

EXAM
CODE **255**

CATALOG
NUMBER **BUSx230**

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**PRACTICE
EXAMS**
SEE PAGE 5 FOR DETAILS

Business Law

CREDIT
HOURS

3

LEVEL

LOWER

PUBLISHED FEBRUARY 2021

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SECTION ONE

Preparing for the Exam

Before You Choose This UExcel Exam

Before You Choose This UExcel Exam

Uses for the Examination

- Excelsior College, the test developer, recommends granting three (3) semester hours of lower-level undergraduate credit to students who receive a letter grade of C or higher on this examination.
- Other colleges and universities also recognize this exam as a basis for granting credit or advanced standing.
- Individual institutions set their own policies for the amount of credit awarded and the minimum acceptable score.

Examinees who have applied to Excelsior College should ask their academic advisor where this exam fits within their degree program.

Examinees **not enrolled** in an Excelsior College degree program should check with the institution from which they wish to receive credit to determine whether credit will be granted and/or to find out the minimum grade required for credit. Those who intend to enroll at Excelsior College should ask an admissions counselor where this exam fits within their intended degree program.

For more information on exam availability and actual testing information, see the [Exam Registration and Information Guide](#).

Examination Length and Scoring

This examination consists of 100 multiple choice and other type questions. You will have two (2) hours to complete the exam. Your score will be reported as a letter grade. Questions are scored either correct (1) or incorrect (0). There is no partial credit. Each credit-bearing exam contains pretest questions, which are embedded throughout the exam. They are indistinguishable from the scored questions. It is to your advantage to do your best on all the questions. Pretest questions are being tried out for use in future versions of the exam.

The UExcel exams do **not** have a fixed grading scale such as A = 90–100%, B = 80–90%, and so forth, as you might have seen on some exams in college courses. Each UExcel test has a scale that is set by a faculty committee and is different for each exam. The process, called standard setting, is described in more detail in the [Technical Handbook](#). Excelsior puts each exam through a standard setting because different test questions have different levels of difficulty. To explain further, getting 70% of the questions right on the exam when the questions are easy does not show the same level of proficiency as getting 70% of questions correct when the questions are hard. Every form of a test (a form contains the test questions) has its own specific grading scale tailored to the particular questions on each exam form.

Please also note that on each form, some of the questions (referred to as pretest questions) count toward the score and some do not; the grading scale applies only to those questions that count toward

the score. The area with percentage ratings on the second page of your score report is intended to help identify relative strengths and weaknesses and which content areas to emphasize, should you decide to take the examination again. Your grade is **based on only the scored questions**. Therefore, the percentage ratings do not necessarily reflect the total percentage that counted toward your grade.

For the best view of the types of questions on this exam, see the sample questions in the back of this guide. Practice, practice, practice!

Score Reporting

For most of our examinations, based on performance, an examinee is awarded a letter grade of A, B, C, or F. A letter grade of D can be given, but credit is awarded for A, B, and C letter grades only. The letter grades reported to examinees indicate that their performance was equivalent to the performance of students who received the same letter grade in a comparable, on-campus course.

More specifically, the letter grade indicates the examinee's proficiency relative to the learning outcomes specified in the exam content guide. Following are general descriptions of examinee performance at each level:

Letter Grade Description

- A Highly Competent: Examinee's performance demonstrates an advanced level of knowledge and skill relative to the learning outcomes.
- B Competent: Examinee's performance demonstrates a good level of knowledge and skill relative to the learning outcomes.
- C Marginally Competent: Examinee's performance demonstrates a satisfactory level of knowledge and skill relative to the learning outcomes.
- D Not Competent (no credit recommended): Examinee's performance demonstrates weak knowledge of the content and minimal skill relative to the learning outcomes.^①
- F Fail (no credit recommended): Examinee's performance demonstrates no knowledge of the content and no skill in the subject relative to the learning outcomes.

^① In general, two-hour exams do not award a D letter grade.

Credit is transcribed by Excelsior College for examinees who achieve letter grades of C or higher.

We encourage colleges and universities to use the Excelsior College letter grades of A, B, and C as acceptable standards for awarding credit.

See page 28, at the back of this content guide, for a sample UExcel Grade Report for Examinations.

Excelsior College Bookstore

The Excelsior College Bookstore offers recommended textbooks and other resources to help you prepare for UExcel exams.

The bookstore is available online at (login required): www.excelsior.edu/bookstore

Excelsior College Library

Library services are available to students enrolled in a degree program at Excelsior College. Created through our partnership with the Sheridan Libraries of The Johns Hopkins University, the library provides access to journal articles, books, websites, databases, reference services, and many other resources. To access the Excelsior College Library, visit www.excelsior.edu/library (login is required). Access to the library is available 24/7.

Take Charge of Your Own Learning

At Excelsior College, independent, self-directed study supported by resources we help you find is not a new concept. We have always stressed to students who take exams that they are acting as their own teacher, and that they should spend as much time studying for an exam as they would spend in a classroom and on homework for a corresponding college course in the same subject area.

Begin by studying the content outline contained in this content guide, at its most detailed level. You will see exactly which topics are covered, and where chapters on those topics can be found in the Recommended Resources. You will see exactly where you might need to augment your knowledge or change your approach.

The content outline, along with the learning outcomes for this exam and recommended textbooks, will serve as your primary resources.

How Long Will It Take Me to Study?

Study for a UExcel exam is comparable to an equivalent college-level course. As an independent learner, you should study and review as much as you would for the same subject in a campus-based college course. If you already have a background in the subject, you may be able to pass the exam successfully with fewer hours of study. It depends upon the learner as well as the subject, the number of credits (for example, a 6- or 8-credit exam will require more hours of study than a 3-credit exam), and the length of the exam. We strongly encourage you to create a long-term action or study plan, so that you have a systematic approach to prepare for the exam. We've included guidelines for creating such a plan.

How Can I Create an Effective Long-Term Study Plan?

1. Determine the time you will require to complete your preparation for this exam. If you have not studied the subject before, you should plan to budget approximately 45 hours of study time for every credit: 135 hours for 3 credits, 180 hours for 4 credits, 270 hours for 6 credits, and 360 hours for 8 credits. These hours are rules of thumb based on expectations for a student taking a course in the subject; it may take you more or less time, depending on how familiar you are with the material and how easily you absorb the information studying on your own. Aside from the content review, you should then factor in time to search for and use other resources, and to complete any projects and assignments in the study materials that will clarify your understanding of the topics in the content outline (that part in the content guide where the specific areas of study are spelled out). Spend more time on concepts and areas in which you feel you are weak. Totaled, this is approximately the amount of time you should expect to devote to a three-credit, campus-based course. The actual amount of time you require depends on many factors, and will be approximate. If your background is weak, you may need to set aside substantially more than

135–150 hours. If your background is strong, you may budget less time.

Take a few minutes to review the content outline to assess your familiarity with the content. Then, in the space below, write the number of hours you will allocate to complete preparing for the exam.

Hours Required =

2. Determine the time you will have available for study.

In self-study, you need structure, as well as motivation and persistence, and a methodical approach to preparation. There is no set class to keep you on task. You have to do that yourself. Construct a time-use chart to record your daily activities over a one-week period. The most accurate way to do this is to complete the chart on a daily basis to record the actual amount of time you spend eating, sleeping, commuting, working, watching television, caring for others and yourself, reading, and everything else in an adult's life. However, if your schedule is regular, you might prefer to complete the chart in one sitting and, perhaps, by consulting your appointment book or planner.

After you have recorded your activities, you will be ready to schedule study periods around these activities or, perhaps, instead of some of them. In the space below, write the number of hours you will be able to set aside for study each week.

