

FINAL EXAM

Instructions

DO NOT GO BEYOND THIS PAGE UNTIL THE EXAM ACTUALLY BEGINS.

This is a CLOSED BOOK exam.

While you are waiting for the exam to begin, be sure that you have read these instructions, and that you are otherwise ready to begin.

Write your AGN on this page and return the exam to the proctor at the end.

This exam will last THREE HOURS. Points are assigned to each section of the exam reflecting the approximate time it is expected will be required to complete that portion.

For the multiple choice questions, enter your answer on the Scantron sheet that will be distributed. Choose the BEST answer. The multiple choice questions are worth 60 points.

There are two essay questions.

Essay Question 1: 60 points

Essay Question 2: 60 points

Plan on spending at least 10 MINUTES reading each essay question and outlining your answer. REREAD the question to be sure you haven't missed anything.

Assume that this case arises in the state of Everglade, which is not a community property state, and ignore any issues relating to family law.

You are welcome to use abbreviations, but indicate what they are, *e.g.*, “Andropov (A) will claim he had a contract with Brezhnev (B). B would be liable to A if”

Plan on spending 10 minutes or so at the end PROOFREADING your answers to the essay questions. You may not write ANOTHER WORD after time is called.

REMEMBER THE HONOR CODE: DO NOT IDENTIFY YOURSELF

GOOD LUCK!

MERRY CHRISTMAS / HAPPY HOLIDAYS

MULTIPLE CHOICE QUESTIONS (60 points)

1. Bill had a motorcycle he wanted to sell. He took a picture of the motorcycle in front of his house and on Friday placed an ad on Craigslist with the picture of the motorcycle and a price of \$10,000. Jim saw the ad on Craigslist, recognized the motorcycle as a classic worth more than \$10,000, and also recognized the house as being in a neighborhood where his girlfriend used to live. The next day, Saturday, Jim drove over to Bill's house and knocked on the door. He asked if Bill had a motorcycle to sell. Bill said, "Yes, I do." Unbeknownst to Jim, Bill had a friend who also saw the ad on Craigslist and told him the motorcycle was worth closer to \$15,000, and he should change the ad. However, Bill had not yet done so. Jim held out his hand with \$10,000 in cash and said, "I accept your offer to sell the motorcycle." If Bill refused to sell the motorcycle, and Jim sued him for breach of contract, what result?

- a. Bill wins, because the ad was not an offer;
- b. Bill wins, because he was intending to change the ad;
- c. Jim wins, because he acted in reliance on the ad;
- d. Jim wins, because his tender of \$10,000 in cash was full performance.

2. Mike and Sam were shooting baskets in the driveway when Mike made a particularly difficult shot. Mike said to Sam, "I bet you can't match that shot." Sam replied, "What will you give me if I make the shot?" Mike said, "I'll give you \$50 if you make it on your first try." Sam then took the ball and repeated the exact same shot, and to his surprise, the ball went through the hoop. Mike then said, "Wow! You're better than I thought. It's a good I was just joking." Sam said, "Oh no you don't. You owe me \$50." If Sam tried to recover \$50 from Mike, what result?

- a. Sam wins, because Mike was promised something of value in return for his promise;
- b. Sam wins, unless Mike thought he was joking when he made the offer;
- c. Mike wins, because Sam suffered no detriment in trying to make the shot;
- d. Mike wins, unless Mike created an impression that he was serious.

3. Ajax Products advertised that it was selling premium widgets, normally priced at \$200, for 50% off. The ad said, "Offer good as long as supplies last." Charlie, an executive at Braxton Industries, saw the ad in a trade magazine that was a month old. He called Ajax to find out whether they still had premium widgets, and if they were still 50% off. "Yeah, we still have a few," said the sales representative at Ajax. "How many do you need?" Charlie said, "I'll have to check. I'll call you back." Charlie then called the head of production at Braxton and told him he could get premium widgets for half price; the production manager said, "Oh, if you could get 100 of them, that would be great. "Okay," said Charlie. He tried to call Ajax again, but by that

time it was after hours and there was no answer. Overnight there was a fire at the production facility of Ajax' main competitor for widgets. The next day Charlie sent an email saying, "Braxton orders 100 premium widgets at your advertised price." The sales manager emailed back saying that premium widgets were now full price. If Braxton sued Ajax to get 100 premium widgets for half price, what result?

- a. Ajax wins, because the original offer was simply an advertisement;
- b. Ajax wins, because in the first phone call Braxton never specified a quantity;
- c. Ajax wins, because Braxton never supplied any consideration to keep the offer open;
- d. Braxton wins, but only if Ajax had 100 widgets in stock.

