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PART I UNDERSTANDING THE LAW
CHAPTER 1

Foundations of Law and the Role of Ethics in Business

KEY POINTS IN THE CHAPTER

- Law is a legally enforceable set of rules established by a government to regulate the conduct of people in a society.
- Sources of law in the United States include constitutions, statutes, case law (court decisions), and administrative regulations.
- Case law is a modern version of the common law of England. Then, as now, court decisions became precedents. A precedent is a standard that judges use for deciding later cases. The practice of following precedents (previously decided cases) is called **stare decisis**.
- Law can be classified as civil or criminal law. Civil law protects the rights and property of individuals from harm by other individuals. Criminal law protects society from the harmful acts of individuals.
- Those who violate criminal laws are punished, whereas those who violate civil laws pay money damages or are required to perform an act (specific performance) or to refrain from certain conduct (injunction).
- Law is constantly changing to reflect the changes in society. Technology has had a major impact on the way we conduct our personal and business affairs.
- Ethics has assumed a greater role as businesses carry on their day-to-day operations. Business owners can no longer minimize moral dilemmas in their role as decision makers. A lack of solutions to ethical issues could be a pathway to disaster.
- Unethical behavior may be serious enough to be considered criminal in nature and therefore subject a violator to a fine or incarceration.

TRUE-FALSE QUESTIONS

On the line at the right of each statement, write the word true if the statement is true. If the statement is false, write the word or expression that should be substituted for the underlined word or expression to make the statement correct.

1. T F One of the purposes of a legal system is to protect society. __________
2. T F The Uniform Commercial Code makes the laws of commercial transactions uniform from one state to another. __________
3. T F Administrative regulations are court rulings that are used as a basis for deciding later cases. __________
4. T F No law enacted either by Congress or by a state legislature may conflict with the U.S. Constitution. __________
5. T  F  The system that grants relief for a wrongdoing based on what is fair and just rather than on legal principles is called criminal law.  

6. T  F  As society changes, laws change to reflect the changes in society.  

7. T  F  Statute law refers to decisions made by English courts on the basis of local customs.

8. T  F  At the federal level, legislation passed by Congress is called opinions.  

9. T  F  An important concept in our legal system is that the law protects people and at the same time imposes legal duties on them.  

10. T  F  A person harmed because of a violation of civil law by another person may sue that person and ask for money damages.

**MULTIPLE-CHOICE QUESTIONS**

Circle the letter next to the most appropriate answer.

1. Unwritten law based on previous court decisions is known as
   a. statute law.
   b. common law.
   c. moral law.
   d. constitutional law.

2. Ethics is the study of
   a. the way business has changed since the Industrial Revolution.
   b. profit from a business dealing.
   c. business law.
   d. what is right or good for human beings in their everyday living.

3. Laws passed by cities, towns, and villages are called
   a. decrees.
   b. ordinances.
   c. acts.
   d. moral laws.

4. The fundamental written law of a state or nation that defines the rights and duties of individuals and describes the powers and limitations of government is called
   a. business law.
   b. common law.
   c. constitutional law.
   d. an ordinance.

5. Laws enacted by legislative bodies that protect society from the harmful acts of individuals and that impose fines or imprisonment for violations are called
   a. moral laws.
   b. civil laws.
   c. natural laws.
   d. criminal laws.

6. Laws that protect the rights and property of individuals from harm by other individuals and that provide remedies for any harm caused are called
   a. civil laws.
   b. criminal laws.
   c. constitutional laws.
   d. administrative laws.
7. The term **business ethics** refers to the study of
   a. a company’s balance sheet.
   b. what is legally required of a company in the business world.
   c. what is right, just or fair in business settings.
   d. all of these answers.

8. Tate maliciously broke into her neighbor’s house. Tate’s action is governed by
   a. criminal law.
   b. natural law.
   c. equity law.
   d. administrative law.

9. After common law is revised and adopted by a state legislature, it is known as
   a. administrative law.
   b. commercial law.
   c. federal law.
   d. statute law.

10. The Social Security Act is an example of a
    a. local ordinance.
    b. state statute.
    c. federal act.
    d. constitutional amendment.

11. A Federal Communications Commission restriction on cigarette advertising on television is an example of
    a. administrative law.
    b. constitutional law.
    c. criminal law.
    d. statute law.

12. The first kind of law, other than Roman law, to come into existence was
    a. constitutional law.
    b. administrative law.
    c. statute law.
    d. common law.

13. The type of action indicated by the case title *William Beebe v. Katherine Coyle* is
    a. civil.
    b. criminal.
    c. punitive.
    d. bankruptcy.

14. A person who violates criminal law is subject to
    a. punishment.
    b. a ruling in equity.
    c. *stare decisis*.
    d. a moral action in a court of law.

15. In law, **equity** means
    a. what is fair and just.
    b. to stand by a decision.
    c. a violation of the law.
    d. precedent.
SHORT-ESSAY QUESTIONS

Answer each of the following questions in the space provided.

1. What ethical considerations might arise for a sales representative who is working with the purchasing department of a large corporation interested in buying several computers? How should he or she handle these considerations?

______________________________________________________________________________
______________________________________________________________________________

2. Discuss the significance of the *stare decisis* concept.

______________________________________________________________________________

3. Under what circumstances is a remedy in equity available to an injured party seeking relief in court?

______________________________________________________________________________

4. When engaging in corporate decision making about whether to undertake a given course of action, what questions should businesspersons typically consider?

______________________________________________________________________________
______________________________________________________________________________


______________________________________________________________________________
CHAPTER 2

The Federal and State Court Systems and Their Constitutional Foundation

KEY POINTS IN THE CHAPTER

• In the United States, the courts are charged with interpreting and enforcing the law. They carry out these responsibilities by deciding cases (rendering a decision).

• The United States has two court systems: the federal court system and the state and local court system; at both the federal and the state levels, there are civil and criminal courts.

• Each state court system includes lower-level trial courts with various degrees of original jurisdiction and an appellate court of final resort (the highest court in the state).

• Courts of special interest in the state system include (1) small claims court, a local court established to provide a fast, nontechnical, inexpensive hearing on a claim; (2) drug court, generally a local court that handles drug-related crimes; mental health court created in many jurisdictions to deal with mentally ill people who become involved in the criminal justice system and are incarcerated.

• The federal court system established under the U.S. Constitution provides for the U.S. Supreme Court (the highest court in the land) and lower courts established by Congress as deemed necessary. Under this authority, Congress has established U.S. District Courts (trial courts), U.S. Courts of Appeals, and special federal courts.

• The attorney, the paralegal, the judge, and the jury play key roles in helping the courts to function smoothly.

• The constitutional system on which our system is based includes these principles: separation of powers, judicial review, accommodation of interests and litigation, and the Bill of Rights.

MATCHING QUESTIONS

Use the following terms to identify the phrases below. On the line next to each phrase, write the letter of the term that is most closely related to it. Do not use a term more than once.

1. _____ Where a case is first tried
   a. Judicial review
   b. Court of original jurisdiction
   c. Executive branch
   d. Marbury v. Madison
   e. Congress
   f. Litigation
   g. Diversity of citizenship

2. _____ Where the technical rules of evidence normally followed in the court trial are not strictly adhered to
   a. Judicial review
   b. Court of original jurisdiction
   c. Executive branch
   d. Marbury v. Madison
   e. Congress
   f. Litigation
   g. Diversity of citizenship

3. _____ A lawsuit or legal action
   a. Judicial review
   b. Court of original jurisdiction
   c. Executive branch
   d. Marbury v. Madison
   e. Congress
   f. Litigation
   g. Diversity of citizenship

4. _____ Has the authority to affirm or reverse the decision of a trial court
   a. Judicial review
   b. Court of original jurisdiction
   c. Executive branch
   d. Marbury v. Madison
   e. Congress
   f. Litigation
   g. Diversity of citizenship

5. _____ Guarantee the right to due process
   a. Judicial review
   b. Court of original jurisdiction
   c. Executive branch
   d. Marbury v. Madison
   e. Congress
   f. Litigation
   g. Diversity of citizenship
6. _____ Where financially troubled debtors are relieved from paying some of their debts

7. _____ Gives higher courts the power to re-examine the decisions of lower courts

8. _____ The Supreme Court case that established the basis for the concept of judicial review

9. _____ The branch of the federal government that has the power to make law

10. _____ Grounds for jurisdiction in the federal courts when the person suing and the person being sued live in different states

11. _____ The minimum claim required in a diversity-of-citizenship case

12. _____ Protects the individual’s right to privacy by prohibiting unreasonable search and seizure by the government

MULTIPLE-CHOICE QUESTIONS

On the line next to each statement, write the letter of the best answer.

1. The power of a court to hear a case is known as
   a. certiorari.
   b. venue.
   c. jurisdiction.
   d. none of these.

2. A court that has the power to hear almost any case brought before it has
   a. appellate jurisdiction.
   b. constitutional jurisdiction.
   c. limited jurisdiction.
   d. general jurisdiction.

3. The U.S. Supreme Court’s jurisdiction is
   a. appellate only.
   b. original only.
   c. appellate and original.
   d. unlimited.

4. The most common means of bringing an appeal before the U.S. Supreme Court is called
   a. case.
   b. certification.
   c. centaurus.
   d. certiorari.
5. The major trial courts of the federal court system are called
   a. circuit courts.
   b. district courts.
   c. claims courts.
   d. courts of appeal.

6. A court of original jurisdiction is called a
   a. trial court.
   b. higher court.
   c. review court.
   d. criminal court only.

7. The United States has two separate and distinct court systems. They are
   a. federal system and county system.
   b. federal system and local system.
   c. federal system and state and local system.
   d. state system and county and local system.

8. The U.S. Supreme Court derives its judicial power from
   a. Congress.
   b. the president.
   c. the Constitution.
   d. the state courts.

9. Howell, a landlord, is involved in a dispute with a tenant over unpaid rent. Howell should bring
   suit against the tenant in
   a. district court.
   b. U.S. Tax Court.
   c. probate court.
   d. small claims court.

10. All of the following are part of the federal court system except
    a. the circuit courts of appeal.
    b. U.S. Tax Court.
    c. district courts.
    d. juvenile courts.

11. A typical state court system includes all of the following except
    a. lower-level trial courts.
    b. intermediate-level appeals courts.
    c. bankruptcy courts.
    d. small claims courts.

12. Most state court systems include small claims courts to settle minor disputes. In small claims
    courts
    a. technical rules of evidence and procedure normally followed in a court trial are not strictly
       followed.
    b. attorneys are not permitted.
    c. the maximum amount for which a person may sue is not established.
    d. a judge and jury consider the evidence and render a decision.
SHORT-ESSAY QUESTIONS

Answer each of the following questions in the space provided.

1. Briefly explain the meaning of the following statement: Our legal system is known as an adversary system.

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

2. The U.S. system of government and law is determined by the doctrine of separation of powers. Explain the meaning of this doctrine.

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

3. Explain why the concept of judicial review is important in our judicial system.

______________________________________________________________________________
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______________________________________________________________________________

4. What is the role of mental health courts in a state’s system of courts?

______________________________________________________________________________
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5. Give reasons why the opportunities for the successful appeal of a case are limited.

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______________________________________________________________________________
6. How does a court gain jurisdiction over a person in a civil case? In a criminal case?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

7. Is the appeals process, which is both time-consuming and costly, really necessary? Or should a verdict reached in a trial court, presided over by a judge who has knowledge of law and trial procedures, be final?

______________________________________________________________________________
______________________________________________________________________________

8. At both the federal and state levels there are civil and criminal courts. What types of cases are handled in civil courts? In criminal courts?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

9. List three advantages to taking a case to small claims court.

______________________________________________________________________________
______________________________________________________________________________
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______________________________________________________________________________
______________________________________________________________________________

10. What is the significance of the Supreme Court decision in *Roe v. Wade* (410 U.S. 113; 93 S. Ct. 705; 35 L. Ed. 2d 147)?

______________________________________________________________________________
______________________________________________________________________________

11. The Fourteenth Amendment guarantees the equal protection of the law to all persons. What is the meaning of the phrase *equal protection*?

______________________________________________________________________________
CASE PROBLEMS

Read the case problems below and then answer the questions that follow.

1. Johnson refused to file a federal income tax return, claiming that it was a violation of his right to privacy. He was arrested and charged with a violation of the Internal Revenue Code of the United States.
   a. Is this a state or a federal case? _____
   b. Which court has jurisdiction to hear this case? _____
   c. If Johnson is convicted, to which court may he appeal? _____

2. Alden had her car radiator repaired by Smokey Garage for $125. She was not happy with the results and decided to sue the garage owner to get her money back.
   a. In what court would her case most likely be heard? _____
   b. Does she need a lawyer to represent her in this court? _____
   c. Would this kind of case normally be heard by a judge or by a jury? _____

   a. Would this case be tried in a civil or a criminal court? _____
   b. Is this a state or a federal case? _____
   c. Would this case be heard in a trial or an appellate court? _____

4. Rolf, a resident of Chicago, Illinois, was a contender for the world middle-weight champion title. Rolf’s manager Archie Bowles, also from Illinois, entered into a contract with the Moyles Corporation of Chicago to co-promote a fight between Rolf and Villin the current middle-weight champion in New York City. The contract was made in the state of New York. To promote the fight, Rolf’s manager held a press conference in New York City. At the press conference, Bowles was involved in a confrontation with a sports writer covering the press conference and ended up severely assaulting him. The sportswriter brought suit against Bowles and the Moyles Corporation by filing a complaint in a New York State Court. The only contact the Moyles Corporation had with New York City was that a selected group of employees had taken one or two trips to New York City to plan the fight, but the fight was never held. New York State had a long arm statute. Does New York State have any jurisdiction over the Moyles Corporation so as to enable a lawsuit to be brought in that state?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
CHAPTER 3

Criminal Law: Traditional and Cyber Crimes

KEY POINTS IN THE CHAPTER

• Crimes, called public wrongs, consist of felonies (serious) and misdemeanors (less serious). Wrongs less serious than misdemeanors—variously termed violations, infractions, and petty offenses—are not crimes. Crimes may be punishable by death, prison, or jail sentences of different durations, depending on the seriousness of these crimes.

• Personal and business crimes often handled by criminal justice agencies and discussed in Chapter 3 include assault, robbery, arson, burglary, theft, insider trading, bribery, identity theft, driving while intoxicated, and cyber crimes.

• The defenses—reasons that accused individuals offer to excuse guilt for criminal acts—are infancy, insanity, involuntary intoxication, duress, justification, entrapment, and mistake based on wrong DNA.

• People who commit crimes are handled through either the federal or the state criminal justice system, which is composed of the police, the courts, and corrections.

COMPLETION QUESTIONS

In the statements below, important words have been omitted. Fill in the blanks to complete each statement.

1. The U.S. criminal justice system is composed of three elements: police, courts, and ___________________

2. The punishment for committing a felony could be imprisonment for more than ___________________, usually in a state or federal prison.

3. Shoplifting is a form of ___________________.

4. The criminal defense of __________________ applies when a person is persuaded by a law enforcement officer to commit a crime.

5. A(n) _______________ is a charge by a grand jury that a certain person has committed a felony.

6. A misdemeanor is an act punishable by imprisonment for ___________________ one year.

7. A person is guilty of ___________________ when he or she intentionally obtains personal identifying information of another person without permission and uses this information for unlawful purposes.

8. Intentionally stealing money or the personal property of another without the use of force is called ___________________.

9. The rights read to a suspect who has been arrested and is about to be questioned are called the ___________________

10. Another name for blackmail is ___________________.

SHORT-ESSAY QUESTIONS
Answer each of the following questions in the space provided.

1. Once a suspect has been taken into custody and interrogated, is it possible for him or her to have a change of mind and invoke the right to silence?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

2. List three rights and three defenses a person has after being arrested on suspicion of having committed a crime.

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3. You are kidnapped by a terrorist group and held hostage. You are then forced to participate with the terrorists in a number of activities in which no one was killed. The terrorist group, including you, are captured a short time later, arrested, and charged with certain crimes. What defense might you use to avoid being convicted?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

4. For each situation described below, identify the crime or crimes committed by the person underlined.

a. A fuel truck driver was charged with skimming more than 100,000 gallons from gasoline deliveries to government agencies and then selling the fuel at cut-rate prices.

______________________________________________________________________________

b. A rock band member, tired of having obscenities yelled at him by another band member, struck the other band member over the head with the base of his microphone stand, causing permanent brain damage.

______________________________________________________________________________

c. Higgins was charged with entering the Larder residence and taking a handgun, jewelry, coins, and bonds valued at over $1,500.

______________________________________________________________________________

d. An escaped prisoner entered a Conway Ice Cream store, pointed a gun at the clerk, and demanded all the money in the cash register

______________________________________________________________________________

e. Driscoll, a store manager, filled out and signed time cards for nonexistent employees and then cashed the paychecks himself.

______________________________________________________________________________
5. How can a police officer avoid lawsuits for false arrest?
______________________________________________________________________________
______________________________________________________________________________

MULTIPLE-CHOICE QUESTIONS
For each statement, circle the letter of the best answer.

1. McCurdy’s Department Store delivered merchandise to Willis by mistake. Although she knew the merchandise was not hers, she kept it. Willis is guilty of
   a. nothing.
   b. larceny.
   c. burglary.
   d. robbery.

2. Weinberg was walking into the South Town Mall when he was attacked. Morrow, the attacker, knocked him down and took his wallet, which contained $50. Weinberg was seriously injured. Morrow was apprehended by the police and charged with
   a. assault and burglary.
   b. assault and robbery.
   c. burglary and robbery.
   d. robbery and criminal mischief.

3. Barnum, the bookkeeper for Time Wise Food Wholesalers, made false entries in the company books so that she could take the company’s money for her own use. Barnum was guilty of
   a. fraud.
   b. larceny.
   c. robbery.
   d. embezzlement.

4. A business, if careless in the way it handles personal information of its customers could perpetuate the crime of
   a. arson.
   b. burglary.
   c. assault.
   d. identity theft.

5. Which of the following crimes cannot be easily committed through the assistance or use of a computer?
   a. larceny
   b. criminal fraud
   c. embezzlement
   d. arson
CASE PROBLEMS
Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. At 3:00 A.M., Benton entered a store through an unlocked window. He gathered several valuable items, intending to steal them. When he heard the police coming, he left everything there but was caught by the police as he climbed out the window. Can Benton be charged with burglary even though he took nothing?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

2. Reese bought a set of high-quality stereo speakers for $50 from someone selling them from the back of a van. The police stopped Reese several blocks away and arrested him for possession of stolen property. Can Reese claim in defense that he is not guilty because he did not know the speakers were stolen?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

3. Customs and immigration officials suspected Marx of smuggling drugs into the United States. An undercover agent from the Bureau of Immigration suggested that Marx contact a certain drug kingpin in order to buy illegal drugs to sell in this country. Marx at first refused, but at the insistence of the undercover agent he later agreed. As he entered the country with the drugs, Marx was arrested and charged with smuggling. Marx claimed that he was “set up” and does not have criminal responsibility for what he did. Is Marx correct?

______________________________________________________________________________
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CHAPTER 4

Tort Law: Traditional and Cyber Torts

KEY POINTS IN THE CHAPTER
• A tort, a private wrong, is an intentional harmful act or a failure to act that causes physical or mental injury to another or damage to another’s property. The perpetrator of a private wrong is subject to a civil lawsuit.
• All persons (minors included) are legally responsible for their torts.
• Torts are classified as intentional negligence, or strict liability.
• Intentional torts—those deliberately committed, include assault and battery, false imprisonment, emotional distress, defamation, invasion of privacy, wrongful death, malicious prosecution, fraud, interference with contractual relations, trespass, conversion, nuisance, and theft of trade secrets. In a civil lawsuit, a defendant may avoid liability for these torts by proving defenses such as consent, privilege, and necessity.
• Negligence as an intentional tort arises through a person’s carelessness (the failure to act carefully). Legal defenses to negligence include contributory negligence, comparative negligence, and assumption of risk.
• The third and final category of torts is strict liability. Under this concept, the law imposes liability on people for reasons other than fault. Defendants in lawsuits (under this category) are held liable for carrying on activities or selling products that cause harm to people because they are unreasonably dangerous. Fault would not be an issue in this type of tort.
• The usual remedy to an injured party for a tort is money damages—compensatory and/or punitive. When money damages will not provide adequate relief, equitable remedies such as specific performance and injunction are available.

MATCHING QUESTIONS
Use the following terms to identify the torts listed in the table. On the line next to each description, write the letter of the term that is most closely related to it.

1. _____ At Elmwood General Hospital, an 81-year-old patient died after a nurse accidentally gave him a toxic liquid instead of his medication.
   a. Assault 
   b. Negligence 
   c. Trespass 

2. _____ A 21-year-old student was paralyzed from the neck down when a poorly maintained platform collapsed at Wonder Amusement Park.
   d. Public nuisance 
   e. Conversion 
   f. Wrongful death
3. _____ A surgeon performing eye surgery failed to follow standard postoperative procedure in measuring and minimizing pressure on the eye. As a result, the 7-year-old patient lost the sight in one eye.

4. _____ Neighbors complained that Huber’s property was “a junkyard and a breeding ground for rodents.” County health investigators confirmed that the property was “a source of filth and a health hazard that affected the entire neighborhood.”

5. _____ Because of poor management practices in his department, a high-level hospital staff member was being investigated. Hospital officials searched his desk, including his personal papers and belongings, while he was at lunch. They discovered that he had once been under psychiatric care.

**COMPLETION QUESTIONS**

In the statements below, important words have been omitted. Fill in the blanks to complete each statement.

1. Using a person’s name or picture for an advertisement or other commercial purpose without consent is a(n) ____________________.

2. A(n) ____________________ tort occurs when one person deliberately performs some act that interferes with another and thereby causes injury or property damage.

3. A person who commits the tort of conversion also may be guilty of the crime of ____________________.

4. A(n) ____________________ is a court order that restrains a person from performing or continuing to perform some act.

5. Truth is a defense to a lawsuit for ____________________.

6. The Supreme Court decision in ____________________ made it more difficult for a public figure to sue for defamation.

7. The concept of liability without fault sometimes is called ____________________.

8. Negligence occurs when a person gets ____________________.

9. The tort of ____________________ occurs when a professional’s improper, immoral, or illegal conduct in rendering services causes the recipient of those services to suffer an injury or loss.
10. A victim of negligence must prove that the defendant’s carelessness was the ________________ cause of the victim’s loss.

**MULTIPLE-CHOICE QUESTIONS**

For each statement, circle the letter of the best answer.

1. The main difference between libel and slander is that
   a. libel concerns adults only; slander, minors only.
   b. libel concerns minors only; slander, adults only.
   c. libel concerns those things spoken; slander, those things in print.
   d. libel concerns those things in print; slander, those things spoken.

2. Tort law is primarily
   a. criminal law.
   b. statutory.
   c. case law.
   d. Roman law.

3. All of the following are intentional torts except
   a. trespass.
   b. fraud.
   c. defamation.
   d. malpractice.

4. Comparative negligence can be used as a defense to a lawsuit for
   a. battery.
   b. negligence.
   c. conversion.
   d. fraud.

5. Martino, a bill collector, was kicked and punched by Beaden while trying to collect an overdue account from Beaden. Beaden could be held for the tort of
   a. libel.
   b. embezzlement.
   c. extortion.
   d. assault and battery.

6. Breaking a car window and destroying a car phone is an example of
   a. fraud.
   b. invasion of privacy.
   c. trespass.
   d. defamation.

7. By orally repeating a rumor she knew to be false, Marny damaged Jewell’s reputation. Marny was guilty of
   a. nothing.
   b. libel.
   c. assault.
   d. slander.

8. Public officials cannot collect damages for false and defamatory statements made about them unless they can prove
   a. actual malice.
   b. strict liability.
   c. invasion of privacy.
   d. malicious prosecution.
9. Benzer bought a television that, unknown to him, was stolen. Benzer refused to surrender the television until he was reimbursed the money he paid the seller. Benzer is liable for the tort of
   a. fraud.
   b. trespass.
   c. negligence.
   d. conversion.
10. Curtis built a fence on what she thought was the border between her property and her neighbor’s. A month later, she found that the fence was on her neighbor’s property. The neighbor could hold Curtis liable for
   a. nuisance.
   b. trespass.
   c. a criminal wrong.
   d. nothing because the act was unintentional.
11. To determine negligence, the court compares the conduct of the defendant with the conduct of
   a. the attorneys involved in the case.
   b. the judge.
   c. a reasonable person.
   d. a witness in the case.
12. Lovell threatened to hit Farrin. If Lovell did hit Farrin and Farrin suffered injury or damages, she could sue Lovell for
   a. nuisance.
   b. assault only.
   c. battery only.
   d. assault and battery.
13. All of the following are a defense in a negligence suit except
   a. assumption of risk.
   b. contributory negligence.
   c. comparative negligence.
   d. strict liability.
14. A person accused of shoplifting was detained in a store for an unreasonable length of time, but a search revealed no evidence of shoplifting. The detained person can sue for
   a. robbery.
   b. larceny.
   c. false arrest.
   d. trespass.
15. A surgeon performed an appendectomy on Frank. One month later, Frank discovered that the surgeon had left some gauze in his incision, causing infection, considerable pain, and additional hospital expenses. Frank sued the surgeon to recover money damages. The basis for Frank’s lawsuit was
   a. nuisance.
   b. invasion of privacy.
   c. conversion.
   d. malpractice.
16. DiBella, a dentist, received a very derogatory letter from a former patient who was not satisfied with DiBella’s work. If no one ever saw the letter, DiBella can sue this patient for
   a. libel.
   b. slander.
   c. conversion.
   d. none of these.
17. Strict liability in tort has been applied to
   a. the sale of defective products to the public.
   b. cases involving assault and battery.
   c. cases involving free speech under the First Amendment.
   d. libel and slander cases.
18. Martin leaves his garbage in open containers, causing foul odors in his neighborhood. This is an example of
   a. fraud.
   b. trespass.
   c. nuisance.
   d. defamation.
19. A tort is
   a. a breach of contract.
   b. an offense against the state.
   c. a private wrong.
   d. a crime.
20. Actual malice must be shown by
   a. a private citizen attempting to recover damages for defamation.
   b. a public figure in order to recover damages for defamation.
   c. both public figures and private individuals.
   d. a person suing for negligence.

CASE PROBLEMS
Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. Reed, a store loss prevention officer, thought she saw Jones leaving the store with merchandise he had not paid for concealed under his coat. Reed stopped Jones outside the store and asked if he would please come to the store manager’s office. Jones agreed and followed Reed to the office. At the office, Reed explained to Jones why he was being detained and then asked if he would mind emptying his coat pockets. Jones agreed. Satisfied that Jones had stolen nothing, Reed released him with an apology. Later Jones claimed that he was the victim of false arrest. Was he correct?

________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________

2. Langley, a state beauty contest winner, was sunning herself by the pool at the hotel where she was staying. Without her permission, King took a photo of her and sold the photo to Dansig for use in an advertising campaign. Langley has sued Dansig for damages for the unauthorized use of her picture. Can Langley recover damages?

________________________________________________________________________________________
________________________________________________________________________________________
________________________________________________________________________________________
3. Dr. Springer tried unsuccessfully for over a year to collect a $1,000 debt from Byrd, a prominent citizen of the community, for services rendered. One evening at a dinner party, Springer casually mentioned to several of his business friends, including the president of the local bank, that he had not been able to collect the overdue debt from Byrd. As a result, Byrd was denied a personal loan he had applied for at the bank. Byrd claims that Springer’s remark was slanderous and that Springer owes him damages. Is Byrd correct?

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4. Marvelle had just mopped and waxed an area of the floor of his restaurant. He placed signs around the waxed area warning customers of the danger. Despite the warnings, Davis walked onto the waxed area. He slipped, fell, and broke an arm and a leg. Davis now claims that Marvelle is liable for the injuries he sustained. Is Davis correct?

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**SHORT-ESSAY QUESTIONS**

Answer each of the following questions in the space provided.

1. The torts of false arrest and false imprisonment are often confused. Explain the difference between false arrest and false imprisonment, and give a brief example of each.

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

2. A person bringing a lawsuit for negligence must generally show the presence of four elements. List and describe these elements.

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______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

3. Two common defenses in a lawsuit based on negligence are contributory negligence and comparative negligence. What are the differences between them?

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______________________________________________________________________________
______________________________________________________________________________
4. The law of defamation was significantly affected by the Supreme Court’s decision in New York Times Co. v. Sullivan. Discuss.

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______________________________________________________________________________
______________________________________________________________________________

5. What concern should a website owner have about his/her privacy being invaded?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
CHAPTER 5
Litigation and Alternatives for Settling Civil Disputes

KEY POINTS IN THE CHAPTER

- Legal disputes that cannot be resolved informally by the parties may end up in court as a lawsuit.
- Litigation (a lawsuit) is expensive, time-consuming, and emotionally draining. Also, the person being sued may be judgment proof. Therefore, if you become involved in a legal controversy, you should try to settle out of court.
- Litigation involves several stages. It begins when the person who is suing after visiting an attorney files a complaint with the appropriate court and the defendant files an answer soon after receiving the complaint and a summons to appear in court to answer the complaint. After suit is filed, the discovery process takes place. Discovery narrows the legal issues and may reduce the duration of the actual trial if the case is not otherwise settled out of court.
- If there is an actual trial, the petit jury is selected and the trial is held.
- The time, trouble, frustrations, and expense associated with trials have led individuals and business to resort to alternative dispute resolution (ADR) methods.
- The common ADR methods are arbitration, mediation, minitrials, private trial, and negotiation (an informal settlement) between the parties.

TRUE-FALSE QUESTIONS

Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T  F At the conclusion of a civil trial, jurors render a **motion**.
2. T  F The examination of potential jurors to determine their qualifications to serve as jurors is called a **voir dire** examination.
3. T  F **Grand** jurors render a verdict.
4. T  F The official decision of the jury, which is entered into the court record, is called the **award**.
5. T  F The term **litigation** refers to a lawsuit.
6. T  F A major reason for not bringing a lawsuit is that the person you are thinking about suing may be **judgment proof**.
7. T  F In order to understand your options fully, the first step in deciding whether or not to sue is to discuss your legal problem with a **friend**.
8. T  F The failure of the defendant in a civil lawsuit to acknowledge receipt of a summons gives the plaintiff the right to a **judgment by default**.
9. T  F The pretrial steps taken by the plaintiff and the defendant to learn in detail the nature of the other’s claim in a civil lawsuit is called **direct examination**.
10. T F If the plaintiff and defendant do not demand a jury trial in a civil lawsuit, the evidence in the case is presented only to a judge.

MULTIPLE-CHOICE QUESTIONS
Circle the letter of the correct answer.

1. An unwilling witness must be served with a
   a. motion.
   b. summons.
   c. subpoena.
   d. voir dire.

2. The questioning of a witness for the plaintiff by the attorney for the defendant is called
   a. direct examination.
   b. redirect examination.
   c. cross-examination.
   d. indirect examination.

3. When a judge advises the jurors of the rules of law that must be applied to the facts presented during a trial, the judge is
   a. instructing the jury.
   b. asking for a judgment on the part of the jury.
   c. asking for a motion.
   d. requesting a verdict.

4. In a civil action, the paper that contains the defendant’s statement of his or her defense is called
   a(n)
   a. summons.
   b. answer.
   c. complaint.
   d. award.

5. In a civil case, in order to “win,” the plaintiff must establish the truth of his or her claim by
   a. proving the facts beyond a reasonable doubt.
   b. cross-examination.
   c. direct examination.
   d. a preponderance of the evidence.

CHRONOLOGY
Rearrange the following events in the order in which they occur and re-write them on the line provided on the right.

<table>
<thead>
<tr>
<th>Event</th>
<th>Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summons and complaint</td>
<td>1.</td>
</tr>
<tr>
<td>Discovery proceedings</td>
<td>2.</td>
</tr>
<tr>
<td>Attorneys’ opening statements</td>
<td>3.</td>
</tr>
<tr>
<td>Answer</td>
<td>4.</td>
</tr>
<tr>
<td>Presentation of evidence for the defendant</td>
<td>5.</td>
</tr>
<tr>
<td>Verdict</td>
<td>6.</td>
</tr>
<tr>
<td>Presentation of evidence for the plaintiff</td>
<td>7.</td>
</tr>
<tr>
<td>Attorneys’ closing statements</td>
<td>8.</td>
</tr>
<tr>
<td>Appeal</td>
<td>9.</td>
</tr>
</tbody>
</table>
SHORT-ESSAY QUESTIONS
Answer each of the following questions in the space provided.

1. What are the differences among litigation, arbitration, and mediation?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

2. What is an important difference between mediation and arbitration?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

3. What is the purpose of discovery as a pretrial step?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

4. List three discovery techniques used by attorneys.

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

5. What are some of the problems that the losing party in a civil lawsuit can encounter if he or she decides to appeal the decision of the lower court?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

6. What are the advantages of an informal settlement through negotiation compared to litigation or to any of the alternatives to litigation described in Chapter 5?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

7. What do you think are the main reasons for the backlog of cases in civil courts?

______________________________________________________________________________
______________________________________________________________________________
8. What do taking a case to Small Claims Court and using an alternative means to settle (i.e., arbitration or mediation) have in common?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

ACTIVITY: DOCUMENT ANALYSIS

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

WILLIAM JORDAN, Plaintiff

against —       Complaint
MARY MARTIN, Defendant

The plaintiff, by his attorney, Peter Leffer, complaining of the defendant, alleges:

1. That on or about the 6th day of July, 2005, the plaintiff was lawfully upon Monroe Avenue, at its intersection with Winton Road, which is a public highway in the City of Rochester, New York, and was in the act of crossing said street at the same time that an automobile, owned and operated by the defendant, was passing over and along Winton Road.

2. That said defendant so negligently and carelessly managed and operated said automobile that in sole consequence thereof and without negligence or fault on the part of the plaintiff, plaintiff was suddenly and without notice or warning thrown violently to the street by said automobile.

3. That by reason of the foregoing the plaintiff suffered great bodily injury and became and still continues to be sick, sore, and disabled, and was obliged to spend large sums in attempting to cure himself, and was prevented for a long time from attending to his business, and was otherwise injured to his damage One Hundred Thousand Dollars ($100,000).

Wherefore, plaintiff demands judgment in the sum of $100,000, together with the costs and disbursements of this action.

PETER LEFFER
Attorney for Plaintiff
Office and P.O. Address
Platt Building
No. 175 Main Street
Rochester, New York
Telephone: 716-389-1462

1. What is the purpose of this document?
2. What is the basis for this complaint?

_____________________________________________________________________________
_____________________________________________________________________________
_____________________________________________________________________________

3. In the legal process, a complaint often accompanies what other legal document?

_____________________________________________________________________________
_____________________________________________________________________________
_____________________________________________________________________________

4. What are the statements made in this complaint called?

_____________________________________________________________________________
_____________________________________________________________________________
_____________________________________________________________________________

5. When the defendant receives this complaint, what should she do?

_____________________________________________________________________________
_____________________________________________________________________________
_____________________________________________________________________________
Review Part I: Understanding the Law

TRUE- FALSE QUESTIONS
Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T F Law is strongly affected by ethical concepts.
2. T F In a criminal case, the state or the federal government represents society against the individual accused of the crime.
3. T F Laws passed by Congress and by state legislatures are called common laws.
4. T F Any law enacted by a state legislature or municipality that conflicts with that state’s constitution may be declared invalid by a court of law.
5. T F A federal court decision always can be appealed to the U.S. Supreme Court.
6. T F The primary difference between a felony and a misdemeanor is the seriousness of the act committed.
7. T F Most serious crimes are punishable by a sentence of a year or more in a state or federal prison.
8. T F The prior criminal record of a defendant may affect the punishment given for a crime.
9. T F Small claims courts usually hear cases involving minor crimes.
10. T F *Stare decisis* means to “stand by a decision” and refers to cases that were decided previously.
11. T F Compensatory damages are imposed on a wrongdoer by the court as punishment for an intentional tort.
12. T F A code of ethics that defines the type of behavior expected of employees can help minimize unacceptable behavior in a company.
13. T F Strict liability is based on the concept of liability without fault.
14. T F All persons taken into police custody have the right of due process.
15. T F Jurors are selected for jury duty through a process called *voir dire*.

MULTIPLE-CHOICE QUESTIONS
Circle the letter of the best answer.

1. The function of the grand jury is to
   a. prosecute the defendant.
   b. judge the defendant guilty or not guilty of the charges.
   c. decide whether there is sufficient evidence to bring a case to trial.
   d. prove to the court that the defendant is guilty as charged.
2. Once a case has been brought to trial, the first court procedure in a lawsuit is
   a. jury selection.
   b. the jury’s verdict.
   c. the attorneys’ opening statements to the jury.
   d. the judge’s charge to the jury.

3. While playing football in an empty lot, Matthews hit a passerby in the eye with the ball. This is an example of a(n)
   a. felony.
   b. tort.
   c. misdemeanor.
   d. infraction.

4. Libel and slander are forms of
   a. negligence.
   b. conspiracy.
   c. fraud.
   d. defamation.

5. The refusal to return to its rightful owner stolen property that you purchased is a tort called
   a. attachment.
   b. trespass.
   c. conversion.
   d. none of these.

6. Blain’s neighbor charged him with assault and battery. Blain was handed a legal notice directing him to appear in court to answer the charges. This notice is known as
   a. an answer.
   b. a subpoena.
   c. a summons.
   d. none of these.

7. Potter won her negligence lawsuit against Mann. The $100,000 awarded to Potter is called a(n)
   a. judgment.
   b. sentence.
   c. indictment.
   d. injunction.

8. Fleming leaves her garbage outside in an uncovered barrel. The resulting bad smell bothers her neighbors. This is an example of
   a. fraud.
   b. trespass.
   c. nuisance.
   d. conversion.

9. The person who initiates a civil action is called the
   a. defendant.
   b. plaintiff.
   c. state.
   d. district attorney

10. A grand jury has the authority to issue a(n)
   a. judgment.
   b. indictment.
   c. verdict.
   d. award.
11. An example of an act classified as a crime is
   a. arson.
   b. nuisance.
   c. slander.
   d. invasion of privacy.
12. A valid defense that a defendant’s attorney could introduce during a criminal trial is
   a. the defendant did not know the act was wrong.
   b. entrapment.
   c. the defendant was instructed to perform the illegal act as a joke.
   d. the defendant committed the act out of necessity.
13. Among the sources of law in the United States, which classification of law has the least authority?
   a. the US Constitution.
   b. state constitutions.
   c. federal and state statutes.
   d. common law (court decisions).
14. Common law often is referred to as
   a. written law.
   b. administrative law.
   c. equity law.
   d. unwritten law.
15. Judges’ practice of following the precedents established by past decisions is called
   a. equity.
   b. indictment.
   c. **stare decisis**.
   d. an act of Congress.
16. If Bartel dumped trash on Frank’s land, Bartel could be held liable for
   a. fraud.
   b. negligence.
   c. conversion.
   d. trespass.
17. Taking money that belongs to someone else and that has been given to you for safekeeping is the crime of
   a. embezzlement.
   b. robbery.
   c. forgery.
   d. arson.
18. The questioning of a plaintiff’s witness by the defendant’s attorney is known as
   a. direct examination.
   b. indictment.
   c. cross-examination.
   d. objection.
19. An effort to make laws similar among states has been attempted through
   a. the Uniform Commercial Code.
   b. amendments to the state constitutions.
   c. an amendment to the U.S. Constitution.
   d. local ordinances within each state.
20. Common law is a system of law that developed
   a. after the eighteenth century.
   b. after the United States was founded.
   c. in the early American colonies.
   d. in England, with precedents established from prior disputes.

21. Punitive damages are awarded to someone injured by another person’s intentional tort
   a. so the injured party can make a profit.
   b. so the injured party is compensated for hospital and doctor bills
   c. to punish the party who committed the tort
   d. so the person who committed the tort can make a profit.

22. When Bond’s lease ended, her landlord inspected the apartment and found no damage beyond
    ordinary wear and tear. The landlord promised to return her $300 security deposit within a week,
    but several months later, Bond still was trying to get her money. For an inexpensive, quick, fair
    settlement, Bond should
   a. ask the public defender to represent her at state expense in a local court.
   b. take her case to small claims court.
   c. take her case to the highest state court.
   d. obtain a writ of execution to seize and sell the landlord’s property.

23. Carmel struck a legally parked car while backing carelessly out of his driveway. Carmel could be
    found guilty of the tort of
   a. nuisance.
   b. negligence.
   c. assault and battery.
   d. conversion.

24. A body of law that states the rights and limitations both of the federal government and of state
    governments is classified
   a. administrative.
   b. constitutional.
   c. common.
   d. statutory.

25. A convicted criminal claimed that his constitutional rights had been violated. The highest court
    that can pass judgment on his claim is
   a. the highest state court.
   b. the U.S. Court of Claims.
   c. a federal district court.
   d. the U.S. Supreme Court.

26. Laws enacted by legislative bodies that forbid conduct harmful to society and that impose fines or
    imprisonment for violations are called
   a. moral laws.
   b. civil laws.
   c. natural laws.
   d. criminal laws.

27. In the United States, law is derived from
   a. written laws, such as constitutions, statutes, and ordinances.
   b. case law, which is based on judicial decisions.
   c. administrative agencies’ rules and regulations.
   d. all of these.
28. If Larson breaks into Pick’s house while Pick is away and steals a painting, Larson may be found guilty of
   a. burglary and robbery.
   b. arson and misrepresentation.
   c. burglary and larceny.
   d. arson and robbery.

29. A person who suffers mentally as a result of another person’s extreme conduct can sue for
   a. battery.
   b. conversion.
   c. emotional distress.
   d. trespass.

30. Detaining a person in a restaurant to see whether the bill has been paid would be considered
   a. battery.
   b. a nuisance.
   c. trespass.
   d. false imprisonment.

31. The relief granted in a civil action is
   a. punishment.
   b. confinement in a state prison.
   c. confinement in a county jail.
   d. money damages.

32. A court of original jurisdiction is called a
   a. trial court.
   b. higher court.
   c. review court.
   d. criminal court.

33. Which of the following statements is correct concerning the distinction between civil and criminal law?
   a. a civil action is brought by a state government against an individual for money damages
   b. criminal law governs felonies, misdemeanors, and torts
   c. a civil action normally involves a dispute between private persons resulting from harmful acts against that persons rights or property
   d. a criminal action involves the prosecution of a person by a state government who has committed a tort

34. A court that has the power to hear any case brought before it is said to have
   a. original jurisdiction.
   b. appellate jurisdiction.
   c. venue jurisdiction.
   d. general jurisdiction.

35. In addition to having jurisdiction over the subject matter, before a court can hear a case it must have
   a. jurisdiction over the state.
   b. jurisdiction over the person.
   c. jurisdiction in general.
   d. appellate jurisdiction.
COMPLETION QUESTIONS

In the statements below, important words have been omitted. Fill in the blanks to complete each statement.

1. A court decision that has the force of law is a(n) ____________________.
2. A person who violates a criminal law is subject to ____________________.
3. The usual remedy available to the injured party in a civil lawsuit involving a tort is ____________________.
4. A pretrial device used by the plaintiff and defendant to learn in detail about the nature of the other’s claim or defense is called ____________________.
5. The defendant in a slander case is not liable if he or she can prove that the statement made about the plaintiff was ____________________.
6. In law, the average individual is referred to as a(n) ____________________ person.
7. Another name for negligence is ____________________.
8. The tort of ____________________ is based on injury resulting from false statements that are made deliberately to deceive.
9. Trespass is a wrong against the property of another; false imprisonment is a wrong against another’s ____________________.
10. ____________________ damages are imposed on a wrongdoer by the court as punishment for an intentional tort.

CASE PROBLEMS

Read the case problem below and then answer the questions that follow.

Ring, age thirty-five, was convicted of driving while intoxicated (DWI). Six months later, he was arrested and again charged with DWI.

1. What do you call the formal charge the grand jury issued against Ring?

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2. How would you classify DWI? What kind of “wrong” is it?

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3. Who presents the charges against Ring in court?

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4. By what means can an unwilling witness to the accident be ordered to appear to give testimony in court?

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5. Suppose it can be shown that Ring, while intoxicated, had been served alcoholic beverages in a restaurant and as a result injured another person. Is the restaurant owner liable? Explain your answer.

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SHORT-ANSWER QUESTIONS

Answer each of the following questions in the space provided.

1. List and describe four primary sources of law in the United States.

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2. Under the law, torts are classified in three ways. Briefly identify and describe them.

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3. If an individual or company acts unethically can legal action be taken against them?

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4. List and describe three alternatives to litigation as a way to settle legal disputes.

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5. Discuss the important role that ethics plays in the business world. Why is it important for you to understand the law and how it works?

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6. What are the features of identity theft that affects nearly 1 million people every year and makes it the fastest growing crime in the United States?
PART II CONTRACTS
CHAPTER 6

Contract Law: A Beginning

KEY POINTS IN THE CHAPTER

• This unit deals with Common Law contracts i.e. court decisions (precedents) that have been rendered primarily by judges. Contracts that are derived primarily from statute law and deal with the sale or purchase of goods (tangible personal property) will be discussed in Chapters 15 through 18. Law discussed in those chapters is governed primarily by provisions of the Uniform Commercial Code (UCC) and not the common law.

• A contract is an agreement that a court will enforce; a social agreement is not enforceable because it does not create legally binding economic obligations for the parties or because the party suing has not suffered damage recognizable by a court.

• A valid contract must contain at least these four requirements: (1) agreement, reached between at least two valid parties; (2) consideration—something of value exchanged by each party; (3) competent parties—individuals legally and mentally capable of understanding that they are making a contract; and (4) legality—not in violation of the law.

• Contracts may be classified as bilateral or unilateral; as valid, void, voidable, or unenforceable; as formal or informal; as express or implied; and as executory or executed.

• A quasi contract (a contract implied in law) is a court-created contract designed to prevent unjust enrichment—that is, one that prevents one person from receiving a benefit at the expense of another person.

MULTIPLE-CHOICE QUESTIONS

Circle the letter with the best answer.

