

Sales

Contracts for sales of goods under the UCC, plus some questions on leases, international sales, and common-law fraud

Prof. Eric E. Johnson
ericejohnson.com/exam_archive

AMALGAMATED RELEASED MULTIPLE CHOICE QUESTIONS

Typical Notes and Instructions

1. Your goal is to show your mastery of the material presented in this course and your skills in analyzing legal problems. It is upon these bases that you will be graded.
2. These questions are not meant to be tricky. They are designed so that if you know the material, you should be able to get the right answers. Work through them analytically, and apply what you have learned.
3. Assumptions for working through the questions:
 - a. Unless expressly stated otherwise, assume that the facts recited herein occur within one or more hypothetical states within the United States. Base your answer on the general state of the common law and, as relevant, the current UCC and CISG, plus other rules, procedures, and cases as presented in class.
 - b. Assume that all monetary amounts are in United States dollars, unless expressly stated otherwise.
 - c. Unless otherwise directed, assume that today's date is the original, officially scheduled date of the administration of the exam.
 - d. A reference to "can sue," "can bring an action," "has a claim," etc., refers to a plaintiff's ability to properly allege and plead a claim with some substantial promise of success.
4. Each question has one correct answer.
5. Each correct answer is worth one point. There is no penalty for incorrect answers.
6. Subsequent to the exam's administration, in the sole discretion of the instructor, if error, irregularity, or defect is discovered, any affected question may be thrown out, or alternative answers may be given credit.
7. You may not copy, transcribe, or distribute examination material or attempt to do the same.
8. This section of the examination is "closed book." You may not use any materials at all, other than pencils, the answer sheet, and this examination booklet.
9. You may write anywhere on this examination booklet for use as scratch paper. Only answers and material recorded in the proper places, however, will be graded.
10. During the exam: You may not consult with anyone - necessary communications with the proctors being the exception - and you may not use or attempt to use information learned from others. You may not view, attempt to view, or use information obtained from viewing materials other than your own.
11. After the exam: You must take deliberate, reasonable precautions to prevent disclosure of any and all information about the exam to any enrolled member of the class who has not yet taken the exam.
12. Do not forget to write your exam number in the space provided above. If no booklet is returned with your exam number, you will presumptively be denied all credit for the exam. Expect no leniency in this regard.
13. All exam materials, including this booklet and your answer sheet, must be turned in at the conclusion of the period for taking this portion of the exam.
14. Do not turn the page until instructed to begin.
15. Good luck!

1. In the case of *Swift v. MWC Water Supply Corp.*, a residential consumer, Swift, is suing a corporation, MWC, under a contract by which MWC agreed to sell water to be delivered by underground pipe to Swift. According to Swift's complaint, MWC breached the contract by failing to supply water for a week, leaving Swift unable to cook, clean, or bathe at home.

Note that UCC § 2-105 provides, in part:

(1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (Section 2-107).

Note that the New Oxford American Dictionary defines "goods" as follows:

merchandise or possessions: *imports of luxury goods*

Note also that uncontradicted expert testimony establishes that within the water industry, when the term "goods" is used in a contract, it is understood to not include water flowing through a pipe.

An initial issue facing the court is whether UCC Article 2 governs this transaction. Which of the following would represent the best analysis for the court to include in its opinion?

- (A) "This court determines that flowing water is a 'good' under UCC Article 2. We must adhere to the definition in § 2-105, which defines 'goods' as things that are moveable at the time of identification. The water that is the subject of this contract for sale was moveable at the time of its identification to the contract, and therefore it must be included within the scope of 'goods' under the UCC; thus UCC Article 2 governs this transaction."
- (B) "This court determines that water is a 'good' under this contract because we must interpret the word 'good' according to the UCC's policy of protecting consumers from abuse by merchant sellers. In this case, by construing the water to be a good, Swift benefits from various of the UCC's provisions. Therefore, as to this contract, water is a 'good,' and UCC Article 2 governs this transaction."
- (C) "Water is embraced within 'goods' under the UCC because the court's job in interpreting the UCC is to use the commonly understood sense of its language, for which resort to a dictionary definition is appropriate. The New Oxford American Dictionary defines goods as 'merchandise or possessions.' This court determines that water fits within this definition. Therefore, the subject of the contract is goods, and UCC Article 2 governs the transaction."
- (D) "This court determines that water is not 'goods' under the UCC. Upon the evidence submitted to it, this court finds that the common-sense definition of goods does not include water. And this court is bound to construe the provisions of the UCC first according to common-sense before resulting to the default definitions provided by the UCC. Therefore, the common law, and not the UCC, governs this transaction."
- (E) "Uncontradicted expert testimony has established that flowing water is understood not to be embraced within the term 'goods' as it is used by the relevant industry in written contracts. Based on this, the court finds that the relevant usage of trade is to exclude water from goods, and therefore, with regard to the transaction before the court, water is not goods and the common law and not the UCC governs this transaction."

2. Which of the following is most likely governed by UCC Article 2?
- (A) the sale of a farm in Michigan
 - (B) the lease of an automobile in Montana
 - (C) the sale of lumber, where the buyer is in Maine and the seller is in New Brunswick, Canada
 - (D) the sale of lumber, where the buyer is in New Brunswick, Canada and the seller is in Maine
 - (E) the sale of a motorcycle, with the seller and buyer in Alabama

NOTE THE FOLLOWING FACTS FOR QUESTIONS 3, 4, AND 5:

Retailer Cut 'n' Run Convenience Stores and Abbingdale Acres, a supplier of food and dairy products, are both Texlahoma-based businesses that have done many deals in the past. Now, Cut'n'Run is suing Abbingdale Acres over a multi-million-dollar contract that had Abbingdale supply milk to all of Cut'n'Run's Texlahoma stores over a five-year term, which began two years ago. The parties dispute whether Abbingdale or Cut'n'Run is supposed to pay for increased shipping costs caused by rising fuel prices. There is a written agreement for the deal, but nothing is said in the document about the issue of increased shipping costs one way or the other. The deal was negotiated by Cassandra, an executive of Cut'n'Run, and the CEO of Abbingdale Acres.

