Preparation hints for the Final Exam

General Hints

1. The Final Exam will be given in the Forum 3 classroom on Thursday, June 29, 2017 from 9:15AM-11:15AM. It covers chapters 9 through 17 only. It is a closed-book, closed-note exam.

1. Reviewing the Catalyst quizzes you took in chapters 9 through 17, and especially studying the questions you missed, would be an extremely worthwhile activity in preparing for this exam.

2. You must bring a ParSCORE answer form, and a number 2 pencil to the exam. Please make sure your ParSCORE answer form is not three-hole punched, folded, or wrinkled, or torn on any of the edges, because I won't accept it if it is. I will have a few for sale for 50 cents immediately prior to the exam, but I would prefer everyone to bring their own.

Specific Hints

Not everything that is listed below will be on the test. And there will be questions on the test on topics that are not listed below. However, the items below are among the most important lessons of this portion of the course and 90-95% of what will be on the exam can be found somewhere below.

The following items are from chapter 9:

1) Know the meaning of the following terms and expressions: judicial restraint, judicial activism, agreement (p. 226,) consideration, legality (p. 226,) capacity (p. 226,) noncompetition agreement, bilateral contract, unilateral contract (p. 231), express contract, implied contract (p. 231,) executory contract, executed contract, valid contract (p. 233,) voidable contract, void agreement, promissory estoppel, quasi-contract, quantum meruit, and goods (p. 239).

2) Know that the purpose of contracts is to make business matters more predictable.

3) Know that even if a contract results in serious financial harm to one party, a court will typically enforce it unless it can be shown to be unconscionable. Know that this is called judicial restraint, wherein a court takes a passive role and requires the parties to fulfill whatever obligations they agreed to.

4) Know that judicial activism makes the law more flexible but less predictable.

5) Know that the law does not enforce all promises. Know that a bilateral contract is a collection of exchanged promises between two parties that the law will enforce. Know that a court will sometimes enforce a non-contractual promise under the doctrine of promissory estoppel, but that parties are wise to get themselves into contracts if they want to ensure court enforcement of the promises others have made to them, because plaintiffs who allege promissory estoppel often lose their cases.

6) Know that it wasn’t until 1602 that English courts began to enforce mutual promises – what today we would call bilateral contracts. Before that, there were requirements beyond just the exchange of promises which, if not met, caused the court to declare that no enforceable contract had been formed. Information about these requirements can be found on page 229.

7) Know that in theDavis v. Mason case, Mason was a surgeon/apothecary and Davis wished to apprentice himself to Mason. Mason made Davis enter a noncompetition agreement with him as a condition of his employment. Mason dismissed Davis about 13 months after hiring him, and Davis
promptly violated the noncompetition agreement. The court enforced the agreement, ordering Davis to pay Mason 200 pounds Sterling in liquidated damages. (Note: We don’t learn what liquidated damages are until chapter 17.)

8) Know that the English courts practiced a very high degree of judicial restraint in contract law cases from 1792 to 1892. Courts rarely if ever declared a contract to be too unfair to enforce during this period. In the 120 years that have elapsed since 1892, however, courts have gotten substantially more willing to practice judicial activism. The doctrines of promissory estoppel and quasi contract were rarely used before 1892. They are much more often used today. In the modern court, noncompetition agreements are only enforced if they are essential to employer, fair to the employee, and not harmful to the general public. No such rule existed or was employed during the 100 year period from 1792 to 1892.

9) Know that environmental statutes currently in effect in the United States hold all owners of property liable to clean up toxic waste on their property. Know that, because of these statutes, if a seller of polluted land includes in their sales contract language which relieves them of liability for cleanup and places liability for cleanup exclusively on the buyer, the courts will ignore that provision of the sales contract, holding that the rest of the sales contract is valid but the seller of the land remains liable for the cleanup.

10) Know that in a unilateral contract, one party makes an offer that the other party can only accept by performing the act specified in the offer. The offeror in effect makes a conditional promise which is rendered binding by the offeree performing that act.

11) Know that contracts that should have been in writing but are not are unenforceable. Know that contracts induced by fraud or misrepresentation are voidable. Know that contracts whose subject matter is illegal are void.

12) Know the three things a plaintiff must prove to win a case under the doctrine of promissory estoppel.

13) Know the basic facts of Norton v. Hoyt, the key legal issue, who won, and why.

14) Know the three things a plaintiff must prove to win a case under the doctrine of quasi-contract.

15) Know that whenever a court provides a remedy to a plaintiff under the doctrine of either promissory estoppel or quasi-contract, that court has engaged in judicial activism.

16) Know that the key issue in a case of quasi-contract is whether the plaintiff supplied a benefit under circumstances in which compensation is essential to avoid unjust enrichment.

17) Know that at least in the state of Indiana, a plaintiff who has supplied medical services to a defendant, although acting without the defendant’s consent (because he was unconscious when he was brought in,) is entitled to restitution under the doctrine of quasi-contract if (1) he expected to charge for his work, (2) the services were necessary to prevent serious bodily harm, and (3) it was impossible for the defendant to give consent. See Novak v. Credit Bureau Collection Service for an example.