1. Oral contracts
   a. are not legal.
   b. cannot be enforced in court.
   c. lack agreement.
   d. are harder to prove than written contracts.

2. An illegal contract generally would be considered
   a. valid.
   b. voidable.
   c. implied.
   d. void.

3. Carlson fully performed her part of a contract to the complete satisfaction of Briggs, who has not yet paid Carlson. This is an example of a(n)
   a. executory contract.
   b. executed contract.
   c. formal contract.
   d. void contract.
4. Contracts that involve important or complicated matters should be
   a. implied in fact.
   b. written.
   c. breached.
   d. implied in law.
5. If either party fails to perform her or his duties under the terms of a contract, the contract has been
   a. performed.
   b. breached.
   c. enforced.
   d. executed.
6. Another name for a contract implied in law is a(n)
   a. executed contract.
   b. written contract.
   c. quasi contract.
   d. express contract.
7. Bart agreed to sell Sean his motorcycle for $1500. Sean paid Bart $1500, and Bart promised delivery the next day. This is an example of a(n)
   a. implied contract.
   b. executed contract.
   c. executory contract.
   d. void contract.
8. For a contract to be valid, four essential elements are required. All of the following are essential elements of a valid contract except
   a. offer and acceptance.
   b. competent parties.
   c. consideration.
   d. written form.
9. Peters promised to pay Carter $50 if he repaired a lawnmower. Carter repaired the lawnmower but has not been paid yet. At this point, this contract is
   a. valid, unilateral, and executory.
   b. valid, bilateral, and executory.
   c. valid, bilateral, and executed.
   d. valid, unilateral, and executed.
10. To create a legally binding contract, both parties to the agreement must be
    a. able to read and write.
    b. able to speak and understand English.
    c. financially responsible.
    d. competent.
11. A bilateral contract involves a(n)
    a. act for an act.
    b. act for a promise.
    c. promise for a promise.
    d. promise for an act.
12. Bentley, a minor, bought a set of golf clubs for $250 from Mickey’s Sporting Goods Shop. This is an example of a
    a. void contract.
    b. voidable contract.
    c. quasi contract.
    d. social agreement.
13. A contract implied in fact  
   a. does not exist in the eyes of the law.  
   b. can be expressed orally or in writing.  
   c. arises from the actions of the parties rather than from a specific agreement.  
   d. generally is not enforced by the courts because competent parties are lacking.  
14. An express contract is one in which  
   a. no specific oral or written agreement is made.  
   b. the agreement is stated specifically.  
   c. neither party can enforce the contract against the other in court.  
   d. no legal obligation is intended.  
15. A contract that can be enforced unless a party legally entitled to avoid the contract does so is called a  
   a. void contract.  
   b. voidable contract.  
   c. quasi contract.  
   d. contract implied in law.  

CASE PROBLEMS  
Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.  

1. Armond and his girlfriend went to the movies. Without saying anything, Armond handed the ticket seller $15. The ticket seller, also without speaking, handed Armond two tickets. Was any type of contract formed?  
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2. Berger fainted at a shopping mall. A security guard arranged with police to have her taken to a hospital for emergency treatment. When she regained consciousness and was about to be discharged, the business office asked her to sign papers arranging for her insurance company to pay the bill. Berger refused to sign, claiming she had not made an agreement with the hospital for treatment. The hospital sued Berger. Would a court require Berger to pay the bill?  
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3. Stevens agreed to take his friend Anderson to lunch. He said to Anderson: “Meet me at the Royal Scot Restaurant at 12:30 tomorrow afternoon.” Anderson agreed. Stevens never showed up. Does Anderson have a legal claim against Stevens for breach of contract?

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4. Mason, who has a degree in business administration, interviewed for two positions, one as a credit manager for a large bank and the other as a financial planner. He received a phone call offering him the credit manager’s position, which he accepted. Two days later he was offered the financial planner’s job, his first choice. He also accepted this position and then called the bank to say he had changed his mind about taking the credit manager’s position. Has Mason breached a contract with the bank?

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5. The Isaac Heating Company randomly sent out a letter to residents of the town where it did business. The letter read: “Special—We offer to clean your furnace for 50% off our regular price.” Martell received the letter. Did a contract result between Isaac Heating Company and Martell when Martell received the letter?

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6. Serono agreed to sell her horse to Branston. Unknown to either of them, the horse had been hit by a car and killed. Can either party still enforce the contract in court?

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Read the case problem below and then answer the questions that follow.

1. On January 7, Harry Owens, owner of Custom Cleaners, offered to clean the carpets in Jane Harrington’s law office for $500. Harrington agreed to this offer on January 9. On January 20, Owens cleaned the carpets and was paid $500.
   a. Who is the offerer?

   ____________________________________________________________________________

   b. Who is the offeree?

   ____________________________________________________________________________

   c. When was the offer accepted?

   ____________________________________________________________________________
d. What did each party give as consideration to bind the agreement?

__________________________________________________________________________

e. Was the contract executed?

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**Read the following contract and then list at least four items that are missing.**

1. This agreement is made between David Richardson and Edward Warren. Richardson agrees to clean and paint the outside surface of Warren’s frame dwelling, using paint and materials supplied by Edward Warren and applying two coats of paint. In consideration of this, Edward Warren agrees to pay David Richardson on satisfactory completion of the work.

   a. 
   b. 
   c. 
   d.

**SHORT-ESSAY QUESTIONS**

Answer each of the following questions in the space provided.

1. “All contracts are agreements, but not all agreements are contracts.” What does this statement mean?

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2. Why should a contract involving an important or complicated matter be in writing?

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3. Other than money, what forms can consideration take?

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4. How is a quasi contract related to the law of contracts?

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5. Is it correct to say that a void contract and an unenforceable contract both refer to an agreement that has no legal existence?

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CHAPTER 7

Agreement: Offer and Acceptance

KEY POINTS IN THE CHAPTER

• An agreement represents the first and most important aspect of contract formation. Agreement is reached through offer and acceptance.

• To be a genuine offer (legally effective), the offer must be seriously intended, be definite (clearly stated), and be communicated to the offeree.

• The seven methods of terminating an offer are (1) lapse, (2) rejection, (3) counteroffer, (4) revocation, (5) death or insanity, (6) illegality, and (7) impossibility.

• Acceptance involves the offeree’s assent to all the terms of the offer. (Only the offeree can accept the offer.) Under common law rules, the acceptance must be a “mirror image” of the offer—that is, it must match term by term what was requested in the offer.

• In bilateral contracts, communication of the acceptance is usually necessary, but this is not true for unilateral contracts. In unilateral contracts, the offeree accepts simply by completing the act requested in the offer, although as a practical matter, the offerer must actually know about the completed act.

• Although neither a rejection nor a revocation is effective until it is communicated to (received by) the other party either directly or indirectly, an acceptance to an offer may be effective when properly sent if an offeree uses a means of communication requested by the offerer or uses any reasonable means when none is specified. If an unauthorized means is used, acceptance is not effective until the offerer actually receives the communication.

• As a general rule, the offeree’s silence is not regarded as acceptance.

MULTIPLE-CHOICE QUESTIONS

Circle the letter with the best answer.

1. The Budget Office Furniture Company advertised a 60- x 30-inch executive desk for $220.99 in its office supplies catalog. Marlow went to the store and told the salesperson that she wanted to buy one of the advertised desks. Marlow’s action was a(n)
   a. agreement.
   b. acceptance.
   c. offer.
   d. bilateral contract.

2. An example of a valid offer is a(n)
   a. notice of a reward for finding a lost dog.
   b. advertisement to sell a car.
   c. offer that is made in jest.
   d. offer to sell a stolen stereo.
3. If no fixed time is stated for an offer to remain open, the offer
   a. ends automatically after thirty days.
   b. ends after a reasonable time.
   c. ends when the offeree states that it has ended.
   d. remains open indefinitely.
4. Your friend made the following statement: “I might sell my car next month if I can get a good price.” This statement is
   a. an offer to a formal contract.
   b. an offer to a unilateral contract.
   c. an offer to a bilateral contract.
   d. not an offer.
5. When goods are sold at an ordinary auction, acceptance takes place when
   a. the auctioneer lets the gavel fall.
   b. the offeree pays for the goods.
   c. the auctioneer accepts a bid from the highest bidder.
   d. the auctioneer presents the goods for sale.
6. Carelli bid $125 for an antique table at a flea market auction. Legally this bid is considered a(n)
   a. acceptance to an offer.
   b. bilateral contract.
   c. counteroffer.
   d. valid offer.
7. Revocation of an offer takes place when
   a. the offerer has been properly notified.
   b. the offeree has been properly notified.
   c. a proper counteroffer is made.
   d. the offeree properly refuses the offer.
8. Unless stated otherwise, acceptance of an offer made by mail takes place as soon as the letter of acceptance is
   a. written by the offeree.
   b. mailed by the offeree.
   c. received by the offerer.
   d. received by the offeree.
9. Fowler, an antiques dealer, wrote a letter to Gorcey on May 9 offering to sell Gorcey the grandfather clock that Gorcey had seen at Fowler’s antiques show. The letter stated that the acceptance had to be received by May 15. Gorcey mailed a letter of acceptance on May 15 that reached Fowler on May 16. A valid contract was made
   a. on May 15.
   b. on May 9.
   c. on May 16.
   d. at no time.
10. If Stornelli pays Mooney $50 to keep an offer for the sale of a personal computer open for a definite length of time, their agreement is called a(n)
    a. counteroffer.
    b. option.
    c. breach.
    d. quasi contract.
11. Preston offered to sell a camera to Bellino but then withdrew the offer before Bellino could accept. Preston’s withdrawal of the offer is known as
   a. revocation.
   b. an option.
   c. a counteroffer.
   d. acceptance.

12. Caldwell offered to sell his used car to Jones for $2,000. Jones refused. The offer has been terminated by
   a. performance.
   b. mutual agreement.
   c. revocation.
   d. rejection.

13. Thomas said to Winton: “I’ll sell you my computer for $2,000.” Winton replied: “I’ll take it if you will include a used printer.” Winton’s reply legally resulted in
   a. a binding contract.
   b. a counteroffer.
   c. revocation.
   d. substitution.

14. Which of the following statements most likely would not be considered a counteroffer?
   a. “I accept, but only if you also include a CD player.”
   b. “I accept, but please ship the merchandise to my home rather than my place of business.”
   c. “I accept, but only if you give me thirty days to pay.”
   d. “I accept, but only if you give me a discount.”

15. A person who makes a counteroffer becomes the
   a. acceptor.
   b. offeree.
   c. offerer.
   d. promisee.

**CASE PROBLEMS**
Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. Archer, in Chicago, wrote to Ganze in New York City offering to purchase her antique car. When she received the letter, Ganze mailed an acceptance. After she mailed the letter, Ganze changed her mind and sent a telegram rejecting the offer. The telegram and the acceptance letter reached Archer at the same time. Did a contract result?

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   ___________________________________________________________________________
2. Jordan said to Beacher, “I’ll sell you my telescope for $150.” Beacher replied, “I won’t give you $150, but I will give you $75.” Jordan said no. Beacher then changed his mind and said, “Okay, I’ll give you $150.” Jordan refused to sell the telescope to Beacher, saying it was too late and he had decided to keep it. Beacher now is claiming breach of contract. Did a contract arise between Jordan and Beacher?

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3. Wurzer subscribed to *Weight Lifters* magazine. About three months before the subscription ran out, he received a letter from the publishing company stating that his subscription would be renewed on the renewal date unless he notified the company to the contrary. Wurzer did not reply or renew his subscription. Is Wurzer bound by contract for the subscription renewal?

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4. Perez offered a $25 reward for the return of an expensive calculator watch he had lost. Jarvis saw the notice in the newspaper and returned the watch, but Perez refused to give her the reward. Does Jarvis have a legal right to the reward?

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5. Earle offered Grant $450 for her computer printer and told her that she had until noon the following day to accept. At 9:00 A.M. the next morning, Earle called Grant and withdrew his offer. Nevertheless, at 11:00 A.M. Grant called Earle back and accepted his offer, noting that Earle had given her until noon of that day to accept. Is Grant’s acceptance legally binding?

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MATCHING QUESTIONS

Use the following terms to identify the method of terminating the offer in the descriptions below. On the line next to each description, write the letter of the term that is most closely related to it.

1. _____ Benson received a letter from a college offering her the position of director of admissions. Before she could reply, she received a telegram from the college president stating that the board of trustees had decided that because of budget restrictions, a director would not be appointed now.
   a. Lapse of time
   b. Rejection
   c. Counteroffer
   d. Revocation
   e. Illegality

2. _____ Three months ago, Petrus offered to sell a friend several shares of a popular stock. The friend as yet has not accepted the offer.

3. _____ Janice offered to sell her friend two tickets to a live rock concert but was told by this friend that she did not want them.

4. _____ Hawkins offered to sell her necklace to Haines for $350. Haines replied that she would pay $300.

5. _____ Carter, a wholesaler, offered to sell Horton, the owner of a retail drugstore, several items classified as drug paraphernalia. Before Horton accepted the offer, a local law was passed banning the sale of drug paraphernalia.

SHORT-ANSWER QUESTIONS

Answer each of the following questions in the space provided.

1. Explain how under the common law, a problem could arise if the offerer asks for performance as the means of acceptance?

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2. What is a counteroffer, and how does it arise?

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ACTIVITY: CASE ANALYSIS

Read the case below and then answer the questions that follow.

Following the assassination of President Abraham Lincoln on April 14, 1865, by John Wilkes Booth and John H. Surratt, one of Booth’s suspected accomplices, the secretary of war published the following reward offer in various newspapers:

$25,000 reward to the person who apprehends John H. Surratt and a $10,000 reward for information leading to the arrest of John H. Surratt.

Sometime afterward, a notice revoking the offer was published. Shuey, unaware that the offer had been revoked, reported information on the whereabouts of Surratt to the proper government officials. The information furnished by Shuey led to Surratt’s arrest. (Based on Shuey v. United States, 92 U.S. 73, 23 L. Ed. 697, 1875)

1. Was Shuey legally entitled to the reward? Explain your answer.

2. If Shuey had provided the information on Surratt before the reward offer was revoked, would he have been entitled to $25,000? Why or why not?
CHAPTER 8
Consideration

KEY POINTS IN THE CHAPTER

• Parties to a contract, as a general rule, are not bound unless consideration is given by both of them.

• Consideration is a promise by the offeror in return for either money or property or a sacrifice by the offeree. Sacrifice (called legal detriment) consists of doing an act (or promising to do an act) or refraining (or promising to refrain) from an act.

• A promise to make a gift is unenforceable because a transfer of property is made by one party without return consideration from the other party.

• The presence of consideration in an agreement is important, not the adequacy of that consideration, unless there is evidence of fraud, duress, or undue influence, or if the contract is grossly unfair (unconscionable).

• A moral promise (e.g., based on love and affection) is no more enforceable than any other promise unsupported by consideration.

• Past consideration is no consideration. The offeror, for example, is not bound by a promise to pay money for an act performed prior to the promise.

• Performing or promising to perform an existing obligation is not consideration unless the offeree does something in addition to what is required by the existing agreement.

• If a debtor and creditor disagree over the amount of a debt, they may compromise on an amount lower than the original debt. The consideration for the creditor’s agreement to accept the compromise amount is the debtor’s surrender of the right to go to court to determine the correct amount.

• Pledges to charitable, religious, educational, or scientific organizations are usually enforceable without consideration.

MULTIPLE-CHOICE QUESTIONS
Circle the letter of the best answer.

1. An agreement is unenforceable because of lack of consideration when
   a. consideration is inadequate.
   b. consideration is not in the form of money.
   c. a person gives up his or her legal rights.
   d. no promise is given or act completed for the offeror’s promise.
2. Lee owes Chaney $450. Both Lee and Chaney agree on the amount owed. The debt will be discharged if Chaney
   a. accepts $300 and a set of books worth $125 from Lee.
   b. accepts $375 in full payment.
   c. accepts $400 in full payment.
   d. orally agrees to cancel the debt.

3. After Buckman found Conrad’s wallet, Conrad orally promised to pay Buckman $15. Conrad is not legally bound to pay because the consideration for her promise was
   a. present.
   b. past.
   c. future.
   d. illegal.

4. Altier orally promised his daughter a silver bracelet as a gift. Altier is not legally bound because
   a. a promise to make a gift is unenforceable.
   b. he never intended to give the gift.
   c. the consideration was inadequate.
   d. the gift was too expensive.

5. When a debtor and a creditor disagree on the amount owed on a debt and agree to compromise, the debt is
   a. not paid legally.
   b. not binding legally.
   c. settled legally.
   d. partially settled.

6. A police officer is not entitled to a reward offered for the arrest of a criminal because
   a. the officer has a legal duty to arrest criminals.
   b. a reward is not legal consideration.
   c. the reward is not an offer.
   d. the reward is too high.

7. Your uncle gave you a TV. He could not claim lack of consideration and demand its return because
   a. the promise of a gift is unenforceable.
   b. the TV is future consideration.
   c. consideration is unimportant once an agreement is executed.
   d. the consideration was inadequate.

8. McIntyre was struck by a car driven by Gaines, who orally promised McIntyre $1,500 if she would not bring suit for injuries. McIntyre agreed. McIntyre
   a. has made a void agreement.
   b. is entitled only to actual expenses.
   c. has no rights because she gave no consideration for Gaines’s promise.
   d. has a right to $1,500 because she refrained from doing what she had a legal right to do.

9. Chang owed Scott $800 but was unable to pay Scott on the due date. Scott agreed to let Chang pay him the following month. This agreement
   a. is not binding legally.
   b. is binding legally.
   c. is enforceable by Chang.
   d. contains adequate consideration by Scott.
10. Allen repaired Hansen’s house while Hansen was sick. When she found out about the repairs, Hansen promised to pay Allen $50. Hansen’s promise is not enforceable in a court of law because it was
a. not adequate.
b. for past consideration.
c. for future consideration.
d. too indefinite.

11. Which of the following agreements is unenforceable because of lack of valid consideration?
a. Johnson agreed to donate $1,000 to the United Hospital Building Fund. On the basis of this and similar promises, construction was started.
b. Davis promised to give his neighbor’s son $50 if the boy would refrain from trespassing on his property. Because of Davis’s promise, the boy complied.
c. Boyd agreed to sell his used motorboat to Yates for $500. Yates offered the $500.
d. Philips promised his nephew $200 if the boy would refrain from smoking until he reached age twenty-one. Because of this promise, his nephew did not smoke.

CASE PROBLEMS
Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. Adler was a medical research assistant at Mills General Hospital. Before his contract with the hospital expired, he was offered a position with another hospital at a higher salary. Mills General Hospital then offered Adler an increase in salary if he would complete his employment contract. Adler agreed to stay at Mills General Hospital. Is Adler entitled to the increase in salary offered by the hospital?

2. Gurbowski, who was heavily in debt, offered to sell her motorcycle, which was valued at $1,200, for $800. Marconi accepted the offer. After thinking it over, Gurbowski decided not to deliver the motorcycle, claiming that $800 was not enough. Is Marconi entitled to delivery of the motorcycle?

3. Visca, who was visiting a friend’s house, was injured by a ceiling tile that fell and hit her on the head. The friend gave her money for one visit to a doctor and for prescriptions ordered by the doctor. In return, Visca agreed not to sue for injuries. Later Visca complained of severe headaches and had to see a doctor several times and continue on medication. Visca then decided to sue for additional money. Can Visca collect?
4. Springer promised to give his son a car on his twentieth birthday. Is Springer legally bound by this promise?

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5. Jenkins claimed he owed LaFond only $500; LaFond insisted the debt was $600. After much discussion, they agreed to settle for $550. Later, evidence proved that LaFond was correct. He sued to recover the $50. Will he win?

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SHORT-ANSWER QUESTIONS
Answer each of the following questions in the space provided.

1. Name four circumstances that lead the courts to question whether the consideration received by each party is fair.

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2. Why is the performance of a pre-existing contractual obligation by the offeree not consideration for an offeror’s promise? Give an example.

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3. What is the basis for enforcing a contract under the doctrine of promissory estoppel?

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4. Discuss the different theories for enforcing promises to charitable organizations.

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CHAPTER 9

Competent Parties

KEY POINTS IN THE CHAPTER

- Competent parties are those persons legally and mentally capable of entering into agreements that are enforceable by law. In virtually all states a person is considered an adult at age eighteen for the purpose of making a contract.

- Minors may usually disaffirm or avoid agreements they make any time before reaching majority or for a reasonable time thereafter. Adults, however, do not have this right and are found by the agreements they make with minors.

- Minors cannot disaffirm agreements for the sale of real property to adults until they reach their majority. Statutes in many states prevent minors at varying ages from disaffirming certain agreements—as, for example, those related to life or accident insurance, a sale of stock, or an educational loan of money.

- In most states, minors who deliberately lie and claim to have reached the age of majority may still disaffirm an agreement and recover only consideration paid.

- Minors may ratify agreements they make with adults only after reaching majority. Once ratified, these agreements become legally binding, and the privilege to disaffirm terminates. However, minors cannot ratify part of an agreement and disaffirm another part. The entire agreement must be either ratified or disaffirmed.

- Agreements made by persons under the influence of drugs or alcohol are voidable. Persons may, upon becoming sober, disaffirm or ratify an agreement made while intoxicated.

- Agreements made by persons declared legally insane by a court are void. Agreements made by persons who suffer from temporary periods of insanity, but who have not legally been declared insane, are voidable.

- Temporarily insane persons may, upon reaching a period of normalcy, disaffirm or ratify an agreement made while insane. Once ratified, the agreement may no longer be disaffirmed.

- All incompetent parties are liable for the reasonable value of necessaries furnished them.

MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. Kavik has been declared legally insane by a court. Her purchase of an electric corn popper for $43.95 is
   a. voidable by Kavik.
   b. void.
   c. valid if the price of the corn popper is reasonable.
   d. valid if the store declares it valid.
2. Two months before reaching the age of majority, Marcus bought a radar detector for $129.95. She paid cash. Nine months later, she sought to avoid the agreement. Marcus’s delay in avoiding the agreement
   a. made her liable to the merchant for fraud.
   b. did not prevent her from avoiding the agreement.
   c. most likely constituted a ratification of the agreement.
   d. entitled her to only a partial refund of the purchase price.

3. A minor who disaffirms an executed agreement with an adult
   a. is bound for life.
   b. ends the agreement with no further obligation.
   c. must inform the adult orally.
   d. must return any consideration received from the adult.

4. An emancipated minor who purchases a prescription in a drugstore is required to pay
   a. any amount the druggist wants to charge.
   b. the reasonable value of the prescription.
   c. an amount decided on by the minor.
   d. the price set by the manufacturer.

5. Lewis, a minor, sold her indoor exerciser to Francis, an adult. Francis then resold the exerciser to Beacon, a good-faith purchaser. Beacon’s title is
   a. voidable.
   b. valid.
   c. void.
   d. unenforceable.

6. Agreements of people who suffer from periods of temporary insanity but who have not been declared legally insane by a court can be disaffirmed by
   a. the temporarily insane person in a period of normalcy.
   b. the temporarily insane person at any time.
   c. the other party to the agreement.
   d. either party.

7. Cigarette lighters, jewelry, and electronic games are classified legally as
   a. necessaries.
   b. luxury items.
   c. adult items.
   d. entertainment items.

8. Thompson, a minor, bought headphones for her stereo from The Stereo Store. This agreement is
   a. voidable by The Stereo Store only.
   b. voidable by either party.
   c. voidable by Thompson only.
   d. binding on both parties.

9. An emancipated minor can avoid a contract to pay for
   a. having a tooth filled by a dentist.
   b. jeans and shirts that are part of a school wardrobe.
   c. room and board at a private roominghouse near the private school he is attending.
   d. archery equipment used in sports tournaments.

10. An emancipated minor’s contracts are voidable unless they are
    a. for luxury items.
    b. for necessaries.
    c. made with other minors.
    d. made with adults.
11. A person who enters into a written contract while intoxicated and does not understand the consequences of the agreement
   a. still is bound by the written contract.
   b. may avoid the contract under certain conditions on becoming sober.
   c. can do nothing.
   d. waives all rights in that agreement.

12. The best illustration of a legally competent party is
   a. a person under the influence of alcohol.
   b. a 14-year-old.
   c. a 65-year-old.
   d. a person who is legally insane.

**CASE PROBLEMS**

Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. A month before his eighteenth birthday, Karlson purchased a VCR for $450 from Langley. He agreed in writing to pay $50 down and the balance in monthly payments of $40. After making three payments, Karlson tried to return the VCR and have his money refunded, less depreciation. Was he within his legal rights in returning the VCR and asking for a refund?

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2. Cordaro, age seventeen, who is self-supporting, injured herself while biking across the country. The injury was serious enough to require immediate medical attention. After being treated by a physician, Cordaro refused to pay the bill, claiming that her parents were still liable for her medical bills. Is Cordaro’s refusal legal?

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3. Libby, age fifteen, bought a laptop computer on a payment plan from Computers Inc. By the time she reached age seventeen she completed the payments due on the computer. When she attempted to return the computer a few weeks after making the final payment claiming that she was a minor, the owner of Computers Inc. refused to deal with her request. He claimed that making all payments amounted to ratification of the contract. Is the owner of Computers Inc. correct?

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4. Gruscho, owner of London Bridge Men’s Store, sold a tuxedo to Robbins. Robbins, who was only seventeen, claimed to be twenty. He agreed to pay the $250 purchase price in thirty days. After the thirty days passed, Robbins returned the tuxedo, which he had worn twice, and disaffirmed the purchase. Gruscho refused to accept the tuxedo. He sued Robbins, claiming that Robbins lied about his age and that a used tuxedo has no value. Can Gruscho legally refuse to take back the tuxedo and sue Robbins?
CHAPTER 10

Legal Purpose

KEY POINTS IN THE CHAPTER

• In addition to offer and acceptance, consideration, and competent parties, a legally binding contract must have a legal purpose.

• Agreements are illegal and void if they violate a state’s civil and criminal statutes, licensing statutes, gambling statutes, usury statutes, or Sunday statutes.

• Agreements are illegal and void because they are opposed to public policy if they disclaim liability for negligence, interfere with the administration of justice, interfere with the performance of a public duty, are harmful to marriage, unreasonably restrain competition and trade, create a monopoly or limit competition, or are unconscionable.

• An agreement may be partially legal and partially illegal. If it can be separated from the part that is illegal, the legal part of the agreement may be enforced.

CASE PROBLEMS

Read the following case problems. For each problem, answer yes or no, and then explain your answer in the space provided.

1. In return for his daughter’s promise never to marry, Wesson agreed to give her $25,000. Is this an enforceable agreement?

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2. Lane promised $5,000 to a state representative if he would influence the legislature to pass a certain law. Is this an enforceable agreement?

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3. Quinn agreed to pay Thorpe $500 if she would not testify against him in a court trial. Thorpe did not testify against Quinn. Is she entitled to the $500?

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4. Kulp, although not a properly licensed real estate agent, sold a house for Curtis. Can Kulp legally collect for his services?

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5. Wenly sold her retail dress shop in Boston to Ryan, agreeing not to engage in a similar business within five blocks of the present location for one year. Is Wenly bound by the agreement?

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6. Beaton, the owner of a grocery store, promised to supply Marven, the mayor, with free food for the next year if an ordinance favorable to Beaton was passed by the city council. Is this agreement binding on Beaton?

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7. Rissone received a letter from a magazine publisher inviting her to enter the company’s $6,000,000 sweepstakes promotion by simply returning a book of certificates with her name already typed on them. In the same envelope was an invitation to buy one of the company’s new books, *Eat Better, Live Better*, at a reduced price. She did not have to buy the book in order to enter the sweepstakes, however. Rissone returned the certificates, but she did not win anything. She was so irritated that she called the company and told them that they were carrying on an illegal operation. Is Rissone correct?

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MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. Usury laws provide protection in a contract that is
   a. for the loan of money.
   b. for the sale of merchandise on credit.
   c. to be performed on a Sunday.
   d. for the restraint of trade.

2. A statute that requires a person to obtain a license to practice a certain trade or profession without having to show competence in that trade or profession is a
   a. criminal statute.
   b. usury statute.
   c. prohibiting statute.
   d. revenue-raising statute.
3. An example of a licensing statute is one that
   a. requires an attorney to have a permit to practice law.
   b. prevents usury.
   c. restricts business activity on Sundays.
   d. reasonably restricts trade.

4. Aaron bet Davis that a certain candidate would win the presidential election. Aaron’s candidate
won the election, but Davis refused to pay the bet. In most states, Aaron could not enforce the
agreement legally because
   a. a gambling agreement is illegal and void.
   b. the agreement involves usury.
   c. the bet was not in writing.
   d. Aaron and Davis are both professional gamblers.

5. If an agreement is partially legal and partially illegal, the
   a. entire agreement is void in all cases.
   b. legal part of the agreement may be enforced if it can be separated from the illegal part.
   c. legal part of the agreement is never enforceable.
   d. parties to the agreement may choose to enforce the part of the agreement that is beneficial to
both of them.

6. If both parties know that an agreement is illegal, a court probably will
   a. enforce the agreement.
   b. refuse to hear the case.
   c. allow the agreement to be ratified.
   d. permit each party to recover any consideration given.

7. Charging interest in excess of the legal rate is considered
   a. a restraint of trade.
   b. enforceable.
   c. usury.
   d. *stare decisis*.

8. An example of an agreement that ordinarily would be classified as illegal is one that
   a. is entered into on a weekday after regular business hours.
   b. is in reasonable restraint of trade.
   c. involves usury.
   d. is between an adult and a minor.

9. A person whose main livelihood is gambling (gaming) is classified as a
   a. professional gambler.
   b. semiprofessional gambler.
   c. casual gambler.
   d. public gambler.

10. An agreement that is in unreasonable restraint of trade is
    a. enforceable.
    b. void.
    c. voidable.
    d. valid.
11. Billings and Durrick, competing distributors, made an agreement whereby Billings promised not
to sell his goods in a specified area and Durrick promised not to sell his goods in another specified
area. They made this agreement to keep prices high by eliminating competition. This arrangement
is
a. legal because it reasonably restrains trade in order to control prices.
b. legal because a binding contract was made willingly by both parties.
c. illegal because it unreasonably restrains trade by controlling prices and territories.
d. illegal because agreements that allow manufacturers to set prices are void under the UCC.

12. Maile agrees to sell his retail men’s shop in Cleveland to Lunger. Lunger wants a clause
restricting competition by Maile included in the contract. Which of the following restrictive
clauses would be enforceable?

a. never to engage in a similar business in Cleveland
b. not to engage in a similar business in Ohio for the next two years
c. not to engage in any type of business anywhere in Cleveland for the next year
d. not to engage in a men’s shop business within a radius of one mile for the next year

13. Which of the following actions is opposed to public policy?

a. an offer to pay money to a witness to testify falsely in court
b. an offer to pay a contractor extra money to speed up a job he already is legally bound to do
c. an offer to pay money to neighbors to attend your birthday party
d. an offer to pay a lawyer to represent your civic group at a legislative session on a bill
seeking tax reduction

14. Slater, believing that his daughter was about to marry and leave him, offered to pay her $10,000 if
she would promise never to marry. The daughter promised and accepted the $10,000. One year
later, she married. Slater sued for breach of contract. A court probably would rule that Slater is
entitled to

a. recover nothing.
b. recover the $10,000.
c. recover the $10,000 plus interest.
d. annul the marriage on the basis of fraud.

15. Which of the following agreements ordinarily would be considered illegal?

a. an agreement between two people that one would pay the other $20 depending on the
outcome of a football game
b. a contract made by a married woman who is a minor
c. a lobbying agreement
d. none of these

16. An agreement to rob a bank is an example of a

a. quasi contract.
b. voidable contract.
c. void contract.
d. contract implied in law.

17. Exculpatory clauses are

a. quasi in nature.
b. generally considered to be contrary to public policy.
c. valid in all cases.
d. legal when they involve the lending of money.
18. When a clause in a non-compete contract is too restrictive, most courts generally
   a. enforce it as it is written.
   b. enforce it as it is written but agree to evaluate the clause over a period of three years.
   c. enforce it as it is written but agree to evaluate the clause over a period of twenty years.
   d. throw it out but enforce the remainder of the agreement.

19. An agreement that is grossly unfair or harsh may be declared void by a court as being
   a. impossible.
   b. unconscionable.
   c. in violation of a state statute.
   d. in violation of the blue laws.

20. Which of the following businesses would not be able to enforce an exculpatory clause under most circumstances?
   a. hospitals.
   b. common carriers.
   c. public utilities.
   d. all of these.

SHORT-ANSWER QUESTIONS
Answer each of the following questions in the space provided.

1. Describe three exceptions to the general rule that an illegal bargain is void.

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2. What is a usurious contract? Name some of the exceptions to the usury laws.

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3. What are covenants not to compete? How do courts decide on the legality of these covenants?

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4. Can a court declare a contract to be illegal although no statute is violated?

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CHAPTER 11

Contracts That Must Be in Writing or E-Signatures

KEY POINTS IN THE CHAPTER

- Most contracts are made orally and are just as legal as written contracts if they can be proven.
- Every state has a statute of frauds requiring certain contracts to be in writing. The most common are (1) a contract to pay a debt of another person, (2) a contract to pay the debt of a deceased person out of personal funds, (3) a contract for the sale of real property, or an interest in real property (4) a contract in consideration of marriage, (5) a contract that cannot be performed within one year of the date of the agreement, and (6) a contract for the sale of goods or merchandise worth $500 or more.
- The written evidence required by the statute is an informal memorandum that contains the essential terms of the agreement: names of the parties, subject matter of the agreement, consideration, and important terms. It need be signed only by the party who will be held responsible.
- Oral evidence is not admissible in court to alter, add to, or vary the terms of a contract that represents the parties’ final and complete statement of their agreement.
- Oral evidence is admissible in court to explain vague or confusing terms in a written contract; to show that agreed-upon terms were accidentally omitted or are incorrect; or to prove illegality, fraud, or mental incompetence.
- Oral changes to a written agreement made subsequent to the writing are allowable. Oral changes are not allowable, however, if the written agreement was required by the statute of frauds to be in writing.
- Electronic signatures (e-signatures) are now just as legal and enforceable as printed and typed signatures according to the E-Sign Act.

TRUE- FALSE

Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T F In a contract of guaranty, the guarantor’s promise to pay is secondary to the debtor’s promise.
2. T F Except as provided by statute, oral contracts are just as enforceable as written contracts.
3. T F The statute of frauds applies only to executory contracts.
4. T F One advantage of a written contract over an oral contract is that a written contract needs no witnesses to establish its existence and terms.
5. T F An oral promise to pay your own debt is not enforceable.
6. T F The parties to a written contract usually are bound by the terms of the agreement.
7. T  F  The courts usually allow oral evidence to change the terms of a written agreement.
8. T  F  Martin agreed to work for Simmons for thirteen months. This agreement would be enforceable if made over the phone.
9. T  F  Parol evidence can be admitted in court to explain vague terms in a written contract.
10. T  F  A written contract can be changed by a subsequent oral agreement if the written contract was not required by the statute of frauds to be in writing.

CASE PROBLEMS
Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. Marks tried to purchase some goods on credit from Bellows. Bellows refused to sell him the goods because he did not believe Marks would be able to pay. Minks orally promised Bellows that he would pay for the goods if Marks failed to do so. If Bellows sells the goods to Marks, is Minks legally bound by his promise?

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2. DeRoller was the executor of his mother’s estate. Because there were insufficient funds in the estate to pay all its debts, DeRoller orally promised several creditors that he would pay the balance out of his own funds. Can DeRoller be held legally responsible for his promise?

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3. Bain orally agreed to sell some land to Carroll for $10,000 and accepted a deposit of $1,000 to bind the agreement. Later, on learning that another buyer would pay a higher price, Bain refused to honor the contract with Carroll. Carroll sued to enforce the contract. Did Carroll succeed in this suit?

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4. On July 15, 1992, Martin orally agreed to work for Stein until June 1, 1993. Was this contract enforceable?

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5. Moralle orally promised Hanson that if she agreed to marry him, he would give her a large monthly expense account, a new car every two years, and a vacation trip each year to a destination of her choice. Hanson accepted, and they were married. Moralle, however, did not keep his promises. Hanson sued for damages. Will she succeed in this suit?

MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. Solomon phoned the Ace Pet Store and told the owner to deliver to his fiancée the French poodle he had looked at the day before. Solomon asked that the cost of the dog be charged to his account. The pet was delivered. This agreement was
   a. binding on Solomon because it is an oral promise to pay another’s debt.
   b. binding on Solomon because it is an oral promise to pay his own debt.
   c. not binding on Solomon because an oral promise to pay another’s debt is not binding.
   d. not binding on Solomon because there was no consideration for the oral promise.

2. Abbot accepted Milligan’s oral offer to sell a small parcel of real property. This agreement is
   a. illegal because it should have been in writing.
   b. illegal because the sale was not arranged by a licensed real estate salesperson.
   c. legal but unenforceable by either party.
   d. legal but enforceable only by the offerer.

3. Yockel agreed to work for Schnabel for eighteen months. This agreement would be enforceable if made
   a. in a face-to-face conversation.
   b. over the telephone.
   c. through an exchange of telegrams.
   d. orally through a friend.

4. Parol evidence is admissible to show that
   a. terms were added to the original contract.
   b. the original contract had been changed.
   c. one party was persuaded to make the contract by fraud on the part of the other party.
   d. the contract does not show the real intentions of the parties.

5. The type of contract that arises when one person promises to pay another’s debt if that person does not pay is a contract
   a. of suretyship.
   b. of guaranty.
   c. for services.
   d. under seal.

6. Long offered to sell Vickers, a neighbor, a 25-foot-wide strip of land between their two lots so that Vickers would have room to build a garage. Vickers accepted the offer. This agreement would be binding on Long if
   a. Vickers paid $100 for an option to buy.
   b. it was made in the presence of at least two witnesses.
   c. it was made in writing.
   d. Long promised orally that he would sell.
Chapter 11: Contracts That Must Be in Writing or E-Signatures

7. An example of an agreement that is binding even if it is not in writing is a contract
   a. to borrow an automobile.
   b. to sell real property.
   c. with marriage as a consideration.
   d. to pay the debts of another person.

8. In most states, the written evidence of an agreement required by the statute of frauds is
   a. parol evidence.
   b. a guaranty.
   c. an executor.
   d. an informal memorandum.

9. If two parties fully perform an oral contract that should have been in writing,
   a. either party can have the contract set aside because it was not in writing.
   b. the statute of frauds no longer applies.
   c. the contract is illegal.
   d. the parties are guilty of fraud.

10. If a contract is required to be in writing under the statute of frauds, modifications to that contract
    a. are not binding.
    b. can be made orally.
    c. must be in writing.
    d. require additional consideration.

SHORT-ANSWER QUESTIONS
Answer each of the following questions in the space provided.

1. What are two advantages of written contracts over oral contracts?

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2. What information must be included in a memorandum in order to satisfy the minimum requirements of a writing under the Statute of Frauds?

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3. Under what circumstances will the courts not allow parol evidence to be introduced in a lawsuit relating to the terms of a written contract?

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4. What is an electronic signature? Is an electronic signature legally binding as a substitute for a manual signature?

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5. When do contracts come under the statute of frauds one-year rule?

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6. Under what circumstances would a court of law not permit a seller of real property to cancel an oral contract for the sale of the property?

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7. Does putting a contract in writing guarantee that its terms will not be questioned by the parties at the time of performance?

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CHAPTER 12

Transfer of Contract Rights and Obligations

KEY POINTS IN THE CHAPTER

• Rights and obligations under a contract are transferred to others by means of an assignment or delegation, respectively.

• The assignee (party to whom rights are transferred) under the terms of an assignment receives the same rights that the assignor (party transferring the rights) had.

• Rights for personal services (those involving a special skill, knowledge, or talent) must have the consent of all parties before they can be transferred (assigned); however, nonpersonal rights may be transferred without consent.

• In a delegation, only the performance of an obligation is transferred to another (delegatee); the delegating party (delegator) remains responsible for its proper performance. Obligations that require a special skill, knowledge, or talent may not be transferred without consent.

• An assignment may be oral or written unless a written assignment is required by the terms of the contract or by a state statute.

• When a contract is transferred to a third party but contains only language of assignment, the wording creates both an assignment of rights and a delegation of duties.

MINI-CASE

Read the following notification of assignment. Then, circle the letter of the best answer.

DATE: September 25, 20—

TO: Jane Lu, 189 Factor Road, Cleveland, OH 44112

FROM: Brendon Associates, 1334 Duncan Avenue, Cleveland, OH 44112

We have purchased from Hyland Fence Company of Cleveland, Ohio, its entire interest in the account it has against you in the amount of one thousand five hundred fifty dollars ($1,550). Any payments or communications in regard to this account should be made to us.

1. According to this notification of assignment, what right is being assigned?
   a. the right to receive payment of money
   b. the right to the delivery of goods
   c. the right to personal services
   d. the right to a personal skill

2. Brendon Associates legally is known as the
   a. offerer.
   b. assignor.
   c. assignee.
   d. promisee.
3. The Hyland Fence Company is known as the
   a. assignee.
   b. offerer.
   c. promisee.
   d. assignor.

4. Lu is the
   a. obligor.
   b. obligee.
   c. assignor.
   d. creditor.

5. Before receiving the notification, Lu informed the Hyland Fence Company that fencing worth $500 was damaged and was being returned. If Lu returns the merchandise, she will be liable to Brendon Associates for payment of
   a. $1,550.
   b. $1,050.
   c. $1,000.
   d. nothing.

TRUE-FALSE QUESTIONS

Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T F An obligor is a party to a contract who transfers rights and obligations to other people through assignment.

2. T F Contract obligations that require a special skill or knowledge cannot be transferred without permission.

3. T F There is no time limit on notifying an obligor of an assignment.

4. T F A notice of assignment always must be in writing.

5. T F Personal services contracts cannot be assigned without the permission of the person providing the service.

6. T F State statutes sometimes place restrictions on the assignment of rights.

7. T F Past performance of a contract before receiving notice of an assignment does not reduce the obligor’s responsibility to the assignee.

8. T F Contract rights legally can be transferred by an assignment.

9. T F Two rights that can be assigned without permission are the payment of money and the delivery of goods.

10. T F Assigning rights under a contract does not entitle the assignee to the same rights that the assignor had before the assignment.
MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. Reynolds owed Currie $550. Currie transferred the contract to Butts. What step should Butts take in order to make sure Reynolds pays her instead of Currie?
   a. notify Reynolds of the transfer
   b. file the contract in the county clerk’s office
   c. have the transfer drawn up by an attorney
   d. have Reynolds’s signature witnessed by a notary public

2. When rights under a contract are assigned, the assignee receives the same rights as the
   a. obligor.
   b. debtor.
   c. assignor.
   d. executor.

3. Renault entered into a contract with Craft to have some plumbing work done. Craft later delegated the work to Marsden, another licensed plumber. Which of the following statements is true?
   a. Craft cannot legally delegate her contract obligations.
   b. Craft is still responsible for making sure the obligation is carried out.
   c. Craft can no longer be held liable if the contract is breached.
   d. The contract automatically is terminated.

4. Which of the following statements about the assignment of contracts is false?
   a. Rights to the payment of money and to the delivery of goods can be assigned without consent.
   b. Some rights are assigned automatically by law.
   c. Responsibilities to perform skilled work can be assigned without the approval of all parties.
   d. The party that delegates a responsibility remains liable for proper performance.

5. Dr. Senour, a successful ophthalmologist, notified her patients that she had sold her practice to Dr. Horner, an equally competent ophthalmologist, and that Horner would now be responsible for their treatment. Which of the following statements best describes this transaction’s legal effect on the patients?
   a. They legally can refuse to accept Horner’s services.
   b. They are legally bound to accept Horner’s services.
   c. They legally can accept the services of another ophthalmologist but only with Senour’s consent.
   d. They can sue Senour for malpractice.
CASE PROBLEMS

Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. On May 2, Blacke’s Hardware paid $200 of the $1,000 owed to Greene’s Wholesalers for a previous purchase of lawn mowers. On May 15, Greene’s transferred all customer accounts to the We Get Results Finance Company. Two weeks later, Blacke’s Hardware paid Greene’s an additional $200. Blacke’s did not receive notice of the assignment until June 9. After receiving this notice, is Blacke’s Hardware obligated to pay the We Get Results Finance Company anything more?

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2. Corey was hired as a pharmacist by the Daw Drug Company under a one-year contract. After six months, Daw sold out to the Freese Drug Company and assigned Corey’s contract to Freese. Is Corey obligated to work for Freese for the remainder of the contract period?

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3. Dr. Christen, a well-known physician and cancer expert, was under contract to deliver a major address to a physicians’ group in Washington, D.C. A month before the scheduled address, Christen had a heart attack and had to cancel his engagements for at least six months. He notified the physicians’ group that he was sending his assistant, also a doctor, who had been working with him. Does the group have to accept the substitute?

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4. Cooke sold all the assets of her business, including the accounts receivable, to Nugent. Did Cooke have the right to assign her accounts receivable to Nugent?

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5. Victor hired Carbone, a mason, to build a patio in his backyard. Because Carbone took on too many other jobs, he engaged another mason to build the patio for Victor. Can Carbone legally delegate his duty under an existing contract?

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6. You arranged to take guitar lessons from a prominent local guitarist. You chose this guitar teacher because you wanted to study his unique playing style. When you arrived for your first lesson, you found that the guitarist’s brother would be giving you lessons instead. Can you refuse to accept this arrangement?

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7. Your landlord assigned to a third party his rent claim from you of $300. Because you were not notified of the assignment, you paid the landlord the $300. Your landlord then left town. Can the third party demand payment of the $300 from you?

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8. On June 10, The First Bank of Georgia lent RYCOM Construction Company $50,000. RYCOM assigned its right to receive $30,000 due for work performed for Marlan, a contractor. It also assigned its right to receive $20,000 from Pool, another contractor, who was thinking of hiring RYCOM in the near future to complete a $20,000 project. The First Bank of Georgia notified both Marlan and Pool on June 15. What are the rights of The First Bank of Georgia in each of the following cases?
   a. Marlan pays $30,000 directly to RYCOM Construction on July 15.

