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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. 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.

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

Exam-takers 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.

Examination Length and Scoring

The examination consists of approximately 100 questions, most of which are multiple choice; for samples of all the item types on this exam, see the sample items in the back of this guide. Some items are unscored, pretest items. The pretest items are embedded throughout the exam and are indistinguishable from the scored items. You will have two (2) hours to complete the examination. Your score will be reported as a letter grade.

UExcel Exam Resources

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: www.excelsior.edu/bookstore

Phone: 800-325-3252 (International 573-441-9179)
Fax: 800-325-4147 (International 573-446-5254)

UExcel Practice Exams

The official UExcel practice exams are highly recommended as part of your study plan. Once you register for your UExcel exam, you are eligible to purchase the corresponding practice exam, which can be taken using any computer with a supported Web browser. Each practice exam includes two forms that you may take within a 180-day period.
Excelsior College Library

Enrolled Excelsior College students can access millions of authoritative resources online through the Excelsior College Library. 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. Special library pages relate to the nursing degree exams and other selected exams. To access it, visit [www.excelsior.edu/library](http://www.excelsior.edu/library) (login is required).

Our library provides:

- 24/7 availability
- The world’s most current authoritative resources
- Help and support from staff librarians

Online Tutoring

Excelsior College offers online tutoring through SMARTTHINKING™ to connect with tutors who have been trained in a variety of academic subjects. To access SMARTTHINKING, go to [www.excelsior.edu/smarthinking](http://www.excelsior.edu/smarthinking). Once there, you may download a copy of the SMARTTHINKING Student Handbook as a PDF.

MyExcelsior Community

MyExcelsior Community enables Excelsior College students and alumni to interact with their peers online. As members, students can participate in real-time chat groups, join online study groups, buy and sell used textbooks, and share Internet resources. [Enrolled students have automatic access from their MyExcelsior page](http://www.excelsior.edu/myexcelsiorcommunity). Visit [www.excelsior.edu/myexcelsiorcommunity](http://www.excelsior.edu/myexcelsiorcommunity).

Preparing for UExcel Exams

How Long Will It Take Me to Study?

A UExcel exam enables you to show that you’ve learned material comparable to one or more 15-week college-level courses. As an independent learner, you should study and review as much as you would for a college course. For a 3-credit course in a subject they don’t know, most students would be expected to study nine hours per week for 15 weeks, for a total of 135 hours.

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** (if you are an enrolled student, search for partners on MyExcelsior Community)
- **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.

Using UExcel Practice Exams

We recommend taking the first form of the practice exam when you begin studying, to see how much you already know. After taking the first practice exam, check your performance on each question and find out why your answer was right or wrong. This feedback will help you improve your knowledge of the subject and identify areas of weakness that you should address before taking the exam. Take the second form of the practice exam after you have finished studying. Analyze your results to identify the areas that you still need to review.
Although there is no guarantee, our research suggests that students who do well on the practice exams are more likely to pass the actual exam than those who do not do well (or do not take advantage of this opportunity).

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 is not affiliated with any test preparation firm and does not endorse the products or services of these companies. 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.

Preparing for This Exam

Prior Knowledge
No prior knowledge of business law is required before you study for this exam.

Using the Content Outline

Each content area in the outline includes (1) the recommended minimum hours of study to devote to that content area and (2) 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 in other editions.

This content outline contains examples of the types of information you should study. Although these examples are numerous, 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 study materials listed below are recommended by Excelsior College as the most appropriate resources to help you study for the examination. For information on ordering from the Excelsior College Bookstore, see page 1 of this guide. You may also find resource materials in college libraries. Public libraries may have some of the textbooks or may be able to obtain them through an interlibrary loan program.

You should allow sufficient time to obtain resources and to study before taking the exam.
Textbook
This textbook was used by the examination development committee to verify all questions on the exam.


This study material may be purchased from the Excelsior College Bookstore.

Websites
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/

Open Educational Resources
The Saylor Foundation provides free, high quality courses through online, self-paced, free learning resources.

The Saylor Foundation’s Business Law and Ethics course is a useful resource for your study.

Saylor Foundation: Business Law and Ethics
http://www.saylor.org/courses/bus205/

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.
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. Explain 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. Explain 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.
4. Discuss 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.
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.

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

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   | 27 HOURS OF STUDY

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

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


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
   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

c. Types of administrative agencies

d. Limitations of agency powers

II. The Constitution and Business

<table>
<thead>
<tr>
<th>10 PERCENT OF EXAM</th>
<th>14 HOURS OF STUDY</th>
</tr>
</thead>
</table>

Kubasek

Ch. 4, Constitutional Law

Appendix A, The Constitution of the United States of America


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
a. Establishment clause  
b. Free exercise clause


3. Fifth (due process)


   a. Right to privacy

5. Fourteenth (due process and equal protection)

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/tortuous 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)

5. Strict liability

III. Business Ethics/Criminal Law/Tort Law

20 PERCENT OF EXAM | 27 HOURS OF STUDY

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)

   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

   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

Note: (see www.law.cornell.edu (LII) and p. 419 for strict liability and partnership law)
a. Abnormally/inherently/unreasonably dangerous activities
b. Exotic animals
   1) Design defect/manufacturing defect/failure to warn

IV. Contracts

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
      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”
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)

   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 | 27 HOURS OF STUDY

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/estoppers
   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)


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


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. Intellectual property (trademarks, copyright, patents, trade secrets)
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 16–20 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

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?
   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.
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. (III B1)

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. (III B1)

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. (III B3)

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. (III B4 a)

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. (III C1b)

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. (IV A4 a)

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.
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.
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