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*print name on the line above as your signature*

**INSTRUCTIONS:**

**1. NOTICE (REMINDER OF SYLLABUS REVISION):**

**[1A] Per Instruction #1 of Exam #4:** only need to have earned 770 total course points to have earned the right to elect to take the Optional Comprehensive Final Exam and replace two lowest earned grades.

**[1B] Per results email following Exam #4** students with 769 or fewer total course points may elect to take this final but must both add 550 points to their denominator as well as add to their nominator their earned percentage on this final times 550 points.

2. This Optional Comprehensive Final Exam must be completed within the allocated time (i.e., *between 9:30 AM and 11:30 AM*). It is a **closed book** and open mind exam.

3. **Recall the material difference between i.e. (that is) versus e.g. (for example).**

4. When you finish your exam, collect all of your personal items before approaching the professor since you must promptly exit the exam room upon finishing.

As students finish their exams they will receive an answer key in exchange for their completed blue bubble answer sheets. *For you to learn your individual exam grade you must use your marked up copy of your exam, so be sure to mark your answers on your copy of the exam.*

5. The worth of the Optional Comprehensive Final Exam varies by student and that student's context. This objective exam has 26 questions graded as if there are 25. Each correct answer to a question on this Optional Comprehensive Final Exam is worth 4% of its idiosyncratic course point value for each unique student. Based upon the instructor's statistical analysis of all students' answers, the instructor unilaterally may alter the grading of specific exam questions. Any student may appeal the grading of any other exam questions. However, only if a student successfully appeals the ambiguity of **AT LEAST TWO** Roman numeral questions on this exam does that student objectively demonstrate non-harmless error due to any ambiguities. Also, a successful appeal only will change *that* student's exam grade and only will do so by the number of successful appeals in excess of **ONE** successful appeals. *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]** immediately following the signature, list in sequence, *solely by number*, each of the questions 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 [i] the instructor; or [ii] the instructor's suite secretary in MH 228; or [iii] a member of the CBA Dean's Office staff in MH 300 no later than 3:00 PM, Friday, December 17, time is of the essence.

**NOTES:**

- A. **Recall the material difference between i.e. (that is) versus e.g. (for example).**
- B. **Use bubble A for TRUE and bubble B for FALSE.**
- C. If the text of a question contains a number (e.g., Amendment XIII), then the truth or falsity of that question never depends upon that number. This is not a test of trivia recall. It is an objective demonstration of your subjective knowledge.
- D. For clarity in distinguishing a "principal" from a principal as well as distinguishing from an "agent" from an agent, quote marks will be used for the generic words "principal" and "agent" and no quote marks will be used for the specific words principal and agent. That is, "principal" **and** "agent" refer to all three relationships (*i.e., principal **and** agent; **and** principal **and** independent contractor; **and** employER **and** employEE*).
- E. For clarity in distinguishing enforceable from **unenforceable** transactions, the word contract is **not** in quotes for an enforceable contract (e.g., a voidable contract), whereas the word "contract" is in quotes for a transaction that is **not** an enforceable contract (e.g., a void "contract").

**QUESTIONS:**

1. **T F** The law seeks to satisfy the People's expectations. (1:2b)
2. **T F** The law imposes liability upon a legal person based, in part, upon degree of knowledge: liability is more likely when a natural person has reason to know than when a mere legal person has receipt of notice. (1:3b)
3. **T F** The USA *Constitution as well as* each USA State's *Constitution* reflects a foundation of a separation of powers. Some of the components of that separation of powers are accurately described as the legislature makes the law, the executive enforces the law, **and** the judiciary interprets the law. Accordingly, it **never** is appropriate for the judiciary to actively interpose itself between the executive using procedural due process **and** an individual whose interests are impinged by that executive's actions. (1:4b)
4. **T F** The law of civil wrongs is known as tort law. In tort law the defendant has legally liable for a tort if the plaintiff proves by probable cause evidence that the defendant both owed to the plaintiff **and** breached that duty of care **as well as** that that breach was the proximate cause of the plaintiff's damages. (1:7b)
5. **T F** Criminal law creates **and** applies a public penalty for wrongs suffered by the whole of society. A criminal statutes is void for vagueness if a legal person defendant lacks the capacity to obtain scienter (*e.g., natural person defendant is mentally retarded*) both the bad deed **and** the bad thought prohibited by the crime. (1:8c)
6. **T F** In both tort law **and** in contract law the purpose of compensatory damages is to make the parties whole. (1:13a)
7. **T F** In the elements **and** functions of Capitalism the role of government is to assure a sufficient quantity **and** quality of private property, prices, markets, **and** competition so that those elements do deliver their functions. (1:13c)

- 8. T F** Some areas of law apply special rules that alter the general rules of contract law due to the special circumstances of the parties' relationships. All insurance contracts always are adhesion contracts; **and**, all ambiguities in all insurance contracts always are interpreted against the insurER **unless and until** the insurED has had a reasonable opportunity to discover **and** does reasonably request clarification of that ambiguity. (1:14a)
- 9. T F** Like all other sciences, economics is based on many moral lies. Two major proxy variables that economics uses are price **and** time. Price (*i.e., dollar value*) is assumed to objectively represent all values. Time (*i.e., clock time*) is assumed to objectively represent process cycles. (1:15a)
- 10. T F** Like all other sciences, economics is based on many moral lies. While all economists objectively know that any party to an economic transaction that is **not** willing to trade **as well as** any party to an economic transaction that is **not** able to trade is **not** captured by either a supply curve **or** by a demand curve, most economists routinely ignore most such externalities. (1:15c)
- 11. T F** For a common law defendant to be legally liable for the tort of common law fraud the plaintiff must prove by the preponderance of the evidence that the defendant knowingly **and** intentionally **mis**represented a material fact **as well as** that the plaintiff justifiably relied **and** that **mis**representation was the proximate cause of the plaintiff's damages. (1:7b) (2:3)

