
print name

INSTRUCTIONS:

1. The Unit Exam #2 must be completed within the allocated time
(*i.e., 10:00 AM - 11:15 AM*).
It is a closed book exam.
2. **Recall the material difference between
e.g. (*for example*) and i.e. (*that is*).**
3. As each student finishes this exam,
that student will receive the exam's answer sheet
and leave the exam room until after the end of the exam
(*i.e., 11:15, unless all students finish earlier, which is likely*).
4. Grades will be posted to BlackBoard
no later than 5:00 PM Wednesday, October 22.
An email notice of the posting will be sent.
5. The Unit Exam #2 is worth 20% of the course grade.
This exam has 35 questions graded as if there are 33.
Harmless errors are far more likely than **non**-harmless errors in this test design.
Based on a statistical analysis of all students' answers,
the instructor unilaterally may alter the grading of specific exam questions
for all similarly situated students.
Any student may appeal the grading of these exam questions. However,
only if a student successfully appeals the ambiguity of **AT LEAST THREE**
questions on this exam will *that* student's exam grade change
by the number of successful appeals in excess of two questions.
Appeals only affect the exam grades of those students that appeal.
6. **All appeals** of this exam's questions must be:
[6A] typed; [6B] signed by the student in three ways, typed name,
handwritten signature, and typed social security number; [6C] in sequence,
list, immediately following the signature, each of the questions, by number,
being appealed; [6D] after the [6C] list, argue each question, one at a time;
[6E] at the beginning of each question's appeal, identify two or more
reasonable meanings that the question could have had; [6F] argue why one or
more of the identified reasonable meanings is *as* appropriate or is *more*
appropriate than the meaning used for the answer key answer; and
[6G] personally handed to the instructor
no later than 10:00 AM, Tuesday, October 28.

QUESTIONS:

1. **T F** Today, the law uses the objective theory of contracts, championed by Nebraskan Roscoe Pound.
For example,
the law focuses upon the plain meaning of the contract terms;
and
if
a term is ambiguous,
then
the court objectively identifies the parties' subjective intent.
2. **T F** All of the elements of a contract are:
agreement, capacity, consideration,
genuineness of assent, form, **and** subject matter.
3. **T F** While all express contracts **also** are implied contracts,
far less than all implied contracts are express contracts.
But note,
none of the express contracts **and none** of the implied contracts are
quasi contracts.
4. **T F** Parties to a contract must reach an agreement that satisfies the
Mirror Image Rule.
Each of the following reaches the required agreement:
an expression of an opinion;
preliminary negotiations;
an agreement to agree; **and**
an advertisement.
5. **T F** There are four contract terms that routinely are
material:
parties, time, consideration, **and** legal subject matter.

6. **T F** The offeree has the power to create a contract with an acceptance. However, an effective revocation by the offeror **or** an effective rejection **or** counter offer by the offeree terminates that power **and** the offer. The offeree's silence is acceptance if the parties' previously agreed silence is acceptance **or** if a minor does **not** disclaim a voidable contract within a reasonable time after reaching the age of majority.
7. **T F** Promissory estoppel is an equitable remedy available. If the defendant makes a clear **and** definite promise to the plaintiff with the reasonable expectation that the plaintiff will **and** the plaintiff does justifiably **and** detrimentally rely upon that promise, then promissory estoppel is available in the absence of a contract.
8. **T F** Consideration must be legally sufficient (*i.e., as distinguished from fair*) **or** must be a bargained for exchange.
9. **T F** A contract's terms must be sufficiently definite so that the court can enforce the contract. A requirements contract uses the objective needs of the buyer while an output contract uses the objective abilities of the seller to measure the quantity obligations of the contract.
10. **T F** A contract with liquidated debts can support an accord **and** satisfaction, **and** can support a release.

11. T F Capacity is a concept used by the law in different contexts **and** the amount of capacity required varies by context. The rank of contexts by the amount of capacity required (with the most listed first **and** the least listed last) is: crime, contract, tort, **and** wills.
12. T F A covenant **not** to compete has two prime requirements in all jurisdictions: a reasonable time **and** a reasonable area. Jurisdictions vary widely in what is seen as reasonable **as well as** how to respond to an **un**reasonably excessive time **or** area. Some jurisdictions reform an excessive covenant, others sever the excessive term, **and** still others void the transaction.
13. T F A contract might be **un**conscionable either via procedural **un**conscionability **or** via substantive **un**conscionability. An adhesion contract containing an exculpatory clause is far more likely to be an **un**conscionable contract if that contract is between a merchant **and** a consumer than if that contract is between two sophisticated businesspersons.
14. T F Material is a concept used by the law in various contexts. The rank of contexts by the amount of material required (with the most listed first **and** the least listed last) is: mutual mistake, unilateral mistake, common law fraud, **and** security law fraud.
15. T F A mutual mistake exists if both parties make the same mistake of material fact. A unilateral mistake exists if the **non**-mistaking party objectively knows the mistaking party made a mistake of material fact.

