
 print name

INSTRUCTIONS:

1. The Group Final Exam must be completed within the allocated time.
As Group members finish the Solo Final Exam those Group members may converse in writing and orally, in a voice of reasonable volume.
Be considerate of your fellow students.
It is a closed book exam.

2. The last member of the Group to finish the Solo Final Exam will receive the Group's answer sheet for its Group Final Exam.
All Group members must (*using their printed names as their signature*) sign the Group Final Exam answer sheet prior to submitting it for its first grading.
Only then may a Group submit its Group Exam for grading.
Time permitting; each Group may submit its answer sheet for **grading three times**.
At each grading, the instructor shall identify which questions are answered correctly.

3. At the conclusion of its Group Final Exam on **Wednesday**, each Group shall turn in all copies of the Group Final Exam and its single answer sheet.
At the conclusion of its Group Final Exam on **Thursday**, each Group shall exchange its Group Final Exam answer sheets for all of their Solo Final Exams as well as answer keys for both exams *and then depart the room*.
Wednesday night students, no earlier than the start of the Thursday night exam (*i.e., 7:00 PM in RH 214*), may retrieve copies of both their Solo Final Exams and Group Final Exams as well as obtain answer keys for both exams.

4. The Group Final Exam is worth 10% of the course grade.
The Group Final Exam has 17 questions graded as if there are 17.
Each of these 17 questions shall use the **eight answer options** at the top of this page.
No student --alone-- may appeal the grading of Group Final Exam's questions.
Only Groups may appeal the grading of a Group Final Exam question.
To have standing to sue for the appeal of a Group Final Exam question every member of the Group needs to have appealed both every question from the Solo Exam from which the Group Exam question was derived as well as appealed the Group Exam question.
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.

5. **All appeals of Group Final exam questions** must satisfy the same typing and form requirements as used for appeals of Solo Final Exam questions.

6. Grades will be posted to O'Hara's web site before 5:00 PM Monday, May 12.
An email notice of the posting will be sent.

QUESTIONS:

NOTE: Each of the questions below is in the same format. Each question asks "Which of the following is/are true?". Each question then presents three answer options a., b., and c. However, each question has eight answer options, but only three are printed so as to save paper. The eight answer options are printed in the header of every page.

1. Which of the following is/are true?

- a. The law favors the objective over the subjective, **but** the law requires objective proof of the subjective on occasion. The reasonable person standard requires actual knowledge.
- b. When there is rapid technological change, some firms are forced into shut down (*i.e.*, $TR < TC$) while other firms may be forced into destructive competition (*i.e.*, $TR \text{ persistently} < VC$).
- c. The old common law was hostile to both assignments of rights **and** delegations of duties because both were presumed to be materially adverse to the parties' reasonable expectations. The new common law encourages free assignment, **but** still is hostile to delegations. This hostility can be seen in the requirement that when one corporation seeks to purchase some of the assets of another corporation, then the price paid must be more than mere consideration, the price paid must be reasonable value.

2. Which of the following is/are true?

- a. Assumption of the risk is a defense that reflects the law's strong preference for placing liability on those persons whose actions are both knowing **or** voluntary. The requisite knowing for assumption of the risk might be subjective (*i.e.*, *actual knowledge*) **or** objective (*i.e.*, *receipt of notice* **or** *reason to know*).
- b. The law assumes human rationality is a bounded rationality (*i.e.*, *can not know all*); reality presents an environment in which risk can **not** be zero; **and** the array of **and** apparent magnitude of known risks is dependent upon the amount of aggregated information.
- c. A UCC Article 9 security agreement (*e.g.*, *written agreement, signed by the debtor, that describes collateral the debtor owns and grants to the creditor a security interest*) creates attachment. If the collateral is a UCC Article 2 goods, then identification is required prior to attachment.