3. Consider the following facts that might be established at trial:
- I. In all other dealings between the two companies – from ice cream to packaged snacks – Abbingdale has always absorbed increased shipping costs as a matter of course.
 - II. Over the past two years of this milk deal, Cut'n'Run has twice paid for increased shipping costs out of its own budget.
 - III. In the retail-convenience industry, retailers virtually always absorb increased shipping costs.

Which of the following correctly orders the above facts from most important to least important in establishing the terms of the deal about which Abbingdale and Cut'n'Run are now litigating?

- (A) I, II, III
- (B) II, I, III
- (C) II, III, I
- (D) III, I, II
- (E) III, II, I

4. Cassandra, the Cut'n'Run executive that negotiated the deal, wants to testify that the CEO of Abbingdale Acres told her orally, right before the companies signed the five-year milk deal, "You know Cassandra, we will of course absorb any increased shipping costs caused by increased fuel prices - that's what I understand this deal to mean." Can Cassandra testify about this at trial?
- (A) Yes, because it is relevant evidence that, on these facts, is admissible notwithstanding the UCC's parol evidence rule.
 - (B) Yes, because there is no parol evidence rule under the UCC.
 - (C) No, because the UCC's parol evidence rule bars the introduction of oral testimony in cases involving written contracts.
 - (D) No, because the UCC's statute of frauds bars the introduction of oral testimony in cases involving written contracts.
 - (E) No, because the oral evidence purports to vary the terms of the written agreement.
5. Shortly after the deal between Cut'n'Run and Abbingdale Acres was signed, an in-house counsel at Cut'n'Run used the exact same writing to document Cut'n'Run's five-year bread-supply deal with Zimzo, a bakery based in Chiuango, Mexico. Now the same issue of who should absorb increased shipping costs has come up with Zimzo. Similar to the situation with Abbingdale Acres, Cut'n'Run executive Cassandra wants to testify that the CEO of Zimzo assured her that Zimzo would absorb any increased shipping costs occasioned by increased fuel prices. Can Cassandra so testify at trial?
- (A) Yes, because it is relevant evidence that, on these facts, is admissible notwithstanding the CISG's parol evidence rule.
 - (B) Yes, because there is no parol evidence rule under the CISG.
 - (C) No, because the CISG's parol evidence rule bars the introduction of oral testimony in cases involving written contracts.
 - (D) No, because the CISG's statute of frauds bars the introduction of oral testimony in cases involving written contracts.
 - (E) No, because the oral evidence purports to vary the terms of the written agreement.



6. There was no writing evidencing Wendy's agreement to sell a \$1,200 chair to Lilla. Which of the following would not be a good argument that the contract should be enforced despite the statute of frauds?
- (A) The chair was specially manufactured for Lilla and no one else would want to buy it.
 - (B) Lilla relied to her detriment on Wendy's promise to sell the chair.
 - (C) Wendy admitted in writing, in a letter to Wendy's friend, that she had agreed to sell the chair to Lilla.
 - (D) Lilla already paid \$1,200 to Wendy.
 - (E) Lilla already accepted delivery of the chair.
7. The contract for which of the following transactions - none of which is evidenced by a writing - appears unenforceable?
- (A) the one-day lease of a combine harvester for \$400
 - (B) the sale of a combine harvester for \$209,000, where buyer and seller have an established course of dealing using oral contracts for such deals
 - (C) the sale of a combine harvester for \$209,000, where delivery of the machine was accepted and where full payment has been made
 - (D) the sale of a combine harvester for \$209,000, where the seller is in Canada and the buyer is in the U.S.
 - (E) the licensing of software needed to run a GPS-enabled self-steering combine harvester



FIG 1. *A combine harvester in a cornfield.*

8. Big Lucky Energy Partners LLP (Big Lucky) purchased a ZX-5000 oil drilling rig for \$5,000,000 from Hexetron Petroleum Equipment Corp. (Hexetron). The rig is especially valuable to Big Lucky because it is capable of operating in what is known as "triple-double tamp-down mode," which increases drilling efficiency by over 300%. The signed, written sales agreement contains the following provision:

Hexetron warrants that operation of the rig (including, without limitation, operation in what is known as "triple-double tamp-down mode") will not infringe on any patent held by Hexetron or any third party. Hexetron hereby indemnifies and holds harmless Big Lucky from any claim, allegation, demand, or judgment of patent infringement.

The sales agreement says nothing else regarding patents or licenses.

After the sale, Hexetron received a letter from Starline Intellectual Ventures (Starline), claiming that operation of the rig in triple-double tamp-down mode infringes the 8,776,655 patent, of which Starline is a co-owner. The letter offers to license the '655 patent to Big Lucky for \$2,000,000 per year, which would dissipate nearly all the increased profit Big Lucky stood to make through its purchase and use of the ZX-5000 rig.

On a hunch, an executive with Big Lucky called up the other co-owner of the '655 patent, Zane Carson. Carson, who is friends with one of the investors in Big Lucky and who is angry at Starline, immediately said he was licensing the patent to Big Lucky, orally, over the phone, and on a gratis basis – that is, without any payment or compensation whatsoever.

Outside patent counsel has determined that the claim of patent infringement is justified and that the patent is valid. She also has explained that a patent can be validly licensed on a non-exclusive basis by any of its co-owners, and a licensee need only obtain a license from just one co-owner to be protected in case of litigation over the patent.

You represent Big Lucky. Given what you know, which of the following is the best advice for Big Lucky?