Hours Required =

3. Divide the first number by the second number.

This will give you the number of weeks you will need to set aside for independent study. For example, if you think you will require 170 hours of study and you have 10 hours available to study each week, divide 170 hours by 10 hours and you will get 17. This means that you will need about 17 weeks to complete this course of study. However, you will also need to allow about a week for review and self-testing. Moreover, to be on the safe side, you should also add two weeks to allow for unforeseen obstacles and times when you know you will not be able to study (e.g., during family illnesses or holidays). So, in this case, you should allot a total of 18 to 19 weeks to complete your study.

4. Schedule your examination to coincide with the end of your study period.

For example, if you plan to allow 18 weeks for study, identify a suitable examination date and begin study at least 18 weeks before that date. (The date you begin study assumes that you will have received all of your study materials, particularly textbooks, by that time.)

5. Format a long-term study plan.

You will need to use a calendar, planner, or some other tool to format and track your long-term study plan. Choose a method that is convenient and one that keeps you aware of your study habits on a daily basis. Identify the days and exact hours of each day that you will reserve for study throughout your whole independent study period. Check to see that the total number of hours you designate for study on your long-term study plan adds up to the number of hours you have determined you will need to complete this course of study (Step 1).

6. Record in your long-term study plan the content you plan to cover during each study period.

Enter the session numbers, review, and examination preparation activities you will complete during each study period. While it is suggested that approximately 160–170 hours of study is required for this exam, each and every student may require different timelines based on their comfort with, and comprehension of, the material.

You now have a tentative personal long-term study plan. Keep in mind that you will have to adjust your study plan, perhaps several times, as you study. It is only by actually beginning to work systematically through the material, using the content outline, that you will be able to determine accurately how long you should allow for each unit.

What Learning Strategy Should I Use?

The following guidelines are intended to help you acquire the grounding in the knowledge and skills required for successful completion of this examination.

1. Approach learning with a positive attitude.

Most students are capable of learning subject content if they devote enough time and effort to the task. This devotion will give you a positive edge and a feeling of control.

2. Diligently complete the exact work you specified in your study plan.

Your study plan is being designed for the specific purpose of helping you achieve the learning outcomes for this exam.

3. Be an active learner.

You should actively engage in the learning process. Read critically, take notes, and continuously monitor your comprehension. Keep a written record of your progress, highlight content you find difficult to grasp, and seek assistance from someone in your learning community who can help you if you have difficulty understanding a concept.

4. Be patient: you may not understand everything immediately.

When encountering difficulty with new material, be patient with yourself and don't give up. Understanding will come with time and further study. Sometimes you may need to take a break and come back to difficult material. This is especially true for any primary source material (original letters, documents, and so forth) that you may be asked to read. The content outline will guide you through the material and help you focus on key points. You will find that many concepts introduced in earlier sessions will be explained in more detail in later sessions.

5. Apply your learning to your daily life.

Use insights you gain from your study to better understand the world in which you live. Apply the learning whenever you can. Look for instances that support or contradict your reading on the subject.

6. Accommodate your preferred way of learning.

How do you learn best? Common ways to learn are reading, taking notes and making diagrams, and by listening to someone (on video or live). Others learn by doing. Do any of these descriptions apply to you? Or does your learning style vary with the learning

situation? Decide what works for you and try to create a learning environment to accommodate your preferences.

Study Tips

Become an active user of the resource materials. Aim for understanding rather than memorization. The more active you are when you study, the more likely you will be to retain, understand, and apply the information.

The following techniques are generally considered to be active learning:

- **preview or survey** each chapter
- **highlight or underline text** you believe is important
- **write questions or comments** in the margins
- **practice re-stating content** in your own words
- **relate what you are reading** to the chapter title, section headings, and other organizing elements of the textbook
- **find ways to engage** your eyes, your ears, and your muscles, as well as your brain, in your studies
- **study with a partner or a small group**
- **prepare your review notes** as flashcards or create recordings that you can use while commuting or exercising

When you feel confident that you understand a content area, review what you have learned. Take a second look at the material to evaluate your understanding. If you have a study partner, the two of you can review by explaining the content to each other or writing test questions for each other to answer. Review questions from textbook chapters may be helpful for partner or individual study, as well.

Study smart for your UExcel exam! Success starts with establishing a relationship with your advisor.

Using UExcel Practice Exams

The official UExcel practice exams are highly recommended as part of your study plan. They can be taken using any computer with a supported web browser such as Google Chrome.

The practice exam package comes with two sets of questions. Please be aware that there will be fewer questions on the practice exams than there will be on the exam you take for credit. Generally, the practice

questions will not be the same as the ones you will see when you take the actual exam for credit. They are intended to expose you to the types of questions you'll encounter in the actual exam. Practice questions are a tool, and do not provide a full exam experience. For example, the practice question sets do not have time limitations. Begin with the Content Guide, especially the detailed content outline. Memorizing specific questions and answers on the practice sets is not as effective as using the questions to practice, along with the content outline, to see which concepts you may need to study further. To register for the practice exam, visit www.excelsior.edu and log into your MyExcelsior account. **Please note: You must be registered for the corresponding credit-bearing exam before you can register for the practice exam.**

Practice exams are not graded. Rather, they are intended to help you make sure you understand the subject and give you a sense of what the questions will be like on the exam for credit. Ideally, you would check any questions you got wrong, look at the explanations, and go back to the textbook to reinforce your understanding. After taking both forms of the practice exam, you should feel confident in your answers and confident that you know the material listed in the content outline.

Practice exams are one of the most popular study resources. Practice exams are typically shorter than the credit-bearing exam. Since the questions are drawn from the same pool of questions that appear on the credit-bearing exam, what you will see when you sit for the graded exam will be roughly the same. Used as intended, these practice exams will enable you to:

- Review the types of questions you may encounter on the actual exam.
- Practice testing on a computer in a timed environment.
- Practice whenever and wherever it is convenient for you.

Take two different forms of a practice exam within a 180-day period. (We highly recommend that you take the first form of the practice exam as a pretest, early in the study period. Use the results to identify areas to further study and carry out a plan. Then take the second form as a post-test and see how much you have improved.)

Although there is no guarantee, our research suggests that exam takers who do well on the practice exams are more likely to pass the actual exam than those who

do not take advantage of the opportunity. Note that since the practice exams are not graded (calibrated) the same way as the scores on the credit-bearing exam, it will be hard for you to use the practice exams as a way to predict your score on the credit-bearing exam. The main purpose of the practice exams is for you to check your knowledge and to become comfortable with the types of questions you are likely to see in the actual, credit-bearing exam.

About Test Preparation Services

Preparation for UExcel® exams and Excelsior College® Examinations, though based on independent study, is supported by Excelsior College with a comprehensive set of exam learning resources and services designed to help you succeed. These learning resources are prepared by Excelsior College so you can be assured that they are current and cover the content you are expected to master for the exams. These resources, and your desire to learn, are usually all that you will need to succeed.

There are test-preparation companies that will offer to help you study for our examinations. Some may imply a relationship with Excelsior College and/or make claims that their products and services are all that you need to prepare for our examinations.

Excelsior College does not endorse the products and services of any tutorial or test preparation firm. We do not review the materials provided by these firms for the content or compatibility of their material and resources with UExcel® exams or Excelsior College Examinations®. No test preparation vendor is authorized to provide admissions counseling or academic advising services, or to collect any payments, on behalf of Excelsior College. Excelsior College does not send authorized representatives to a student's home nor does it review the materials provided by test preparation companies for content or compatibility with Excelsior College examinations.

To help you become a well-informed consumer, we suggest that before you make any purchase decision regarding study materials provided by organizations other than Excelsior College, you consider the points outlined on our website at www.excelsior.edu/testprep.

Exam Preparation Strategies

Each learner is different. However, all learners should read the content outline in the exam's Content Guide and ensure that they have mastered the concepts. For someone with no prior knowledge of the subject, a rule of thumb is 135 hours of study for a 3-credit exam—this number is just to give you an idea of the level of effort you will need, more or less.