3. Which of the following is/are true?

- a. USA business law often relies upon efficiency as ethics (*i.e., profit maximization **and** cost minimization*) for its orientation. Because of spillovers, what is profitable from one point of reference might **not** be profitable from another. The society is the point of reference for measuring efficiency as ethics.
- b. An "agent" acts instead of an on behalf of the "principal". Accordingly, the "agent's" knowledge is imputed to the "principal" **and** the "principal" is vicariously liable for the actions of the "agent". A "principal" can **not** avoid strict liability by acting through an "agent".
- c. A UCC Article 9 financing statement (*i.e., a written document, signed by the debtor, that describes [i.e., sufficient to place the world on notice] the collateral, **as well as** provides the name **and** address of both the debtor **and** the creditor*), when filed creates perfection. If multiple creditors claim the same collateral, then their priority is set by the first to attach **and** then first to perfect. A PMSI (*purchase money security interest*) in consumer goods is perfected automatically.

4. Which of the following is/are true?

- a. Warranties can be express (*i.e., words: oral **or** written*) **or** implied (*i.e., acts, words, **and/or** circumstances*). While express, puffing is **not** an example of an express warranty.
- b. There are three types of good faith: consumer (*i.e., honesty in fact*); merchant (*i.e., honesty in fact **and** commercial reasonableness*); **and** fiduciary (*i.e., honesty in fact **and** personalized objective*). Since each general partner is simultaneously an agent **and** a principal, each owes the other general partner(s) a fiduciary duty of good faith. Each partner shares equally the partnership's profits, losses, management, **and** assets; **unless** there is an express agreement to the contrary.
- c. The automatic stay of bankruptcy does **not** stop a preferential transfer, **but** does set the measuring date.

5. Which of the following is/are true?

- a. Governments in the USA are obligated to provide persons with due process (*i.e., notice **and** hearing, both proportional to the interest involved [i.e., life, liberty, property]*). Private parties do **not** owe each other due process. However, if the power between parties clearly is **unequal**, then the law might require something called commercial due process. For example, in an at will employment, a manager is presumptively acting outside of the scope of authority **and** is personally liable for an underling's sexual harassment **unless** that manager has a policy prohibiting sexual harassment, has communicated that policy to the underlings, **and** enforces that policy.
- b. Typically, communications between an accountant **and** client are confidential; **and** typically, communications between an attorney **and** client are privileged. Typically, a professional's liability to third parties is **not** based on privity, **but** the professional needs to have actual knowledge of the third party.
- c. The cram down provision of in a Chapter 11 bankruptcy is applied by the Bankruptcy Court when the debtor in possession **and** the creditors can **not** reach an agreement on which reasonable restructuring plan to implement. Their dispute often focuses upon which executory contracts will be avoided by the trustee **and** which debts will be discharged. The debts that can be discharge in Chapter 7 **and** Chapter 11 are fewer than the debts that can be discharged using the Chapter 13 Super Discharge. However, even a Chapter 13 Super Discharge can **not** discharge alimony **or** child support, a mechanics lien that is **not** yet required to be filed, **or** a CERCLA debt.

6. Which of the following is/are true?

- a. There are three major separations of powers (*i.e., Individual versus government; federal versus State; **and** legislative versus executive versus judicial*). The different burden of proof for a criminal case (*i.e., beyond a reasonable doubt*) **and** for a civil case (*i.e., preponderance of the evidence*) reflects all of these three separations of power.
- b. Law provides rules for contracts (*i.e., agreement, capacity, consideration, reality of assent, form, **and** subject matter*), while equity is available when there is **no** adequate remedy at law. For example, promissory estoppel is an equitable remedy that sometimes substitutes for contract when there is a failure of consideration.
- c. All limited partnerships required a general partner. Few States allow a corporation be the sole general partner of the limited partnership.

7. Which of the following is/are true?

- a. The legislature tends to react to problems in society between groups of similarly situated persons (*i.e., unequal bargaining power, history of abuse, and/or disparate impact*). In contrast, the judiciary tends to limit its analysis to the plaintiff **and** the defendant. Accordingly, an entrepreneur is **not** likely to get much help from either the legislature **or** the judiciary when confronting enforcement of a contract with a venture capitalist that reflects a risk preference (*i.e., small i in Rule of 70 formula*) for an early **and** liquid exit by the venture capitalist. The entrepreneur is expected to perform due diligence.
- b. The amount of capacity required by the law for a transaction varies. From greatest to least, the amount of required capacity ranges: crime, contract, tort, will.
- c. If a corporation's BoD elections use cumulative voting, then a shareholder can guarantee that shareholder a seat on the BoD by owning one more share than one divided by the number of Directors; **but** that shareholder typically owes fiduciary duties to other shareholders. Obviously, if, a shareholder owns enough shares to unilaterally force a short form merger, then even greater fiduciary duties are owed to the other shareholders.

