
print name

INSTRUCTIONS:

1. The Exam #1 must be completed within the allocated time (*i.e.*, 6:30 - 7:30). 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 the Exam #1, that student will receive an Exam #1 answer sheet and leave the exam room until after the end of Exam #1 (*i.e.*, 7:30, unless all finish earlier, which is quite likely).
4. Grades will be posted to O'Hara's web site no later than 5:00 PM Wednesday, May 21. An email notice of the posting will be sent.
5. The Exam #1 is worth 20% of the course grade. The Exam #1 has 35 questions graded as if there are 33. Harmless errors are far more likely than non-harmless errors in this test design. Any student may appeal the grading of Exam #1 questions. However, only if a student successfully appeals the ambiguity of AT LEAST THREE questions on the Exam #1 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.* Based on a statistical analysis of all students' answers, the instructor unilaterally may alter the grading of specific exam questions for all similarly situated students.
6. **All appeals** of Exam #1 questions must be:
[6A] typed; [6B] signed by the student in three ways, typed name, handwritten signature, and typed social security number; [6C] in sequence, list, immediately following the signature, each of the questions, by number, being appealed; [6D] at the beginning of the appeal of each question appeal, identify two or more reasonable meanings that the question could have had; [6E] argue each question, one at a time, argue why one or more of the identified reasonable meanings is *as* appropriate or *more* appropriate than the meaning used for the answer key answer; and [6F] received in the instructor's RH 502 mailbox (*i.e.*, *no email*)
no later than 1:30 PM on Wednesday, May 21.

QUESTIONS:

1. **T F** Both capitalism **and** USA law are based upon the actor's actions being both knowing **and** voluntary.
2. **T F** Because the law favors the objective over the subject, the law might require an action the actor can **not** perform. In contrast, because ethics requires subjective coherence ethics **never** requires an action the actor can **not** perform.
3. **T F** The outer bound of every person's bounded rationality is the objective knowledge of a reasonable person.
4. **T F** Of the three ethical points of reference (*i.e., individual, subgroup[s], and society*), only society can earn profit by avoiding spillover costs.
5. **T F** Efficiency as ethics requires both profit maximization pursued by the individual **and** cost minimization, typically, enforced by competition.
6. **T F** A well-run business enterprise reduces risk to zero.
7. **T F** The Elements of Capitalism (*i.e., private property, prices, markets, competition, and government*) are the means used to reach the ends of Individualism (*i.e., the Functions of Capitalism: embody, measure, coordinate, and regulate self interest, as well as facilitate private property, prices, markets, and competition*).
8. **T F** The law reacts to changes in society because the law seeks to honor a reasonable person's reasonable expectations. The legislature reacts if there is: **unequal bargaining power, history of abuse, and/or disparate impact.**

9. **T F** The civil burden of proof (*i.e., preponderance of the evidence*) requires less proof than the criminal burden of proof (*i.e., beyond a reasonable doubt*) because the government is setting transaction costs, partially, to reflect the separation of powers.
10. **T F** A plaintiff must have standing to sue. To have standing to sue the plaintiff must have an injury in fact **or** be within the zone of protected interests.
11. **T F** Because express is in words, all implied contracts are express.
12. **T F** A trial court finds fact **and** applies law. An appellate court finds error **and** interprets law. An appellate court will affirm the trial court **unless** the trial court makes: a clear error of fact, a harmless error of procedure, **and/or** any error of fact.
13. **T F** The USA structure of government reflects three separations of powers. The Individual is more important than the government. The federal government is, on occasion, superior to State government. Within government, the legislature makes law, the executive enforces law, **and** the judiciary interprets law. The legislature has the most power **and** the judiciary the least power.
14. **T F** The power of Judicial Review is an express power in the USA *Constitution*. Judicial Review is the power of the judiciary to declare **unconstitutional** an act of the legislature **or** act of the executive.
15. **T F** Privacy is an express right of the People in the USA *Constitution's* Amendment Nine. Each person has constitutional protection when that person has a reasonable expectation of privacy.

- 16. T F** The First Amendment of the USA *Constitution* protects free speech. The courts interpret free speech as having two types: political **and** commercial. Any USA government may reasonably regulate the time, place, **and** manner of free speech. **No** USA government may regulate the content of political free speech.
- 17. T F** All USA governments are required to provide all persons with due process. Procedural due process requires both notice **and** hearing, with both proportional to the interests involved.
- 18. T F** The Police Power is the power of all USA government's to regulate for the People's health, safety, morals, **and** general welfare.
- 19. T F** The Commerce Clause as interpreted by the USA Supreme Court in 1937, grants the federal government power over all commerce with a direct **effect** on commerce between the States.
- 20. T F** Because the USA structure of government relies on federalism, if the federal government has power, then concurrent federal **and** State powers are presumed. Accordingly, preemption is favored, **and** will be allowed, if: there is clear intent of Congress **and** national interests outweigh State interests, **or** there is express intent of Congress **and** a need for uniformity.
- 21. T F** Both the Fourteenth Amendment **and** the Fifth Amendment of the USA *Constitution* contain a due process clause. **But**, they do **not** have identical meanings. The 14th Amendment due process clause requires the State governments to respect each person's fundamental rights of the Bill Rights.

- 22. T F** The Fourteenth Amendment of the USA *Constitution* contains an Equal Protection clause. The 14th Amendment's Equal Protection clause as interpreted by the courts presumes valid a State government's regulation of social **and** economic activities, **as well as** requires a plaintiff to prove that the State regulation was **not** rationally related to a compelling State interest.
- 23. T F** The judicial interpretations of the 14th Amendment Equal Protection clause **and** the Commerce Clause both reflect the concept that a power has a core, penumbra, **and** emanations.
- 24. T F** After providing you with due process of law, the federal government **and** a State government may take your life, may take your liberty, **and** may take your property.
- 25. T F** The law uses three levels of "knowing". Actual knowledge is subjective, while both receipt of notice **and** reason to know are objective.
- 26. T F** The means of Capitalism **never** fail to yield the ends of Capitalism.
- 27. T F** The rules for running society are fair **and** just if a person voluntarily would accept those rules when making that choice from behind the Veil of Ignorance.
- 28. T F** A reasonable person is a legal fiction. A reasonable person is objective.
- 29. T F** The reasonable expectations of a reasonable person are based on that reasonable person's actual knowledge.
- 30. T F** What can be known by a person depends upon the aggregated information available to that person. A person with access to the aggregated information of a firm, objectively, can **not** know more than a person with access to the aggregated information of an industry.

- 31. T F** Good faith comes in three forms:
consumer, merchant, **and** fiduciary.
Each uses the same objective element: honesty in fact.
- 32. T F** The defendant commits fraud
when the defendant intentionally **mis**represents a material value **and** thus
induces the plaintiff's justifiable reliance **and** causes the plaintiff's injury.
- 33. T F** A contract has six elements:
agreement, capacity, consideration, reality of assent,
form, **and** legal subject matter.
- 34. T F** A tort has five elements:
the defendant owes the plaintiff a duty of care,
the defendant breaches that duty of care,
the defendant's breach is the proximate cause of
the plaintiff's injury, **and**
the defendant has **no** defenses.
- 35. T F** Proximate cause
exists
if
the defendant did foresee the plaintiff's injury
at the time of the defendant's breach of the duty.