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   _______________________________________________________________________
   _______________________________________________________________________

   b. Pool fails to respond to the notice sent by the First Bank of Georgia.

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SHORT-ANSWER QUESTIONS

Answer each of the following questions in the space provided.

1. What do we mean when we say that the assignee “steps into the shoes of the assignor”?

   _______________________________________________________________________
   _______________________________________________________________________
   _______________________________________________________________________

2. Is it possible for a contract to prohibit an assignment of contract rights? Explain your answer.

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   _______________________________________________________________________
   _______________________________________________________________________
3. Why is it important for the assignee to notify the obligor about the assignment as soon as possible after the assignment is made?

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4. What formalities, if any, are required for an assignment to be valid?

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5. Why do you think that a person who transferred his or her obligation under a contract to a third party continues to have the responsibility for making sure that the obligation is carried out?

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6. How do assignments and delegations differ?

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CHAPTER 13

The Termination of Contracts: Discharge

KEY POINTS IN THE CHAPTER

- Most contracts are discharged by full performance. Contracts may also be discharged by (1) agreement, (2) impossibility or impracticality, (3) alteration of a written contract, and (4) breach of contract.

- When the contract is essentially complete, the courts may permit the party who performed to recover on the basis of substantial performance.

- A discharge by agreement involves (1) mutual agreement, (2) rescission, (3) novation, or (4) accord and satisfaction.

- For the following reasons, contracts may legally be discharged under the doctrine of impossibility: (1) destruction of the subject matter, (2) death or serious illness in a personal services contract, or (3) change in the law. Under the common law, if performance simply becomes more difficult to perform (but performance is still possible), no relief is automatically granted. Under modern law, however, the doctrine of commercial impracticability becomes the basis for justifiable nonperformance in selective cases.

- If one party to a contract deliberately makes a material change in its terms without the permission of the other party, the contract is discharged.

MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. Objective impossibility includes
   a. strikes.
   b. riots.
   c. a change in the law.
   d. all of these.

2. When Johnson finished painting Bristol’s house as agreed, Bristol paid him in full. Their contract was discharged by
   a. accord and satisfaction.
   b. legal tender.
   c. full performance.
   d. operation of law.

3. Kemp agreed to build a storage shed at the back of Martin’s property. Before work began, the city passed an ordinance forbidding the construction of this kind of building in the neighborhood. As a result of this ordinance,
   a. the contract was discharged.
   b. Kemp was liable to Martin for breach of contract.
   c. the city was liable to Martin for damages.
   d. the existing contract was not affected.
4. An offer to fulfill the terms of a contract by completing an act required by the contract or by paying money is known as
   a. novation.
   b. ratification.
   c. mutual agreement.
   d. tender of performance.

5. Vinton was under a written contract to work for Rossi. Vinton had to move to another state and received from Rossi a written release from the agreement. This contract was discharged by
   a. performance.
   b. mutual agreement.
   c. breach.
   d. subsequent impossibility.

6. Nash, a rock celebrity, is under contract to give a concert in the Warner Theater. Suppose serious illness prevents her from giving the concert on the agreed date. In this situation,
   a. Nash would be released from the contract and would not be liable for any damages or losses incurred by the theater.
   b. Nash would be released from the contract but would be liable for damages or losses incurred by the theater.
   c. Nash would have the right to give the concert when she recovers.
   d. the theater would be obligated to accept performance by another celebrity whom Nash sends as a substitute.

7. Gibbons entered into a written agreement with Bensinger to purchase a painting. In the meantime, without the knowledge of either party, the painting was destroyed in a fire. This contract was discharged by
   a. performance.
   b. breach.
   c. mutual agreement.
   d. impossibility.

8. The refusal of a tender of payment
   a. forces a settlement by arbitration.
   b. forces payment with legal tender.
   c. does not excuse the debtor from paying interest charges.
   d. does not discharge the obligation.

9. The usual manner of discharging a contract is by
   a. subsequent impossibility.
   b. the death of one of the parties.
   c. assignment.
   d. full performance.

10. When Rosco was unable to pay the $1,000 he owed Lyden, Lyden agreed to let Rosco paint Lyden’s house in payment. When Rosco finished painting the house, his original obligation was discharged by
    a. breach.
    b. impossibility of performance.
    c. accord and satisfaction.
    d. disability.
11. A change made in the terms of an executory contract by one party without the knowledge and consent of the other party is called a(n)
   a. novation.
   b. substitution.
   c. accord.
   d. alteration.

12. Vasquez contracted to install vinyl siding on O’Grady’s house during the first two weeks of August. When Vasquez arrived on August 1 to begin the work, O’Grady told him that the job would have to be postponed for two months. Vasquez’s obligation to perform the contract was discharged by
   a. tender of performance.
   b. operation of law.
   c. agreement.
   d. delegation of duty.

**TRUE- FALSE QUESTIONS**

Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T  F If one party to a contract makes a material change in its terms without the other party’s permission, the contract is discharged by novation.

2. T  F A contract is discharged by full performance when a person in good faith fulfills all the major requirements, leaving only minor details incomplete.

3. T  F Full performance is the most common method by which contracts are discharged.

4. T  F The offer to perform the terms of a contract or to pay money is called substantial performance.

5. T  F If the subject matter that is essential to the performance of the contract is destroyed through no fault of either party, the contract is considered discharged.

6. T  F A waiver is a mutual agreement to cancel a contract even after one or both parties have performed completely.

7. T  F If a new agreement is made before the original contract is breached, this new agreement is called a substitute contract.

8. T  F When West finished repairing Thomas’s car as agreed, Thomas paid West in full. The contract was discharged by operation of law.

9. T  F Lund and Mann entered into a contract. Two months later, they agreed to let Wells perform Mann’s obligations with Lund releasing Mann from her agreement. In this case, Mann’s obligations are discharged by accord and satisfaction.

10. T  F The form of money accepted as lawful payment of debts in the United States is called legal tender.
SHORT-ANSWER QUESTIONS
Answer each of the following questions in the space provided.

1. What does the term **rescission** mean as it is related to a contract?

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______________________________________________________________________________
______________________________________________________________________________

2. Define impossibility of performance. Discuss the importance of identifying whether a contract is **Objectively** or **Subjectively** impossible to perform.

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CASE PROBLEMS
Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. Shaw, a TV news commentator, died before completing his two-year written contract to broadcast news for Station WKLB. Was Shaw’s estate liable for damages to Station WKLB for her failure to complete the contract?

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2. Santos entered into a written contract to sell her delicatessen to Gluck for $75,000. Later, both parties changed their minds and mutually agreed to cancel the contract. Is the contract discharged?

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3. Tyler owed Franks $1,500. When the debt came due, Tyler offered payment by check. Franks refused to accept it. Two months later, Franks asked Tyler for payment. Tyler refused, claiming that because Franks did not accept payment when the check was presented on the due date, the debt had been discharged. Was Tyler right?

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4. Hardies agreed to deliver to Davidson 25,000 standard three-ring student notebooks by September 1. On August 1, Hardies’ warehouse and its contents were destroyed by fire through no fault of Hardies. Was Hardies liable on the contract? 

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5. Peters contracted to paint the exterior of Bottom’s frame house for $1,000. Before Peters began work, the house burned to the ground. Was the contract terminated?

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CHAPTER 14

The Termination of Contracts: Breach of Contract

KEY POINTS IN THE CHAPTER

- Contracts are usually breached after the performance date. To breach a contract means that one party without excuse fails to perform his or her obligations under the terms of the contract. This type of breach would be labeled as an actual breach. Sometimes a contract is breached before the performing date. This type of breach is called an anticipatory breach. The party obligated to perform simply says: “I am not going to perform for whatever reason.”

- Money damages, the most frequently granted remedy for breach of contract in a court of law, may be (1) compensatory, (2) liquidated, (3) nominal, or (4) punitive. However when money alone does not provide satisfaction to the injured party, courts provide equitable remedies called rescission, specific performance, and injunction.

- Breaches are of two types: material (failure to perform substantially the obligations required by a contract), and minor (less significant than a material breach). When a minor breach occurs both parties must still perform but with the injured party legally free to seek damages. A material breach allows the injured party to end the contract. He or she is excused from further performance and may pursue money damages.

- As soon as a breach occurs, the injured party has a duty to mitigate (minimize) the damages.

- The defendant in a breach-of-contract suit may claim such defenses as fraud, duress, undue influence, and mutual mistake. These four acts also make a contract void or voidable by the victim.

- Other defenses for a breach of contract suit include bankruptcy and the statute of limitations.

MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. In seeking damages, the victim of a breach of contract has a duty to
   a. increase the amount of the damages.
   b. mitigate the damages.
   c. liquidate the damages.
   d. rescind the contract.

2. Aman had a written employment contract with Bagden for one year at a $48,000 salary, payable at the rate of $4,000 a month. Aman worked for five months, collected $20,000, and then was discharged without cause. Within a few days, he found another job at a lower salary and sued Bagden for breach of contract. The greatest amount that Aman can recover legally is
   a. $48,000.
   b. $28,000.
   c. $28,000 minus his earnings on the new job.
   d. $20,000 minus his earnings on the new job.
3. Marriott agreed to do some electrical work for Bastiuk for $500. The terms of the contract called for one-half of the contract price to be paid once the work began. When Marriott began work and requested $250, Bastiuk offered only $175. Bastiuk’s action would be considered

   a. substantial performance.
   b. an alteration.
   c. a breach of contract.
   d. a rescission.

4. Manix sued Cartright for breach of contract. The court awarded Manix damages of $1. This award is known as

   a. liquidated damages.
   b. nominal damages.
   c. premeditated damages.
   d. mitigated damages.

5. Falvo entered into a contract with Mathis to build an addition to Mathis’s house. The price agreed on was $25,000. Falvo failed to do the work, so Mathis contracted with Baily to do the work for $24,000. Mathis then sued Falvo for breach of contract and sought $1,000 in damages. The court probably will rule in

   a. Mathis’s favor for $1,000 because Falvo breached the contract.
   b. Mathis’s favor but only for nominal damages.
   c. Falvo’s favor because Mathis did not suffer a loss.
   d. Falvo’s favor because Mathis saved money as a result of the breach.

6. The statute of limitations

   a. specifies the time within which a lawsuit can be filed.
   b. requires that certain contracts be in writing.
   c. requires the use of written evidence of an action at a trial.
   d. contains the same provisions in all of the United States.

7. Feingold contracted to sell Betz an original letter written by George Washington, for $25,000. Both thought the letter was authentic, but it turned out to be a reproduction. Betz now wants to avoid the contract. The most appropriate remedy is

   a. punitive damages.
   b. compensatory damages.
   c. specific performance.
   d. rescission of the contract.

8. The basis of fraud is

   a. a misrepresentation of opinion.
   b. an act of violence.
   c. a threat of force.
   d. concealment or misrepresentation of a material fact.

9. Perry sold an old ring to Weeks for $10. Later Perry learned that the ring was worth $500. If Perry sues, she legally is entitled to recover

   a. $500.
   b. the ring.
   c. $490.
   d. nothing.

10. All of the following are legal reasons for exercising the right to rescind a contract except

    a. duress.
    b. minority.
    c. unilateral mistake.
    d. fraud.
TRUE- FALSE QUESTIONS
Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T F One of the elements necessary to establish fraud is a false statement or concealment of a material fact.

2. T F Money damages awarded to an injured party by law should place the person in the same position he or she would have been in if the contract had been carried out.

3. T F Undue influence renders a contract voidable by either party.

4. T F A mutual mistake about the identity of the subject matter does not affect the validity of the contract.

5. T F Gugel, a used-car dealer, told Billings, a prospective customer, “This is the best used-car value in town.” Relying on this statement, Billings bought the car but soon discovered that it had been substantially overpriced. Billings can avoid the contract on the basis of fraud.

6. T F When money damages do not adequately and fairly compensate for a loss, the injured party can sue for specific performance or request a court to issue an injunction.

7. T F Neilson requested a catalog from Noom Brothers. She used an order form to order some jewelry but entered an incorrect catalog number. As a result, she received jewelry she did not want. Neilson has a legal right to return the jewelry because her mistake voided the contract.

8. T F Specific performance generally is granted in contracts for the sale of real property.

9. T F A person who conceals a material fact is guilty of fraud if the concealment prevents the victim from discovering the truth.

10. T F A court will not enforce a liquidated damages clause if the stated amount appears to be a penalty.

SHORT-ANSWER QUESTIONS
Answer each of the following questions in the space provided.

1. Describe the two major types of remedies allowed by the courts to the victims of a breach of contract.

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2. If a breach is material, what rights does the injured party have?

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______________________________________________________________________________
______________________________________________________________________________
3. Explain the meaning of the following: “As soon as a breach occurs, the injured party has a duty to *mitigate the damages.*”

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4. The injured party can waive his or her rights when the other party to the contract breaches the contract. What is the legal effect of this waiver?

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5. Under what conditions can an injured party demand specific performance when a contract has been breached?

______________________________________________________________________________

______________________________________________________________________________
TRUE- FALSE QUESTIONS
Indicate whether each statement below is true or false by circling T or F in the column on the right.

1.  T  F  In a contract, the value of the consideration given need not be equal to the value of the consideration received.

2.  T  F  One who has a right to receive money from another may transfer this right to a third person through the process of delegation.

3.  T  F  According to the statute of limitations, certain debts are outlawed and the right to legal action is lost if a claim is not filed within a specific period of time.

4.  T  F  A contract to answer for the obligations of others must be in writing.

5.  T  F  If a debtor makes a voluntary partial payment after the due date, the time limit under the statute of limitations starts over from the date of payment.

6.  T  F  Cilino said to Regal, “I’ll sell you my video game system for $175 in cash today.” Regal replied, “I’ll take it by paying you $100 today and the other $75 in thirty days.” Regal’s reply resulted in an accord and satisfaction.

7.  T  F  Nonpersonal rights cannot be transferred without the other party’s permission.

8.  T  F  When money damages do not compensate adequately for a loss, one remedy is for the injured party to sue for specific performance.

9.  T  F  Not all contracts must be in writing to be valid.

10. T  F  A minor’s obligation to pay for necessaries is an express contract.

MULTIPLE-CHOICE QUESTIONS
On the line next to each statement, write the letter of the best answer.

1. A contract that is completely enforceable against all parties unless and until a party legally entitled to avoid the contract does so is
   a. valid.
   b. void.
   c. voidable.
   d. performed.

2. On July 8, Varden wrote to Montague offering to sell Montague her used car for $525. The letter stated: “The offer is subject to the actual receipt of your acceptance no later than July 23.” Monty mailed a letter of acceptance on July 21, which reached Varden on July 24. A valid contract
   a. was made July 21.
   b. was made July 23.
   c. was made July 24.
   d. was never made.
3. White purchased a used car from Drover on the basis of Drover’s statement that the car was “a real bargain and a tremendous buy.” Shortly afterward, White found that the car did not give the performance that she had expected. Can White legally return the car on the grounds of Drover’s statement?
   a. Yes; when one person takes unfair advantage of another through the use of undue influence, the agreement is voidable.
   b. Yes; when a seller deliberately makes false statements in such a way as to mislead the buyer, fraud exists and the contract is voidable.
   c. No; regardless of any statement made by the seller, the rule of caveat emptor applies whenever the buyer inspects the article.
   d. No; when the seller makes statements of opinion concerning the article for sale, the validity of the contract is not affected.

4. Carter offered to sell Milford a used power lawn mower. Milford accepted the offer. This offer and acceptance are called
   a. mutual assent.
   b. compromise.
   c. ratification.
   d. payment of an option.

5. Paulson borrowed $100 from Best and promised in writing to pay the debt on March 1. On the due date, Paulson could not pay the full amount but offered Best $50 in cash and a watch worth $25. Best accepted. Was the debt discharged?
   a. Yes. When a claim is disputed, a compromise figure is binding.
   b. Yes. A debt is canceled if the creditor accepts as full payment a part payment in money plus additional property.
   c. No. The consideration was inadequate.
   d. No. The additional consideration was illegal.

6. A contract must be in writing to be enforceable if it involves
   a. payment of an excessive interest rate.
   b. the sale of goods worth more than $350.
   c. the sale of real property.
   d. restraint of marriage.

7. Contracts involving personal services can be assigned or delegated
   a. under any conditions.
   b. with the consent of all the parties involved.
   c. under no circumstances.
   d. with the consent of only one of the parties.

8. If a party proves that a contract has been breached but shows damages of only a few dollars, the injured party may be awarded
   a. liquidated damages.
   b. remote damages.
   c. nominal damages.
   d. punitive damages.

9. In a personal services contract, if the person to perform the services dies, the contract is
   a. terminated.
   b. assigned to a relative.
   c. considered breached.
   d. ratified.
10. Agreements in unreasonable restraint of trade are
   a. voidable.
   b. quasi contracts.
   c. illegal.
   d. valid.

11. An agreement in which the offeree gives something of value to the offeror to keep an offer open is called a(n)
   a. tender of performance.
   b. compromise agreement.
   c. option contract.
   d. promise.

12. A minor can disaffirm a contract for the purchase of a stereo
   a. during minority or within a reasonable time after reaching majority.
   b. only during minority.
   c. within one year of the date of the agreement.
   d. only after reaching majority.

13. An agreement that would be illegal and therefore void is a contract
   a. in reasonable restraint of trade.
   b. to pay a usurious rate of interest.
   c. to extend the time of payment of a debt.
   d. to hold an offer open for a certain time.

14. The purpose of awarding an injured party money damages for breach of contract is to
   a. permit the injured party to avoid the contract.
   b. punish the party that breached the contract.
   c. compensate the injured party for the loss suffered.
   d. permit the injured party to make a profit.

15. Carlson had a written contract with Sanchez to purchase some cattle. Unknown to either party, the cattle had died. The contract was discharged by
   a. breach.
   b. full performance.
   c. impossibility.
   d. mutual agreement.

16. The statute of frauds applies only to
   a. executed contracts.
   b. executory contracts.
   c. quasi contracts.
   d. illegal contracts.

17. Which of the following, at common law, generally constitutes impossibility?
   a. fire caused by lightning.
   b. strikes.
   c. shortage of supplies.
   d. none of these.
**ACTIVITY**

Use the following scenario to answer questions one through five on the information below.

Wentwell did some repair work for Burt. Burt agreed to pay him $250 for his services. Since Wentwell owed Carson $450, he notified Burt to pay Carson the $250.

1. In this relationship, Burt would be legally known as
   a. a debtor.
   b. a creditor.
   c. an assignor.
   d. an assigned.

2. Wentwell’s transferal to Carson of his right to collect the $250 from Burt is legally known as
   a. transaction.
   b. an injunction.
   c. an assignment.
   d. a delegation of duties.

3. The transferal of the right to collect Burt’s debt is
   a. valid because rights to money or property may generally be transferred to another person.
   b. valid because contracts for personal services may always be transferred to another person.
   c. not valid because the delegation of duties may never be transferred to another person.
   d. not valid because rights may only be transferred when prior consent is given.

4. Which statement concerning Burt is true?
   a. Burt need not pay Carson the $250.
   b. Burt must pay Carson, since he was notified of the transfer.
   c. Burt must pay Carson even if he was not notified of the transfer.
   d. Burt must pay Wentwell if he was notified of the transfer.

5. Which transfer would Wentwell not be able to make?
   a. the transfer of duties not involving personal skills or qualifications
   b. the transfer of a damage claim for personal injuries
   c. the transfer of rights equal to those that he already had at the time of the transfer
   d. the transfer of contracts for personal services when consent for the transfer has already been given
MATCHING QUESTIONS
Use the following terms to identify the phrases below. On the line next to each phrase, write the letter of the term that is most closely related to it.

1. _____ The voluntary surrender of one’s contractual rights  
   a. Agreement  
   b. Alteration  
   c. Breach  
   d. Impossibility of performance  
   e. Performance  
   f. Tender  
   g. Waiver

2. _____ An offer to pay money in satisfaction of a contractual obligation  
   a. Agreement  
   b. Alteration  
   c. Breach  
   d. Impossibility of performance  
   e. Performance  
   f. Tender  
   g. Waiver

3. _____ A termination by mutual consent  
   a. Agreement  
   b. Alteration  
   c. Breach  
   d. Impossibility of performance  
   e. Performance  
   f. Tender  
   g. Waiver

4. _____ A refusal to perform by one of the contracting parties  
   a. Agreement  
   b. Alteration  
   c. Breach  
   d. Impossibility of performance  
   e. Performance  
   f. Tender  
   g. Waiver

5. _____ A material change of the terms of a written contract without the consent of both parties  
   a. Agreement  
   b. Alteration  
   c. Breach  
   d. Impossibility of performance  
   e. Performance  
   f. Tender  
   g. Waiver

COMPLETION QUESTIONS
In the statements below, important words have been omitted. Fill in the blanks to complete each statement.

1. Duress renders a contract ________________ by the victim.
2. The most common method by which contracts are discharged is ________________.
3. Damages that are agreed on in advance in case of a breach and stated in the contract are known as ________________ damages.
4. If no definite time is stated, an offer remains open for a (an) ________________
5. A contract in which nothing remains to be done by either party is said to be ________________.
6. Once an agreement is executed, the presence of ________________ is unimportant.
7. The rights of the assignor are the rights of the ________________.
8. A promise based on consideration to keep an offer open for a definite period of time is called a(n) ________________.
9. An agreement containing illegal subject matter is ________________.
10. When one party to a contract fails to do as agreed, a(n) ________________ is said to have occurred.
CASE PROBLEMS

Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. Singer Nancy Green was admitted to a Chicago hospital last night after being reported missing for two days. She had failed to make her scheduled appearance at a nightclub. Mrs. Helen Mangam, owner of Mangam’s Chateau in Chicago where Green was appearing, said the singer apparently suffered a heart attack and would not be able to make any scheduled appearances for at least six months. Is Green’s contract with Mangam’s Chateau discharged?

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2. On February 1, 1995, the Burton Manufacturing Co. contracted to make and ship 1,000 men’s suits to the Fisher Clothing Co. by March 1. A prolonged breakdown of factory machinery caused an interruption in production, and the Burton Co. informed Fisher Clothing Co. that it could not fulfill contract commitments until June 1. Does the Fisher Clothing Co. have a case for breach of contract under the common law?

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______________________________________________________________________________

3. Deveraux, a noted columnist, was engaged by a newspaper syndicate to prepare manuscript copy and editorials for its papers. Owing to ill health, Deveraux is obliged to retire and assigns his contract to White, also a prominent journalist. When the newspaper syndicate learns of the assignment, it refuses to give its approval. Is the newspaper syndicate obliged to accept White’s services?

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SHORT-ANSWER QUESTIONS

Answer each of the following questions in the space provided.

1. Name two situations in which contract law attempts to protect the morality of the general public.

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______________________________________________________________________________
______________________________________________________________________________

2. Is it possible to rescind a contract because of a unilateral mistake?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
3. What is the relationship of an executed contract to consideration?
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______________________________________________________________________________
______________________________________________________________________________

4. It is said that the assignee “steps into the shoes of the assignor.” What does this mean?
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______________________________________________________________________________
______________________________________________________________________________

5. How can a contract be breached before the date scheduled for performance?
______________________________________________________________________________
______________________________________________________________________________
PART III PURCHASE, SALE, AND LEASE OF GOODS UNDER THE UCC
CHAPTER 15

Formation of Sales and Lease Contracts

KEY POINTS IN THE CHAPTER

- The UCC applies to an ordinary sale or lease of goods (Article 2 and 2A respectively). Article 2 (sales) and Article 2A (leases) are essentially the same. Some variations occur because a sale involves a transfer of title as opposed to a lease, which involves a transfer of possession.

- Article 2 and Article 2A deal with the sale and lease of goods respectively for any dollar amount. Goods are defined as property that is tangible and moveable.

- Article 2 applies to both merchants and non-merchants (casual sellers) and some special rules apply to sales contracts made between merchants.

- The UCC has relaxed the rules related to sales transactions that originally were governed by the common law. Many of the technical requirements found under the common law have been removed. It is now easier to form a sales contract. Article 2, however, insists that the parties perform in good faith and avoid unfair dealings such as might exist between a merchant (a professional) and an inexperienced contractor.

- The statute of frauds under the UCC is less restrictive and allows oral contracts for the sale of goods under certain circumstances (see Chapter 15 of the text). In addition, the statute of frauds requirement of the written memorandum as evidence of a sale has been greatly relaxed under the UCC. There is only a need of “some writing”—a check, a letter, an invoice, a fax, an e-mail, etc.—as evidence that a sale took place. The writing need name only the quantity and term, and be signed by the party to be charged.

- More and more contracts are being formed online especially business-to-business sales contracts. Existing contract laws apply to online transactions but new laws have also been created to fit circumstances where existing laws will not fit online transactions.

TRUE-FALSE QUESTIONS

Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T F Under the UCC, an agreement modifying a contract for the sale of goods needs no consideration to be binding.

2. T F A contract for the sale of goods costing under $500 can be oral or written.

3. T F Article 2 of the UCC applies to all sellers and buyers of goods regardless of whether they are merchants or nonmerchants.

4. T F The UCC requires all parties entering a sales contract to perform their obligations in good faith.

5. T F The term goods includes intangible personal property such as shares of stock.

6. T F An oral contract for the sale of goods costing $500 or more is enforceable if the buyer makes full payment.
7. T F Under the UCC, it is important to determine whether buyers and sellers are merchants or nonmerchants.

8. T F An action for breach of a sales contract must be started within four years of the breach.

9. T F Minot, a furniture dealer, sold her car to Martino. In this transaction, according to the UCC, Minot is considered a merchant.

10. T F Gibbons bought a record from his friend Marks. Marks is considered a merchant.

MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. Under Article 2 of the UCC, a firm offer will be created only if the
   a. offeree is a merchant.
   b. offeree gives consideration to the offerer.
   c. offer is made by a merchant in a signed writing.
   d. the offerer states the time period during which it will remain open.

2. Cuomo, owner of a large men’s retail store, signed a written contract to purchase 100 dozen ties at $60 a dozen from the Gem Wholesale Company. The ties were shipped, and Cuomo paid the $6,000 due. Gem then sued Cuomo for an additional $300 and, at the small claims court hearing, testified that Cuomo had agreed orally to pay an additional $3 a dozen. The judge held the evidence inadmissible because
   a. all contracts must be in writing to be enforceable.
   b. written contracts cannot be modified at the will of the parties.
   c. a contract of guaranty must be in writing to be enforceable.
   d. evidence of an oral agreement that contradicts a written contract is inadmissible.

3. Berry entered into an oral agreement over the phone with a book club to purchase a book a month for $19.95 per book. After he had received and accepted one book, he decided to cancel the contract. Under the contract, Berry is liable for
   a. the full contract price for one year.
   b. none of the contract price.
   c. the cost of one book.
   d. the cost of two books.

4. A contract for the sale of goods costing $500 or more can be made orally if
   a. the agreement is executory.
   b. the buyer deposits at least $100.
   c. the buyer receives and accepts the goods.
   d. the goods are intangible.

5. Lopez orally agreed to buy some computer equipment from the Soyota Computer Co. for $2,000. When the company shipped the equipment, which consisted of several items, Lopez decided to accept and pay for only two items. Lopez legally is obligated to pay for
   a. only the equipment he accepted.
   b. all of the equipment he agreed to buy.
   c. the equipment he accepted plus half of the remainder of the order.
   d. none of the equipment.

6. Under the UCC, the sale of goods involves
   a. real property.
   b. real and personal property.
   c. personal property.
   d. items attached to real property only.
7. Which of the following contracts is not covered by Article 2 of the UCC?
   a. a contract for the sale of goods that have been specially manufactured
   b. a contract for the sale of a computer
   c. a contract for the sale of growing crops
   d. a contract for services

8. O’Brien paid $600 cash for a color television at a local retail store. O’Brien did not sign a memorandum for the sale. In this case, he
   a. can avoid the agreement because contracts for the sale of goods costing $500 or more must be in writing to be enforceable.
   b. can avoid the agreement because a memorandum is required for all sales of merchandise.
   c. cannot avoid the agreement because the contract need not be in writing when the buyer has paid in full for the goods.
   d. cannot avoid the agreement because it involves specially manufactured goods.

9. Under Article 2 of the UCC, which of the following statements is correct?
   a. Merchants and non-merchants are treated alike.
   b. The contract must involve the sale of goods for a price of more than $500.
   c. The obligations of the parties to the contract must be performed in good faith.
   d. The mirror image rule applies when an acceptance to an offer is required.

10. The UCC requires that the parties to every contract
    a. place their agreement in writing.
    b. state a price in their agreement that is acceptable to both the buyer and the seller.
    c. act in good faith.
    d. be merchants.

SHORT-ANSWER QUESTIONS
Answer each of the following questions in the space provided.

1. A motorcycle dealer in your town sells you a new motorcycle. Under the UCC, would this be classified as a sale? Why or why not?

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2. A repair shop fixed the turntable on your stereo. Under the UCC, would this be classified as a sale? Why or why not?

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3. Lemond orally agreed to purchase three pairs of prescription eyeglasses for a total cost of $550. Can Lemond later claim that because the oral agreement involved goods costing more than $500, she is not bound by it?

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4. Distinguish between the common law’s “mirror image” rule and the UCC’s provisions for dealing with the acceptance of an offer.

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5. Describe a firm offer allowed under Article 2 of the UCC. Is it (the firm offer) treated differently than a common law offer?

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6. Should the terms of an online offer be just as inclusive as the terms of an offer made in written form or can an online offer be streamlined because it is offered on the Internet?

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CHAPTER 16
The Sales Contract: Transfer of Title and Risk of Loss

KEY POINTS IN THE CHAPTER

• If the contract does not specify when title and risk of loss pass from buyer to seller, the courts will refer to the rules set out in Article 2 of the UCC to determine liability. Determining when risk of loss passes is more important than determining when title passes. The rules in this chapter are those found in Article 2 of the UCC. Who suffers the risk of loss (seller or buyer) will depend upon whether the sales contract has been breached at the time of the loss. If a breach has occurred, risk falls on the party committing the breach.

• When a merchant sells to a consumer at the merchant’s place of business, risk of loss passes to the buyer when the buyer takes possession of goods; risk of loss passes when the seller has tendered delivery if the seller is not a merchant.

• In a sale FOB shipping point (shipment contract), risk of loss passes to the buyer on proper delivery of the goods to an independent (for-hire) carrier. In a sale FOB destination (destination contract), risk of loss passes a reasonable time after the buyer has been notified that the goods are available for pick-up at the destination point.

• In a sale on approval, risk of loss and title stay with the seller until the buyer approves. In a sale or return, the buyer takes the risk of loss and assumes ownership at the time of the sale, but has a right to cancel the sale within a specified period of time.

• The bulk sales law allows creditors to void a bulk sale (within a six-month period) if the bulk sale buyer does not notify them at least ten days before the sale takes place. The majority of states have repealed Article 6 because modern commercial practices make it difficult for merchants to sell the assets of their business and abscond with the cash they receive.

• Auction sales involving goods costing $500 or more must be in writing.

• In a cash-only sale, the seller may retain possession of the goods until they are paid for by sending them to the buyer COD.

• As a general rule, a purchaser obtains only such title to goods as the seller had. For example, a thief, who does not get any title, cannot pass legal title on to a purchaser. There are two exceptions to this general rule under the UCC: (1) A buyer with a voidable title can legally transfer a valid title to a third party who purchased in good faith and gave value. (2) Any merchant with temporary possession of goods can transfer a valid title to a buyer in the ordinary course of business.
MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. Goods that are not in existence and not yet identified are called
   a. personal goods.
   b. real goods.
   c. future goods.
   d. unsatisfactory goods.

2. Mincer bought an electric saw from Brown’s Hardware Store. Because the saw needed minor adjustments, he left it with the dealer. Risk of loss passed to Mincer when he
   a. made the agreement.
   b. picked up the saw.
   c. felt that the saw was satisfactory.
   d. accepted the risk of loss.

3. Figmont, of Albany, New York, ordered fifty calculators from Mund Calculator Company, terms FOB Atlanta, Georgia. The calculators were damaged in transit from Atlanta to Albany. Who suffers the loss?
   a. Figmont.
   b. Figmont and Mund Calculator equally.
   c. Figmont suffers 25 percent, and Mund 75 percent.
   d. Mund Calculator.

4. Lannigan bought an onyx ring and left it with the jeweler to be sized. Before it was sized, Tanzer came into the store to purchase an onyx ring. Because Lannigan’s ring was the only onyx ring Tanzer liked, the jeweler sold it. Can Tanzer keep the ring?
   a. Yes. A merchant who has temporary possession of goods can transfer a valid title.
   b. Yes. A merchant who has temporary possession of goods can transfer a voidable title.
   c. No. A buyer obtains no better title to goods than the seller.
   d. No. A buyer with a voidable title cannot transfer a valid title.

5. Barnes went to Caines Furniture Store to buy a sofa. The store was sold out but agreed to call the factory and have one made up. This transaction is
   a. a present sale.
   b. void.
   c. a contract to sell.
   d. a sale of identified goods.

6. If the requirements of the bulk sales law under Article 6 of the UCC are not met, creditors may have the right to declare a bulk sale
   a. void.
   b. voidable.
   c. inadequate.
   d. performed.

7. Johnson bought a portable radio from Hughes without realizing that the radio was stolen. Johnson received
   a. a valid title.
   b. no title.
   c. a voidable title.
   d. an informal title.
8. A bill of sale is
   a. a storage document.
   b. used in a sale or return.
   c. written proof of ownership of goods.
   d. a document that shows a person is keeping goods beyond the approval date.

9. When he bought a new boat, Johnson was given the choice of delivery FOB shipping point or FOB destination. Of these terms, delivery FOB destination is to Johnson’s legal advantage because
   a. risk of loss passes to him when the boat is delivered to the carrier.
   b. shipping expenses are paid by the buyer on delivery.
   c. Johnson will not sustain a loss if the boat is damaged in transit.
   d. all losses caused by damage to the boat will fall on the carrier.

10. Kimball charged a lamp at the Ames Department Store and asked that it be delivered to her house on the next delivery run. The lamp was damaged while being loaded onto the company’s delivery truck. Which of the following statements best describes Kimball’s legal position?
   a. The risk of loss has not yet shifted to Kimball, so Ames must bear the loss of the lamp.
   b. The risk of loss shifted to Kimball at the moment the Ames employees were loading the lamp onto the truck, so Kimball must bear the loss.
   c. Kimball must accept delivery of the lamp even though it is damaged because she charged it.
   d. Kimball does not have to pay because the lamp is considered to be future goods.

MATCHING QUESTIONS

Use the following terms to identify the phrases below. On the line next to each phrase, write the letter of the term that is most closely related to it.

1. _____ A promise to transfer title to a buyer at some time in the future
   a. Identified goods
   b. Sale or return
   c. Contract to sell
   d. COD
   e. Title
   f. FOB
   g. Future goods
   h. Sale on approval
   i. Present sale
   j. Risk of loss

2. _____ A method of shipping that allows the seller to retain possession of the goods until the buyer pays the price and any delivery charges

3. _____ Goods to be sold that have been selected by the seller and the buyer

4. _____ A sale of goods in which title passes from the seller to the buyer at the time the parties make the contract

5. _____ A burden assumed by either the buyer or the seller in a sales contract for damage or destruction of the goods
SHORT-ANSWER QUESTIONS
Answer each of the following questions in the space provided.

1. What is the importance of identifying goods in a contract?
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2. In determining risk of loss in a sales contract, why is it important to determine whether or not there had been a breach of contract at the time the loss occurred?
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3. List two exceptions to the general rule that a purchaser obtains only such title to the goods as the seller had.
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CASE PROBLEMS
Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. Rogers ordered some electrical equipment from Cobb in Dayton, Ohio. The equipment was shipped to Utica, New York, terms FOB Utica, New York. An accidental fire destroyed the equipment soon after it left Dayton. Must Rogers bear the loss in this case?
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2. Gornig bought a dozen sport shirts from Rock’s Men’s Shop, paid for them, and asked the merchant to hold the shirts in the store until he could pick them up the next day. During the night, a fire destroyed the store and its contents. Gornig demanded his money back, claiming that he had not yet taken physical possession of the shirts. Is Gornig entitled to the money?
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3. Roman, a consumer, purchased a VCR from a merchant on ten days’ approval. Five days later, the VCR was stolen. Was Roman responsible for the loss?

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4. Otterman purchased an oriental rug in good faith from a house-to-house salesperson. Later he sold the rug to Redstone. Philips proved that the rug had been stolen from her before it was sold to Otterman. Did Philips have a legal claim to the rug?

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5. Klein sold his entire ice cream business—merchandise and equipment—to Hartman. Hurst, a creditor of Klein, sought to have the sale set aside, claiming that as a creditor, he was entitled to notice of the sale. Was Hurst correct?

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6. Tomari, a manufacturer’s representative, and Gould, a real estate agent, entered into a written contract for the sale of Tomari’s minivan to Gould for $8,000 cash. Tomari agreed to tune up the motor on the van, which he did, and on the night of August 1 phoned to tell Gould that the van was ready for pick-up. Upon pick-up, Gould was to make payment. Gould replied to Tomari by saying: “I’ll be there in the morning to pick up the van and to pay you the $8,000.” The next morning, however, Gould held an unexpected meeting with a potential client and decided to pick up the van later in the week. On the night of August 2, the van was destroyed by fire of unknown origin. Neither Tomari nor Gould had any comprehensive insurance (which would have included protection from fire) on the van. Who must bear the loss?

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CHAPTER 17

The Sales Contract: Performance, Breach, and Remedies for Breach

KEY POINTS IN THE CHAPTER

• The seller performs a sales contract by delivering conforming goods; the buyer performs by accepting and paying for these goods, assuming, of course, that the goods conform to the contract.

• The perfect tender rule under the UCC requires the seller to tender goods that exactly meet the requirements of the contract. Under the common law rule of contract performance, substantial performance is considered performance. Because the perfect tender rule is a harsh rule, the code has allowed some exceptions.

• The buyer has the right but not the duty to inspect goods before accepting delivery unless the goods were sent C.O.D. In this case, the buyer must pay first before making an inspection. Failure to inspect operates as a waiver. Further, a poor inspection has the same effect as a complete inspection.

• If there has been a proper tender and the goods conform to the contract, the buyer has a duty to accept and pay for these goods.

• If either the goods or the delivery does not conform to the contract, the seller can cure if the defect is simple. If the cure is complicated, or if the defect is so serious that a cure will not give a buyer substantially what was bargained for, then the seller has no right to cure and the buyer is entitled to reject the goods. If the seller does not cure, or is not allowed to, the buyer may reject the goods (cancel the contract). If after an inspection, the buyer accepts nonconforming goods, he or she may no longer reject them.

• Remedies for breach of the sales contract by the seller that are available to the buyer include (1) suing for breach of warranty, (2) canceling the contract and then covering, (3) canceling the contract and suing for damages, and (4) seeking specific performance or replevin.

• Remedies available to the seller if the buyer breaches the contract include (1) canceling the contract, (2) reselling the goods and suing for damages, (3) suing the buyer for the purchase price, (4) suing the buyer to recover damages for nonacceptance, (5) withholding delivery of the goods, and (6) reclaiming the goods from the buyer.

COMPLETION QUESTIONS

In the statements below, important words have been omitted. Fill in the blanks to complete each statement.

1. The first obligation of the seller is to tender (offer) ____________________ goods.

2. A buyer can sue for breach of warranty only after ____________________ is given to the seller that there is a problem with the goods.
3. If the seller breaches the sales contract, one remedy available to the buyer is to buy substitute goods elsewhere to replace those originally due from the seller. This remedy is called the right to ____________________.

4. The buyer has the right to ____________________ the goods within a reasonable time before accepting delivery to determine whether they conform to the contract.

5. Assuming that the goods have been delivered properly and that they conform to the contract, the buyer has a duty to ____________________ the goods and pay for them according to the terms of the contract.

6. Damages for the breach of a sales contract by a seller generally are set at the difference between the contract price and the ____________________ price at the time the buyer learns of the breach, plus any expenses.

7. In the case of a breach of contract by a buyer, a seller who still has possession of the goods but who is unable to resell them elsewhere can hold the goods for the buyer and sue for the ____________________.

8. A seller legally can withhold the delivery of goods purchased on credit if the seller discovers before delivery that the buyer is ____________________.

9. Under the UCC, a breach of contract allows the injured party to pursue more than one ____________________.

10. The UCC allows a seller who gives up possession of goods to the buyer to reclaim them on discovering a buyer’s insolvency if a demand is made within ____________________ days after the buyer receives the goods.

SHORT-ANSWER QUESTIONS

Answer each of the following questions in the space provided.

1. Under what circumstances may the buyer employ the remedy of replevin?

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2. What are the general obligations of the seller and the buyer who have entered into a sales contract?

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3. How does the perfect tender rule, a requirement of the UCC, change the common law rule of performance?

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MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. If, while the goods are in transit with a common carrier, the seller learns that the buyer has become insolvent, the seller can
   a. stop the goods in transit.
   b. sue for nonacceptance.
   c. sue the buyer for fraud.
   d. sue the buyer for conversion.

2. Snyder sold some standard-sized sheets of plywood on credit to Robinson, promising delivery within ten days. Five days later, Snyder wrongfully refused to deliver the goods to Robinson. Robinson legally is entitled to
   a. sue for the purchase price.
   b. exercise a right of lien on the goods.
   c. sue for specific performance.
   d. purchase similar goods elsewhere and sue for damages.

3. Franklin, owner of Dollar Buy Department Store, accepted and paid for twenty-five dozen ballpoint pens from the Perkins Stationery Company. After selling some of the pens, Franklin began to get complaints that the pens would not write. What action can Franklin take against the Perkins Company?
   a. None.
   b. resell the goods and sue for damages
   c. sue for specific performance
   d. sue Perkins for breach of warranty

4. A seller who is notified that the buyer is not going through with a contract can
   a. cancel the contract.
   b. obtain specific performance.
   c. sue for breach of warranty.
   d. cover.

5. One remedy that is not available to a seller is
   a. rescinding the contract.
   b. reclaiming the goods.
   c. stopping the goods in transit.
   d. suing for breach of warranty.

6. Which remedy is not available to the buyer?
   a. Cover.
   b. Cure.
   c. Replevin.
   d. Specific performance.

7. If the contract provides for delivery C.O.D.,
   a. the buyer must pay prior to inspection.
   b. the buyer has the right to pay after inspection.
   c. the buyer has no right of inspection.
   d. none of these answers.
8. The remedy that enables the buyer to obtain ordinary goods that have been ordered but wrongfully detained by the seller is called
   a. curing.
   b. covering.
   c. replevin.
   d. specific performance.

9. When a seller breaches a warranty, the measure of damages is generally the difference between
   a. the value of the warranty and the contract price.
   b. the value of the warranty and the cover price.
   c. the value of the goods accepted and their value had they conformed to the warranty.
   d. the cover price and the contract price.

10. Under Article 2 of the UCC, cure involves
    a. the right of the seller to correct defective performance.
    b. the duty of the seller to provide additional goods.
    c. the right of the buyer to reject a shipment of goods for no reason at all.
    d. the duty of the buyer to accept goods without first inspecting them.

CASE PROBLEMS
Read the case problem below and then answer the questions that follow.

The Morgan Company, a manufacturer of men’s clothing, entered into a contract to send twenty
dozen shirts a month between September and December to the Best Wholesale Clothing
Company. In November, the Morgan Company discovered that Best Wholesale Clothing was
insolvent. What action can the Morgan Company take under the following circumstances?

1. The September and October shipments were delivered to Best Wholesale Clothing.

2. The November shipment had been placed in the hands of a common carrier for delivery to Best
   Wholesale Clothing.

3. The December shipment had been manufactured but was in Morgan’s warehouse awaiting
   shipment.
KEY POINTS IN THE CHAPTER

- Product liability refers to the liability that manufacturers or other sellers in the chain of sale have to immediate purchasers and to the general public, for physical injury or property damage caused by defective products placed on the market. The cornerstone of a plaintiff’s case is the product defect. The three types of defects are: design defects, manufacturing defects, and marketing defects.

- A buyer or anyone injured by a defective product may sue the manufacturer and other sellers in the chain of distribution under one of three theories of liability: negligence, breach of warranty, or strict liability.

- Each theory requires a different type of proof. Strict liability, based on tort law, requires no proof of negligence on anyone’s part and is therefore the most popular theory under which to sue. Courts in strict liability cases are interested only in proof that a product was unreasonably dangerous due to a defect at the time it left the manufacturer’s or other seller’s control. The negligence theory requires proof of negligence, which is often hard to obtain. Breach of warranty requires proof of the existence of either an express or an implied warranty; the disadvantage here is that the seller may disclaim express and certain implied warranties.

- A defense used by manufacturers and sellers to product liability lawsuits is improper conduct on the part of the consumer (e.g., using the product in an unauthorized way).

- The Magnuson-Moss Warranty Act requires that adequate information about written warranties be made available to consumers. Under the act, a distinction is made between a full warranty and a limited warranty. Under a full warranty, the seller may not limit the time the goods are covered by implied warranties; under a limited warranty, the seller may do so.

- Article 2 of the UCC provides for two types of warranties made by sellers: express warranties and implied warranties. An express warranty is an oral or written guarantee given by manufacturers and sellers. They arise in different ways, such as when the seller makes a factual statement or a promise, describes the goods, or produces a sample of the item that is being sold. A seller may exclude an express warranty from a sales contract by using clear, specific language. Implied warranties are imposed on a seller by law. They become part of a sale even though the seller may not have intended to create them. Implied warranties include merchantability, fitness for a particular purpose, and the implied warranty of title. Like express warranties, implied warranties may under certain circumstances be disclaimed. For example, the expressions “as is” and “with all faults” exclude all implied warranties except the implied warranty of title.

TRUE- FALSE QUESTIONS

Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T F Today, the law is written to allow anyone harmed by a defective product to sue whoever is in any way responsible.
2. T F The Magnuson-Moss Warranty Act requires that all express warranties given by manufacturers be full warranties.

3. T F All product liability cases are based on breach of warranty.

4. T F Statements by salespersons expressing their opinions about the quality of the goods they sell constitute express warranties.

