
print name on the line above as your signature

INSTRUCTIONS:

1. **NOTICE: SYLLABUS REVISION.** At PDF page 3 of 7 of the Syllabus a post-Exam #3 course point total of 800 points is **required to earn the right to elect to the take the Optional Comprehensive Final Exam.** That 800 points has been reduced so that **only 770 points are required.**
<http://cba.unomaha.edu/faculty/mohara/web/LEAf10-Syllabus.pdf>
2. This Exam #3 must be completed within the allocated time (i.e., *between 9:00 AM and 10:15 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. This Exam #3 is worth 200 of the course total of 1,000 points.
This objective exam has 21 questions graded as if there are 20. Each correct answer to a question on this Exam #3 is worth 10 course points.
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 the instructor or to the instructor's suite secretary in MH 228 no later than 9:15 AM, Monday, December 13, 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. Below are three statements: a., b., and c. Two of those three are true. One of those three is false. Which one is FALSE?**
- a.** The law of civil wrongs is known as tort law.
In tort law the types of torts are:
intentional torts, negligence torts, **and** strict liability torts.
In tort law the plaintiff has legal liability for a tort when the plaintiff knowing **and** voluntarily assumes the risk created by the defendant. (1:7)
- b.** Some areas of law apply special rules that alter the general rules of contract law due to the specific circumstances of the parties' relationships. For example, 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** object to that ambiguity.
Also for example, the trustee is a fiduciary (*i.e., owes a duty of utmost good faith*) to both the beneficiary **and** to the grantor. (1:14)
- c.** Like all other sciences, economics is based on many moral lies. Two major proxy variables that are used by economics 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 all process cycles.
Thus, the supply **and** demand (S&D) curves are based upon a host of assumptions related to *ceterus paribus* (*i.e., all other things held equal*). For example, economics assumes that the most volatile **non**-price determinate of both S&D (*i.e., expectations*) does **not** change **as well as** assumes that the most dynamic **non**-price determinate of either S&D (*i.e., technology*) does **not** change. (1:15)

**2. Below are three statements: a., b., and c.
Two of those three are true. One of those three is false.
Which one is FALSE?**

- a. The defendant is legally liable for a tort if the plaintiff proves by the preponderance of the evidence that the defendant both owed **and** breached a duty of care to the plaintiff **as well as** that that breach was the proximate cause of the plaintiff's damages. (2:3)
- b. Real property owners have both rights **and** duties; some of which are:
 - [i] an owner of a fee simple can **not** commit waste by mining ground water;
 - [ii] **mis**laid property must be delivered, in constructive trust, to the real property owner where the **mis**laid property was found;**and**
 - [iii] to own either an easement **or** a profit that owner need **not also** own real property adjacent to the real property which is the dominant estate for the subservient estate of the easement **or** the profit. (2:7)
- c. The four main categories of "intellectual property" each has different rules. Some of the differences are as follows.
 - [i] **no** USA State may issue any patents **or** copyrights;
 - [ii] trademarks are governed by the law of commercial free speech, thus the primary legal purpose of trademarks is to serve consumers **and** the primary legal purpose is **not** to serve business owners; **and**
 - [iii] reverse engineering is a lawful appropriation of a trade secret. (2:9)

**3. Below are three statements: a., b., and c.
Two of those three are true. One of those three is false.
Which one is FALSE?**

- a. When the "agent" acts within the scope of authority an "agent" acts instead of **and** on behalf of the "principal"; therefore, the "principal" has **un**limited personal liability for those actions.
- b. All "agents" owe their "principals" **as well as** all "principals" owe their "agents" fiduciary duty of utmost good faith.
- c. The "agent" **and** the "principal" control their relationship. Accordingly, their prior, written, signed contract determines whether their relationship is that of a principal **and** an agent, **or** principal **and** independent contractor, **or** an employER **and** an employEE.

