or (16).

The UCC gives a buyer an intervening right to (17) the goods before making payment or accepting delivery.

The literal meaning of “scienter” is (18).

Three categories of implied warranties are (19), (20), and (21).

An example of an equitable remedy is (22).

According to the parol-evidence rule, (23) evidence cannot be introduced to try to change the terms of an executed contract.

Whoever holds (24) to goods also bears the risk of loss of those goods.

Before actual delivery of goods, the seller may place the goods in the custody of a third party. This third party is called a (25).

The elements of fraud include (26), (27), (28), (29), and (30).

Remedies may be classified as (31) or (32).

The process by which parties to a contract may agree to substitute a party or parties to discharge the contract is called (33).

To be valid, an offer must (34), (35), and (36).

The legal steps taken to perfect a security interest are outlined in the UCC in Article (37).

A contract may be discharged by (38), (39), (40), or (41).

Rescinding a contract is an example of [a/an] (42) remedy.

A (43) integrated contract contains the entire agreement of the parties and is the formal and complete representation of the agreement.

The goods in which a debtor gives the secured party a security interest are called the (44).

A/An (45) contract is an actual statement evidenced by either the written or oral statement of the parties.

An example of a legal remedy is (46).

A/An (47) is a statement of fact concerning the quality or character of the goods sold.

The element that distinguishes undue influence from duress is (48).

The mailbox rule concerns (49).

Including a (50) clause will prevent a contract from being completely invalid if any one clause is subsequently found to be unlawful.

**Answer “True” or “false.”**

51. Whether a contract is considered bilateral or unilateral depends on the number of promises made.
52. The ability that the law requires of each party to make the binding promises that form an enforceable contract is called accord and satisfaction.
53. When a party fails to perform a promise that is the basis of the contract, that party has assigned the contract.
54. The Uniform Consideration Code governs the sale of goods.
55. Misrepresentation differs from fraud in that scienter and intent are missing.
56. The literal meaning of “scienter” is “he who trespasses.”
57. A warranty may be express.
58. “Course of performance” refers to repeated performance by either party to which an objection has not been made.
59. A Form UCC-1 is an example of a financing statement.
60. The Secretary of State of [your state] has made available National Forms UCC-3 and UCC-11.
61. A promissory note is an example of an executory contract.

62. The UCC defines “goods” as “all things that are moveable at the time of identification to the contract for sale.”
63. To change information on a [your state] public record concerning a security interest under the UCC, one files a Form 11.
64. Examples of legal remedies include restitution and specific performance.
65. The process by which parties to a contract may agree to substitute a party or parties to discharge the contract is called alienation.
66. When acceptance reflects all the terms of the offer, the acceptance conforms to the mirror image rule.
67. A contract may be discharged by promise, nonpromise, assignment, or opinion of law.
68. Examples of non-performance of a contractual duty include breach and commercial impracticability.
69. The threat of physical or emotional harm to coerce a party into entering a contract is called misrepresentation.
70. Illusory promises are valid consideration.
71. A latent defect is a defect that is readily apparent upon inspection.
72. A partially integrated contract contains the entire agreement of the parties and is the formal and complete representation of the agreement.
73. When examining the capacity of a natural person to enter into a contract, that natural person’s age should be taken into account.
74. “Usage of trade” is any practice or method that is not observed by a place, vocation, or trade.
75. Under the UCC, a buyer must be a merchant.
76. A party to a contract is within its rights to insist on complete performance instead of accepting substantial performance.
77. The Statute of Frauds requires that certain agreements must be reduced to writing in order to be valid.
78. A void contract is one that never met the requirements of a valid contract and, thus, never existed.
79. An adhesion contract is automatically unconscionable.
80. An offer remains open until it lapses or until it is revoked or rejected or accepted.
81. One remedy of the seller provided by the UCC is to stop delivery of goods in transit.
82. In [your state], a Form UCC-1 is available to inquire about financing statements filed on the public record.