18) Know that the Uniform Commercial Code was created in 1952, and that by 1990 each state in the United States had passed a state statute adopting the Uniform Commercial Code rules, although each state legislature couldn’t resist tinkering with the language and the rules a little bit before passing their version of the statute - so the so-called Uniform Commercial Code as passed by the 50 states is not actually 100% “uniform”!

19) Know that UCC article 2 governs contracts for the sale of goods only. Know that in a mixed contract, UCC article 2 governs only if the primary purpose of the contract was the sale of goods. Know that contract law defines goods as “a thing which exists and is moveable.”
20) Know that the common law in each state governs contracts for services, employment, real estate, and most other types of contracts.

21) Know that the Restatement of Contracts was written in 1932 by a group of judges, legal academicians, and lawyers at the American Law Institute; and that, unlike the UCC, it is not binding law. But it is influential on judges, especially appeals court judges, who are trying to decide how to rule on a case governed by the common law of contracts. The more states adopt those rules over time, the more uniform contract law will become across the states. Know that the second edition of the Restatement of Contracts came out in 1979, and that is the most current version.

22) Know the answers to additional questions 4, 5, and 7 on pages 243-244 of your textbook, at the end of chapter 9.

The following items are from chapter 10:

23) Know the meaning of the following terms and expressions: meeting of the minds, offer, offeror, offeree, letter of intent, open terms (p. 253), gap-filler provisions, output contract, requirements contract, implied warranty of merchantability, implied warranty of fitness for a particular purpose, revocation (p. 254), firm offer, rejection (p. 255), mirror image rule, additional terms (p. 258), different terms (p. 259), and mailbox rule.

24) Know that an offer empowers the offeree to bind the offeror in a contract by accepting.

25) Know that an invitation to bargain is not an offer. Know that a price quote is generally not an offer. Know that an advertisement is generally not an offer.

26) Know that some letters of intent have been found by courts to contain legally binding provisions, while others have been found to contain no binding provisions.

27) Know that an automobile dealer who advertises a remarkably low price on a particular model of car, but fails to mention in the ad that he only has one automobile available at that price has probably violated a state consumer protection statute.

28) Know that placing an item up for auction is not an offer, it is a request for offers to buy. Know that the law assumes auctions are with reserve unless otherwise indicated, and what with reserve means.

29) Know that, for contracts governed by common law, it is not enough that the offeror intends to make an offer. The terms of the offer must be definite. If they are vague, then even if the offeree appears to have accepted the deal, a court will rule that no contract was formed.

30) Know the basic facts of Baer v. Chase, the key legal issue, who won, and why.

31) Know that under UCC Section 2-204(3), even though one or more terms are left open, a contract for the sale of goods does not fail to be formed on the grounds of indefiniteness if (1) the parties have intended to make a contract, and (2) there is a reasonably certain basis for (the jury) to give an appropriate remedy.

32) Know that under UCC Section 2-207(3), conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for the sale of goods even if the writings of the parties do not otherwise establish a contract. Know that the effect of 2-204(3) and 2-207(3) together is to remove the “terms of the offer must be definite” requirement from the rules governing contract formation under UCC Article 2.

33) Know that if two parties form a contract under UCC Article 2 without reaching agreement on warranty provisions, the Code will impose two warranties on the seller: an implied warranty of merchantability and an implied warranty of fitness for the purpose to which the buyer intends to put the goods, if the seller is aware of such purpose.
Know that if two parties form a contract under UCC Article 2 without reaching agreement on price, the finder of fact (the jury if there is one) will be called upon to determine “a reasonable price” and the court will substitute that price for the missing term. The finder of fact will listen to testimony from expert witnesses called by both sides to assist them in determining this price. In most jurisdictions under normal circumstances, the jury will be instructed to determine a reasonable price based on the fair market value of the goods at the time of delivery.

35) Know that, generally, an offeror may revoke an offer any time prior to acceptance. Know that revocation is effective when the offeree receives it, not when it is dispatched or at any other earlier time. Know that, under the common law, revocation is effective if received by the offeree before the offeree accepts, even if the offer was a firm offer.

36) Know that if an offeror enters into an option contract, the subject matter of which is a firm offer by him, that his offeror cannot be revoked during the option period. In other words, a valid option contract can make the “firmness” aspect of a firm offer binding.

37) Know the “firm offer by a merchant” rule laid out in UCC Section 2-205, and when it applies.

38) Know that if an offeree rejects an offer, the rejection immediately terminates the offer.

39) Know that, under common law rules, any acceptance that materially changes or adds to the terms contained in the offer is a counteroffer, and a counteroffer is a type of rejection. One cannot counteroffer under common law rules without impliedly rejecting the original offer, and therefore destroying that offer. One can, however, very delicately inquire about the possibility of improved terms without creating a counteroffer and therefore without destroying the original offer. If it would change the legal outcome of a case, a court will parse your words carefully to decide which (in their opinion) you have done.

40) Know that when an offer specifies a time limit for acceptance, that period is binding. Know that, if the offer specifies no time limit, the offeree has a reasonable period in which to accept. Know that if the parties are bargaining face to face, any offer made will normally be valid only during that discussion.

41) Know that the death or mental incapacity of the offeror terminates an offer.

42) Know that the destruction of the subject matter of an offer terminates the offer.

