

QUESTIONS & ANSWERS:
CONTRACTS

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*Multiple Choice and Short Answer
Questions and Answers*

SECOND EDITION

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Dedication

To John Kidwell, *bon ami*

About the Author

Scott J. Burnham is the Curley Professor of Commercial Law 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, and Cardozo, as well as law schools in Uruguay, Lithuania, Vietnam, and China. He also teaches online at Concord 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 member of the American Law Institute.

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

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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 most states and is the source for the bar exam, so this book uses that version of Article 1. Attempts to revise Article 2 have all failed (other than changes made to coordinate it with the adoption of Revised Article 1). Therefore, you should make sure you are using a recent version of Article 2 as promulgated by the ULC and not Revised Article 2 or Amended Article 2, both of which have been withdrawn from consideration by the states.

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.

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

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