

I.TRUE AND FALSE (2 points each)

1. Although it did not choose to do so, the defendant could have moved for removal of the litigation to federal court in *Turner v. Dolcefino and KTRK*. T
2. Exculpatory clauses have been upheld by courts even in cases where the provider of the activity is grossly negligent. (*McCune v. Myrtle Beach Indoor Shooting Range, Inc.* involving a paintball game). F, not upheld
3. Liability was imposed on the defendant minor in *Yale Diagnostic Radiology v. Estate of Harun Fountain* based on principles of quasi contract (unjust enrichment). not quasi, necessity
4. A minor is able to disaffirm a contract in all fifty states. T
5. There was no consideration for the promise made by Son to repay Kim for the money Son had lost in his investment because the loan was to Son's corporations. (*Kim v. Son*, involving the promise written in blood on a napkin). ~~no~~ NO consideration from Son
6. The courts determine whether the laws restricting free speech are justified by the need to promote other policies. (*Bad Frog Brewery, Inc. v. New York State Liquor Authority*).
7. The debate over the issuing of religious school vouchers by the government would raise Free Exercise Clause issues.
8. Procedural due process issues only involve actions by the government, not by the private sector.
9. Third parties as well as parties to the lawsuit can be required to give deposition testimony.
10. Unlike trademark infringement, a claim of dilution does not require proof of likelihood of confusion. (*Hasbro, Inc. v. Internet Entertainment Group, Ltd.* and *Federal Express Corp. v. Federal Espresso, Inc.*)
11. Although there is a bias toward business in arbitration, overall plaintiffs favor it because it helps to resolve disputes quickly. ("*In Arbitration, a Bias Toward Business*," The New York Times).

12. The primary difference between the intentional torts involving land is that nuisance usually does not involve any physical invasion of the plaintiff's property. (*Stephens v. Pillen*, the hog farm case).
13. The person who has died from the alleged negligence of the defendant is referred to as the plaintiff's decedent. (*Kay v. Springle*, California Bar Journal Trials Digest).
14. The plaintiff had a subjective expectation of privacy in her Facebook photos. (*Chelsea Chaney v. Fayette County Public School District*).
15. Although a business can be liable in negligence for dangerous conditions on its premises, such as from criminal attack, the court rejected this argument in *Currie v. Chevron USA, Inc.*, even though the young woman died as the result of a vicious criminal act on the premises.
16. The court found for the county in *County of Champaign v. Hanks* based on an implied contract created by the parties' actions.
17. The court took a narrow approach to the question of foreseeability and ultimate liability in *Palsgraf v. Long Island Railroad*.
18. In order to preserve your right to further litigate a dispute involving money, it is a good idea to write restrictive language on a check when cashing it (for example, "paid on account; \$500 still owed").

II. MULTIPLE CHOICE (2 points each)

19. The president of Deal Corp. wrote to Boyd, offering to sell the Deal factory for \$900,000. The offer was sent by Deal on June 5 and was received by Boyd on June 9. The offer stated that it would remain open until October 1. The offer
- a. constitutes an enforceable option.
 - b. may be revoked by Deal at any time prior to Boyd's acceptance.
 - c. is a firm offer under the UCC but will be irrevocable for only 3 months.

d. is a firm offer under the UCC because it is in writing.

20. After graduation from college, Mark was unable to find a job. Bill, Mark's cousin, let Mark move in with him. Mark lived with Bill for six months until he found a job. After moving out, Mark promised to pay Bill \$3,000 for the time he lived with him. This promise is:

- a. Not enforceable because of lack of consideration.
- b. Not enforceable because it is illusory.
- c. Enforceable.
- d. None of the above.

21. Max agrees to supervise a construction project for Nora for a certain fee. In mid-project, Max asks for more money, claiming an increase in the ordinary business expenses to complete the project. Nora agrees. This agreement is

- a. enforceable as an accord and satisfaction.
- b. enforceable because of unforeseen difficulties.
- c. unenforceable under the preexisting duty rule.
- ~~d. unenforceable as an illusory promise.~~

22. A city ordinance required landlords to install smoke detectors in all apartments. Smith, a landlord, did not install smoke detectors in his Belle Vue apartments. John, a tenant in a Belle Vue apartment, was seriously injured when a fire swept through the building. If John sues Smith for negligence, which of the following doctrines may help his case?

- A. Proximate causation. ← enforceable
- B. Strict liability.
- ~~C. Comparative negligence.~~
- (d.) Negligence per se.

23. Joe, a minor, is living at home with his parents, but signs a lease with a landlord to rent an apartment. Joe can

- (a) Disaffirm the contract, but his parents can be held liable for the lease.
- (b) Not disaffirm the contract because the apartment is a "necessary."
- (c) Not disaffirm the contract because he indicated an intent to live on his own.
- (d) Disaffirm the contract without further liability.

24. Harry's promise to pay his employees a year end bonus "if he decides that payment is warranted" is an example of

- a. an illusory contract
- b. an unconscionable contract
- c. a unilateral contract
- d. an enforceable contract.

25. The doctrine of *res ipsa loquitur* (*Goldstein v. Levy*) may be applicable to situations involving:

- a. wheels falling off moving vehicles.
- b. a train derailment.
- c. a falling elevator.
- d. all of the above.

III. INTERMEDIATE ESSAYS (10 points each) Answer all three questions!

1. Contract interpretation is sometimes not as straight-forward or obvious as one might think. Discuss the court's approach to interpreting the contract in the context of *Stender v. Twin Cities Food* (litigation involving harvesting pea crop) AND *Parker v. Arthur Murray*.