43) Know that when the offer is for a bilateral contract, the offeree generally must accept by making a promise. Know that when the offer is for a unilateral contract, the offeree must accept by performing an act. Know that if it is unclear (ambiguous) whether the offer is for a bilateral contract or a unilateral contract, the offeree may accept either by a promise or by performance.

44) Know that the mirror image rule is effective for contracts governed by common law only. Contracts governed by UCC Article 2 are exempt from this rule.

45) Know that under UCC Section 2-207(1), an offeree who accepts an offer for a sale of goods contract may include in the acceptance terms that are additional to and/or different from those in the offer, while still binding the offeror in a contract. This is a clear rejection of the mirror image rule!

46) Know that, under UCC Section 2-207(2), between merchants, additional terms contained in the acceptance will become part of the contract unless: (1) the original offer insisted on its own terms, or (2) the additional terms materially alter the offer, or (3) the offeror receives the additional terms and promptly objects to them.

47) Know the basic facts in the case of Bayway Refining Co. v. Tosco Corp., the key legal issue, who won, and why.
48) Know that in *Specht v. Netscape Communications Corp.*, the appeals court ruled that the plaintiffs were not bound by the arbitration clause in Netscape’s clickwrap agreement because Netscape placed the link inviting the user to “review and agree to the terms of the…software license agreement” too far down on the screen. The users would have had to do a “Page Down” in order to see that link, and it was unreasonable for Netscape to expect them to do that. Netscape should have known that most if not all users would simply click the “Download” button plainly visible on the screen rather than actively hunt around for a link to the license agreement first.

49) Know that if an offer demands acceptance in a particular medium or manner, the offeree must follow those requirements. Know that if the offer does not specify a type of acceptance, the offeree may accept in any reasonable manner.

50) Know the basic facts of *Soldau v. Organon, Inc.*, the key legal issue, who won, and why.

51) Know the answers to additional questions 1, 2, 3, 4, 5, and 8 on pages 267-268 of your textbook, at the end of chapter 10.

The following items are from chapter 11:

52) Know the meaning of the following terms and expressions: promisor, promisee, liquidated debt, unliquidated debt, and accord and satisfaction.

53) Know and understand the following four facts about consideration, explained on pages 273-274:
   - Consideration can be anything that someone might want to bargain for. The thing bargained for can be another promise or action. The thing bargained for can be a benefit to the promisor or a detriment to the promisee. And finally, the thing bargained for can be a promise to do something or a promise to refrain from doing something.

54) What does the seller promise to do in a *requirements contract*?

55) What does the buyer promise to do in an *output contract*?

56) Know that under the doctrine of consideration, a court will enforce one party’s promise as a contractual promise only if the other party did something or promised something *in exchange*, and only if the thing done or promised had *legal value*. Gift promises (promises not supported by consideration from the other party) are generally not enforced.

57) Know the basic facts of *Kelsoe v. International Wood Products, Inc.*, the key legal issue, who won, and why.

58) Know the basic facts of *Hamer v. Sidway*, the key legal issue, who won, and why. Know that Hamer v. Sidway illustrates the principle that, in order to function as consideration, the thing exchanged must be either a benefit to the promisor or a detriment to the promisee, but it need not be both of those. The younger William Story’s acts were a legal detriment to him, therefore they function as consideration to make the uncle’s promises enforceable even if the nephew’s acts were not a *benefit* to the uncle.

59) For any two way exchange, be able to determine whether each thing given is a *detriment* to someone, and if so to whom, and whether it is a *benefit* to someone, and if so to whom. For example, Fred promises to sell his surfboard to Bill for $400. To whom is Fred’s promise a benefit? To whom is Fred’s promise a detriment? To whom is Bill’s promise (to pay the $400) a benefit? To whom is Bill’s promise a detriment?

60) Know that the adequacy of consideration means the degree to which the consideration given was *equal in value* to the thing promised. Know that courts generally take the position that it is not their role to evaluate the adequacy of consideration; rather, it is *the parties’ job to do that* as they bargain.

61) Know that an *illusory promise* is a promise that *appears* to bind the promisor but does not *actually bind them* in any meaningful way. Know that an illusory promise cannot function as consideration.
62) Know the basic facts of *Culbertson v. Brodsky*, the key legal issue, who won, and why. Know at least one way Mr. Brodsky could have changed the terms of the deal to make Mr. Culbertson’s promise legally binding.

63) Know why requirements contracts and output contracts would generally be considered invalid and unenforceable under common law rules. Know how the UCC article 2 solved the problem of unenforceability by imposing certain burdens upon the maker of the illusory promise, and what those burdens are.

64) Know that past consideration is generally no consideration. Or to put it another way, services performed before the promise is made, with no intention of inducing that promise, are not consideration. (Taken from *Dementas v. Estate of Tallas*.)

65) Know that, under the preexisting duty rule, a promise to do something the promisor is already obligated to do cannot function as consideration. This includes preexisting private duties, which are duties you have imposed on yourself by entering a contract still in effect. Understand that this rule has the effect of making one-side improvements (modifications that benefit one party but not the other) to contracts generally unenforceable, because the party who received the improvements didn’t offer any consideration (anything of value) to the other party in exchange for these improvements.

66) Understand the additional work exception to the preexisting duty rule.

