Student name:__________

TRUE/FALSE - Write 'T' if the statement is true and 'F' if the statement is false.

1) Negotiable instruments are governed under Article 2 of the UCC.

⊚ true
⊚ false

2) Negotiation includes various steps that determine the roles and rights of the parties.

⊚ true
⊚ false

3) If the instrument is in bearer form, one needs only to be in physical possession to be considered a holder.

⊚ true
⊚ false

4) A holder gains a sort of super status if she meets the Article 3 requirements as a holder in due course (HDC).

⊚ true
⊚ false

5) Being a holder in due course is a risky proposition in that a holder is subject to an array of defenses by other parties that might render the instrument worthless.

⊚ true
⊚ false

6) The holder of a negotiable instrument is holder in due course if the holder has taken the instrument for value; in good faith; and without notice of it being overdue, fraudulent, or subject to claim by another party.

⊚ true
⊚ false

7) While HDC status provides immunity from personal defenses or claims in recoupment, it does protect an HDC from being subjected to any real defenses.

⊚ true
⊚ false

8) Holders in due course have immunity from claims in recoupment.

⊚ true
⊚ false

9) The Holder Rule preserves a consumer's rights against a Holder In Due Course when the consumer is entering credit contracts realted to goods and services.

⊚ true
⊚ false

10) The Holder Rule applies to merchant-consumer transactions only.

⊚ true
⊚ false

MULTIPLE CHOICE - Choose the one alternative that best completes the statement or answers the question.

11) The most important part of understanding the role of negotiable instruments is realizing that they move from party to party through a legally defined process called:

A) negotiation

B) litigation

C) arbitration

D) All of the choices are correct.

12) Each negotiable instrument is made up of a series of events beginning with the issuance of the instrument by the party promising to make a payment and ending with __________ of the instrument by the party seeking to receive payment.

A) litigation

B) liability

C) presentment

D) All of the choices are correct.

13) The __________ plays a central role in the story of a negotiable instrument:

A) holder

B) offeror

C) presenter

D) None of the choices are correct.

14) Which Article of the Uniform Commerical Code covers negotiable instruments?

A) Article 1 of the Uniform Commercial Code

B) Article 2 of the Uniform Commercial Code

C) Article 3 of the Uniform Commercial Code

D) Article 4 of the Uniform Commercial Code

15) If the instrument is in bearer form, one needs only to be in __________ possession to be considered a holder.

A) theoretical

B) physical

C) at will

D) None of the choices are correct.

16) If the instrument is in __________ form, this requires both physical possession and an indorsement.

A) express
B) value
C) order
D) substitute

17) A negotiable instrument may only be transferred to the party the __________ intended as a holder.

A) lendor
B) investor
C) offeror
D) transferor

18) Legislatures and courts have recognized __________ transfers as meeting the delivery requirement.

A) electronic
B) promise
C) common law
D) gift

19) Article 3 admits __________ to prove an individual did not sign personally in all instances where the holder is not a holder in due course.

A) true evidence
B) express evidence
C) personal evidence
D) parol evidence

20) __________ sets out a series of conditions required to obtain Holder in Due Course (HDC) status.

A) Article 1 of the Uniform Commercial Code
B) Article 2 of the Uniform Commercial Code
C) Article 3 of

the Uniform Commercial Code

D) Article 4 of the Uniform Commercial Code

21) The holder of a negotiable instrument is a holder in due course (HDC) if the holder has taken the instrument __________; in good faith; and without notice of it being overdue, fraudulent, or subject to claim by another party.

A) for free
B) for value
C) for no charge
D) All of the choices are correct.

22) If the instrument is __________, the holder cannot meet the requirements for Holder in Due Course status.

A) an implication
B) a gift
C) free
D) None of the choices are correct.

23) One who __________ a negotiable instrument has not taken it for value and cannot meet the UCC's value criterion.

A) pays for
B) removes
C) finds
D) All of the choices are correct.

24) Article 3 of the UCC sets a higher bar in its __________ by requiring that a negotiable instrument be taken for value by the holder for a promise that has already been performed.

