

Questions & Answers

Contracts

CAROLINA ACADEMIC PRESS
QUESTIONS & ANSWERS SERIES

- Questions & Answers: Administrative Law, Fourth Edition**
Linda D. Jellum, Karen A. Jordan
- Questions & Answers: Antitrust, Second Edition**
Shubha Ghosh
- Questions & Answers: Bankruptcy, Second Edition**
Mary Jo Wiggins
- Questions & Answers: Business Associations, Third Edition**
Douglas M. Branson, Seth C. Oranburg, John Towers Rice
- Questions & Answers: Civil Procedure, Fifth Edition**
William V. Dorsaneo, III, Elizabeth Thornburg, Brooke D. Coleman
- Questions & Answers: Constitutional Law, Fourth Edition**
Paul E. McGreal, Charles W. Rhodes
- Questions & Answers: Contracts, Fourth Edition**
Scott J. Burnham
- Questions & Answers: Copyright Law, Second Edition**
Dave Fagundes, Robert C. Lind
- Questions & Answers: Criminal Law, Fifth Edition**
Paul Marcus
- Questions & Answers: Criminal Procedure — Police Investigation, Fourth Edition**
Wayne A. Logan
- Questions & Answers: Criminal Procedure — Prosecution and Adjudication, Fourth Edition**
Wayne A. Logan
- Questions & Answers: Employment Discrimination**
Marcia L. McCormick
- Questions & Answers: Environmental Law**
Dru Stevenson
- Questions & Answers: Evidence, Fifth Edition**
Paul C. Giannelli
- Questions & Answers: Family Law, Fourth Edition**
Mark Strasser
- Questions & Answers: Federal Estate and Gift Taxation, Third Edition**
James M. Delaney, Elaine Hightower Gagliardi
- Questions & Answers: Federal Income Tax, Second Edition**
James M. Delaney
- Questions & Answers: The First Amendment, Fourth Edition**
Russell L. Weaver, William D. Araiza
- Questions & Answers: Health Law**
Melissa B. Alexander, Deborah R. Farringer
- Questions & Answers: Intellectual Property, Third Edition**
Gary Myers, Lee Ann Wheelis Lockridge
- Questions & Answers: International Law**
Rebecca Bratspies
- Questions & Answers: Patent Law**
Cynthia M. Ho
- Questions & Answers: Payment Systems, Second Edition**
Timothy R. Zinnecker
- Questions & Answers: Professional Responsibility, Fifth Edition**
Patrick Emery Longan
- Questions & Answers: Property, Third Edition**
John Copeland Nagle, Donald J. Kochan
- Questions & Answers: Remedies, Second Edition**
Rachel M. Janutis, Thomas Orin Main
- Questions & Answers: Secured Transactions, Fourth Edition**
Bruce A. Markell, Timothy R. Zinnecker
- Questions & Answers: Torts, Fifth Edition**
Anita Bernstein
- Questions & Answers: Trademark and Unfair Competition**
Vince F. Chiappetta
- Questions & Answers: Wills, Trusts, and Estates, Fourth Edition**
Thomas M. Featherston, Jr., Victoria J. Haneman

Questions & Answers

Contracts

*Multiple-Choice and Short-Answer
Questions and Answers*

FOURTH EDITION

Scott J. Burnham

PROFESSOR OF LAW EMERITUS
GONZAGA UNIVERSITY SCHOOL OF LAW



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2025
Carolina Academic Press, LLC
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Names: Burnham, Scott J. author
Title: Questions & answers. contracts / Scott J. Burnham.
Other titles: Contracts
Description: Fourth edition. | Durham, North Carolina : Carolina Academic Press, 2025. | Series: Questions & answer series | Includes bibliographical references and index.
Identifiers: LCCN 2025006609 | ISBN 9781531031121 paperback | ISBN 9781531031138 ebook
Subjects: LCSH: Contracts--United States--Problems, exercises, etc. | LCGFT: Study guides | Examinations
Classification: LCC KF801.Z9 R69 2025 | DDC 346.7302/2076--dc23/eng/20250305
LC record available at <https://lccn.loc.gov/2025006609>

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
(919) 489-7486
www.cap-press.com