8. Which of the following is/are true?

- a. A plaintiff must have standing to sue (*i.e., injury in fact and within the zone of protected interests*). At the same time, the court must have geographic (*i.e., substantial minimal contacts*) jurisdiction **and** subject matter jurisdiction. In the USA, as long as the choices are consistent with jurisdiction, parties to a contract are allowed discretion in using choice of law (*e.g., Delaware*), choice of forum (*e.g., federal district court*), **and** choice of venue (*e.g., Lincoln*) clauses in their contracts.
- b. The common law of contracts requires consideration (*i.e., not a fair price; rather, objective manifestation of the intent to be bound to the contract*). In contrast, the UCC (*i.e., Uniform Commercial Code*) statute often relies on value. Value may **or** may **not** be consideration (*e.g., past consideration*).
- c. Officers are agents of the corporation while Directors are a part of the physical embodiment of the principal and are **not** agents. The Business Judgment Rule immunizes both Officers **and** Directors from personal liability for honest mistakes that cause losses for the corporation. To be immunized, persons must use their best judgment, must act in good faith, **and without** any conflict of interest. Their decisions must be informed decisions within the scope of authority, must have a reasonable basis, **and** must be made with the care of a reasonable person. Directors may justifiably rely upon Officers, **but** Directors can **not** have conflicts of interest excused by the Board.

9. Which of the following is/are true?

- a. A trial court finds facts **and** applies the law. An appellate court finds error **and** interprets the law. An appellate court will affirm the trial court **unless** the appellate court finds any error of fact, a **non**-harmless error of procedure, **or** a clear error of law.
- b. Common law fraud (*i.e., defendant knowingly **and** intentionally **misrepresents** a material fact inducing the plaintiff's justifiable reliance **and** causes the plaintiff's injury*) is difficult to prove by a preponderance of the evidence. Accordingly, venture capitalists often insist upon milestones, vesting, **and** then lock up.
- c. To Pierce the Corporate Veil can be either a remedy in law **or** equity. If the corporation perpetrates a fraud (*e.g., parties*), is thinly capitalized, ignores formalities, **or** there is material commingling, then a derivative law suit must be brought to expose the Directors **and/or** shareholders to personal liability.

10. Which of the following is/are true?

- a. The Police Power is the power of the States to regulate for the People's health, safety, morals, **and** general welfare. The federal government does **not** have the Police Power.
- b. There are two types of mistake that prevent contract formation: mutual mistake (*i.e., both parties make the same material mistake of fact*), **and** unilateral mistake (*i.e., the **non**-mistaking party objectively knows of the mistaking party's material mistake of fact*). A Force Majeure clause reduces the likelihood that either party successfully can claim mistake. Similarly, a liquidated damages clause (*i.e., at the time of contract, a reasonable estimate of damages that the parties reasonably believe will be difficult to estimate at the time of loss*) **also** reduces the likelihood of a successful claim of mistake.
- c. Congress outlawed employers using the cheap information of stereotyping with respect to protected classes in employment (*e.g., women's work*). Each employment decision must be based on whether the individual applicant objectively is qualified for the job. Congress did recognize that a *bona fide* union seniority plan is proportional to the parties' legitimate business interests **and** is a valid means of determining objective qualification. In contrast, a BFOQ recognizes that protected class membership sometimes is necessary for an applicant to be objectively qualified (*e.g., female with functioning uterus to serve as surrogate mother*).

11. Which of the following is/are true?

- a. The federal government, under the Commerce Clause, has the power to regulate all commerce with a close **and** substantial **effect** on commerce between the States.