- (A) "You do not need a license to operate the ZX-5000 in triple-double tamp-down mode. Because Hexetron fully indemnified Big Lucky for operation of the rig in this mode, no patent owners have rights against Big Lucky."
- (B) "You do not need a license to operate the ZX-5000 in triple-double tamp-down mode, because such a license is implied in the sale of the rig, unless disclaimed."
- (C) "You need a license to operate the ZX-5000 in triple-double tamp-down mode. You should offer to pay Carson a fee for the patent license, because like any other contract, a license is generally not valid unless supported by consideration. If Carson will not do a license for consideration, then you will need to license through Starline, although you could try to bargain down the fee first. Once you get a license, whether through Carson or Starline, you will be protected in case of a suit for breach of license."
- (D) "You need a license to operate the ZX-5000 in triple-double tamp-down mode. You should ask Carson to put this purported gratis license in writing. While it is generally the case that licenses, like other contracts, need consideration to be binding, there is under the UCC an exception for written licenses evidenced by a writing signed by the licensor. If you get that, you will be protected in case of a suit for breach of license."
- (E) "You need a license to operate the ZX-5000 in triple-double tamp-down mode, but thanks to Carson, you've got one. You should write him a thank-you letter, which will help serve as evidence of the license should this ever end up in litigation. But, strictly speaking, you don't need a writing for the license to have legal validity."

NOTE THE FOLLOWING FACTS FOR QUESTIONS 9 AND 10:

VovolTrac is a manufacturer of vehicle trailers based in Elkhart, Indiana, selling about 2000 trailers per year. They do many different kinds of sales. Just last month, VovolTrac sold a VVB-60 boat trailer it manufactured to George Yinkan for \$4000, with delivery taken at VovolTrac's manufacturing facility in Elkhart. VovolTrac also sold 10 VVB-60 boat trailers it manufactured to the Canada Border Services Agency (CBSA), a Canadian government agency responsible for border enforcement. Those trailers were transported by a third party to a CBSA facility in Ontario, Canada. And also last month, VovolTrac sold a metal-bending machine - which it had used for years to bend metal as part of its manufacturing operations - to Ridgefield College of Technology (Ridgefield Tech), a private university with a very strong mechanical engineering program. In making the sale to Ridgefield Tech, the VovolTrac's chief operations officer Linda Rezerna explained that VovolTrac had a great amount of knowledge and expertise in metal bending and metal bending machines. Linda even suggested - without making an explicit promise - that if Ridgefield Tech bought the machine, VovolTrac employees would be able to come to Ridgefield Tech to explain how to use it.

9. Based on the facts given, and assuming no other facts, which sales would include a warranty of title?
- (A) the sales to George Yinkan, CBSA, and Ridgefield Tech
 - (B) the sales to George Yinkan and CBSA, but not Ridgefield Tech
 - (C) the sales to George Yinkan and Ridgefield Tech, but not CBSA
 - (D) the sales to Ridgefield Tech and CBSA, but not George Yinkan
 - (E) not any of the sales to George Yinkan, CBSA, or Ridgefield Tech
10. Based on the facts given, and assuming no other facts, which sales would include an implied warranty of merchantability?
- (A) the sales to George Yinkan, CBSA, and Ridgefield Tech
 - (B) the sales to George Yinkan and CBSA, but not Ridgefield Tech
 - (C) the sales to George Yinkan and Ridgefield Tech, but not CBSA
 - (D) the sales to Ridgefield Tech and CBSA, but not George Yinkan
 - (E) not any of the sales to George Yinkan, CBSA, or Ridgefield Tech



11. Vayatom and Hexetron Heavy Industries entered into a written, signed sales contract, whereby Vayatom would purchase three large steam turbine generators for commercial power generation at \$25 million each. Vayatom has now backed out of the deal.

Hexetron can scale its operations to produce more or fewer turbine generators. If there were additional demand for selling three such turbine generators to another customer, Hexetron could have ramped up capacity to produce three additional units. Therefore, the lost sale represents \$75 million in lost revenue.

There were also corporate-finance implications of Vayatom's breach. Hexetron is a publicly traded company, and since Vayatom backed out of the transaction, Hexetron has lost 4% of its share price. This has scuttled a secondary stock offering Hexetron had planned, causing the company to resort to corporate bond issuances to raise needed capital, a more expensive option than a stock offering, resulting in a further loss of \$60 million to the corporate bottom line.

Note the following:

- I. Contract-price/market-price-differential damages measured by the difference between the contract price of \$25 million and the market price of the turbine generators at the time of tender, multiplied by three, which is the number of units Vayatom was to buy
- II. Consequential damages from the losses associated with the cancelled secondary stock offering and increased costs of capital obtained through the bond issuance
- III. Lost-profits damages

Which describes damages that would likely be available for breach if Hexetron prevails in a lawsuit against Vayatom?

- (A) I, but not II or III
 - (B) I and II, but not III
 - (C) I and III, but not II
 - (D) I, II, and III
 - (E) not any of I, II, and III
12. In which situation will complete destruction of the good or goods before delivery (and before risk of loss has passed to the buyer) completely excuse performance?
- (A) The contract is for "10 metric tons of industrial grade aluminum."
 - (B) The contract is for "2,000 units of Team USA Luge t-shirts in sizes and design as specified on the attached list."
 - (C) The contract is for "a 2008 white Ford F-150 XL pickup truck."
 - (D) The contract is for "the Pontiac Trans Am used to portray KITT in the final scene of Season 1, Episode 5 of the original Knight Rider TV series."
 - (E) The contract is for "luxury office furnishings suitable for three offices and one conference room, such rooms being as shown on the attached blueprint."

NOTE THE FOLLOWING FACTS FOR QUESTIONS 13, 14, AND 15:

Colossal Television Productions LLC is a major Hollywood television production company producing upwards of 100 episodes per year of scripted dramas and comedies for first-run network primetime television distribution.

The Blue Dragon Epic Z digital camera system (which includes brain-and-sensor module and standard mount) is the most advanced motion-picture camera available today. It just came out last month. Executive producers at Colossal absolutely adore it. It is capable of providing 7K resolution at 300 frames per second with a 36 megapixel sensor delivering a 20.5+ stop dynamic range. Blue LLC sells the Blue Dragon Epic Z digital camera system for \$500,000. Although digital motion-picture camera technology is always evolving, the digital cameras manufactured by Blue LLC are not subject to quick obsolescence and have been holding their value for years on end. According to one expert Hollywood accountant, a Blue Dragon Epic Z purchased today and used continuously should be worth more than half its purchase price after six years. The lenses used with Blue Dragon digital cameras have similarly long lifetimes and enduring financial worth.