67) Know the unforeseen circumstances exception to the preexisting duty rule. Know that courts are very stingy about granting this exception, and that it generally requires that mother nature has thrown the seller a “curve ball” (some unforeseen circumstances.) If other human actors have caused the seller’s distress, such as his workers or the suppliers of his raw materials, courts will generally require the seller to complete the contract under the originally-agreed terms, and will not enforce the modification.

68) Know that, in cases of liquidated debt, if the creditor agrees to take less than the full amount as full payment, her agreement is not binding.

69) Know that when a debt is unliquidated, if the creditor agrees to take less than the full amount as full payment, her agreement is generally binding provided that the debtor actually pays the lessor amount on a timely basis. Such an agreement is called an accord, and the rendering of the check for the lessor amount into cash (i.e. depositing the check and having it not bounce) is called a satisfaction. The accord part isn’t binding until the satisfaction occurs.

70) Know the answers to additional questions 1, 4, 5, 6, and 7 on pages 288-289 of your textbook, at the end of chapter 11.

**The following items are from chapter 12:**

71) Know the meaning of the following terms and expressions: exculpatory clause, bailment, bailor, bailee, unconscionable contract (p. 302), oppression (in the bargaining), and adhesion contracts.

72) Know that a promise to do something illegal will make the entire agreement of which it is a part void, meaning not at all legally enforceable. Know that if one party to a void agreement has paid, but the other has not yet performed the illegal service, a court will not intervene to order the service provider to refund the money, even if requested to do so, because they are not interested in helping either party to a void agreement in any way.

73) Know the basic facts of *Metropolitan Creditors Service of Sacramento v. Sadri*, who won, and why.

74) Know that anyone taking out a (life insurance) policy on the life of another must have an insurable interest in that person. Know that the most common insurable interest is family connection, such as spouses or parents. Know that other valid interests include creditor-debtor and business association.
75) Know that when a licensing requirement is designed to protect the public, any contract made by an unlicensed worker is unenforceable; but when a licensing requirement is designed merely to raise revenue, a contract made by an unlicensed person is generally enforceable.

76) Know the basic facts of Jimenez v. Protective Life Insurance Co., who won, and why.

77) Know the basic facts of Authentic Home Improvements v. Mayo, the key legal issue, who won, and why.

78) Know that usury laws prohibit charging excess interest on loans. Know that a lender who charges a usurious rate of interest may forfeit the illegal interest, or all interest, or in some states, the entire loan.

79) Know the basic facts of Jersey Palm-Gross, Inc. v. Paper, who won, and why.

80) Know that, to be valid, an agreement not to compete must be ancillary to a legitimate bargain.

81) Know that when a noncompete agreement is ancillary to the sale of a business, it is enforceable if and only if it is reasonable in time, geographic area, and scope of activity.

82) Know that a noncompete clause in an employment contract is generally enforceable only if it is (1) essential to the employer, (2) fair to the employee, and (3) harmless to the general public. Know that courts will generally not enforce such agreements if they last too long or apply in a very wide (geographic) area.

83) Know the basic facts of King v. Head Start Family Hair Salons, Inc., the key legal issue, who won, and why.

84) Know that an exculpatory clause is generally unenforceable to the extent it attempts to exclude an intentional tort or gross negligence.

85) Know that an exculpatory clause is generally unenforceable when the affected activity is in the public interest, such as medical care, public transportation, or some essential service such as car repair.

86) Know that an exculpatory clause is generally unenforceable when the parties come to the negotiation with greatly unequal bargaining power.

87) Know that an exculpatory clause is generally unenforceable unless it is clearly written and readily visible.

88) Know basic facts behind the Ransburg v. Richards case, the key legal issue, and the Indiana Court of Appeals’ decision and reasoning.

89) Know that the two factors that most often lead a court to find unconscionability are oppression and surprise.

90) Know the basic facts of Worldwide Insurance v. Klopp, the key legal issue, who won, and why.

91) Know the answers to additional questions 1, 2, 3, 5, 6, 7, and 8 on pages 306-307 of your textbook, at the end of chapter 12.

The following items are from chapter 13:

92) Know the meaning of the following terms and expressions: capacity (p. 310), minor (p. 310), disaffirm, rescind, restitution, ratification, necessaries (p. 312), mental impairment (p. 313), misrepresentation, innocent misrepresentation (p. 314), fraudulent misrepresentation (p. 314), fraudulent statement (p. 315), material statement (p. 315), bilateral mistake, unilateral mistake, and duress.

93) Know that two groups of people usually lack legal capacity: minors and those with a mental impairment.
94) Know that if one party lacks capacity, but there are no other issues preventing contract formation, a voidable contract will generally be created. Know that a voidable contract may be cancelled only by the party who lacked capacity (or their legal guardian.) Know that if an adult co-signs a contract in support a minor’s signature, the merchant will be protected from disaffirmance because although the minor may still disaffirm, the adult co-signer may not.

95) Know that a minor may disaffirm a contract by notifying the adult that they want to disaffirm orally or in writing, or by refusing to perform their obligations under the contract, or by filing a lawsuit to unilaterally rescind the contract. Know that a minor who disaffirms a contract must return the consideration he has received, to the extent he is able.