A) value exchange rule
B) demand rule
C) equal opportunity rule
D) gift promise rule

25) Article 3 of the UCC provides a two-part definition that describes good faith as

A) honesty in law and the observance of reasonable standards

B) honesty in fact and the observance of specific commercial standards

C) honesty in fact and the observance of reasonable commercial standards

D) All of the choices are correct.

26) Article 3 uses the word reasonable to indicate that we should use __________ standard when determining whether the holder was factually honest and acting in accordance with commercial standards:

A) an objective
B) a subjective
C) a fair
D) None of the choices are correct.

27) In *Banco Bilbao Vizcaya Argentaria v. Easy Luck Co.,* 208 So. 3d 1241 (Fla. Dist. Ct. App. 2017), the court held that a holder may be accorded HDC status it acts pursuant to:

A) good faith and reasonable commercial standards of fair dealing
B) good faith and specific commercial standards of fair dealing
C) fair faith and reasonable standards of best efforts dealing
D) fair faith and specific commercial standards of fair dealing

28) The __________ requirement is particularly important to obtaining HDC status because it separates innocent holders from those who know or should know that the negotiable instrument is defective or fraudulent in some way.

A) with notice
B) without notice
C) promise
D) future promise

29) __________ notice is not sufficient notice to the holder under Article 3.

A) Constructive
B) Simple
C) Future
D) All of the choices are correct.

30) In *Triffin v. Pomerantz Staffing Services*, 851 A.2d 100 (N.J. Super. 2004), the court held that Friendly's (and Triffin's as its assignee):

A) met the "with notice" requirement
B) met the "without notice" requirement
C) failed to meet the "without notice" requirement
D) failed to meet the "with notice" requirement

31) The __________ rule provides that the transferee of an instrument acquires the same rights that the transferor had.

A) parol evidence
B) shelter
C) maker
D) holder

32) The UCC does not confer a __________ bar for parties asserting a defense against an HDC.

A) complete
B) partial
C) mediated
D) None of the choices are correct.

33) Article 3 of the UCC contains the following defense/(s):

A) real
B) personal
C) claims in recoupment
D) All of the choices are correct.

34) Article 3 provides for real defenses that may be asserted by a third party. Which of the following is not a real defense?

A) fraud in essence
B) forgery

C) bankruptcy
D) lack of capacity

35) Article 3 provides for personal defenses that may be asserted by a third party. Which of the following is not a personal defense?

A) bankruptcy
B) infancy
C) lack or failure of consideration
D) All of the choices are correct.

36) __________ is both a real defense and a personal defense.

A) A special indorsement
B) Fraud
C) Infancy
D) None of the choices are correct.

37) __________ is an example of a claim in recoupment.

A) Restitution
B) Jail/prison time
C) Offset for breach of warranty
D) None of the choices are correct.

38) Although not classified as a real or personal defense, HDCs also have immunity from __________.

A) non-restrictive indorsements
B) litigious parties
C) claims in fact
D) claims in recoupment

39) State courts and state legislatures began to create __________ protections based on common law and state law that outlined exceptions to the HDC rules.

A) non-restrictive

B) reasonable

C) consumer

D) restrictive

40) The __________ promoted a regulation that preserves a consumer's rights against an HDC when the transaction involves the consumer entering into credit contracts related to the sale of goods and services.

A) Department of Labor

B) Federal Trade Commission

C) Ministry of Contracts

D) None of the choices are correct.

41) The Holder Rule __________ a consumer's rights against an HDC when the transaction involves the consumer entering into credit contracts related to the sale of goods and services.

A) frees

B) perpetuates

C) limits

D) preserves

42) Only transactions between a consumer and a __________ who is regularly engaged in the sale/lease of the products or service at issue are covered by the Holder Rule.

A) financier

B) merchant

C) seller

D) All of the choices are correct.

43) FTC regulations make it an "unfair or deceptive act or practice" under the Federal Trade Commission Act for any __________ to use a consumer note unless it contains a notice statement that is specified in the regulations.

A) seller

B) buyer

C) financing

company

D) warranty buyer

44) Most courts have held that the Holder Rule only comes into play to allow a consumer's claim/defense against the __________ to be asserted against the creditor that is demanding payment under the consumer creditor contract.

A) guarantor
B) seller
C) buyer
D) None of the choices are correct.

