CAVEATS: These questions appeared on prior exams. They have varying degrees of difficulty. On the real exam, some would be worth relatively more points and some relatively fewer to reflect both their difficulty and their length.

1. Tempus Fugit (“Tempus”) manufactures wall clocks in its New Jersey factory. Franks Cranks (“Franks”) manufactures precision gear works in its factory in Windsor, Ontario (that’s in Canada, for the geographically challenged). Gearz-R-Us (“Gearz”) is Franks’s authorized dealer for New York and New Jersey. On March 1, 2003, Tempus’s purchasing manager telephoned Gearz and, after describing Tempus’s particular needs, ordered 1,000 sets of precision gear works, at a price of US$50.00 per set (that’s $50,000, for the mathematically challenged), to be delivered to Tempus’s plant no later than April 15, 2003. Later that same day, Franks faxed an acknowledgment from Windsor, agreeing to manufacture for and sell to Tempus 1,000 sets of gear works satisfying Tempus’s specifications, at a price of US$50.00 per set, and to deliver them to Tempus’s plant no later than May 15, 2003. Franks’s acknowledgment also contained a provision requiring Tempus to pay the full contract price, including transportation costs, upon receipt of the gears. There was no further correspondence between the parties. The goods left Franks’s plant on or about April 5, 2003, and arrived at Tempus’s factory on April 12, 2003. Upon receipt of the goods, Tempus paid the carrier $52,500, representing the full contract price, plus $2,500 for transportation costs. If a dispute subsequently arises between Tempus and Franks, will their agreement be governed by Article 2 of the UCC or by the CISG? Please explain.

2. Willy Huff wanted a new pickup truck. However, he lacked the funds to purchase one for cash. So, Willy entered into a Lease Agreement with Lone Mesquite Autoplex (“LMA”). The terms of the Lease Agreement required Willy to pay LMA a cash deposit of $1,000 plus $250 per month for 60 months (total lease payments = $15,000). At the end of the 60-month lease term, Willy could purchase the truck for its then-“blue book” value, or he could return the truck to LMA, which would sell the truck for him. If LMA failed to receive the full “blue book” value of the truck from either Willy or another purchaser, the Lease Agreement obligated Willy to pay LMA the difference between the “blue book” value and the price at which LMA was able to resell the truck. The Lease Agreement also obligated Willy to insure the truck from the date of the Lease Agreement until the end of the lease term. In the event Willy let the insurance on the truck lapse, the Lease Agreement empowered LMA to obtain insurance for the truck and add the cost to Willy’s monthly lease payments. If at any time prior to the end of the lease term Willy wished to terminate the lease, the Lease Agreement required him to give 30 days prior
notice to LMA. At the end of the 30 days, Willy could either purchase the truck for its then-“blue book” value, or he could return the truck to LMA, which would sell the truck for him. As would be true at the end of the agreed lease term, if LMA failed to receive the full “blue book” value of the truck from either Willy or another purchaser following Willy’s premature termination of the lease, the Lease Agreement obligated Willy to pay LMA the difference between the “blue book” value and the price at which LMA was able to resell the truck.

A. The same day that Willy signed the Lease Agreement, paid the $1,000 deposit plus the first month’s lease payment, and drove his new pickup home from LMA’s lot, someone stole Willy’s new truck while it was parked in front of his house. At the time of the theft, who bore the risk of loss: Willy or LMA? Please explain.

B. Suppose, instead, that twelve months into the term of the Lease Agreement, Willy has timely made all required payments, and has been routinely driving the truck several hundred miles a week without any performance problems. Nonetheless, after receiving a recall notice from the truck’s manufacturer, Willy took the truck to LMA for the repairs called for in the recall notice, which LMA assured Willy would be performed free of charge. While the truck was at LMA for those repairs, unknown persons vandalized it and several other vehicles, causing more than a thousand dollars’ worth of damage to Willy’s truck. As between Willy and LMA, who bore the risk for the vandalism? Please explain.