Colossal signed a “lease agreement” with Valleyview Media Equipment Partners whereby Valleyview agreed to provide Colossal with a Blue Dragon Epic Z system for a minimum term of one year with annual options to renew for a total term of up to three years, for \$200,000 per year, with an option to purchase at the end of the three years (provided all annual options have been exercised) for \$50,000. Valleyview has an inventory of 20 Blue Dragon Epic Zs, of which about four to six are on hand at any given time.

Colossal also signed a “lease agreement” with Tinseltown Entertainment Partners whereby Tinseltown agreed to provide Colossal with a Blue Dragon Epic Z system for a term of three months for \$10,000 per month, with an option to renew month-to-month for up to nine months at the same monthly rate, with an option to purchase at the end of 12 months (provided all monthly options have been exercised) for \$400,000. Tinseltown has an inventory of 12 Blue Dragon Epic Zs, of which about three or four are on hand at any given time.

Colossal additionally signed a “lease agreement” with Shoreline Leasing Partners for one Likkor 23-800mm f/1.4 telephoto zoom lens usable with a Blue Dragon Epic Z camera. The agreement is for a term of 36 months for \$25,000 per month, with all lease payments over the three-year term totaling \$900,000. The price of a new Likkor 23-800mm f/1.4 telephoto zoom lens is \$3,000,000. The lens was specifically selected by Colossal, and Shoreline will purchase the lens specifically for the purpose of leasing it to Colossal. Shoreline does not keep lenses or motion-picture camera equipment of any kind in stock.

13. Assume that the agreements specified above are in writing. Which of the transactions can be correctly categorized as a “true lease”?
- (A) each of the transactions with Valleyview, Tinseltown, and Shoreline
 - (B) the transactions with Valleyview and Tinseltown, but not the transaction with Shoreline
 - (C) the transactions with Shoreline and Tinseltown, but not the transaction with Valleyview
 - (D) the transaction with Valleyview, but not the transactions with Tinseltown or Shoreline
 - (E) the transaction with Tinseltown, but not the transactions with Valleyview or Shoreline

14. Assume that the agreements specified above are in writing. Which of the transactions can be correctly categorized as a “finance lease”?
- (A) the transactions with Valleyview and Tinseltown, but not the transaction with Shoreline
 - (B) the transactions with Shoreline and Tinseltown, but not the transaction with Valleyview
 - (C) the transaction with Tinseltown, but not the transactions with Valleyview or Shoreline
 - (D) the transaction with Shoreline, but not the transactions with Valleyview or Tinseltown
 - (E) none of the transactions with Valleyview, Tinseltown, or Shoreline
15. Assume for this question only that the agreement with Tinseltown was not made in writing but was made orally. Also assume that the Blue Dragon Epic Z has not yet been delivered to Colossal, nor has Colossal made any payment. Can the transaction be enforced on these facts?
- (A) Yes, because the statute of frauds is inapplicable to this transaction.
 - (B) Yes, because the obligatory lease term, which does not include options, is less than one year.
 - (C) Yes, because each lease payment does not exceed \$10,000.
 - (D) No, because the total lease payments are not less than \$1,000.
 - (E) No, because leases are unenforceable, regardless of the amount of total payments, unless evidenced by a writing or unless delivery or payment has already been made.



FIG 2. A location shoot for another Colossal production.



16. Gregor Gillingshurst went to FFM Pharmacy to fill a prescription for tablets of nixaltandiga, a patent-protected cancer drug that costs \$1,000 per tablet. When the bottle – labeled and pill-filled – was presented to him, Gregor paid. But it instead of having filled the prescription with genuine tablets of nixaltandiga, FFM had given Gregor placebo tablets – that is, tablets with no active ingredients and no genuine medicine. Gregor is pursuing an action against FFM for fraud. Which additional fact or conclusion, if established at trial, would not allow FFM to escape liability?
- (A) Gregor really should have known that the tablets were not nixaltandiga, since the pharmacy tech offered to sell Gregor 30 additional tablets for a total of \$50.
 - (B) When Gregor saw the FFM Pharmacy tech filling the prescription the first time, he could tell, even from a distance over the counter, that the tablets were probably not genuine nixaltandiga tablets, pictures of which he had seen at his physician's office.
 - (C) FFM Pharmacy is a unit of the United States Department of Veterans Affairs, a unit of the federal government.
 - (D) Although the label on the pill bottle provided by FFM said "nixaltandiga" in large letters, it also said in very fine print on the label "FFM Pharmacy makes no guarantees about the efficacy of or identity of any ingredients of the tablets contained herein."
 - (E) As the placebo tablets came from a supplier which had labeled them as genuine tablets of nixaltandiga, FFM was never aware that it was substituting placebos for nixaltandiga.
17. A year ago, Landattle Grace Hospital signed a written contract with Hexetron Surgical Supplies for purchasing scalpels on an ongoing basis. According to the written terms of the agreement, Hexetron is to pay for all shipping costs. Nonetheless, the hospital has habitually paid for shipping of scalpels under the deal. In the industry, it is customary – and in fact nearly universal – that hospitals pay for shipping of surgical supplies. And in all the other dealings between Landattle Grace and Hexetron – for instance, for purchases of retractors, clamps, and all other surgical instruments – Landattle Grace has always paid for shipping. If it comes to a dispute between Hexetron and Landattle Grace, whom should a court rule is responsible to pay shipping costs under the scalpel contract?
- (A) Hexetron, because the course of dealing controls over the course of performance, usage of trade, and the express terms
 - (B) Hexetron, because the usage of trade controls over the express terms, the course of dealing, and the course of performance
 - (C) Hexetron, because the words of the written contract control over the usage of trade, course of performance, and course of dealing
 - (D) Landattle Grace, because the course of performance controls over the usage of trade, the express terms, and the course of dealing
 - (E) Landattle Grace, because the course of dealing controls over the course of performance, usage of trade, and the express terms