Content Guides

This content guide is the most important resource. It lists the outcomes, a detailed content outline of what is covered, and textbooks and other study resources. It also has sample questions and suggestions for how to study. Content guides are updated periodically to correspond with changes in particular examinations and in textbook editions. Examinees can download any of the latest free UExcel content guides by visiting the individual exam page or from the list at www.excelsior.edu/contentguides.

Using the Content Outline

Each content area in the content outline includes the most important sections of the recommended resources for that area. These annotations are not intended to be comprehensive. You may need to refer to other chapters in the recommended textbooks. Chapter numbers and titles may differ among textbook editions.

This content outline contains examples of the types of information you should study. Although these examples are many, do not assume that everything on the exam will come from these examples. Conversely, do not expect that every detail you study will appear on the exam. Any exam is only a broad sample of all the questions that could be asked about the subject matter.

Using the Sample Questions and Rationales

Each content guide provides sample questions to illustrate those typically found on the exam. These questions are intended to give you an idea of the level of knowledge expected and the way questions are typically phrased. The sample questions do not sample the entire content of the exam and are not intended to serve as an entire practice test.

Recommended Resources for the UExcel Exam in Business Law

The resources listed below were selected by the faculty members on the examination committee for use in developing this exam.

Resources listed under “Strongly Recommended” were used by the committee to verify all the questions on the exam. Please refer to the Content Outline to see which parts of the exam are cross-referenced to these resources.

Resources listed under “Optional” provide additional material that may deepen or broaden your understanding of the subject, or that may provide an additional perspective on the exam content. Textbook resources, both Strongly Recommended and Optional, may be purchased from the Excelsior College bookstore at www.excelsior.edu/bookstore.

You should allow ample time to obtain the necessary resources and to study sufficiently before taking the exam, so plan appropriately, with an eye towards your own personal learning needs. See the sections in this guide on the Excelsior College Bookstore and the Excelsior College Library, and under Reducing Textbook Costs, to help you secure the Strongly Recommended resources successfully.

Textbook Editions

Textbook editions listed in the UExcel content guides may not be the same as those listed in the bookstore. Textbook editions may not exactly match up in terms of table of contents and organization, depending upon the edition. However, our team of exam developers checks exam content against every new textbook edition to verify that all subject areas tested in the exam are still adequately available in the study materials. If needed, exam developers will list additional Strongly Recommended resources to ensure that all topics in the exam are still sufficiently covered. Public libraries may have the textbooks you need, or may be able to obtain them for you through interlibrary loan to reduce textbook costs. You may also consider financial aid, if you qualify, to further help defray the steep cost of textbooks. A section on open educational

resources (OER) has been included in this guide to help you locate additional, possibly free resources to augment your study.

Strongly Recommended

Kubasek, N., Browne, M.N., Herron, D., Giampetro-Meyer, A., & Barkacs, L. (2016). *Dynamic business law: The essentials*. (4th ed.). New York: Richard D. Irwin.

The study materials may be purchased from the [Excelsior College Bookstore](#).

Optional Resources

The examination development committee did not identify any specific Optional resources for this exam. If you would like to explore topics in more depth, we encourage you to refer to available Open Educational Resources (OER).

Websites for Additional Study

The following websites have been included to augment your learning of the content.

<http://www.usa.gov/>

<http://www.supremecourt.gov/>

<http://www.law.cornell.edu/>

<http://www.law.cornell.edu/constitution/>

http://www.law.cornell.edu/wex/criminal_law

<http://www.law.cornell.edu/ucc/ucc.table.html>

<http://www.findlaw.com/>

<http://smallbusiness.findlaw.com/business-structures/llc/llc-basics.html>

Reducing Textbook Costs

Many students know it is less expensive to buy a used textbook, and buying a previous edition is also an option. The Excelsior College bookstore includes a buyback feature and a used book marketplace, as well as the ability to rent digital versions of textbooks for as long as students need them. Students are encouraged to explore these and the many other opportunities available online to help defray textbook costs.

Practice Exam

The Practice Exam is available after you register for this UExcel exam.

Open Educational Resources

There are many resources available online free of charge that may further enhance your study for the exam. Known as Open Educational Resources (OER), these may be textbooks, courses, tutorials, or encyclopedias. Any additional OER that you find independently should be used to augment study—not as replacements for the Strongly Recommended resources.

Most sites for university-based OER can be searched through www.ocwconsortium.org and/or www.oercommons.org.

Sites that specialize in web courses designed by college professors under contract with the website sponsor, rather than in web versions of existing college courses, include:

www.education-portal.com

www.opencourselibrary.org (abbreviated as OCL)

We have included specific courses that cover material for one or more UExcel® exams from the sites in the listings above. It's worth checking these sites frequently to see if new courses have been added that may be more appropriate or may cover an exam topic not currently listed.

Sites like Khan Academy (www.khanacademy.com) and iTunes U feature relatively brief lessons on very specific topics rather than full courses. Full courses are also available on iTunes U (<http://www.apple.com/education/ipad/itunes-u/>). We have chosen a few courses and collections for this listing.

Open Online Textbooks

BookBoon

<http://bookboon.com/en/textbooks-ebooks>

Flatworld Knowledge

<http://catalog.flatworldknowledge.com/#our-catalog>

College Readiness

Khan Academy

<http://www.khanacademy.org/>

Hippocampus

<http://www.hippocampus.org/>

Open Course Library

<http://opencourselibrary.org/collg-110-college-success-course/>

Study Aids

Education Portal

<http://education-portal.com/>

Khan Academy

<http://www.khanacademy.org/>

Annenberg Learner

<http://www.learner.org/>

OpenCourseWare

<http://ocwconsortium.org/en/courses/search>

OER Commons

<http://www.oercommons.org/>

Open Course Library

<http://www.opencourselibrary.org/>

To achieve academic success, rate yourself at Excelsior College's Self-Regulated Learning Lab. Visit the Diagnostic Assessment & Achievement of College Skills site at <https://srl.daacs.net/>

It's free!

SECTION TWO

Content Outline

General Description of the Examination

The UExcel Business Law examination is based on material typically taught in a one-semester, three-credit, introductory course in business law.

The examination measures comprehension and understanding of business law in pursuit of organizational goals and strategies. More specifically, it measures familiarity with the key legal issues and terms related to business law, application of the legal tools needed to deal with real world legal/business issues within the US legal environment, an understanding of the sources of law, dispute resolution, business ethics, criminal law as it relates to business, tort law, contracts, agency law, the various types of business organizations and the matters of real and intellectual property under US law.

No prior knowledge of business law is required before beginning study for this exam.

Learning Outcomes

After you have successfully worked your way through the recommended study materials, you should be able to demonstrate the following learning outcomes:

1. Understand the primary sources of law and their relevance in the US federal and state judicial system, the structure of each system, and the steps involved in the civil litigation process and other means of dispute resolution.
2. Examine the significance and application of selected Articles of the US Constitution and selected Amendments (including the various protections afforded in the Bill of Rights) to the American business environment.
3. Identify and analyze ethical issues within the business environment including social responsibility, stakeholder theories, white collar crimes, and corporate criminal liability. (Aligns to GECC 6.1)
4. Recognize applicable elements of tort law including intentional and unintentional torts and their applicable defenses.
5. Describe the elements for formation of an enforceable contract, the different types of contracts, challenges to contract enforcement, and available remedies for breach of contract.
6. Describe and apply principal/agent relationships, business organizational mechanisms, and real and intellectual property rights within the American business environment.

General Education Career Competencies Addressed in this Exam

GECC-6: Ethical Reasoning: Explain different ethical positions in relation to a problem or issue.

Content Outline

The content outline describes the various areas of the test, similar to the way a syllabus outlines a course. To fully prepare requires self-direction and discipline. Study involves careful reading, reflection, and systematic review.

The major content areas on the Business Law examination, the percent of the examination, and the hours to devote to each content area are listed below.