96) Know the basic facts of Star Chevrolet Co. v. Green, the key legal issue, who won, and why.

97) Know that a minor may disaffirm a contract any time before she reaches the age of majority, and for a reasonable time thereafter.

98) Know that in 47 states, the age of majority is 18. Know that, any time after reaching the age of majority, a person who was formerly a minor may ratify any or all of the agreements they made while a minor; but if they choose to do so, they will immediately and permanently lose their ability to disaffirm that agreement.

99) Know that on a contract for necessaries, a minor may disaffirm the contract, but they will still have to pay the reasonable value of any benefits they have actually received under the contract. Know that medical treatment of an illness or injury will generally be treated as a necessary, but that purely cosmetic medical services will not.

100) Know that a person suffers from a mental impairment if (and only if) by reason of mental illness or defect he is unable to understand the nature and consequences of the transaction. Know that voluntary intoxication will count as a mental defect, but that this defect will treated as a mental impairment only if the jury is persuaded that the intoxicated party was unable to understand the nature and/or consequences of the agreement at the time the agreement was made.

101) Know that in most states, a minor who cannot make full restitution when they disaffirm a contract is still entitled to a full refund; whereas a mentally infirm person is only entitled to a partial refund in proportion to the degree to which they can make restitution.

102) Know that, to rescind a contract based on misrepresentation or fraud, a party must show three things: (1) there was a false statement of fact; (2) the statement was fraudulent or material; and (3) the injured person (actually and) justifiably relied on the statement. Know that when these three conditions are present, it makes the contract voidable, not void.

103) Know that most statements of opinion cannot be used to rescind a contract based on fraud or misrepresentation.

104) Know when a statement is (sales) puffery. (p. 315)

105) Know that the words and expressions “better, best, high-quality,” and “expert workmanship” are representative of sales puffery, and that courts generally view sales puffery as a type of opinion. What these words have in common is that they are not something we can precisely measure. They are vague. Statements containing these words and similar words generally cannot be used as a basis for rescinding a contract based on fraud or misrepresentation.

106) Know that a statement is material if the maker would expect a reasonable person to rely on the statement to a measurable degree in deciding whether to enter into the agreement or not. Conversely, a statement is not material if a reasonable buyer would not be influenced by the statement into making the deal.
Know that if the maker’s statement is fraudulent, the injured party generally (i.e. under common law rules in most states) has a choice of rescinding the contract or suing for damages by alleging the tort of fraud; but that if the contract is one for goods, the UCC Article 2 lets them both rescind the contract and sue for damages, even if the maker’s statement was not fraudulent (provided the statement was material) in virtually every state.

Know that nondisclosure of a fact (i.e. silence) amounts to misrepresentation in only four cases: (1) where disclosure is necessary to correct a previous assertion by the maker, (2) where disclosure would correct a basic mistaken assumption that the other party is relying upon, (3) where disclosure would correct the other party’s mistaken understanding about a writing (such as a map), or (4) where there is a relationship of trust between the two parties.

Know that active concealment of a material fact about a property, or the use of one or more half-truths to deliberate lead a party to an incorrect conclusion about a fact always constitutes fraud.

Know the basic facts of Hess v. Chase Manhattan Bank, the key legal issue, who won, and why.

Know the basic rule regarding bilateral mistake, which is that if the parties contract based on an important mutual factual error, the contract will be voidable by the injured party.

Know that, to rescind for unilateral mistake, which is more difficult than rescinding under bilateral mistake, the mistaken party must demonstrate: (1) that she entered the contract because of a basic (important) factual error and that either (2a) enforcing the contract would be unconscionable, or (2b) the other party knew (or should have known) of the mistaken party’s error.

Know the basic facts of Donovan v. RRL Corporation, the key legal issue, who won, and why.

Know the basic rule regarding duress, which is that if one party makes an improper threat that causes the victim to enter into a contract, and the victim had no reasonable alternative, the contract is voidable by the victim. Know that threatening to do something you have every legal right to do will never be considered an improper threat.

Know that to rescind a contract based on economic duress, the plaintiff must show both that because of their economic distress, they agreed to terms they never would have agreed to otherwise and that the defendant caused, at least in substantial part, their economic distress; by for example breaching their initial contract with the plaintiff (for example not paying him on time.) (Lecture only)

Know that to rescind a contract based on undue influence, a party must show both (1) a relationship of trust or domination between the two parties, and (2) improper persuasion by the stronger party.

Know the answers to additional questions 2, 3, 4, 5, 6, 7, and 8 on pages 331-332 of your textbook, at the end of chapter 13.

The following items are from chapter 14:

Know the meaning of the following terms and expressions: easement (p. 336), collateral promise (p. 340), executor (p. 341), parol evidence (p. 348), integrated contract, and integration clause (p. 348).

Know the six types of agreements that fall within the statute of frauds. (They are listed on page 334.) Know that an oral contract that falls within the statute of frauds is unenforceable, but not void.

Know that once both parties have fully performed an unenforceable contract, neither party may use the courts to reverse the deal, even if it should have been in writing but wasn’t. This is one of the key differences between an unenforceable contract and a void agreement.
121) Know the full performance by seller exception to the land contract provision of the statute of frauds.

122) Know the part performance by buyer exception to the land contract provision of the statute of frauds.