18. Hexetron Global Solutions Systems and Oceanic Airlines agreed to a binding deal whereby Hexetron would sell a one-year license to Oceanic to reproduce copies of and use its copyrighted Digidustrial Infomology 9000 Software Suite in exchange for \$1.5 million, due to be paid in 12 monthly installments. The software license was conditioned upon Oceanic making timely payments. Oceanic missed payments, but kept using and reproducing the software. What are good causes of action that Hexetron has against Oceanic?
- (A) breach of contract, but not breach of license or copyright infringement
 - (B) breach of license, but not breach of contract or copyright infringement
 - (C) copyright infringement, but not breach of license or breach of contract
 - (D) breach of contract and copyright infringement, but not breach of license
 - (E) breach of license, copyright infringement, and breach of contract
19. Emiliana and Ásgeir are both professional singer-songwriters. Emiliana and Ásgeir did a deal, evidenced by a signed writing, where, for a \$5,000 fee, Emiliana would hold open an irrevocable offer for 10 years for Ásgeir to purchase an original wood sculpture for \$25,000. Emiliana received the sculpture as a gift from a friend many years ago. Can Ásgeir accept the offer enforce it as a contract?
- (A) Yes, so long as Ásgeir accepts the offer within three months.
 - (B) Yes, so long as Ásgeir accepts the offer within one year.
 - (C) Yes, Ásgeir can accept the offer and enforce it at any time because the offer is supported by consideration, so it is independently enforceable as a contract—what is commonly called an option contract.
 - (D) No, because the 10-year period is too long.
 - (E) No, because Emiliana and Ásgeir aren't merchants.



FIG 3. Centralside Café hosts an open mic for amateur singer-songwriters on Tuesdays.

20. A contract between Silver Square Mining Supplies and Gareth Clanderstand concerns the sale of a jackhammer – a large powered tool for breaking up concrete and rock. It specifies as follows:

The parties agree that that Rhode Island law governs the contract and that in the event of any dispute, the forum shall be Rhode Island.

Silver Square Mining Supplies has its headquarters in Hermosillo, Sonora, Mexico. It also has a research and development office in Newport, Rhode Island. Gareth contacted Silver Square over the phone and explained that he needed the jackhammer to use in renovating the swimming pool at his house. The call was received at Silver Square's Hermosillo office. Silver Square shipped the jackhammer from its Hermosillo facility to Gareth's home in Rhode Island.

In the event there is litigation about this contract, what substantive law will be applied to determine the parties' rights and obligations under the contract?

- (A) The CISG will not apply, because one of the countries involved (and only one) is not a CISG signatory.
 - (B) The CISG will not apply, because both of the countries involved are not CISG signatories.
 - (C) The CISG will not apply, because these goods are for personal/household use, and the seller knew this.
 - (D) The CISG will not apply, because the UCC's choice of law rules require the application of UCC law.
 - (E) The CISG will apply.
21. Geologists are predicting that that Mount Dante, an active volcano, is likely to erupt within the next few days, sending out a gargantuan cloud of choking ash. It's all over television and radio, and everyone in the region is making preparations. Making her own preparations, bed-and-breakfast owner Anne contracts with Northwest Supply Co to purchase a large box of breathing masks, with delivery set for the next day. When Northwest attempts to procure the breathing masks from the wholesaler, the company finds that the price is now 30 times what it was the last time they checked. The Northwest Supply Co wants to avoid the contract. Can they?
- (A) Probably yes, on the basis of procedural unconscionability.
 - (B) Probably yes, on the basis of substantive unconscionability.
 - (C) Probably yes, on the basis of commercial impracticability.
 - (D) Probably yes, on the basis of frustration of purpose.
 - (E) Probably not.

22. A contract called for the Perrier-Jouët Winery to deliver 300 cases of Belle Epoque champagne from its warehouse in California to Kozlov-Higgins Inc, a distributor in Colorado. The contract says Perrier-Jouët is responsible for shipping; the contract says nothing about risk of loss or transfer of title. It is customary in the industry for risk of loss to be borne by the buyer. Perrier-Jouët transports the champagne on one of its own trucks. While driving across the Nevada desert, the Perrier-Jouët truck driver decides to experiment with driving at night with his lights off. As a result of his careless experiment, his truck hits a bridge pier. All the cargo is lost. Who must bear the loss of the champagne and why?
- (A) Perrier-Jouët Winery, because it is the shipper
 - (B) Perrier-Jouët Winery, because the loss was a result of its own negligence
 - (C) Perrier-Jouët Winery, because it held title at the time of loss
 - (D) Kozlov-Higgins Inc, because of industry custom
 - (E) Kozlov-Higgins Inc, because it is the buyer
23. A written agreement is filled with industry jargon and handwritten interlineations. A dispute over the contract lands the parties in court, and the interpretation of the contract is central to resolving the litigation. A motion in limine poses the question of whether the jury or the judge should decide issues of contract interpretation. Which of the following would be most clearly wrong if announced by the court in ruling on the motion?
- (A) "The court will determine the issue, because contract interpretation is a matter of law, not an issue of fact."
 - (B) "The court makes the preliminary determination, on the basis of extrinsic evidence, that the parties' subjectively understood intent is at odds with the apparently unambiguous objectively expressed intent. Therefore, this court will instruct the jury to determine which of the differing subjectively understood intents is more fair and reasonable, and the contract will be construed thusly."
 - (C) "The court will make the threshold determination as to whether the contract is ambiguous, because whether or not the contract is ambiguous is a question of law. Depending on this determination, the jury may or may not have a role in interpreting the contract."
 - (D) "The court determines that the contract is not susceptible to more than one reasonable interpretation, therefore, no issue regarding contract interpretation will be given to the jury."
 - (E) "The court determines that the contract is susceptible to more than one reasonable interpretation. That being the case, the court will instruct the jury to determine, on the basis of extrinsic evidence, which interpretation was intended by the parties."