2. Jensen offered Judy, a resident of Chicago, a position in a company in Los Angeles. The job represented a substantial salary increase as well as greater career growth. Jensen told Judy that if she decided to relocate within six months, the job was hers. After deciding to accept the job, Judy called Jensen and informed him. Jensen told her to give him a call as soon as she arrived in Los Angeles and said, "We're really looking forward to having you on board." Shortly afterwards, Judy and her husband quit their jobs, sold their house in Chicago, and arrived in Los Angeles. When Judy called Jensen, however, he said that, unfortunately, the position they had discussed was not available and the company had no openings. Was the company's promise to hire Judy enforceable? Discuss.

ambiguity
contract construction

cases

is given
salary increase
relocation

Firm

Doctrine
of Impossibility

3. Andorra is a very small country in Eastern Europe. Expatriate citizens living in LA celebrate Andorra Independence Day each year with patriotic festivities lasting several days. One year members entered into an oral agreement with a resort for a weekend of events, featuring Andorran food and a variety of activities, including lodging for one night for 50 participants, for \$40,000. Afterwards, however, they refused to pay the bill, arguing that the contract was covered by the UCC Article 2 which requires that contracts for goods over \$500 have to be in writing to be enforceable. Common law contracts do not have a dollar threshold. (a) What is the name for this kind of contract? (b) How do courts generally resolve the issue of which law to apply in these cases? (c) Discuss the relevance (or irrelevance) to the result in *Pass v. Shelby Aviation*, where liability for the negligent servicing by the defendant would depend on how the contract was characterized.

IV. SHORT ESSAYS (4 points each). *Select five only!*

- ① Explain what is meant by "minimum contacts" and how the concept was applied by the court in *Knowles v. Modglin*.
- ② (a) Discuss how the consideration issue was resolved by the court in *Hamer v. Sidway* (involving the agreement between the young man and his uncle). (b) Why was Sidway rather than the uncle the defendant?
3. Discuss how the court resolved the allegation by the defendant First Baptist Church that the consideration it received from Pastor Brads was inadequate.
3. Soldau was fired by Organon, Inc. He received a letter from Organon offering to pay him double the normal severance pay if he would sign a release giving up all claims against the company. The letter incorporated the proposed release, which Soldau signed, dated, and deposited in a mailbox outside a post office. When he returned home, Soldau found that he had received a check from Organon in the amount of the increased severance pay. He returned to the post office and persuaded a postal employee to open the mailbox and

retrieve the release. Soldau cashed Organon's check and subsequently filed an age discrimination suit against Organon. Was Soldau bound by the release? Discuss.

4. (a) Explain the courts' approach to resolving the issue of whether an offer has been made in the context of *Lucy v. Zehmer*. (b) What judicial relief was Lucy seeking?

5. (a) Why was the defendant unable to change the terms of the newspaper advertisement in *Lefkowitz v. Great Minneapolis Surplus Store*? (b) What type of contract was this?

6) Discuss how the concept of "piercing the veil" was addressed by the court in *Kaycee Land and Livestock v. Flahive*.

7. Merrick grows and sells blueberries. Maine Wild Blueberry Co. agreed to buy all of Merrick's crop under a contract that left the price unliquidated. Merrick delivered the berries, but a dispute arose over the price. Maine Wild sent Merrick a check with a letter stating that the check was the "final settlement." Merrick cashed the check but filed a suit for breach of contract, claiming that he owed more. What will the court likely decide in this case? Discuss.

8. Discuss "purposeful availment" in the context of *Gucci America, Inc. v. Wang Huoqing*.

9) Jana leaves her truck's motor running while she enters a Kwik-Pik store. The truck's transmission engages, and the vehicle crashes into a gas pump, starting a fire that spreads to the next block. The warehouse collapses, causing its billboard to fall and injure Lou, a bystander. Can Lou recover from Jana? Discuss.

10. Kim went to Ling's Market to pick up a few items for dinner. It was a stormy day, and the wind had blown water through the market's door each time it opened. As Kim entered through the door, she slipped and fell in the rainwater that had accumulated on the floor. The manager knew of the weather conditions but had not posted any sign to warn customers of the water hazard. Kim injured her back as a result of the fall and sued Ling's for damages. Can Ling's be held liable for negligence? Discuss.

10. Discuss the plaintiff's duty to mitigate in the context of *Parker v. Twentieth Century Fox*.

(11) Schmidt, the owner of a small business, has a large piece of used farm equipment for sale. He offers to sell the equipment to Barry for \$10,000. Discuss the legal effects of the following events on the offer.

- a. Schmidt dies prior to Barry's acceptance, and, at the time he accepts, Barry is unaware of Schmidt's death.
- b. The night before Barry accepts, fire destroys the equipment.
- c. Barry pays \$100 for a thirty-day option to purchase the equipment. During this period, Schmidt dies, and later Barry accepts the offer within the stipulated time period, knowing of Schmidt's death
- d. Barry pays \$100 for a thirty-day option to purchase the equipment. During this period, Barry dies, and Barry's estate accepts the offer, within the stipulated time period.

12. What two public policies was the court dealing with in *Straub v. BMT*? (b) What is meant by "sic?"

BONUS:

1. What was the hidden issue in *Terrace Company v. Calhoun*? (One word: Two points).
2. Rewrite the following sentence (One point): There was a heated discussion between the three engineers.

→ ^{minor} judgment
confession

majority
reasonable
disaffirmament?