

Answers to Assignment 4 Questions

NOTE: These answers are provided to give students a basic understanding of acceptable types of responses. They often are not the only valid answers and are not intended to provide an exhaustive response to the questions.

Educational Objective 1

- 1-1. UCC Article 2 applies to commercial transactions such as the sale of goods, leases, contracts, and negotiable instruments.
- 1-2. Under a unilateral contract, a promise is exchanged for an act. A bilateral contract is an exchange of promises of future action.
- 1-3. The two situations in which an oral contract for the sale of goods for \$500 or more is enforceable are these:
 - The buyer accepts and receives part of the goods.
 - The buyer makes partial or full payment for the goods.
- 1-4. A seller pays the cost of insurance and freight charges for delivery to the buyer in a CIF sale, but not in an FOB sale. In an FOB place of shipment sale, the seller delivers goods to the carrier at the seller's risk and expense, and the ownership then shifts to the buyer.
- 1-5. The two exceptions to the rule that a shipment of nonconforming goods constitutes a breach of contract are these:
 - A shipment of nonconforming goods is neither an acceptance nor a breach of contract if the seller notifies the buyer that the shipment is only an accommodation to the buyer.
 - If a buyer rejects goods as nonconforming, the seller can notify the buyer of its intention to "cure" the nonconformity of the shipment by delivering conforming goods.
- 1-6. If the goods are en route, the seller can stop delivery unless the buyer has already received a document of title for the goods or unless a carrier or warehouse operator has notified the buyer that it is holding the goods for the buyer.

Educational Objective 2

- 2-1. An instrument must be in writing and meet these four requirements to be negotiable:
 - It must be signed by the maker or drawer.
 - It must contain an unconditional promise or order to pay a certain sum of money and contain no other promise, order, obligation, or power on the part of the drawer or maker except as otherwise provided by Article 3.
 - It must be payable on demand or at a definite time.
 - It must be payable to order or to bearer.
- 2-2. Salability is an essential characteristic for negotiable instruments so that the seller does not have to wait for payment once the goods are delivered to the buyer.



- 2-3. The payee of a negotiable instrument can negotiate it to another specific person by endorsement.
- 2-4. A holder in due course is the person to whom a negotiable instrument has been issued or endorsed and who possesses it for value, in good faith and without notice that it may not be valid, can be claimed by another, is overdue, or was previously dishonored.
- 2-5. The answers to the questions about the endorsements on separate instruments are these:
- This is a special endorsement that transfers John Doe's right to payment associated with the check to Howard Roe. This endorsement, however, does not transfer John Doe's liabilities. If the check is dishonored, John Doe will have liability to Howard Roe for the payment.
 - This is a restrictive endorsement that limits payment of the check to a deposit into an account or fund owned by John Doe. John Doe retains liability to the financial institution holding the account if the check is dishonored.
 - This is a qualified endorsement that transfers John Doe's rights and liabilities to Susan Coe. John Doe is not liable to Susan Coe or any future holders if the check is dishonored.

Educational Objective 3

- 3-1. UCC 1-201 (b) (16) defines a document of title as a bill of lading, dock warrant, dock receipt, warehouse receipt, order for the delivery of goods, or any other document that, in the regular course of business or financing, adequately evidences that the possessor is entitled to receive, hold, and dispose of the document and the goods it covers.
- 3-2. Warehouse operators provide the goods' owner with a receipt describing the amount, type and condition of the goods, and the conditions of storage.
- 3-3. The bill of lading serves these purposes:
- As a contract for the transportation (carriage) of the goods
 - As a receipt of the goods by the carrier for delivery
 - Under certain circumstances, as title to the goods
 - To identify the terms of the agreement, including goods by type and amount, the consignor, the carrier, provisions of the agreement for shipping, any special instructions, the consignee, date shipped, terms of delivery, and freight terms (prepaid, collect, or from a third party).

Educational Objective 4

- 4-1. In a chattel mortgage, the debtor is allowed to retain possession of the property while the creditor retains the right to take ownership of the property.
- 4-2. Most collateral falls into one of five forms:
- Consumer goods
 - Equipment
 - Farm products
 - Inventory
 - Property on paper



- 4-3. There are three requirements for an attachment to occur:
- A consensual security agreement must exist between the debtor and creditor.
 - The creditor must give value.
 - The debtor must have rights in the collateral.
- 4-4. The debtor can send a written request to the creditor for a termination statement and then file a termination statement with all offices that hold the financing statement. A termination statement is evidence that the debt has been paid in full.
- 4-5. The secured party has the right to regain possession of collateral through the courts or by other legal means, such as lawful repossession. The majority of states allow the secured party to regain possession without going to court if the collateral can be repossessed in a legal manner.