3. Romeo had been courting Juliet for several years. Finally, he decided to propose marriage. Romeo shopped around to find the best deal on the right ring. Romeo found the ring he was looking for at Old Will’s Jewelers (“OWJ”) for $10,000. Romeo was unable to pay the entire purchase price immediately. Old Will agreed to sell Romeo the ring for $2,500 down and $7,500 to be paid in ten equal monthly installments. Romeo asked Old Will to hold the ring for him and promised to return the next day with the down payment.

Romeo returned to OWJ the next afternoon with a check for $2,500, drawn on Romeo’s account at the Padua Bank & Trust (“PB&T”). Old Will agreed to hold Romeo’s check until Romeo picked up the ring the following morning. Later that afternoon, however, Old Will called PB&T to make sure that Romeo’s account contained sufficient funds to cover the check. PB&T informed Old Will that the account had, at that moment, “less than $500,” and that, “over the past 12 months, the balance in this account has averaged less than $1,000.” Old Will then called the local credit bureau, which characterized Romeo as “a questionable credit risk” for any amount greater than $500.

Old Will promptly called Romeo, chastised him for writing “a rubber check,” and demanded that Romeo pay the entire purchase price in cash. Romeo told Old Will that he had transferred funds into his PB&T account to cover the check, but that (because he had done so after 3:00 p.m.) the additional funds would not show up in his account balance until tomorrow. Romeo offered to bring $2,500 cash when he came to pick up the ring. Old Will would not budge. He insisted that Romeo pay the full price in cash or the deal was off. Romeo refused,
bought a ring of comparable size and quality from another jeweler for $12,500, proposed to
Juliet, she accepted, and they are happily married.

Romeo then sued OWJ for breach of contract. OWJ moved for summary judgment,
claiming that Romeo anticipatorily repudiated by writing a check without sufficient funds in his
account, thus relieving OWJ of any obligation to perform.

A. Assume that (1) each action taken by Old Will is attributable to OWJ; and (2) Romeo
transferred $2,500 into his PB&T account in time to cover the check if OWJ had
deposited it the same day that Romeo was to pick up the ring. Did Romeo have an
enforceable contract to purchase the ring from OWJ for $2,500 plus ten monthly
payments of $750 each? Please explain.

B. Regardless of your answer to subpart “A,” if Romeo and OWJ had an enforceable
contract, which one breached their contract, when, and how? Please explain.

C. Suppose that, shortly after Romeo filed suit against OWJ, Juliet accidentally broke one of
the prongs on the (replacement) ring Romeo gave her. Unaware that Romeo was
involved in litigation with OWJ, and wanting to get the ring fixed without telling Romeo,
Juliet stopped during lunch at the jeweler’s store just around the corner from her office –
the aforementioned Old Will’s Jewelers – to have the ring repaired. The clerk,
Henslowe, who took the ring told her it would be ready for her to pick up after 5 p.m. He
then tagged the ring and left it on the repair box. Old Will, who was handling repairs that
afternoon, read the name on the repair tag, put two and two together, and realized whose
ring it was that had been left for him to fix. Steaming over Romeo’s suit, Old Will fixed
the prong and then put the ring in a display case, at a bargain price, hoping some lucky
soul would come along and buy it. Before that could happen, however, one of OWJ’s
customers, Rosaline, saw the ring and recognized it as one of several that had been stolen
from her house several months earlier. Further investigation revealed that the thief had
pawned the ring at Fennyman’s Friendly Pawn Shop, which sold it to Beth’s Fine
Jewelry, which sold it to Romeo, who gave it to Juliet. Assuming that the ring was stolen
from Rosaline and that Romeo had an enforceable contract with Beth’s Fine Jewelry, can
Romeo sue Beth’s Fine Jewelry for breaching the implied warranty of good title? Please
explain.

D. Same facts as “C,” except suppose that, instead of placing Juliet’s ring in a display case at
the store, Old Will put the ring in his pocket, took it to the Fennyman’s Friendly Pawn
Shop, and gave Fennyman the ring to pay off a prior debt of $2,500. Around 4 p.m. that
same day, Thomas Kent wandered into Fennyman’s, looking for an engagement ring for
his beloved, Violet, and purchased Juliet’s ring for $5,000. Can Juliet reclaim her ring
from Kent? Please explain.

