
print name

LAWS 3910, Introduction to Business Law and Ethics

Spring 2003

Exam #2, Chapters 1 - 18

35 questions scored as if there are 33

20% of course grade¹

INSTRUCTIONS:

1. This Exam #2 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, each student shall exchange that student's answer sheet for an answer key. Each student may write on and may keep that student's copy of the exam.
5. This Exam #2 is worth 20% of the course grade (*but see footnote 1*). This Exam #2 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 #2** 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 #2 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 in paper copy to O'Hara's RH 502 mailbox no later than 4:00 PM on Friday, April 4.**
7. Assuming the airlines cooperate; 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 Monday, April 7.
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 of Exams #1, #2, and 33 each is 33%.

QUESTIONS:

1. **T F** A party that obtains the remedy of *quasi* contract (*i.e., implied-in-law*) will receive *quantum meruit* (*i.e., the agreed upon price*).
2. The equitable remedy of promissory estoppel is available to any party:
 - a. who has relied upon a promise.
 - b. to ensure the plaintiff's enrichment.
 - c. who has an adequate remedy at law.
 - d. All of the above.
 - e. None of the above.
3. **T F** Using the mailbox rule, an offeree may revoke the offeree's rejection of the offer if the revocation reaches the offeror prior to the rejection.
4. **T F** If the parties agree upon a bargained for exchange of detriments **and/or** benefits for the parties (*e.g., to promise to do something when there is **no** duty to do so, **and/or**, to promise **not** to do something when there is the right to do so*) then the parties have exchanged consideration.
5. The amount of capacity required for a transaction varies. Which of the following correctly arranges, from most on left to least on right, the required amount of capacity?
 - a. contract, crime, tort, will.
 - b. crime, tort, contract, will.
 - c. tort, contract, crime, will.
 - d. All of the above.
 - e. None of the above.
6. **T F** The price must be fair for the consideration to be legally sufficient.
7. Which of the following is/are true?
 - a. Typically, a voluntarily intoxicated person has capacity.
 - b. Typically, a mentally ill person in a lucid phase has capacity.
 - c. Typically, an emancipated minor has capacity.
 - d. All of the above.
 - e. None of the above.

8. **T F** An insurance contract (*i.e., allocates existing risk*) is legal subject matter, while a gambling contract (*i.e., creates **and** allocates risk*) is **not**.
9. **T F** A covenant **not** to compete that is **both** ancillary **and** proportional to the businesses' legitimate business interests, **as well as** limited to **both** a reasonable time **and** a reasonable area is enforceable.
10. **T F** Courts of different jurisdictions have different reactions to over broad covenants **not** to compete. Some jurisdictions reform the over broad covenant to reasonable limits, others sever the over broad covenant from the encompassing contract, **and** others (*e.g., Nebraska*) void the entire contract.
11. **T F** Some exculpatory clauses are **not** enforceable because the limitation on liability is contrary to public policy. The courts tend to balance the type of contract (*e.g., a necessary service*), the relative bargaining power of the parties (*e.g., merchant shifting risk to consumer versus two merchants*), as well as the sophistication of risk allocation (*e.g., the party that ends up with risk covers it with insurance*) in making the court's determination of enforceability.
12. **T F** Typically, if a party to a contract makes a unilateral mistake of material value, then the mistake is a question of ethics, **not** a question of law, for the **non**-mistaking party.
13. **T F** All material defects actually known by seller are unilateral mistakes of material fact by the buyer.
14. **T F** In Nebraska, the plaintiff proves **undue** influence by proving the defendant had both the opportunity **and** the inclination to use **undue** influence **as well as** the result is consistent with **undue** influence.