Content Area	Percent of the Examination	Hours of Study*
I. Introduction to Business Law	20%	27
II. The Constitution and Business	10%	14
III. Business Ethics/Criminal Law/Tort Law	20%	27
IV. Contracts	30%	41
V. Agency Relationships/Business Organizations/Property	20%	27
Total	100%	

*Approximate: For those examinees who know the topic well, less time may be needed to learn the subject matter. For those who are new to the subject matter, more time may be required for study.

NOTE: For all specific court cases listed as part of this content outline, it is expected that students will understand the brief facts of the case, the issue(s) involved, the court's reasoning, the decision/remedy and the significance of the case.

I. Introduction to Business Law

20 PERCENT OF EXAM

Kubasek et al.

Ch. 1, An Introduction to the Fundamentals of Dynamic Business Law

Ch. 2, The U.S. Legal System and Alternative Dispute Resolution

Ch. 3, Administrative Law

A. Classifications of law (Ch. 1)

1. Public/private

2. Civil/criminal

B. Sources of the law

1. Constitutional
2. Statutory
3. Common/case law
 - a. *Stare decisis*
 - b. Precedent
4. Administrative/regulatory (for example: *Brown v. Board of Education* [347 U.S. 483 1954]; 1954 U.S. LEXIS 2094

Regents of the University of California v. Bakke [438 U.S. 265 (1978); 1978] U.S. LEXIS 5)

C. Dispute resolution (Ch. 2)

1. Jurisdiction
 - a. Original and appellate
 - b. Personal (*in personam*)

- 1) Long arm statute
(for example: *International Shoe v. Washington*, 326 U.S. 310 (1945); 1945 U.S. LEXIS 345)
- c. Subject-matter
 - 1) Exclusive federal
 - 2) Exclusive state
 - 3) Concurrent
(for example: *Caterpillar, Inc. v. Lewis*, 518 U.S. 1050 [1996]; 1996 U.S. LEXIS 4512

Gafford v. General Electric, 997 F.2d 150 (1993); 1993 U.S. App. LEXIS 14766 abrogated by *Hertz Corp. v. Friend*, 130 S. Ct. 1181; 2010 U.S. LEXIS 1897)
- 2. Venue
- 3. Structure of the court system
 - a. Federal courts
 - 1) Trial/appellate/courts of last resort
 - 2) Ancillary courts (patent, bankruptcy, tax [see fig. 2-2, p. 23])
 - b. State courts
 - 1) Trial/appellate/courts of last resort
- 4. Steps in civil litigation process
 - a. Threshold requirements (standing, case or controversy, ripeness)
 - b. Pretrial stage (pleadings, service of process, defendant's response)
 - c. Trial
 - 1) *Voir dire* – *J.E.B. v. Alabama* 114 S.Ct. 1419 (1994); 1994 U.S. LEXIS 3518
 - d. Post trial
 - e. Motion practice
 - f. Appellate process
- 5. Alternative dispute resolution (negotiation, mediation, arbitration)
- 6. Administrative law (Ch. 3)
 - a. Administrative law defined
 - b. Formation and procedure
 - 1) Enabling legislation — *Massachusetts v. EPA* 549 U.S. 497 (2007); 2007 U.S. LEXIS 3785
 - c. Types of administrative agencies
 - d. Limitations of agency powers

II. The Constitution and Business

10 PERCENT OF EXAM

Kubasek

Ch. 4, Constitutional Law

Appendix A, The Constitution of the United States of America

- A. US Constitution — *Granholm v. Heald*, 544 U.S. 460 (2005); 2005 U.S. LEXIS 4174 (see case in Lexis Academic)
- B. Judicial review — *Marbury v. Madison*, 5 U.S. 1803; 1803 U.S. LEXIS 352
- C. Supremacy clause
 - 1. Preemption
- D. Commerce clause
 - 1. Police powers
 - 2. Dormant commerce clause (see *Granholm* above)
- E. Constitutional restrictions, obligations, and safeguards
 - 1. Privileges and immunities
 - 2. Full faith and credit clause
 - 3. Contract clause
- F. Amendments to the Constitution
 - 1. First (freedom of religion, speech, press, assembly) — *Bad Frog Brewery v. New York State Liquor Authority*, 134 F.3d87 (1998); 1998 U.S. App. LEXIS 525. See also Canadian case, *Central Hudson Gas & Electric Corp. v. Public Service Commission*, p. 82 and *Miller v. California*, 413 U.S. 15 (1973); 1973 U.S. LEXIS 149

- a. Establishment clause
- b. Free exercise clause
- 2. Fourth (search and seizure) — *United States v. Kyllo*, 533 U.S. 27 (2001); 2001 U.S. LEXIS 4487
- 3. Fifth (due process)
- 4. Ninth (rights retained by the people) — *Griswold v. Connecticut*, 381 U.S. 479 (1965); 1965 U.S. LEXIS 2282
 - a. Right to privacy
- 5. Fourteenth (due process and equal protection)

- a. Strict liability/vicarious liability
- 5. Fighting business crime
 - a. Racketeer Influenced and Corrupt Organizations Act (RICO)
 - b. False Claims Act
 - c. Sarbanes-Oxley Act

C. Tort law (Ch. 6)

- 1. Intentional torts
 - a. Against persons (assault/battery/defamation)
 - b. Against property (trespass/conversion/nuisance)
 - c. Against economic relations (disparagement/tortious interference with contract relationship)
- 2. Negligence (unintentional)
 - a. Elements
 - 1) Duty
 - 2) Breach
 - 3) Causation
 - a) Actual
 - b) Proximate — *Palsgraf v. Long Island Railroad*, 248 NY 339 (1928); 1928 NY LEXIS 1269
 - 4) Harm (compensatory damages, nominal/punitive, joint and several liability)

Note: (see www.law.cornell.edu (LII) and p. 419 for strict liability and partnership law)
- 3. Special negligence doctrines
 - a. *Res ipsa loquitur*

Kambat v. St. Francis Hospital, 89 NY2d 489 (1997); 1997 N.Y. LEXIS 95
 - b. Negligence per se
- 4. Defenses to negligence (contributory negligence, comparative negligence, assumption of the risk, special defenses)

III. Business Ethics/Criminal Law/Tort Law

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Kubasek

Ch. 1, An Introduction to the Fundamentals of Dynamic Business Law and Business Ethics

Ch. 2, The U.S. Legal System and Alternative Dispute Resolution

Ch. 5, Criminal Law and Business

Ch. 6, Tort Law

A. Business ethics (Ch. 1–2)

U.S. v. Geibel, 369 F.3d 682 (2004); 2004 U.S. App. LEXIS 10580

- 1. Social responsibilities
- 2. Business law and ethics
- 3. Stakeholders, people impacted by business decisions
- 4. Process of ethical decision making

B. White collar crime (Ch. 5)

U.S. v. Gershon Cohen, 171 F.3d 796 (1999); 1999 U.S. App. LEXIS 2716

- 1. Elements of crime
- 2. Classification of crime
- 3. Specific white-collar crimes (bribery, extortion, fraud [insider trading/false pretense/forgery], embezzlement, computer [cyber] crimes)
- 4. Corporate criminal liability

U.S. v. Park, 421 U.S. 658 (1975); 1975 U.S. LEXIS 69

5. Strict liability
 - a. Abnormally/inherently/unreasonably dangerous activities
 - b. Exotic animals
 - c. Product liability (See <http://library.Findlaw.com/2000/Mar/1/128522.html>)
 - 1) Design defect/manufacturing defect/failure to warn

6) Formal/informal

B. Detailed element analysis

1. Agreement
 - a. Elements of the offer (intent — definite terms/communication)
 - b. Termination of the offer
 - 1) Revocation/rejection
 - 2) Counter-offer
 - c. Elements of acceptance
 - 1) Manifestation to be bound
 - 2) Acceptance of definite terms (mirror image rule)
 - 3) Communication to offeror (mailbox rule)
2. Consideration (rules of consideration) (Ch. 9)
 - a. Lack of consideration/adequacy of consideration