- 12. T F** Real property owners have both rights **and** duties; some of which are:
- [i] an owner of a fee simple commits waste by mining ground water;
  - [ii] both personal property and real property can be abandoned (*e.g., via adverse possession*); **and**
  - [iii] the owner of an easement in gross, **but not** the owner of a profit in gross, is an owner of real property adjacent to the real property which is the dominant estate for the subservient estate of the easement **or** the profit in gross. (2:7)
- 13. T F** The four main categories of "intellectual property" are patent, copyright, trademark, **and** trade secret. Each of the four has different rules. Some of the differences are as follows.
- [i] all USA State issued patents are enforceable until the USA federal government issues a patent on the same invention;
  - [ii] most USA State copyrights are automatic **whereas** all USA federal copyrights require registration by the author;
  - [iii] since trademarks are governed by the law of free speech, parody of trademarks is the right of the speaker; **and**
  - [iv] by rebuttable presumption, inventions by employEes that solely are protected by trade secrets create rights for the employER, **not** the employEE. (2:9)
- 14. T F** If a document is signed **and** issued by its creator, **and** on the face of that document, is a writing of an **unconditional promise or** order to pay to bearer **or** to order a sum certain in money at a definite time **or** on demand, then that document is a negotiable instrument. (2:11)
- 15. T F** Every person whose signature is on the front of an instrument (*i.e., either a promissory note or a draft*) has primary liability on that instrument. However, a financial institution's (*e.g., bank*) signature liability varies between its primary liability for its own cashier's check versus its primary liability as the signer accepting a check issued by a customer drawer of that financial institution. (2:15)

- 16. T F** An employEE whose invention is patented is rebuttably presumed to **not** have invented under a "hired to invent" employment agreement.  
An independent contractor who authors a copyrighted work is rebuttably presumed to **not** have authored under a "work made for hire" employment agreement.  
A [i] prior, [ii] written, [iii] signed, [iv] contract achieves rebuttal.  
(2:9) (3:2c)
- 17. T F** An employER **and** all of the employER's supervisory subagents  
(*e.g., corporation, CEO, and all supervisors in chain-of-command*)  
are personally legally liable for sexual harassment in the workplace  
**unless**  
[i] the employER has a written policy  
regulating sexual harassment in the workplace, **and**  
[ii] that policy has been communicated to all in the workplace, **and**  
[iii] that policy is, in fact, enforced as written. (3:7a)
- 18. T F** A general partnership is a legal person. (3:8b)
- 19. T F** A single member of a corporation's Board of Director is **not** the principal.  
The principal is the corporation.  
A single member of a corporation's Board of Director is an agent of the corporation. (3:11c)
- 20. T F** The legal phrasing of the business judgment rule is identical for corporate directors **and** for corporate officers.  
However,  
in a variety of ways, the business judgment rule protects directors more than it protects officers from personal liability  
for business decisions of the corporation that go awry. (3:12b)
- 21. T F** The corporation's Board of Directors has the power to waive a corporate director's conflict of interest **as well as** the power to waive a corporate officer's conflict of interest. (3:12c)

- 22. T F** To be a lawful contract a shareholders' agreement must be for a legal subject matter.  
There is more legitimate business interests to support a shareholders' agreement in a close corporation than in the generic publicly-held corporation.  
However, **neither** in a close corporation shareholders' agreement **nor** in a publicly-held corporation shareholders' agreement may a shareholder promise how that shareholder will cast votes as a Director (*e.g., who will be appointed CEO*) in exchange for that shareholder obtaining other shareholders' votes for election to the corporation's Board of Directors. (3:13a)
- 23. T F** Some securities are exempt from federal registration requirements.  
For example, since the federal government's Commerce Clause power requires a regulated event both to be a close cause of **and** to be a substantial cause of commerce between the several States, issues of securities that are either intrAstate securities **or** small (*e.g., under SIM*) are exempt. (3:16a)
- 24. T F** Under SEC Rule 16b-5 a tippER always is obligated to disclose material **non**-public information prior to trading; **whereas** a tippEE **never** is obligated to disclose material **non**-public information prior to trading. (3:16c)
- 25. T F** A franchise tax really is a subsidy (*e.g., tax credit*) **and** thus is a particular advantage of franchises versus other forms of business. (3:17a)
- 26. T F** Because "principals" **and** "agents" are fiduciaries to each other, the doctrine of at-will employment in most jurisdictions includes an implied cause of action for bad faith termination.  
The remedy is the benefit of the bargain lost.  
At the election of the party acting in good faith, that remedy may be either pecuniary (*e.g., cash*) **or** may be specific performance. (3:18c)

**ANSWER KEY: Fall 2010: LAWS 3940: Optional Comprehensive Final Exam**

1. FALSE.
2. FALSE.
3. FALSE.
4. FALSE.
5. FALSE.
6. FALSE.
7. true.
8. FALSE.
9. true.
10. true.
  
11. true.
12. FALSE.
13. FALSE.
14. true.
15. FALSE.
16. true.
17. true.
18. true.
19. true.
20. true.
  
21. FALSE.
22. true.
23. true.
24. FALSE.
25. FALSE.
26. FALSE.