
 print name

INSTRUCTIONS:

1. The Solo Final Exam and the Group Final Exam must be completed within the allocated time (i.e., 6:30 - 10:30). 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. The Group Final Exam 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 as many as three times**. At each grading, the instructor shall identify which questions are answered correctly.
3. At the conclusion of its Group Final Exam each Group shall exchange its Group Final Exam answer sheet for all of their Solo Final Exams as well as answer keys for both exams *and then **immediately** depart the room.*
4. The Group Final Exam is worth 10% of the course grade. The Group Final Exam has 20 questions graded as if there are 20. Each of these 20 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 files a separate appeal of the Solo Final Exam and those separate Solo Final Exam appeals must contain every question appealed in the Group Final Exam appeal. ***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. An email notice of this will be sent no later than noon on Thursday, June 27.
5. **All appeals of Group Final exam questions** must satisfy the same typing, form, and deadline 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, June 30. 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. Both the law **and** ethics favor the objective over the subjective, thus either might require an action the actor can **not** perform.
- b. The legal risks a corporate Officer **and** a corporate Director face are materially different. For example, a corporate Officer, **unlike** a member of the corporation's Board of Directors, is exposed to strict liability, **but** may act on all waived conflicts.
- c. Partners, between themselves, are free to expressly agree to an **unequal** division of profits **and** losses, management, **and** assets. In contrast, by statute, the shareholders of a corporation may **not** share the management, the income, **and** the assets on any basis other than a *pro rata* basis.

2. Which of the following is/are true?

- a. The outer bound of every person's bounded rationality is the objective knowledge of a reasonable person.
- b. Most information revealed to a fiduciary (*e.g., attorney*) is privileged.
- c. Each State may limit arbitration contracts in commerce only by using that State's general law of contracts. For example, the Nebraska courts hold that, a consumer does **not** have capacity to enter any contract to waive the right to be a plaintiff in a trial until that consumer has standing to sue.

3. Which of the following is/are true?

- a. Of the three ethical points of reference (*i.e.*, *individual*, *subgroup[s]*, *and society*), only society can **not** earn profit by avoiding spillover costs.
- b. Typically, **neither** Officers **nor** Directors are insurers of the corporation. Typically, the honest mistakes of both Officers **and** Directors are immunized by the Business Judgment Rule. However, to be immunized the action of the Officer **and/or** the Director must be: made using the decision maker's best judgment; made as an informed decision with a reasonable basis; made within the decision maker's scope of authority; **and** made with the care of ordinarily prudent person.
- c. The old common law of assignment **and** delegation is similar to the new common law of assignment **and** delegation in that both presumes a delegation materially **and** adversely affects the parties' reasonable expectations. However, a fully disclosed "agent" who only signs a contract with "agent's" personal name freely may delegate the contract to the "principal".

4. Which of the following is/are true?

- a. Efficiency as ethics requires either profit maximization pursued by the individual **or** cost minimization, typically, enforced by competition.
- b. Legally, if a merchant is in an identical circumstance with a consumer then the merchant is more likely than the consumer to have assumed the risk.
- c. The law uses negotiable instruments to facilitate free assignment. A negotiable instrument is a signed writing containing an **unconditional** promise **or** order to pay to bearer **or** order a sum certain in money at a definite time **or** on demand. The maker of a promissory note has primary liability on the note, **but** the drawer of the draft merely has secondary liability.

5. Which of the following is/are true?

- a. 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*).
- b. An "agent" acting within the scope of authority acts instead of **and** on behalf of the "principal". Both the "principal" **and** the "agent" must expressly create the agency.
- c. A security agreement may be oral, **but** a written security agreement must be signed by debtor, grant the creditor rights in the collateral that debtor has, **and** describe the collateral sufficiently to transfer ownership.

6. Which of the following is/are true?

- a. 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.
- b. A shareholder's derivative lawsuit to Pierce the Corporate Veil must allege **and** must prove by a probable cause that the defendant Directors **and/or** defendant shareholders used the corporate form to commit fraud, engaged in an **illegality or an injustice**, ignored required formalities, thinly capitalized the corporation, usurped corporate assets to personal use, **and/or** commingled assets.
- c. A security interest is valid even if **not** perfected. A filed financing statement can perfect most security agreements. A financing statement must be written, signed by both the debtor **and** the creditor, include both the name **and** address of both the debtor **and** the creditor, **and** a description sufficient to place others on notice of the creditor's security interest.

7. Which of the following is/are true?

- a. All written **and** signed contracts are both express **and** implied.
- b. The USA federal government has one-fourth of the Police Power that the USA States have.
- c. The bankruptcy trustee owes the court, **not** the creditors, fiduciary duties. The trustee has the power to **and** the discretion to reverse preferential transfers **and** avoid executory contracts.