Labriola v. Pollard Group, Inc. 152 Wn.2d 828 (2004)

Smith v. Riley 2002 Tenn. App. LEXIS 65
 - b. Illusory promise/past consideration/pre-existing duty rule
3. Capacity (Ch. 10)
 - a. Lack of capacity as a defense to contract formation (minors [voidable]/mentally incompetent [voidable]/intoxicated [voidable] / adjudicated mentally incompetent [void])
4. Legality (Ch. 10)
 - a. Statutory illegality (licensing, usury, gambling, Sabbath day)

For licensing see *Hydrotech Systems Ltd. v. Oasis Water Park*, 52 Cal.3d 988 (1991); 1991 Cal. LEXIS 139487
 - b. Illegality as against “public policy”

IV. Contracts

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Kubasek

Ch. 8, Introduction to Contracts and Agreement

Ch. 9, Consideration

Ch. 10, Capacity and Legality

Ch. 11, Reality of Assent

Ch. 12, Contracts in Writing and Third-Party Contracts

A. Nature and classifications of contracts (Ch. 8)

1. Definition of a contract
2. Elements of a contract — overview (agreement, consideration, capacity, legality)
3. Contract defenses
 - a. Genuine assent
 - b. Form (statute of frauds)
4. Sources
 - a. Common law
 - b. Uniform commercial code as a source of contracts
 - c. Types of common law contracts (overview)
 - 1) Bilateral/unilateral
 - 2) Express/implied
 - 3) Quasi-contract
 - 4) Valid/void/voidable/unenforceable
 - 5) Executed/executor

- 1) Restraint of trade vs. covenants not to compete — *Gann v. Morris*, 122 Ariz. 517, 596 P.2d (1979) Ariz. App. LEXIS 487
- 2) Unconscionable contracts (procedural, substantive, adhesion)
- 3) Exculpatory clause
- 4) Effect of illegal agreements

For exculpatory clause see *Lucier, Haley v. Williams, Cambridge Associates, et al.*, 841 A2d. 907 (2004); 2004 N.J. Super. 65

C. Defenses to contract enforcement — details

1. Reality of assent (Ch. 11)
 - a. Genuineness of assent (mistake [unilateral/mutual], fraudulent misrepresentation, undue influence, duress, unconscionability)

Note: see discussion above — *Krysa v. Paine* (176 S.W. 3d 150 (2005); 2005 Mo. App. LEXIS 1680
2. Contracts in writing (Ch. 12)
 - a. Statute of frauds requirements (terms cannot be performed within one year; promises made in consideration of marriage; collateral promises; involving interest in land; sale of goods valued over \$500/\$5000)
 - b. Exceptions to the statute of frauds (admission under oath, partial performance, promissory estoppel)
 - c. Sufficiency of the writing — *Stewart Lamle v. Mattel, Inc.*, 394 F3d. 1355 (2005); 2005 U.S. App. LEXIS Parol

D. Uniform Commercial Code Article 2 formation of sale and Article 2(A) lease contracts (brief overview) (Ch. 14)

1. Scope and significance of UCC
2. Application of UCC sales contracts vs. service agreements

3. Article 2 formation in general
 - a. Offers [firm offers/option contracts]; acceptance; consideration; statute of frauds; unconscionability

E. Third party rights (Ch. 12)

1. Assignments of rights — *Traffic Control Services v. United Rentals, Inc.*, 87P.3d 1054 (2004)
 - a. Contracts that cannot be assigned/notice requirements
2. Delegation of duties/non-delegable
3. Third party beneficiary contracts
 - a. Intended third party/incidental third party beneficiary

Lawrence v. Fox, 20 NY 268 (1859)

F. Performance (discharge) (Ch. 13)

1. Methods of discharge (conditions; performance [complete/substantial]; material breach; mutual agreement)

For material breach see *Miller v. Mills Construction, Inc.*, 352 F3d. 1166, (8th Cir.) (2003); 2003 U.S. App. LEXIS 25608
2. Operation of law (alteration of contract; bankruptcy; statute of limitation; impossibility of performance; commercial impracticability; frustration of purpose)

For commercial impracticability see *Thrifty Rent a Car System v. South Florida Transport* (2005); 2005 U.S. Dist. LEXIS 38489

G. Remedies

1. Legal remedies (compensatory, consequential, punitive, nominal, liquidated, mitigation of damages)

For consequential see *Hadley v. Baxendale Court of Exchequer*, 156 Eng. Rep. 145 (185)
2. Equitable remedies (rescission, restitution, specific performance, injunction, reformation, quasi-contract)

V. Agency Relationships, Business Organizations, and Property

20 PERCENT OF EXAM

Kubasek

Ch. 7, Real and Intellectual Property

Ch. 19, Agency and Liability to Third Parties

Ch. 20, Forms of Business Organizations

A. Agency relationships (Ch. 19)

1. Agency law overview
2. Creation of agency relationships
 - a. Express/implied
 - b. Apparent/estoppels
 - c. Ratification
3. Types of business
 - a. Principal/agent
 - b. Employer/employee vs. employer/independent contractor

Larry S. Lawrence v. Bainbridge Apartments et al., 957 S.W. 2d 400 (1997); 1997 Mo. App. LEXIS 1839
4. Duties of the agent (loyalty, performance, notification, obedience, accounting)

For accounting see *Sierra Pacific Industries v. Joseph H. Carter*, 104 Cal. App.3d 579 (1980) 1980 Cal. App. LEXIS 1707
5. Duties of the principal (compensation, reimbursement and indemnification, cooperation, safe working conditions)
6. Authority of agent to bind principal/contractual liability
 - a. Express/implied/apparent authority, authorized/unauthorized acts
7. Tort liability
 - a. *Respondeat superior*/vicarious liability — *Iglesia Cristiana La Casa Del Senor, Inc. Etc. v. L.m.*, 783 So. 2d 353, (2001); 2001 Fla. App. LEXIS 5795

8. Termination of the agency relationship
 - a. Acts of the parties/operation of law

B. Forms of business organizations (Ch. 20)

1. Overview of the major forms of business organizations (including advantages and disadvantages)
 - a. Sole proprietorship
 - b. Partnership
 - 1) General partnerships
 - 2) Limited partnerships
 - 3) Limited liability partnerships
 - c. Corporations
 - 1) S corporations
 - d. Limited liability companies

C. Property (Ch. 7)

1. Nature of real property
 - a. Extent of ownership (air/surface/subsurface)
 - b. Interest in real property (fee simple absolute [sole ownership]; conditional estate; life estates; future interests; leasehold estate; non-possessory estates)
 - c. Voluntary property transfer (title by deed)
 - 1) Execution/delivery/acceptance/recording
 - d. Involuntary transfer
 - 1) Adverse possession
 - 2) Condemnation — *Kelo v. City of New London*, 126 S.Ct. 326 (2005); 2005 U.S. LEXIS 5482
2. Intellectual property (trademarks, copyright, patents, trade secrets)

SECTION THREE

Sample Questions

The sample questions give you an idea of the level of knowledge expected in the exam and how questions are typically phrased. They are not representative of the entire content of the exam and are not intended to serve as a practice test.

Rationales for the questions can be found on pages 20–24 of this guide. In that section, the correct answer is identified and each answer is explained. The number in parentheses at the beginning of each rationale refers to the corresponding section of the content outline. For any questions you answer incorrectly, return to that section of the content outline for further study.

1. Which type of law is enacted by legislatures?
 - 1) judicial
 - 2) uniform
 - 3) statutory
 - 4) administrative
2. Which judicial action best represents *stare decisis*?