123) Know that, for the purposes of determining whether a contract can or cannot be performed within one year, the start date is always the date the contract was entered into (formed.) For an oral contract to be enforceable, it must be the case that the contract can be performed within one year of the date of contract formation, never a later date, no matter what the contract itself says.

124) Know the possibility test and how to apply it to determine whether a contract can or cannot be performed within one year. (Lecture only.)

125) Know that when one person agrees to pay the debt of another (should they default) as a favor to that debtor, it is called a collateral promise, and it must be in writing to be enforceable.

126) Know the leading object rule exception to the rule regarding promises to pay the debt of another.

127) Know that an executor’s promise to use his or her own funds to pay a debt of the deceased must be in writing to be enforceable, but an executor’s promise to pay a debt of the deceased using the estate’s funds is perfectly enforceable, even if only oral.

128) Know that for contracts governed (entirely) by common law, if the contract needs to be in writing, then the writing must not only be signed by the defendant, state the name of each party, and state the subject matter of the contract, but it must also contain all of the essential terms and promises. UCC Article 2 exempts sales of goods contracts from this last requirement (the one in italics.)

129) Know that judges define signature very broadly. See page 342 for details.

130) Know that under UCC Section 2-201(1), a contract for the sale of goods worth $500 or more is not enforceable unless there is some writing, signed by the defendant, indicating that the parties reached an agreement. This means the writing need not contain all the essential terms and promises. It must specify the subject matter of the contract and the quantity of goods to be sold. That’s about it! See page 344 for details.

131) Know that under UCC Section 2-201(2), the Merchants’ Exception, if within a reasonable time of making an oral contract, one merchant sends a written confirmation to the other definite enough to bind the sender in a contract, then the receiver will also be bound (in a contract) if they receive the confirmation and do not object to it in writing within 10 days.

132) Know the three conditions under which an oral contract for a sale of goods may be enforceable as given in UCC Section 2-201(3).

133) Know that electronic signatures are generally an acceptable means to create a signed writing.

134) Know the parol evidence rule: when two parties (intended to) make an integrated contract, neither one may use parol evidence to contradict, vary, or add to its terms. But know also the two exceptions to the parol evidence rule covered in the next two preparation hints.

135) Know that if a court determines that a written contract is incomplete or ambiguous, it will make an exception to the parol evidence rule and will permit parol evidence.

136) Know that a court will (always) permit parol evidence of misrepresentation or duress.

137) Know the answers to additional questions 2, 3, 4, and 8 on pages 352-353 of your textbook, at the end of chapter 14.

The following items are from chapter 15:
Know the meaning of the following terms and expressions: promisor, promisee, intended beneficiary, incidental beneficiary, creditor beneficiary (p. 355), donee beneficiary (p. 356), assignment, delegation, assignor (p. 358), assignee (p. 358), obligor, obligee, gratuitous assignment, security interest, delegator, delegatee, and novation.

Know that, according to the Restatement of Contracts (Second), a beneficiary of a contract is an intended beneficiary and may enforce a contract if (and only if) the parties intended her to benefit and if either (a) enforcing the promise will satisfy a duty of the promisee to the beneficiary, or (b) the promisee intended to make a gift to the beneficiary. Know that if (a) is true, then the beneficiary is a creditor beneficiary. Know that if (b) is true, then the beneficiary is a donee beneficiary.

Know the basic facts of Schauer v. Mandarin Gems of California, Inc., the key legal issue, who won, and why.

Know that, according to the Restatement of Contracts (Second), any contractual right may be assigned unless assignment (a) would substantially change the obligor’s rights or duties under the contract; or (b) is forbidden by law or public policy; or (c) is validly precluded by the contract itself. Know that assignment of rights arising from claims for personal injury is forbidden by law in all 50 states, while assignment of rights arising from breach of contract claims is routinely permitted.

Know that, at least in the Fifth Federal Circuit, the fact that a proposed new tenant is a competitor of the landlord’s is not a factor that a landlord may consider in deciding whether to permit a lessee to assign their rights under a lease to that proposed tenant. They may consider whether the new tenant is financially responsible, they may consider whether the new tenant will adequately maintain the property, and they may consider whether the new tenant will use the premises for a legal business, but they may not take the fact that the new tenant competes against the landlord into consideration in making this decision. (Taken from Tenet Healthsystem Surgical, L.L.C. v. Jefferson Parish Hospital Service District No. 1.)

Know that an assignment of rights under a contract can be done either orally or in writing unless the rights being assigned fall within the Statute of Frauds, in which case the assignment must be done in writing to be valid.

Know that a gratuitous assignment (of rights) is valid, and is generally irrevocable if done in writing, but is generally revocable if made orally.

Know that an assignment is valid with or without notice to the obligor, but that if the assignor does not notify the obligor on a timely basis, and the obligor performs, then the assignor shall be responsible for further performance as needed to fulfill the rights of the assignee. See page 362 for an example involving a delivery of 700 frogs to a pet shop.

Know that, once an assignment is made and the obligor notified, the assignee may enforce her contractual rights against the obligor, but that the obligor may generally raise all defenses against the assignee that she could have raised against the assignor.