5. T F Even though it is not written, an implied warranty imposes obligations on a seller.

6. T F If a buyer purchases goods after inspecting a model, there is an implied warranty that the goods will conform to the model.

7. T F The implied warranty of merchantability can be excluded either orally or in writing.

8. T F Both merchants and nonmerchants can make implied warranties of fitness for a particular purpose.

9. T F Under the UCC, it is not necessary that a warranty be given at the time of a sale.

10. T F In making an express warranty to a buyer, the seller does not have to actually use the word warranty.

MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. In selling an electronic game to a customer, the salesperson stated, “the game is made of a durable plastic and will not crack or break even when dropped on the floor.” The salesperson’s statement
   a. is sales puffing.
   b. is an implied warranty.
   c. is an express warranty.
   d. creates a warranty of merchantability.

2. Martins bought an automotive diagnostic analyzer for $150. A one-year warranty covering original factory defects in materials and workmanship came with the analyzer. The consideration given by Martins for the warranty was
   a. part of the purchase price.
   b. giving up the right to sue the store.
   c. acceptance of the offer to buy the analyzer.
   d. the entire sales contract.

3. Product liability describes the liability that manufacturers and sellers have to those harmed because of
   a. products they place on the market that are defective or do not work right.
   b. their lack of privity of contract.
   c. their lack of negligence.
   d. their lack of knowledge about warranties.

4. Montgomery cut her mouth on a piece of glass that was in a bowl of chili at Piper’s Restaurant. If Montgomery sues the restaurant, she can base her action on the
   a. express warranty of title.
   b. express warranty of description.
   c. implied warranty of merchantability.
   d. express warranty of merchantability.
5. Under the UCC, a warranty, oral or written, given by the seller following the sale
   a. becomes part of the original sales contract without additional consideration.
   b. must be accompanied by additional consideration.
   c. is illegal.
   d. is a breach of the sales contract.

CASE PROBLEMS
Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. Santos called Chicken Delight and ordered several buckets of chicken for a party. Following the party, two guests became seriously ill because some of the chicken was spoiled. The sick guests missed several days of work while they were under a doctor’s care. Because they had used up their sick time, they were not paid for the days they missed. Could the guests sue Chicken Delight for damages resulting from their medical bills and their lost pay?

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2. Horton entered into a written contract to sell and install a central air conditioning system in Cordero’s house. A week after the system was installed, Cordero asked Horton about a warranty, and Horton warranted the system in writing against all defects for one year. Eight months later, the system broke down because of a defective switch. Could Cordero enforce the warranty?

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3. When he ordered a water pump by mail, Banks specified that he wanted one that would pump 25 gallons a minute. When the pump arrived and was installed, Banks found that it pumped only 20 gallons a minute. Was there a breach of warranty?

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4. Martina went to the beauty parlor for a permanent and a hair coloring. The stylist pointed out to Martina that information on the hair-coloring packet warned that the contents of the package should not be used in conjunction with a permanent. Martina nevertheless gave the stylist permission to apply the hair coloring to her hair. When applied, much of Martina’s hair fell out. Martina brought an action against the company that produced the hair coloring claiming breach of the implied warranty of merchantability. Does Martina have a legitimate lawsuit?

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5. Marvin was using a power press manufactured by United Press. While operating the press, Marvin’s hand was caught in the mechanism and severely injured. The press was manufactured without a guard device to prevent injuries such as the one suffered by Marvin. Marvin sued United Press for defective design and for producing an unreasonably dangerous product. At trial Marvin’s attorney made two important points: The press was only six months old, and United sold the guard as an optional piece of equipment rather than as a standard part of the press. Is United Press liable to Marvin for the injuries he sustained?

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**SHORT-ANSWER QUESTIONS**

Answer each of the following questions in the space provided.

1. What is the purpose of the Magnuson-Moss Warranty Act? What is the difference between a full warranty and a limited warranty under the act?

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2. What are the requirements that must be satisfied before a seller will be found liable for strict liability?

---

3. Can express warranties be excluded by a merchant when making a sale to an ultimate consumer?
Review Part III: Sale and Lease Contracts Under the UCC

TRUE- FALSE QUESTIONS
Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T F Under the UCC, an agreement modifying a contract for the sale of goods needs no consideration to be binding.
2. T F When a merchant sells to a consumer at the merchant’s place of business, risk of loss does not pass until the buyer actually receives the goods.
3. T F In a sale of goods FOB shipping point, risk of loss passes to the buyer when the goods are properly delivered to the carrier at the shipping point.
4. T F A buyer with a voidable title can transfer a valid title to a third party who obtains the goods for value and in good faith.
5. T F A sale or return is a present sale in which risk of loss passes to the buyer when the buyer accepts the goods.
6. T F Part of the purchase price of goods purchased under a sales contract is consideration for any express warranty given with those goods.
7. T F A warranty of title can be expressed or implied.
8. T F Express warranties cannot be excluded from sales contracts even if clear, specific language is used.
9. T F Under the UCC, courts can refuse to enforce an entire contract or any particular clause in a contract if finds unconscionable at the time the agreement was made.
10. T F A bill of sale can be an informal document, such as a sales slip from a store, or a formal document.

MULTIPLE-CHOICE QUESTIONS
Circle the letter of the best answer.

1. Under Article 2 of the UCC which of the following statements is the most important in determining who bears the risk of loss when the sales contract is silent?
   a. who has title to the goods
   b. the method used to ship the goods
   c. how the goods were lost
   d. the contract’s shipping terms
2. Which of the following statements made by a salesclerk at the time of a sale is a warranty?
   a. “This coat is an unusual bargain.”
   b. “This coat will be in style for many years.”
   c. “This coat has an all-silk lining.”
   d. “This coat will wear like iron.”

3. A warranty implied in every sale of goods is that
   a. the goods are of high quality.
   b. the seller has title to the goods.
   c. the seller will refund the purchase price if the goods are unsatisfactory.
   d. the purchase price is reasonable.

4. If the buyer possesses and holds title to goods but is found to be insolvent, within ten days the seller can
   a. place a lien on the goods.
   b. reclaim the goods.
   c. rescind the transfer of the title.
   d. resell the goods to a third party.

5. If a buyer wrongfully refuses to accept goods when a seller makes proper delivery, the seller is entitled to
   a. keep the goods for his or her own use and sue for the purchase price.
   b. sue the buyer for damages for not accepting the goods.
   c. sue the buyer for specific performance.
   d. sue the buyer for breach of warranty.

6. Young purchased a 50-foot length of garden hose at a hardware store. When she tried to use it, the hose pulled apart in several places. Was there any breach of warranty by the store?
   a. Yes. There was an implied warranty that the goods were of the finest quality.
   b. Yes. There was an implied warranty that the goods were merchantable.
   c. No. No warranties were expressed by the store clerk.
   d. No. Unless the store states a definite warranty, there is none.

7. When goods are shipped from Buffalo, New York, to Columbus, Georgia, terms FOB Columbus, risk of loss passes to the buyer when
   a. the contract is made.
   b. the goods are delivered to the common carrier.
   c. the goods reach their destination.
   d. the goods leave the seller’s warehouse.

8. The McCracken Garment Company sold one hundred clown suits to Getz for $2,000. Getz inspected the goods and paid for ten suits at the time of the sale. Getz later refused to receive and accept the rest of the suits, claiming that because the goods cost over $500, the oral agreement was unenforceable. Can Getz get his money back for the ten suits he paid for, even though the contract was oral?
   a. Yes. There was no written memorandum of the sale.
   b. No. Acceptance of the ten clown suits made the entire agreement enforceable.
   c. Yes. The agreement was unenforceable under the statute of frauds.
   d. No. When the buyer has made a partial payment, the contract can be enforced for those goods covered by the partial payment.
9. Goods not yet in existence and not yet identified are called
   a. nonexisting goods.
   b. real goods.
   c. future goods.
   d. personal goods.
10. Unless a contract for the sale of a stereo states otherwise, the place of delivery is the
    a. seller’s residence.
    b. buyer’s residence.
    c. buyer’s place of business.
    d. seller’s place of business.
11. Which of the following types of property would be classified as goods under Article 2 of the
    UCC?
    a. growing trees.
    b. shares of stock.
    c. a bathtub in a house that could not easily be removed without doing substantial damage.
    d. a mobile home.
12. If a merchant (offeree) makes a “firm offer” to sell goods but does not specify a time in which the
    offeree must accept,
    a. the merchant can revoke the offer at any time.
    b. the merchant can revoke the offer at any time before it is accepted.
    c. the merchant cannot revoke the offer for one year.
    d. the merchant cannot revoke the offer until after a reasonable time has passed.
13. Which of the following people would not be considered a merchant under the UCC?
    a. a person who regularly sells the type of goods involved
    b. a person who occasionally sells the type of goods involved,
    c. a person who claims to have specialized knowledge of the type of goods involved,
    d. a person who is considered a commercial expert in the type of goods involved.
14. Under the UCC, an action for breach of a sales contract must be started by the nonbreaching party
    within
    a. four years of the breach.
    b. six years of the breach.
    c. eight years of the breach.
    d. one year of the breach.
15. The “mirror image rule” relating to offer and acceptance
    a. remains a fundamental cornerstone of the UCC.
    b. is no longer relevant under the UCC.
    c. applies only to merchants.
    d. suggests everyone should be treated equally
ACTIVITY: UNDERSTANDING WARRANTIES

Base your answers to Questions 1 through 5 on the following information.

McDonnell purchased an electric razor from the Sibley Department Store for $79.95. He took the razor home when he made the sales agreement on December 10, and he paid for the razor at the end of the thirty-day credit period. The following statement appeared on a tag attached to the razor:

LIMITED WARRANTY. Warranted for one year from the date of purchase against original factory imperfections in materials and workmanship. During this time, Excello will elect to repair or replace the product without charge for parts or labor, provided the product is returned to the manufacturer with the warranty card. Excello Razor Company

1. The warranty statement on the tag represents an
   a. express warranty.
   b. implied warranty.
   c. express and an implied warranty.
   d. exclusion of warranties.

2. McDonnell would benefit from the warranty if
   a. he left the razor out in the rain on a camping trip and the razor was damaged.
   b. he gave the razor to a friend for Christmas and the friend did not like it enough to use it.
   c. the cutting edges of the razor became dull after McDonnell used it for one month.
   d. the razor did not give him as good a shave as his old razor.

3. The consideration given by McDonnell for the warranty was
   a. his reputation.
   b. his acceptance of the electric razor.
   c. part of the purchase price.
   d. money paid in addition to the purchase price.

4. McDonnell brought the razor back for an adjustment two weeks after he bought it. He questioned the clerk about the razor’s quality. The clerk replied that in addition to the manufacturer’s warranty, the store guaranteed all razors for two years against all defects and, if necessary, would replace the razor with a new one. The clerk’s statement is
   a. binding because a warranty made after a sales contract is completed needs no additional consideration.
   b. binding because it is based on common usage in the trade, and most razors carry this kind of guarantee.
   c. not binding because it is based on past consideration.
   d. not binding because it was simply sales talk or “puffing.”

5. Risk of loss passed to McDonnell on
   b. December 10.
   d. December 11.
CASE PROBLEMS

Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. Briggs wanted to buy a computer for his home-based business. He went to the Harvard Computer Supply Company and signed a written memorandum to purchase one for $2,500. However, Briggs refused to accept delivery of the computer the next day, saying he had changed his mind. He claimed that the memorandum he signed was not enforceable because the salesperson had not signed it. Is Briggs liable for breach of contract?

______________________________________________________________________________
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______________________________________________________________________________

2. Friske, of Boston, Massachusetts, placed an order with Kevin Supply Company in Dayton, Ohio, for office furniture he had seen in a catalog. If, after the furniture is received in Boston, Friske finds that it does not conform to the description in the catalog, does he have a legal claim against the Kevin Supply Company?

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______________________________________________________________________________

3. In the case described in Question 2, the shipping terms were FOB Dayton. If the furniture is damaged en route to Boston, through no fault of the common carrier, should Friske bear the loss?

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4. Jayson purchased a power lawn mower from the American Department Store on thirty days’ approval. Before the thirty-day period expired, a thief broke into Jayson’s garage and stole the mower. Must Jayson bear the loss in this case?

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SHORT-ANSWER QUESTIONS

Answer each of the following questions in the space provided.

1. Compare the three theories of liability that a buyer who is injured can use in a product liability action. How do these theories differ?

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______________________________________________________________________________
2. Explain why it is difficult for a merchant to completely avoid making any type of express warranty.

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______________________________________________________________________________

3. Explain what is meant by the term “battle of the forms.”

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4. When there is a breach of contract, on whom does the code place the risk of loss?

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______________________________________________________________________________
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5. In what way does the UCC permit a seller to pass on a better title of goods than he or she has?

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______________________________________________________________________________
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6. If a buyer and a seller enter into a contract that is complete in every respect except that the price has not been agreed upon, can the price be negotiated at a later time, or will the contract fail for indefiniteness?

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PART IV NEGOTIABLE INSTRUMENTS
CHAPTER 19

Nature and Types of Negotiable Instruments

KEY POINTS IN THE CHAPTER

- Negotiable instruments can be used as a substitute for money or as a means of extending credit. They consist of promises to pay (such as promissory notes and certificates of deposit) and orders to pay (such as drafts and checks). Notes have two parties (maker and payee); drafts and checks have three parties (drawer, drawee, and payee). The drawee of a check is always a bank, and the drawer is the depositor.

- Negotiable instruments may be classified as either demand instruments (payable for a reasonable time after issue) or time instruments (payable at a future date).

- The concept of negotiability is important when dealing with the law of negotiable instruments. If an instrument contains certain characteristics (discussed in the chapter) it can be legally transferred to another party with this party gaining the same rights and privileges as the transferring party.

- Article 3 governs the law of negotiable instruments. It has made several revisions to the Negotiable Instruments Law to more accurately reflect modern business practices. Changes have been reflected in this chapter and in the remaining chapters in this Part. A number of amendments were approved in 2002, but to date they have only been adopted in a few states.

- To be negotiable (legally transferable), the instrument must (1) be in writing (2) be signed by the maker or the drawer (3) contain an unconditional promise or order to pay (4) state a fixed amount of money (5) be payable on demand (or at sight) or at a definite time (6) be payable to order or to bearer, and (7) designate a drawee (in the case of a draft) with reasonable certainty.

MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. A check is issued by the
   a. maker.
   b. payee.
   c. drawee.
   d. drawer.

2. A promissory note must contain
   a. words indicating a promise to pay.
   b. mention of an IOU.
   c. a certificate of deposit.
   d. a date.

3. The signature on a negotiable instrument must
   a. be printed or stamped on the instrument.
   b. be that of the maker or drawer.
   c. appear in the body of the instrument.
   d. appear in the lower right-hand corner.
4. A written order by one person on a second person to pay a third person is a
   a. promissory note.
   b. certificate of deposit.
   c. draft.
   d. receipt.

5. The omission of the word order or bearer on a promissory note can render it
   a. voidable.
   b. void.
   c. negotiable.
   d. nonnegotiable.

6. The term nonnegotiable means
   a. void
   b. not cash.
   c. not readily transferable from one person to another.
   d. not payable.

7. An instrument is payable on demand or at a definite time if it is payable
   a. at someone’s death.
   b. under a certain condition.
   c. on, before, or after a specified date.
   d. at a bank.

8. A check that contains the words three hundred fifty dollars and the figures $3.50 is
   a. payable in the amount of $350.
   b. illegal.
   c. payable in the amount of $3.50.
   d. void.

9. An instrument that is not payable for a fixed amount of money and thus is not negotiable if
   a. it is payable in a foreign currency that is a legal currency.
   b. it is payable with interest.
   c. the amount in figures is omitted.
   d. the person required to pay the instrument has the option to pay something in addition to money.

10. A check is
    a. a written promise.
    b. usually payable at a certain time.
    c. payable immediately.
    d. not a substitute for cash.

11. Which of the following contains the necessary words of negotiability?
    a. Pay to Mary Roe.
    b. Please pay Mary Roe.
    c. Pay to holder, Mary Roe.
    d. Pay to the order of Mary Roe.

12. Brown signed a document unconditionally promising to pay a certain sum of money on a definite
    day to the order of Nevarez. Nevarez is called the
    a. maker.
    b. payee.
    c. drawer.
    d. drawee.
13. A promissory note is not negotiable if it is
   a. not dated.
   b. payable thirty days after the death of the maker.
   c. signed by two people.
   d. payable thirty days after the date of the note.

14. A note or check payable in a foreign currency that is a legal currency is
   a. nonnegotiable.
   b. fully negotiable.
   c. not payable in the dollar equivalent of that currency.
   d. void.

15. If the day of issue is omitted from a note or check, its negotiability is
   a. restricted.
   b. voided.
   c. not affected.
   d. postponed.

**ACTIVITY: DETERMINING NEGOTIABILITY**

Indicate whether each of the following is a negotiable or a nonnegotiable instrument by circling N or NN in the column on the right.

1. An unsigned check  
   2. A note signed with an X  
   3. An instrument payable to “Bearer”  
   4. A promissory note payable ten days before February 8, 1993  
   5. A check lacking the words “to the order of”  
   6. An oral promise to pay $1,000  
   7. A check on which the name of the payee has been omitted  
   8. A signed promissory note containing the words “I promise to pay 500 pounds of scrap iron to the order of Merle Thomas”  
   9. A draft payable at sight  
  10. A draft in which the drawee’s name has been omitted

**TRUE- FALSE QUESTIONS**

Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T F A person to whom a negotiable instrument is transferred obtains special privileges.
2. T F A check is an instrument that is payable on demand.
3. T F The drawee of a check is always a bank.
4. T F An instrument that places conditions on the promise or order to pay is negotiable.
5. T F A draft is a negotiable instrument that is a written promise to pay money.
6. T F The party who promises to pay a promissory note is called the drawee.
7. T F A promissory note need not be in writing.
8. T F A promissory note is an order to pay.
9. T F An instrument made payable to “Myself” is considered payable to the bearer.
10. T F An instrument that is payable “fifteen days after I paint my house” is negotiable.

SHORT-ANSWER QUESTIONS
Answer each of the following questions in the space provided.

1. What test is used to determine whether an instrument is payable in money?
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

2. What kind of writing is required for a negotiable instrument?
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

3. If the words and figures in an instrument differ, which controls?
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

4. If an instrument is made payable to cash, to whom is it payable?
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

5. What is the effect of making an instrument payable in the event of something—even something certain—happening?
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______________________________________________________________________________
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6. How is a check different from other drafts?
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CHAPTER 20

Issue, Transfer, and Discharge of Negotiable Instruments

KEY POINTS IN THE CHAPTER

• The first transfer of the instrument to the payee by the maker or drawer is called an issue. The payee may demand payment on the instrument or pass it on, generally by negotiation to a holder; the original payee is also a holder. By means of the issue, the payee becomes a holder and is thereby entitled to collect payment on the instrument or trans it (pass it on) to a third party. A transfer is best made by negotiation because the third party (who takes possession of the instrument) becomes a holder like the original payee and could, under certain circumstances, gain special privileges. In order to gain these special privileges, the holder would need to meet the requirements of a holder in due course.

• An order instrument (one payable “to the order of” a named payee) may be negotiated only by endorsement (a signature) and delivery. Negotiation in this manner may continue until the holder in possession decides to present the instrument to the party responsible for payment.

• A bearer instrument (payable to anyone in possession) may be negotiated by delivery alone. An endorsement is not necessary. After negotiation, the transferee becomes a holder.

• There are four basic endorsements: blank, special, restrictive, and qualified.

• A blank endorsement, consisting only of the signature of the endorser, makes the instrument payable to bearer. A special endorsement specifies the person to whom the endorser intends to make the instrument payable; a restrictive endorsement requires the endorsee to comply with instructions stated in the endorsement regarding what is to be done with the money stated on the face of the instrument. “For deposit only” is the restrictive endorsement most frequently used; a qualified endorsement allows a person to transfer the instrument but to disclaim any liability if the instrument is not paid by the maker or drawee when due.

• A negotiable instrument can be discharged in five ways: payment, alteration, the statute of limitations, bankruptcy, and cancellation.

TRUE- FALSE QUESTIONS

Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T F A payee of a negotiable instrument can transfer that instrument to someone by negotiation.

2. T F An endorsement that limits the liability ordinarily undertaken by an endorser is called a restrictive endorsement.

3. T F An endorsement that states the name of the person to whom the instrument is being transferred is a special endorsement.

4. T F A check payable to “Cash” must be negotiated by endorsement and delivery.

5. T F The purpose of an endorsement is to transfer ownership of a negotiable instrument.
6. T F Negotiation is a special form of transfer, which makes a person who takes the instrument a holder.

7. T F A person who has a negotiable instrument containing a blank endorsement can legally change the endorsement to a special endorsement.

8. T F A blank endorsement makes the instrument payable to the bearer.

9. T F The use of a qualified endorsement makes an instrument nonnegotiable.

10. T F Marking a promissory note “void” is one way of canceling the instrument.

11. T F “For deposit only” is a special endorsement.

12. T F An instrument with a blank endorsement can be transferred from one person to another by delivery alone, without further endorsement.

13. T F Bearer paper can be negotiated by voluntary delivery alone.

14. T F An instrument with a blank endorsement should not be mailed because if the instrument is lost, anyone can collect without proving ownership of the instrument.

15. T F A special endorsement must contain the word order or bearer.

MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. Barbara Allen endorses her paycheck “For deposit only—Barbara Allen.” This endorsement is
   a. blank.
   b. restrictive.
   c. special.
   d. qualified.

2. Which of the following endorsements by Walter Bly, the payee of a check, makes the check payable to bearer?
   a. Walter Bly.

3. Varden wanted to make a bank deposit by mail. The safest endorsement for her to use on checks deposited this way is a(n)
   a. special endorsement.
   b. blank endorsement.
   c. qualified endorsement.
   d. restrictive endorsement.

4. Barron negotiated a check that she received from Cleary by making the following endorsement: “Pay to the order of Blythe Love—Jane Barron.” Legally, Love now can negotiate this check by
   a. delivery only.
   b. endorsement only.
   c. either endorsement or delivery.
   d. both endorsement and delivery.
5. To be valid, an endorsement
   a. must be typed.
   b. must be handwritten.
   c. can be typed or handwritten.
   d. must be printed.

CASE PROBLEMS
Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. Falvo made a check payable to “Cash” and gave the check to Gamber. Gamber left the check on his desk while he attended a meeting. When Gamber returned, he discovered that the check had been stolen. Did the thief receive the check by negotiation?

______________________________________________________________________________
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______________________________________________________________________________

2. Freeman’s house was burglarized, and several checks were stolen, one of which was made out to “Cash.” The thief who stole the check passed it on to another party. Did the transfer by the thief to the other party constitute a negotiation of the check?

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SHORT-ANSWER QUESTIONS
Answer each of the following questions in the space provided.

1. James Tuttle wrote a check drawn on the Friendly Trust Bank, payable to Rachel Fellows in the amount of $500. Fellows owed $500 to Timothy Blanchard, so she endorsed the check and gave it to Blanchard.
   a. Who is the drawer? _________________________________________________________
   b. Who is the drawee? _________________________________________________________
   c. Who is the payee? ___________________________________________________________
   d. Who is the endorser? _________________________________________________________
   e. Who is the endorsee? _________________________________________________________
2. Identify each type of endorsement in the illustrations below.

a. _________________________

b. _________________________

c. _________________________
CHAPTER 21

Rights and Duties of Parties

KEY POINTS IN THE CHAPTER

• Primary parties and secondary parties are those parties liable for payment on negotiable instruments. Makers of notes and drawees (acceptors) are primary parties; drawers and endorsers are examples of secondary parties.

• A primary party’s liability for payment of a negotiable instrument is unconditional, whereas that of the secondary party is conditional upon three factors: (1) that presentment of the instrument for payment was made by the holder to the primary party, (2) that the primary party dishonored the instrument; and (3) that the holder gave the secondary party notice of the primary party’s dishonor. Unconditional liability means that the primary party is obligated to pay a negotiable instrument without the holder having to resort first to another party and remains liable on the instrument according to its terms until it is outlawed by the statute of limitations.

• It is desirable to attain the unique status of a holder in due course because of the special privileges that are gained from this status.

• To qualify as a holder in due course, a holder must take the instrument for value, in good faith, and without knowledge that the instrument is defective.

• Holders in due course may encounter certain defenses when they attempt to collect on an instrument that is legally in their possession. These defenses are either personal (limited) defenses or universal (real) defenses. Personal defenses are not good against a holder in due course (a special privilege gained from being a holder in due course) whereas universal (real) defenses are good against all holders, including holders in due course.

• Personal defenses include (1) fraud in the inducement; (2) lack of consideration; (3) payment at or before maturity; (4) lack of delivery of a complete instrument; (5) unauthorized completion of an incomplete instrument; and (6) slight duress.

• Universal defenses consist of (1) fraud in the execution; (2) forgery; (3) minority; (4) material alteration; (5) illegality; and (6) serious duress.

• The Federal Trade Commission (FTC) has abolished the holder in due course rule as it applies to consumer transactions.

• Accommodation parties are third parties who lend their name (signature) on an instrument as security against nonpayment by a person obligated to pay. An accommodation party may sign either as a co-maker or as an endorser.

TRUE- FALSE QUESTIONS

Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T F Under the UCC, the holder of an uncertified check has thirty days after the date of issue to present it for payment or the drawer is not liable.

2. T F If presentment of a promissory note is late, the maker is discharged from any liability.
3. T F A person whose name is forged to an instrument has a personal defense against all holders.

4. T F If a promissory note falls due on January 8, proper presentment can be made on January 9.

5. T F Kuhn, the payee of a promissory note, changed the amount due from $60 to $600. The maker can be held liable for $600.

CASE PROBLEMS
Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. Blair wanted to make a gift to his son Eric but did not have enough cash on hand. Instead, he gave Eric a $5,000 promissory note, payable in thirty days. Eric negotiated the note ten days later to his friend Tompkins. When Tompkins tried to collect on the note from Blair, Blair refused to pay, claiming that there was no consideration for the execution of the note. Is this a valid defense against payment to Tompkins?

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______________________________________________________________________________

2. Curran bought a new car from Superior Motors. He paid $1,000 in cash and gave a promissory note for the balance of the purchase price. Superior negotiated the note to Calumet Bank and received cash in return. Curran then found the car’s transmission was defective, and he refused to make any payments to Calumet Bank. If it had no knowledge of the defective transmission, is Calumet Bank considered a holder in due course?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

3. Hackman was the holder of a time draft payable on July 8, 2007. However, Hackman discovered that July 8, 2007 fell on a Sunday, which is not a business day. Can Hackman require payment on July 8?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
MATCHING QUESTIONS

Use the following terms to identify the phrases below. On the line next to each phrase, write the letter of the term that is most closely related to it.

1. _____ Notification of a secondary party that can be given orally or in writing
   a. Secondary party
   b. Real defense
   c. Primary party
   d. Notice of dishonor
   e. Presentment
   f. Improper presentment
   g. Unauthorized completion
   h. Ordinary holder
   i. Holder in due course
   j. Accommodation parties who sign as endorsers

2. _____ A party who can enforce payment despite personal defenses
3. _____ A demand for payment that discharges the liability of secondary parties
4. _____ A party who has secondary liability
5. _____ A personal defense
6. _____ Makes a negotiable instrument void from the time of its creation
7. _____ A demand for payment made by the holder of commercial paper
8. _____ Has unconditional liability for the payment of commercial paper
9. _____ Has conditional liability for the payment of commercial paper
10. _____ The holder of a nonnegotiable instrument

ACTIVITY: ANALYZING COMMERCIAL PAPER

The promissory note below was given to Erica Karvelos by Maria Schmidt as evidence of a $350 loan made by Karvelos to Schmidt. Karvelos endorsed the note and gave it to her niece as a wedding present. Study the note and then answer the questions that follow.

![Promissory Note Image]

$350.00

Thirty days after date I promise to pay

to the order of Erica Karvelos

Three hundred fifty dollars

at The First National Bank of Boston, Boston, Massachusetts

Value received

No. 

Due July 25, 19-- Maria A. Schmidt
1. Who is primarily responsible for the payment of this note? _______________________________

2. Is Karvelos an ordinary holder or a holder in due course? ______________________________

3. Is the niece a holder or a holder in due course? _______________________________________

4. What are the conditions that determine whether a person to whom commercial paper has been transferred is an ordinary holder or a holder in due course?

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______________________________________________________________________________
______________________________________________________________________________

SHORT-ANSWER QUESTIONS

Answer each of the following questions in the space provided.

1. Distinguish between primary parties and secondary parties.

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______________________________________________________________________________
______________________________________________________________________________

2. Define the term presentment and list the three conditions that are necessary for a proper presentment.

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______________________________________________________________________________

3. What is the primary reason for establishing holder in due course status?

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4. Under what circumstances can a holder in due course collect on an instrument even if the maker or drawer claims a defense?

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CHAPTER 22

Checks, The Banking System, and E-Money

KEY POINTS IN THE CHAPTER

- A check is a specialized type of draft drawn on a bank. The bank is always the drawee. Checks serve as a substitute for money.
- Issues relating to checks are governed by Article 3 and Article 4 of the UCC.
- A debtor-creditor relationship exists between a bank and its depositor. The bank is always obligated to honor the depositor’s checks if there are sufficient funds and if the check is not stale (more than six months old). If a bank wrongfully dishonors a check, it is liable in damages to the depositor.
- The need to make trips to the bank or to an ATM machine to complete bank transactions is eliminated in many (but not all) cases through online banking.
- The drawer may stop payment on a check by giving the bank a stop-payment order; if the bank disobeys the order and pays the instrument, it is liable in damages to the drawer, unless the drawer has not acted properly.
- A bank has no obligation to pay a postdated check until its due date but may pay early without liability unless notified by the drawer not to do so.
- The bank may not charge the depositor’s account where there is an alteration, a forgery, or a missing endorsement unless there is negligence on the part of the drawer.
- A bank may pay a check after the death of a drawer until it receives notice of the death or for ten days after the drawer’s death.
- The electronic funds transfer system (EFTS) allows money to be transferred electronically from the accounts of depositors to the accounts of creditors or stores where the depositors have made purchases.
- A bank is liable for wrongful dishonor if it fails to pay an electronic fund transfer when there are sufficient funds in the customer’s account.
- The Expedited Funds Availability Act and Regulation CC have determined when funds deposited with a bank are to be made available for withdrawal.
- There are special types of checks that perform different functions. These include certified checks, cashier’s checks, and traveler’s checks.

TRUE- FALSE QUESTIONS

Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T F A stop-payment order can be telephoned to the bank.
2. T F A depositor has a duty to advise the bank promptly of any mistakes found in the monthly statement of bank transactions.
3. T F Writing a bad check is a criminal act.

4. T F If the drawer’s negligence contributes to the alteration of a check, any loss resulting from the bank’s payment of the altered check is borne by the bank.

5. T F A bank is liable to the drawer for paying a check on which the payee’s endorsement has been forged, but it may recover from the holder who presented the check to the bank.

6. T F A bank is in no way liable for any loss that results from its cashing a check that lacks an endorsement.

7. T F Some banks, by express agreement, allow certain customers to write checks for more than the amount on deposit.

8. T F A bank can be held liable to a drawer if it pays a postdated check before it is due and such action harms the drawer.

9. T F A bank can be held liable to the payee for wrongfully refusing to pay a check when sufficient funds are on deposit in the bank.

10. T F The drawer of a certified check can issue a stop-payment order on the check.

11. T F If, after checking a holder’s identification, the bank is suspicious of the holder, it can refuse to honor the check without liability to the drawer.

12. T F A drawer who writes a check that a bank dishonors for lack of funds remains liable to the holder.

13. T F A cashier’s check is drawn by a bank on its own funds.

14. T F If a bank pays a check that has been materially altered, the bank is not liable to the drawer for the amount of the alteration.

15. T F A bank can pay a check up to ten days after the death of the drawer.

MULTIPLE-CHOICE QUESTIONS
On the line next to each statement, write the letter of the best answer.

1. A written stop-payment order is effective for
   a. fourteen days.
   b. seven days.
   c. six months.
   d. ninety days.

2. A check that a bank draws on its own funds, payable to a certain party, is a
   a. cashier’s check.
   b. certified check.
   c. personal check.
   d. money order.

3. A personal check that a bank guarantees to pay is a
   a. cashier’s check.
   b. money order.
   c. certified check.
   d. traveler’s check.
4. The relationship between a bank and a depositor who opens a checking account at the bank is one of
   a. bailor and bailee.
   b. debtor and creditor.
   c. bailor and independent contractor.
   d. assignor and assignee.

5. If a drawer has a check certified, the drawer
   a. remains primarily liable for payment.
   b. is relieved of secondary liability.
   c. is discharged.
   d. remains secondarily liable for payment.

6. To hold a bank liable for a forged signature, how long after the canceled check has been returned does the drawer have to report the forgery?
   a. ninety days.
   b. six months.
   c. one year.
   d. sixty days.

7. If a bank pays a check that has been materially altered, the bank
   a. has no liability for the alteration.
   b. is liable to the drawer for the amount of the alteration only if the drawer notifies the bank within one year after the altered check is returned to the depositor.
   c. is liable only for the original amount of the check.
   d. is liable only if notice of the alteration is received by the drawer within one year after the check is returned.

8. The electronic funds transfer system allows depositors to
   a. make deposits and withdrawals using a computer terminal.
   b. obtain traveler’s checks quickly.
   c. postdate checks.
   d. locate a missing endorsement on a check quickly.

9. A bad check is one written by a
   a. maker who has insufficient funds in a savings account.
   b. drawer who has insufficient funds in a checking account.
   c. drawee who has insufficient funds in a checking account.
   d. depositor who has insufficient funds in a savings account.

10. After a drawer’s death, a bank legally can pay or certify checks drawn before the drawer’s death for
    a. ninety days.
    b. sixty days.
    c. five days.
    d. ten days.

11. When a depositor tells the bank not to pay a particular check, the procedure is called
    a. dishonoring the check.
    b. forging the check.
    c. negotiating the check.
    d. stopping payment on the check.
12. A postdated check is
   a. payable on demand.
   b. invalid.
   c. payable on its due date.
   d. payable thirty days after its due date.

13. A popular type of cashier’s check issued by a bank or a private company such as American Express that transfers funds to a named payee and is considered a safe method of carrying funds is
   a: 
   a. money order.
   b. certificate of deposit.
   c. certified check.
   d. traveler’s check.

14. When a check is certified, the certifying bank
   a. dishonors the check.
   b. draws on its own funds.
   c. guarantees payment of the check.
   d. draws on the funds in another bank.

15. If the name of a fictitious payee is put on a check and that name then is endorsed, the bank that pays the check
   a. is liable for the full amount of the check.
   b. is not liable to the drawer.
   c. shares liability with the drawer.
   d. shares liability with the payee.

16. An oral stop-payment order is binding on a bank for
   a. thirty days.
   b. fourteen days.
   c. six months.
   d. three months.

17. A stale check is one that is more than
   a. six weeks old.
   b. three months old.
   c. one year old.
   d. six months old.

18. If a bank dishonors a check for no good reason, the customer can collect from the bank
   a. only the service fee charged by the bank.
   b. all damages the customer suffers.
   c. any damages that cause injury to the customer’s reputation resulting from a bad credit rating or from being arrested and prosecuted.
   d. nothing.

19. An overdraft occurs when a
   a. bank allows a customer to write checks for more than the amount of money on deposit.
   b. customer writes a bad check.
   c. bank cashes a check that is more than three months old.
   d. bank cashes a check dated after its actual date of issue.
20. When a customer presents a merchant with a debit card to purchase goods, the transaction is called a(n)
   a. EFT transfer.
   b. ATM transaction.
   c. POS transaction.
   d. VISA transaction.

SHORT-ANSWER QUESTIONS

Answer each of the following questions in the space provided.

1. What responsibilities does a bank have to a depositor for the payment of checks written by the depositor?

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______________________________________________________________________________
______________________________________________________________________________

2. What liability does a bank have to a depositor for wrongfully refusing to pay a holder the amount of a check written by the depositor?

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______________________________________________________________________________
______________________________________________________________________________

3. What obligations does a depositor have to the bank in which the depositor maintains a checking account?

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______________________________________________________________________________
______________________________________________________________________________

4. Who has liability if the bank pays a customer’s check that has been altered?

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______________________________________________________________________________

5. What happens if a bank pays a check by mistake over a valid stop-payment order?

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6. What is an electronic funds transfer (EFT) and what methods are currently in use to transfer funds electronically?

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______________________________________________________________________________
______________________________________________________________________________
7. What is meant by the term “virtual cash?”

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______________________________________________________________________________
______________________________________________________________________________

MATCHING QUESTIONS

Use the following terms to identify the phrases below. On the line next to each phrase, write the letter of the term that is most closely related to it.

1. _____ A check used primarily by tourists who want a safe method of carrying funds while traveling
   a. Signature card
   b. Postdated check
   c. Predated check
   d. Traveler’s check
   e. Certified check
   f. Material alteration
   g. Stale check
   h. Forged check
   i. Overdraft
   j. Cashier’s check
   k. POS transaction
   l. Stop-payment order
   m. COD transaction

2. _____ Raising the amount on the face of a check
3. _____ A personal check that a bank guarantees to pay
4. _____ A check that is dated after its actual date of issue
5. _____ A check written, with the bank’s permission, for more than the amount of money on deposit
6. _____ A contract between the bank and its customer
7. _____ A purchase transaction in which no money or checks change hands
8. _____ An order to a bank to refuse payment of a check
9. _____ A check drawn by a bank against its own funds
10. _____ A check in which the drawer’s signature is made without authorization
ACTIVITY: ANALYZING CHECKS
The completed check below contains at least five errors. Study the check carefully.

```
Donald E. Swanson
25 Canterbury Lane
Rochester, NY  14643

Pay to
Glenwood Pharmacy

Eighty and 00/100

First Federal Bank of Rochester
Rochester, New York  14643

MEMO

Dave Swanson

April 31  10  --  50-67  223

8,00

Dollars

187
```

List the five errors that appear in the check.

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

ACTIVITY: CASE PROBLEM
Read the case problem below. Answer yes or no, and then explain your answer in the space provided.

Frontier Phone Company issued a check in the amount of $1,000 to Hanson Manufacturing Company, one of its major customers. The check was presented for payment eleven months later to the First National Bank, which made payment on the check and charged the Frontier Phone Company’s account. Frontier now seeks to recover the payment from the bank, claiming that the check was “stale.” Can Frontier collect?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
Review Part IV: Negotiable Instruments

MULTIPLE-CHOICE QUESTIONS
Circle the letter of the best answer.

1. If only the signature of the endorser is written on the back of a check, it is known as a(n)
   a. bearer endorsement.
   b. blank endorsement.
   c. order endorsement.
   d. special endorsement.

2. To be a holder in due course, a person must take an instrument
   a. before its due date.
   b. the day after its due date.
   c. thirty days after its due date.
   d. ten days after its due date.

3. The party to a draft who is ordered to make payment to the payee is called the
   a. drawer.
   b. maker.
   c. payer.
   d. drawee.

4. The defense that a person was a minor when he or she signed a note is a(n)
   a. real defense.
   b. invalid defense.
   c. bearer defense.
   d. personal defense.

5. Defenses that are not good against a holder in due course are called
   a. holder defenses.
   b. real defenses.
   c. instrument defenses.
   d. personal defenses.

6. An endorsement that limits the endorser’s liability is called
   a. limited.
   b. restrictive.
   c. qualified.
   d. special.

7. To be negotiable, an instrument must be payable in
   a. services or money.
   b. money only.
   c. money or goods.
   d. U.S. currency only.
8. The maker of a draft is called the
   a. drawee.
   b. payor.
   c. drawer.
   d. payee.

9. A check that a bank draws on its own funds, payable to a certain party, is called a
   a. money order.
   b. draft.
   c. letter of credit.
   d. cashier’s check.

10. A check written by a depositor, with the bank’s permission, for more than the amount on deposit
    is called a(n)
    a. presentment.
    b. overdraft.
    c. postdated check.
    d. promissory note.

11. When the maker’s name on a promissory note has been forged, the maker has a defense that is good against
    a. all holders.
    b. only ordinary holders.
    c. only holders in due course.
    d. none of these.

12. If there is a discrepancy between the amount written in words and the amount indicated in figures
    on a check, the amount is
    a. the amount indicated in figures.
    b. the difference between the two amounts.
    c. the amount written in words.
    d. none of these.

13. A promissory note payable in merchandise is
    a. negotiable.
    b. nonnegotiable.
    c. illegal.
    d. payable in the dollar equivalent of the merchandise.

14. The maker of a promissory note is a
    a. primary party.
    b. secondary party.
    c. payee.
    d. drawee.

15. If a primary party dishonors an instrument, notice of dishonor must be given to the secondary party within
    a. ninety days.
    b. sixty days.
    c. a reasonable time.
    d. three business days.
16. A check that is more than six months old is called a(n)
   a. overdraft.
   b. stale check.
   c. bad check.
   d. postdated check.

**TRUE-FALSE QUESTIONS**

Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T F A promissory note must contain mention of an *IOU*.
2. T F A negotiable instrument can be readily transferred from one person to another.
3. T F *Payable on demand* means payable when the payee presents it to the person obligated to pay it.
4. T F A bearer instrument can be negotiated by voluntary delivery alone.
5. T F An alteration of commercial paper discharges the obligation of any party whose liability is changed by the alteration.
6. T F Delivery of a note back to the maker cancels the note.
7. T F The liability of secondary parties is unconditional.
8. T F Personal defenses are not good against holders in due course.
9. T F Real defenses make an instrument void from the time of its creation.
10. T F Accommodation parties who sign their name on an instrument as security against non-payment by a debtor may sign either as a co-maker or as an endorser.
11. T F The shelter principle allows a person to gain the rights and privileges of a holder in due course without actually being a holder in due course.
12. T F A holder who has knowledge that there is a defense against payment on an instrument cannot become a holder in due course.
13. T F A bank can pay checks for up to ten days after the drawer’s death.
14. T F Presentment is a demand for payment made by or on behalf of a holder.
15. T F A note or check payable in merchandise is a negotiable instrument.
MATCHING QUESTIONS

Use the following terms to identify the phrases below. On the line next to each phrase, write the letter of the term that is most closely related to it.

1. _____ A written promise by one party to pay a certain amount of money to another party
   a. Draft
   b. Promissory note
   c. Accommodation endorsement
   d. Primary parties
   e. Dishonor
   f. Negotiable instrument
   g. Restrictive endorsement
   h. Real defenses
   i. Holder in due course
   j. Personal defenses

2. _____ Fraud, lack of consideration, and other defenses that are not good against holders in due course

3. _____ An endorsement by a person who helps another by adding her or his signature to guarantee payment

4. _____ A holder who has special rights that can be enforced against a party who is obligated to pay

5. _____ Defenses that exist on creation of an instrument and that are good against all holders

6. _____ Those persons who are first obligated to make payment on an instrument

7. _____ An endorsement that limits what a party can do with an instrument

8. _____ The different types of written instruments that can be used as a substitute for money

9. _____ The refusal of the primary party to pay or accept an instrument when it is presented for payment

10. _____ An order by one party to a second party to pay a certain amount of money to a third party

SHORT-ANSWER QUESTIONS

Answer the following questions in the space provided.

1. Does a bank have an absolute duty to honor its customer’s checks?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

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2. Name two ways of making stop-payment orders and the length of time for which each is effective.

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______________________________________________________________________________

CASE PROBLEM
On March 8, Antes writes a check for $300 payable to Goodsen in payment for goods to be received later in the month. Before the close of business on the eighth, Antes notifies the bank by telephone to stop payment on the check. On Monday, March 18, Goodsen gives the check to Bingo for value. On the nineteenth, Bingo deposits the check in his account at the First National Bank. On the twentieth, the First National Bank sends the check to its correspondent, Key Bank. On the twenty-first, Key Bank presents the check through the clearinghouse to Chase Bank. On the twenty-second, Chase Bank presents the check to Manhattan Bank, the payer bank. On March 27, the payer bank makes payment of the check final. Antes sues the payer bank for the amount of the check. Can Antes recover?

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______________________________________________________________________________

SIMULATION PROBLEM
Question 1 through 5 relate to the following instrument. For each question write the letter to the correct answer on the line to the right of the question. The correct answers should be selected from the list below.

(Front)
To: Bankers Trust
Scranton, PA

Pay to the order of Dale Matthews five thousand dollars ($5000) on June 1, 2006.

March 10, 2006
/s/Sandra Connors
Sandra Connors

(Back)
/s/Dale Matthews
Pay to R. Vogt
/s/T. Weed
/s/R. Vogt
Without Recourse
List:

a. Bearer paper
b. Blank
c. Check
d. Draft
e. Negotiable
f. Nonnegotiable
g. Note
h. Order paper
i. Qualified Endorsement
j. Special Endorsement

1. This instrument is a (type of instrument) ___________.
2. Matthew’s endorsement makes the instrument (type of Instrument) _____________.
3. Weed’s endorsement makes the instrument (type of instrument) _____________.
4. Weed’s endorsement would be considered a (type of endorsement) _____________.
5. Vogt’s endorsement would be considered a (type of endorsement) _____________.

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PART V AGENCY, EMPLOYMENT, AND LABOR LAW
CHAPTER 23

Employer-Employee Relationship

KEY POINTS IN THE CHAPTER
- The employer-employee relationship is usually created by an oral or a written contract.
- The relationship may be affected by a union contract that covers terms of employment for union members.
- Employers and employees have obligations to each other that are determined by the employment contract or by statutes.
- Many state and federal statutes affect employer-employee relationships, including wages and hours, discrimination, healthful and safe working conditions, and disability.
- The general rule that an employer may terminate an employee’s service at will is gradually being watered down through legislation and court decisions.

TRUE-FALSE QUESTIONS
Indicate whether each statement below is true or false by circling T or F in the column on the right.