8. Which of the following is/are true?

- a. A trial court finds fact **and** applies law. An appellate court finds error **and** interprets law. An appellate court typically reverses the trial court; **unless** the trial court avoids making an error (*i.e., a clear error of fact, a **non-harmless error of procedure, and/or any error of law***).
- b. The federal government can **not** preempt the States' laws in the area of security regulation because the State power is at its core **and** the federal power is its emanation.
- c. Management **and** labor are required to engage in good faith bargaining. There are three types of bargaining topics: mandatory (*i.e., wages, hours, terms **and** conditions of employment*), permissive, **and** prohibited (*e.g., violates the Rule of Reason [i.e., the restraint of trade is **not** proportional to the parties' legitimate business interests]*).

9. Which of the following is/are true?

- a. The power of Judicial Review is an implied power in the USA *Constitution*.
- b. Because the Full Faith **and** Credit Clause of the USA *Constitution* makes the international law principle of comity an implied commitment of each USA State, in the USA, **unlike** the most of the rest of the world, parties to a contract largely have freedom of choice of law, of forum, of venue, **and/or** of language. All that the contracting parties need to have is substantial minimal contacts with the chosen jurisdiction.
- c. The market typically does **not** efficiently allocate work place safety. The knowledge of work place risk typically is materially greater for employERs than employEEs because of complex causation **and** aggregated information. Unions are one solution to this information **asymmetry**. Additionally, even if employERs do pay employEEs an appropriate net present value risk premium, employEEs tend to **misallocate** that risk premium to the material **disadvantage** of the employEEs' economic dependants.

10. Which of the following is/are true?

- a. Privacy is an implied right of the People in the USA *Constitution*.
- b. **Neither** an employment agreement, **nor** a bailment, **nor** a warranty need be a contract; **but** each can be a contract.
- c. The States' Worker Compensation laws alter traditional tort law with respect to work place risks to employEEs arising out of **and** happening in the course of employment. The federal OSHA law's General Duty Clause creates, for covered employERs, an absolute duty to remove all known **and** preventable risks of serious physical injury.

11. Which of the following is/are true?

- a. Any USA government may reasonably regulate the time, place, **and** manner of both political free speech **and** commercial free speech. **No** USA government may regulate the content of free speech.
- b. Between merchants, an anticipatory breach with little opportunity for mitigation is more likely to be predatory economic duress than is an initial agreement that is an adhesion contract.
- c. The EEO laws define BFOQ **and** *bona fide* seniority plans as two situations where protected class membership might make an applicant **or** an employEE objectively qualified to do a job.

12. Which of the following is/are true?

- a. All private (*e.g., corporation*) persons **and** all public (*e.g., State government*) persons are required to provide all persons with procedural due process (*i.e., notice **and** hearing, both proportional to the interests involved*).
- b. Since the Industrial Revolution, **neither** the quantity **nor** the quality of pollution has increased materially. **Neither** a rational person **nor** a reasonable person could assert that current pollution levels do exceed either dynamic limits **and/or** static limits of needed ecosystems.
- c. A manager has **unlimited** personal liability for any **and** all sexual harassment perpetrated by an underling of that manager **unless** that manager has a policy addressing prohibited harassment, has communicate that policy to relevant underlings, **and** actually enforces that policy in the event of prohibited harassment. Sexual harassment is defined by **neither** the subjective intent of the harasser **nor** the subjective experience of the person harassed. Sexual harassment is defined by the objective intent **and** the objective experience of the parties.

13. Which of the following is/are true?

- a. The Commerce Clause, as interpreted by the USA Supreme Court in 1937, grants the federal government power over all commerce with a close **and** substantial **affect** 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 land; must take more than one year; guarantee the debts of another; in consideration of marriage*) to have their material terms (*i.e., parties, time, consideration, **and** subject matter*) in a written memorandum of sufficient definiteness that the court can enforce the parties agreement **and** to have the signature (*i.e., any mark with the current intent to authenticate the document*) of the party being sued for the enforcement of the contract. The Equal Dignity Rule uses the Statute of Frauds to set maximum limits on the parties' reasonable expectations of the scope of authority of an "agent" to enter into a contract if the "agent" does **not** have written **and** signed authority to do so.

- c. In the USA *Constitution*, the States have granted to the federal government the exclusive power to create, for limited durations, the exclusive right to exploit writings **and** inventions (*i.e., copyrights **and** patents*). In contrast, under the Commerce Clause **and** the Police Power, the federal government **and** the States share concurrent powers over trademarks **and** trade secrets. Federal preemption of State trademarks does **not** extinguish pre-existing State marks. Federal preemption of State trade secrets is limited to trade secrets with a foreign nexus.

14. Which of the following is/are true?

- a. If the federal government has power (*e.g., Article I, section 8*), then concurrent federal **and** State powers are presumed. Accordingly, preemption is **not** favored, **but** may be allowed, if: Congress' intent is clear **and** national interests outweigh State interests, **or** Congress' intent is express of **and** there is a need for uniformity.