- 4. Below are three statements: a., b., and c.
Two of those three are true. One of those three is false.
Which one is FALSE?**
- a. Generically, prior to the "agent's" action, the "principal" may delegate any of its own authority to its "agent"; in contrast, ratification must occur prior to any material change in circumstances.
 - b. The USA *Constitution* Amendment XIII (*i.e., eliminating slavery*) makes the USA the country with the strongest version of at-will employment.
 - c. A "principal" breaches an implied duty to its "agent" if the "principal" terminates the agency due to the "agent's" having acted as a whistleblower with regard to the "principal's" own felonies.
- 5. Below are three statements: a., b., and c.
Two of those three are true. One of those three is false.
Which one is FALSE?**
- a. In a right-to-work State (*e.g., Nebraska*) a close shop is **not** lawful.
 - b. Because the specific controls the general, a union's strike does **not** violate the *Per Se Unreasonable Test* of the Sherman Act **and** is **not** a felony.
 - c. State laws (*e.g., Workers' Compensation statutes*) tend to focus on the causes of a problem while federal laws (*e.g., Occupational Safety and Health Act*) tend to focus on the symptoms of a problem.
- 6. Below are three statements: a., b., and c.
Two of those three are true. One of those three is false.
Which one is FALSE?**
- a. EmployEE workplace privacy rights are greatest when the employEE is using the employER's telephone because that is at the core of the federal government's Commerce Clause power.
 - b. Proof of disparate treatment requires objective proof of subjective intent; whereas proof of disparate impact requires objective proof of objective intent.
 - c. All employment quotas always violate all employment discrimination laws.

**7. Below are three statements: a., b., and c.
Two of those three are true. One of those three is false.
Which one is FALSE?**

- a. Only if
an employER has a written policy regulating sexual harassment in the workplace,
and only if
that policy has been communicated to all in the workplace,
and only if
that policy is, in fact, enforced as written,
is **neither** the employER **nor** any of its subagents
personally liable for any sexual harassment
arising within the purview of their lawful exercise of managerial authority.
Otherwise,
a sexually harassing "agent" of the employER
is acting within the scope of authority.
- b. National origin is the most likely lawful justification for a
Bona Fide Occupational Qualification (*BFOQ*).
- c. Voluntary affirmative action
focused on assuring the applicant pool **no** less than fully represents the
traditionally discriminated against segment of the relevant labor pool
rarely is **unlawful**.
Voluntary affirmative action
when making decisions to hire, to pay, to promote, **or** to fire
routinely is **unlawful**.

**8. Below are three statements: a., b., and c.
Two of those three are true. One of those three is false.
Which one is FALSE?**

- a. A sole proprietorship always is a natural person.
- b. A general partnership (*in the vast majority of contexts*) is **not** a person.
- c. In some material respects federal regulation of the sale of a franchise
is far more stringent than
federal regulation of the issue of securities;
in other respects far less so.

- 9. Below are three statements: a., b., and c. Two of those three are true. One of those three is false. Which one is FALSE?**
- a. All general partners simultaneously are both principal **and** agent to all other general partners.
 - b. If the general partnership agreement is a prior, written, signed contract, then that contract may alter a general partner's personal liability owed to a third party that deals with the partnership.
 - c. **Not** all jurisdictions allow a corporation to be a general partner.
- 10. Below are three statements: a., b., and c. Two of those three are true. One of those three is false. Which one is FALSE?**
- a. All limited partnerships have at least one general partner with **unlimited** personal liability; **and**, far more easily **and** frequently than piercing the corporate veil, a limited partner can be transformed into a general partner.
 - b. **Unlike** corporations, both a limited partnership (LP) **and** a limited liability company (LLC) offer advantages to investors in the form of pass-through federal income tax treatment. Therefore, LPs **and** LLCs are the best form for a business.
 - c. A corporation, a LP, **and** a LLC each is a mere legal person.
- 11. Below are three statements: a., b., and c. Two of those three are true. One of those three is false. Which one is FALSE?**
- a. The *ultra vires* doctrine applies to the corporation itself **and** does **not** apply to corporate officers.
 - b. To pierce the corporate veil is an equitable remedy authorized by statute to address abuse of the corporate form
(*e.g., commingling corporate assets with personal assets*).
 - c. A corporate director is **neither** an agent **nor** a principal.

**12. Below are three statements: a., b., and c.
Two of those three are true. One of those three is false.
Which one is FALSE?**

- a. Both a director **and** a shareholder have the right to inspect corporate records. The director's right is absolute **whereas** the shareholder's right is reasonable
- b. The business judgment rule protects both directors **and** officers from personal liability for business decisions that go awry. Directors **and** officers receive the same protection. Therefore, in a well run corporation the same natural person simultaneously will serve as Chair of the Board of Directors **and** Chief Executive Officer (CEO).
- c. The board of directors may waive any conflict of interest an officer has.

**13. Below are three statements: a., b., and c.
Two of those three are true. One of those three is false.
Which one is FALSE?**

- a. There is more legitimate business interests to support a shareholder's agreement in a close corporation than in the generic publicly-held corporation. Accordingly, in a close corporation shareholder agreement a shareholder may promise how that shareholder will cast votes as a director (*e.g., who will be appointed CEO*) if elected by the shareholders to the board.
- b. Nebraska requires cumulative voting of corporate shares.
- c. A *de facto* corporation is **not** the same thing as *de facto* control.