E. Same facts as “C,” except suppose that the ring was not stolen from Rosaline (or anyone
else), and was sitting in the display case where Will had maliciously placed it when Kent
wandered into the store, looking for an engagement ring for his beloved, Violet. Kent
saw Juliet’s ring in the display case and purchased it from another sales clerk, Webster,
who was unaware that the ring was not part of the store’s inventory. When Juliet returned to the store to reclaim her ring, she discovered that Webster had inadvertently sold it to Kent, who took it with him. Can Juliet reclaim her ring from Kent, given that she did not authorize OWJ to sell it? Please explain.

4. Mercury Rising (“Mercury”) is an Illinois manufacturer of indoor and outdoor thermometers. On April 2, 2003, Will Bruce, Mercury’s purchasing agent, faxed a purchase order to the Glass Manufacturie (“GM”), a Michigan manufacturer of precision glass tubing. Mercury ordered 5,000 1-foot lengths of glass tubing, at a price of $5.00 per foot, to be delivered to Mercury’s plant no later than May 1, 2003. Later that same day, GM faxed a written acknowledgment, agreeing to manufacture and deliver 5,000 1-foot lengths of glass tubing, at a price of $5.00 per foot to Mercury’s plant no later than May 1, 2003. GM’s acknowledgment also contained (1) a disclaimer of all implied warranties, (2) a provision requiring Mercury to pay the cost of having the tubing shipped from GM’s plant to Mercury’s, and (3) a provision requiring Mercury to pay the full contract price, including transportation costs, upon receipt of the tubing. The parties did not correspond further. GM shipped the goods to arrive on May 1, 2003.

A. Before the goods reached Mercury, Mercury found another seller, Glaz Emporium (“Glaz”), who offered to provide the same quantity and quality of glass tubing, no later than May 2, 2003, at a price of $4.50 per foot. Mercury agreed on April 15, 2003 to purchase the tubing from Glaz, and refused to receive the shipment from GM when it arrived on May 1, 2003. GM wants to sue Mercury for breach of contract. Did Mercury and GM have an enforceable contract for the glass tubing? If so, why and what were its terms? If not, why not?

B. Assuming, for purposes of this subpart, that GM and Mercury had an enforceable contract, did Mercury’s refusal to accept GM’s May 1, 2003 shipment constitute a breach of Mercury’s contract with GM? If so, when? Please explain.

C. Assuming, for purposes of this subpart, that GM and Mercury had an enforceable contract and that Mercury’s refusal to accept GM’s May 1, 2003 shipment constituted a breach of Mercury’s contract with GM, and that

1. On May 15, 2003, GM entered into a contract to sell 4,000 feet of the glass tubing originally destined for Mercury to another customer, Video Matrix, for $6.00 per foot, to be delivered no sooner than June 1, 2003, with Video Matrix to pay transportation costs from GM’s plant,

2. the market price of the glass tubing on April 2, 2003 was $5.25 per foot,

3. the market price of the glass tubing on April 15, 2003 was $5.00 per foot,

4. the market price of the glass tubing on May 1, 2003 was $5.50 per foot
5. the market price of the glass tubing on May 15, 2003 was $6.00 per foot,
6. the cost of transporting the glass tubing from GM’s plant to Mercury’s plant (or vice versa) is $500, and
7. GM’s cost of manufacturing the tubing Mercury ordered was $4.50 per foot.

What remedy or remedies does Article 2 afford GM against Mercury? Please explain.

D. Go back to the original facts. Now, suppose that Mercury did not refuse to receive GM’s May 1, 2003 shipment; instead, Mercury properly paid the carrier $25,500 (including $500 for transportation). Shortly thereafter, however, Mercury determined that 80% of tubing GM supplied was of inferior quality and unfit for the use for which Mercury bought it. Assuming, for purposes of this subpart, that GM and Mercury had an enforceable contract, what recourse does Article 2 afford Mercury with respect to the inferior tubing? Please explain.

E. Same facts as “D,” except that GM’s acknowledgment clearly stated that it would accept Mercury’s purchase order only on the condition that Mercury agree to all terms set forth in GM’s acknowledgment. Assuming, for purposes of this subpart, that GM and Mercury had an enforceable contract, should Mercury prevail against GM on a claim of breach of warranty? Please explain.