- b. In a general partnership, the partnership **and** each one of the partners has **unlimited** personal liability; while in a limited partnership, the partnership has **and** all general partners have **unlimited** personal liability; **but**, typically, **none** of the limited partners has **unlimited** personal liability.

- c. As between a "principal" **and** its "agent", the ownership of IP can be resolved by a prior, written, **and** signed contract. In the absence of such a contract, IP law establishes that if the "agent" is acting within the scope of authority, then employERs own patents; independent contractors **and** employERs own copyrights, **and** employERs own trade secrets.

15. Which of the following is/are true?

- a. 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 **invalid** a State government's regulation based on race, alienage, **or** national origin, **as well as** requires the State to prove that the State regulation is the least restrictive means of achieving a compelling State interest.
- b. A security is an investment in a common enterprise with a reasonable expectation of profit derived from the **undeniably** significant efforts of others.
- c. Parody is treated in two very different ways by IP law because of free speech law. Copyright law bars parody as **unlawful** content of commercial free speech. Trademark law allows parody as constitutionally protected political free speech, **unless** that parody creates a likelihood of consumer confusion.

16. Which of the following is/are true?

- a. 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; **but**, to lawfully take your private property that government **also** must take for a public purpose **and** pay you just compensation.
- b. Common law fraud (*i.e., the defendant knowingly **and** intentionally misrepresents **or** omits a material fact inducing the plaintiff's justifiable reliance **and** causing the plaintiff's injury*) is far more difficult to prove than security law fraud (*i.e., the defendant misrepresents **or** omits a material fact causing the plaintiff's injury*).
- c. An SEC section 10b "tippee" is a person who has knowingly received material information via a breach of a fiduciary duty. A tippee has a duty to either **not** trade **or** to disclose prior to trading.

17. Which of the following is/are true?

- a. A natural person who is a consumer can **not** subjectively know more than a corporation with access to the aggregated information of an industry.
- b. There are three major exempt transactions that do **not** require a prospectus. They are: intRAstate (*i.e., seller, buyer, **and** capital all in one State*); small issue (*i.e., \$1 million*), **and** private issue (*i.e., a limited number of sophisticated investors with access to information that would have been disclosed*).
- c. An SEC section 16b "statutory insider" (*i.e., 10% shareholder, director, **or** officer*) has a fiduciary duty to **not** disclose material **non**-public information **and** is **irrebuttably** presumed to possess **and** trade on such information. However, the market requires the entry **and** exit of statutory insiders. Accordingly, so that the market may function, statutory insiders are allowed to trade only with disclosure of their status. However, statutory insiders are required to offer to the corporation all short swing profits.

18. Which of the following is/are true?

- a. Good faith comes in three forms: consumer, merchant, **and** fiduciary. Each uses the same subjective element: honesty in fact.
- b. Especially between merchants who are engaged in a sophisticated allocation of risk of loss, as partially evidenced by the insurance the parties' purchase, an aggressive liquidated damages clause might be enforceable.
- c. If a corporation seeks to sell all **or** substantially all of its assets, then the shareholders **and** the Board of Directors of both the selling **and** the buying corporation must approve of the sale.

19. Which of the following is/are true?

- a. A contract has six elements: agreement, capacity, consideration, reality of assent, form, **and** subject matter.
- b. Under the Uniform Commercial Code (*i.e.*, *UCC*) Article 2, Sale of Goods, all parties lack the legal power to disclaim the obligation of good faith **and/or** a merchant's liability for a consumer's personal injury. Both of these two provisions are reflective of when the legislature tends to react, while the latter reflects the parties' relative ability to bear **and** to spread the risk of loss.
- c. Both the market **and** the law require participants whose actions are both knowing **and** voluntary. The law attempts to correct for information **asymmetries** that spring from different opportunities for information aggregation. The market can **not** make such a correction **unless** some party pursues a profit opportunity in that **asymmetry**.

20. Which of the following is/are true?

- a. 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 actual cause of the plaintiff's injury, **and** the defendant has **no** defenses.
- b. The parties to a contract may agree in the contract to terminate the contract prior to either commercial impracticability (*e.g.*, *3x change in price*) **or** commercially impossibility (*e.g.*, *10x change in price*) by using a *Force Majeure* clause that identifies what the parties agree is beyond the power of the parties to control **or** accept.
- c. The Major Forces of Change that shaped the Capitalist world since 1500 have generated material changes in who has standing to sue (*e.g.*, *women*). The Major Forces of Change afoot around 2000 **also** are likely to generate other material changes in who has standing to sue (*e.g.*, *???*).

ANSWER SHEET FOR GROUP FINAL EXAM

FIRST SECOND FINAL

GROUP MEMBERS

**PRINT YOUR NAME
AS YOUR SIGNATURE**

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- 20. _____

CORRECT ANSWERS ARE CIRCLED

SCORE _____