The judge decides to

 - 1) create a new area of legal analysis citing a modern trend.
 - 2) follow the higher court's ruling on the legal issue before the court.
 - 3) agree with the Restatement of the Law summary of the legal issue before the court.
 - 4) diverge from the higher court's rulings, citing the need for an updated legal analysis.
3. What is the legal term for the most appropriate forum for hearing a case, once both subject matter and personal jurisdiction have been determined?
 - 1) domicile
 - 2) proceeding
 - 3) trial
 - 4) venue
4. Which Article of the U.S. Constitution establishes the federal court system?
 - 1) Article I
 - 2) Article II
 - 3) Article III
 - 4) Article V
5. Patent, bankruptcy, and tax courts are examples of which type of courts?
 - 1) courts of general jurisdiction
 - 2) courts of last resort
 - 3) intermediate courts of appeal
 - 4) special trial courts

6. The state of Missouri has enacted a law that allows in-state wineries to ship wine orders directly to Missouri residents; however, out-of-state wineries are not allowed to ship orders to Missouri. The Missouri legislature's rationale, when passing the law, was that the Missouri wine industry is in its infancy and needs protection from outside competition. How is a federal appeals court likely to rule if out-of-state wineries sue the state of Missouri?
- The court is most likely to rule in favor of the
- 1) out-of-state wineries because the Missouri law is in violation of the dormant commerce clause.
 - 2) out-of-state wineries because the Missouri law is illegal as it does not include a timeframe for banning the out-of-state winery business in Missouri.
 - 3) state of Missouri, giving the farmers a set amount of time to develop their in-state wine industry.
 - 4) state of Missouri because their newly developed wine industry needs protection from out-of-state competitors.
7. Which amendment to the U.S. Constitution prohibits government from conducting unreasonable searches of individuals and seizing their property to use as evidence against them?
- 1) the First Amendment
 - 2) the Fourth Amendment
 - 3) the Fifth Amendment
 - 4) the Fourteenth Amendment
8. Which right is not specifically enumerated in a constitutional amendment but rather evolved from judicial interpretation of amendments?
- 1) the right to privacy
 - 2) the right to assemble
 - 3) the right to free speech
 - 4) the right to a jury of one's peers
9. Which term best applies to a community's expectation that a business should obey certain standards of fairness even when those standards interfere with profit maximization?
- 1) ethics
 - 2) business ethics
 - 3) social responsibility
 - 4) ethical dilemma
10. What is a major similarity between the public disclosure test and the universalization test?
- 1) Both help classify crimes.
 - 2) Both measure liability without fault.
 - 3) Both help identify the elements of a crime.
 - 4) Both are methods of making ethical decisions.
11. What are the two elements of crime?
- 1) jurisdiction and venue
 - 2) *actus reus* and *mens rea*
 - 3) misdemeanors and felonies
 - 4) probable cause and burden of proof
12. The owner of a nightclub hires a bouncer to provide security at the club. The owner does not conduct a background check on the new bouncer. As it turns out, the bouncer has several convictions for assault and battery. One night at the nightclub, the bouncer severely beats a patron. Can the owner be found criminally negligent for the bouncer's actions, and why or why not?
- 1) No, the owner did not knowingly hire a convicted criminal.
 - 2) No, the owner did not consciously ignore a substantial risk.
 - 3) Yes, because the doctrine of strict liability applies to this situation.
 - 4) Yes, if the owner was found to have failed to use a reasonable standard of care.

13. Why are computer crimes generally difficult to prosecute?
- 1) Computer crimes are not true crimes.
 - 2) Computer crimes are often hard to detect.
 - 3) Computers are not a viable tool for criminal behavior due to new security software.
 - 4) Computers are still not owned by most of the population in industrialized nations.
14. A school bus driver caused a traffic accident between his bus and a car. The driver of the car was injured and the bus driver was determined to be negligent. Is the bus driver's employer liable for damages to the injured party, and why or why not?
- 1) No, because the bus driver was negligent.
 - 2) No, because the employer did not know about the accident until after it occurred.
 - 3) Yes, if the bus driver gets a ticket for causing the accident.
 - 4) Yes, if the bus driver was working when the accident occurred.
15. Truman has built a smokehouse in his backyard to cure meats. The smoke is used to flavor the meats. However, the smoke has a strong odor and often drifts into his neighbor's garden area. She is complaining that she cannot enjoy her garden because of the smoke. The neighbor's strongest complaint should be based on what legal concept?
- Truman's activities are a
- 1) private nuisance.
 - 2) trespass to personal property.
 - 3) conversion.
 - 4) disparagement.
16. How are lack of genuine assent and lack of proper form similar?
- They are both
- 1) defenses to a contract.
 - 2) elements of a contract.
 - 3) way to terminate an offer.
 - 4) classifications of contracts.
17. Even though they had made a deal, a buyer refuses to pay for the delivery of prescription painkillers he does not have a prescription for. Why can't the seller sue the buyer to enforce the terms of their agreement?
- Their contract
- 1) violates the statute of frauds.
 - 2) is unenforceable.
 - 3) is void.
 - 4) is voidable.
18. Which type of terms are required by the court in a breach of contract lawsuit?
- 1) illusory
 - 2) written
 - 3) material
 - 4) executed
19. What differentiates a durable power of attorney from a non-durable power of attorney?
- 1) Only a durable power of attorney needs to be written.
 - 2) A durable power of attorney gives the agent more authority than a non-durable power of attorney.
 - 3) A non-durable power of attorney addresses health care issues while a durable power of attorney addresses only business issues.
 - 4) A durable power of attorney gives the agent authority that continues despite the principal's subsequent incapacity.
20. A person is hired as a general manager of a regional paper supply company. Although no formal written contract is signed, it is expected that he will hire and fire employees, pay the bills associated with the day-to-day operations of the office, and make contracts with local customers. What type of authority is this?
- 1) express
 - 2) implied
 - 3) apparent
 - 4) ratification

21. What form of business organization is unincorporated and allows members a choice in how they wish to be taxed, while allowing them to take part in management activities?

- 1) corporation
- 2) S corporation
- 3) limited partnership
- 4) limited liability company

22. Pierce has purchased a piece of real property for which the seller of the property prepared a deed. Once Pierce received the deed, he promptly filed it with the County Deed Office. If the grantor failed to sign the deed, which legal requirement is missing in this attempt to transfer property?

- 1) acceptance
- 2) delivery
- 3) execution
- 4) recording

23. A city is approached by Sea Wharf Development Corporation (SWD) concerning the seizure of waterfront property owned by the Cardillo family. The city agrees to seize the property by eminent domain, thereby paving the way for SWD to construct its shopping center and restaurants. If the Cardillo family sues the city, what is the most likely outcome of the case, and why?

The Cardillo family will

- 1) win, because its property is being condemned and given to another private party.
- 2) win, because the city's taking of the property is not for "public use."
- 3) lose, because the waterfront is being developed to include a shopping center and restaurant that benefit the city's tax base.
- 4) lose, because the city's action does not amount to a taking under the law.

SECTION FOUR

Rationales

1. (IB2)

- 1) These are laws made by judges.
- 2) Uniform laws are proposed by legal scholars and are not themselves law.
- *3) Statutes are enacted by legislatures.
- 4) Administrative laws are enacted by administrative agencies.

2. (IB3a)

- 1) *Stare decisis* means “standing by their decision.” If a judge decides to create a new area of legal analysis citing a modern trend, the judge is not following *stare decisis*.
- *2) The judge is following legal precedent, meaning the ruling was based on the previous judicial ruling.
- 3) *Stare decisis* involves the judge following the prior rulings of higher courts. The Restatements of the Law are not binding on judges; however, judges may use them when interpreting areas of law.
- 4) Here, the judge is overruling the prior higher court rulings. *Stare decisis* involves the judge's following the prior rulings of the higher courts.