1. T F An employment contract for more than one year must be in writing.
2. T F An employee can be forced to join a union as a condition for being hired.
3. T F An employee’s desk may never be examined by an employer without the employee’s consent.
4. T F The Fair Labor Standards Act requires certain employers to provide employees a legal minimum hourly wage plus one and a half times their regular hourly wage for all hours worked over forty hours a week.
5. T F The Occupational Safety and Health Act requires employers to provide employees with safe working conditions in the buildings where they work.
6. T F An invention produced by the employee on the job always belongs to the employer.
7. T F An employer can end a contract with an employee at any time without liability.
8. T F If a contract does not specify a length of employment, an employee can quit a job at any time.
9. T F An employer may not test an employee for past drug usage.
10. T F Extreme negligence by an employee would prevent recovery under workers’ compensation laws.
11. T F The federal government may not require a lie detector test of a potential employee.
13. T F An employee is always entitled to pension benefits.
CASE PROBLEMS

Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. The Disco Roller Skating Rink advertised in a local newspaper for a floor guard. Schantz, age sixty-five, applied for the job and was turned down by the rink manager, who claimed that he could not handle the job because it was for a “younger man.” Can Schantz legally be turned down for this reason?

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______________________________________________________________________________
______________________________________________________________________________

2. Steeper was hired under a three-year contract as head accountant for the Alliance Tool Company. When the owner discovered that Steeper was giving a competing tool company confidential information about Alliance, he fired Steeper. Steeper sued for breach of contract, claiming that because his contract had not expired, he could not be fired. Was Steeper correct?

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3. Tydings Garage was required by state law to provide ventilating equipment to protect its workers. Because this equipment was not installed, one mechanic suffered carbon monoxide poisoning and was unable to work for several weeks. Was the mechanic entitled to benefits under workers’ compensation?

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______________________________________________________________________________
______________________________________________________________________________

4. Baxter was employed by Veteran Motors as a mechanic. He worked from 8:00 A.M. to 5:00 P.M., with an hour for lunch. After many warnings, Baxter continued to take much more than an hour for lunch. Would Veteran Motors be justified in discharging Baxter?

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______________________________________________________________________________
______________________________________________________________________________

5. Elgin applied for a job as a firefighter but was turned down because she was a female. Elgin claims that she cannot be discriminated against because of her gender. Is Elgin correct?

______________________________________________________________________________
______________________________________________________________________________
6. Barstow entered the United States on a tourist visa. She was offered a good job and decided to remain here. Is she permitted to accept the offer of employment?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

7. Curtis believed that his personnel file contained reference letters that might be unfavorable to him. He claims that he has an absolute right to examine his file. Is he correct?

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______________________________________________________________________________
______________________________________________________________________________

MULTIPLE-CHOICE QUESTIONS

Read the information below. Then, on the line next to each statement, write the letter of the best answer.

Curran was employed by Bond Wholesale Foods to deliver food supplies to grocery stores.

1. Curran legally is known as a(n)
   a. independent contractor.
   b. employee.
   c. merchant.
   d. employer.

2. After Curran had been employed for some time, he tried to organize his fellow workers into a union. Curran was allowed to organize his fellow workers, without interference from Bond Wholesale Foods, under the provisions of the
   c. Wage and Hour Law.
   d. Occupational Safety and Health Act.

3. As a result of Curran’s efforts, the workers formed a union that was recognized by Bond Wholesale Foods. Curran, as the union’s representative, negotiated a contract with higher wages and improved working conditions. Because both the employees and the company approved the contract, it is called a(n)
   a. workers’ agreement.
   b. collective bargaining agreement.
   c. equal pay agreement.
   d. workers’ compensation agreement.

4. Curran, while making a delivery, fell and broke his leg. As a result, he could not work for several weeks. Curran’s medical bills, as well as a weekly income while he could not work, were paid under
   a. unemployment insurance.
   c. the Occupational Safety and Health Act.
   d. state workers’ compensation laws.
5. Bond Wholesale Foods prohibits its employees from conducting anything other than company business during working hours. Curran runs a part-time storm window business on the side. While making deliveries for Bond, he often meets with customers for his storm window business. If Bond discovers what Curran is doing, it can
   a. report Curran to the EEOC.
   b. report Curran to OSHA.
   c. fire Curran.
   d. have Curran arrested.

6. The burden of proving that a discriminatory labor practice is necessary for the proper performance of a job is on the
   a. union.
   b. employer.
   d. employee.

7. If Curran needs to care for a seriously sick child, he is entitled to unpaid leave for up to
   a. one year.
   b. sixty days.
   c. twelve weeks.
   d. nine months.
CHAPTER 24

Principal-Agent Relationship

KEY POINTS IN THE CHAPTER

- An agent enters into transactions with third parties in place of and at the request of a principal.
- A principal-agent relationship may be created by oral or written contract, by appearance, by ratification by the principal, or by necessity.
- The difference between an agent and an employee is the amount of control and supervision involved.
- Agents having broad authority are called general agents; agents having narrow authority are known as special agents.
- Agents and principals owe each other certain duties and have certain obligations, including obedience, loyalty, compensation, and safe working conditions.
- A principal-agent relationship may be terminated by agreement, by fulfillment of the purpose of the agency, by revocation of the agent’s authority, or by operation of law.

MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. The right of an agent to require the principal to pay for personal losses incurred by the agent while the agent is performing business for the principal is called
   - a. rebate.
   - b. reimbursement.
   - c. indemnification.
   - d. recovery.

2. Browning hired Barrett to paint her house for the sum of $2,500. Barrett would be classified as
   - a. general agent.
   - b. special agent.
   - c. independent contractor.
   - d. employee.

3. All profits that result from an agency
   - a. belong solely to the agent.
   - b. belong solely to the principal.
   - c. are divided equally between the principal and the agent.
   - d. are divided according to the agreement between the principal and the agent.

4. A real estate agent hired to sell a house is considered a(n)
   - a. independent contractor.
   - b. employee.
   - c. general agent.
   - d. special agent.
5. A principal legally can appoint an agent by
   a. a written contract only.
   b. an oral contract only.
   c. putting a notice in a newspaper.
   d. either a written or an oral contract.

6. A person can act as
   a. both an employee and an independent contractor.
   b. both an employee and an agent.
   c. both an employer and an employee.
   d. all of the above.

7. Agents who do not receive compensation are called
   a. free agents.
   b. special agents.
   c. gratuitous agents.
   d. general agents.

8. In an emergency, an agency relationship can be created by
   a. ratification.
   b. appearance.
   c. duress.
   d. necessity.

9. The major difference between a special agent and a general agent is
   a. the amount of compensation paid.
   b. the way the agency is created.
   c. the authority given to the agent.
   d. the type of work the principal does.

10. A formal written document authorizing one person to act for another is called a(n)
    a. appointment.
    b. power of attorney.
    c. employment contract.
    d. bailment agreement.

11. When an agent makes a contract for a deceased principal, the contract is
    a. binding on the agent.
    b. binding on the principal’s estate.
    c. voidable.
    d. void.

12. Doan authorized Marple to sell Doan’s car for not less than $2,000 for a commission of 10%. Marple sold the car for $2,400. How much must Marple give Doan?
    a. $2,000.
    b. $2,000 less the commission.
    c. $2,200.
    d. $2,400 less the commission.

13. An agent is given formal written authority to sign checks for her principal. This formal written authorization is called a(n)
    a. affidavit.
    b. power of attorney.
    c. notary.
    d. certification.
14. Morales, a general agent for the Kincaid Manufacturing Company, was notified of the company’s bankruptcy. Which of the following statements about the principal-agent relationship is true?
   a. Contracts made by an agent after the bankruptcy of the principal are binding on the principal.
   b. A general agent is liable as a guarantor of the bankrupt principal’s unpaid accounts.
   c. The principal’s bankruptcy has no effect on the principal-agent agreement.
   d. The bankruptcy of the principal terminates the agency agreement.

15. A principal-agent relationship can be terminated by
   a. the death of a third party.
   b. the request of a third party.
   c. mutual agreement between principal and agent.
   d. the bankruptcy of a third party.

MATCHING QUESTIONS

Use the following terms to indicate the way in which the agency relationship was created. On the line next to each description, write the letter of the term that is most closely related to it.

1. _____ Arlis left Marvin, a friend, at her fruit and vegetable stand with instructions only to tell customers that the stand would open two hours late because of an emergency. While Arlis was gone, Marvin sold fruit and vegetables to several customers.
   a. Agency created by contract
   b. Agency created by appearance
   c. Agency created by ratification
   d. Agency created by necessity

2. _____ Calkins used Green’s car to drive Green’s parents to a family reunion 50 miles away. The car developed engine trouble, and Calkins had to have it repaired in order to reach the destination. Calkins presented the repair bill to Green.
   a. Agency created by contract
   b. Agency created by appearance
   c. Agency created by ratification
   d. Agency created by necessity

3. _____ Beaty signed a three-year written contract to manage Richard’s Tour Guide Agency in New York City.
   a. Agency created by contract
   b. Agency created by appearance
   c. Agency created by ratification
   d. Agency created by necessity

4. _____ Downs asked Erlman to purchase a stereo and charge it to her (Downs’s) account with her credit card. She asked Erlman to pay no more than $750. Erlman charged a stereo that cost $1,000. When the bill arrived, Downs paid it in full.
   a. Agency created by contract
   b. Agency created by appearance
   c. Agency created by ratification
   d. Agency created by necessity

5. _____ Count is employed under a five-year contract as a sales representative for Arnold’s Clothes Unlimited. Count sold merchandise on credit to Barnes’s Department Store, which must pay the bill in thirty days.
   a. Agency created by contract
   b. Agency created by appearance
   c. Agency created by ratification
   d. Agency created by necessity
CASE PROBLEMS

Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. Todd was a salesperson for the Marcum Textbook Company. The company provided her with a car to travel to various high schools within a specific territory in Wyoming. While she was driving within the speed limit on a highway, the car was struck by a hit-and-run driver, causing $200 in damages. Todd paid for the repairs out of her own pocket, but Marcum refused to repay Todd, claiming it had no legal obligation to do so. Was the company correct?

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2. O’Brien, a retiree, decided to invest in a fast-growing company that was selling its stock for $20 a share. He appointed Walford, a person with a good business background, as his agent to buy fifty shares of Xeon stock. Unknown to O’Brien, Walford already had purchased one hundred shares of Xeon stock for himself when it was being offered at $10 a share. Walford then sold fifty of his shares to O’Brien for $20 a share and kept the profit. When O’Brien found this out, he demanded that Walford take the stock back, stating that what Walford did was a breach of trust. Did Walford have to comply?

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3. DiFabio, an adult, hired Nichols, a minor, as general manager of a service station and authorized him to buy supplies. Nichols contracted to buy some supplies that were not needed. DiFabio claimed that the contract was not valid because Nichols was a minor and therefore could not act as an agent. Was DiFabio legally correct in claiming that he was not bound by Nichols’s contract?

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4. As purchasing agent for the Delton Company, Millson often bought materials from the Howard Supply Company. After Delton discharged him, Millson bought something for himself from Howard Supply but charged it to Delton. Howard Supply knew nothing about Millson’s dismissal. Was Howard Supply able to hold the Delton Company liable for Millson’s purchase?

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5. Fox, who was going into the army, contracted with Scutti Auto Sales to sell his car for a commission. Scutti Auto Sales advanced $500 to Fox, with the understanding that the advance would be paid back out of the proceeds of the sale. Three weeks later, before the car was sold, Fox changed his mind and tried to terminate the agency. Was Fox legally able to terminate the agency?
CHAPTER 25

Principal-Agent, Employer-Employee, and Third-Party Relationships

KEY POINTS IN THE CHAPTER

- An agent’s authority may be expressed (stated orally or in writing), implied (needed to exercise the functions of the agent), emergency (required under unusual situations in which the principal cannot be contacted), or apparent (where third parties are led to believe that the agent has certain authority).

- As long as an agent has the authority described above and acts within the scope of that authority, the agent’s principal is liable to third parties for contracts that the agent makes. If the agent enters into unauthorized contracts, the employer may ratify the contract and be bound by its terms.

- Both an employer and an agent may be held liable to third parties for torts committed by an employee or an agent, provided the employee was acting within the scope of his employment and the agent was acting within the scope of her authority. Intentional torts would be considered as being outside the scope of one’s employment or authority.

- An employer and principal are not liable for crimes committed by an agent or employee unless the employer or principal authorized the criminal act.

COMPLETION QUESTIONS

In the statements below, important words have been omitted. Fill in the blanks to complete each statement.

1. The direct authority that an agent is given by a principal is called __________________ authority.

2. A principal whose identity is unknown to a third party is called a(n) __________________ principal.

3. A principal can be held liable for a(n) __________________ committed by an agent while the agent is pursuing agency business.

4. A principal can approve the actions of an unauthorized agent by __________________ them.

5. A power of attorney is an example of __________________ authority in a principal-agent relationship.

6. The authority that a principal leads third parties to believe that an agent has is called __________________ authority.

7. If an agent acts within the scope of his or her authority, the agent is not considered a(n) __________________ to a contract with a third party.

8. An agent can be held personally liable if the agent fails to disclose the principal’s identity to a(n) __________________.
9. The authority that an agent has to perform duties not expressly given by the principal is called ______________ authority.

10. A principal or employer is not liable for a ______________ committed by an agent or employee.

**MULTIPLE-CHOICE QUESTIONS**

Circle the letter of the best answer.

1. Frost was hired as general manager of Casey’s snow plowing business. As general manager, Frost has
   a. implied authority to hire and fire people to help clear snow.
   b. implied authority to sell the snow plowing business.
   c. implied authority to purchase new equipment.
   d. express authority to cancel equipment orders placed by Casey.

2. A principal generally is not liable for her or his agent’s
   a. torts.
   b. contracts.
   c. criminal acts.
   d. false statements.

3. A principal whose identity is not known to a third party with whom the agent makes a contract is called a(n)
   a. independent contractor.
   b. fiduciary.
   c. undisclosed principal.
   d. irrevocable principal.

4. Apparent authority is
   a. express authority.
   b. implied authority.
   c. the extent of the agent’s authority.
   d. authority that a principal leads third parties to believe the agent has.

5. When a principal approves of an agent’s unauthorized act, the principal has
   a. ratified the act.
   b. rejected the act.
   c. elected either to ratify or to reject the act.
   d. acted in the scope of authority.

6. A principal generally is bound by contracts an agent makes with third parties on behalf of the principal if the agent acts
   a. quickly.
   b. within the scope of authority.
   c. to the principal’s advantage.
   d. on commission.

7. When a third party discovers the identity of an undisclosed principal, the third party can hold
   a. both the principal and the agent liable on the contract.
   b. only the principal liable on the contract.
   c. only the agent liable.
   d. either the principal or the agent liable, but not both.
8. If the agent does not include the principal’s name on a written contract,
   a. both the principal and the agent are bound by the contract.
   b. only the agent is bound by the contract.
   c. only the principal is bound by the contract.
   d. the contract is not binding.

9. A person who pretends to be an agent
   a. is personally liable to a third party.
   b. binds the principal.
   c. binds the third party.
   d. has the power of ratification.

10. The proper signature by an agent, R. M. Figs, on behalf of a principal, Norman Corner, is
    a. R. M. Figs.
    b. Norman Corner by R. M. Figs, Agent.
    c. R. M. Figs, Agent.
    d. Norman Corner, Principal.

CASE PROBLEMS

Read the case problems below. For each problem, answer yes or no, and then explain your answer in
the space provided.

1. While she was away on a business trip, Martin, a storeowner, left Maxim, one of her salesclerks,
in charge of the store. During this time, a heavy rainstorm flooded the basement. Maxim hired two
men to remove some merchandise from the basement to save it from water damage. Was Martin
legally obligated to pay the two men?

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2. Lerner, a sales agent for Burke, sold jewelry to Polk, stating that it was platinum. Later, when
   Polk learned that the jewelry was white gold, he sued Burke. Burke claimed that he was not liable
   because he had not authorized Lerner to make the statement about the jewelry. Was Burke liable
   for damages?

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3. Hammer was employed as a salesperson by the Outgoing Merchandise Company. In the
   company’s name, with a view to boosting sales, she entered into a contract with a TV station for a
   series of spot announcements. The Outgoing Company refused to pay for the advertising, claiming
   that Hammer did not have the authority to buy TV spots. Was Outgoing liable to the TV station?

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4. Folwell, a plumber, needed a certain wrench to complete a job. He asked Burns, his employee, to buy one at a local hardware store. Finding the store closed, Burns broke into it and stole the wrench. Is Folwell liable for Burns’s crime?

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5. ABC Motor Lines held a company party at a restaurant and used one of its buses to transport some employees to the party. The bus driver was speeding and hit a taxi, injuring its passengers. Is ABC liable for the injuries?

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Review Part V: Agency, Employment, and Labor Law

TRUE-FALSE QUESTIONS
Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T F One obligation of an agent to a principal is indemnification.
2. T F Implied authority is a type of actual authority.
3. T F If a principal terminates an agent’s actual authority, the agent’s apparent authority automatically is terminated as well.
4. T F If an agent refuses to continue to work for the principal, the principal-agent relationship automatically is terminated.
5. T F A person can be an employee and also act as an agent for the employer.
6. T F A principal-agent relationship is created only through an oral or written contract.
7. T F Under the Occupational Safety and Health Act, employers must provide employees with safe working conditions.
8. T F An employee who is covered by workers’ compensation laws is entitled to certain benefits if injured on the job, regardless of whether the employee was at fault.
9. T F A person can act as an agent for both parties to a transaction even if neither party is aware of the agent’s dual status.
10. T F An agent who makes a secret profit is entitled to keep the money even if the principal discovers it and demands its return.

MULTIPLE-CHOICE QUESTIONS
Read the information below. Then, on the line next to each statement, write the letter of the best answer.

Whitmore, a used-car dealer, hired Chambers as a sales representative for six months at a weekly salary of $200 plus commission.

1. Chambers paid for some repairs that were required when she was demonstrating a car to a customer. Her right to collect this amount from Whitmore is called the right of
   a. accounting.
   b. compensation.
   c. indemnification.
   d. reimbursement.
2. If, after Chambers had sold several used cars, Whitmore found that she was a minor,
   a. Chambers’s contracts still would be valid.
   b. Chambers’s contracts would be voidable.
   c. Chambers’s contracts would be invalid.
   d. Chambers could not legally make any more contracts.

3. After a customer purchased a used car on the basis of Chambers’s remark that the car was “a bargain at $1,500,” the customer found that the engine was in very bad condition. The customer can hold Whitmore legally liable for
   a. fraud.
   b. undue influence.
   c. deceit.
   d. nothing.

4. Chambers is a(n)
   a. general agent.
   b. special agent.
   c. implied agent.
   d. public agent.

5. If a customer is injured in an accident caused solely by Chambers’s careless driving, that customer can sue Whitmore because the principal
   a. has a duty to live up to the terms of the contract.
   b. is bound by any knowledge acquired by the agent.
   c. is liable for torts of an agent acting within the scope of the agency.
   d. has a duty to compensate the agent for any loss or damage.

CASE PROBLEMS
Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. Bauman agreed to act as general manager of the Furniture Mart for three years. Is it necessary for this agreement to be in writing?

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2. Franklin worked as a cook in the Little Chef Restaurant. Melanson, the owner of the restaurant, did not anticipate the large Thanksgiving Day business and so authorized Franklin to buy several food items at a local food market where Melanson often shopped. Was Franklin a special agent?

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3. Drake, the owner of Rent-A-Car, hired Pincus to purchase five new cars for the business. On the day that Pincus made the purchase, Drake, who was on vacation, died in a hotel fire. Was the contract made by Pincus valid?

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4. Pitnell authorized her office manager to employ an additional bookkeeper. The office manager hired a bookkeeper and a clerk typist. Pitnell refused to pay the clerk typist’s salary, claiming she was not liable because the office manager had exceeded her authority. Was Pitnell correct?

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5. Jackson hired Ames, a minor, to manage a store. Without Jackson’s knowledge, Ames bought merchandise for the store from the Rustic Supply Company. Jackson later refused to pay for the merchandise on the grounds that he was not bound by a minor’s contract. Was Jackson bound by the contract?

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PART VI BUSINESS ORGANIZATION AND REGULATION
CHAPTER 26

Sole Proprietorships, Partnerships, and Limited Liability Organizations

KEY POINTS IN THE CHAPTER

- In a sole proprietorship, the most common form of business organization, the owner has sole responsibility for management.

- How a partnership is operated depends on the partnership agreement and the Uniform Partnership Act. These affect management decisions, sharing of partnership profits and losses, and partnership property.

- Partnerships are created by agreement or by acts of the partners.

- Partners have rights, such as participating in management and sharing in partnership property. They also have obligations to each other. A partnership may be bound by the acts of a partner, if they are done with apparent authority to bind the partnership and in the ordinary course of partnership business.

- A partnership may be dissolved because its term of existence has expired, by agreement between the partners, by death of a partner, or because of bankruptcy of a partner.

- The partnership form has advantages and disadvantages. The advantages include ease of organization, operation, and termination. The disadvantages include the unlimited liability of partners for partnership debts and the lack of continuity if a partner dies or leaves the business.

- The law permits limited partnerships, limited liability organizations, and limited liability partnerships. Like general partnerships, there are income tax advantages that corporations do not enjoy, but unlike general partnerships, partners have limited liability for partnership debts and torts.

TRUE-FALSE QUESTIONS

Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T F The partnership is the most flexible form of business organization.
2. T F In most states, certain formalities are required to establish a sole proprietorship.
3. T F A sole proprietor who uses a trade name must register that name in a public office.
4. T F Lawyers or doctors can practice their professions in partnerships.
5. T F To establish a partnership, there always must be a partnership agreement.
6. T F If a partnership is formed by an agreement, the agreement must be in writing.
7. T F In the absence of an agreement, a partnership can be implied from the actions of the partners.
8. T F If a partnership wants to admit new partners, all of the existing partners must agree to the change.
9. T F All partners in a partnership can share equally in the profits even if they do not share equally in management responsibilities.

10. T F If there are three equal partners in a business, one of them can sell a third of the assets to someone else.

SHORT-ANSWER QUESTIONS
Answer each of the following questions in the space provided.

1. Explain the difference between a secret partner and a silent partner.

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2. List and briefly explain five different types of partners.

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3. Explain the basic difference between a general partnership and a limited partnership.

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4. Explain the difference between a limited partnership and a limited liability company.

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5. Explain the advantages of limited liability companies and partnerships.

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MULTIPLE-CHOICE QUESTIONS
Circle the letter of the best answer.

1. The most common form of business organization is the
   a. corporation.
   b. limited partnership.
   c. sole proprietorship.
   d. partnership.
2. An inactive partner known by the public to be a partner is called a
   a. limited partner.
   b. silent partner.
   c. secret partner.
   d. dormant partner.

3. The liability of partners as a group and individually is called
   a. collective liability.
   b. general liability.
   c. group liability.
   d. joint and several liability.

4. Unless otherwise agreed, the partners’ shares of the profits are
   a. equal.
   b. based on the amount each partner invested.
   c. based on the partners’ ages.
   d. based on the partners’ salaries.

5. The termination of a partnership is called
   a. disassociation.
   b. cessation.
   c. dispartnership.
   d. dissolution.

6. When two or more persons conduct a business as a formal partnership without making a partnership agreement, they have formed a(n)
   a. express partnership.
   b. partnership by implication.
   c. illegal partnership.
   d. corporation.

7. One disadvantage of a sole proprietorship is
   a. lack of flexibility.
   b. the difficulty of setting it up.
   c. the expense of setting it up.
   d. the owner’s risk.

8. A medical partnership is classified as a
   a. trading partnership.
   b. limited partnership.
   c. joint venture.
   d. nontrading partnership.

9. A partnership formed to last six months
   a. can be made with an agreement.
   b. must be formed with a written agreement.
   c. is invalid.
   d. is unconstitutional.

10. Termination of a partnership can result from
    a. the death of a partner.
    b. the bankruptcy of a partner.
    c. the retirement of a partner.
    d. all of these.
CASE PROBLEMS

Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. Hill and Doan became partners in an automobile business. Their partnership agreement contained no provision for dividing profits and losses. At the end of the year, Hill claimed that he was entitled to more of the profits than Doan because he spent more time managing the business than Doan did. Was Hill correct?

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2. Jansen and Johnson operated a grocery store as partners. Jansen told Johnson not to buy a certain product because it was not selling well. Johnson disregarded Jansen’s request and bought a large quantity of the product. Jansen refused to pay the bill, claiming that her orders had been disregarded. Was the partnership obligated to pay for the product?

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3. Fain and Warner were partners in a service station. Because of personal business problems, Fain had to file a petition in bankruptcy. Warner claimed that the partnership could continue. Was Warner correct?

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CHAPTER 27

Corporations and Franchising

KEY POINTS IN THE CHAPTER

- A corporation is created under state law by the filing of articles of incorporation, resulting in the issuance of a charter.

- A corporation is a legal entity, owned by its stockholders. It may hold title to property in its own name, and sue or be sued in its own name.

- Corporations are classified as either public or private, and profit or non-profit.

- Stockholders elect the directors, vote on major issues, and share in corporate profits. Directors establish general corporate policies, hire officers, and declare dividends. Officers handle day-to-day operations.

- Officers and directors are liable to the corporation for negligence and intentional torts. They may be liable to third parties for fraud.

- Corporate existence ends when its term expires (unless it has perpetual existence), when the state revokes its charter, when there is a merger or consolidation, or when the stockholders agree to terminate.

- The corporate form has advantages and disadvantages. The advantages are continuity, ease of transferring ownership using corporate stock, and limited liability of stockholders. Disadvantages include the expense involved in organizing, operating, and terminating; taxation at both the corporate and stockholder levels, and extensive state and federal regulation.

- Franchising is a common type of business arrangement involving the purchase of business know-how, management skills, and a name and/or logo well known to the public. Both state and federal governments regulate the registration and sale of franchises.

CASE PROBLEMS

Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. The directors of the Brennan Corporation were negligent in handling the corporation’s business, and the company lost money. The stockholders then voted to dissolve the corporation. Did the common stockholders have first claim against the assets?

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2. The Rogers Corporation was organized to manufacture electronic equipment. The board of directors voted (a) to borrow $1,000,000 to expand the company and (b) to go into the plumbing business. Neither actions were authorized by the charter and bylaws. Were the stockholders able to invalidate both of these actions?

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3. Segal and Finch owned a pizza shop. Business was good and they decided to expand. What would be the advantages of expanding by franchising their business?

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4. Jones, President of Allen Corp., sold products to Rondo Corp. that Jones knew were defective. Can Rondo hold Jones liable for fraud?

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MATCHING QUESTIONS

Use the following terms to identify the phrases below. On the line next to each phrase, write the letter of the term that is most closely related to it.

1. _____ The written permission given by stockholders to someone else to “vote their share” for them
   a. Board of directors
   b. Preferred stock
   c. Dividend
   d. Proxy
   e. Ultra vires
   f. Common stock
   g. Stock certificate
   h. Stockholder
   i. Merger
   j. Articles of incorporation
   k. Tender offer
   l. Insider trading

2. _____ A type of stock entitled to receive dividends provided that profits are earned
   a. Board of directors
   b. Preferred stock
   c. Dividend
   d. Proxy
   e. Ultra vires
   f. Common stock
   g. Stock certificate
   h. Stockholder
   i. Merger
   j. Articles of incorporation
   k. Tender offer
   l. Insider trading

3. _____ The joining of two corporations, with one surviving
   a. Board of directors
   b. Preferred stock
   c. Dividend
   d. Proxy
   e. Ultra vires
   f. Common stock
   g. Stock certificate
   h. Stockholder
   i. Merger
   j. Articles of incorporation
   k. Tender offer
   l. Insider trading

4. _____ Stock having a prior right to receive a dividend
   a. Board of directors
   b. Preferred stock
   c. Dividend
   d. Proxy
   e. Ultra vires
   f. Common stock
   g. Stock certificate
   h. Stockholder
   i. Merger
   j. Articles of incorporation
   k. Tender offer
   l. Insider trading

5. _____ Exceeding the powers of the corporation
   a. Board of directors
   b. Preferred stock
   c. Dividend
   d. Proxy
   e. Ultra vires
   f. Common stock
   g. Stock certificate
   h. Stockholder
   i. Merger
   j. Articles of incorporation
   k. Tender offer
   l. Insider trading

6. _____ The application for permission to incorporate
   a. Board of directors
   b. Preferred stock
   c. Dividend
   d. Proxy
   e. Ultra vires
   f. Common stock
   g. Stock certificate
   h. Stockholder
   i. Merger
   j. Articles of incorporation
   k. Tender offer
   l. Insider trading

7. _____ A person having an interest in a corporation
   a. Board of directors
   b. Preferred stock
   c. Dividend
   d. Proxy
   e. Ultra vires
   f. Common stock
   g. Stock certificate
   h. Stockholder
   i. Merger
   j. Articles of incorporation
   k. Tender offer
   l. Insider trading

8. _____ The group that sets corporate policy
   a. Board of directors
   b. Preferred stock
   c. Dividend
   d. Proxy
   e. Ultra vires
   f. Common stock
   g. Stock certificate
   h. Stockholder
   i. Merger
   j. Articles of incorporation
   k. Tender offer
   l. Insider trading

9. _____ A document showing part ownership of a corporation
   a. Board of directors
   b. Preferred stock
   c. Dividend
   d. Proxy
   e. Ultra vires
   f. Common stock
   g. Stock certificate
   h. Stockholder
   i. Merger
   j. Articles of incorporation
   k. Tender offer
   l. Insider trading
10. _____ The part of corporate profits paid to a stockholder

11. _____ A public offer to stockholders to purchase their shares

12. _____ Trading in corporate securities by those with special knowledge

MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. To organize a private corporation, permission first is required from
   a. the courts.
   b. the state government.
   c. a judge.
   d. the federal government.

2. A corporation that is organized in one state and does business there is known in that state as a
   a. local corporation.
   b. foreign corporation.
   c. regional corporation.
   d. domestic corporation.

3. The first formal step in incorporating a corporation is drafting and filing the
   a. articles of incorporation.
   b. company bylaws.
   c. stock certificates.
   d. minutes of incorporation.

4. The number, type, and nature of stocks issued by a corporation are known collectively as its
   a. liquidity factor.
   b. stock composition.
   c. capitalization.
   d. no-par factor.

5. Corporate stock that has a prior claim to dividends over all other classes of stock is called
   a. cumulative stock.
   b. participating stock.
   c. no-par stock.
   d. preferred stock.

6. General policy for a corporation is determined by the
   a. stockholders.
   b. legislature.
   c. directors.
   d. New York Stock Exchange.

7. Officers of a corporation are hired by
   a. the directors.
   b. the stockholders.
   c. the state.
   d. other officers.
8. Most corporations are incorporated for a(n)
   a. term of ten years.
   b. term of one hundred years.
   c. indefinite term.
   d. term of seventy-five years.
9. When two corporations join together and a new one is formed, the result is called a(n)
   a. merger.
   b. joint venture.
   c. amalgamation.
   d. consolidation.
10. All of the following terminate corporate existence except
    a. the end of the corporate term.
    b. stockholder agreement.
    c. revocation of the corporate charter.
    d. a change in ownership.
11. When one corporation buys another corporation, the purchase is called a(n)
    a. consolidation.
    b. merger.
    c. amalgamation.
    d. proxy.
12. A corporation organized to operate a state hospital is an example of a
    a. public corporation.
    b. nonprofit corporation.
    c. common stock corporation.
    d. municipal corporation.
13. If a corporation organized to build homes began selling used cars instead, the action would be considered
    a. sua sponte.
    b. de bonis non.
    c. ultra vires.
    d. inter vivos.
14. In Ohio, an Idaho corporation that does business in Ohio is called a(n)
    a. domestic corporation.
    b. foreign corporation.
    c. public corporation.
    d. common stock corporation.
15. Directors of a corporation are elected by the
    a. stockholders.
    b. state.
    c. officers.
    d. federal government.
16. A stockholder’s written authorization allowing another person to cast her or his vote is called
    a. ultra vires.
    b. a stock certificate.
    c. a pre-emptive right.
    d. a proxy.
17. Nonprofit corporations can be organized to
   a. provide charitable services.
   b. earn money.
   c. operate without a charter.
   d. issue stock.

18. The board of directors of a corporation usually is elected for a period of
   a. one year.
   b. two years.
   c. five years.
   d. ten years.

19. Two types of private corporations are
   a. stock and nonstock.
   b. profit and nonprofit.
   c. limited and general.
   d. common and preferred.

20. All stockholders in a corporation have the right to
   a. receive dividends.
   b. vote on corporate matters.
   c. sell their stock.
   d. all of the above.

**SHORT-ANSWER QUESTIONS**

Read the following paragraph, and then answer the questions in the space provided.

Salerno and Peterson are organizing a corporation in Indiana to manufacture and market solar heating panels. They have chosen the name Icarus, Inc., even though there already is a company in Indiana named Icarus, Ltd., which manufactures sunglasses. They plan to issue 200,000 shares of common stock in the corporation. In drawing up the bylaws, Salerno wants to include a provision that in the event of his death, the corporation will be dissolved.

1. Will Salerno and Peterson be allowed to use the name Icarus, Inc.? Why or why not?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

2. What are the advantages of organizing this company as a corporation rather than as a partnership?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

3. Can Salerno insist that the corporation be dissolved in the event of his death?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
4. Like most corporations, this company will be subject to double taxation. Explain double taxation.

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

5. One year, the corporation failed to pay a dividend. Does Cortillo have a claim against the corporation?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

6. Describe the ways in which this corporation can be dissolved.

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

7. If Icarus, Ltd., decides to sell its products using distributors who take them on consignment, would this business arrangement be considered a franchise?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
CHAPTER 28

Government Regulation of Business

KEY POINTS IN THE CHAPTER

• Both the state and federal governments regulate business to maintain competition and to protect the rights of consumers, employees, and stockholders.

• A state’s power to regulate business is concerned with intrastate commerce, while the federal government’s power, derived from the U.S. Constitution, is concerned with interstate commerce.

• Certain businesses, such as public utilities, enjoy monopoly status because their services are so crucial to the public. They are subject to greater than normal regulation, involving advertising and price controls.

• One of the most heavily regulated industries in the United States is the securities industry. Federal acts, designed to protect buyers of securities, regulate the sale and transfer of securities to prevent fraud and misrepresentation.

• Regulations are of little use unless they can be enforced. Administrative agencies, the courts, and public opinion all enforce government regulations. The methods include fines, injunctions, revocation of licenses to operate, and civil lawsuits.

MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. Government regulation of business is designed to protect
   a. consumers.
   b. employees.
   c. stockholders.
   d. all of these.

2. The basic power of governments to regulate business is called the
   a. commerce power.
   b. police power.
   c. regulatory power.
   d. public power.

3. Business activity that is conducted solely within the boundaries of a state is called
   a. domestic commerce.
   b. interstate commerce.
   c. intrastate commerce.
   d. foreign commerce.

4. The power to regulate interstate commerce comes from
   a. the individual states.
   b. the U.S. Constitution.
   c. local governments.
   d. the United Nations Charter.
5. Antitrust regulation at the federal level is based on the

   a. monopolies.
   b. mergers.
   c. price discrimination.
   d. unfair competition.

7. The antitrust laws apply to all the following organizations except
   a. labor unions.
   b. railroads.
   c. steel companies.
   d. lumber companies.

8. Most governmental regulations of business are enforced by
   a. the police.
   b. local government.
   c. administrative agencies.
   d. the U.S. Congress.

9. The sale and trading of securities is regulated by the
   a. Federal Reserve Board.
   b. New York Stock Exchange.
   d. Bank of the United States.

10. Laws prohibiting the sale of certain products on certain days of the week are called
    a. sunshine laws.
    b. closing laws.
    c. common laws.
    d. Sunday laws.

11. Federal legislation prohibiting practices that lessen competition is known as
    b. The First Trade Act.

12. Competitors who divide a market among themselves to lessen competition are engaging in an
    illegal restraint of trade known as
    a. a tying agreement.
    b. market allocation.
    c. an exclusive dealing arrangement.
    d. a monopoly.
SHORT-ANSWER QUESTIONS

Answer each of the following questions in the space provided.

1. List five important areas in which government regulates business to protect the public.

   __________________________________________
   __________________________________________
   __________________________________________

2. Administrative agencies have legislative, executive, and judicial powers. Give a brief explanation of each type of power.

   __________________________________________
   __________________________________________
   __________________________________________

3. List the basic terms of a standard franchise agreement.

   __________________________________________
   __________________________________________
   __________________________________________

CASE PROBLEMS

Read the case problems below and then state which agency or agencies you would consult for help in each situation.

1. You operate a retail store selling musical instruments. A large chain store that also sells musical instruments opens for business a few blocks from your store. The owners of that store spread a rumor that your pianos are made of inferior materials and will not last more than six months.

   Agency:

2. You work for a machine tool company and operate a lathe. It is common practice for employers to provide employees with safety glasses to prevent injury caused by pieces of metal thrown from the machines. Your employer, however, refuses to provide you with this type of safety equipment.

   Agency:

3. You buy 50,000 shares of stock in a uranium mining company and then discover that the company did not disclose the fact that uranium has never been found in the area in which the company plans to do business. You want to return the stock and get your money back, but the company refuses.

   Agency:

4. You are the chairperson of the federal agency that is responsible for protecting those who borrow money from banks. You learn that a certain bank has been charging its borrowers an interest rate that is double the maximum permitted by federal law.

   Agency:
5. You live in a city in which there are four TV stations. One company purchases all four stations and broadcasts the same news on all the stations. You feel that the public interest is not being served by this monopolistic practice.

Agency:

6. You live in a residential area that is zoned for one-family houses. A local manufacturer buys the three homes next to yours and announces that it plans to demolish them and build a factory.

Agency:

7. You go to a doctor for treatment of a skin condition. Two weeks later you discover that your doctor never graduated from medical school and is not licensed to practice medicine in your state.

Agency:

8. You apply for telephone service and are advised that a $200 deposit is required before you can obtain service. You believe that the deposit is excessive and unfair, but the phone company refuses to provide you with service unless you pay the deposit.

Agency:

9. Your local television station broadcasts programs that you feel are not appropriate for viewing by minors.

Agency:

10. Your bank refuses to cash your checks unless you pay a fee of $5.00 per check, even though you have an account at that bank.

Agency:

11. You discover that an industrial plant in your area is dumping toxic waste into a nearby stream.

Agency:
Review Part VI: Business Organization and Regulation

MINI-CASE
The announcement below appeared in the *Upstate News*, December 10 through December 17, 2005. Use the information in the announcement to answer the questions that follow. On the line next to each statement, write the letter of the best answer.

**TO ALL PROSPECTIVE CREDITORS OF THE FIRM**
**OF SINK AND BOWL, PLUMBING CONTRACTORS,**
**UPSTATE, NEW YORK**

TAKE NOTICE, that the above-named partnership, the certificate of doing business having been filed in the Upstate County Clerk’s Office on May 28, 1981, has, by agreement dated December 1, 2005, has been dissolved. Sink shall continue the said business as a sole proprietor, under his own name.

Dated: December 1, 2005
Hill & Dale
Attorneys for Sink and
Bowl
Upstate, New York

1. The partnership of Sink and Bowl was dissolved by the
   a. bankruptcy of the firm.
   b. death of a partner.
   c. admission of a new partner.
   d. mutual consent of the partners.

2. The announcement constitutes
   a. an act of bankruptcy.
   b. proper notice to new creditors.
   c. actual notice to old creditors.
   d. the formation of a partnership.

3. Bowl is liable for
   a. all debts contracted by the partnership before proper notice was given.
   b. half of the debts of the partnership contracted before proper notice was given.
   c. the debts of his former partner, now operating as a sole proprietor.
   d. none of the partnership’s debts.

4. After the dissolution of the partnership, Sink orally offered Plummer, an employee, 25 percent of the profits of the business as wages. Plummer is not a partner because
   a. there is no charter.
   b. the agreement was not made in writing.
   c. partners share the ownership of a business.
   d. Bowl did not give his consent before the dissolution.
5. For Sink, one advantage of a proprietorship is
   a. limited liability.
   b. the freedom to conduct business as he wants to within the limits of the law.
   c. increased capital.
   d. the advice of the members of his board of directors.

**MULTIPLE-CHOICE QUESTIONS**

On the line next to each statement, write the letter of the best answer.

1. The most flexible form of business organization is the
   a. general partnership.
   b. corporation.
   c. limited partnership.
   d. sole proprietorship.

2. In most states, a sole proprietor must register a business or trade name with
   a. the local chamber of commerce.
   b. a local bank.
   c. a public office.
   d. Washington, D.C.

3. A partner who is neither active in a partnership nor known to the public as a partner is called
   a. silent.
   b. dormant.
   c. general.
   d. secret.

4. The major difference between a general partnership and a limited partnership is the partners’
   a. degree of liability.
   b. degree of management.
   c. investment.
   d. percentage of ownership.

5. A business corporation can
   a. borrow money in its own name.
   b. sue and be sued in its own name.
   c. own property in its own name.
   d. do all of these.

6. Public utilities are chartered by
   a. city and town governments only.
   b. state governments only.
   c. the federal government only.
   d. both state and federal governments.

7. Officers of a corporation are chosen by the
   a. stockholders.
   b. directors.
   c. previous officers.
   d. trustees.

8. The life of a corporation is not affected by
   a. mergers.
   b. the death of a stockholder.
   c. a court decree.
   d. consolidation.
9. Laws enacted to prevent monopolies are called
   a. ultra vires laws.
   b. merger laws.
   c. antitrust laws.
   d. OSHA laws.
10. A local zoning board is an example of a(n)
    a. corporation.
    b. monopoly.
    c. administrative agency.
    d. public utility.

MATCHING QUESTIONS
Use the following terms to identify the phrases below. On the line next to each phrase, write the letter of the term that is most closely related to it.

1. _____ Stock with no stated value  
   a. Joint and several liability
2. _____ The liability of partners as a group and individually  
   b. Joint venture
3. _____ The power of a state to protect the welfare of its citizens  
   c. No-par stock
4. _____ An association of two or more companies engaged in a common venture  
   d. Treble damages
5. _____ Damages payable for violation of the antitrust laws  
   e. Police power

CASE PROBLEMS
Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. Curry, Davis, and Ivy were partners operating a motel. Davis died, and Ivy and Curry decided to continue to operate the business. Was it legally necessary for them to make a new partnership agreement?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

2. Pillson, a partner in a retail drug business, was responsible for purchasing drugs from wholesalers. One wholesaler gave Pillson a 5 percent commission in appreciation for the order placed for the partnership. Was Pillson entitled to keep the commission for personal use?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
3. Granby was treasurer of Eagle Electric Corporation. The company owed $10,000 for electric cable purchased by the corporation for use in its business. An action was brought against Granby for payment of the $10,000. Was Granby liable?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

4. Hill and Fox each owned 50 percent of the shares of stock of the Ames Corporation. Hill died and left the stock to her family. Was it necessary for Fox to set up a new corporation to be able to continue in business?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

5. Polcin found a business report dropped by mistake on a sidewalk. The report stated that a certain corporation’s stock would double in price due to a pending merger. Polcin bought the corporation’s stock based on the report. Has he violated any law?

______________________________________________________________________________
______________________________________________________________________________
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PART VII REAL AND PERSONAL PROPERTY, BAILMENTS, AND WILLS AND ESTATE PLANNING
CHAPTER 29

Basic Legal Concepts of Property

KEY POINTS IN THE CHAPTER

- Real property consists of land, anything attached to the land, and interest in real property such as easements. Personal property consists of tangible property such as furniture or cash, and intangible property such as stocks and bonds.

- Real and personal property may be acquired by purchase, gift, and inheritance. In addition, personal property may be acquired by finding it and by creative efforts, while real property may be acquired by adverse possession and by condemnation.

- Title to real property is transferred by deed, while title to personal property is transferred by delivery or by bill of sale.

- Title to real property may be held in one’s name (sole tenancy), or in joint ownership such as tenancy in common, joint tenancy, tenancy by the entirety, and community property.

- Three special forms of ownership are the condominium, the cooperative, and the time-share.

- Property use is not unlimited and may be affected and restricted by restrictive covenants in deeds, easements, wills, and government regulations including zoning laws, environmental rules, and health and safety regulations.

COMPLETION QUESTIONS

In the statements below, important words have been omitted. Fill in the blanks to complete each statement.

1. A stock certificate is an example of ____________________ property.

2. An item of personal property so attached to real property that it cannot be removed without damage to the structure is called a(n) ____________________.

3. A public utility that wants a permanent right to cross someone’s property with a power line must obtain a(n) ____________________.

4. A(n) ____________________ is a formal document that transfers title to real property.

5. A gift of personal property can be made by document or ____________________.

6. A person who occupies another person’s land for a certain period of time can claim title to that land under a right known as ____________________.

7. The distinguishing feature of a joint tenancy is the right of ____________________.

8. The process by which a state government obtains title to abandoned or unclaimed property is called ____________________.

9. A joint tenancy by a husband and wife usually is called a tenancy by ____________________.

10. The use of land can be restricted by municipalities through ____________________ ordinances.
MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. Patent and copyright protection is granted by
   a. state governments.
   b. warranty.
   c. the chamber of commerce.
   d. the federal government.

2. A patent protects an invention for
   a. ten years.
   b. seventeen years.
   c. thirty-five years.
   d. thirty-seven years.

3. Ownership of property by one person is called
   a. tenancy in common.
   b. tenancy by the entirety.
   c. a cooperative.
   d. sole tenancy.

4. On the death of a joint tenant, the property automatically belongs to the
   a. surviving joint tenants.
   b. state.
   c. spouse.
   d. heirs.

5. The use of land can be restricted by
   a. the state government.
   b. the federal government.
   c. the city government.
   d. all of these.

6. The process by which the state can obtain title to abandoned or unclaimed property is called
   a. presumption.
   b. adverse possession.
   c. condemnation.
   d. escheat.

7. With registration at the patent office, the exclusive right to use a trademark extends throughout
   a. the world.
   b. the United States.
   c. the state in which the owner lives.
   d. the county in which the owner lives.

8. The temporary right to use a portion of another person’s land is called a(n)
   a. profit.
   b. easement.
   c. permit.
   d. license.