Know that Article 9 of the UCC governs security interests in contracts for the sale or lease of goods. Know that under this Article, the obligor on a sales contract may generally assert any defenses against the assignee that she could have raised against the assignor. Know however that, under this Article, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense that he may have against the seller or lessor is generally enforceable by the assignee if: (1) the assignee took the assignment in good faith, and (2) the assignee paid a price for the assignment high enough to not raise suspicion that the seller or lessor was acting in bad faith, and (3) the assignee did not become aware during the negotiations of any defenses the buyer or lessee might be able to legally raise against the assignor (seller/lessor), and (4) the buyer or lessee is a business, not a consumer.
Know that such an agreement, where enforceable, creates an unencumbered security interest, and is often called either a waiver clause or an exclusion clause.

148) Know the basic facts of Wells Fargo Bank Minnesota v. BrooksAmerica Mortgage Corporation, the key legal issue, who won, and why.

149) Know that most duties are delegable, but delegation by itself will not relieve the delegator of being (redundantly) responsible for performing the duty, along with the delegatee. Only a novation can do that.

150) Know that, according to the Restatement of Contracts (Second), an obligor may delegate his duties unless: (1) delegation would violate public policy, or (2) the contract prohibits delegation, or (3) the obligee has a substantial interest in personal performance by the obligor (because of the nature of the work).

151) Know the basic facts of Rosenberg v. Son, Inc., the key legal issue, who won, and why. Know that the lesson of this case is that, for a novation to be legally effective, it must be clearly worded. It must state that the parties agree that the delegator shall be discharged from his or her duties, or that the obligee agrees to look only to the delegatee for performance. Just getting the signature of the obligee on a clause labeled “assignment of rights” is not enough to create a novation.

152) Know the answers to additional questions 2, 3, 4, and 9 on pages 371-373 of your textbook, at the end of chapter 15.

The following items are from chapter 16:

153) Know the meaning of the following terms and expressions: discharge, rescind, condition, condition precedent (p. 377), condition subsequent (p. 377), strict performance, substantial performance, personal satisfaction contract (p. 382), time of the essence clauses, material breach (p. 386), anticipatory breach (p. 387), statute of limitations, true impossibility (p. 388), personal services contracts, commercial impracticability (p. 389), frustration of purpose (p. 389), and force majeure clause (p. 390).

154) Know that most contracts are discharged by full performance.

155) Know that sometimes the parties discharge a contract by agreement, such as by mutually agreeing to rescind the contract.

156) Know the difference between an express condition and an implied condition.

157) Know the difference between a condition precedent and a condition subsequent.

158) Know that if the parties agreed to a condition precedent, the plaintiff has the burden to prove that the condition occurred, but if the parties agreed to a condition subsequent, the defendant has the burden to prove that the condition did not occur (failed).

159) Know the basic facts of Anderson v. Country Life Ins. Co., the key legal issue, who won, and why. Know that the lesson of this case is that at times, a court will refuse to enforce an express condition on the grounds that it is unfair and harmful to the general public.

160) Know that in a contract for services, a party is generally not required to render strict performance unless (1) the contract expressly demand it, and (2) such a demand is reasonable.

161) Know the substantial performance doctrine: In a contract for services, a party that substantially performs its obligations will receive the full contract price, minus the value of any defects; but a party that fails to substantially perform will receive nothing on the contract itself and will recover only the value of the work, if any, as determined by the jury after hearing testimony from both sides on the subject.
162) Know that courts look at these four issues in deciding whether a party has substantially performed or not:

a) How much of the benefits they were promised has the promisee received?
b) If this is a construction contract, can the owner safely use the thing for its intended purpose?
c) Can the promisee be adequately compensated with money damages for the defects; or is it unlikely, under the circumstances, that a jury of reasonable persons could agree that a specific dollar amount would be adequate compensation for the defects but not overcompensation?
d) Did the promisor act in good faith in carrying out his or her duties under the contract?

163) Know the basic facts of Strategic Resources Group v. Knight-Ridder, Inc., the key legal issue, who won, and why.

164) Know that a court will permit a promisee to discharge themselves from a contract based on a personal, subjective evaluation of the promisor’s performance only if both: (1) the contract explicitly spells out the personal satisfaction condition, and (2) the work is of a type that can only be evaluated by applying one’s personal tastes, preferences, or judgment. Unless both conditions are met, a court will ignore the personal satisfaction condition and will apply an objective standard to the work in deciding whether or not the promisee should be discharged.

165) Know that the Restatement of Contracts (Second) states that every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement, and that the Restatement gives a nice definition of good faith when it states that “the parties must remain faithful to (i.e. behave in a way that is consistent with) the agreed common purpose and justified expectations of the other party.”

166) Know that a time of the essence clause will generally make contract dates strictly enforceable, but merely including a date for performance in a contract (without also including a time of the essence clause) will not. If the parties do not clearly state that prompt performance is essential, then both are entitled to reasonable delays.

167) Know that, when one party breaches a contract, the other party is discharged and may sue for damages; but that a court will only discharge a contract if the breaching party committed a material breach.

168) Know the two ways that a party can commit an anticipatory breach: (1) by notifying the promisee that they will not perform, or (2) by taking some step that makes the breach evident, such as going out of business, or announcing (to the press) that they do not plan to rebuild after a fire has gutted their entire building.

