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**print name on the line above as your signature**  
**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 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 Wednesday, March 21.  
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, March 27.**

**QUESTIONS:**

1. **T F** A warranty can be a contract;  
**but**,  
an employment transaction can **not** be a contract  
because  
an employment transaction does **not** include  
consideration **or** capacity as an element.
2. **T F** If  
the parties are *in pari delicto*,  
then  
**neither** party may obtain  
either *quasi* contract **or** promissory estoppel.
3. **T F** If  
a merchant imposes privileged economic duress on a consumer,  
then  
the court will sever each offensive material term.
4. **T F** A unilateral contract that is executory with respect to acceptance  
only will satisfy the Mirror Image Rule  
if  
that executory portion is  
expressly included by an incorporated by reference clause.
5. **T F** The Statute of Frauds, in part,  
bars silence as acceptance by requiring the signature of each party.
6. **T F** Gambling is a form of security law fraud.
7. **T F** Under the old common law of assignments **and** delegations,  
the Mail Box Rule makes most assignments **unenforceable**.
8. **T F** If  
the court phrases the prime question as a question of  
freedom **of** contract versus freedom **from** contract  
then  
an assignment of "all rights"  
by defendant corporation A to defendant corporation B  
will be held by the court to be **unconscionable** assignment  
when challenged by a consumer plaintiff.
9. **T F** If  
a contract is a bargained for exchange of **illusory** promises,  
then  
a court of equity will discharge it by mutual rescission with restitution.

- 10. T F** A natural person who has been adjudicated **in**competent can provide a signature for a delegation of an output contract **but** can **not** provide a signature an assignment of a requirements contract.
- 11. T F** A liquidated damages clause is condition subsequent for a substituted agreement.
- 12. T F** Prior to the age of majority the court will reform a contract; **but not** after the age of majority.
- 13. T F** In interstate commerce, **but not** necessarily in intrastate commerce, a fiduciary's **undue** influence requires use of an electronic signature.
- 14. T F** A liquidated debt is consideration for an accord **and** satisfaction.
- 15. T F** If a natural person is voluntarily intoxicated **and** a Reasonable Person in the position of the other party to the contract objectively would perceive that intoxication, then the intoxicated person suffers **no** legally recognized pecuniary losses because the contract is void.
- 16. T F** A minor has capacity sufficient to act as the implied agent of the minor's parents when purchasing a necessity (*e.g., insurance*). The other contracting party is a vested intended third party creditor.
- 17. T F** A unilateral mistake creates in the wronged party an election of remedies in a court of equity **and** in court of law (*e.g., crime*).
- 18. T F** Predatory economic duress requires a measure of material that goes to the outer reaches of liberty.
- 19. T F** An output contract that assigns ownership of all copyrighted works created by an employEE requires a signature.

- 20. T F** If  
an offerEE responds to a written offer  
with the offerEE's **un**ambiguous expression of assent  
**and** simultaneously the offerEE **also**  
insists upon the offerOR's original written offer be expanded to include  
a merger clause,  
then  
the offerEE has made a counter offer.
- 21. T F** Partial performance of a personal services contract  
is a condition precedent to a court ordering  
full performance of that personal services contract.
- 22. T F** If,  
by secretly replacing a trade usage definition in a written contract  
with the plain meaning definition,  
one merchant in a contract seeks to do a fraud upon  
the other merchant in the contract  
then  
an incidental donee third party merchant  
can **not** have standing to sue for that contract fraud.
- 23. T F** An express condition is condition precedent to a material breach.
- 24. T F** Substantial performance is a breach of contract.  
But,  
that breached contract  
still contains sufficient consideration from each party  
to support a novation  
only if  
there is a good faith dispute underlying the breach.
- 25. T F** Anticipatory repudiation is a breach.  
Receipt of communication of that anticipatory breach  
is the sole condition precedent  
of the **non**-breaching party's duty to mitigate damages.
- 26. T F** It is ethical  
for a sole proprietorship to seek to profit maximize  
by successfully seeking to design its products  
so as to avoid  
any of its products producing any consumer's serious physical injury  
until after  
the Statute of Repose has run.

- 27. T F** An otherwise enforceable guarantee that could have earned a remedy of specific performance for one party may be discharged via the remedy of unilateral rescission in favor of the performing party if that performance becomes an impossibility.
- 28. T F** It is ethical for an employER to seek to profit maximize by seeking compensatory damages from an employEE that has **unambiguously** violated an enforceable covenant **not** to compete if that covenant is known by the employER to be valid in the multi-jurisdiction employER's headquarters jurisdiction **and** that covenant is known by the employER to be void in the employEE's jurisdiction of employment **and** residence; **but** the employER obtained the employEE's **unquestionably** knowing **and** voluntary agreement to a valid choice of law contract clause specifying the employER's headquarter jurisdiction as the controlling law. **Also**, to some extent, both legally **and** ethically, that covenant is redundant to an independent **and** preexisting duty of the employEE.
- 29. T F** Compensatory damages are a condition precedent to incidental damages.
- 30. T F** If a USA State's exercising its Police Power within the confines of the Rational Basis Test limits a commercial advertiser's Free Speech by rendering **unlawful** the advertiser's previously reasonably expected means of performing a still valid contract, **and if** that State regulation leaves reasonably positioned advertisers *(but not this particular advertiser)* with multiple ordinary **and** feasible means of performance, then upon this particular advertiser's breach proximately caused by this regulation the breaching advertiser will be liable both for consequential damages **and** punitive damages.

- 31. T F** If lost profits are a mere economic loss from the contract, then the court only will award the successful breach of contract plaintiff nominal damages.
- 32. T F** A **non**-breaching party's express anticipatory waiver of a breach reasonably expected by both parties when that breach is sure to spring from an **unambiguous impracticability** is **not** a valid waiver **unless** the breaching party promptly acts to accept that waiver **or unless** the time of performance has arrived with breach.
- 33. T F** It is ethical for a sole proprietor to seek to profit maximize during litigation by continually invoking the parole evidence rule so as to prevent an employEE from introducing into evidence **unambiguous oral evidence** that an employER imposed penalty is, in fact, voidable at the option of an employEE.
- 34. T F** It is ethical for a sole proprietor to seek to profit maximize by contractually defining a technological change as a *Force Majeure* when that technological change is [a] anticipated by both parties, [b] specific, **and** [c] **unambiguously material**.
- 35. T F** It is ethical for a sole proprietor to seek to profit maximize by acting as a surety to an option contract.