9. Ownership of a condominium unit is shown by a
   a. stock certificate.
   b. mortgage.
   c. bill of sale.
   d. deed.
10. A restrictive covenant is binding on
   a. the seller.
   b. the original buyer.
   c. all subsequent buyers.
   d. both b and c.

**MATCHING QUESTIONS**

Use the following terms to identify the phrases below. On the line next to each phrase, write the letter of the term that is most closely related to it.

1. _____ The right to use someone’s property perpetually or for a specific period of time
   a. Condominium
   b. Easement
   c. Escheat
   d. Adverse possession
   e. License
   f. Restrictive covenant
   g. Trademark
   h. Fixture
   i. Deed
   j. Patent

2. _____ The process by which a state government obtains title to private property that is abandoned or unclaimed

3. _____ A word or symbol used to identify a product or a business

4. _____ A temporary right to use someone’s property

5. _____ Ownership of a specific unit in an apartment project

6. _____ A clause in a deed that limits the use of property

7. _____ Occupying another person’s land without that person’s permission

8. _____ A grant to a person of an exclusive right to manufacture and sell, or to license others to manufacture and sell, an invention

9. _____ An item of personal property that is attached to and treated as real property

10. _____ A formal document that transfers title to real property
SHORT-ANSWER QUESTIONS
Answer each of the following questions in the space provided.

1. Explain the difference between a joint tenancy and a tenancy in common.

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

2. Explain the nature of patents, trademarks, and copyrights and the type of protection each affords.

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

3. List six ways in which real property can be acquired.

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________

4. Explain the two methods of protecting computer technology

______________________________________________________________________________

______________________________________________________________________________
CHAPTER 30
Renting Real Property

KEY POINTS IN THE CHAPTER

• A lease is a contract for the rental of real property for a specific term and for a specific price.

• There are different forms of tenancies depending on the length of the lease term: tenancy for years, tenancy at will, and tenancy at sufferance.

• To be valid, a lease must satisfy the usual requirements for a valid contract: names of the parties, the property being leased, the lease term, and the rental payment. Also, it should include the duties of both parties, including responsibility for making repairs and paying real estate taxes.

• There are two ways to end a lease before expiration of the lease term: assignment, transferring the unexpired lease term to another, or subleasing, transferring a portion of the unexpired lease term.

• Depending on the lease terms, most leases may be terminated by agreement, by breach of the lease, or by condemnation or destruction of the leased premises.

MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. Under the statute of frauds, a lease of real property must be in writing if it is for
a. residential property.
b. commercial property.
c. more than one year.
d. less than one year.

2. The major difference among the various types of tenancies is the
a. relationship between the parties.
b. length of the lease term.
c. type of property being leased.
d. rent paid under the lease.

3. If you want to be able to cancel a lease at any time, you should get a
a. tenancy at will.
b. holdover tenancy.
c. tenancy at sufferance.
d. periodic tenancy.

4. When a lease is assigned by a tenant, the
a. original tenant has no further obligations.
b. the landlord assumes all responsibility.
c. the new tenant assumes all responsibility.
d. the original tenant is still liable.
5. Most leases provide that if the leased property is totally destroyed by fire or other casualty,
   a. rent continues.
   b. the tenant pays half the original rent.
   c. the lease terminates.
   d. the tenant pays the cost of repairs.
6. Graber is renting an apartment to Brill. Graber can require Brill to pay a security deposit to be used to pay
   a. the first month’s rent.
   b. for damage caused during Brill’s lease term.
   c. the last month’s rent.
   d. property taxes.
7. Under most leases, permanent fixtures installed by the tenant
   a. can be removed by the tenant when the lease ends.
   b. become the property of the landlord and cannot be removed.
   c. must be purchased by the landlord when the lease ends.
   d. belong to the next tenant.
8. If a tenant fails to pay the rent when it becomes due, the landlord can
   a. sue to evict the tenant.
   b. sue the tenant for the rent due.
   c. have the tenant arrested.
   d. evict or sue the tenant.
9. A constructive eviction occurs when
   a. the landlord wants to repair the property.
   b. the tenant redecorates the property without the landlord’s permission.
   c. the landlord makes the property uninhabitable.
   d. the tenant intentionally damages or destroys the property.
10. A person who leases residential property can
    a. be restricted in the type of furniture placed on the property.
    b. be restricted from having visitors.
    c. use the property only for the purpose described in the lease.
    d. use the property for any purpose.
11. A landlord’s promise in a lease that the tenant will have undisturbed possession of the property is called a
    a. covenant of quiet enjoyment.
    b. tenancy at sufferance.
    c. constructive eviction.
    d. warranty of habitability.
12. A lease that omits the names of the landlord or tenant is
    a. enforceable.
    b. a sublease.
    c. unenforceable.
    d. a covenant.
SHORT-ANSWER QUESTIONS
Answer each of the following questions in the space provided.

1. Explain the difference between a lease and a sublease.

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

2. List seven important terms that every lease should contain.

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

3. Describe six ways in which a lease can be terminated.

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

4. What action may a landlord take if a tenant fails to pay the rent or fails to move out at the end of the lease term?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

5. Describe two situations in which a lease may be terminated by a tenant prior to the end of the lease term, regardless of what the lease provides.

______________________________________________________________________________
______________________________________________________________________________
CHAPTER 31

Buying and Selling Real Property

KEY POINTS IN THE CHAPTER

- There are four steps in buying real property: signing a contract of sale, obtaining financing, examination of the title, and the closing.
- Because a contract of sale is binding and may not be changed without agreement, it should be examined carefully before it is signed and should contain all the essential terms of the purchase and sale.
- Most home purchases are financed using a mortgage. This might be a new mortgage from a bank or from the seller, or could involve assuming an existing mortgage.
- A buyer is entitled to good title to the property being purchased. This may be accomplished by a title search, title insurance, or registration under the Torrens System in some states.
- Title to real property passes to the buyer at closing upon delivery of the deed and payment of the purchase price. The type of deed used to pass title depends on the contract terms, the most common types being the warranty deed, the bargain and sale deed, and the quitclaim deed.
- To protect the buyer and the holder of the mortgage, the deed and any mortgage documents should be recorded in a public office.

TRUE-FALSE QUESTIONS

Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T F A contract for the sale and purchase of a home need not be in writing if the purchase price is under $25,000.
2. T F A homeowner and a potential buyer can negotiate directly, without using the services of a real estate broker.
3. T F Once a contract of sale is executed, it is binding on both seller and buyer.
4. T F Contingencies in a contract protect the buyer but not the seller.
5. T F A person buying a house that already is mortgaged automatically can assume the mortgage without the mortgagee’s consent.
6. T F The seller can give a buyer a mortgage in the same way that a lending institution can give a mortgage.
7. T F Every mortgage gives the mortgagor the right to pay the balance due on the mortgage without penalty before the end of the mortgage term.
8. T F When a house is sold, the buyer pays the real estate agent’s commission.
9. T F Title insurance protects the buyer against financial loss if the title proves to be defective.
10. T F Title to real estate passes from seller to buyer when the deed is recorded in the appropriate public office.

MATCHING QUESTIONS
Use the following terms to identify the phrases below. On the line next to each phrase, write the letter of the term that is most closely related to it.

1. _____ A mortgage used to finance the purchase of real property
   a. Abstract of title
   b. Counteroffer
   c. Covenant
   d. Escrow

2. _____ The holding of closing documents and purchase funds until a final title search is made
   e. Grantee
   f. Mortgage commitment
   g. Purchase money mortgage
   h. Quitclaim deed
   i. Title
   j. Warranty deed

3. _____ A summary of transactions concerning the title to real property
   a. Abstract of title
   b. Counteroffer
   c. Covenant
   d. Escrow

4. _____ The legal interest an owner has in real property
   e. Grantee
   f. Mortgage commitment
   g. Purchase money mortgage
   h. Quitclaim deed
   i. Title
   j. Warranty deed

5. _____ A counterproposal made by a seller to the offer made by a buyer to purchase real property
   a. Abstract of title
   b. Counteroffer
   c. Covenant
   d. Escrow

6. _____ A deed, given by the seller to the buyer, that guarantees good title
   e. Grantee
   f. Mortgage commitment
   g. Purchase money mortgage
   h. Quitclaim deed
   i. Title
   j. Warranty deed

7. _____ A promise made by a grantor in a warranty deed
   a. Abstract of title
   b. Counteroffer
   c. Covenant
   d. Escrow

8. _____ A deed that gives the buyer whatever title the seller had
   e. Grantee
   f. Mortgage commitment
   g. Purchase money mortgage
   h. Quitclaim deed
   i. Title
   j. Warranty deed

9. _____ An agreement by a lending institution to give a mortgage to the mortgagor
   a. Abstract of title
   b. Counteroffer
   c. Covenant
   d. Escrow

10. _____ The person to whom title is transferred by the owner of real property
    a. Abstract of title
    b. Counteroffer
    c. Covenant
    d. Escrow

MULTIPLE-CHOICE QUESTIONS
Circle the letter of the best answer.

1. A contract entered into between a property owner and a real estate broker for the sale of real property is called a(n)
   a. oral contract.
   b. listing contract.
   c. title contract.
   d. deed contract.
2. Ownership of real property is transferred by means of
   a. a mortgage.
   b. title insurance.
   c. a deed.
   d. a bond.
3. A provision in a contract of sale that makes the sale subject to obtaining financing is called a(n)
   a. covenant.
   b. restriction.
   c. easement.
   d. contingency.
4. When a buyer takes over and agrees to pay an existing mortgage, the process is called
   a. a prepayment privilege.
   b. escrow.
   c. mortgage assumption.
   d. a purchase offer.
5. A survey that shows the approximate measurement of property is called a(n)
   a. tape location map.
   b. instrument survey.
   c. plot.
   d. transit.
6. A person who transfers real estate to another is known as the
   a. grantor.
   b. mortgagor.
   c. mortgagee.
   d. grantee.
7. The most complete interest in real property is obtained by receiving a
   a. mortgage.
   b. warranty deed.
   c. quitclaim deed.
   d. bargain and sale deed.
8. To ensure that title to real property is good, a buyer can purchase
   a. mortgage insurance.
   b. homeowners’ insurance.
   c. title insurance.
   d. liability insurance.
9. To determine whether title to property is good, an attorney generally uses a(n)
   a. computer.
   b. deed to the property.
   c. abstract of title.
   d. survey.
10. Claims against property for unpaid taxes, claims of a mortgagee, and the like are called
    a. covenants.
    b. prescriptions.
    c. escrows.
    d. encumbrances.
11. Conditions included in a contract of sale that, if not met, can void the agreement are called
   a. contingencies.
   b. covenants.
   c. encumbrances.
   d. escrow.

12. A lien held by a bank or other lender as security until a loan for the purchase of property is repaid
    is called
   a. a title.
   b. a mortgage.
   c. escrow.
   d. a deed.

13. A property survey made by a surveyor that shows exact angles and distances is called
   a. a tape location map.
   b. the Torrens system.
   c. a title search.
   d. an instrument survey.

14. A copy or condensed summary of all transactions related to a particular piece of property over a
    period of years is called a(n)
   a. deed.
   b. abstract of title.
   c. closing statement.
   d. listing contract.

15. Promises and guarantees transferred by a warranty deed are called
   a. covenants.
   b. contingencies.
   c. escrow.
   d. surveys.
KEY POINTS IN THE CHAPTER

- A bailment occurs when possession of property is transferred from one person (the bailor) to another (the bailee), for a specific purpose and for a specific period of time.
- The requirements for a valid bailment are transfer of possession of personal property and the ultimate return of that property.
- Bailments may arise from an express agreement, from the actions of the parties, or because justice and fair play require the recognition of such arrangements.
- Bailments are temporary and may end by agreement between the parties, by acts of the parties, by destruction of the bailed property, and by operation of law.
- There are situations similar to bailments but treated differently, such as depositing money in a bank account (a debtor-creditor relationship) or parking a car in a garage (a landlord-tenant relationship).

YES-NO QUESTIONS

Read each statement to determine whether it is an example of a bailment. Indicate your answer by circling Y (yes) or N (no) in the column on the right.

1. You buy a TV set, agreeing to pay for it over a two-year period. Y N
2. You lend your sister a tennis racket that you borrowed from a friend. Y N
3. A friend lets you use a tape recorder in the basement of his home. Y N
4. Your cousin lets you use her cottage for the weekend. Y N
5. A friend asks you to take his snowmobile in for repairs. Y N
6. A neighbor leaves a raincoat on the back seat of your car without telling you about it. Y N
7. A neighbor asks you to watch his child while he is in the store. Y N
8. You accept delivery of a TV set on behalf of a friend who is away. Y N
9. You see someone else’s wallet on the ground but do not pick it up. Y N
10. You store a radio and some clothing in a rented locker at a bus station. Y N
11. You place some jewelry and legal documents in a safe-deposit box at a bank. Y N
12. Your friend keeps your guitar for you while you go on vacation. Y N
13. You ask a salesperson in a store to watch your coat while you go to a different department in the store. Y N
14. You find a briefcase that has been stolen and attempt to return it to its owner. Y N
15. You borrow a library book and agree to return it in two weeks. Y N
SHORT-ANSWER QUESTIONS
Answer each of the following questions in the space provided.

1. List and briefly explain four characteristics of a valid bailment.

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2. Give two examples of bailments you have entered into. Do not use the ones mentioned in the textbook.

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3. Explain the difference between a bailment and a sale.

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4. Explain why depositing money in a bank is not considered a bailment.

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5. List five ways in which a bailment can end.

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MULTIPLE-CHOICE QUESTIONS
Circle the letter of the best answer.

1. A bailment involves the transfer of
   a. title to, but not possession of, personal property.
   b. title to, but not possession of, real property.
   c. possession of, but not title to, personal property.
   d. possession of, but not title to, real property.

2. A bailment that arises because of the actions of the parties, without any oral or written agreement, is
   a. illegal.
   b. implied by law.
   c. an express bailment.
   d. implied in fact.
3. Bailments implied by law often are created
   a. through express agreements.
   b. through implied agreements.
   c. through mutual agreement.
   d. when people find and take possession of lost or stolen property.

4. If bailed property is lost or damaged as a result of the bailee’s negligence,
   a. the bailee has no liability.
   b. the bailee is liable to the bailor for the value of the property.
   c. the bailment ends by mutual agreement.
   d. the bailment ends by operation of law.

5. All of the following can be the subject of a bailment except a(n)
   a. stock certificate.
   b. automobile.
   c. garage.
   d. motorcycle.

COMPLETION QUESTIONS

In the statements below, important words have been omitted. Fill in the blanks to complete each statement.

1. A person who takes possession of a bailed item is the ____________________.
2. Only ____________________ property can be the subject of a bailment.
3. The transfer of personal property for a specific time and purpose is called a(n) ____________________.
4. Land and buildings are examples of ____________________ property.
5. A bailment in which the agreement is stated in words, either oral or written, is a(n) ________________ agreement

CASE PROBLEMS

Read the case problems below. For each problem, answer yes or no and then explain your answer in the space provided.

1. Sloan was going on vacation and asked Brown to keep his guitar while he was away. While Sloan was away, excessive humidity warped the guitar’s neck and ruined it. When Sloan returned, he insisted that Brown pay him for the damaged guitar. Was he entitled to collect?

______________________________________________________________________________
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2. Monteiro, a high school senior, placed a camera in his high school locker and locked the door. When he returned from class, he discovered that the door had been broken and the camera stolen. Can he hold the school authorities liable for the loss on the grounds that a bailment had been created?

3. By mistake, Andrews received in the mail a book her neighbor ordered. Not wanting to be bothered with it, she left it on her front porch. Two months later, the book was stolen. Was Andrews liable to her neighbor for the loss?
CHAPTER 33

Special Bailments

KEY POINTS IN THE CHAPTER

• For historical reasons, a special standard of care is imposed on certain bailees, such as hotelkeepers and common carriers. The standard of care is absolute liability for goods left in the possession of the bailee.

• The standard of care is limited today by law and by agreement between the parties. The common exceptions to the absolute liability of special bailees are (1) an act of God that causes the damage, (2) an act of a public enemy that causes the damage, (3) an act of a public authority that results in damage, (4) fault on the part of the bailor, and (5) damage that occurs because of the basic nature of the goods bailed. Also, the parties may limit absolute liability by agreement, provided the agreement is reasonable.

• Hotelkeepers, those who rent rooms on a temporary basis, may limit their liability by posting notices to that effect and by providing safe deposit boxes for their guests.

• A common carrier, such as a railroad or trucking company, is absolutely liable for goods it carries unless one or more of the exceptions mentioned above applies, or unless it limits its liability by agreement.

MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. An example of a special bailment is the liability imposed on a
   a. person who rents a car.
   b. trucking company.
   c. parking garage.
   d. service station.

2. The degree of care imposed on a special bailee is
   a. reasonable care.
   b. slight care.
   c. a high degree of care.
   d. extraordinary care.

3. Under common law, the liability of special bailees was
   a. absolute.
   b. minimal.
   c. based on the status of the parties.
   d. based on the property bailed.

4. A special bailee’s liability can be limited by all of the following except
   a. an act of God.
   b. agreement between the bailor and the bailee.
   c. the actions of rioters.
   d. the actions of public authorities.
5. A special bailee is not liable for losses resulting from a typhoon because
   a. a typhoon is a natural disaster that could not have been anticipated.
   b. special bailments require only a reasonable level of care.
   c. special bailees are exempt from all liabilities.
   d. special bailees always have agreements with bailors to limit their liability.

6. A person who enters a hotel solely for the purpose of having dinner is a
   a. hotel guest.
   b. transient.
   c. bailor by implication.
   d. business guest.

7. A hotelkeeper can refuse to accept a person as a guest because of that person’s
   a. inability to pay.
   b. religion.
   c. race.
   d. gender.

8. A carrier that transports goods for certain customers only is a
   a. limited carrier.
   b. common carrier.
   c. contract carrier.
   d. mutual carrier.

9. The liability of a common carrier is that of a(n)
   a. special bailee.
   b. ordinary bailee.
   c. constructive bailee.
   d. bailee by necessity.

10. A common carrier whose equipment is detained by a customer for an unreasonable period of time
    can make a special charge called
     a. containerage.
     b. detonage.
     c. a bailee’s charge.
     d. demurrage.

**SHORT-ANSWER QUESTIONS**
1. In the space below, list four exceptions to the rule of absolute liability of hotelkeepers and common carriers. Give an example of each exception.
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________

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CASE PROBLEMS

Read the case problems below. For each problem, answer yes or no, and then, in the space provided, state the rule of law that supports your answer.

1. Berger checked into a motel and left a valuable stamp collection in his room because the motel did not provide safe-deposit boxes. The stamps were stolen. Was the motel liable for the value of the collection?

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2. Corrida Corporation shipped a large quantity of gold bars via Ajax Trucking Lines. The shipment was hijacked by a gang of escaped prisoners. Could Corrida hold Ajax responsible for the loss?

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3. Thurston moved to a nearby city to start a new job. She rented a suite in a hotel for a two-year period. Would the hotelkeeper be absolutely liable to Thurston if any of her belongings were stolen?

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______________________________________________________________________________
______________________________________________________________________________

4. Allingham checked her coat in a theater and was told that the liability for loss was limited to $100. The coat, which was worth $500, was stolen. Did Allingham collect that amount from the theater?

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5. The Grange Company stored a large quantity of apples in a warehouse owned by Storage, Inc. The warehouse roof was defective, and the apples were ruined when a freak storm resulted in a large amount of water leaking through the roof. Was Storage, Inc., liable for the loss?

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6. Melons Ltd. shipped a quantity of overripe melons by Freight Carriers, Inc. The carrier was aware of the condition of the fruit and took every precaution to prevent spoilage. Still, the melons spoiled en route. Was Freight Carriers responsible for the loss?

______________________________________________________________________________
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7. Cruise checked his coat at the Ultimate Hotel while having dinner there. The coat was stolen despite the reasonable care of the checkroom attendant. Can Cruise recover the value of his coat?

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8. Golden checked out of the Acme Motel and left his suitcase with an attendant while he went to get his car. When he returned, he discovered that the suitcase had been stolen. Was the motel liable for the loss if it was not at fault?

______________________________________________________________________________

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9. The Comfort Motel refused to permit Regis to register as a guest because Regis was just 15 years old. Was the motel liable for discrimination?

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10. Western Express agreed to transport a valuable painting, provided that its liability did not exceed $5,000. Can a carrier limit its liability in this way?

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CHAPTER 34

Wills, Intestacy, and Estate Planning

KEY POINTS IN THE CHAPTER

- A person who dies and leaves a will is said to have died testate, and the estate will be distributed according to the will provisions. A person who dies without a will is said to have died intestate, and the estate will be distributed according to state law.

- To be valid, a will must be executed by someone with testamentary capacity (proper mental and physical capacity and proper age), free from fraud and duress. Also, the will must be executed with proper formalities, which vary from state to state but which generally include the following: the will must be in writing, signed at the end by the maker of the will, and properly witnessed.

- Some states permit special types of wills because of special situations, including handwritten wills, oral wills, and wills made by members of the armed forces.

- There are five steps in making a will: (1) gathering necessary information; (2) determining goals and desired distributions; (3) studying any tax problems; (4) naming executors, trustees, and guardians; and (5) drafting and executing the will.

- In a testate estate, the executor administers the estate. In an intestate estate, an administrator appointed by the state administers the estate. In some states, an executor or administrator may be called a personal representative.

- Many people have specific preferences regarding medical care following incapacity resulting from serious illness or accident. Many states now recognize the validity of living wills and health care proxies to ensure that a person’s preferences are carried out.

- Estate planning involves arrangements for the disposition of one’s assets during lifetime and upon death.

- The major reasons for estate planning are to provide for proper disposition of assets, minimizing taxes, and retirement planning.

- Estate taxes may be minimized by using gifts, trusts, and the marital deduction. In addition to tax considerations, the following should be considered in choosing gifts, trusts, and the marital deduction: the type of property being given, to whom the disposition is to be made, the need for liquidity, and the need for the property at a later date.

- The marital deduction reduces estate taxes by transferring property to a spouse, including transfers by will and the automatic transfer of jointly owned property.

- A trust, which may be set up during one’s lifetime or by will, transfers property to a trustee for the benefit of another, shifting the income tax burden and reducing one’s estate.

- Estate planning involves the person who wants it, an attorney, and often an accountant, insurance agent, and bank trust officer. After gathering all necessary information, the group develops a plan and then implements it.
MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. The estate of a person who dies without a will is distributed according to
   a. federal law.
   b. oral instructions left by the person before death.
   c. state law.
   d. local ordinance.

2. Property owned by joint tenants with the right of survivorship is distributed on one tenant’s death
   a. according to that person’s will.
   b. to the survivor(s).
   c. according to state law.
   d. to that person’s children.

3. An estate tax is imposed by
   a. all states.
   b. the federal government.
   c. banks.
   d. each city.

4. To be valid, a written will can be
   a. typed.
   b. handwritten.
   c. printed.
   d. any of these.

5. A completely handwritten will is called a
   a. nuncupative will.
   b. holographic will.
   c. xerographic will.
   d. de minimus will.

6. The major reason for estate planning is
   a. to create an estate.
   b. to provide liquidity.
   c. to minimize taxes.
   d. all of these.

7. Of the following methods, the only one that does not effectively revoke a will is
   a. mutilating it.
   b. sending a letter of revocation to one’s heirs.
   c. writing a new will.
   d. destroying the old will.

8. A trust set up in one’s will is called a(an)
   a. inter vivos trust.
   b. living trust.
   c. Totten trust.
   d. testamentary trust.

9. Information needed for successful estate planning includes
   a. Social Security numbers.
   b. family history.
   c. insurance policy information.
   d. all of these.
10. The person named in a will to carry out its terms is the
   a. guardian.
   b. spouse.
   c. administrator.
   d. executor.

COMPLETION QUESTIONS
In the statements below, important words have been omitted. Fill in the blanks to complete each statement.

1. A person who makes a will is called a(n) ____________________.
2. A person who dies without a will is said to have died ____________________.
3. Establishing a will’s validity is a process called ____________________.
4. The ________________ is the person who handles the estate of a person who dies without a will.
5. In most states, a person who is entitled to share in the estate of a person who dies intestate is called a(n) ________________.
6. An oral will made in the presence of witnesses is a(n) ____________________ will.
7. A(n) ________________ is an amendment to a will.
8. A will that expresses one’s health care preferences is a(n) ________________ will.
9. A gift of personal property by will is called a(n) ________________.
10. The right of a(n) ________________ to receive a certain portion of an estate cannot be defeated by a will’s provisions.

SHORT-ANSWER QUESTIONS
Answer each of the following questions in the space provided.

1. List the person(s) who should be consulted in developing an estate plan.

2. Briefly describe the steps involved in developing an estate plan.

3. List four different types of property that generally qualify for the marital deduction.
4. Describe three different devices that can be used to minimize estate taxes.

______________________________________________________________________________

______________________________________________________________________________

______________________________________________________________________________
MULTIPLE-CHOICE QUESTIONS
Circle the letter of the best answer.

1. A promissory note is an example of
   a. real property.
   b. intangible personal property.
   c. fixed property.
   d. tangible personal property.

2. A trailer is considered
   a. personal property.
   b. real property.
   c. real and personal property.
   d. none of these.

3. If you want a permanent right to cross your neighbor’s land to have access to a lake, you want a(n)
   a. license.
   b. profit.
   c. patent.
   d. easement.

4. Real property, but not personal property, can be transferred by
   a. gift.
   b. deed.
   c. purchase.
   d. inheritance.

5. A bill of sale would be used to transfer title to a
   a. cottage and lakefront lot.
   b. car.
   c. farm.
   d. home.

6. A covenant restricting the use of land can be imposed by
   a. local or state government.
   b. the federal government.
   c. local, state, or federal government.
   d. none of these.

7. Renting a public locker is not considered a bailment because
   a. it does not involve personal property.
   b. the owner of the locker never actually accepts delivery of the articles in the locker.
   c. no consideration is given.
   d. the agreement is not in writing.
8. The subject of a bailment can be
   a. twenty shares of corporate stock.
   b. a sailboat.
   c. a sweater.
   d. all of these.

9. For a bailment to exist there must be
   a. a transfer of possession.
   b. a transfer of title.
   c. a written lease.
   d. real property of any type.

10. In a gratuitous bailment,
    a. both parties benefit.
    b. only the bailor or the bailee benefits.
    c. no one benefits.
    d. only a third party benefits.

11. The relationship between a bank and one of its depositors is that of
    a. bailor-bailee.
    b. trustor-trustee.
    c. debtor-creditor.
    d. none of these.

12. A gift of real property is called a(n)
    a. legacy.
    b. codicil.
    c. devise.
    d. attestation.

13. A will can be changed by adding a(n)
    a. writ.
    b. codicil.
    c. attesting clause.
    d. mandamus.

14. For a will to be valid, most states require that it be witnessed by
    a. one person.
    b. two or three people.
    c. four or five people.
    d. five people.

15. Which of the following is not required by most states for a will to be valid?
    a. that the will be witnessed.
    b. that the witnesses know the contents of the will.
    c. that the signature of the testator appear on the will.
    d. that the testator be legally competent.

16. Someone who dies without leaving a valid will has died
    a. in trusteeship.
    b. in codicil.
    c. intestate.
    d. in holography.
TRUE-FALSE QUESTIONS
Indicate whether each statement below is true or false by circling T or F in the column on the left.
1. T F A patent protects an invention for the inventor’s lifetime.
2. T F A copyright protects any form of expression except musical compositions.
3. T F To transfer real property as a gift, one must sign and deliver a deed.
4. T F An appliance usually can be removed from a home before a sale, provided that doing so does not damage real property.
5. T F Title to public property can be acquired through adverse possession.
6. T F A landowner can control the use of the land through purchase of the property.
7. T F The purchaser of a cooperative apartment receives a deed indicating ownership of the unit.
8. T F The standard of care required in a bailment depends on the amount of the consideration paid for the bailment.
9. T F A bailee can be held liable to a bailor for failing to observe the terms of a bailment.
10. T F The lease of a car for a two-year period is considered a bailment.
11. T F Parties to a bailment can agree to limit the liability of the bailee.
12. T F A hotel has a greater responsibility toward a hotel guest than it does toward a business guest.
13. T F The consignor gives the consignee a bill of lading.
14. T F It is not necessary for witnesses to a will to see its contents.
15. T F If a person dies without leaving a will, the estate always escheats to the state.
16. T F The signature at the end of a will must be in the testator’s handwriting.
17. T F An oral will made in the presence of witnesses may be valid.
18. T F Bequests in a will to a spouse are tax exempt.
19. T F The federal estate tax is a tax on the gross estate.
20. T F Jointly owned real property qualifies for the marital deduction.

MATCHING QUESTIONS
Use the following terms to identify the phrases below. On the line next to each phrase, write the letter of the term that is most closely related to it.

1. _____ The process by which the state obtains title to abandoned property
   a. Purchase money mortgage
   b. Sublease
   c. Encumbrance
   d. Escheat
   e. Escrow
   f. Probate
2. _____ The personal representative of a deceased named in the deceased’s will.
   a. Purchase money mortgage
   b. Sublease
   c. Encumbrance
   d. Escheat
   e. Escrow
   f. Probate
3. _____ An addition or amendment to a will
   a. Purchase money mortgage
   b. Sublease
   c. Encumbrance
   d. Escheat
   e. Escrow
   f. Probate
4. _____ The process of validating a will.  
5. _____ A person who dies without a will.  
6. _____ A plan by which one turns property over to someone to hold and manage for another. uninhabitable  
7. _____ A mortgage obtained by a buyer to finance the purchase of real property  
8. _____ The holding of closing documents and funds in trust until it is determined that the title is clear  
9. _____ A transfer by a tenant of a portion of the unexpired lease term  
10. _____ An interest in real property that conflicts with the owner’s title

g. Trust  
h. Intestate  
i. Executor  
j. Codicil

CASE PROBLEMS
Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. Perkins typed a will and then added his handwritten signature at the end. The will was not witnessed. In the will, Perkins left all of his property to one sister. Perkins’s other sister claimed that the will was void. Was she correct?

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2. Nichols executed a will valid in all respects. In the will, she left $5,000 to her nephew. Six months later, Nichols crossed out this figure and wrote in $50,000. When Nichols died, the nephew made a claim against the estate for $50,000. Was the claim valid?

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3. Burdine left a will in which she bequeathed her house to her sister, provided that the sister agreed to live in the house and not sell it. On Burdine’s death, the sister claimed that the provision was invalid. Was she correct?

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______________________________________________________________________________
4. When he made his will, Greggs had two children, and he left all of his property “to his wife and children.” A year later another child was born, but Greggs never changed his will. When Greggs died, the first two children claimed that the third child was not entitled to share in Greggs’s estate. Were they correct?
PART VIII CONSUMER AND CREDITOR PROTECTION
CHAPTER 35

Protecting the Consumer and the Taxpayer

KEY POINTS IN THE CHAPTER

- All levels of government have enacted laws and regulations to protect consumers in purchasing goods and to protect them from goods that may be unsafe.
- Areas of government regulation include making sure that goods are advertised and priced fairly, are safe, and are packaged properly. Other regulations cover the right to return unordered goods, to have contracts that are understandable to the average person, and to cancel certain contracts.
- Certain groups are receiving more protection each year because so many persons are affected by certain problems. These include buyers of new and used cars, air travelers, and taxpayers.
- Consumer protection laws must be enforceable if they are to be effective. These laws may be enforced by government agencies, such as the Federal Trade Commission, the Food and Drug Administration, and the Consumer Product Safety Commission. They may also be enforced by the courts through individual or class action lawsuits against manufacturers and suppliers.

COMPLETION QUESTIONS

In the statements below, important words have been omitted. Fill in the blanks to complete each statement.

1. The agency primarily responsible for enforcing consumer rights is the ____________________.
2. The failure to disclose important product information is one form of ____________________.
3. Price fixing violates both state ___________ and federal __________ laws.
4. A person who receives unordered goods can either ____________________ them or throw them away.
5. The ________________ can require advertisements for certain products to carry warning labels.
6. Exaggerating the quality of merchandise is called ____________________.
7. An item sold below cost to entice a customer into a store is called a(n) ________________.
8. Consumer contracts involving less than a certain amount of money must be written in ________________.
9. Liability for injuries on international flights is limited by the ________________.
10. A suit by a group claiming a violation of consumer protection laws is called a(n) ________________ suit.
SHORT ANSWER QUESTIONS

Answer each of the following questions in the space provided.

1. List four consumer rights and give an example of each.

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______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

2. List three federal consumer agencies and describe their functions.

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

CASE PROBLEMS

Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. Acme Supermarket and Peach Supermarket agreed to charge the same prices for their fruits and vegetables, resulting in a lower price for consumers. Have these supermarkets violated the law?

______________________________________________________________________________
______________________________________________________________________________

2. Turner bought a new TV from a department store, paying for it in cash. Two days later, she tried to return it, claiming she had a right to rescind the sales contract within three days of the purchase. Was Turner correct?

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CHAPTER 36
Protecting the Borrower

KEY POINTS IN THE CHAPTER

• Federal and state governments have enacted laws to protect consumers who buy on credit and those who borrow money. The most important of these laws is the Consumer Credit Protection Act, popularly known as the Truth in Lending Act.

• Government laws and regulations protect the following rights: to obtain credit, to borrow at lawful interest rates, to receive accurate bills, to be free from harassing collection methods, and to obtain relief from debt.

• The two basic types of consumer credit are unsecured credit, based solely on a promise to repay, and secured credit, based both on a promise to repay and a pledge of the borrower’s property.

• The three most common types of credit are charge accounts, installment loans, and bank loans.

• The federal Equal Credit Opportunity Act prevents creditors from discriminating against certain people and makes sure that credit is based solely on the ability to pay.

• The federal Truth in Lending Act helps consumers and borrowers know what credit is actually going to cost them.

• The federal Fair Credit Reporting Act enables consumers to have accurate credit records and correct inaccurate records.

• A consumer is entitled to accurate bills for goods purchased or money borrowed. The federal Fair Credit Billing Act enables consumers and borrowers to resolve billing disputes in a simplified way.

• The federal Fair Debt Collection Practices Act controls the acts of debt collectors and prohibits abusive collection techniques.

• Most states have enacted usury laws that regulate the amount of interest that may be charged for loans and credit purchases and that provide penalties for those who charge higher than the legal rate of interest.

• The federal Bankruptcy Act helps debtors, both personal and corporate, to either work out payment plans with creditors, or go into bankruptcy and be relieved from debt. Debtors may also be able to enter into voluntary plans with creditors without having to resort to the Bankruptcy Act.

MULTIPLE CHOICE QUESTIONS

On the line next to each statement, write the letter of the best answer.

1. Discrimination in granting credit is prohibited by the
   b. Commerce Act.
   d. Fair Credit Act.
2. In deciding whether to grant credit, a creditor can consider an applicant’s
   a. religion.
   b. geographical residence.
   c. income.
   d. marital status.

3. In deciding whether to grant credit, a creditor can refuse to consider income from
   a. alimony.
   b. a pension.
   c. part-time employment.
   d. gambling.

4. The money paid for the use of credit is a(n)
   a. annual charge.
   b. finance charge.
   c. borrowing fee.
   d. percentage fee.

5. A person whose credit card is stolen and who notifies the card issuer of the theft is liable for
   charges made with the card up to
   a. the total amount charged.
   b. $100.
   c. $250.
   d. $50.

6. An incorrect bill received by a consumer must be corrected within
   a. thirty days.
   b. forty-five days.
   c. sixty days.
   d. ninety days.

7. A consumer who believes a bill is incorrect must notify the
   c. creditor.
   d. local chamber of commerce.

8. Assets of a debtor that cannot be taken to satisfy a judgment include
   a. a car.
   b. a bank account.
   c. stocks.
   d. household furniture.

9. Usury laws generally do not apply to
   a. credit card charges.
   b. mortgage loans.
   c. education loans.
   d. vacation loans.

10. A person can file for bankruptcy
    a. once a year.
    b. once in a lifetime.
    c. every twelve years.
    d. every six years.
TRUE/FALSE QUESTIONS
Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T F Lenders can refuse credit to someone who is receiving public assistance.
2. T F Creditors always can consider a potential borrower’s age in determining whether to grant credit.
3. T F A lender must disclose the finance charge but not the annual percentage rate.
4. T F The law does not require that service or carrying charges added to finance charges be disclosed to a borrower.
5. T F If you lose a credit card because of your negligence, you may be held responsible for an unlimited amount of unauthorized charges.
6. T F A person who is denied credit is entitled to know the reasons why.
7. T F A consumer who believes a bill is incorrect does not have to make any payment on the bill until the error is corrected.
8. T F An agreement requiring an interest rate higher than the contract rate is usurious.
9. T F After being discharged in bankruptcy, the bankrupt individual is no longer responsible for any debts.
10. T F When the interest rate is not stated in a loan or credit agreement, the maximum that can be charged is called the legal rate.

CASE PROBLEMS
Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. Garnett needed capital to expand her business. She found a friend who agreed to lend her the money at 25 percent interest per year. When Garnett failed to pay the debt, her friend sued. Garnett claimed that the loan was invalid because the maximum interest rate in her state is 12 percent. Was Garnett legally correct?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

2. Briggs finds that her debts exceed her assets by a considerable amount, and she cannot pay her bills on time. Is bankruptcy the only solution?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
CHAPTER 37
Protecting the Creditor

KEY POINTS IN THE CHAPTER

- State laws protect a creditor’s right to be repaid for goods sold or for loans made.
- What methods a creditor may use to be repaid depends on whether the debt is unsecured or secured. A creditor may enforce repayment of an unsecured debt (one based solely on the debtor’s promise to repay) by suing the debtor, obtaining a judgment, and then collecting the judgment out of the debtor’s assets, either voluntarily or by execution using an enforcement officer, or by garnishing the debtor’s wages.
- A creditor may enforce repayment of a secured debt (one based on a pledge of specific property in addition to a promise to repay) by seizing the secured property, known as the collateral, selling it, and satisfying the debt out of the proceeds.
- Creditors may also protect their interest by obtaining a third party’s guarantee to repay the loan. The two most common methods used are suretyship and guaranty, the difference between them being whether the third party is primarily liable, like the debtor, or secondarily liable if the debtor fails to pay.
- State laws give creditors extra protection in certain circumstances in the form of security interests known as liens. In the event of nonpayment, the creditor may seize the liened property, sell it, and satisfy the debt out of the proceeds. The most common liens are the tax lien, the mechanic’s lien, and the hotelkeeper’s lien.

TRUE FALSE QUESTIONS

Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T F To be collectible, a debt always must be in writing.
2. T F An unsecured creditor can repossess the item for which credit was given.
3. T F A creditor can refuse to give credit unless security is given.
4. T F A secured loan is valid even if a financing statement is not filed.
5. T F In some states a secured creditor can repossess the collateral without going to court.
6. T F A guarantor is primarily responsible for paying the debtor’s obligation.
7. T F If the debtor and creditor increase the interest rate on a guaranteed loan, the guarantor is freed of all responsibility on the loan.
8. T F A taxing authority can sell someone’s property if that person fails to pay taxes.
9. T F If a secured creditor repossesses property and decides to sell it, the sale must be public.
10. T F A financing statement protects both the creditor and the public.
**CASE PROBLEMS**

Read the case problem below and then answer the questions that follow.

Granby wanted to borrow money from Public Bank to purchase a new car. Because Granby’s credit was poor, Public Bank agreed to lend the money to Granby only if Granby’s brother would act as guarantor. Granby and his brother signed the contract.

1. If Granby defaults in paying the loan, what are Public Bank’s remedies?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

2. If Public repossesses the car, can it sell the car at a private sale?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

3. If Granby defaults on the loan, must Public first try to collect from Granby before trying to collect from his brother?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

4. If Granby does not pay, can Public hold his brother liable for making the payment? Explain your answer.

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

5. What would happen if Granby’s brother were a surety rather than a guarantor?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

**MATCHING QUESTIONS**

Use the following terms to identify the phrases below. On the line next to each phrase, write the letter of the term that is most closely related to it.

1. _____ A notice that a security interest no longer exists
   a. Surety
   b. Collateral
e. Lien

2. _____ The act of taking back property that is subject to a security agreement
   a. Surety
   b. Collateral
c. Financing statement
d. Guarantor

3. _____ A person who promises to repay a debt if the debtor fails to do so after attempts are made to collect from the debtor
   a. Surety
   b. Collateral
c. Financing statement
d. Guarantor
e. Lien
4. _____ A secured interest in property granted by law
5. _____ Property subject to a security interest
6. _____ Public notice of a security interest
7. _____ A person who promises to repay the obligation of a debtor even though the creditor does not attempt to collect from the debtor
8. _____ A lien for those who supply labor, materials, or services in the construction of buildings
9. _____ Statutes that ensure that creditors are paid
10. _____ A lien granted to a creditor who has sued a debtor

f. Termination statement
g. Repossession
h. Judgment lien
i. Creditors’ bill of rights
j. Mechanic’s lien
Review Part VIII: Consumer and Creditor Protection

MATCHING QUESTIONS
Use the following terms to identify the phrases below. On the line next to each phrase, write the letter of the term that is most closely related to it.

1. _____ The right to pay for goods and services after they have been received
   a. Loss leader
   b. Collateral
   c. Security agreement
   d. Consumer
   e. Insolvency
   f. Class-action suit
   g. Bait and switch
   h. Mechanic’s lien
   i. Credit
   j. Secured creditor

2. _____ An agreement between debtor and creditor that creates a security interest
   a. Loss leader
   b. Collateral
   c. Security agreement
   d. Consumer
   e. Insolvency
   f. Class-action suit
   g. Bait and switch
   h. Mechanic’s lien
   i. Credit
   j. Secured creditor

3. _____ A lien given to those who supply materials, labor, and services in constructing buildings
   a. Loss leader
   b. Collateral
   c. Security agreement
   d. Consumer
   e. Insolvency
   f. Class-action suit
   g. Bait and switch
   h. Mechanic’s lien
   i. Credit
   j. Secured creditor

4. _____ Advertising designed to get a consumer to select a more expensive product than the one advertised
   a. Loss leader
   b. Collateral
   c. Security agreement
   d. Consumer
   e. Insolvency
   f. Class-action suit
   g. Bait and switch
   h. Mechanic’s lien
   i. Credit
   j. Secured creditor

5. _____ An item sold at or below cost to attract customers
   a. Loss leader
   b. Collateral
   c. Security agreement
   d. Consumer
   e. Insolvency
   f. Class-action suit
   g. Bait and switch
   h. Mechanic’s lien
   i. Credit
   j. Secured creditor

6. _____ Any type of asset that can be pledged as security to a bank or other creditor
   a. Loss leader
   b. Collateral
   c. Security agreement
   d. Consumer
   e. Insolvency
   f. Class-action suit
   g. Bait and switch
   h. Mechanic’s lien
   i. Credit
   j. Secured creditor

7. _____ The inability of a debtor to pay debts as they come due
   a. Loss leader
   b. Collateral
   c. Security agreement
   d. Consumer
   e. Insolvency
   f. Class-action suit
   g. Bait and switch
   h. Mechanic’s lien
   i. Credit
   j. Secured creditor

8. _____ A person who buys goods, products, and services
   a. Loss leader
   b. Collateral
   c. Security agreement
   d. Consumer
   e. Insolvency
   f. Class-action suit
   g. Bait and switch
   h. Mechanic’s lien
   i. Credit
   j. Secured creditor

9. _____ A creditor who has a secured interest in property belonging to the debtor
   a. Loss leader
   b. Collateral
   c. Security agreement
   d. Consumer
   e. Insolvency
   f. Class-action suit
   g. Bait and switch
   h. Mechanic’s lien
   i. Credit
   j. Secured creditor

10. _____ A lawsuit filed on behalf of a group of consumers
   a. Loss leader
   b. Collateral
   c. Security agreement
   d. Consumer
   e. Insolvency
   f. Class-action suit
   g. Bait and switch
   h. Mechanic’s lien
   i. Credit
   j. Secured creditor
TRUE-FALSE QUESTIONS
Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T  F Bait-and-switch advertising is permissible as long as the recommended item is superior to the item the consumer intended to buy.

2. T  F Price fixing is a violation of both state and federal laws.

3. T  F Failure to use “plain English” in a contract as required by law would make the contract voidable at the purchaser’s or buyer’s option.

4. T  F Consumer rights can be enforced by groups as well as by individuals.

5. T  F A lender can refuse to grant credit to a potential borrower solely because of that person’s marital status.

6. T  F The government can ban the sale of any product that is considered dangerous.

7. T  F In deciding whether to grant credit, a creditor can discount the importance of income from alimony, part-time work, or a pension.

8. T  F A security agreement is effective only if it is filed.

9. T  F A secured creditor who repossesses property and decides to sell it must dispose of it at a public sale.

10. T  F A secured creditor usually can repossess the collateral without first having to resort to the courts.

MULTIPLE-CHOICE QUESTIONS
On the line next to each statement, write the letter of the best answer.

1. Consumer protection laws have been enacted at
   a. the state level.
   b. the county level.
   c. state and federal levels.
   d. regional levels.

2. If a retailer runs out of an advertised item, it must give a consumer a(n)
   a. credit.
   b. item of equal value.
   c. refund.
   d. rain check.

3. Mislabeling an item with an incorrect “suggested retail price” is an example of
   a. price fixing.
   b. price misrepresentation.
   c. bait-and-switch advertising.
   d. a loss leader.

4. A buyer’s right to cancel a contract made with a door-to-door salesperson is guaranteed by the
   b. Truth in Lending Act.
   d. Return of Merchandise Act.
5. A seller who violates consumer protection laws can be subject to
   a. civil penalties.
   b. criminal penalties.
   c. both civil and criminal penalties.
   d. none of these.

6. The Smyth Company began to manufacture and sell a power lawn mower that had a tendency to 
catch on fire. The federal government is able to protect the public by
   a. forcing a recall of the mowers.
   b. requiring corrective action.
   c. ordering a refund.
   d. all of these.

7. An unsecured debt
   a. must be oral.
   b. must be in writing.
   c. can be either oral or written.
   d. must be written and filed in the county clerk’s office.

8. An unsecured creditor can collect a debt by
   a. seizing the item sold.
   b. bringing suit to collect.
   c. obtaining an injunction.
   d. all of these.