45) In *Hemmings v. Camping Time RV Centers and Bank of America*, No. 1:17-CV-1331-TWT (D. Ct. N.D. Georgia 2017), the court held that was not covered under the rule because it was not a

A) holder of a consumer credit contract
B) warrantor of a consumer credit contract
C) purchaser of a consumer credit contract
D) None of the choices are correct.

ESSAY. Write your answer in the space provided or on a separate sheet of paper.

46) Name and describe the process of negotiating a negotiable instrument.

47) Planter is a consultant for Succulent Co. and they issue him a $5,000 check payable to cash as payment. Before leaving for the bus, the Planter, in hast, stuffs the check in his briefcase without indorsement. Later that day, the briefcase is stolen, and the thief then signs his own name and indorses it with “Pay to the Order of Kane’s Furniture.” The thief delivers the check to the furniture store to satisfy an outstanding debt on a recent purchase. Your common sense may tell you that the thief would not prevail in this case, but what is the legal reasoning? Classify the roles of Planter, Succulent Co., and the thief classified in this transaction? Explain.

48) Suppose that Ansley gives a check to Brian as a birthday gift. Brian negotiates the check to Christy in exchange for Christy’s promise to buy Brian’s car next week. What is the status of the parties in this transaction? Do Brian and/or Christy qualify to be HDCs?

50) Phillip purchases a brand-new, expensive oven from Restaurant Supplier, a restaurant supply store in Phillip’s neighborhood and finances his purchase via a consumer loan in which Phillip issues a promissory note payable to Restaurant Supplier for $5,000 payable over three years at the prime interest rate. Restaurant Supplier then transfers Phillip’s note to Biggie Smalls Bank for value. Soon after, the oven stops heating and working properly. It turns out that the oven was not new, as Restaurant Supplier advertised, but rather reconditioned with used parts. Must Phillip make the monthly payments due to Biggie Smalls Bank? Why or why not?

Answer Key

Test name: CH20

1) FALSE

2) TRUE

3) TRUE

4) TRUE

5) FALSE

6) TRUE

7) FALSE

8) TRUE

9) FALSE

10) TRUE

11) A

12) C

13) A

14) C

15) B

16) C

17) D

18) A

19) D

20) C

21) B

22) B

23) C

24) A

25) C

26) A

27) A

28) B

29) A

30) C

31) B

32) A

33) D

34) D

35) A

36) B

37) C

38) D

39) C

40) B

41) D

42) B

43) A

44) B

45) A

46) A negotiable instrument is: an unconditional promise or order; to pay a fixed amount of money; that must be in writing; signed; made payable “to order,” “to bearer,” or “to cash;” and made payable either on demand or at a definite time in the future. Negotiation is a series of events beginning with the issuance of the instrument by the party promising to make a payment and ending with presentment of the instrument by the party seeking to receive payment. A holder has actual physical possession of a negotiable instrument (in bearer form) or possession of the instrument (pay to order form) if the instrument was made payable to a specific party.

47) Succulent Co. issued a bearer instrument (i.e., a check payable to cash) to Planter and delivered it to him. Therefore, Planter is a holder. Although it is a bearer instrument, the thief was not the intended payee; therefore, the delivery requirement cannot be met, and the thief cannot qualify as a holder.

48) Ansley is the drawer since he issued the check to Brian. Since the Ansley’s check was a gift, Brian does not qualify as a HDC since he hasn’t provided any services or goods in exchange for the check. Similarly, Christy cannot be an HDC since the promised purchase of Brian’s car was a promise for future goods.

49) No, because Bars Inc is entitled to assert a claim of recoupment for $14,000 against Barton Beers, and

Barton Beers now is only entitled to $36,000.

50) Although a defective, used oven was sold to him with fraudulent representations by the seller, he still must make a monthly payment to Biggie Smalls Bank. Biggie Smalls Bank is an HDC; therefore, if Biggie Smalls Bank were to demand payment, Phillip would be barred from asserting a personal defense of fraud in the inducement or breach of warranty in the underlying oven contract. As an HDC, Biggie Smalls Bank would also be immune from any claims in recoupment that Phillip could assert as an offset. Phillip is left trying to recover damages from Restaurant Supplier but must continue to make payments to Biggie Smalls Bank under the note.