16. **T F** The defendant commits common law fraud if the defendant knowingly **and** intentionally **misrepresents** a material fact thereby inducing the plaintiff's justifiable reliance **and** causing the plaintiff's injury.
17. **T F** Legally objectionable duress, regardless of its form, defeats a contract. The law is more likely to see legally objectionable duress if it is physical duress than emotional duress **or** economic duress. Similar to emotional duress is the separate cause of action called **undue** influence. Economic duress is far more likely if the behavior is predatory instead of privileged.
18. **T F** A signature is any mark with the current intent to authenticate the document. Federal law has preempted the States with respect to electronic signatures for a limited number of transactions covered by the Commerce Clause **and** the Full Faith **and** Credit Clause.
19. **T F** The Statute of Frauds requires five types of contracts to have their material terms in a written memorandum of sufficient definiteness that the court can enforce the agreement of the parties' **as well as** signed by the party to be sued. The five types of contracts are: sale of "goods" at **or** over \$5,000; sale of an interest in land; must take longer than one year; guarantee the debts of another; **and** in consideration of marriage.
20. **T F** The Parol Evidence Rule helps enforce the Statute of Frauds.

21. T F Privity of contract includes all parties to the contract, including vested incidental beneficiaries.
22. T F With respect to assignment of rights **and** delegation of duties, both the old common law **and** the new common law at their core share the same focus: the parties' reasonable expectations. However, the old common law presumes all assignments **and** all delegations materially alter the parties' reasonable expectations. In contrast, the new common law presumes most assignments do **not**.
23. T F An incidental beneficiary can **not** be a creditor beneficiary.
24. T F A condition precedent creates a contractual duty to perform while a condition subsequent terminates a contractual duty to perform. A condition concurrent (*e.g., tender [i.e., ready, willing, and able]*) involves multiple simultaneous condition precedents, which if **not** reciprocated act as a condition subsequent.
25. T F Few contracts are discharged with complete performance. Substantial performance discharges the duty to continue to perform **but** creates liability for damages. However, an implied condition, as contrasted with an express condition, classifies substantial performance as a material breach.
26. T F Receipt of an anticipatory breach empowers the **non**-breaching party to either sue immediately **or** to await performance on the due date. Even if the breaching party effectively repudiates the anticipatory breach prior to the **non**-breaching party suing, the **non**-breaching party still may sue.
27. T F A novation is a contract **as is** an accord **and** satisfaction. However, **neither** a mutual rescission **nor** a substituted agreement, standing alone, is a contract.

28. T F Contractual duties can be discharged by operation of law. For example, a statute of limitations **or** its companion statute of repose might terminate a duty to perform.
29. T F The **non**-breaching party has **no** duty to make an election of remedies. For example, the **non**-breaching party need **not** choose between specific performance (*e.g., sale of land or sale of unique goods*) **and** compensatory damages plus incidental damages.
30. T F A breaching party is legally liable for all damages flowing from the breach. For example, the breaching party is liable for economic losses **and** for consequential damages. **But** note, the **non**-breaching party's pattern of waivers of multiple breaches can create a reasonable expectation that breaching performance is, in fact, complete performance.
31. T F The breaching party has a duty to mitigate damages. Instead of damages, a **non**-breaching party might seek the equitable remedy of unilateral rescission.
32. T F The law encourages penalties in contracts. For example, a liquidated damages clause is a penalty. In an adhesion contract with a consumer liquidated damages might be **un**conscionable. A valid liquidated damages clause exists if at the time of contract it was reasonable for the parties to believe that at the time of loss estimation of damages would be difficult, **and** at the time of contract the parties' make a reasonable estimation of what the losses will be at the time of loss.

33. **T F** Even though the worldwide web is inherently multi-jurisdictional, the law still strongly discourages express contract clauses that contains a choice of law, choice of forum, choice of venue, **and** choice language.
34. **T F** The generic public policy hostility towards adhesion contracts is reduced in the context of the worldwide web. Often, for the purposes of the Statute of Frauds, a mere mouse click will serve as a signature on the worldwide web.
35. **T F** The advent of the worldwide web eliminated the law's need for the Mail Box Rule.