9. A secured creditor can collect a debt by
   a. seizing the item and selling it.
   b. bringing criminal charges against the debtor.
   c. having the debtor arrested.
   d. all of these.

10. A security agreement is filed to protect the
    a. debtor.
    b. public.
    c. creditor.
    d. creditor and the public.

11. Collateral for a security interest
    a. can be tangible or intangible personal property.
    b. must be intangible personal property.
    c. must be tangible personal property.
    d. can be real property.

12. In a secured transaction, collateral
    a. must be in the debtor’s possession.
    b. must be in the creditor’s possession.
    c. cannot be required.
    d. can be in either the debtor’s or the creditor’s possession.

13. Whether a person is a surety or a guarantor depends on
    a. the purpose of the loan.
    b. the interest rate of the loan.
    c. who is primarily responsible for payment.
    d. the age of the borrower.
14. Anderson supplied bricks to a contractor to construct an apartment house. If the contractor does not pay for the bricks, Anderson will be protected by filing a
   a. tax lien.
   b. debtor’s lien.
   c. mechanic’s lien.
   d. judgment lien.

15. A secured creditor who repossesses the collateral when a debt is not paid
   a. must sell it.
   b. can keep it or sell it.
   c. must deliver it to the police.
   d. must return it to the debtor.

16. A debtor can file a bankruptcy petition
   a. every two years.
   b. once a year.
   c. every six years.
   d. every six months.

17. Collecting interest in excess of the legal rate is
   a. price fixing.
   b. legal.
   c. price misrepresentation.
   d. usury.

18. If you receive an incorrect bill, you
   a. need not pay it.
   b. must notify the creditor.
   c. must notify the Better Business Bureau.
   d. can sue the creditor.

19. A person who is denied credit is entitled to know
   a. the name of the credit bureau supplying the credit report.
   b. the address of the credit bureau.
   c. the names of people asking for credit reports.
   d. all of these.

20. If your credit card is stolen and you notify the issuer, your liability is limited to
   a. $100.
   b. $75.
   c. $50.
   d. $500.

ACTIVITY: USING CREDIT

Shown below is a retail installment credit contract. Read the contract and then answer the questions on the following page.
**A-1 AUTOS**
121 S. Main Street, Akron, OH 44308

**RETAIL INSTALLMENT CONTRACT**

Date: **Sept. 25 19**

Buyer's Name (print): **Marguerita Santos**

Address: **307 E. Buchtel Avenue, Akron, OH 44325**

The undersigned Seller hereby sells and the undersigned Buyer, having been quoted both the following Cash Price and the following Deferred Payment Price, hereby buys for the Deferred Payment Price, on the terms and conditions hereinafter set forth, the following described motor vehicle, with accessories and equipment thereon, receipt and acceptance of which, in satisfactory condition, are hereby acknowledged by Buyer:

<table>
<thead>
<tr>
<th>NEW OR USED</th>
<th>YEAR</th>
<th>MAKE</th>
<th>BODY STYLE</th>
<th>MODEL NO.</th>
<th>NO. CYL.</th>
<th>FACTORY OR SERIAL #</th>
</tr>
</thead>
<tbody>
<tr>
<td>Used</td>
<td>1982</td>
<td>CHEV</td>
<td>2-door</td>
<td>8-046</td>
<td>4</td>
<td>AL27884625</td>
</tr>
</tbody>
</table>

**Special Accessories and Equipment**

(Check or specify those applicable)

- ☐ Power Steering
- ☐ Air-Conditioning
- ☑ Power Brakes
- ☑ Radio
- ☐ Power Windows
- ☐ Other (specify)

- Transmission: ☑ 4-Speed

<table>
<thead>
<tr>
<th>1. Cash Price</th>
<th>(incl. taxes, accessories, services)</th>
<th><strong>$1,200</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Downpayment</td>
<td>Cash Downpayment $200.</td>
<td><strong>$200</strong></td>
</tr>
<tr>
<td></td>
<td>Trade-in</td>
<td><strong>$200</strong></td>
</tr>
<tr>
<td>3. Unpaid Balance of Cash Price (1-2)</td>
<td><strong>$200</strong></td>
<td></td>
</tr>
<tr>
<td>4. Other Charges</td>
<td>Certificate of Title Fee</td>
<td><strong>$10</strong></td>
</tr>
<tr>
<td></td>
<td>Registration Fee</td>
<td><strong>$25</strong></td>
</tr>
<tr>
<td></td>
<td>Optional Insurance</td>
<td><strong>$-</strong></td>
</tr>
<tr>
<td>5. Unpaid Balance</td>
<td>Amount Financed (3 + 4)</td>
<td><strong>$1,035</strong></td>
</tr>
<tr>
<td>6. Finance Charge</td>
<td>$93.10</td>
<td></td>
</tr>
<tr>
<td>7. Total of Payments (5 + 6)</td>
<td>$1,128.10</td>
<td></td>
</tr>
<tr>
<td>8. Deferred Payment Price (1 + 4 + 6)</td>
<td>$1,538.6</td>
<td></td>
</tr>
<tr>
<td>9. Annual Percentage Rate</td>
<td><strong>9.7%</strong></td>
<td></td>
</tr>
</tbody>
</table>

**PAYMENT SCHEDULE**

Buyer hereby agrees to pay to Seller the Total of Payments (Item 7 from above) in **23** monthly installments of **$47.00** each and one final installment of **$47.00** on the like day of each month commencing **Oct. 1, 19** or, if different from date of transaction, finance charge begins to accrue **Oct. 1, 19**.

Signed **Marguerita Santos** Date: **9/25/19**

Signed __________________________ Date: _______
1. What is the purchase price of the car?
______________________________________________________________________________

2. What are the total interest charges?
______________________________________________________________________________

3. What is the total cost of the car?
______________________________________________________________________________

**SHORT-ANSWER QUESTIONS**

Answer each of the following questions in the space provided.

1. Because items end up costing more when they are bought on credit, what are the advantages of buying on credit?
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

2. What are the disadvantages of buying on credit?
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

3. Since passage of the Truth in Lending Law, businesses providing credit to consumers have been required to provide complete information on the cost of using credit. Write a short paragraph explaining how this law has helped consumers make wiser buying decisions.
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
PART IX INSURANCE
CHAPTER 38

Property, Casualty, and Automobile Insurance

KEY POINTS IN THE CHAPTER

- Insurance is a means of sharing risk of financial loss among a group of people. Upon payment of a premium, an insurance company issues an insurance policy that covers certain risks for a certain period of time and for a certain amount of coverage.

- Insurance may be purchased from an agent, who represents and is employed by an insurance company, or from a broker, an independent contractor who represents many companies.

- All insurance policies contain similar provisions, such as the term of coverage, the need for an insurable interest in the subject matter of the policy, what risks the policy covers, and the procedures for filing a claim.

- Property and casualty insurance protects against loss of property from fire, burglary, and theft. It also covers injuries to persons when those injuries occur on the insured premises. There are also special policies that cover other risks, such as damage to or loss of boats, and all-risk policies that insure against damage or loss from any source.

- All property and casualty insurance policies contain standard clauses that outline the rights and responsibilities of the insurance company and the insured. These include policy coverage, what happens if insured property becomes vacant, when a policy may be canceled, whether a policy may be assigned, and the procedure for making claims.

- All states have financial responsibility laws, laws requiring drivers and owners of motor vehicles to make sure that they can pay for any damage for which they are legally liable. The most common way to do this is by purchasing automobile insurance.

- Automobile insurance policies protect against (1) bodily injury liability (injury to others), (2) property damage liability (damage to property of others), (3) medical payments (medical expenses for injuries), (4) uninsured motorist liability (injuries caused by uninsured drivers or hit-and-run drivers), and collision and comprehensive damage (damage to the insured’s vehicle).

- In many states, in the event of an accident, the insured must prove that the other driver’s negligence caused the accident. Many states have adopted no-fault insurance, which eliminates the need to prove negligence in accidents involving nonserious injuries. The insured person’s insurance company pays the insured’s medical expenses regardless of who was at fault.

- A person involved in an automobile accident should notify both the police and the insurance company as soon as possible after the accident occurs, because failure to do so may result in the insurance company’s refusal to honor a claim under the policy.
MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. A risk or peril that specifically is not covered by an insurance policy is called an
   a. excision.
   b. extrusion.
   c. exclusion.
   d. extension.

2. Injuries caused by a hit-and-run driver are covered by
   a. comprehensive insurance.
   b. liability insurance.
   c. collision insurance.
   d. uninsured motorist insurance in all states.

3. Coverage against loss or damage from a windstorm is called
   a. special coverage.
   b. extended coverage.
   c. windstorm coverage.
   d. catastrophe coverage.

4. To insure property against loss or damage from any cause, one should buy a(n)
   a. all-risk policy.
   b. multi-peril policy.
   c. marine policy.
   d. liability policy.

5. To collect under an insurance policy for damage to property, the insured must have an insurable
   interest at the time
   a. the policy is purchased.
   b. the loss occurs.
   c. of purchase and the time of loss.
   d. proceeds are paid.

6. To protect yourself against claims that others might make against you for injuries caused by your
   negligence and on your property, you need
   a. public liability insurance.
   b. inland marine insurance.
   c. risk insurance.
   d. negligence insurance.

7. An addition to an insurance policy is called a(n)
   a. filler.
   b. amendment.
   c. memorandum.
   d. rider.

8. A person who operates a vehicle with the owner’s consent is protected by a clause in the policy
   called a(an)
   a. guest clause.
   b. autobus clause.
   c. deductible.
   d. omnibus clause.
9. The obligation to carry a minimum amount of insurance is called
   a. risk sharing.
   b. coinsurance.
   c. multiple coverage.
   d. co-obligation.

10. Insurance that protects against loss from claims made by persons injured as a result of the
    insured’s actions is
    a. fire insurance.
    b. public liability insurance.
    c. personal liability insurance.
    d. standard insurance.

CASE PROBLEMS

Read the case problems below. For each problem, answer yes or no, and then explain your answer in
the space provided.

1. Gilbey was burning some leaves in his backyard one afternoon. When he got too close to the
   flames, his coat caught fire and was ruined. Can he collect from his insurance company under his
   fire insurance policy for the damage to the coat?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

2. Hanley went to a baseball game and took along a valuable camera. The camera was insured under
   an all-risk policy. Hanley, through negligence, left the camera in the aisle, where it was stepped
   on and destroyed. Can Hanley collect from the insurance company for the value of the camera?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

3. Jaffey bought a painting for $2,000 and insured it for that amount. Ten years later, she discovered
   that the painting was actually a Rembrandt worth $2,000,000. If the painting is stolen, can Jaffey
   collect the full appraised value?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

4. Gregg applied for an insurance policy covering loss of or damage to his motorcycle. In the
   application, he incorrectly stated the color of his eyes. If the motorcycle is damaged in an
   accident, can the insurance company refuse to pay for the damage because of the misstatement in
   the application?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
5. Cohen lent Bridges a valuable set of china dishes for use during a party that Bridges was giving at her home. Bridges took out an insurance policy insuring the value of the china. When the china was damaged during the party, Bridges insisted that the insurance company compensate her for the loss. Was she entitled to collect?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

6. Davidson insured her jewelry with two insurance agencies. If the jewelry is stolen, can she collect the full policy amount from both agencies?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

7. Hughes canceled his car insurance policy before the end of the term. Did Hughes receive a refund for the full amount of the unused premium?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

8. Beatty had collision coverage on her car. While driving to school one day, she made a wrong turn on a one-way street and collided with another car, damaging her own car extensively. Did Beatty have a good claim for the damage?

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________

**COMPLETION QUESTIONS**

In the statements below, important words have been omitted. Fill in the blanks to complete each statement.

1. A means of sharing risk of loss with others is called ________________.

2. A written insurance contract is called a(n) ________________.

3. The greater the risk, the higher the ________________.

4. Someone who is hired by and sells insurance policies only for a specific company is called an insurance ________________.

5. A risk that specifically is not covered under an insurance policy is called a(n) ________________.

6. A policy that states the specific amount to be paid when a loss occurs is said to have ________________ coverage.

7. To reduce premiums, many insurance companies offer policies that contain a ________________ clause.

8. A material ________________ on an application for an insurance policy can void the policy.
9. In the event of a loss, the first step in presenting the claim is to notify the _________________.

10. After a claim is settled, the insured is asked to sign a document called a(n) ________________ before payment is made.
KEY POINTS IN THE CHAPTER

• Personal insurance, the most common type of which is life insurance, protects the insured and the insured’s family in the event of death, accident, or illness. It may be purchased either individually or as part of a group.

• A life insurance policy pays a certain sum of money to the designated beneficiary upon the death of the insured. The three basic types of life insurance are whole life, term, and endowment. Whole life offers lifetime protection as long as the insured pays the premiums. Its most important feature is its cash value, which increases upon each payment of the premium and which may be borrowed upon or used for other purposes. Term insurance lasts for certain periods of time and has no cash value. Endowment insurance pays the insured a yearly income for a certain period of time, with death benefits payable if the insured dies before the income benefits have been paid in full.

• Most insurance policies contain standard clauses dealing with changing a beneficiary, failure to pay premiums on time, the right to assign the policy, and waiver of premiums for disability of the insured. Two important clauses include the right of the company not to honor the policy if the insured made a material misrepresentation in the insurance application, and the inability of the company to cancel the policy after it has been in effect for two years.

• After the insured has died, a beneficiary may choose among five settlement options or ways in which the proceeds may be paid, such as a lump sum payment or payment over a period of years.

• Health insurance, which may be purchased from a private company or provided by state and federal governments, covers hospital and surgical expenses, loss of income, and often dental expenses. The most well known state and federal programs providing protection for health-related expenses are Medicaid and Medicare.

MULTIPLE-CHOICE QUESTIONS

Circle the letter of the best answer.

1. Life insurance is often a combination of protection and investment. The type of insurance that has no investment feature is
   a. straight life.
   b. endowment.
   c. term.
   d. universal life.

2. The least costly type of life insurance is
   a. endowment insurance.
   b. limited payment life insurance.
   c. term insurance.
   d. whole life insurance.
3. The clause in a life insurance policy that states that the insurance company cannot void a policy that has been in effect for a specific period of time for any reason other than nonpayment of premiums is the
   a. incontestable clause.
   b. suicide clause.
   c. settlement option clause.
   d. grace period clause.
4. In his application for life insurance, Meany lied about his health. The insurance company cannot cancel the policy if it discovers the lie after the policy has been in effect
   a. one year.
   b. two years.
   c. three years.
   d. five years.
5. At age thirty-five, Grimsby took out a life insurance policy and stated her age as twenty-nine. Grimsby died five years later. What effect, if any, does the misrepresentation have on the payment to the beneficiary?
   a. The insurer does not have to pay the beneficiary anything because the policy is void.
   b. The insurer must pay the beneficiary only half the face value of the policy.
   c. The insurer must pay the beneficiary an amount adjusted for the insured’s correct age.
   d. The insurer must pay the beneficiary the face value of the policy because the misrepresentation had no effect on the performance of the contract.
6. Forman allowed her term insurance policy to lapse when she was laid off from work and short of money. After six months she was able to make all of her back payments and was still in good health. Which clause in her policy would require the insurance company to place Forman’s policy back in force?
   a. grace period clause
   b. reinstatement clause
   c. incontestable clause
   d. waiver of premium clause
7. Weeks purchases a life insurance policy on McKay’s life and names Jones as the beneficiary. Who must have an insurable interest, and at what time, for this policy to be valid?
   a. Jones at the inception of the policy
   b. Jones at the time of McKay’s death
   c. Weeks at the inception of the policy
   d. Weeks at the time of McKay’s death
8. Johnson and Bell were engaged to be married. Johnson took out a $10,000 life insurance policy on his life and named Bell as the beneficiary. The engagement was broken. Johnson subsequently married Cochran and had a son. When Johnson died, the insurance company would be required to pay
   a. his estate.
   b. Cochran.
   c. the son.
   d. Bell.
9. When Pogue retired from her job at age sixty-five, she became eligible for government-subsidized health insurance called
   a. Medicare.
   b. Medicaid.
   c. unemployment insurance.
   d. disability income protection.
10. Insurance that covers catastrophic illness or injury is called
   a. Medicare.
   b. Major Medical Insurance.
   c. Medicaid.
   d. Social Security.

**CASE PROBLEMS**

Read the case problems below. For each problem, answer yes or no, and then explain your answer in the space provided.

1. The premium on Benson’s life insurance policy was due on December 1. Benson mailed the premium on December 10, but the insurance company refused to accept it, claiming the policy had lapsed. Was the insurance company correct?

   ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________

2. Harden purchased a life insurance policy. Five years later, he committed suicide. Did the insurance company have to pay the proceeds of the policy to Harden’s beneficiary?

   ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________

3. On August 1, 1986, Williams submitted a life insurance application to the Premier Life Insurance Company. Although he was born in 1950, he mistakenly wrote 1960 as his year of birth on the application. Last month the insurance company discovered the error in Williams’s date of birth. Can the policy be declared void?

   ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________

4. Rustin purchased a 5-year term insurance policy. After 5 years, can Rustin collect the cash value of the policy from the insurance company?

   ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________

5. Milton purchased a whole life insurance policy. Several years later, she found she could no longer pay the premiums. Can the insurance company cancel the policy without any further benefit to Milton?

   ____________________________________________________________
   ____________________________________________________________
   ____________________________________________________________
### MATCHING QUESTIONS

Use the following terms to identify the phrases below. On the line next to each phrase, write the letter of the term that is most closely related to it.

<table>
<thead>
<tr>
<th>Phrase</th>
<th>Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. A policy that provides income during the owner’s lifetime</td>
<td>a. Group insurance</td>
</tr>
<tr>
<td>2. An insurance policy for which premiums start out low and increase</td>
<td>b. Key-person insurance</td>
</tr>
<tr>
<td>3. A policy that insures all members of a specific group</td>
<td>c. Limited payment insurance</td>
</tr>
<tr>
<td>4. Insurance purchased by business partners to insure the lives of other partners or stockholders</td>
<td>d. Term insurance</td>
</tr>
<tr>
<td>5. A policy that combines whole life and term insurance</td>
<td>e. Endowment insurance</td>
</tr>
<tr>
<td>6. Insurance that provides protection for a limited time</td>
<td>f. Modified life insurance</td>
</tr>
<tr>
<td>7. Insurance for which premiums are paid for a limited period of time</td>
<td>g. Annuity</td>
</tr>
<tr>
<td>8. Insurance that provides protection until the insured reaches a certain age</td>
<td>h. Family income policy</td>
</tr>
<tr>
<td>9. A policy that provides income to a person who cannot work because of illness or accident</td>
<td>i. Disability income insurance</td>
</tr>
<tr>
<td>10. A policy offering lifetime protection and for which premiums remain the same</td>
<td>j. Whole life insurance</td>
</tr>
</tbody>
</table>
Review Part IX: Insurance

TRUE-FALSE QUESTIONS
Indicate whether each statement below is true or false by circling T or F in the column on the left.

1. T F An insurance broker is employed by an insurance company to sell insurance.
2. T F An insurance company does not issue a policy without an application.
3. T F Once an insured makes the first premium payment, the insurance company is obligated on the policy regardless of the presence of an insurable interest.
4. T F If an insured suffers a loss that equals the deductible amount, he or she does not recover anything from the insurance company.
5. T F An insurance company can cancel a policy because of false information on the application even if it did not rely on the information in issuing the policy.
6. T F Fire insurance does not cover smoke damage caused by a fire.
7. T F A homeowners policy covers damage to the personal property of guests while they are on the insured’s property.
8. T F Specific coverage in a property insurance policy becomes a problem if costs rise because of inflation.
9. T F An insurance company can cancel an insurance policy if the insured increases the risk of loss or damage.
10. T F A passenger in a car who shares the expenses of a trip is not protected by an automobile guest law.

MATCHING QUESTIONS
Use the following terms to identify the phrases below. On the line next to each phrase, write the letter of the term that is most closely related to it.

1. _____ That part of a loss paid for by the insured
   a. Coinsurance
   b. Short rate
   c. Subrogation
   d. Binder
   e. Indemnification
   f. Proximate cause
   g. Release
   h. Guest laws
2. _____ A legal form signed when a claim is settled
3. _____ Laws that define responsibility toward passengers in the insured’s car
4. _____ A clause that requires an insured to maintain a certain amount of insurance
MULTIPLE-CHOICE QUESTIONS
Circle the letter of the best answer.

1. Insurance can be issued by
   a. department stores.
   b. savings banks.
   c. churches and synagogues.
   d. city governments.

2. An insurance salesperson who sells insurance issued by several companies is an
   a. insurance agent.
   b. issuer.
   c. actuary.
   d. insurance broker.

3. When an insurance company does not give a binder, a policy becomes effective when
   a. the application is received.
   b. the application is accepted.
   c. thirty days have gone by.
   d. the policy is delivered to the insured.

4. If an insured does not have an insurable interest in the life or the property insured, the
   a. policy is void.
   b. policy is voidable at the insured’s option.
   c. insured can collect only half the face value of the policy.
   d. insured cannot recover any premiums paid.

5. If you own a painting valued at $5,000 and want to guarantee payment of that amount in the event of theft, regardless of the actual value at the time of the loss, you should choose insurance with
   a. inflation coverage.
   b. open coverage.
   c. valued coverage.
   d. closed coverage.
6. To be fully protected from loss of or damage to personal property for any reason, you would choose a(n)
a. all-risk policy.
b. homeowners policy.
c. multi-peril policy.
d. standard policy.

7. If a person insures property with more than one company and a loss occurs,
   a. the company that issued the first policy is liable for the loss.
   b. neither company is liable.
   c. each company pays its pro-rata share of the loss.
   d. each company must pay the full amount of the loss.

8. Property and casualty policies can be canceled
   a. when a loss occurs.
   b. at any time by the insured or the insurer.
   c. by the insured only.
   d. by the insurer only.

9. An insured who has property and casualty insurance
   a. can assign the policy at any time.
   b. is prohibited from assigning the policy.
   c. can assign the policy with the consent of the insurance company.
   d. can assign the policy only before a loss occurs.

10. Collision insurance insures against
    a. injury to the insured.
    b. damage to another’s car.
    c. injury to another person.
    d. damage to the insured’s car.

11. The coverage under a policy in which a specific amount is payable is called
    a. closed.
    b. specific.
    c. open.
    d. valued.

12. Concealing material information on an insurance application
    a. voids the policy.
    b. makes the policy voidable at the insurance company’s option.
    c. has no effect on the policy.
    d. has no effect if the initial premium has been paid.

13. To insure a camera against any type of loss, you would purchase a
    a. theft policy.
    b. homeowners policy.
    c. comprehensive policy.
    d. floater policy.

14. Insurance coverage that pays for damage if a driver loses control of her or his car and crashes into a store window is
    a. comprehensive.
    b. property damage.
    c. collision.
    d. public liability.
15. Ward, age forty, wants to insure his life. To receive the face value of the policy when he reaches age sixty, he should buy a(n)
   a. term policy,
   b. twenty-year endowment policy.
   c. twenty-payment life policy.
   d. annuity with payments beginning at age sixty.

16. When an insured dies, the life insurance company pays the
   a. face value of the policy to the beneficiary.
   b. cash surrender value to the beneficiary.
   c. face value to the insured.
   d. cash surrender value to the insured.

17. Hubbard planned to fly from Boston to Dallas. She purchased a life insurance policy that covered her solely during the trip. This kind of policy is called a(n)
   a. straight life policy.
   b. term policy.
   c. endowment policy.
   d. annuity.

18. A life insurance company can refuse to pay the face amount of a policy if the insured commits suicide
   a. before age eighteen.
   b. before age twenty-one.
   c. within the first two policy years.
   d. within the first three policy years.
CHAPTER 1: FOUNDATIONS OF LAW AND THE ROLE OF ETHICS IN BUSINESS

True-False Questions
1. true
2. true
3. false—precedents
4. true
5. false—equity
6. true
7. false—common (case)
8. false
9. true
10. true

Multiple-Choice Questions
1. b
2. d
3. b
4. c
5. d
6. a
7. c
8. a
9. d
10. c
11. a
12. d
13. a
14. a  
15. a  

**Short-Answer Questions**  

1. Some possible considerations might be:  
   - Whether to disclose possible delays in delivery.  
   - Whether to discuss the possibility of a price increase that would affect the price of the computers purchased by the corporation.  
   - Whether to discuss the chance of a recall of the computers after the date scheduled for delivery to the corporation.  
   - Whether to discuss that the current model of computers under consideration have been the subject of recalls because of known defects to this particular mode.  
   - Whether to discuss the fact that repairs to the model computer under consideration are high.  

The sales person might also seek to answer the following questions:  
   - What kind of conduct is generally regarded as legally permissible?  
   - What is accepted business practice?  
   - What would his company expect the salesperson to do?  
   - Will nondisclosure of these facts hurt repeat business?  
   - What would other sales representatives in his company do?  
   - How would I view the situation if I were in the customer’s place?  

2. *Stare decisis* is the practice of following previous decisions; its main advantage is that it enables people to act in certain ways, knowing they can rely on established law.  

3. If a lawsuit arises and money damages (the only remedy at law) are an unsuitable remedy, a court of equity may allow the injured party to seek nonmonetary relief such as specifically ordering the other party to perform a certain act (called specific performance) or to refrain from certain conduct (called an injunction).  

4. Although law is strongly affected by ethical concepts, the law and ethics are not the same. Many rules of law are completely unrelated to ethics—for example, the rule stating you must stop at a red light. Likewise, many ethical precepts are not legally enforceable—for example, the issue of watching from shore as a person drowns in a lake.  

5. *Robinson v. California* is a part of the U.S. law called case law (law arrived at through court decisions). More important, this decision by the Supreme Court became a precedent. As stated on page 9 of the text, courts in the United States make laws that create precedents (standards to be followed by other courts), and these precedents have the same force of law as laws passed by the United States Congress or by state legislatures.
CHAPTER 2: THE FEDERAL AND STATE COURT SYSTEMS AND THEIR CONSTITUTIONAL FOUNDATION

Matching Questions
1. b  
2. m  
3. f  
4. n  
5. o  
6. k  
7. a  
8. d  
9. e  
10. g  
11. l  
12. h

Multiple-Choice Questions
1. c  
2. d  
3. c  
4. d  
5. b  
6. a  
7. c  
8. c  
9. d  
10. d  
11. c  
12. a

Short-Answer Questions
1. In a court action, opposing parties, usually represented by attorneys, produce evidence to prove that their point of view should prevail over the other party’s. It is felt that this process will bring out all evidence and that the result will be the truth.
2. This form of government allows for an executive branch, a legislative branch, and a judicial branch. The separation of government functions into three distinct branches removes the judicial system from politics and from the influence of temporary fads or ideas.

3. Judicial review allows lower court decisions to be reversed or changed if they are not in accordance with existing law and the state and federal constitutions.

4. A court with general jurisdiction has the power to hear almost any case brought before it. A court with limited jurisdiction has the power to hear only certain cases in terms of the type of case, the amount of money involved, or the geographic area.

5. The appealing party must show that, had an error of law not been made, he or she would have won the case. Cost is another inhibiting factor of the appeals process. One major expense is attorney’s fees. Another major expense is the cost of reducing to writing the entire record of the court trial (word for word). A copy of this record of trial must be presented to each appellate court judge so that he or she can study it in great detail.

6. The issuance of a summons in a civil case (civil lawsuit) brings the defendant party under the jurisdiction of the court. In a criminal case, an arrest made by means of an arrest warrant issued by a judge brings a person accused of a crime (the defending party) into court.

7. (Answers will vary.)

Some points for allowing an appeal:

- Appellate court judges are geographically, emotionally, and politically removed from the place of trial. This places them in a neutral position to reflect on the issues brought up at the trial.
- The process of appeal serves as a check on the proceedings in a trial court to ensure that the judge properly interpreted the evidence presented in a case.

8. Civil courts handle cases involving disputes between individuals, between a person and a business, or between businesses. Disputes are usually settled by an award of money damages to the “winning party.” Criminal courts hear cases between a governmental unit—such as the state or federal government (acting for society)—and a person or business accused of a crime. Criminal courts determine whether a crime has been committed and also set punishment for those who are found guilty of committing a crime.

9. A discussion of small claims court will be found on pages 25-27. Three distinct advantages are listed on p. 25.

10. The case of *Roe v. Wade* is a recent (1973) example of a court’s power to exercise the right of judicial review. The concept of judicial review gives higher courts the power to review decisions of lower courts and to modify, change, or reverse these decisions if they are not in harmony with existing laws and constitutions. The Supreme Court case of *Marbury v. Madison* established the basis for the concept of judicial review by declaring an act of Congress unconstitutional.

11. Refer to p. 38 in the text.

**Case Problems**

1. 
   a. federal
   b. U.S. District Court
   c. U.S. Court of Appeals
2.
   a. small claims court
   b. no
   c. judge

3.
   a. civil
   b. state
   c. trial

4. Yes. New York State can establish personal jurisdiction by applying the minimum contact rule under that state’s long arm statute. It is true that employees from the Moyles Corporation had only made one or two trips to New York State, but on the other hand Moyles had entered into a contract in the state of New York and had promoted the Villin-Rolf fight within the state. It seems only fair that because of these two circumstances, Moyles should be required to answer the complaint.

CHAPTER 3 CRIMINAL LAW: TRADITIONAL CRIMES AND CYBERCRIMES

Completion Questions
1. corrections
2. one year
3. larceny
4. entrapment
5. indictment
6. less than
7. identify theft
8. larceny
9. Miranda warnings
10. extortion

Short-Answer Questions
1. See Figure 3.3, also p. 55.

2.

<table>
<thead>
<tr>
<th>Rights:</th>
<th>Defenses:</th>
</tr>
</thead>
<tbody>
<tr>
<td>right to remain silent</td>
<td>insanity</td>
</tr>
<tr>
<td>right against self-incrimination</td>
<td>justification</td>
</tr>
<tr>
<td>right to know reason for arrest</td>
<td>entrapment</td>
</tr>
</tbody>
</table>

(Note: Student answers may vary.)
3. Your best defense is duress by proving that you were forced to act against your free will under the threat of death by these terrorists, and that there was no reasonable opportunity to escape.

4. 
   a. larceny (theft) and possession of stolen property
   b. assault
   c. burglary and larceny (theft)
   d. robbery
   e. embezzlement and forgery

5. Obtain a warrant before making an arrest. (Answers may vary.)

Multiple-Choice Questions
1. b
2. b
3. d
4. d
5. d

Case Problems
1. Yes. The intent to commit the crime still classifies the act as burglary, even though Benton did not actually follow through with his intention.
2. No. The low price Reese paid and the circumstances of the sale should have made him suspicious that the speakers were stolen. Courts hold that a person is guilty of a crime if he or she accepts property under the reasonable belief that it has been stolen.
3. Yes. Marx has the defense of entrapment. The act of bringing drugs into the United States originated in the minds of the immigration officials, and it was they who induced Marx to violate the law. This act on the part of the immigration officials constitutes entrapment. Therefore, Marx is not criminally liable.

CHAPTER 4 TORT LAW: TRADITIONAL TORTS AND CYBERTORTS

Matching Questions
1. f
2. b
3. h
4. d
5. j

Completion Questions
1. invasion of privacy
2. intentional
3. theft (stealing)
4. injunction
5. defamation
7. strict liability
8. careless
9. malpractice
10. proximate (direct)

**Multiple-Choice Questions**

1. d
2. c
3. d
4. b
5. d
6. c
7. d
8. a
9. d
10. b
11. c
12. d
13. d
14. c
15. d
16. d
17. a
18. c
19. c
20. b

**Case Problems**

1. No, there has been no false arrest. For a false arrest to occur, a person must be detained against his or her will. In this case, Jones, confronted by Reed for possible shoplifting, consented and freely accompanied her (Reed) to the store manager’s office.

2. Yes. An invasion of privacy has taken place because Dansig, without consent, used Langley’s picture in an advertising campaign.
3. No. The remark about Byrd was true, so Byrd has no claim for damages on the basis of slander. Byrd, however, can sue for invasion of privacy because Dr. Springer wrongfully disclosed true information about Byrd which was not of legitimate concern to the public—in this case those in attendance at the dinner party.

4. No. Davis was negligent (i.e., he acted carelessly). He (Davis) should have foreseen that his act of walking onto the waxed floors, in spite of the signs that warned customers not to, created a risk that injury could have resulted. Davis failed to act as a “reasonable person” would have acted. On the other hand, if Davis were not the average individual (e.g., minor child, sight impaired, advanced age), he might have some success in suing the restaurant. He could claim that the restaurant contributed to his (Davis’s) negligence by not anticipating dangers for certain classes of people (e.g., as a sight-impaired person he could not see the small signs; or as a minor child he was attracted to the area by the shiny floor).

**Short-Answer Questions**

1. False arrest involves unlawful detainment by an authorized official—for example, a police officer—without just cause. False imprisonment occurs when a person is unlawfully forced to remain in a certain area or a person’s freedom of movement is restricted. (Examples will vary.) A police officer mistakes you for someone else and arrests you (false arrest). A store detective holds you in a locked room on suspicion of shoplifting (false imprisonment).

2. Refer to pp. 80-82.

3. Refer to p. 82.

4. Refer to pp. 71-74, specifically p. 73.

5. Refer to p. 76

**CHAPTER 5: LITIGATION AND ALTERNATIVES FOR SETTLING CIVIL DISPUTES**

**True-False Questions**

1. verdict
2. true
3. petit
4. judgment
5. true
6. true
7. attorney
8. true
9. discovery
10. true

**Multiple-Choice Questions**

1. c
2. c
3. a  
4. b  
5. d

**Chronology**

1. summons and complaint  
2. answer  
3. discovery proceedings  
4. attorneys’ opening statements  
5. presentation of evidence for the plaintiff  
6. presentation of evidence for the defendant  
7. attorneys’ closing statements  
8. verdict  
9. appeal

**Short-Answer Questions**

1. Litigation is the settlement of disputes in court or by trial. Arbitration is the nonjudicial determination of disputes; an arbitrator is chosen to hear the case and make a binding decision called an award. Mediation is similar to arbitration, except that the decision reached is not binding but advisory only.

2. Arbitration substitutes for a court trial, and the decision of the arbitrator is binding. Mediation cannot force a settlement. It is advisory, not binding. The mediator simply helps the parties reach agreement.

3. Discovery enables both the plaintiff and the defendant to learn in detail the nature of the other’s claim or defense. The process used in the pretrial steps of discovery ensures that all potential testimony and other evidence is available to both sides. As a result of the use of discovery as a pretrial technique, the actual trial can be shortened, or the need for a trial can be eliminated.

4. Discovery techniques include written questions answered under oath by the opposite party; depositions—sworn statements from witnesses who, for good cause, may not be able to be present at the trial; compulsory physical and mental examinations by doctors chosen by the other party in personal injury cases; and the production for inspection of documents or other things in the possession of the other party.

5. Costs associated with an appeal are high—the entire record of trial must be reduced to writing (word for word) and given to each appellate court judge to study; attorney’s fees are higher than the normal 33.33 percent of the amount collected as money damages. The opportunities for successful appeal are limited to questions of law; i.e., the appealing party must show that he or she would have won the case if the error of law had not been made during the trial. (Also discussed in Chapter 2.)

6. Refer to p. 106 and revisit all alternatives to litigation on pp. 103 – 106.

7. The large number of cases filed; a shortage of judges available to hear cases; the length of time required to settle each case (many cases are complicated and involve large sums of money).

**Activity: Document Analysis**

1. This document, called a complaint, is one of the documents (another is a summons) used to initiate a civil action in a court of law. It sets out the facts and circumstances that the plaintiff believes are the basis for a legal action against the defendant; the complaint also states the remedy being sought by the plaintiff.

2. Negligence of the defendant (Mary Martin) in operating her automobile, causing the plaintiff (William Jordan) to suffer great bodily injury for an extended period of time.

3. a summons

4. allegations

5. She should, through her lawyer, file an answer which is a written response to the allegations (claims) made by the plaintiff.

**REVIEW PART I: UNDERSTANDING THE LAW**

**True-False Questions**

1. T
2. T
3. F
4. T
5. F
6. T
7. T
8. T
9. F
10. T
11. F
12. T
13. T
14. T
15. T

**Multiple-Choice Questions**

1. c
2. a
3. b
4. d
5. c
6. c
7. a
8. c
9. b
10. b
11. a
12. b
13. d
14. d
15. c
16. d
17. a
18. c
19. a
20. d
21. c
22. b
23. b
24. b
25. d
26. d
27. d
28. c
29. c
30. d
31. d
32. a
33. c
34. d
35. b

Completion Questions
1. precedent
2. punishment
3. money damages
4. discovery
5. true
6. reasonable
7. carelessness
8. fraud
9. person
10. punitive

**Case Problem**
1. indictment
2. felony (second time)
3. district attorney
4. subpoena
5. in some states (“dram shop act”)

**Short-Answer Questions**
1. Refer to Chapter 1, pp. 6-10
2. Refer to Chapter 4, pp. 67 & 68
3. No, unless the unethical act has been specifically declared illegal. Keep in mind however, that ethics is strongly connected to the law. Laws are made and changed as ideas of what is right and wrong changes.
4. Refer to pp. 103-106.
5. Refer to chapter 1, page 16
6. Refer to Chapter 3, page 48

**CHAPTER 6: CONTRACT LAW: A BEGINNING**

**Multiple-Choice Questions**
1. d
2. d
3. a
4. b
5. b
6. c
7. c
8. d
9. a
10.  d
11.  c
12.  b
13.  c
14.  b
15.  b

Case Problems
1. Yes. An implied contract was formed as a result of the action of the parties rather than from spoken or written words.
2. Yes. A contract implied in law was formed between Berger and the hospital. If she did not pay, she would benefit unjustly at the expense of the hospital; therefore, the court would require her to arrange for payment.
3. No. The agreement between Stevens and Anderson was simply a social arrangement, and therefore no legal obligations were created.
4. Yes. The oral offer and acceptance of the credit manager position created a binding contract. However, because the agreement was oral, enforcement will be difficult.
5. No. A valid contract requires offer and acceptance. There is no evidence of acceptance on Martell’s part.
6. No. Because the subject matter of the contract did not exist at the time of the agreement, the contract is void. A void contract has no legal effect.
7. 
   a. Harry Owens
   b. James Harrington
   c. January 9
   d. Owens cleaned the carpet; Harrington paid money ($500).
   e. Yes
8. 
   a. date of agreement
   b. signature of parties
   c. consideration
   d. location of house to be painted

Short-Answer Questions
1. Answers will vary. Suggested answer: If an agreement creates a legal obligation, then it is considered to be a contract and will be enforced by the courts. However, many agreements are simply social arrangements in which the parties do not intend to create a legal obligation. Such social agreements are not enforceable as contracts in a court of law.
2. Written terms cannot easily be changed. If a misunderstanding arises later, it is easy to establish the terms actually agreed upon.

3. Consideration may be property such as a watch or a car. Consideration may also consist of doing something you are not legally bound to do, refraining from doing something you have a legal right to do, or promising to do or not to do something.

4. Refer to p. 121.

5. No. A void contract is not a contract at all. It has no legal effect (no legal existence). For example, a contract to murder someone is void; therefore, a court will not enforce this agreement because it lacks the element of legality. On the other hand an unenforceable contract is one that is legal and binding in all respects but will not be given effect in a court of law for some particular reason. For example some contracts by law must be in writing. If such a contract is made orally, it will be unenforceable. Note, however, that the contract otherwise appears to meet all the criteria of a valid contract.

CHAPTER 7: AGREEMENT: OFFER AND ACCEPTANCE

Multiple-Choice Questions
1. c
2. a
3. b
4. d
5. a
6. d
7. b
8. b
9. d
10. b
11. a
12. d
13. b
14. b
15. c

Case Problems
1. Yes. Acceptance occurred when Ganze mailed the acceptance letter. The fact that the telegram and the letter arrived at the same time has no bearing in this case.

2. No. A counteroffer terminates the original offer. Beacher rejected the original offer, and Jordan rejected Beacher’s counteroffer. Therefore, no contract was formed.

3. No. The offeree’s silence would not be regarded as acceptance. Wurzer had no legal obligation to notify the publishing company.
4. Yes. The offer was made to the general public, but it is directed to the first person who acts upon it. Since Jarvis complied with the offeror’s request, she is entitled to the reward.

5. No. An offer may be withdrawn at any time, even if the offeror has promised to hold the offer open for a stated period. No option contract existed to require the offeror to hold the offer open.

Matching Questions
1. d
2. a
3. b
4. c
5. e

Short-Answer Questions
1. If the offeror asks for performance (rather than a promise) as the means of acceptance, it would ordinarily be unnecessary for the offeree to communicate his or her acceptance to the offeror. The offeree would be free to accept simply by completing the act called for in the offer. If the offeror, however, expects performance sooner than the offeree plans to give it, and it doesn’t happen, the offeror may make the same offer to someone else who completes the job sooner. Under these circumstances, the offeror, of course, would have no further obligation to the original offeree. If the original offeree attempted to sue the offeror for breach of contract, he or she would have no case.

2. A counteroffer results when the offeree’s attempted acceptance fails to match term by term the provisions in the original offer. It is actually a rejection of the offer. Original offerors may accept counteroffers if they wish, but they have no legal obligation to do so.

Activity: Case Analysis
1. No. The revocation was also published, thereby ending the offer, even though Shuey did not see the revocation himself.

2. No. Shuey did not apprehend Suratt; he simply supplied information leading to his arrest. The original offer provides only a $10,000 reward for providing such information.

CHAPTER 8: CONSIDERATION

Multiple-Choice Questions
1. d
2. a
3. b
4. a
5. c
6. a
7. c
8. d
Case Problems
1. No. Adler is already under contract and would have to give additional consideration, such as a longer contract period, to create a new agreement.
2. Yes. The adequacy of the consideration is unimportant. The important thing is that consideration (money) was given in exchange for the item.
3. No. The agreement not to sue (which Visca would have been legally entitled to do) when supported by valid consideration (money) is enforceable.
4. No. The promise of a gift is unenforceable because of lack of consideration.
5. No. A compromise of a disputed claim is binding on both parties. The promise of each to settle for less is supported by consideration, which is each other’s refraining, or a promise to refrain, from contesting the amount to be paid in court.

Short-Answer Questions
1. Fraud; Duress; Undue Influence; Unconscionability
2. If a party (usually the offeree) promises to perform a pre-existing legal obligation (i.e., an obligation he or she is already bound to perform), then that party has really not given up any consideration to support a new promise by the offeror to do something.
3. Courts will apply this equity doctrine to enforce a promise unsupported by consideration on the part of the promisee (offeree) if it would be grossly unfair not to enforce the promise. A promisee may do something significant in reliance upon the promise of the promisor (even though no consideration was given by the promisee) and then have the promisor back out of his or her promise.
4. Refer to pp. 149-150 of text.

CHAPTER 9: COMPETENT PARTIES

Multiple-Choice Questions
1. b
2. c
3. d
4. b
5. b
6. a
7. b
8. c
9. d
10. b
11. b
12. c

**Case Problems**

1. No. Once a minor ratifies a contract after reaching majority, he or she can no longer disaffirm. Karlson ratified the agreement by making payments after he turned 18, the age of majority in most states.

2. No. A self-supporting minor is liable for her or his own necessaries.

3. No. An attempt by a minor to ratify a contract while still a minor is not effective.

4. No. A minor may avoid a contract for other than necessaries even if the minor’s age was misrepresented. The minor may be required to pay for depreciation of the tuxedo’s value.

**CHAPTER 10: LEGAL PURPOSE**

**Case Problems**

1. No. Agreements that totally discourage marriage are illegal and void.

2. No. An agreement made with an elected or appointed official to use her or his influence to affect the passage of a law is illegal and void.

3. No. Agreements that interfere with the proper administration of justice are illegal and void.

4. No. When state statutes require that a person be licensed to perform services for the general public, an agreement made with an unlicensed person is illegal, and the unlicensed person cannot legally collect for services performed.

5. Yes. A contract in reasonable restraint of trade is valid and binding.

6. No. An agreement with an elected or appointed official to use her or his influence to affect passage of a law is illegal and void.

7. No. Giveaways used for promotional purposes are lawful as long as it is not necessary to purchase anything to participate. Because Risson’s participation was free, the element of consideration is lacking and the promotion is legal.

**Multiple-Choice Questions**

1. a
2. d
3. a
4. a
5. b
6. b
7. c
8. c
9. a
10. b
Short-Answer Questions

1. 
   a. When the parties are not in pari delicto (that is, not equally at fault). In this situation, the less guilty party may recover if recovery serves the public interest in some way.
   
   b. When agreements consist of both legal and illegal parts. The legal part may be enforced if it can be separated from the illegal part.
   
   c. Gambling statutes. Statutes in some states permit a person who suffers gambling losses (at cards or dice, for example) over a certain amount to recover these losses from the winner. This applies if gambling takes place at other than legalized gambling casinos. pp. 165–166

2. A usurious contract involves charging a higher rate of interest than that allowed by state law. Some of the exceptions: (a) Special lenders such as small-loan companies, credit unions, and pawn shops may charge interest rates above the maximum rate allowed by state law. (b) Loans to corporations are exempt from usury statutes. (c) Consumer loans (such as car loans) are also exempt from usury statutes.

3. Covenants not to compete consist of promises (generally written), made by a seller of a business or an employee who leaves a company, not to engage in the same or a similar business or occupation for a period of time in a certain geographical area. Courts judge them as to the reasonableness of the time period involved and the geographical area involved.

4. Yes. A court can declare a contract, or any portion of a contract to be illegal if, in its opinion, the agreement or clause in that agreement if enforced, would bring about a result that would be significantly harmful to individuals. Each state will determine as a matter of public policy what agreements are harmful—that is immoral, unethical, or interfere with the health, safety, or general welfare of the people in that state.