- b. The Statute of Frauds requires five types of contracts (*i.e., sale of goods at or over \$500; sale of an interest in land; must take longer than one year; guarantee the debts of another; and in consideration of marriage*) to have the material terms in a written memorandum of sufficient definiteness that the court can enforce the parties agreement. One signature (*i.e., any mark with the current intent to authenticate the document*) is required. The federal government has preempted the States on the issue of what constitutes an "e-sign" in most areas of commerce between two merchants.

- c. Both the State **and** the federal governments are concerned about risk in the workplace. They take different approaches to the same problem. The States use the Workers' Compensation laws that remove many common law barriers to employee recovery. The States make employers liable for those risks arising out of **and** happening in the course of employment. The federal OSHA (*Occupational Safety and Health Act/Administration*) requires employers to remove all known **and** preventable risks of serious physical injury. OSHA **also** mandates reporting that continually increases known risk **as well as** mandates **no** employer retaliation against employee reporting risks to OSHA. The States tend to focus on eliminating the cause of the problem, while the federal government tends to focus on addressing the symptom.

12. Which of the following is/are true?

- a.** The federal power of preemption is favored **and** will be allowed if a clear intent of Congress **and** national interests outweigh State interests; **or** an express of intent of Congress **and** a need for uniformity. Congress has preempted the States **and** created a preference for arbitration of disputes in commerce. Each State only may restrict arbitration contracts in commerce via that State's general law of contracts. For example, Nebraska is opposed to arbitration **and** expresses this opposition by holding that a person lacks contractual capacity for any waiver of the right to trial until that person has standing to sue for the right waived.
- b.** Contracts require the voluntary exercise of capacity (*i.e., the ability to grasp the natural consequences of actions*). Duress can prevent the requisite voluntary exercise of capacity. Of the types of duress, physical duress is most likely to be legally objectionable duress. To the **untrained** eye, emotional duress is difficult to distinguish from **undue** influence, **but** the distinction is quite clear. Economic duress is far more likely to be legally objectionable when it springs from predatory behavior rather than mere poverty. If legally objectionable duress is proved, then damages are owed.
- c.** Reverse engineering defeats a patent, **but** reverse engineering merely reduces the competitive value of a trade secret **without** necessarily ending the trade secret. If an employee is hired to reverse engineer, then by that fact alone, the employee is **not** hired to invent; **but**, is far more likely to have been hired to invent than an ordinary employee.

13. Which of the following is/are true?

- a. Free speech comes in two broad forms: political **and** commercial. Political free speech is the right of the speaker, lacks objective truth, **and** government only may reasonably regulate its time, place, **and** manner. Government may **not** regulate the content of political free speech. In contrast, commercial free speech is the right of the listener, has objective truth, **and** government, in addition to reasonable time, place, **and** manner regulation, may regulate its content if that regulation directly serves a substantial governmental interest, is proportional to that interest, **and** is the least restrictive means of achieving that interest.
- b. The common law defines "material" as big enough that it would have changed your mind, while security law fraud defines "material" as what a reasonably prudent investor would want to know. The common law uses that definition of material in mutual mistake, unilateral mistake, **and** common law fraud, **but** in each context, the definition has substantially different meanings. For guidance, on what is **and** what is **not** material, one should recall that the Statute of Fraud identifies four terms as material terms (*i.e., parties, signature, time, and consideration*).
- c. An employee, acting within the scope of authority, who authors **and** publishes on the employer's web a parody of a copyrighted work is engaged in a constitutionally protected fair use **as well as** a work made for hire. In contrast, an employee, acting within the scope of authority, who authors **and** publishes on the employer's web a parody of a famous trademark is engaged in infringement **and** the employer is vicariously liable.

14. Which of the following is/are true?

- a. Privacy is an implied (*i.e., 9th Amendment*) constitutional right in the USA; while in the EU (*i.e., European Union*) privacy is a statutory right. Privacy in the USA has less sweeping legal protection than in the EU. Because of the relative importance of the right to privacy, comity does **not** require a foreign jurisdiction to necessarily accept another's law of privacy.
- b. A defendant commits a tort when the defendant breaches a duty of care owed to the plaintiff **and** at the time of that breach the defendant did foresee the plaintiff's injury, **and** when the defendant has **no** defenses. Torts are either intentional, negligent, **or** strict liability torts. In Nebraska, punitive damages are available for each of these types of torts.
- c. A security (*i.e., an investment of money in a common enterprise with an expectation of profit, that profit derived from the undeniably significant efforts of others*) need **not** be issued with a par value.