24. On November 20, at an industry conference, Harvey, a representative of retail home improvement chain Home Hangar, makes an oral contract with Pauline, president of water-heater manufacturer Tomorrow Temp, to purchase 1,000 SlimLine Series G home water heaters, to be delivered in January to Home Hangar's distribution center for \$337 per unit. On November 21, Pauline sent an e-mail to Harvey at the e-mail address on the business card Harvey gave to Pauline. The e-mail had the subject line "confirming our deal from yesterday" and said just the following:

Harvey, it was wonderful talking with you yesterday. I am very pleased to confirm our deal for 1,000 SlimLine Series G home water heaters, delivery in January to your distribution center for \$337 per unit.

Best,
Pauline Pomtokz, President Tomorrow Temp.

Like us on Facebook! [facebook.com/tomorrowtemptoday](https://www.facebook.com/tomorrowtemptoday)
Follow us on Twitter to find out what's cool in hot water tech! [twitter.com/tomorrowtemp](https://www.twitter.com/tomorrowtemp)

Harvey, behind on his e-mail, didn't open the e-mail from Pauline even though it was in his inbox. Then, on December 6, Harvey received a customer-trend report from Home Hangar's data analytics group projecting that Home Hangar would have trouble selling more than 500 units of the SlimLine Series G. After reading this, Harvey fished Pauline's e-mail out of his inbox and replied to it, saying he was sorry, but the deal wasn't going to happen after all. If Tomorrow Temp brings a breach of contract action against Home Hangar, is Tomorrow Temp likely to prevail?

- (A) Yes, because this contract does not implicate the statute of frauds.
- (B) Yes, because this contract fits within an exception to the statute of frauds in that, among other things, Pauline's confirmation is sufficient against Tomorrow Temp.
- (C) Probably no, because enforcement of this contract will likely be barred by the statute of frauds since Pauline's e-mail is probably not timely.
- (D) No, because enforcement of this contract is barred by the statute of frauds since Pauline's e-mail did not constitute a confirmation that was sufficient against the sender since it was not signed, as would be necessary for the written-confirmation exception to apply. If it only had been, then it would have been a sufficient confirmation that would invoke the statute-of-frauds exception.
- (E) No, because enforcement of this contract is barred by the statute of frauds because Harvey never saw the e-mail. Thus, it wouldn't matter even if Pauline's e-mail had been properly signed or if it had been sent the same day as the oral contract.

NOTE THE FOLLOWING FACTS FOR QUESTIONS 25 AND 26:

The Hernstender Museum of Contemporary Art (the Hernstender) and the Museum of Human Modernity (MoHuM) are large, well-established museums of modern art, each including a large collection of paintings and sculptures. The Hernstender made a written, signed offer to MoHuM to purchase the painting *Puce No. 3* by renowned artist Jan Cember for \$3 million, payment due on delivery. A letter accompanying the offer explained that *Puce No. 3* would be the essential centerpiece for a new gallery at the Hernstender devoted to Cember's "Puce Period." The offer said nothing about dispute resolution. MoHuM responded with a written, signed acceptance. The acceptance said nothing about payment, but it provided that dispute resolution was to be done by binding arbitration conducted by the American Association of Museum Arbitrators.

Acceptance in hand, the Hernstender staff then cleared out a gallery to house the 10-foot-by-6-foot *Puce No. 3* and purchased several minor works – such as sketches and various smaller paintings by Cember, none larger than a 1-foot-by-2-foot. Approaching the designated date for delivery of *Puce No. 3*, Hernstender staff manufactured a special crate to safely carry the painting and procured an armored truck service with armed guards to transport it from MoHuM.

On the eve of delivery, the Hernstender's acuity in art procurement was confirmed when it received multiple offers from other museums to buy *Puce No. 3* for more than \$5 million. Despite the attractiveness of these offers, the Hernstender planned to retain the painting. Unfortunately, on the day of the transfer, when the armored truck pulled up, Hernstender staffers were shocked to find the MoHuM engulfed in flames. After the fire department put out the fire, the building housing the MoHuM was nothing but a smoldering shell, and 85 percent of the artwork inside had been completely destroyed, including *Puce No. 3*. The director of MoHuM then called up the Hernstender's director to announce that the MoHuM was backing out of the deal for *Puce No. 3* – since the painting no longer existed.

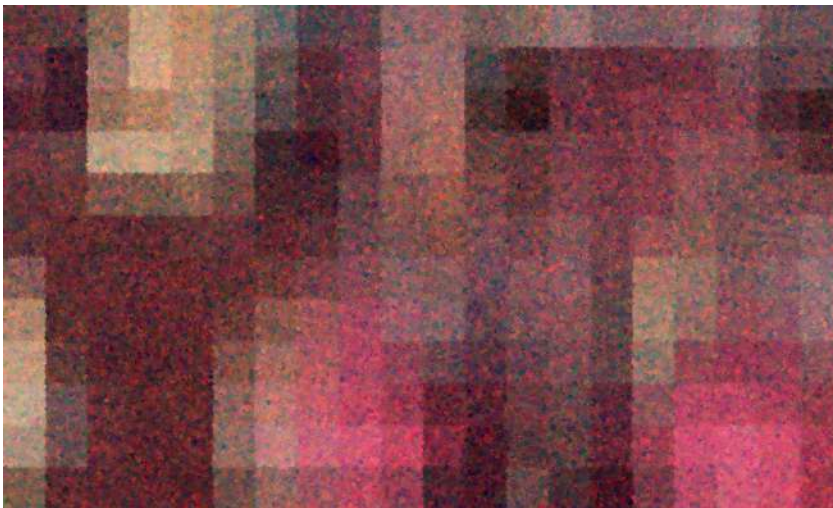


FIG. 4: *Puce No. 3*

25. On the basis of the facts above, which of the following would represent the most plausible legal basis for MoHuM to avoid all liability to Hernstender?
- (A) lack of an enforceable contract
 - (B) fraud
 - (C) commercial impracticability
 - (D) unconscionability
 - (E) the between-merchants rule

NOTE THE FOLLOWING ADDITIONAL FACTS FOR QUESTION 26:

The management of the Herntender and MoHuM are unable to settle the matter informally. The tribunal hearing the dispute, after taking testimony and learning additional facts, holds that a contract for sale was formed and is enforceable, and that MoHuM's failure to perform was "total and complete."

