
print name

LAWS 3910, Introduction to Business Law and Ethics

Spring 2003

Exam #1, Chapters 1 - 9

35 questions scored as if there are 33

20% of course grade¹

INSTRUCTIONS:

1. This Exam #1 must be completed within the allocated time (*i.e., start at 7:00 PM and end by 8:00 PM*). It is a closed book exam.
2. **Recall the material difference between i.e. (that is) and e.g. (for example).**
3. **Use answer sheet option "A" to indicate True and use "B" to indicate False.**
4. At the conclusion of the exam, students will exchange their answer sheets for answer keys.
5. This Exam #1 is worth 20% of the course grade (*but see footnote 1*). This Exam #1 has 35 questions graded as if there are 33. Harmless errors are far more likely than non-harmless errors in this test design. Any student may appeal the grading of exams questions. However, only if a student **successfully appeals the ambiguity of AT LEAST THREE questions on this Exam #1** will that student's exam grade change. *Appeals only affect the exam grades of those students that appeal.* Based on a statistical analysis of all students' answers, the instructor may unilaterally alter the grading of specific exam questions for all similarly situated students.
6. **All appeals of Exam #1 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] at the beginning of the appeal of each question appeal, **identify** two or more meanings that the question reasonably could have had; [6E] **argue** each question, one at a time, argue why one or more of the identified meanings is *as* appropriate or *more* appropriate than the meaning used for the answer key answer;
and [6F] **submitted to O'Hara's RH 502 mailbox no later than 5:00 PM on Thursday, February 27.**
7. Grades will be posted to O'Hara's web site (*i.e., <http://cba.unomaha.edu/faculty/mohara/web/ohara.htm>*) by 5:00 PM Friday, February 28. A Lotus Notes email notice of the posting will be sent.

¹ Unless the student has an "A" average after the third exam, when weight is 33%.

QUESTIONS:

Q1:Q9 on chapters 1 (*reasoning*); 2 (*courts*); and 3 (*procedure*)

1. **T F** The law favors the objective over the subjective.
2. The law uses the concept "person".
Which of the following is a correct use of "person"?
 - a. A consumer is a legal person.
 - b. A natural person is reasonable person.
 - c. A corporation is natural person.
 - d. All of the above.
 - e. None of the above.
3. The law uses the concept "knowing".
Which of the following is a correct use of "knowing"?
 - a. Actual knowledge is subjective.
 - b. Receipt of notice is objective,
but is less objective than reason to know
when reason to know is objective.
 - c. Reason to know may be subjective **or** may be objective,
but typically is objective.
 - d. All of the above.
 - e. None of the above.
4. **T F** The civil trial burden of proof is on the plaintiff
and is preponderance of the evidence.
A civil trial requires less proof than a criminal trial.
The criminal trial burden of proof is on the defendant
and is beyond a reasonable doubt.
5. **T F** A trial court finds fact **and** applies the law,
while an appellate court finds error **and** interprets the law.
An appellate court will affirm the trial court,
unless the appellate court finds error, which can be:
a clear error of fact,
a **non-harmless** error of procedure, **or**
any error of law.

6. Standing to sue
- springs from a constitutional requirement **and** from a desire for judicial efficiency.
 - is satisfied with injury in fact **and** being within the zone of protected interest.
 - is a required of both the plaintiff **and** the defendant.
 - all of the above.
 - only a. **and** b.
7. **T F** The USA federal government **or** a State government may take your life **and** may take your liberty with notice **and** hearing, both proportional to the interest involved. However, such a government must do more if it is to take your private property.
8. The plaintiff initiates a lawsuit by filing a complaint with the court. In the complaint the plaintiff must:
- allege a cause of action (*e.g., intentional infliction of emotional distress*).
 - assert **both** the court's geographic jurisdiction **and** the court's subject matter jurisdiction.
 - request a remedy that the court has the power to grant (*e.g., money damages*).
 - all of the above.
 - only a. **and** b.
9. **T F** A Statute of Limitations, when tolled, can run for more years than the Statute of Repose.
- Q10:Q18 on chapter 4 (*constitution*)
10. **T F** The Preemption Doctrine is an interpretation of the Supremacy Clause. Preemption is **not** favored **but** will be allowed if: clear intent of Congress **and** national interests outweigh State interests; **or**, express intent of Congress **and** a need for uniformity.

- 11.** The federal government's Commerce Clause power:
- pre-1937 was interpreted to cover all commerce that had a direct **-a-**ffect on commerce between the States.
 - pre-1937 was interpreted to cover all commerce that had a direct **-e-**ffect on commerce between the States.
 - post-1937 is interpreted to cover all commerce that has a close **and** substantial **-e-**ffect on commerce between the States.
 - post-1937 is interpreted the same as pre-1937.
 - only a. **and** c.
- 12. T F** The Equal Protection Clause of the 14th Amendment, USA *Constitution* reduces the discretion of the State's legislatures. The State legislatures must provide women **and** men substantially similar legal treatment **unless** the difference in treatment is rationally related to a legitimate State interest.
- 13. T F** The Due Process Clause of the 14th Amendment, USA *Constitution* (*as interpreted by the Absorption Doctrine or Incorporation Doctrine*) requires the State governments to recognize that the State citizens have the rights in the Bill of Rights (*i.e., amendments 1 through 10*). The States must recognize the verbatim rights in the Bill of Rights.
- 14.** The Police Power
- is a federal power.
 - is a power of a government to protect that government.
 - covers health, safety, morals, **and** general welfare.
 - all of the above.
 - only a. **and** b.
- 15.** Privacy
- is a USA constitutional right of the People implied via the right to "liberty" **and** the Ninth Amendment.
 - in the USA is as broad as one's reasonable expectation of privacy.
 - in the European Union (*EU*) is protected by a default legal requirement that a person opt-out to a computerized data collection process.
 - all of the above.
 - only a. **and** b.

