
print name

INSTRUCTIONS:

1. This Exam #2 must be completed within the allocated time
(*i.e., 60 minutes*).
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 return both the student's exam and the answer sheet
and then leave the exam room until after the end of the exam
(*e.g., all students finish in less than 60 minutes*).
4. Grades will be posted to BlackBoard no later than 5:00 PM Friday, October 27.
An email notice of the posting will be sent.
5. This Exam #2 is worth 20% of the course grade.
The True-False form of 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 the True-False version of this exam's questions must be:
[6A] typed; **[6B]** signed by the student in three ways,
typed name, handwritten signature, and typed university identification 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 [6D] appeal,
identify two or more reasonable meanings that the question could have had;
[6F] argue why one or more of the [6E] 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 the start of class on Wednesday, November 1.

QUESTIONS:

1. **T F** The six elements of a contract are:
agreement (*i.e., offer **and** acceptance*), capacity, consideration,
reality of assent, form (*i.e., all contracts must be in writing*),
and legal subject matter.
2. **T F** A *quasi*-contract
is an implied (*i.e., acts, words, **and/or** circumstances*) contract.
3. **T F** There are four terms of all contracts that are
material terms:
parties, time, consideration, **and** subject matter.
4. **T F** The Mirror Image Rule
is part of the contract law's requirement that an agreement exist.
If
an offerEE makes a counter offer
that is different, **but not** materially different, from
the offerOR's original offer,
then
the offerEE is objectively manifesting a knowing **and** voluntary assent to
the offerOR's offer,
and
a contract forms.
5. **T F** If
a contract fails to form (*e.g., plaintiff minor's lack of capacity*),
then
the defendant's promise might still be enforceable via
the contractual remedy of promissory estoppel.
6. **T F** The Objective Theory of Contracts makes it impossible for
silence to be acceptance.
7. **T F** The Mail Box Rule
allows the offerOR to become bound to a contract
based on the offerOR's objective knowledge,
as well as
allows the offerEE to revoke the acceptance
prior to the offerOR's actual knowledge,
and thus void what was a contract.
8. **T F** All contracts must be supported by consideration.
Value alone is **not** consideration,
in addition to value the parties **also** must
make a bargained for exchange of that value.

- 9. T F** The difference between Freedom **of** Contract and Freedom **from** Contract is a policy question. This can be seen in the wide variation of the State's treatment of covenants **not** to compete.
- 10. T F** An illusory promise is **not** consideration. For example, a requirements contract **and/or** an output contract is **not** enforceable because each uses a definition of the contract's quantity that is illusory.
- 11. T F** A person with contractual capacity has the ability to grasp the natural consequences of that person's actions.
- 12. T F** A minor
(*i.e., under the age of majority [i.e., age 18 in Nebraska]*) lacks contractual capacity as a matter of law, **unless** a court makes a specific finding that, objectively, that individual child has contractual capacity (*e.g., emancipation*). An adult may seek the equitable remedy of restitution (*i.e., majority rule is the return of value*) if the child **disaffirms** their voidable contract.
- 13. T F** Every person who is objectively intoxicated lacks capacity.
- 14. T F** All transactions by an adjudicated **in**competent person are void.
- 15. T F** All USA States make some gambling contracts **illegal** subject matter; **and** all USA States make some insurance contracts legal subject matter.
- 16. T F** If a contract is an **un**conscionable contract from the point of view of equity, then that contract is an **un**conscionable contract from the point of view of statute.

- 17. T F** An overbroad covenant **not** to compete will be reformed (*i.e., rewritten*) by a Nebraska court to **no** broader than allowed by public policy.
- 18. T F** A mutual mistake uses the definition of “material” that defines the outer bounds of liberty.
A unilateral mistake offers more Freedom **from** Contract.
- 19. T F** If the plaintiff can prove by a preponderance of the evidence that the defendant knowingly **and** intentionally **misrepresents** a material fact, thereby inducing the plaintiff’s reasonably foreseeable justifiable **and** detrimental reliance, then the defendant has committed a common law fraud.
- 20. T F** The common definition of “material” is what a reasonably prudent person would want to know prior to making a decision.
- 21. T F** In Nebraska, a fiduciary is rebuttably presumed to have the opportunity for, the inclination to exercise, **and** to have generated a result consistent with, **undue** influence.
- 22. T F** Privileged economic duress can **not** be duress that results in a lack of reality of assent.
- 23. T F** A surety contract for must be in a signed, written memorandum of sufficient definiteness that the court can enforce the parties’ agreement.
- 24. T F** The federal government has preempted the individual USA States on the question of whether a consumer’s mouse click is a signature on the registration of a transfer of a land by a deed.

- 25. T F** An incorporation by reference clause in a contract is defeated if that contract **also** contains an incorporation **or** merger clause.
- 26. T F** Both the Old Common Law **and** the New Common Law governing assignment of contract rights **and** delegation contract duties focus on any material alternation of the parties' reasonable expectations. Accordingly, a contract for personal services entitles the contracting parties' to the remedy of specific performance since personal services are unique.
- 27. T F** An incidental creditor beneficiary third party to a contract is **not** a party to the contract even if vested.
- 28. T F** Tender (*i.e., ready, willing, and able*) of performance is an implied condition subsequent in all contracts, **unless** expressly **disclaimed**.
- 29. T F** An express condition precedent transforms performance that ordinarily would have been substantial performance into a material breach; thus such performance with that clause does **not discharge** the contractual duties **and** damages then are owed.
- 30. T F** If one contracting party delivers to the other contracting party an anticipatory breach, then the receiving party's failure to immediately take steps to mitigate the damages is a waiver of the breach.

- 31. T F** If tolling delays the discharge of a contract far enough beyond the running of the Statute of Limitations, then the Statute of Repose will discharge that contract.
- 32. T F** If the parties do **not** exercise their Freedom **of** Contract by agreeing to a *Force Majeure* Clause, then the law will impose Freedom **from** Contract upon the parties by implying a condition subsequent **but** only when a commercial impracticality **or** commercial impossibility occurs.
- 33. T F** Contractual damages ordinarily are limited to compensatory damages (*i.e., the difference between the contract price **and** the market price*) **plus** incidental damages. If a loss is an economic loss, then that loss is **not** recoverable via contract damages.
- 34. T F** Lost profits are **not** recoverable as contractual damages **unless** those consequential damages were reasonably foreseen (*i.e., proximate cause*) either subjectively **or** objectively by both parties.
- 35. T F** A liquidated damages clause between two merchants engaged in sophisticated risk management acts a condition precedent for the creation of a liquidated debt for the related breach and acts as a condition subsequent to discharge the duty to perform. Thus, liquidated damages can **not** support an accord **and** satisfaction, **but** can support a mutual rescission.

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