15. Which of the following is/are true?

- a. The 14th Amendment has two major clauses, the Equal protection clause **and** the Due Process clause. The Equal Protection clause rarely will be violated by a State that is regulating business. The Due Process clause requires the States to provide the fundamental rights of the Bill of Rights to all persons within the State's jurisdiction.
- b. Proximate cause in torts **and** consequential damages in contracts require different types of bounded rationality.
- c. Security law fraud (*i.e., misrepresentation or omission of a material fact causing injury*) is easier to prove than common law fraud (*i.e., knowing and intentional misrepresentation of material fact inducing justifiable reliance and causing injury*) in part because the prospectus must disclose all material risks.

16. Which of the following is/are true?

- a. A human is a natural person (*e.g., consumer*) while a corporation merely is a legal person. A shareholder casting a vote to elect a member of the Board of Directors (*BoD*) is exercising part of a property right (*i.e., income, management, assets*). A member of the BoD casting a vote to appoint an Officer, however, is exercising a fiduciary duty. Shareholder agreements that purport to bind a member of the BoD's vote are **not** legal subject matter.
- b. A warranty, a bailment, **and** employment need **not** be contracts, **but** can be if both parties have capacity **and** reality of assent. Because each requires legal subject matter, each can be ruled **unconscionable**. Warranties can be **unconscionable** either as made **or** as **disclaimed**.
- c. A tippee (*i.e., section 10-b*) receives material **non**-public information via a breach of a fiduciary duty. A tippee must choose between **not** trading **and** only trading after disclosure. A statutory insider (*i.e., section 16-b: 10% shareholder, Director, and/or Officer*) is **irrebuttably** presumed to possess material **non**-public information **as well as** fiduciary duty to **not** disclose that information. Statutory insiders may trade **without** disclosure, **but** must offer the corporation all profits.

17. Which of the following is/are true?

- a. Capitalism (*i.e., private property embodies self interest, prices measure self interest, markets coordinate self interest, **and** government regulates self interest*) was one consequence of the year 1500 Major Forces of Change (*i.e., new world, gun power, printing press, rural, **and** labor shortage*). The year 2000 Major Forces of Change (*i.e., one world, WMD, computer, urban, **and** labor surplus*) may spawn the end of Capitalism.

- b. A crime is created by the legislature **and** requires a bad deed, a bad thought, **and no** defenses. One way it is seen that the USA is a Capitalist nation is it is a federal felony to destroy competition. The federal antitrust laws are interpreted by the Courts in two ways: *per se* violations (*i.e., price fixing, horizontal divisions of territories, group boycotts, **and** tying*) **and** the Rule of Reason (*i.e., any restraint is lawful if that restraint is proportional to the parties' legitimate business interests*). The States have similar approaches, **but** are **not** necessarily identical. For example, if a covenant **not** to compete is predatory, then the court may void the entire contract, sever the offensive clause if the remainder of the contract is **unobjectionable**, **or** reform, that is rewrite, the clause to within permissible boundaries (*i.e., reasonable time **or** area*).

- c. Exempt transactions (*e.g., intrastate [i.e., seller, buyer, **and** cash all in one State], small [e.g., \$1M], private [i.e., limited number of sophisticated investors with access to information that would have been disclosed]*) are exempt from registration **but** are **not** exempt from the definition of security law fraud.

a b c d = all e = none f = a+b g = a+c h = b+c

ANSWER SHEET FOR GROUP FINAL EXAM

FIRST

SECOND

FINAL

GROUP MEMBERS

**. PRINT YOUR NAME
. AS YOUR SIGNATURE .**

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____
- 7. _____
- 8. _____
- 9. _____
- 10. _____
- 11. _____
- 12. _____
- 13. _____
- 14. _____
- 15. _____
- 16. _____
- 17. _____

CORRECT ANSWERS ARE CIRCLED .

SCORE _____