
print name on the line above as your signature
INSTRUCTIONS:

1. This Exam #1 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) versus i.e. (that is).
3. As each student finishes this exam,
that student shall 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, February 9.
An email notice of the posting will be sent.
5. This Exam #1 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.
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 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 Tuesday, February 20.

QUESTIONS:

1. **T F** USA law allocates liability towards actions that are both knowing **and** voluntary (*e.g., assumption of the risk defense in tort*). Also, USA law favors the objective over the subjective. Knowing comes in three forms: actual knowledge (*subjective [i.e., scienter]*), receipt of notice (*objective*), **and** reason to know (*objective*).
2. **T F** Objective can be express (*i.e., words: oral **or** written*) **or** can be implied (*i.e., acts, words, **and/or** circumstances*).
3. **T F** Broadly, the law is divided into the fields of equity **and** of law. Equity relies upon maxims **and** decisions that are **not** precedence. In contrast, the common law relies upon rules **and** cases of first impression to create precedence. *Stare decisis* once established is **not** reversed **unless** that reversal [a] can accommodate the People's settled expectations; [b] is consistent with the court's legitimacy (*e.g., jurisdiction*); **and** [c] is workable (*e.g., technological change has eroded the precedence*).
4. **T F** To have a cause of action a plaintiff must have standing to sue. Standing to sue requires the plaintiff to both suffer an injury in fact **and** to be within the zone of protected interests (*i.e., make arguments consistent with public policy*).
5. **T F** All citizens are both natural persons **and** legal persons.
6. **T F** A common law consumer who acts with honesty in fact acts in good faith.
7. **T F** Because a trial court finds fact **and** applies law, while an appellate court finds error **and** interprets law, an appellate court will affirm the trial court unless the appellate court finds a clear error of fact, *non-harmless* error of procedure, **or** any error of law.
8. **T F** The power of judicial review is an express authority found in the USA *Constitution's* Article VI Supremacy Clause **and** it empowers the courts to declare **un**constitutional acts of the legislature **or** of the executive.

9. **T F** A court must have jurisdiction
(*i.e., both subject matter [e.g., bankruptcy] and geographic [i.e., minimal contacts]*).
10. **T F** Because of the importance of a question of fact, a court is more likely to grant a Motion to Dismiss than to grant a Summary Judgment.
11. **T F** The vast majority of regulation of business is mere regulation **and** does **not** amount to a taking. However, since a government may **not** do **indirectly** that which it may **not** do directly, regulation that extinguishes all value is **not** mere regulation, **but**, instead is a taking. A government within the USA may take all of a business' private property as long as that government provides the business with due process (*i.e., notice and hearing*) **and** just compensation (*i.e., fair market value*).
12. **T F** Judicial decisions require satisfaction of a burden of proof. The required level of the burden of proof is varies by legal context. The required level is much higher for conviction in a criminal cases (*i.e., beyond a reasonable doubt*) than is the burden of proof for a decision in a civil case (*e.g., preponderance of the evidence*).
13. **T F** The Police Power is the power of the State government to regulate for the People's health, safety, morals, **and** general welfare. A State **also** might choose to use its power to tax. However, since a State may **not** do **indirectly** that which it may **not** do directly, the State must be careful to avoid a tax that discriminates against interstate commerce in the form of taxation that is an exercise of the power to destroy.
14. **T F** Preemption is **not** favored, **but** may be allowed if
(a) clear intent of Congress **and** national interests outweigh State interests; **or**
(b) express intent of Congress **and** need for uniformity.
For example, the federal government has expressly preempted the State judiciaries on the question of enforceability of arbitration agreements in Commerce.