CHAPTER 11: CONTRACTS THAT MUST BE IN WRITING AND E-SIGNATURES

True-False Questions

1. T
2. T
3. T
4. T
5. F
6. T
7. F
8. F
9. T
10. T

**Case Problems**
1. No. The promise to pay another’s debt must be in writing to be enforceable.
2. No. A promise by an executor to be personally liable for the debts of the deceased must be in writing to be enforceable.
3. No. Contracts for the sale of property must be in writing to be enforceable, even if a down payment is made.
4. Yes. An oral contract that by its terms can be performed within a year is enforceable.
5. No. Contracts made in consideration of marriage must be in writing to be enforceable.

**Multiple-Choice Questions**
1. b
2. c
3. c
4. c
5. b
6. c
7. a
8. d
9. b
10. c

**Short-Answer Questions**
1. See text p. 186.
2. The writing must contain at least the following information: (a) the names of the parties, (b) the subject matter; (c) the consideration; (d) the material terms (e) at least the signature of the party (handwritten, printed, typed or stamped) against whom enforcement is sought. (This signature can be anywhere in the writing). Several documents (i.e. letters, telegrams, receipts etc.) could be pieced together to meet the minimum requirements.
3. Under the parol evidence rule if a court finds that the parties intended their written contract to be the final and complete statement of agreement, parol evidence offered prior to or at the time of signing the written contract cannot present evidence in court that would change the written agreement.

4. When the friend promises to pay Jackson’s bill if Jackson does not do so, the friend is promising to pay the debt of another. In order to be enforceable, this promise must be in writing according to the statute of frauds. When Jackson’s friend, however, tells Riggins to charge the purchase to him (Jackson’s friend), the friend is incurring a personal debt; he is not promising to pay Jackson’s debt but instead is creating his own debt. This latter type of transaction does not have to be in writing to be enforceable.

5. When the terms of a contract cannot possibly be performed within one year from the date the contract is entered into (not from the date that performance is to begin).


7. No. A different interpretation by the parties may occur as the parties begin their performance, even though they may have tried to be as precise as possible. The courts then may be called upon to decide what the disputed terms mean.

CHAPTER 12: TRANSFER OF CONTRACT RIGHTS AND OBLIGATIONS

Mini-Case
1. a
2. c
3. d
4. a
5. b

True-False Questions
1. F
2. T
3. F
4. F
5. T
6. T
7. F
8. T
9. T
10. F
**Multiple-Choice Questions**

1. a
2. c
3. b
4. c
5. a

**Case Problems**

1. Yes. Blacke’s must pay the finance company $600. Unless and until the obligor (Blacke’s) receives a notice, the assignment has no legal effect. In this case, the obligor is free to perform for the assignor.

2. No. The right to work for someone is so personal that it cannot be assigned without permission.

3. No. Contract obligations that require a special skill or knowledge may not be delegated without permission of the party who is to receive performance of the service.

4. Yes. Rights of a nonpersonal nature may be freely transferred without permission.

5. Yes. Obligations of a nonpersonal nature may be delegated without permission.

6. Yes. You are under no obligation to accept the services of the guitarist’s brother. Contracts involving special skill, knowledge, or judgment cannot be delegated without both parties’ consent.

7. No. Since the third party (the assignee) failed to notify you of the assignment, he has no legal claim against you.

8.
   a. This was a legal assignment; therefore, the bank may collect the $30,000 from Marlan. Marlan has a legal obligation to pay the assignee once he or she has been given notice of the assignment.
   b. This was not a legal assignment; therefore, the bank may not collect the $20,000 from Pool. No contract right existed that could be assigned at the time of the so-called assignment. The thought of hiring RYCOM did not as yet create rights that could be assigned.

**Short-Answer Questions**

1. It means that the assignee has the same rights as the assignor and does not acquire any new rights. Also, the assignee is subject to the same defenses as existed prior to the assignment.

2. Yes, and such a clause in a contract is generally honored; however, there are some exceptions. A contract, for example, cannot prevent an assignment of the right to receive money. The statutes of some states may also place restrictions on assignments.

3. If notice is not given after the assignment has been made, the assignee runs the risk that the obligor, not knowing of the assignment, will pay the debt (or render whatever other performance is required) to the assignor. In this case, the assignee loses all rights against the obligor.

4. Generally no special form is required when an assignment is made. Any oral or written words that clearly indicate a person’s intent to make an assignment are sufficient. It is always best, however, to put an assignment in writing.
5. Answers will vary. The following is a suggested answer. It would not be fair to let the delegator of the duty substitute a new party in his or her place without the third party’s permission and then be able to escape liability.

6. In an assignment, the assignor (original party to the contract) transfers his or her contract rights. After the assignment, the assignor no longer is entitled to these rights. In a delegation, the delegator transfers an obligation under the contract but continues to be responsible for making sure that this obligation is carried out.

CHAPTER 13: THE TERMINATION OF CONTRACTS: DISCHARGE

Multiple-Choice Questions
1. c
2. c
3. a
4. d
5. b
6. a
7. d
8. d
9. d
10. c
11. d
12. a

True-False Questions
1. alteration
2. substantial performance
3. true
4. tender of performance
5. true
6. rescission
7. true
8. performance
9. novation
10. true

Short-Answer Questions
1. Rescission consists of a voluntary, mutual ending of a contract by the parties and a return to the status quo (i.e., back where they started before the contract was made).
2. Impossibility due to an unforeseen event is grounds for discharge of a contract if it falls into one of the categories below and then only if it is legally concluded to be the case as determined by external (objective) means rather than an individual’s personal conclusion: (a) destruction of the subject matter; (b) death, serious illness, or other incapacity in a personal services contract; (c) change in the law. If performance simply becomes unreasonably difficult to perform (but performance is still possible), no relief (discharge) is granted unless a contingency clause is in the contract. For this reason, nonperformance stemming from strikes, insolvency, and droughts will usually not result in discharge. Because of the harshness of this common law rule, the doctrine of commercial impracticability has emerged under modern law (case law and UCC section 2-615). This doctrine recognizes unanticipated events that radically alter the original performance of a contract and allows these events to become the basis for justifiable nonperformance.

**Case Problems**

1. No. Death discharges a contract for personal services. p. 208
2. Yes. A contract may be discharged by mutual agreement of the parties. p. 206
3. No. Payment by check does not constitute legal tender, and offering such payment does not discharge the debtor from liability. p. 205
4. Yes. Unforeseen hardships that make a contract more difficult to perform after a contract is made will not discharge a contract. (In this case, the standard notebooks can be obtained elsewhere by Hardies for delivery to Davidson.) p. 209
5. Yes. Impossibility of performance due to the destruction of the subject matter terminates the contract. p. 207

**CHAPTER 14: THE TERMINATION OF CONTRACTS: BREACH OF CONTRACT**

**Multiple-Choice Questions**

1. b
2. c
3. c
4. b
5. b
6. a
7. d
8. d
9. d
10. c

**True-False Questions**

1. T
2. T
3. F
4. F
5. F
6. T
7. F
8. T
9. T
10. T

Short-Answer Questions
1. Remedies for breach of contract are discussed on pp. 219-223 of text. (Note: The two major types of remedies allowed by the courts are legal remedies and equitable remedies.)
2. Material breach is discussed on pp. 219 of text.
3. Refer to p. 220 of text.
4. The waiver has the effect of eliminating the breach. As a result of the waiver, the contract is canceled with no further liability on the part of either party to the contract.
5. Specific performance is discussed on p. 222 of text.

REVIEW PART II: CONTRACTS

True-False Questions
1. T
2. F
3. T
4. T
5. T
6. F
7. F
8. T
9. T
10. F

Multiple-Choice Questions
1. c
2. d
3. d
4. a
5. b
6. c
7. b  
8. c  
9. a  
10. c  
11. c  
12. a  
13. b  
14. c  
15. c  
16. b  
17. d

Activity
1. a  
2. c  
3. a  
4. b  
5. b

Matching Questions
1. g  
2. f  
3. a  
4. c  
5. b

Completion Questions
1. voidable  
2. full performance  
3. liquidated  
4. reasonable time  
5. executed  
6. consideration  
7. assignee  
8. option  
9. void  
10. breach of contract
Case Problems
1. Yes. Under the common law rule, serious illness in a personal service contract discharges the contract.
2. Yes. The hardship (breakdown of factory machinery) should have been guarded against by including a contingency clause in the contract.
3. No. A contract for personal services cannot be assigned without consent.

Short-Answer Questions
1. Public policy refers to what is right and wrong for the general public. Contract law attempts to protect the morality of the general public by protecting the public from unreasonable restraint of trade and from agreements that would permit public officials to act improperly in carrying out their duties.
2. Yes. A contract can be rescinded when one party to the contract was aware that the other party made a mistake but failed to mention it. One person is not allowed to take unfair advantage of another’s mistake.
3. An executed contract will not normally be set aside for lack of consideration.
4. It means that if the obligor had a valid excuse for not performing for the assignor under the original contract, the same excuse is also good against the assignee.
5. One party might simply say, “I’m not going to perform.” This is called an anticipatory breach.

CHAPTER 15: FORMULATION OF SALES AND LEASE CONTRACTS

True-False Questions
1. T
2. T
3. T
4. T
5. F
6. T
7. T
8. T
9. F
10. F

Multiple-Choice Questions
1. c
2. d
3. c
4. c
5. a
Short-Answer Questions
1. This is a sale because the dealer is supplying you with goods (the motorcycle) in exchange for your money. p. 235
2. This is not a sale because the repair shop supplied you with an intangible service rather than a product.
3. No. An oral contract for goods to be specially manufactured for the buyer is enforceable even if the amount involved is more than $500.
4. The common law “mirror image” rule states that an acceptance of an offer cannot legally vary the terms of an offer—that is, the acceptance cannot add, alter, omit, or change any terms in the offer. This rule tended to obstruct the formation of a contract. The Code eliminates the mirror image rule and replaces it with a rule that is more practical in today’s business world.
5. A firm offer is an offer made by a merchant in writing in which the merchant agrees to keep the offer open for a specified time, but not to exceed three months. If no time is stated, the offer remains open for a reasonable time but for no longer than three months. By contrast, a common law offer is freely revocable at any time prior to acceptance unless consideration has been given to keep the offer open.
6. Refer to the section on E-Sales Contracts, starting on p. 250.

CHAPTER 16: THE SALES CONTRACT: TRANSFER OF TITLE AND RISK OF LOSS

Multiple-Choice Questions
1. c
2. b
3. a
4. a
5. c
6. a
7. b
8. c
9. c
10. a
Matching Questions
1. c
2. d
3. a
4. b
5. j

Short-Answer Questions
1. Title cannot pass to the buyer from the seller unless the goods are identified to the contract.
2. The Code places risk of loss onto the party responsible for committing the breach.
3. Two exceptions: (a) A buyer with a voidable title can transfer a valid title to a third party who obtained goods for value and in good faith. (b) A merchant with temporary possession of goods can transfer a valid title to a buyer in the ordinary course of business.

Case Problems
1. No. When goods are sent FOB destination, the risk of loss does not pass until these goods reach the destination. In this case, Cobb must bear any loss that occurs before the goods reach Utica.
2. Yes. When a consumer buys goods at a merchant’s place of business, risk of loss does not pass to the buyer until he or she actually receives (takes physical possession of) the goods. p. 253
3. No. In a sale on approval, risk of loss (and title) remain with the seller until approval is given by the consumer-buyer.
4. Yes. The legal owner of stolen goods does not lose title (ownership) to these goods. Otterman and Redstone never received title; therefore, Philips, the true owner, can recover the rug from Redstone.
5. Yes. Under Article 6 of the UCC, creditors may declare a bulk sale void if the buyer does not notify them at least ten days before the sale has taken place. (Note: creditor rights under Revised Article 6.)
6. Gould must bear the loss. Tomari was not a merchant within the meaning of the Code (Section 2-104); therefore, the risk of loss passes upon tender of delivery (Section 2-509). Because Tomari made a proper tender by notifying Gould that the van was for pick-up, the loss falls on Gould.

CHAPTER 17: THE SALES CONTRACT: PERFORMANCE, BREACH, AND REMEDIES FOR BREACH

Completion Questions
1. conforming
2. notice
3. cover
4. inspect
5. accept
6. market price
7. purchase price
8. insolvent
9. remedy
10. remedy

**Short-Answer Questions**

1. The buyer may resort to replevin once the seller refuses to deliver goods to the buyer that were originally ordered and identified to the contract. The seller must first attempt to “cover” (buy the goods elsewhere). If the buyer cannot do so after making a reasonable effort, he/she may obtain a court order to replevy (obtain) the goods. Generally the goods in question are not of a unique nature.

2. The seller is obligated to deliver the goods called for in the contract (conforming goods). The buyer’s obligation is to accept and pay for these goods as long as they do conform to the contract.

3. The perfect tender rule under the UCC requires the seller to tender goods that exactly meet the requirements of the contract. Under the common law rule of contract performance, substantial performance is considered performance. Because the perfect tender rule is a harsh rule, the Code has allowed various exceptions.

**Multiple-Choice Questions**

1. a
2. d
3. d
4. a
5. d
6. b
7. a
8. c
9. c
10. a

**Case Problem**

1. For goods still in possession of the Best Co., Morgan can attempt to reclaim these goods if it does so within 10 days after discovering the insolvency. If the Best Co. had assured the Morgan Co. in writing within three months before delivery that it (the Best Co.) was in good financial condition, the 10-day limit would not apply.

2. The Morgan Co. can stop the goods in transit if the carrier is properly notified in time to allow a stoppage before the goods are delivered to the Best Co.
3. The Morgan Co. can completely withhold delivery of the December shipment (cancel the shipment). The Morgan Co. could resell any goods that it was able to reclaim and the goods still in its possession (December shipment) and sue for damages. For goods it could not reclaim or resell, Morgan Co. could sue Best Co. for the purchase price of the goods. Since the Best Co. is insolvent, chances of recovering damages or the purchase price are at risk.

CHAPTER 18: PRODUCT LIABILITY LAW

True-False Questions
1. T
2. F
3. F
4. F
5. T
6. F
7. T
8. T
9. T
10. T

Multiple-Choice Questions
1. c
2. a
3. a
4. c
5. a

Case Problems
1. Yes. The guests could sue Chicken Delight for breach of the implied warranty of merchantability. The guests ate the chicken in the buyer’s home, so in most states they have the right to sue the immediate seller.

2. Yes. Under the UCC, if the seller gives a warranty after the sale, the warranty becomes part of the original sales contract, even without consideration.

3. Yes. When the buyer tells the seller the particular purpose for which the goods are needed and relies on the seller to select these goods, there is an implied warranty that the goods supplied will fit the needed purpose.

4. Not really. True, the goods were not used by the hair stylist in the manner intended. However, it was done so at the request of the customer. The customer was warned of the danger but she chose to ignore this warning. Consequently, the courts most likely would not hold the manufacturer or the beauty parlor liable.
5. Yes. The press, as manufactured, was unreasonably dangerous. The two points made by Marvin at the trial would be especially convincing to the jury. The guard should have come as standard equipment.

**Short-Answer Questions**

1. The purpose of the Magnuson-Moss Warranty Act is to make available to consumers adequate information about written warranties. In a full warranty under the act, the seller cannot limit the time the goods are covered by implied warranties. Under a limited warranty, however, the seller can limit the time the goods are covered by any implied warranties.

2. The injured party simply needs to show that a manufacturer or other seller placed an unreasonably dangerous product (caused by a defect) on the market and that he or she suffered an injury as a consequence. There is no necessity of proving negligence (fault).

3. Yes. Express warranties may be excluded by the seller simply by not making factual statements, or by describing goods, or by producing a sample, which in all cases induces a person to buy goods. Another way is to state clearly in a written contract (and make known to the buyer) that no express warranties (oral or written) are being made with the sale of the product. Of course using ambiguous language not amounting to an inducement to purchase (e.g. sales puffing) is another way to exclude an express warranty.

**REVIEW PART III: PURCHASE, SALE, AND LEASE OF GOODS UNDER THE UCC**

**True-False Questions**

1. T
2. T
3. T
4. T
5. F
6. T
7. F
8. F
9. T
10. T

**Multiple-Choice Questions**

1. d
2. c
3. b
4. b
5. b
6. b
7. c
8. d
9. c
10. d
11. d
12. d
13. b
14. a
15. b

Activity: Understanding Warranties
1. a
2. c
3. c
4. a
5. b

Case Problems
1. Yes. Under the statute of frauds, only the party who is liable for performance of the contract must sign it in order for it to be enforceable.
2. Yes. In catalog sales, there is an express warranty that the goods will conform to the catalog description. Friske may sue for breach of the express warranty of description.
3. Yes. Since the goods were sent FOB shipping point, Friske is liable for any damage that occurs while the goods are en route to the destination, Boston.
4. No. Because this was a sale on approval, risk of loss did not pass to Jayson. The theft occurred within the 30-day approval period, so the store must bear the loss.

Short-Answer Questions
1. Answers will vary. Sample answer: A buyer may sue on the basis of (1) negligence—the injured party must establish the manufacturer’s or seller’s negligence in designing, inspecting, or marketing the product; (2) breach of warranty—that is, breach of the seller’s guarantee that a product is not defective and that it is suitable for its intended use; proof of negligence is not required; (3) strict liability—the issue is whether the product was unreasonably dangerous; the injured party does not have to prove fault and need not show the existence of a warranty.
2. Answers will vary. Sample answer: In order to completely avoid making an express warranty, a merchant would have to avoid (1) using samples or models, (2) making statements or promises about the goods, and (3) describing the goods. Also, under the UCC any disclaimer of express warranties will be disregarded if it is inconsistent with the words or conduct that created an express warranty.
3. The UCC has replaced the “mirror image rule” which requires the acceptance to mirror the offer—i.e. any change in the terms of the offer submitted by the offeree amounts to a rejection and a counteroffer. If there is a difference in the terms of the written offer and the written acceptance submitted by both parties, the question comes up: Is acceptance destroyed? This situation is referred to as the “battle of the forms” and is resolved under Section 2-207 of the Code. This section states that “When both parties are merchants, new or additional terms will not destroy acceptance, but will automatically become part of the contract without further consent of the offeror unless the offeror gives notice limiting acceptance to the terms of the offer or rejecting the new terms; or if the new terms materially alter the contract.”

4. If the seller breaches the contract, risk of loss remains with the seller until either the seller cures (corrects) the defect or the buyer accepts the goods in spite of the defects. If the buyer breaches the contract, any loss beyond the seller’s insurance coverage is sustained by the buyer. The buyer’s responsibility for any breach, however, remains with him or her for only a commercially reasonable time after the seller learns of the breach.

5. A buyer who obtains a voidable title and then sells to a third party can transfer a valid (good) title to a third party who obtained the goods for value and in good faith.

6. Yes, the price can be negotiated at a later time. In Chapter 15, you learned that under recent changes to the Code, a contract is legal as long as both parties intended on entering into the agreement – even if key elements, such as price, quantity, terms of payment, and terms of delivery have not yet been determined.

CHAPTER 19: NATURE AND TYPES OF NEGOTIABLE INSTRUMENTS

Multiple-Choice Questions
1. d
2. a
3. b
4. c
5. d
6. c
7. c
8. a
9. d
10. c
11. d
12. b
13. b
14. b
15. c
Activity: Determining Negotiability

1. NN
2. N
3. N
4. N
5. N
6. NN
7. NN
8. NN
9. N
10. NN

True-False Questions

1. T
2. T
3. T
4. F
5. F
6. F
7. F
8. F
9. T
10. F

Short-Answer Questions

1. Whether it is payable in a currency that is the legal currency of a particular country at the time the instrument is issued.
2. Any writing will suffice, whether it is printed, typewritten, or handwritten.
3. Words.
5. The instrument is not negotiable because it is not payable at a definite time. Negotiability must be determined from the face of the instrument.
6. The drawee of a check is always a bank, and a check, unlike some drafts, is payable on demand.
CHAPTER 20: ISSUE, TRANSFER, AND DISCHARGE OF NEGOTIABLE INSTRUMENTS

True-False Questions
1. T
2. F
3. T
4. F
5. T
6. T
7. T
8. T
9. F
10. T
11. F
12. T
13. T
14. T
15. F

Multiple-Choice Questions
1. b
2. a
3. d
4. d
5. c

Case Problems
1. No. A bearer instrument may be negotiated by voluntary delivery. The thief did not acquire it in this manner.
2. Yes. Although the thief stole the check, he transferred it to the third party by voluntary delivery, which is proper negotiation.
Short-Answer Questions

1.
   a. James Tuttle
   b. Friendly Trust Bank
   c. Rachel Fellows
   d. Rachel Fellows
   e. Timothy Blanchard

2.
   a. special
   b. qualified
   c. restrictive

CHAPTER 21: RIGHTS AND DUTIES OF PARTIES

True-False Questions

1. T
2. F
3. F; universal
4. F
5. F

Case Problems

1. No. Lack of consideration is not a defense against a holder in due course.
2. No. In 1976, the FTC ruled that if a consumer gives a seller a negotiable instrument and the seller negotiates the instrument to a bank, the bank cannot become a holder in due course.
3. No. Since the maturity date (July 8) is on Sunday, Hackman cannot demand payment on that date. He should make presentment on the first regular business day following the maturity date—Monday, July 9, in this case.

Matching Questions

1. d
2. i
3. f
4. j
5. g
6. b
7. e
8. c
9. a
10. h

Activity: Analyzing Commercial Paper
1. Maria Schmidt is primarily responsible.
2. She is a holder in due course.
3. She is a holder.
4. A holder in due course must take the instrument for value, in good faith, and without knowledge that the instrument is overdue or dishonored or that someone has a defense against it.

Short-Answer Questions
1. Primary parties are those who are first obligated to pay an instrument. Examples of primary parties include makers of promissory notes, drawees of promissory notes, and drawees of drafts. Secondary parties are those who are legally obligated to pay the holder, but only after the primary party who is expected to pay fails to do so (their liability is conditional). Examples of secondary parties include drawers of checks (or drafts) and endorsers of any negotiable instrument.
2. Presentment is a demand for payment of a negotiable instrument by a holder to the primary party. For a presentment to be proper, it must be made (1) to the proper person, (2) in a proper manner, and (3) at the proper time.
3. To give negotiable instruments a high degree of marketability—that is, to encourage people to use commercial paper like money by giving them some assurance that the instrument will be paid when presented to the proper person.
4. A holder in due course may enforce payment against the maker or drawer only if he or she (maker/drawer) claims a personal defense. A real defense is good even against a holder in due course.

CHAPTER 22: CHECKS, THE BANKING SYSTEM, AND E-MONEY

True-False Questions
1. T
2. T
3. T
4. F
5. T
6. F
7. T
8. T
9. F
10. F
11. T
12. T  
13. T  
14. F  
15. T  

**Multiple-Choice Questions**

1. c  
2. a  
3. c  
4. b  
5. d  
6. c  
7. b  
8. a  
9. b  
10. d  
11. d  
12. c  
13. c  
14. c  
15. b  
16. b  
17. d  
18. c  
19. a  
20. c  

**Short-Answer Questions**

1. The bank is responsible for paying the amount of the check if there are sufficient funds and for requiring identification before cashing a check.

2. The bank is liable for any damages caused as a result of its refusal to pay, such as injury to the depositor’s credit rating.

3. The depositor has to keep sufficient funds in the account to cover checks and must examine the monthly statement and advise the bank of any errors.

4. The bank. The bank is liable to the customer for the amount of the alteration because the depositor’s instruction to the bank is to pay the exact amount on the face of the check. The bank is held liable for failing to detect the alteration since it has both the opportunity and the expertise to examine the check before honoring it.
5. The bank is liable to the depositor and must credit the depositor’s account for the amount of the check.

6. An electronic transfer allows money to be transferred electronically (generally by computer) from your bank account to a creditor, to a store where you have made a purchase, or to yourself. Some methods currently in use are debit cards, automatic teller machines (ATMs), and pay-by-phone.

7. Virtual cash is a representation of money.

Matching Questions
1. d
2. f
3. e
4. b
5. i
6. a
7. k
8. l
9. j
10. h

Activity: Analyzing Checks
1. The day is incorrect (there is no April 31).
2. The name of the pharmacy is crossed out.
3. Words of negotiability (order of) are missing.
4. The amount in figures does not agree with the amount in words.
5. The signature is different from the printed name.

Activity: Case Problem
In this case, probably not. If a bank pays in good faith without consulting the customer, it has the right to charge the customer’s account for the amount of the check. This seems to be the case here. Hanson Manufacturing Co. was one of Frontier’s major customers, so what the bank did seemed proper. As a practical matter, most banks usually do not pay stale checks until they have first contacted the depositor to be sure that the depositor still wishes it to be paid.

REVIEW PART IV: NEGOTIABLE INSTRUMENTS

Multiple-Choice Questions
1. b
2. a
3. d
4. a
5. d
6. c
7. b
8. c
9. d
10. b
11. a
12. c
13. b
14. a
15. d
16. b

True-False Questions
1. F
2. T
3. T
4. T
5. T
6. T
7. F
8. T
9. T
10. T
11. T
12. T
13. T
14. T
15. F

Matching Questions
1. b
2. j
3. c
4. i
5. h
Short-Answer Question
1. Paying by check eliminates the need to keep large amounts of cash on hand and is safer than using cash for payments by mail. Also, once returned by the bank, checks serve as receipts and may be used as proof of payment.
2. Written and oral. A written stop order lasts 6 months and can be renewed. An oral stop order is good for 14 days but can be confirmed in writing and thus be effective for 6 months.

Case Problem
No. If a customer for example has insufficient funds in his/her account to cover a check, the bank may elect to pay it and charge the customer’s account but is not bound to do so. Also, a bank may refuse to honor a stale check or a check that is questionable as for example a check that contains a material omission such as the amount in words.

Simulation Problem
1. D. It is a three party instrument where a drawer (Connors) orders a drawee (Banker’s Trust) to pay a fixed amount in money to the payee (Matthews).
2. A. A blank endorsement which does not specify any endorsee converts order paper to bearer paper.
3. H. An endorsement that indicates the specific person to whom the endorsee wishes to negotiate the instrument is a special endorsement. A special endorsement converts bearer paper into order paper.
4. J. Weed named a specific person to whom the instrument is to be negotiated; thus the endorsement is a special endorsement.
5. I. Vogt’s endorsement is a qualified endorsement because Vogt signed without recourse thus disclaiming any further liability on the instrument.

CHAPTER 23: EMPLOYER-EMPLOYEE RELATIONSHIP

True-False Questions
1. T
2. F
3. F
4. T
5. T
6. F
7. T
Case Problems
1. No. If his qualifications are equal to any younger applicant’s qualifications, he cannot be refused the job because of his age.
2. No. Alliance has good cause to dismiss Steeper and will not be liable for breach of contract.
3. Yes. Workers’ compensation provides benefits for loss of wages due to an injury or illness caused by the conditions prevailing at the place of employment.
4. Yes. An employee who continues to violate reasonable rules set down by an employer may be discharged.
5. No. She cannot be discriminated against because of her gender unless it can be shown that females do not have the qualifications necessary to be firefighters.
6. No. A nonimmigrant alien is not permitted to work in the United States.
7. No. Access to reference letters would violate the right to privacy of the writers of the letters.

Multiple-Choice Questions
1. b
2. a
3. b
4. d
5. c
6. b
7. c

CHAPTER 24: PRINCIPAL-AGENT RELATIONSHIP

Multiple-Choice Questions
1. c
2. c
3. b
4. d
5. d
6. b
7. c
8.  d  
9.  c  
10. b  
11. d  
12. d  
13. b  
14. d  
15. c

**Matching Questions**
1. b 
2. d 
3. a 
4. c 
5. a

**Case Problems**
1. No. The principal must reimburse the agent for all necessary expenses incurred by the agent in carrying out the principal’s business.  
2. Yes. Personally benefiting from a business deal is a breach of loyalty between the agent and the principal.  
3. No. A minor may act as an agent and bind the principal in contracts made with third parties.  
4. Yes. When an agent’s authority is revoked, third parties who have had business dealings with the agent are entitled to notice of the revocation; otherwise, the principal is responsible for unauthorized acts of the former agent.  
5. No. The principal alone may not terminate an agency coupled with an interest. The agent must agree to the termination.

**CHAPTER 25: PRINCIPAL-AGENT, EMPLOYER-EMPLOYEE, AND THIRD-PARTY RELATIONSHIPS**

**Completion Questions**
1. express  
2. undisclosed  
3. tort  
4. ratifying  
5. express  
6. apparent  
7. party
8. third person
9. implied
10. crime

**Multiple-Choice Questions**

1. a
2. c
3. c
4. d
5. a
6. b
7. d
8. b
9. a
10. b

**Case Problems**

1. Yes. A principal is liable to third parties if the agent acts within the scope of authority. In this case, Maxim had implied authority to hire men to move the merchandise in this emergency.
2. Yes. A principal is liable for the torts of an agent if the torts are committed while the agent is acting within the scope of the agency.
3. No. The agent is personally liable when acting beyond the scope of authority. In this case, a salesperson has no authority (including apparent authority in this case) to contract with the TV station for a series of announcements.
4. No. An employer is not liable for the crimes committed by an employee unless the criminal activity was authorized.
5. Yes. The trip was conducted by the company and would be considered within the scope of employment.

**REVIEW PART V: AGENCY, EMPLOYMENT, AND LABOR LAW**

**True-False Questions**

1. F
2. T
3. F
4. T
5. T
6. F
7. T
Multiple-Choice Questions
1. d
2. a
3. d
4. b
5. c

Case Problems
1. Yes. All contracts between principals and agents that are for more than one year must be in writing.
2. Yes. Franklin had authority to perform only one specific act; this made Franklin a special agent.
3. No. Death of a principal terminates the principal-agent relationship.
4. No. The principal is liable to third parties if the agent acts within the scope of apparent authority.
5. Yes. A minor may act as an agent, and the principal is bound by all contracts made within the scope of apparent authority.

CHAPTER 26: SOLE PROPRIETORSHIPS, PARTNERSHIPS, AND LIMITED LIABILITY ORGANIZATIONS

True-False Questions
1. F
2. F
3. T
4. T
5. F
6. F
7. T
8. T
9. T
10. F

Short-Answer Questions
1. A secret partner is active in the business but unknown to the public. A silent partner is inactive in the business but is known to the public as a partner.
2. A limited partner contributes cash or property to the business but may not take part in operations. A general partner is a fully active partner. A silent partner is inactive in a general partnership but is known to the public. A secret partner is active in the partnership but is unknown to the public. A dormant partner is neither active in the partnership nor known to the public.

3. In a general partnership, all partners share liability for debts and torts. In a limited partnership, the limited partner is not bound by the obligations of the partnership and is not liable beyond the limited investment.

4. In a limited partnership, only the limited partners have limited liability, but they cannot participate in management. In an LLC, all members have limited liability and may participate in management.

5. The limited partners enjoy limited liability and can also participate in management.

**Multiple-Choice Questions**

1. c
2. b
3. d
4. a
5. d
6. b
7. d
8. d
9. a
10. d

**Case Problems**

1. No. If a specific agreement is not drawn up, all partners equally share the profits and losses.
2. Yes. The product was bought for the business, so the partnership is liable for the cost.
3. No. Bankruptcy of the partnership or an individual partner dissolves the partnership.

**CHAPTER 27: CORPORATIONS AND FRANCHISING**

**Case Problems**

1. No. Upon dissolution of a corporation, the corporation’s creditors have first claim against the assets, followed by the preferred stockholders. Common stockholders have a claim against the remainder.
2. No. A corporation has the implied power to borrow money for any proper corporate purpose. The vote to go into the plumbing business could be invalidated, however, because it goes beyond both the express and the implied powers of the corporation.
3. They would need less capital and experience than normally required, would get a well-known name or logo, and would get valuable training and experience.
4. Yes. A corporate officer may be held personally liable for fraud.
Matching Questions
1. d
2. f
3. i
4. b
5. e
6. j
7. h
8. a
9. g
10. c
11. k
12. l

Multiple-Choice Questions
1. b
2. d
3. a
4. c
5. d
6. c
7. a
8. c
9. d
10. d
11. b
12. a
13. c
14. b
15. a
16. d
17. a
18. a
19. b
20. c
Short-Answer Questions
1. No. In most states a business applying for incorporation cannot choose a name that is similar to the name of an existing corporation.
2. The advantages of organizing this company as a corporation are perpetual existence, limited liability, ease of transfer of ownership, and centralized management.
3. No. The death of a stockholder does not result in the termination of a corporation unless it’s a one-stockholder corporation.
4. In double taxation, the company is taxed on all corporate income. Then the dividends paid to stockholders are taxed as well.
5. No. A corporation has discretion whether or not to pay a dividend to holders of its common stock.
6. This corporation can be dissolved in the following ways: when the term of the corporate charter ends, when the stockholders agree, when the charter is revoked, or when there is a merger or consolidation.
7. No, none of the elements of a franchise relationship exist.

CHAPTER 28: GOVERNMENT REGULATION OF BUSINESS

Multiple-Choice Questions
1. d
2. b
3. c
4. b
5. a
6. d
7. a
8. c
9. c
10. d
11. a
12. b

Short-Answer Questions
1. Monopolies, competition, taxation, public utilities, and preservation of the general welfare and environment.
2. Legislative power sets the rules, rates, and standards. Executive power enforces the rules. Judicial power determines violations and penalties.
3. The names, the addresses of the franchisor and franchisee, what is being franchised, the terms of the contract, franchise fees, and purchase requirements.
Case Problems
1. Federal Trade Commission
2. Occupational Safety & Health Administration
3. Securities and Exchange Commission
4. Federal Reserve Board
5. Federal Communications Commission
6. Local zoning board
7. State licensing board
8. State Public Utilities Commission
9. Federal Communications Commission
10. Federal Reserve Board
11. Environmental Protection Agency

REVIEW  PART VI: BUSINESS ORGANIZATION AND REGULATION

Mini-Case
1. d
2. b
3. d
4. c
5. b

Multiple-Choice Questions
1. d
2. c
3. b
4. a
5. d
6. d
7. d
8. b
9. c
10. c

Matching Questions
1. c
2. a
Case Problems
1. Yes. The death of a partner dissolves a partnership.
2. No. Income earned as part of a partnership business has to be shared with the partners.
3. No. Officers are usually liable only to the corporation unless they are guilty of fraud or deceit.
4. No. Corporations do not terminate when there is a change of ownership.
5. No. Polcin is not an insider and received no information from an insider. He has not broken any securities laws.

CHAPTER 29: BASIC LEGAL CONCEPTS OF PROPERTY

Completion Questions
1. personal
2. fixture
3. easement
4. deed
5. delivery
6. adverse possession
7. survivorship
8. escheat
9. the entirety
10. zoning

Multiple-Choice Questions
1. d
2. b
3. d
4. a
5. d
6. d
7. b
8. d
9. d
10. d
Matching Questions
1. b
2. c
3. g
4. e
5. a
6. f
7. d
8. j
9. h
10. i

Short-Answer Questions
1. A joint tenancy has the right of survivorship; upon the tenant’s death, the interest in the property passes to surviving tenants. In a tenancy in common, upon the death of the tenant, the interest passes to that tenant’s heirs or to the person or persons named in the deceased tenant’s will.

2. A patent is an exclusive right to an invention and is good for 17 years. A trademark protects words or symbols used to identify a business or product and is good for 10 years. A copyright is an exclusive right to artistic and intellectual works and is good for life plus 50 years.

3. Real property may be acquired by purchase, gift, inheritance, adverse possession, accretion, or condemnation.

4. The use of copyright law and the law of “trade secrets.”

CHAPTER 30: RENTING REAL PROPERTY

Multiple-Choice Questions
1. c
2. b
3. a
4. d
5. c
6. b
7. b
8. d
9. c
10. c
11. a
12. c
Short-Answer Questions
1. A lease is a rental agreement between the landlord and tenant. A sublease is the transfer of a portion of a lease term by the tenant to a subtenant.

2. (1) Names and addresses of the landlord and tenant
(2) A description of the property being leased
(3) The term of the lease
(4) The amount of rent
(5) The time and place to pay the rent
(6) The signatures of the parties
(7) The rights and duties of the landlord

3. (1) Passage of time
(2) Agreement between parties
(3) Agreement in the lease
(4) Condemnation
(5) Destruction of the leased property
(6) Operation of law

4. The landlord may (1) keep the lease in effect and sue for the rent due or (2) bring an eviction proceeding against the tenant.

5. When a tenant must enter a health-care facility and when a person is called to military duty.

CHAPTER 31: BUYING AND SELLING REAL PROPERTY

True-False Questions
1. F
2. T
3. T
4. F
5. F
6. T
7. F
8. F
9. T
10. F
Matching Questions
1. g
2. d
3. a
4. i
5. b
6. j
7. c
8. h
9. f
10. e

Multiple-Choice Questions
1. b
2. c
3. d
4. c
5. a
6. a
7. b
8. c
9. c
10. d
11. a
12. b
13. d
14. b
15. a

CHAPTER 32: NATURE AND TYPES OF BAILMENTS

Yes-No Questions
1. N
2. Y
3. N
4. N
5. Y
6. N
7. N
8. Y
9. N
10. N
11. N
12. Y
13. Y
14. Y
15. Y

**Short-Answer Questions**

1. (1) Possession—the bailor must be in possession of the property.
   (2) Personal property—only personal property is subject to a bailment.
   (3) Delivery and acceptance—the property must change hands and be accepted by the bailee.
   (4) Return—the bailed property must be returned with little or no change.

2. Answers will vary.

3. A bailment involves transfer of possession only. A sale involves a transfer of title and possession.

4. A depositor does not expect to get back the same money deposited, and therefore no bailment is created. The deposit establishes a debt from the bank to the depositor.

5. (1) upon completion
   (2) by mutual agreement
   (3) by acts of the bailor and bailee
   (4) by destruction of the bailed property
   (5) by operation of law

**Multiple-Choice Questions**

1. c
2. d
3. d
4. b
5. c
Completion Questions
1. bailor
2. personal
3. bailment
4. real
5. express

Case Problems
1. No. Brown is responsible for only slight care of the guitar. The humidity was a problem beyond his control.
2. No. Monteiro did not turn the camera over to someone else; therefore, he retained possession and no bailment was created.
3. Yes, a bailment by necessity was created when Andrews received the book; this bailment makes her responsible for exercising reasonable care.

CHAPTER 33: SPECIAL BAILMENTS

Multiple-Choice Questions
1. b
2. d
3. a
4. c
5. a
6. d
7. a
8. c
9. a
10. d

Short-Answer Questions
Student examples will vary.
1. Acts of God
2. Acts of a public enemy
3. Acts of public authorities
4. Fault of the bailor or guest
Case Problems

1. Yes. The motel is a special bailee and is liable for the safety of its guests’ property.
2. Yes. Ajax is a special bailee, and hijacking is not an exception to absolute liability.
3. No. Thurston is a resident, not a transient, so the hotelkeeper is responsible only for reasonable care.
4. No. Liability was limited by implied agreement between the parties.
5. Yes. Even though the apples were ruined by a storm, there would have been no damage but for Storage’s fault.
6. No. The shipper was aware of the overripe condition and must bear the loss—there was no negligence by the carrier.
7. No. Cruise is a business guest, and the hotel is not liable because it took reasonable care of the coat.
8. No. A hotel ceases to be liable for a guest’s baggage after the guest checks out of the hotel.
9. No. It is only on the basis of race, color, religion, or national origin that a hotelkeeper may not discriminate.
10. Yes. A common carrier may limit its liability for loss of goods shipped, by contract with the consignor.

CHAPTER 34: WILLS, INTESTACY, AND ESTATE PLANNING

Multiple-Choice Questions

1. c
2. b
3. d
4. d
5. b
6. d
7. b
8. c
9. b
10. d

Completion Questions

1. testator
2. intestate
3. probate
4. administrator
5. heir
6. nuncupative
7. codicil
8. living
9. legacy or bequest
10. spouse

Short-Answer Questions
1. Lawyer, accountant, insurance agent, bank trust officer.
2. Seek professional help, decide on a plan, execute the plan.
3. Property transferred by will, property held jointly, insurance proceeds payable to a spouse, interests created by a trust.

REVIEW PART VII: REAL AND PERSONAL PROPERTY, BAILMENTS, AND WILLS AND ESTATE PLANNING

Multiple-Choice Questions
1. b
2. a
3. d
4. b
5. b
6. d
7. b
8. d
9. a
10. b
11. c
12. e
13. b
14. b
15. b
16. c

True-False Question
1. F
2. F
3. T
4. T
5. F
6. T
7. F
8. F
9. T
10. F
11. T
12. T
13. T
14. T
15. F
16. F
17. T
18. T
19. F
20. T

Matching Questions
1. d
2. i
3. j
4. f
5. h
6. g
7. a
8. e
9. b
10. c

Case Problems
1. Yes. A will must be witnessed to be valid unless it is a holographic will.
2. No. Mutilating a will revokes it.
3. Yes. Such a provision is void because it restricts the sale of property and is against public policy.
4. No. Children born after a will has been executed are included in a bequest in a will “to children.”
CHAPTER 35: PROTECTING THE CONSUMER AND THE TAXPAYER

Completion Questions
1. Federal Trade Commission
2. false advertising
3. regulations, anti-trust laws
4. keep
5. Consumer Product Safety Commission
6. puffing
7. loss leader
8. plain English
9. Warsaw Convention
10. class-action

Short-Answer Questions
1. (1) The right to fair advertising
   (2) The right to fair pricing
   (3) The right to refuse unordered goods
   (4) The right to cancel a contract
   Student examples will vary.

2. (1) Federal Trade Commission—prohibits false and misleading advertising.
   (2) Consumer Product Safety Commission—is responsible for product safety.
   (3) Food and Drug Administration—requires manufacturers to give consumers correct information about their products.

Case Problems
1. Yes. This action is price fixing, which violates state regulations and federal antitrust laws.
2. No. The right to cancel a sales contract within 3 days, granted under the federal Truth in Lending Law, applies only to credit purchases.

CHAPTER 36: PROTECTING THE BORROWER

Multiple-Choice Questions
1. c
2. c
3. d
4. b
5. d
6. d
7. c
8. d
9. a
10. d

True-False Questions
1. F
2. F
3. F
4. F
5. F
6. T
7. F
8. T
9. F
10. T

Case Problems
1. No. Usury laws generally do not apply to business loans; if they did, the friend would still be entitled to repayment of the loan but would forfeit the interest.
2. Briggs must receive counseling, take a financial means test and take a credit management course.

CHAPTER 37: PROTECTING THE CREDITOR

True-False Questions
1. F
2. F
3. T
4. T
5. T
6. F
7. T
8. T
9. F
10. T
Case Problems
1. Public Bank may repossess the car or sue Granby’s brother if it is unable to collect from Granby first.
2. Yes
3. Yes
4. Yes. The guarantor is liable for payment if all attempts to collect from Granby are unsuccessful.
5. The bank could try to collect from Granby’s brother without first suing Granby for payment.

Matching Questions
1. f
2. g
3. d
4. e
5. b
6. c
7. a
8. j
9. i
10. h

REVIEW PART VIII: CONSUMER AND CREDITOR PROTECTION

Matching Questions
1. i
2. c
3. h
4. g
5. a
6. b
7. e
8. d
9. j
10. f

True-False Questions
1. F
2. T
3. F

Multiple-Choice Questions

Activity: Using Credit
1. $1,200.00 2. $93.15 3. $1,328.15
Short-Answer Questions

1. One advantage is a purchaser’s ability to buy more items than might be possible with cash. Another advantage is that the purchases can be paid for over a long period of time, which enables the purchaser to have more cash to spend for other things. A third advantage is that most items purchased using credit cards can be returned if the merchandise is defective or is stolen within a certain period of time after the purchase is made.

2. One disadvantage is that it costs more to buy an item on credit than it does to buy it with cash. A second disadvantage is that the availability of credit is so tempting that some people purchase more items than they can afford.

3. One way in which the law has helped consumers make wiser buying decisions is by requiring that the consumer be informed of the amount that the item being purchased is actually going to cost, taking into account the cost of the use of credit. This may protect a potential consumer from getting too heavily into debt. The law has also helped by enabling a consumer to compare the cost of credit from various financial sources, resulting in more intelligent financing decisions.

CHAPTER 38: PROPERTY, CASUALTY AND AUTOMOBILE INSURANCE

Multiple-Choice Questions

1. c
2. d
3. b
4. a
5. c
6. a
7. d
8. a
9. b
10. c

Case Problems

1. No. The damage was caused by Gilbey’s carelessness, not by hostile fire.
2. Yes. An all-risk policy covers all losses, regardless of the cause.
3. No. Jaffey can collect only up to the face value of the policy.
4. No. The misstatement was not material to the insurance company in deciding to issue the policy to Gregg.
5. Yes. Bridges had an insurable interest because she was liable to Cohen for the value of the china.
6. No. If the same property is insured with more than one company, each company is liable only for its proportionate share of the loss (pro-rata liability).
7. No. If the insured cancels the policy, he or she receives a short rate refund, which is less than the full amount of the unused premium.

8. Yes. Collision insurance covers the damage regardless of who was at fault.

**Completion Questions**

1. insurance
2. policy
3. premium
4. agent
5. exclusion
6. valued
7. deductible
8. misrepresentation
9. insurance company
10. release

**CHAPTER 39: PERSONAL INSURANCE**

**Multiple-Choice Questions**

1. c
2. c
3. a
4. b
5. c
6. c
7. c
8. d
9. a
10. c

**Case Problems**

1. No. Most policies provide a 30-day grace period.
2. Yes. The suicide occurred after a reasonable time.
3. No. A misstatement about age does not void an insurance policy.
4. No. Term insurance does not build up cash value.
5. No. Whole life insurance policies have nonforfeiture rights, ways of using the accumulated cash value to prevent a policy from lapsing.
Matching Questions
1. g
2. f
3. a
4. b
5. h
6. d
7. e
8. e
9. i
10. j

REVIEW PART IX: INSURANCE

True-False Questions
1. F
2. T
3. F
4. T
5. F
6. F
7. T
8. T
9. T
10. T

Matching Questions
1. j
2. g
3. h
4. a
5. c
6. d
7. e
8. b
9. i
10. f
Multiple-Choice Questions

1. b
2. d
3. d
4. a
5. c
6. a
7. c
8. b
9. c
10. d
11. d
12. b
13. d
14. b
15. b
16. a
17. b
18. c