
print name on the line above as your signature

INSTRUCTIONS:

1. This Exam #2 must be completed within the allocated time
(*i.e., the 30 minutes between 10:45 AM and 11:15 AM*).
It is a OPEN BOOK exam.
2. **Recall the material difference between i.e. (that is) versus e.g. (for example).**
3. **Remain seated until after all students have finished their exams,**
then each student shall
 - [3A] present to the instructor the student's photo ID;
 - [3B] present the student's completed blue bubble answer sheet; and
 - [3C] exchange the completed blue bubble answer sheet for an answer key;.

***For you to learn your individual exam grade
you must use your marked up copy of your exam,
so be sure to mark your answers on your copy of the exam.***
4. This Exam #2 is worth 200 of the course total of 1,000 points.
This objective exam has 21 questions graded as if there are 20.
Each correct answer on Exam #2 is worth 10 course points.
Based upon the instructor's statistical analysis of all students' answers,
the instructor unilaterally may alter the grading of specific exam questions.
Any student may appeal the grading of any other exam questions.
However, only if a student successfully appeals the ambiguity of
AT LEAST **TWO** questions on this exam
does that student objectively demonstrate non-harmless error due to any ambiguities.
Also, a successful appeal only will change *that* student's exam grade and only will do so
by the number of successful appeals in excess of ONE successful appeal.
Appeals only affect the exam grades of those students that appeal.
5. **All appeals** of this exam's questions must be:
 - [5A] typed;
 - [5B] signed by the student in three ways, typed name, handwritten signature, and typed university identification number;
 - [5C] immediately following the signature, list in sequence, *solely by number*, each of the questions being appealed;
 - [5D] after the [5C] list, argue each question, one at a time;
 - [5E] at the beginning of each question's [5D] appeal, identify two or more reasonable meanings that the question could have had;
 - [5F] argue why one or more of the [45E] identified reasonable meanings is as appropriate or is more appropriate than the meaning used for the answer key answer; and
 - [5G] personally handed to the instructor or the instructor's suite secretary in RH 502 no later than the 10:05 AM on Wednesday, October 28.

INSTRUCTIONS:

- A. Recall the material difference between **i.e.** (that is) versus **e.g.** (for example).
B. Use bubble A for **TRUE** and bubble B for **FALSE**.

1. **T F** USA law favors assigning liability based upon the parties' objectively knowing **and** voluntary actions.
The objective is what a Reasonable Person would perceive.
The objective comes in two forms: express **and** implied.
Express is in words: oral **or** written.
Implied is in acts, words, **and/or** circumstances.
Objective knowing comes in three forms:
actual knowledge, receipt of notice, **and** reason to know.
2. **T F** Good faith comes in four forms
(*i.e., common law consumer [i.e., non-UCC], UCC consumer, merchant, and fiduciary*).
All four forms use an identical subjective good faith (*i.e., honesty in fact*).
Each of the four differs materially on objective good faith.
For example,
the objective good faith of a UCC consumer **and** of a merchant both are "commercially reasonable" which are materially different.
3. **T F** Actual cause is the chain of events from first cause to plaintiff's injury.
Proximate cause truncates the defendant's legal liability to a fraction of actual cause.
Proximate cause exists if
the plaintiff's injury was foreseen
by a Reasonable Person in the position of the defendant
(*i.e., Bounded Rationality*).
However,
Assumption of the Risk
is a defense to a fault based tort **and** it exists
if
the plaintiff knowing **and** voluntarily exposed the plaintiff to the risk of harm created by the defendant.
4. **T F** Common law fraud
exists if the defendant knowingly **and** intentionally **misrepresents** a fact (*e.g., expert's opinion of value*)
thereby inducing the plaintiff's reliance **and**
actually causing the plaintiff's damages.

5. **T F** In common law contexts something is material if it was big enough it would have changed a Reasonable Person's mind. The material terms are parties, time, capacity, **and** subject matter.
6. **T F** A signature is any mark with the current intent to authenticate the document **or** record.
7. **T F** All contracts require agreement
(*i.e., an acceptance of an offer that satisfies both the Mirror Image Rule **and** the Mail Box Rule*),
capacity
(*i.e., ability to grasp the natural consequences of one's actions*),
consideration
(*i.e., bargained for exchange of legally sufficient value*),
reality of assent
(*e.g., lack of predatory economic duress*),
form, **and**
legal subject matter
(*e.g., covenant **not** to compete limited to a reasonable time **and** a reasonable area*).
8. **T F** A good faith dispute must underlie an accord **and** satisfaction. A liquidated debt is a good faith dispute.
9. **T F** For the formation of a contract, objectively, silence is **not** acceptance **unless** coupled with some prior agreement between the parties to give silence that meaning. A **non**-breaching party may waive a material breach (*e.g., substantial performance*). Silence as a response to a breach is **not** waiver of the breach **unless** that silence becomes either the parties' course of performance **or** course of dealings. The breaching party's duty to mitigate damages is activated immediately upon the **non**-breaching party's receipt of the breaching party's breach by anticipatory repudiation.