- 15. T F** The law reaches binary conclusions, often after using triad analysis. The Commerce Clause is an example of this. The interstate segment of the Commerce Clause contains the inherently ambiguous word "among" which can mean either "between" **or** "within". Pre-1937 the USA Supreme Court interpreted "among" as "between" by using the concept of direct **effect** (*i.e., result*) in commerce; while post-1937 the USA Supreme Court interprets "among" as "within" by using the concept of close **and** substantial **affect** (*i.e., cause*) on commerce between the USA States. The Commerce Clause power (*as are many governmental powers do*) exists across a continuum ranging from strongest to the weakest, from the core, to the penumbra, **and** finally the emanations. For example, the Commerce Clause triad is transportation, manufacturing, **and** retail.
- 16. T F** All speech is subject to reasonable time, place, **and** manner regulations. **No** content regulation is permitted for political speech. Content regulation of **commercial** speech is permitted. **But**, content regulation of commercial speech is permissible if **and** only if that regulation:
[a] directly furthers a substantial government interest;
[b] is proportional to that interest; **and**
[c] is the least restrictive alternative for regulating.
Some speech is **unprotected** speech (*e.g., defamatory; obscene*).
- 17. T F** The USA *Constitution's* Bill of Rights focuses upon the separation of powers between the Individual **and** government. For example,
Amendment IV
 provides that if a search is **unreasonable**,
 then a warrant is required **and**
 that warrant must be supported by probable cause;
Amendment V
 provides that a defendant in criminal proceedings
 has a right against self incrimination;
Amendment VI **and** Amendment VII
 provides a right to a lawyer **and** a jury trial; **and**
Amendment IX **and** Amendment X, in particular,
 provide for the inferiority of the federal government.
- 18. T F** Due process is either substantive (*i.e., fundamental right*) **or** procedural due process. Privacy is an express substantive due process right protecting one's reasonable expectation of privacy.

- 19. T F** The USA *Constitution's* Amendment XIV contains the Equal Protection Clause. The triad used to interpret the Equal Protection Clause is the Rational Basis Test
(*i.e., social **or** economic regulation that has a rational basis **and** a legitimate governmental interest [e.g., Police Power] is presumed valid*); Heightened Judicial Review; **and** Strict Scrutiny.
- 20. T F** The USA *Constitution's* Article IV contains the Full Faith **and** Credit Clause which is an express commitment by each USA State to provide domestic comity to sister States subject only to a sister State's discretion consistent with its fundamental public policy.
- 21. T F** If an act by a government is an Act of State, then that act is cloaked with sovereign immunity.
- 22. T F** Both ethical responsibility **and** legal liability are limited to the actor's Bounded Rationality.
- 23. T F** Both ethical responsibility **and** legal liability require the actor to have the power to act.
- 24. T F** Business ethics requires either profit maximization by the individual **or** society's (*e.g., competition*) imposition of cost minimization on the individual as the only path to that profit maximization.
- 25. T F** There are three types of torts intentional torts, negligence torts, **and** strict liability torts. All are based on the defendant's fault.
- 26. T F** If the defendant owes a duty of care to the plaintiff **and** the defendant's action is the proximate cause of the plaintiff injury, then the defendant has committed a tort.

- 27. T F** Proximate cause requires either actual cause of the plaintiff's injury **or** that the plaintiff's injury was reasonably foreseeable to a Reasonable Person in the position of the defendant at the time of the defendant's action.
- 28. T F** The defendant commits common law fraud if the defendant knowingly **and** intentionally **misrepresents** a fact (*e.g., expert's opinion*) thereby proximate causing the plaintiff's damages.
- 29. T F** Reverse engineering of an intellectual property creates a new owner of that intellectual property.
- 30. T F** Parody of a copyright **or** of a trademark is Fair Use.
- 31. T F** A moral right is a legal right to freely use an intellectual property because of necessity when that use otherwise would be an infringement.
- 32. T F** Punitive damages are subject to a substantive due process limitation; whereas specially damages are limited by the actual economic losses that can be proved via procedural due process.
- 33. T F** If a defendant is sued for the tort of negligence, then the defendant, depending upon the jurisdiction's laws, may raise the complete defense of contributory negligence (*i.e., bar to suit because of plaintiff's own negligence*), **or** may raise the fractional defense of comparative negligence (*i.e., an offset for the amount of the plaintiff's negligence*).

34. T F Public policy is hostile towards adhesion contracts because these contracts are less knowing **and** less voluntary. However, some contracts must be adhesion contracts (*e.g., due to Equal Protection Clause*), in which case the law is less hostile. An ambiguity in an adhesion contract is interpreted against the drafter; **unless** the **non**-drafting party had a reasonable opportunity to discover **and** to object to the ambiguity. If such a reasonable opportunity was available, then that ambiguity in the adhesion contract is interpreted reasonably.

35. T F The elements of crime are a legislatively defined *actus reus* (*i.e., bad act*), *mens rea* (*i.e., bad thought*), **and** **no** defenses.

36. The version of this exam is C [see lower left corner of exam].