26. Consider the following:

- I. Contract-price/market-price differential damages based on the several offers the Herntender received from other museums to buy *Puce No. 3* for over \$5 million
- II. Consequential damages from the loss of revenue associated with not having a centerpiece for the new gallery devoted to Cember's Puce Period
- III. Punitive damages for "total and complete" failure to deliver

Which describes damages that would likely be available for breach, assuming the Herntender prevails?

- (A) I, but not II or III
- (B) II, but not I or III
- (C) I and II, but not III
- (D) I, II, and III
- (E) not any of I, II, and III



27. Which of the following sales would not include a warranty of title?

- (A) Oceanic Airlines, a major commercial airline, purchased a new VV-7000 turbofan jet engine from Delkin Dynamics Aerospace Corp for \$21.7 million. Oceanic will use the engine in one of its passenger aircraft.
- (B) Sohaila purchased a nail gun for \$529 from Depew's Home Improvement Store. Sohaila works construction jobs. She doesn't have to supply her own tools, but she prefers to have her own nail gun when she works. Depew's is a regular retailer to the public.
- (C) James purchased a hard hat for \$22 from the showroom (which is open to the public) of Blastodyne Safety Corp, a leading seller of industrial safety equipment to businesses in the construction, demolition, mining, and manufacturing sectors. James is a newspaper reporter. He got the hard hat to wear while working on the treehouse he is building for his children.
- (D) Gloria purchased an ice fishing hut for \$100 at a sheriff's auction of unclaimed property. Gloria purchased the hut because she is thinking about taking up ice fishing as a hobby.
- (E) Rafiq purchased a kit of scrapbooking supplies for \$65 from Orinoco Online, a multi-billion-dollar retailer that sells a huge range of products to individuals and businesses across a wide array of markets. The scrapbooking kit was sold through Orinoco's website and shipped from its warehouse by U.S. Mail.

28. Marie just bought a new lawn mower. She told the sales associate that she needed a lawn mower that would work well with thick, wet grass. The sales associate responded, "You could mow down the Everglades with this thing!" (The Everglades is a huge swamp (or "wetland") in Florida, and it is much thicker and much wetter than Marie's lawn could ever get.) When Marie got the mower back home and started using it, she found that it was decent with wet grass, at least compared to her old mower, but it still stopped frequently and required her to clean clumps of wet grass out to get it going again. Marie's mower came with a written 90-day limited warranty. Marie is thinking about pursuing legal action for breach of express warranty. From among the following, which is the best, most accurate legal assessment Marie could be given about her situation?
- (A) "You are likely to prevail because the warranty is enforceable. The sales associate, perhaps foolishly, made an express warranty that the mower couldn't live up to. So you can sue for breach on the basis that the mower couldn't mow down the Everglades."
 - (B) "You are unlikely to prevail because under the UCC, an oral express warranty is not valid if the good is sold with any kind of written warranty."
 - (C) "You are unlikely to prevail because under Magnuson-Moss, an oral express warranty is not valid if the good is sold with any kind of written warranty."
 - (D) "You are unlikely to prevail because a court will most likely look at the sales associate's statement about mowing down the Everglades as mere puffery, and therefore it is unlikely to be upheld as an express warranty."
 - (E) "You are unlikely to prevail because express warranties are not valid under the UCC unless in writing."
29. Locobit Inc. in Texas is a leading industrial manufacturer of drill bits for oil exploration. Which of the following signed, written offers, each declaring on its face to be irrevocable, will be most likely to be held not enforceable for the full duration listed?
- (A) an offer to Unicol OSE LLC of Saskatchewan, Canada for up to 100 bits for \$8,000 each, held open for two months, in exchange for a \$3,500 fee
 - (B) an offer to Octan-Alyeska Arctic Exploration PRLR LLC of Alaska for up to 100 bits for \$3,000 each, held open for three years, in exchange for the right to be the exclusive supplier of directional drilling bits to Octan-Alyeska Arctic Exploration PRLR LLC for the next six months
 - (C) an offer to Octan Prairie OGVE LLC of Oklahoma for up to 5000 bits for \$400 each, held open for two months, where the offer is unsupported by independent consideration
 - (D) an offer to Dinoco-West Partners LLP of North Dakota for up to 50 bits for \$2,000 each, held open for 200 days, where the offer is unsupported by independent consideration
 - (E) an offer to Petroza HR Corp. of Alberta, Canada for up to 10 bits for \$10,000 each, held open for seven years, where the offer is unsupported by independent consideration

NOTE THE FOLLOWING FACTS FOR QUESTIONS 30 AND 31:

These charts shows market prices per barrel for West Texas Intermediate crude oil on selected days in February for two locations: Odessa, Texas and Union County, New Jersey.

Market price in Odessa, Texas	
February 4	\$45
February 5	\$47
February 6	\$51
February 23	\$53

Market price in Union County, NJ	
February 4	\$50
February 5	\$52
February 6	\$56
February 23	\$58

On February 4, Clampett-Ewing Pecos Partners West LLP (Clampett-Ewing) of Odessa, Texas, as seller, contracted with Octan Atlantic Refining Corp. (Octan) of Union County, NJ, as buyer, for the sale of 1,000,000 barrels of West Texas Intermediate crude oil, delivery at Union County, NJ on February 23 for \$50 per barrel. On February 5, Clampett-Ewing repudiated the contract in a communication originating from Odessa, Texas and received in Union County, NJ. On February 6, Octan was able to obtain cover at \$51 a barrel from Dinoco-West LP (Dinoco-West) for delivery, the next day, in Odessa, Texas. Getting the oil to Octan's Union County location by February 23 will cost \$3 per barrel.