F. Same facts as “D,” except that, after discovering the inferior glass tubing, Mercury made arrangements to return the unfit tubing to GM. While the tubing was en route from Mercury’s plant back to GM’s, the truck overturned and all of its contents were destroyed. Assuming, for purposes of this subpart, that GM and Mercury had an enforceable contract, who would bear the risk of loss for the destroyed tubing and to what extent? Please explain.

5. On May 5, 2006, Hester Quill, a law professor at Sagebrush State University, located in the western United States, received an e-mail from Quality Books ("QBooks"), an internet book reseller specializing in books about law and related fields, whose booth Hester had visited at the Western Law Schools Association’s annual meeting in San Diego earlier this year. Among the items advertised in QBooks’s e-mail (Item # 164258) was a “Signed first edition of Charles W. Kingsfield, Jr.’s most famous and rarest book, *The “Hairy Hand” and Other Ruminations on Contract*, published by the Harvard Law Review Association, Cambridge, Massachusetts in celebration of its 75th anniversary (1962).” The e-mail indicated the “list price” of the book was US$500.00 and that, until June 30, 2006, the “sale price” of the book was US$400.00.

The order form included with the e-mail indicated that recipients could order advertised books by completing the online order form at http://www.qbooks.com/store/order_form.htm or by printing out the order form included with the e-mail and faxing it to 1-877-LAW-BOOK. Nothing in the e-mail indicated, nor did its toll-free number disclose, QBooks’s physical location. The online order form, likewise, did not indicate QBooks’s physical location.
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On May 6, 2006, using the online order form and a credit card, and without ever reading QBooks’s Terms of Use but clicking “I Agree” when prompted to agree or disagree to be bound by QBooks’s Terms of Use, Hester ordered the book (Item # 164258) for $400.00, plus $9.95 shipping and handling, clicking “Purchase” when prompted to authorize QBooks to bill her credit card the amount indicated on the order form when QBooks’s shipped the book she ordered.

On May 6, 2006, QBooks sent Hester an e-mail indicating that it received her order and that it would send a follow-up e-mail when the book was ready to ship. On May 9, 2006, QBooks sent Hester an e-mail indicating that the book was ready to ship, and providing a link to allow her to track the shipment’s progress. Following the link would lead Hester to a page on the shipping company’s website indicating that her shipment originated in Burnaby, British Columbia (which is in Canada for those of you who are geographically challenged ☻). Likewise, the shipping documents accompanying the box, which Hester received on May 15, 2006, indicated that the shipment originated in Burnaby, British Columbia. The day after the QBooks shipped Hester’s book, it billed Hester’s credit card in the amount of $409.95.

A. What law should govern Hester’s transaction with QBooks and any dispute that might arise from it? Please explain.

B. At what point in time did Hester and QBooks have an enforceable contract such that, if QBooks did not fill Hester’s order, she would have a breach of contract claim against QBooks and, if Hester did not pay for the book she ordered, QBooks would have a breach of contract claim against her? Please explain.

C. If the book was lost or destroyed in transit from QBooks to Hester, who would bear the risk of loss under that governing law? Please explain.
When her box arrived, Hester opened it and found inside a first edition of Kingsfield’s, *Ruminations*. When she turned to the frontispiece, however, she saw that the book was signed by “James Hart, HLS Class of ’73” rather than Kingsfield, making the book considerably less valuable both to “the market” and to Hester.

D. Assuming that Hester had an otherwise enforceable contract with QBooks, on what ground or grounds, if any, can Hester avoid her contract with QBooks, return the book they sent her, and demand that QBooks send her the correct book immediately or issue her a refund? Please explain.

After receiving her shipment from QBooks, Hester visited online bookseller Nile.com’s website and found another first edition of Kingsfield’s *Ruminations* “Signed by author” advertised for $600.00.

E. If, instead of promptly notifying QBooks of its error and demanding that QBooks send her the correct book immediately or issue her a refund, Hester purchased the more expensive book from Nile.com and then sued QBooks because she ended up having to pay more for a first edition signed by Kingsfield, on what ground or grounds could QBooks avoid liability to Hester for breach of contract? Please explain.