4. Elaine worked as a bookkeeper for Farmer, a lawyer nearing retirement age. Elaine told Farmer she got an offer from a different employer for more money. Farmer told Elaine, "I don't want the hassle of hiring someone new. If I pay you \$100 more a month, will you stay?" Elaine said, "Yes." Two months later, Elaine got an even better offer from a different employer. She then told Farmer she either needed more money or she would take the new job. Farmer said, "Wait a minute. You said you would stay if you got \$100 more per month. I held up my end of the bargain." Elaine said, "Times have changed." If Elaine quit, could Farmer successfully sue her under the principle of promissory estoppel?

- a. No, because employers can't force employees to continue working;
- b. No, assuming that Farmer did not detrimentally rely on her promise;
- c. Yes, if Elaine expected Farmer to rely on her promise;
- d. Yes, because Elaine received consideration for the promise to stay.

5. Herald Services Ltd. provided cleaning and maintenance services to Everglade businesses. Herald Services offered to come in after 7 pm twice per week and empty any trash containers, clean the bathroom and kitchen areas, vacuum any carpeted areas and restock any paper dispensers such as paper towels or bathroom tissue. Before quoting a price a representative from Herald Services toured the office and asked questions about the number of employees and their typical working hours. Herald Services obtained one or more keys to the office and instructions on how to disable and re-enable any security alarms. Kendall Yards, a local business contracting business, signed a contract for 12 months of service at \$500 per month. Two months into the one-year contract, Herald Services was purchased by WeClean, a national company. WeClean sent a letter to Kendall Yards notifying them of the change in ownership, but assuring Kendall Yards that Marco and Patricia, who had previously performed the maintenance at Kendall Yards, would continue to do so as employees of WeClean. If Kendall Yards wants to cancel the contract, may they do so?

- a. Yes, if the contract contained a "no-assignment" clause;
- b. Yes, if the delegation posed a security risk to Kendall Yards;

- c. Yes, if employees other than Marco and Patricia performed the work;
- d. No, unless employees other than Marco and Patricia performed the work.

6. Ownby wanted to build a new house on land that had previously been part of a large wheat farm. Ownby had plans drawn up that included a large basement. Samson Contractors sought bids for the excavation of the site, 8 feet below grade level. Drake Digging sent an estimator to the site and submitted a bid for \$10,000 to do the excavation work. Ownby received a bid that was slightly lower, but chose Drake because Sampson previously had a good experience with Drake. Samson signed a contract with Ownby to build the house and Drake was notified that their bid had been accepted. When Drake began digging, they discovered that there was a large rock formation that could not be removed except by use of explosives, tripling the cost compared with what Samson and Drake had expected. If Drake refused to complete the subcontract without an increase in compensation, what result?

- a. Drake would win, because of their prior course of dealing;
- b. Drake would win, because Samson did not choose the lowest bidder;
- c. Samson would win, because Drake accepted the risk of loss when proposing the bid;
- d. Samson would win, because Drake was subjecting Samson to duress.

7. Xylophone United made musical instruments for use by high school band members. Some instruments were purchased by the students themselves, but others were purchased by a school for use by students while they are enrolled in a band class. The Lake City School District (LCSD) built a brand new high school, Freeman High School, and authorized Mr. Yearly, the band teacher, to order instruments. Yearly sent Xylophone an email asking for a quote on twenty snare drums, the most popular type of drum. Xylophone sent him a quote for twenty drums at \$200 per drum. Yearly then called Xylophone to ask how much Xylophone would charge for drums that matched the school colors and had the logo of the school. Xylophone said they would charge that it would cost \$300 per drum. Yearly said that he needed the drums by August 15, the week before school began. Xylophone agreed. A contract for the delivery of twenty drums by August 15 was signed by both parties. On August 10 twenty drums arrived that had the correct color, but three of them were missing the logo. Xylophone explained that the machine for printing the logos broke. What are LCSD's options?

- a. LCSD can reject the shipment and sue for damages;
- b. LCSD can accept the 17 conforming drums and sue for breach of contract with respect to the last three;
- c. LCSD can keep all twenty drums and sue for damages;
- d. Any of the above.

8. Fred owned a condo at a ski resort, one of 24 units in the same building, all of which had identical floorplans and amenities. Fred didn't use his condo very much partly because he and his brother had purchased neighboring condos, and the two brothers had gotten into a heated argument, after which they cut off all communication. Fred decided to put his condo up for sale. Ginger saw the listing for the condo and began looking into the possibility of buying it. After some negotiations, Fred and Ginger signed a contract that provided for closing the sale on July 1. On June 15th Fred learned that his brother was going to sell his condo, and Fred's new girlfriend said that she really wanted to take up skiing and told him not to sell. Fred told Ginger that he had changed his mind, and pointed out that his brother's condo was selling for a lower price than what Ginger had agreed to pay for his condo. If Ginger sued and demanded specific performance, would she win?

- a. Yes, because real estate is unique;
- b. Yes, unless an award of damages would fully compensate Ginger;
- c. No, because Ginger would suffer no damage from purchasing the neighboring condo;
- d. No, because she has a duty of good faith to accommodate Fred.