3. (IC2)

- 1) Domicile means a party's residence or home as in the place where one is likely to return.
- 2) A proceeding in legal terms generally refers to a court action and the trial process.
- 3) Trial is a court proceeding in an action brought by a plaintiff against a defendant.
- *4) Venue is defined as the most appropriate forum for a case to be heard once both subject matter and personal jurisdiction is determined.

4. (IC3a1)

- 1) Article I of the U.S. Constitution vests legislative powers in a bicameral legislature that includes the Senate and the House of Representatives.
- 2) The executive branch of the U.S. government is created by Article II.
- *3) Article III (Section 2) of the U.S. Constitution grants power to the federal court system.
- 4) Article V describes the process required to amend the U.S. Constitution.

*correct answer

5. (IC3a2)

- 1) Patent, bankruptcy, and tax courts are special trial courts with limited jurisdiction and are, therefore, not courts of general jurisdiction.
- 2) The court of last resort is the United States Supreme Court which is the highest level appeals court and is not limited in jurisdiction to special areas of law.
- 3) Intermediate courts of appeal hear only cases appealed from the lower trial courts and are not limited in jurisdiction to special areas of law.
- *4) Special trial courts have limited jurisdiction over cases concerning certain subject matter, such as patents, bankruptcy, tax, international trade, and administrative agencies.

6. (IID2)

- *1) The state of Missouri has enacted a law that discriminates against out-of-state wineries (and as such, interstate commerce) without an adequate basis to do so. This violates congressional authority to regulate interstate commerce.
- 2) See 1).
- 3) See 1).
- 4) See 1).

7. (IIF2)

- 1) The First Amendment guarantees freedom of speech and freedom of religion.
- *2) The Fourth Amendment prohibits government from conducting unreasonable searches of individuals and seizing their property to use as evidence against them.
- 3) The Fifth Amendment provides that the government cannot deprive an individual of life, liberty, or property without a fair and just hearing (that is, due process) and protects criminal defendants against self-incrimination and double jeopardy.
- 4) The Fourteenth Amendment prohibits states from denying equal protection of the laws to any citizen.

8. (IIF4)

- *1) There is no right to privacy enumerated in any of the amendments to the Constitution. The protection flows from interpretations of both the Ninth and Fourteenth Amendments as stated in concurring opinions written in support of the U.S. Supreme Court's ruling in *Griswold v. Connecticut*.
- 2) The First Amendment specifically states that Congress will not abridge the right of the people to peacefully assemble.
- 3) The First Amendment specifically states that Congress will not abridge the freedom of speech.
- 4) The Sixth Amendment specifically states that in all criminal proceedings, the accused shall enjoy the right to a speedy and public trial by an impartial jury.

9. (IIIA1)

- 1) Ethics is the study and practice of decisions about what is good or right.
- 2) Business ethics is an application of ethics to "special problems" and opportunities experienced by business people.
- *3) The social responsibility of business consists of expectations the community imposes on firms doing business.
- 4) An ethical dilemma is a problem about what a firm should do, for which no clear, right decision is available.

10. (IIIA4)

- 1) Felonies, misdemeanors, and petty offenses are classifications of crimes.
- 2) Liability without fault (or strict liability) deals with the elements of a crime. It refers to assessing liability without applying the guilty-mind criteria.
- 3) Strict liability, wrongful behavior, and wrongful states of mind comprise the elements of a crime.
- *4) Public disclosure and universalization are both ethical guidelines that, along with the Golden Rule concept, focus on how other stakeholders should be treated or considered when making ethical business decisions.

*correct answer

11. (IIIB1)

- 1) Jurisdiction is the power of a court to hear a case and venue is the convenient forum for a case to be heard.
- *2) *Actus reus* (guilty act) and *mens rea* (guilty mind) are the elements of crime.
- 3) Misdemeanors and felonies are two specific categories of crime, not elements of a crime.
- 4) Probable cause is the likelihood that a suspect committed or is planning to commit a crime and burden of proof is the standard that the prosecutor must meet in order to achieve a conviction.

12. (IIIB1)

- 1) Although the owner did not knowingly hire a convicted criminal, there are other degrees of *mens rea*.
- 2) Although the owner did not consciously ignore a substantial risk, there are other degrees of *mens rea*.
- 3) Strict liability does not apply to this situation. This applies to a civil wrong in which the defendant takes an action that is inherently dangerous and can never be undertaken safely.
- *4) A defendant is negligent if he or she does not meet a standard of care that the reasonable person would use in the context that led to the criminal act. If found at trial to be criminally negligent, the owner could be convicted of a crime.

13. (IIIB3)

- 1) Computer crimes are true crimes.
- *2) Access to computers by unauthorized users and the ease with which hackers can access vital information make it difficult to prosecute cybercrimes. In addition, companies are often reluctant to make these crimes public for fear that this information will in some way hurt their businesses.
- 3) Computers are a viable tool for criminal activity.
- 4) If this premise were true, computer crime would in fact be easier to prosecute.

14. (IIIB4a)

- 1) The driver's negligence does not protect the employer if the driver was working when the accident occurred.
- 2) The fact that the employer was not present when the accident occurred does not protect the employer if the driver was working when the accident occurred.
- 3) The employer's liability is not dependent upon the traffic enforcement authority's determination of "fault" or "violation."
- *4) The doctrine of *respondeat superior* provides that an employer is liable for damage caused by negligence of her/his employee if the employee was working at the time of the injury. Although the employer did not cause or authorize the negligent conduct, the employer is vicariously liable.

15. (IIIC1b)

- *1) Truman's smokehouse creates smoke that drifts into the neighbor's garden, preventing the neighbor from enjoying her property. This is a private nuisance.
- 2) A trespass to personal property occurs where the defendant temporarily exercises control over the personal property of another or temporarily interferes with the owner's use or enjoyment of the personal property. This is not the case here.
- 3) When a person permanently deprives the owner of personal property of possession and enjoyment, it is deemed a conversion. This is not the case here.
- 4) Disparagement is an intentional tort against an economic interest. In the scenario, Truman's smokehouse has interfered with his neighbor's enjoyment of her backyard garden.

16. (IVA4a)

- *1) These are both categories of defenses to a contract.
- 2) Agreement, consideration, legal purpose, and capacity are the four elements of a contract.
- 3) Revocation by offeror, rejection by the offeree, etc., are the ways to terminate an offer.
- 4) Express vs. implied, quasi-contracts, bilateral vs. unilateral, etc. are classifications of contracts.

*correct answer

17. (IVA4c4)

- 1) The statute of frauds, a requirement that the contract be in writing to be enforceable, is not the reason the contract is not enforceable.
- 2) Unenforceability is a defect that prevents enforcement of a valid contract. For example, parties orally agree to exchange a particular piece of real property for an agreed-upon price. Neither party can compel the exchange, that is, enforce the agreement, because agreements to sell real estate must be written.
- *3) An agreement for the sale or purchase of an illegal item is void. The contract does not exist.**
- 4) Voidability is a defect that can prevent execution of a valid contract. A voidable contract is one where one or both parties have the right or ability to withdraw from the agreement.

18. (IVB1a)

- 1) These are terms that do not have any support in the contract.
- 2) Contracts are enforceable even if they are not in writing.
- *3) Material terms are necessary to determine breach of contract and damages.**
- 4) Executed is a term used to refer to contracts in which all the terms have been fully performed.

19. (VA1)

- 1) All powers of attorney are written documents.
- 2) Either power of attorney can give the same authority.
- 3) Either power of attorney can be used for health care or business purposes.
- *4) This is a correct distinction between a durable and non-durable power of attorney.**

20. (VA2a)

- 1) Express authority exists when it is specified within the agency agreement.
- *2) Implied authority is determined by what would be considered reasonable given the circumstances of the situation.**
- 3) Apparent authority is not actual authority. This can be applied where the principal leads a third party to believe that an unauthorized agent has authority to bind the principal.
- 4) Ratification occurs when a principal subsequently approves of a prior unauthorized act of an agent who did not possess apparent authority.