Printed in the United States of America

To John Kidwell, *bon ami*

Contents

Preface	ix
About the Author	xiii
Acknowledgments	xv
Questions	
Topic 1: Overview	3
Topic 2: The Scope of Article 2	11
Topic 3: Offer and Acceptance	15
Topic 4: Consideration	23
Topic 5: Formation Defenses	29
Topic 6: Statute of Frauds	37
Topic 7: UETA	43
Topic 8: Obligations Enforceable without Consideration	47
Topic 9: Parol Evidence and Interpretation	53
Topic 10: Terms Implied by Law	61
Topic 11: Discharge of Duties	67
Topic 12: Conditions	73
Topic 13: Anticipatory Repudiation	79
Topic 14: Remedies	83
Topic 15: Third Parties	91
Practice Final Exam: Questions	97
Answers	
Topic 1: Overview	117
Topic 2: The Scope of Article 2	129
Topic 3: Offer and Acceptance	133
Topic 4: Consideration	147

Topic 5: Formation Defenses	153
Topic 6: Statute of Frauds	163
Topic 7: UETA	171
Topic 8: Obligations Enforceable without Consideration	175
Topic 9: Parol Evidence and Interpretation	187
Topic 10: Terms Implied by Law	197
Topic 11: Discharge of Duties	205
Topic 12: Conditions	213
Topic 13: Anticipatory Repudiation	219
Topic 14: Remedies	225
Topic 15: Third Parties	237
Practice Final Exam: Answers	247
Index	263

Preface

Answering Multiple-Choice Questions

Multiple-choice and short-answer questions are an excellent way to review your knowledge of the concepts of Contracts by requiring you to apply that knowledge to new fact situations. Some of the questions test your ability to recall or recognize a concept or a definition, but most of them are analytical. I believe that a good multiple-choice question is similar to an essay question and is best approached through the IRAC method. First, try to spot the issue raised by the facts. This is easier when the questions are organized by topic, for the topic will help you narrow the area from which the issue will be drawn. It will be harder in the Practice Final Exam, where the topics are interspersed.

Note the call of the question—exactly what is the question looking for? Take a moment to try to answer the question without looking at the options. Try to recall the relevant rule. The facts will often suggest whether a rule or an exception to a rule is being tested. For example, if the facts say “a buyer made a telephone call to a seller,” ask why the author thought it was important to tell you that this transaction took place over the telephone. It was probably to indicate that the rule may involve oral contracts. If the facts say “a merchant buyer made a telephone call to a merchant seller,” ask why the author told you the parties were merchants. It was probably to invoke a rule or an exception applicable only to merchants.

Then apply the rule to the facts. As with an essay question, make sure you account for all the facts—there is a reason the author included them. And don't make up facts that aren't there. This analysis should lead you to a conclusion found in one of the options. If the question is tricky, you will probably narrow the choice down to two options that both seem correct. To distinguish between the options that seem close, you might employ some of the following techniques:

- Ask what body of law is applicable. One option might be right under the common law, and another under the UCC.
- Review the facts to determine whether you are being tested on a factual distinction. One option might be correct when the contract is *oral*, another when the contract is *written*. Or one option might be correct when the seller is a *merchant*, another when the seller is a *non-merchant*.
- Make sure you are applying the right rule. Rule A might lead you to one option, while Rule B might lead you to another.

- Check whether you are being tested on the exception to a rule. The rule might lead you to one option, while the exception might lead you to another.
- If the facts of two questions are similar, the assessor is probably trying to get you to spot a factual distinction that affects the outcome. Review the earlier question to help determine whether the different facts suggest a different outcome.
- Be skeptical of options that are stated in terms of absolutes like *always* or *never*.

The Sources of Contract Law

Traditionally, Contracts was a common law course. The law of contracts is state law, and the common law varies from state to state. However, your Contracts course likely involves the study of general principles rather than the law of a particular state. Similarly, the bar exam tests general principles rather than local rules. In theory, to know what the common law rule is, you would have to read all the cases and synthesize them. The good news is that our friends at the American Law Institute have done this for us. They have digested all the cases and stated the rules as black-letter law in the Restatement (Second) of Contracts.

This book relies heavily on the common law rules and principles as found in the Restatement (Second) of Contracts, which I will refer to as “the Restatement”—any other Restatement will be designated by name. However, every time you see a citation to the Restatement, you should imagine that there is a footnote stating:

*WARNING! The Restatement is not the law of any particular U.S. jurisdiction. It is a handy short-cut for finding the general principles of contract law. But judges are not bound to follow it, and when you practice in a particular jurisdiction, you will have to find the case law and rules that have developed in that jurisdiction.