169) Know that the legal right to sue for breach of contract is subject to a statute of limitations, meaning that if you don’t file your lawsuit within a specified number of years, you will lose your right to sue for that breach. Know that a statute of limitations begins running at the time of injury.

170) Know that a party will only be discharged based on true impossibility if something has happened that makes it utterly impossible to (legally) do what the promisor said he would do. Know that the defense of true impossibility is generally only allowed in three cases:

a) Destruction of the subject matter
b) Death of the promisor in a personal services contract, or
c) (Subsequent) illegality

171) Know that the death of the promisor does not discharge most contracts. Unless the contract was for personal services, the estate of a deceased person will generally have to perform all of the contractual promises made by the promisor while they were alive.
172) Be able to recognize when a party is or is not discharged due to the failure of a condition in the contract.

173) Know the answers to additional questions 2, 3, 6, 7, and 8 on pages 393-394 of your textbook, at the end of chapter 16.

The following items are from chapter 17:

174) Know the meaning of the following terms and expressions: remedy (p. 397), injunction, expectation damages, specific performance, interest, compensatory damages, consequential damages, incidental damages, cover, reliance interest, restitution interest, rescission, preliminary injunction (p. 410), permanent injunction (p. 410), reformation, mitigate, nominal damages, liquidated damages clause, and penalty clause (p. 412).

175) Know that someone breaches a contract when he fails to perform a duty without a valid excuse.

176) Know that courts almost never use an injunction or specific performance to force an employee to complete a contract with his employer, because that would force antagonistic parties to work together.

177) Know that in cases of rare property, such as land or a rare automobile, courts often award specific performance.

178) Know the four principle contract interests that a court may seek to protect: the expectation, reliance, restitution, and equitable interests.

179) Know that an award of expectation interest is the most common remedy the law provides for a party injured by a breach of contract.

180) Know that the expectation interest is designed to put the injured party in the position she would have been in had both parties fully performed their obligations.

181) Know that expectation damages are the sum of compensatory damages plus consequential damages plus incidental damages, if any.

182) Know that compensatory damages are the most common monetary awards for the expectation interest. Know that they are also known as “direct damages.” They are designed to put the injured party in the position they would have been in immediately after the breaching party performed.

183) Know that the injured party must prove the breach of contract caused damages that can be quantified with reasonable certainty. Courts will not award so-called speculative damages.

184) Know that consequential damages, also known as “special damages,” are damages from lost profits that would have been earned after the breaching party’s performance was due.

185) Know the Hadley v. Baxendale rule: The injured party may recover consequential damages only if the breaching party should have foreseen them when the two sides formed the contract.

186) Know that under UCC Article 2, if a buyer breaches a sale of goods contract, the seller generally has two choices: she can either resell the goods elsewhere and collect the difference between the contract price and the amount she is able to obtain on the open market (assuming she searches in good faith for a buyer that will give her a good price;) or she can keep the goods and seek the difference between the contract price and the market value of the goods.

187) Know that under UCC Article 2, if a seller breaches a sale of goods contract, the buyer generally has two choices: she can either cover by purchasing substitute goods, and collect the difference between the contract price and her cover price; or she can choose not to cover and seek the difference between the contract price and the market value of the goods.
188) Know that, under the UCC, a buyer is entitled to consequential damages only if: (1) she covers, and (2) the seller could have reasonably foreseen these damages. Know that most courts hold that a seller of goods is not entitled to consequential damages.

189) Know that the reliance interest is designed to put the injured party in the position she would have been in had the parties never entered into a contract.

190) Know that, in promissory estoppel cases, a court will generally award only reliance damages.

191) Know that the restitution interest is designed to return to the injured party a benefit that he has conferred on the other party, which it would be unjust to leave with that person.

192) Know that restitution is a common remedy in contacts involving fraud, misrepresentation, mistake, or duress.

193) Know that a court will award specific performance only in cases involving the sale of land or some other asset that is unique. Know that, historically, every parcel of land has been regarded as unique, therefore specific performance is always available in real estate contracts.

194) Know that one limitation in land sales is that a buyer may obtain specific performance only if she was ready, willing, and able to purchase the property on time.

195) Know that, besides land, other unique items for which a court will order specific performance include rare works of art, secret formulas, patents, and shares in a closely-held corporation.

196) Know that, in the context of a cease-and-desist order, cease means stop and desist means don’t do it in the future.

197) Know the doctrine of mitigation of damages: a party injured by a breach of contract may not recover for damages that he could have avoided with reasonable efforts.

198) Know that a court will generally enforce a liquidated damages clause (only) if: (1) at the time of creating the contract it was very difficult to estimate actual damages (with reasonable certainty) and (2) the liquidated amount is reasonable.

199) Know that courts do not enforce penalty clauses.

200) Know that if courts grant punitive damages in a breach of contract case, which is rare, it will be to punish the breaching party, and the punitive damages will be in addition to any expectation, reliance, or restitution damages awarded.

201) Know the basic facts of Orkin Exterminating Company Inc. v. Jeter, the key legal issue, what kinds of damages were awarded, and why.

202) Know the answers to additional questions 3, 4, 5, and 7 on pages 418-419 of your textbook, at the end of chapter 17.