- 15.** "Duress" prevents reality of assent **and** thus prevents contract formation. Which of the following correctly describe "duress"?
- a.** Economic duress due to poverty is **not** likely to be "duress".
 - b.** Economic duress due to predatory behavior is likely to be "duress".
 - c.** Material physical duress is likely to be "duress".
 - d.** All of the above.
 - e.** None of the above.
- 16. T F** Adhesion contracts are contrary to public policy because the adhesion generates contractual ambiguity.
- 17. T F** A co-signer providing a guarantee has primary liability (*i.e., all co-signers are obligated to pay first*), while a co-signer acting as a surety has secondary liability (*i.e., the surety pay if and only if the other co-signer defaults*).
- 18.** A fixture:
- a.** was real property **and** now is personal property.
 - b.** can **not** be sold separately from the real estate.
 - c.** is determined by the objective intent of the owner of the fixture.
 - d.** All of the above.
 - e.** None of the above.
- 19. T F** A defendant commits fraud when the defendant knowingly **and** intentionally **misrepresents** a material fact inducing the plaintiff's reliance **and** causing the plaintiff's injury.
- 20.** The Statute of Frauds requires the material terms of five types of contracts to be in writing. Which of the following contracts are covered by the Statute of Frauds?
- a.** sale of goods at **or** over \$500.
 - b.** must take longer than one year.
 - c.** in consideration of marriage.
 - d.** All of the above.
 - e.** None of the above.
- 21.** The Statute of Frauds requires the material terms of five types of contracts to be in writing. Which of the following terms are material terms?
- a.** agreement.
 - b.** consideration.
 - c.** capacity.
 - d.** All of the above.
 - e.** None of the above.

22. **T F** The law favors free assignment of rights **but** does **not** favor free delegation of duties because an assignment is far less likely to, **and** a delegation is far more likely to, involve a material deviation from the parties' reasonable expectations.
23. **T F** All of the elements of a contract are: agreement, consideration, capacity, reality of assent, form, **and** subject matter.
24. **T F** An incidental creditor beneficiary vests either by providing the parties notice of the vesting, **or** by reasonably **and** materially detrimentally relying on the contract.
25. Speaking broadly, there are three types of conditions: precedent, subsequent, **and** concurrent. Which of the following correctly describes the condition?
- a. Performance of a condition precedent starts a duty.
 - b. Performance of a condition subsequent ends a duty.
 - c. Performance of a condition concurrent starts a duty.
 - d. All of the above.
 - e. None of the above.
26. **T F** Violation of an implied condition is likely to be substantial performance, **but** violation of an express implied condition is likely to be a material breach.
27. The law recognizes different results flowing from different levels of performance. Which of the following correctly describes the result of performance?
- a. Perfect performance discharges most duties created by the contract, **but** now nominal damages are owed.
 - b. Substantial performance discharges few duties created by the contract, **but** now both compensatory **and** consequential damages are owed.
 - c. Performance that is a material breach discharges both parties, **but** now punitive damages are owed.
 - d. All of the above.
 - e. None of the above.

- 28. T F** If the breaching party sends the **non**-breaching party an anticipatory breach, then the **non**-breaching party must make an election of remedies between suing immediately **or** waiving this breach **and** all future similar breaches.
- 29.** The law recognizes different persons owe different types of "good faith". Which of the following correctly describes the required good faith?
- a.** A consumer who acts with subjective good faith acts in good faith.
 - b.** A merchant is most likely to be proved to have acted **without** good faith because the merchant's behavior was **not** commercially reasonable.
 - c.** It is easier to prove a fiduciary acted **without** good faith than to prove either a consumer **or** a merchant acted **without** good faith.
 - d.** All of the above.
 - e.** None of the above.
- 30. T F** A Statute of Limitations can be tolled only so long as the Statute of Repose.
- 31. T F** New consideration is needed for a novation, **but** new consideration is **not** needed for an accord **and** satisfaction.
- 32. T F** All "liquidated damages" owed by consumers are **unenforceable** penalties.
- 33. T F** A Force Majeure clause is an effort by the parties to expressly define what they see as reasonably likely to make a parties' performance commercially impracticable.
- 34. T F** If there is no exculpatory clause or other clause limiting damages, then the **non**-breaching party may obtain compensatory damages **and** consequential damages.
- 35. T F** The breaching party has a duty to mitigate damages.