**14. Below are three statements: a., b., and c.
Two of those three are true. One of those three is false.
Which one is FALSE?**

- a. A corporate merger involves two corporations **whereas** a corporate consolidation involves three corporations.
- b. Both the shareholders **and** the boards of all corporations involved in any merger **or** in any consolidation must give prior approval.
- c. If corporation ABC buys, for cash, all of the assets of corporation XYZ, then ABC does **not** necessarily **also** get all of XYZ's liabilities.

**15. Below are three statements: a., b., and c.
Two of those three are true. One of those three is false.
Which one is FALSE?**

- a. A security is an investment of money in a common enterprise with a reasonable expectation of profit: that profit derived from the **undeniably** significant efforts of others.
- b. Security law fraud exists if, in a covered transaction, the defendant **misrepresents or** omits a material fact thereby proximately causing injury.
- c. Material in the context of security law fraud is much smaller than material in the context of common law fraud. Material in the context of security law fraud is something big enough it would have changed the mind of a reasonably prudent investor.

**16. Below are three statements: a., b., and c.
Two of those three are true. One of those three is false.
Which one is FALSE?**

- a. 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 \$5M*) are exempt.
- b. Under SEC Rule 10b-5 a statutory insider is rebuttably presumed to trade on **non**-disclosed material **non**-public information in any buy **and** sell combination within a six month period.
- c. Under SEC Rule 16b-5 a tippee is obligated to disclose material **non**-public information prior to trading only if that information was obtained via a breach of a fiduciary duty.

- 17. Below are three statements: a., b., and c.
Two of those three are true. One of those three is false.
Which one is FALSE?**
- a.** A franchise tax is a particular **dis**advantage of franchises versus other forms of business.
 - b.** In **no** fewer than many jurisdictions, **neither** a partnership agreement **nor** a LLC operating agreement need be in writing.
 - c.** A valid trademark might be registered with **neither** the business' State of residence **nor** with the federal government.
- 18. Below are three statements: a., b., and c.
Two of those three are true. One of those three is false.
Which one is FALSE?**
- a.** Some, **but not** all, private offerings of securities must go through the complete federal registration process (*e.g., prospectus prior to sale*).
 - b.** To accurately reject the standard corporation as the best mechanism for controlling risk of investments becoming the personal liability of the investor, the person doing the analysis must perceive tax liability as the major source of liability as measured in discounted present value.
 - c.** 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 that is coupled with the remedy of return to employment.

**19. Below are three statements: a., b., and c.
Two of those three are true. One of those three is false.
Which one is FALSE?**

- a. The Focus on Ethics (FoE) stress that the natural person making decisions within a corporation **and** for that corporation (*i.e., a mere legal person*) discharges all ethical duties when satisfying the moral minimum. The Focus on Ethics (FoE) stress that privacy law, more than most forms of law, very closely synchronize ethical duties with legal duties. The Focus on Ethics (FoE) stress that fiduciary duties parallel ethical duties more closely when the parties share a contractual relationship that is a commercial contract rather than when the parties share an insurance contract.
- b. What is legal is **not** necessarily ethical; **and**, what is ethical is **not** necessarily legal. For a natural person's conduct to be **un**ethical that natural person must act with scienter. If a natural person can act, then that natural person confronts an ethical question.
- c. Because the law seeks to satisfy the reasonable expectations of a Reasonable Person, what is ethical is **not** necessarily legal.

**20. Below are three statements: a., b., and c.
Two of those three are true. One of those three is false.
Which one is FALSE?**

- a. The Focus on Ethics (FoE) stress that ethical origins underlie the legal rules related to good faith **and** the legal rules related to holder in due course (HDC). The Focus on Ethics (FoE) stress that a perfected security interest creditor is legally superior, **but** is **not** necessarily ethically superior to, a debtor defaulting on that security interest.
- b. Ethically, if an "agent" acts within the scope of authority, then that "agent's" "principal has personal ethical liability, **but**, that "agent" does **not** have personal ethical liability.
- c. The law of limited liability defines the legal contours of an investor's *qua* property owner's legal liability; **but**, that legal treatment does *not* accurately define that investor's *qua* property owner's ethical responsibilities.

21. FREEBEE: ANSWER "E" TO OBTAIN ONE CORRECT ANSWER

22. Today, Dec. 8, I forecast that Monday, Dec. 13, I will elect to take the final.