Educational Objective 5

- 5-1. The FTC Act prohibits unfair methods of competition and unfair or deceptive acts or practices that affect interstate commerce.
- a. The FTC Act is not strictly an antitrust act, although it overlaps with the Sherman Anti-Trust Act. The purpose of the Sherman Anti-Trust Act was to prevent companies from acting in ways that would hinder free competition by outlawing practices such as unlawful restraints of trade, price discrimination, price fixing, and unlawful monopolies. The FTC Act is broader than the anti-trust acts in that it prohibits unfair or deceptive acts that have no relationship to competition.
 - b. The FTC Act does not apply to the insurance industry. Under the McCarran-Ferguson Act, the federal government generally does not regulate the business of insurance because it is subject to state regulation. However, if a state does not have antitrust legislation, federal antitrust laws apply. Even if states do regulate insurance antitrust matters, federal antitrust laws can apply in cases of insurance practices involving boycott, coercion, or intimidation.
- 5-2. State laws typically prohibit unfair acts (oppressive or bad-faith conduct), deceptive acts (fraud, deceit, and misrepresentation), and unfair methods of competition (including antitrust violations such as price fixing and group boycotts).
- a. State laws are designed to compensate for perceived inadequacies in the FTC Act. For example, some states extend rights to sue that the FTC Act does not provide. Many of the state acts apply to insurance, unlike the FTC Act.
 - b. State unfair trade practices acts and unfair claim settlement practices acts specific to insurance generally follow the National Association of Insurance Commissioners (NAIC) model Insurance Fair Trade Practices Act. State unfair trade practices acts prohibit such unfair and deceptive insurance industry practices as misrepresentation and false advertising of policies; defamation of competitors; boycott, coercion, and intimidation; creation of false financial statements; unfair discrimination; rebates; and issuing capital stock, certificates, or securities or using advisory board or similar contracts that promise returns or profits as an inducement to purchase insurance.



- 5-3. The UCC codified implied warranties of merchantability and fitness for a particular purpose and described the creation of express warranties. However, under the UCC, only consumers could enforce these warranties, and consumers could also unwittingly waive them. Inadequate controls led to increasing deception in product warranties and resulted in the passage of the Magnuson-Moss Act. The Magnuson-Moss Act does not require a producer of goods to provide a warranty. However, if the producer does provide a written warranty, it must conform to certain standards. The FTC enforces Magnuson-Moss on the federal level.
- a. The UCC provides for implied warranties of merchantability and fitness for a particular purpose but allows sellers to disclaim them. Magnuson-Moss does not permit disclaimers of implied warranties. Under a full warranty, implied warranties cannot be limited in any way. However, Magnuson-Moss does permit a limited warranty to apply the same time restriction to implied warranties as that specified in the express warranty.
 - b. Manufacturers often characterize warranties that are essentially full warranties as limited to avoid the “lemon law” provision of Magnuson-Moss that applies to full warranties. If repeated efforts to repair a product fail, lemon provisions require that consumers of such products must have a choice of full refund or a replacement without charge.
- 5-4. The purpose of the Truth in Lending Act is to ensure that consumers know the terms and interest rates of their credit transactions.
- a. Under the Fair Credit Billing Act, a person who is dissatisfied with property or services purchased with a credit card has the right not to pay the remaining amount due if he or she first tries in good faith to return the property or give the merchant a chance to correct the problem.
 - b. The Fair Debt Collection Practices Act prohibits unfair and oppressive collection practices by agencies that collect debt for creditors.
- 5-5. Bankruptcy law provides two avenues for relief. One avenue is the liquidation of the debtor’s assets and distribution of the proceeds to the creditors. The other avenue is a reorganization of the debtor’s affairs, free of creditor’s claims during the process, and partial or full repayment of their debts.
- 5-6. The goal of John and Mary Doe’s bankruptcy is to discharge all debts prior to the court’s order for relief in order to give them a fresh start.
- a. The parties to a federal bankruptcy proceeding include the debtor, the creditors (both secured and unsecured), a trustee, a bankruptcy judge, and attorneys.
 - b. Bankruptcy does not discharge all debts. Education loans are typically not discharged by bankruptcy.