- 10. T F** An illusory promise exists if the only objective measure of quantity is the seller's business capability to produce output **or** the buyer's business capability to consume output.
- 11. T F** Adhesion contracts, at a minimum, are suspect **and** often are contrary to public policy because adhesion contracts, objectively, typically are less knowing **and** less voluntary. Any ambiguity in any adhesion contract is interpreted reasonably.
- 12. T F** The law enforces freedom **of** contract
(*e.g., exculpatory clause between merchants engaged in sophisticated risk management*)
whereas
equity enforces freedom **from** contract
(*e.g. equitable remedies of reform, sever, or void*).
- 13. T F** The State of Frauds requires five types of contracts to be in a signed writing that includes the parties' material terms with sufficient definiteness that the court can enforce the parties' objective agreement. Those five types of contracts are:
[i] sale of interest in land at or over \$5,000;
[ii] sale of goods;
[iii] must take longer than one year;
[iv] surety of the debts of another; **and**
[v] marriage.
All parties must sign.
- 14. T F** If party BAD
(*e.g., either BAD adult contracting with minor party GOOD or BAD adult involuntarily intoxicating adult party GOOD*),
then
the contract is voidable at the election of the party GOOD
(*e.g., either the minor or that involuntarily intoxicated adult*).
If
party GOOD elects to void a voidable contract with party BAD,
then
party GOOD owes restitution to party BAD.
Party GOOD may elect to ratify the voidable contract upon obtaining capacity
(*e.g., reach age of majority or intoxication ends*).

- 15. T F** **Not** all transactions that seek to become a contract achieve that end.
 A *quasi* contract
 is **not** a contract; instead, a *quasi* contract is an equitable remedy.
 Promissory estoppel is another equitable remedy.
 Promissory estoppel is available
 if
 the defendant makes a clear **and** definite promise to the plaintiff
 thereby inducing the plaintiff's reliance,
and if
 justice will be served by enforcement of the promise,
 then
 the defendant's promise will be enforced even though it is **not** a contract.
- 16. T F** A delegation of a duty **or** an assignment of a right
 always
 is an **unenforceable** material alteration of
 the parties' reasonable expectations
 if:
 [i] the parties' had expressly agreed to a prohibit such alternations;
 [ii] the contract's subject matter is personal services; **or**
 [iii] a statute prohibits the alternation.
- 17. T F** The plaintiff must have standing to sue
 (*i.e., injury in fact and within the zone of protected interests*).
 Privity is a concept of tort law **and** of contract law.
 Those parties with legally recognized direct relationships
 (*e.g., reasonably foreseeable in tort;*
vested incidental donee third parties in contract)
 have privity.
 Parties with privity have standing to sue each other.
- 18. T F** A contract may be discharged in many ways.
 The parties' original contract terms can specify the means of discharge
 (*e.g., perfect tender by both parties; Force Majeure clause*).
 After contract formation,
 the parties' contract may be discharged by agreement of the parties
 (*e.g., unilateral rescision; accord and satisfaction*).
 After contract formation,
 the parties' contract may be discharged by operation of law
 (*e.g., depending upon jurisdiction and type of contract, either*
commercial impossibility [e.g., three times price change] or
commercial impracticability [e.g., ten times price change]).
 A discharged contract is executory

- 19. T F** Damages are a legal remedy for legally recognized pecuniary losses.
 In tort,
 compensatory damages are to make the party whole.
 In contract,
 compensatory damages are to cover the loss of the benefit of the bargain
*(i.e., difference between the contract price **and** the market price)*.
 Contract compensatory damages
 include incidental damages
(e.g., cost of entering the market for substitute performance).
 Contract consequential damages
(e.g., lost profits)
 ordinarily are **not** recoverable.
 Parties who enter a contract exit from the standard tort law relationships.
 Accordingly,
 tort damages suffered within the context of a contract
 are **not** recoverable
 because those tort damages are a mere economic loss.
 Punitive damages
 are recoverable in tort law;
but,
 typically punitive damages are **not** recoverable in contract law.
 However,
 a bad faith breach
(i.e., more than mere absence of good faith)
 of an insurance contract **or** of an employment contract
 does support recovery of punitive damages.
 All punitive damages must conform to the requirements of
 both substantive due process **and** procedural due process.
- 20. T F** USA law seeks to satisfy the reasonable expectations of a
 Reasonable Person *(i.e., natural person)*.
 Technology often changes reasonable expectations.
 Because
 the law seeks to serve the reasonable expectations of the People,
 the law anticipates technological change.
- 21. T F** Federal power over the internet **and** the world wide web
 is great because
 transportation is the core *(i.e., direct effect)* of the Commerce Clause.
But,
 an Act of State is an action by a government acting as a government;
 thus,
 an Act of State by a USA State is an action
 that is at the core of that USA State's powers.
 Accordingly,
 the federal government can **not** completely preempt the USA States
 with respect to all transactions over the internet **or** the world wide web.