30. Assuming Octan properly provided any and all necessary notice to Clampett-Ewing, insofar as notice may have been required, what is the maximum market-price damages to which Octan would be entitled from Clampett-Ewing, on a per-barrel basis?
- (A) Less than \$5
 - (B) \$5
 - (C) \$6
 - (D) \$7
 - (E) More than \$7
31. Assuming Octan properly provided any and all necessary notice to Clampett-Ewing, insofar as notice may have been required, what is the maximum cover damages to which Octan would be entitled from Clampett-Ewing, on a per barrel basis?
- (A) Less than \$2
 - (B) \$3
 - (C) \$4
 - (D) \$5
 - (E) More than \$5

◇ ◇ ◇

32. Ferdinand Flowers LLC, a flower retailer, and SupplyMax, an industrial equipment supplier, signed a 15-page sales agreement for the sale of 10 Beküldött F1000 industrial refrigerators at \$4,600 each. Included toward the end of the agreement was this:

This agreement contains, constitutes, and represents the entire agreement between Ferdinand Flowers and SupplyMax and contains the full expression of all aspects pertaining thereto and supersedes all prior agreements, representations and understandings, whether oral or written, express or implied with respect to the subject matter hereof.

The written agreement said nothing about price guarantees. While negotiating the sale, Ferdinand Flowers, proprietor of the business bearing his name, was told by the sales executive at SupplyMax that they would provide a 90-day price guarantee to Ferdinand Flowers such that if Ferdinand Flowers found Beküldött F1000 refrigerators for less elsewhere, SupplyMax would refund the difference. Sure enough, the week after signing the deal Ferdinand found Beküldött F1000 refrigerators on sale for half price at Depot Depot. (Depot Depot is a leading supplier of equipment for big-box retailers, railroad stations, and other businesses.) Based on these facts, can Ferdinand Flowers enforce the 90-day price guarantee by having evidence of the oral promise admitted at a trial?

- (A) No, because the 90-day price guarantee would add to the terms of the written agreement.
 - (B) No, because the agreement, though not fully integrated, is partially integrated as to the issue of price.
 - (C) Maybe; whether the promise can be admitted will depend on which version of UCC § 2-205 this state has enacted – version A, version B, or version C.
 - (D) Yes, because the quoted provision overcomes the presumption of the statute of frauds since it constitutes a “nachfrist.”
 - (E) Yes, because there is no reason the evidence of the oral promise cannot be admitted at trial.
33. Mercury and Sohaila are both retired insurance brokers. Mercury and Sohaila signed a written agreement whereby for a \$80 payment Mercury would hold open an irrevocable offer for three years for Sohaila to purchase a boat trailer for \$2,000. Mercury got the boat trailer as a hand-me-down from his aunt many years ago. Can Sohaila accept the offer enforce it as a contract?
- (A) Yes, so long as Sohaila accepts the offer within one month.
 - (B) Yes, so long as Sohaila accepts the offer within three months.
 - (C) Yes, Sohaila can accept the offer and enforce it at any time during the three years because the offer is supported by consideration, so it is independently enforceable as a contract.
 - (D) No, unless Mercury is a merchant.
 - (E) No, because the three-year period is too long, making the would-be firm offer unenforceable.

34. According to a binding, enforceable contract, Siobhan's Snowmobiles, a medium-sized recreational sports store and an authorized Icewalker Snow Vehicles Company dealer, was to sell 75 top-of-the-line Icewalker YX-900 snowmobiles to the Lazy Double G Ranch, a 40,000 acre ranch that raises buffalo. A week before delivery, the Lazy Double G Ranch called and repudiated the contract, saying they would not take delivery of the snowmobiles. Already having purchased and taken delivery of the snowmobiles from the manufacturer (which used up all the company's cash on hand) and compelled to obtain extra storage to deal with unexpected extra inventory, Siobahn's was forced into bankruptcy. Which of the following is it most clear Siobhan's is not entitled to as a remedy?
- (A) consequential damages
 - (B) incidental damages
 - (C) contract-price/market-price differential damages
 - (D) the right to identify goods to the contract
 - (E) lost-profits damages
35. Sebastian, a full-time yoga instructor, offers, in an e-mail, to sell his car to Bellissa, who is a full-time anthropology student. Neither Sebastian nor Bellissa is particularly knowledgeable about cars, and this is the only automobile sales transaction either has sought to enter into in the past two years. Sebastian's e-mail specifies a price of \$4,000, identifies the car by make, model, state registration number and vehicle identification number, and says, "This offer is conditioned on your agreeing to pay with a cashier's check from a local bank." (A cashier's check is a check written against the bank's own funds and cannot, therefore, be turned down by the bank because of insufficient funds in a customer's account.) Nothing is said in the e-mail about the place of delivery. Bellissa responds with an e-mail saying, "I accept on the condition that I can pay in cash with U.S. currency, since I don't have an account at a local bank." Has a contract been formed for the sale of the car? And if so, what are the terms for payment and place of delivery?
- (A) Yes, a contract has been formed. The place of delivery is the buyer's residence, and payment must be by cashier's check.
 - (B) Yes, a contract has been formed. The place of delivery is the seller's residence, and payment must be by cashier's check.
 - (C) Yes, a contract has been formed. The place of delivery is the buyer's residence, and payment may be made in made in cash with U.S. currency.
 - (D) Yes, a contract has been formed. The place of delivery is the seller's residence, and payment may be made in made in cash with U.S. currency.
 - (E) No contract has been formed.

●● THIS IS THE END OF THE AMALGAMATED QUESTIONS ●●

CREDITS AND NOTES: Images: Fig. 1, photo by Lance Cheung, U.S. Department of Agriculture, identifier 20130920-OC-LSC-0584; Figs. 2, 3, & 4 by Eric E. Johnson. The Fig. 2 photo ("Film production lighting no. 4148") and Fig. 3 photo ("Urban cafe interior day no. 4233") are available via Flickr and findable by name. Text: All text by Eric E. Johnson. Questions in this collection include released questions that were used on real exams and quizzes. Some questions originated as sample questions. Question 16 is the same as the question numbered 75 as of August 2018 in the amalgamated released multiple-choice questions for Torts.

Copyright 2015-2018 Eric E. Johnson. Konomark - most rights sharable. If you want to reuse any of the material in this document without charge, e-mail me and ask. I'm usually fine with that. Find out more about the Konomark Project at konomark.org.