83. Fitness for a particular purpose, also called fitness for intended use, is an implied warranty that may only be excluded in writing.
84. The UCC is a narrow statute predicated upon the assumption that the seller and buyer will probably try to cheat each other and need protection from each other.
85. Liquidated damages are an example of a legal remedy.
86. “Detrimental reliance” is another name for “promissory estoppel.”
87. Ratification is the acceptance or confirmation of a voidable act.
88. Mistake may be mutual.
89. When there is disagreement over what a contract means, the court may use the plain meaning rule.
90. Reformation is a process by which a third party, such as a court, reframes a written contract to reflect what the parties intended the contract to mean.
91. It is desirable for a debtor to perfect its security interest in collateral by placing information on the public record.
92. A material mistake is one so fundamental that, had the parties been aware of it, they could not have consented to the agreement.
93. “Take it or leave it” contracts not subject to negotiation are known as accepted contracts.
94. If the offer does not state how acceptance shall be made, acceptance may be communicated to the offeror in any reasonable manner.
95. A person making an offer is called an offeror.
96. A person receiving an assignment is called an assignee.
97. A person who holds goods on behalf of the seller is called a bailee.
98. Duress can be physical, mental, or economic.
99. An oral contract is never valid.
100. It is a good idea to check your answers on a final exam.

### **Key to fill-in-the-blank questions.**

The elements necessary to form a valid contract are [**agreement**], [**consideration**], [**capacity**], and [**legality**].

Under the UCC, the basic duty of the seller is [to deliver the goods], while the basic duties of the buyer are [**to accept the goods**] and [**to pay for the goods**].

When a party fails to perform a promise that is the basis of the contract, that party has [**breached**] the contract.

Misrepresentation differs from fraud in that two elements of fraud are missing. They are [**scienter**] and [**intent**].

Rights under a contract may be [assigned], but duties under a contract may only be [**delegated**].

Consideration may take the form of [**an act**], [**a promise to act**], [**forbearance**], or [**a promise to forbear**].

The UCC gives a buyer an intervening right to [**inspect**] the goods before making payment or accepting delivery.

The literal meaning of “scienter” is [**guilty knowledge**].

Three categories of implied warranties are [**merchantability**], [**fitness for an intended use**], and [**title**].

An example of an equitable remedy is [**any of: specific performance, rescission, restitution, reformation, injunction**].

According to the parol evidence rule, [**extrinsic**] evidence cannot be introduced to try to change the terms of an executed contract.

Whoever holds [**title**] to goods also bears the risk of loss of those goods.

Before actual delivery of goods, the seller may place the goods in the custody of a third party. This third party is called a [**bailee**].

The elements of fraud include [**misrepresentation of a material fact**], [**scienter**], [**intent**], [**reliance**], and [**damages**].

Remedies may be classified as [**legal**] and [**equitable**].

The process by which parties to a contract may agree to substitute a party or parties to discharge the contract is called [**novation**].

To be valid, an offer must [**clearly demonstrate an intent to contract**], [**be definite as to its terms**], and [**be communicated to the offeree**].

The legal steps taken to perfect a security interest are outlined in the UCC in Article [9].

A contract may be discharged by [**performance**], [**nonperformance**], [**agreement**], or [**operation of law**].

Rescinding a contract is an example of a/an [**equitable**] remedy.

A [**fully, or totally**] integrated contract contains the entire agreement of the parties and is the formal and complete representation of the agreement.

The goods in which a debtor gives the secured party a security interest are called the [**collateral**].

A/An [**express**] contract is an actual statement evidenced by either the written or oral statement of the parties.

An example of a legal remedy is [**any of: actual or compensatory damages, incidental or consequential damages, exemplary or punitive damages, liquidated damages, nominal damages**].

A/An [**warranty**] is a statement of fact concerning the quality or character of the goods sold.

The element that distinguishes undue influence from duress is [**a fiduciary relationship**].

The mailbox rule concerns [**acceptance of an offer**].

Including a [**severability**] clause will prevent a contract from being completely invalid if any one clause is subsequently found to be unlawful.