21. (VB1c1)

- 1) There is not a limit on shareholders for the corporation.
- 2) This type of corporation cannot have more than 100 shareholders. This is because it is taxed like a partnership.
- 3) This form requires one general partner and allows limited partners.
- *4) A limited liability company, first conceived in 1977, has gained popularity because it combines some of the best features of a partnership and a corporation, including the choice of how members wish to be taxed and allowing members to help manage the company.**

22. (VC1c1)

- 1) The acceptance requirement is met, because the deed was received and acknowledged by the grantee/purchaser of the property.
- 2) The delivery requirement is met, because the deed was, in fact, delivered to the grantee/purchaser.
- *3) The grantor's signature on the deed is evidence that the grantor intends to transfer the property to the grantee/purchaser. Therefore, the execution requirement is not met in this case because the grantor did not sign the deed.**
- 4) The recording requirement is met, because the grantee/purchaser filed the deed with the County Deed Office.

*correct answer

23. (VC1d2)

- 1) The Supreme Court has held that a city may take private property and sell it to a private developer where the motive is to help improve the city's economy.
- 2) The taking was for "public use." In *Kelo v. City of New London*, the Supreme Court acknowledged that its interpretation of "public use" was a broad one. This means that the city may seize property for a "public purpose."
- *3) The Supreme Court has held that this type of taking is proper because it benefits the public. The city's economy will improve due to the new development.
- 4) The city's act of seizing the property through eminent domain is considered a taking. This type of "public purpose" condemnation is considered proper because it is meant to benefit the public by improving the city's overall economy.

*correct answer

SECTION FIVE

Taking the Exam

Registering for Your Exam

Register Online

www.excelsior.edu/examregistration

Follow the instructions and pay by Visa, MasterCard, American Express, or Discover Card.

Examination Administration

Pearson Testing Centers serve as the administrator for all Excelsior College computer-delivered exams.

Accessibility Services

Excelsior College is committed to the principle that every individual should have an equal opportunity to enroll in an Excelsior College degree program, to register for courses or examinations in order to demonstrate their knowledge and skills under appropriate conditions, and to complete a degree.

The Accessibility Services Office at Excelsior College is responsible for considering requests for reasonable accommodations for individuals with verifiable, documented disabilities. If you are requesting an accommodation due to a disability/condition, complete a [Request for Accommodation form](#).

Computer-Delivered Testing

The UExcel exams are delivered by computer. You can take this exam either in a [Pearson VUE testing center](#) or at your home or office with an online proctor. If you are interested in remote proctoring, visit [PearsonVUE OnVUE online proctoring](#).

The system is designed to be as user-friendly as possible, even for those with little or no computer experience. On-screen instructions are similar to those you would see in a paper examination booklet. You will use either the keyboard or the mouse to submit your answers, depending upon the type of question.

Before taking your exam, we strongly encourage you to go on a virtual tour of the testing center. To access this tour, click the What to Expect in a Pearson VUE test center at the following link: home.pearsonvue.com/test-taker/security.aspx

You also will receive a small, erasable whiteboard if you need one.

Breaks

Breaks are only permitted for exams taken at Pearson VUE Testing Centers, and are not permitted during exams delivered via online proctoring.

Online Proctoring

As of spring 2021, Excelsior is offering an [online delivery option](#) for UExcel exams, using OnVUE, Pearson VUE's online delivery and proctoring service.

You must use a personal (vs. an employer's) computer if you want to take the exam online and not in a testing center, so the exam can be effectively delivered to you.

Breaks are not allowed during an exam taken online from home. You may not leave your seat during an online-proctored exam, so be prepared to sit for two or three hours. If you need extra time, the exam will have to be taken at a PearsonVUE Testing Center, and an accommodation formally requested.

NOTE: English Composition, Spanish, Music, and College Writing will NOT be available for online proctoring.

On the Day of Your Exam

Important Reminders

On the day of your exam, remember to:

- dress comfortably: the computer will not mind that you're wearing your favorite relaxation outfit
- arrive at the test site rested and prepared to concentrate for an extended period
- allow sufficient time to travel, park, and locate the test center
- be prepared for possible variations in temperature at the test center due to weather changes or energy conservation measures
- bring your ID, but otherwise, don't weigh yourself down with belongings that will have to be kept in a locker during the test.

Academic Integrity Nondisclosure Statement

- All examinees must agree to the terms of the Excelsior College Academic Integrity Policy before taking an examination. The agreement will be presented on screen at the Pearson VUE Testing Center before the start of your exam.
- Once the examinee agrees to the terms of the Academic Integrity Nondisclosure Agreement (NDA), the exam will begin.

If you choose not to accept the terms of the agreement

- your exam will be terminated
- you will be required to leave the testing center
- you will not be eligible for a refund. For more information, review the Student Policy Handbook at www.excelsior.edu/studentpolicyhandbook.

Student behavior is monitored during and after the exam. Electronic measures are used to monitor the security of test items and scan for illegal use

of intellectual property. This monitoring includes surveillance of Internet chat rooms, websites, and other public forums.

UExcel Grade Report

After you complete the exam, you will be issued a UExcel Grade Report for Examinations. See the [sample UExcel Grade Report](#) in this content guide.

Grade Appeals

If you believe that your score grade is incorrect, you may appeal your grade to examcredit@excelsior.edu. Details about the appeals process are in the [Student Handbook](#).

What If I Miss My Appointment?

If you don't cancel or reschedule your testing appointment 24 hours before your test appointment, you will have to pay the full fee of the exam, even if you don't show up.

Late Arrivals

You will also forfeit the exam fee if you arrive to the test center more than 15 minutes late.

Information About UExcel Exams for Colleges and Universities

A committee of teaching faculty and practicing professionals determines the learning outcomes to be tested on each exam. Excelsior College Center for Educational Measurement staff oversee the technical aspects of test construction in accordance with current professional standards. To promote fairness in testing, we take special care to ensure that the language used in the exams and related materials is consistent, professional, and user friendly. Editorial staff perform systematic quantitative and qualitative reviews to ensure accuracy, clarity, and compliance with conventions of bias-free language usage.

Excelsior College, the test developer, recommends granting three (3) semester hours of lower-level undergraduate credit to students who receive a letter grade of C or higher on this examination. The examination may be used to help fulfill a core requirement for Business degrees or as a free elective for all Excelsior College degree programs that allow for free electives. Other colleges and universities also

recognize this exam as a basis for granting credit or advanced standing. Individual institutions set their own policies for the amount of credit awarded and the minimum acceptable score.

Business Law Exam Development Committee

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Sample Grade Report

Excelsior College
GRADE REPORT FOR EXAMINATIONS

<p>Contact ID:</p> <p>Test Date: 11/21/2020</p> <p>Letter Grade: C</p> <p>Examination Code and Title: 210 Statistics</p> <p>Recommended Credit: 3 Lower Level</p>

Your examination results are expressed as a Letter Grade of A, B, C, or F. Your results are automatically verified when they are received at Excelsior College. If an error is detected, you will be notified immediately.

Recommended Credit is the number of semester hours credit that Excelsior College awards and recommends for your grade. Excelsior College awards and recommends credit for letter grades of C or better.

If you plan to take another examination, you may download free content guides and the User's Guide by visiting our website at www.excelsior.edu/exams/content-guides/.

If you need an Excelsior College Official Examinations Transcript to document the credit you have earned for this examination for another institution, the request can be made online by accessing the Excelsior College website (www.excelsior.edu), logging into your MyExcelsior account, and scrolling down to the For Exams Takers box and clicking on the Request transcripts link. If you do not already have a MyExcelsior username and password, you can obtain one at no cost by accessing the Excelsior College website, clicking the Log In to MyExcelsior button, and then clicking the link "Create a MyExcelsior User Account."



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