- 16. Judicial Review**
- a.** is an express, Article III power of the federal judicial branch.
 - b.** is the power of the courts to declare **un**constitutional acts of either the legislative branch **or** the executive branch.
 - c.** is at its zenith when protecting the rights of the States.
 - d.** all of the above.
 - e.** only a. **and** b.
- 17. The Full Faith **and** Credit Clause of Article IV of the USA *Constitution***
- a.** is similar to the international law concept of comity.
 - b.** requires the federal government to enforce State laws.
 - c.** both a. and b.
 - d.** none of the above.
- 18. T F** Free speech is protected by the First Amendment of the USA *Constitution*. **No** USA government may regulate the content of speech. Governments only may reasonably regulate the time, place, **and** manner of speech.

Q19:Q27 on chapters 5 (*torts*); 6 (*product liability*); and 7 (*IP*)

- 19. T F** A defendant commits a tort when the defendant breaches a duty of care owed to the plaintiff, the defendant's breach is the proximate cause of the plaintiff's injury, **and** the defendant has **no** defenses.
- 20. T F** The defendant's intent for an intentional tort must be subjective, while the defendant's intent for a negligence tort only need be objective.
- 21. Proximate cause exists when**
- a.** the defendant's breach starts the factual chain of events leading to the plaintiff's injury.
 - b.** the defendant's breach is the "**but** for" cause of the plaintiff's injury.
 - c.** at the time of breach, the defendant could have reasonably have foreseen the plaintiff's injury.
 - d.** all of the above.
 - e.** only a. **and** b.

22. Assumption of the risk is a defense that requires
- a. the defendant to have warned the plaintiff.
 - b. the plaintiff to knowingly **and** voluntarily assume the risk.
 - c. the plaintiff to knowingly **or** voluntarily assume the risk.
 - d. a. **and** b.
 - e. a. **and** c.
23. Some negligence torts are "*per se*" and some are "*res ipsa loquitur*". Which of the items below best describes these two concepts?
- a. If a defendant complies with a statutory standard of care, then the defendant is *per se* **not** negligent.
 - b. If the defendant has complete control of the plaintiff's person as well as complete control of circumstances surrounding the plaintiff, **and** the plaintiff is injured, then the defendant is liable *res ipsa loquitur*.
 - c. all of the above.
 - d. none of the above.
24. **T F** The *Restatement of Torts* section 402A imposes strict liability on businesses that are sellers of services.
25. **T F** The federal government **and** the State governments share the field of intellectual property law. The federal government has exclusive control over patents, copyrights, **and** trademarks; while the State governments have most of the power over trade secrets.
26. **T F** "Fair use" of a copyrighted work is part of the public domain during the term of the copyright.
27. **T F** "Parody" of a trademark is permissible free speech, **but** parody of a copyrighted work is **not**.

Q28:Q35 on chapters 8 (*crime*) and 9 (*cyberlaw*)

- 28.** A crime
- a.** is committed every time a tort is committed.
 - b.** always has the government as the plaintiff.
 - c.** trial in a second jurisdiction is **unconstitutional** double jeopardy if the defendant previously was convicted for the same action in another jurisdiction.
 - d.** all of the above.
 - e.** none of the above.
- 29. T F** The elements of a crime are *actus rea (i.e., bad deed)*, *mens rea (i.e., bad thought)*, **and no** defenses.
- 30. T F** The Congress has the power to create crimes even though the federal government lacks the Police Power.
- 31. T F** "Material" uses the same definition (*i.e., would have changed your mind*), **but** with different meanings with common law fraud **and** securities law fraud.
- 32.** Good faith
- a.** uses the same subjective element for consumers, merchants, **and** a fiduciary.
 - b.** uses commercial reasonableness as the merchant's objective element.
 - c.** uses receipt of notice as the fiduciary's objective element.
 - d.** all of the above.
 - e.** only a. **and** b.
- 33. T F** A "signature" is any mark with the current intent to authenticate the document.
- 34.** In the USA, the parties to a contract may choose
- a.** the State's law that will control the contract.
 - b.** the forum (*i.e., court {e.g., Nebraska Federal District Court}*) **and** the venue (*i.e., court house {e.g., Lincoln Federal Court House}*) to hold a trial if there is a lawsuit between the parties.
 - c.** the official language (*e.g., Spanish*) for interpreting the contract.
 - d.** all of the above.
 - e.** only a. **and** b.
- 35. T F** A court has geographic jurisdiction over a defendant when the defendant has substantial minimal contacts with the court's geographic jurisdiction.