**Key to true or false questions.**

51. Whether a contract is considered bilateral or unilateral depends on the number of promises made. [**True.**]
52. The ability that the law requires of each party to make the binding promises that form an enforceable contract is called accord and satisfaction. [**False.**]
53. When a party fails to perform a promise that is the basis of the contract, that party has assigned the contract. [**False.**]
54. The Uniform Consideration Code governs the sale of goods. [**False.**]
55. Misrepresentation differs from fraud in that scienter and intent are missing. [**True.**]
56. The literal meaning of “scienter” is “he who trespasses.” [**False.**]
57. A warranty may be express. [**True.**]
58. “Course of performance” refers to repeated performance by either party to which an objection has not been made.
59. A Form UCC-1 is an example of a financing statement. [**True.**]
60. The Secretary of State of [your state] has made available National Forms UCC-3 and UCC-11. [**go by your state**]
61. A promissory note is an example of an executory contract. [**True.**]
62. The UCC defines “goods” as “all things that are moveable at the time of identification to the contract for sale.” [**True.**]
63. To change information on a [your state] public record concerning a security interest under the UCC, one files a Form 11. [**go by your state, but probably false**]
64. Examples of legal remedies include restitution and specific performance. [**False.**]
65. The process by which parties to a contract may agree to substitute a party or parties to discharge the contract is called alienation. [**False.**]
66. When acceptance reflects all the terms of the offer, the acceptance conforms to the mirror image rule. [**True.**]

67. A contract may be discharged by promise, nonpromise, assignment, or opinion of law. **[False.]**
68. Examples of non-performance of a contractual duty include breach and commercial impracticability. **[False.]**
69. The threat of physical or emotional harm to coerce a party into entering a contract is called misrepresentation. **[False.]**
70. Illusory promises are valid consideration. **[False.]**
71. A latent defect is a defect that is readily apparent upon inspection. **[False.]**
72. A partially integrated contract contains the entire agreement of the parties and is the formal and complete representation of the agreement. **[False.]**
73. When examining the capacity of a natural person to enter into a contract, that natural person's age should be taken into account. **[True.]**
74. "Usage of trade" is any practice or method that is not observed by a place, vocation, or trade. **[False.]**
75. Under the UCC, a buyer must be a merchant. **[False.]**
76. A party to a contract is within its rights to insist on complete performance instead of accepting substantial performance. **[True.]**
77. The Statute of Frauds requires that certain agreements must be reduced to writing in order to be valid. **[False.]**
78. A void contract is one that never met the requirements of a valid contract and, thus, never existed. **[True.]**
79. An adhesion contract is automatically unconscionable. **[False.]**
80. An offer remains open until it lapses or until it is revoked or rejected or accepted. **[True.]**
81. One remedy of the seller provided by the UCC is to stop delivery of goods in transit. **[True.]**
82. In [your state], a Form UCC-1 is available to inquire about financing statements filed on the public record. **[False.]**
83. Fitness for a particular purpose, also called fitness for intended use, is an implied warranty that may only be excluded in writing. **[False.]**
84. The UCC is a narrow statute predicated upon the assumption that the seller and buyer will probably try to cheat each other and need protection from each other. **[False.]**
85. Liquidated damages are an example of a legal remedy. **[True.]**
86. "Detrimental reliance" is another name for "promissory estoppel." **[True.]**
87. Ratification is the acceptance or confirmation of a voidable act. **[True.]**

88. Mistake may be mutual. [**True.**]
89. When there is disagreement over what a contract means, the court may use the plain meaning rule. [**True.**]
90. Reformation is a process by which a third party, such as a court, reframes a written contract to reflect what the parties intended the contract to mean. [**True.**]
91. It is desirable for a debtor to perfect its security interest in collateral by placing information on the public record. [**False.**]
92. A material mistake is one so fundamental that, had the parties been aware of it, they could not have consented to the agreement. [**True.**]
93. “Take it or leave it” contracts not subject to negotiation are known as accepted contracts. [**False.**]
94. If the offer does not state how acceptance shall be made, acceptance may be communicated to the offeror in any reasonable manner. [**True.**]
95. A person making an offer is called an offeree. [**False.**]
96. A person receiving an assignment is called an assignee. [**True.**]
97. A person who holds goods on behalf of the seller is called a bailee. [**True.**]
98. Duress can be physical, mental, or economic. [**True.**]
99. An oral contract is never valid. [**False.**]
100. It is a good idea to check your answers on a final exam. [**True.**]