Statutes are an increasingly important part of the study of law. In some U.S. jurisdictions, such as Louisiana and California, the law of contracts is found in the form of a code rather than the common law, though the common law still has an important role in interpreting the statutes. All U.S. jurisdictions have enacted most of one very important statute—the Uniform Commercial Code (UCC). More specifically, all jurisdictions have enacted Article 1, which contains general principles and definitions, and all but Louisiana have enacted Article 2, which codifies the law of the sale of goods. Most basic Contracts courses introduce you to the UCC, so it is discussed in this book.

Just as the common law is different in each state, so is the UCC. While our friends at the Uniform Law Commission promulgate a uniform version of the Code, each state legislature enacting the Code is free to make changes, and often does. This book uses the Code as found in the uniform version. But just as with the common law, when you are in practice you will need to consult the law of a particular jurisdiction to see what the Code section looks like and how it has been interpreted in that jurisdiction.

There have been many attempts to revise the UCC over the years. Revised Article 1 (2001) has been enacted in every state and is the source for the bar exam, so this book simply calls it Article 1. Attempts to revise Article 2 have all failed (other than changes made to coordinate it with the adoption of Revised Article 1).

The United States and many of its trading partners have joined in the United Nations Convention on the International Sale of Goods (CISG), which governs international commercial contracts for the sale of goods. Because most Contracts courses regrettably do not include study of the CISG, and because it is not tested on the bar, I have not included questions about the CISG beyond a basic understanding of when it applies to a transaction.

How to Use This Book

I suggest you work with the questions in this book after you have studied each topic in order to review and reinforce your understanding of that topic. The topics are not always studied in the same order in every Contracts course, but you should be able to find the appropriate topic by its description or by using the Index. If you get a question wrong, make sure you review the reasoning to find out why you got it wrong. Then take the Practice Final Exam before you take your final. You might also want to review the questions when you study Contracts in preparation for the bar exam. The multiple-choice portion of the bar exam includes Contracts and Sales questions, and there are often essay questions in those areas as well.

A Comment on the Fourth Edition

There have been two significant changes since the Third Edition of this book was published. First, the Uniform Law Commission promulgated the 2022 Amendments to the Uniform Commercial Code. The most significant part of the Amendments for our purposes is the new definition of “hybrid transactions” in §2-106(5) and the new rule on hybrid transactions in §2-102(2). These changes are discussed in a new Topic 2, The Scope of Article 2. The Amendments also made clear the effectiveness of electronic transactions. Questions on electronic transactions, including an introduction to the Uniform Electronic Transactions Act (UETA), are found in a new Topic 7, UETA.

Second, the National Conference of Bar Examiners has announced that the last administration of the present bar exam will be in February, 2028. After that, all jurisdictions that administer the Uniform Bar Exam will use the NextGen Bar Exam, and some jurisdictions will use it prior to that date. For our purposes, the most significant change is that many of the multiple-choice questions will contain resources to consult while answering the question. For example, the relevant statute will be provided for questions on many UCC topics. I have included some questions that use this format. They are introduced with [NextGen] at the beginning of the question.

If you have questions or comments, feel free to contact me at burnham@gonzaga.edu.

About the Author

Scott J. Burnham is the Curley Professor of Commercial Law Emeritus at Gonzaga University School of Law in Spokane, Washington. For many years he taught at The University of Montana School of Law and has visited the law schools at Santa Clara, University of Tennessee, Western New England, UNLV, Hawaii, Memphis, The Ohio State University, Stetson, University of Baltimore, and Cardozo, as well as law schools in Uruguay, Lithuania, Vietnam, and China. He also teaches online at Purdue Global Law School.

Professor Burnham is the author of numerous books, articles, and CALI lessons in the areas of Contracts, Commercial Law, and Copyright Law. He is a former member of the American Law Institute.

Acknowledgments

I am grateful to Keith A. Rowley, William S. Boyd Professor of Law at the Boyd School of Law, University of Nevada Las Vegas, for authoring the first edition of this work. I thank the Uniform Law Commission and the American Law Institute for permission to reproduce sections of the Uniform Commercial Code, the Restatement (Second) of Contracts, and the Restatement (Third) of Restitution and Unjust Enrichment. I am grateful to Chelsea Porter, a student at Gonzaga University School of Law, for her assistance and advice. Most importantly, I am grateful to all my Contracts students who have allowed me to hone my skills by writing multiple-choice questions in order to assess them.