9. Jason needed cash to pay for a medical operation for his mother. Jason had a valuable painting, "Seascape." He sent an email to twenty different friends of his, whom he knew to have an appreciation of the artwork and its value. His email stated, "Friends, due to financial circumstances, I need to sell Seascape. You all know how much I treasure it, and you also know that it will appreciate in value, so I am giving you all an opportunity to bid to purchase it. If you want to purchase it, send me an email with your best offer, but it should be at least \$50,000. I would like to have your answer no later than noon on Thursday, November 1. I will sell the painting to whoever offers me the most money." Karl replied by email on October 31, "I can't do \$50,000, but I will buy it for \$40,000." Larry responded on November 2, "I will buy your painting for \$50,000." Is Jason obligated to sell the painting?

- a. Yes, Jason is obligated to sell to Karl, because his was the only bid that came in by noon on November 1.
- b. Yes, Jason is obligated to sell to Larry, because he offered more money;
- c. Jason isn't obligated to sell to either Karl or Larry;
- d. Either Larry or Karl could enforce the obligation to sell the painting.

10. For twenty years Tom and Jerry operated a bicycle shop in a building they rented from their landlord. Tom and Jerry used to work for George, who ran a competing bicycle shop but with whom Tom and Jerry still got along and whom they respected for his honesty. Tom handled the business side of the bicycle shop, handling customers, purchasing bicycles, advertising, bookkeeping, etc. Jerry spent his time actually fixing bicycles. Last month Jerry decided he wanted to do something different. He asked Tom if he would buy out his share of the

business. Tom said, “Yes, I will pay you 50% of what the business is worth.” Jerry then drew up a contract that listed all the assets of the business, both tangible and intangible, and provided, “Tom shall pay Jerry 50% of what our friend George estimates the business to be worth.” Both parties signed the agreement, but Jerry subsequently changed his mind and said he didn’t want to sell. Can Tom enforce the agreement?

- a. Yes;
- b. Yes, but only if the agreement is not governed by the UCC;
- c. No, because it was just an agreement to agree;
- d. No, because the selling price is a material term not included in the agreement.

11. Barbara offered to sell her piano to Camille for \$5,000. Camille liked the piano but wasn’t sure it was worth \$5,000. Camille asked Barbara for more information about how she came up with the \$5,000 figure. Barbara said that she looked at prices for similar pianos and thought it was a fair price. Camille said, “I only have \$3,000 saved up. Would you take \$3,000?” Barbara said, “If you pay me \$3,000 up front, and promise to pay the other \$2,000 within one year, I will sell it to you.” Camille replied, “I’m still not sure it’s worth it.” Barbara said, “I will get you some more information.” Barbara then printed out an ad from Craigslist that showed a similar looking piano that was being offered for \$6,000. Barbara didn’t tell Camille that the other piano had appeared in a movie about a famous musician. Camille then agreed to the terms Barbara proposed; Barbara wrote up a contract with the terms she had proposed both parties signed it. Barbara delivered the piano to Camille and Camille paid her \$3,000 in cash. Camille later found out why the owner of the other piano was demanding \$6,000. What are Camille’s remedies?

- a. Camille can refuse to pay the remaining \$2,000, but she cannot recover the \$3,000 she already paid;
- b. Camille is obligated to pay the remaining \$2,000 because Barbara never made a knowingly false statement concerning the piano’s value;
- c. If Camille got back her \$3,000, she would have to return the piano;
- d. Camille can get her \$3,000 back and also recover damages for misrepresentation.

12. Blizzard Tire Company sells snow tires for winter driving. Emily is a manager for Rubber Shoes, a local tire store. Emily called Blizzard to get a quote on snow tires. Blizzard replied, “tell me what sizes you need, and how many.” Emily then emailed a list of the four most common sizes, and Blizzard replied with a quote for each size. Emily emailed back that she wanted 10 tires of each size at the price quoted. Blizzard wrote a confirmation email, “Order received. Delivery expected between two to four weeks.” The next day Blizzard sent another email, which contained the following language: “Snow tires are made of soft rubber for better traction, and all sales of snow tires are without any warranty as to how long they will last.” Emily didn’t read that email because when she saw the subject line she thought it was just more

advertising. Rubber Shoes received the tires and installed them on customer vehicles. Later that winter customers complained that their snow tires didn't even last a full season, and Rubber Shoes wound up replacing many of them. If Rubber Shoes sued Blizzard for breach of warranty, is Blizzard's warranty disclaimer effective?

- a. No, if Rubber Shoes timely objected;
- b. No, because it is unconscionable;
- c. Yes, because Emily is presumed to have read and understood the email
- d. Yes, because the sale was already complete.

13. Daniel bought a used car from Catherine. Daniel agreed to pay \$200 per month for 24 months. After six months the transmission failed. Daniel accused Catherine of lying to him about the condition of the car when she sold it to him. Catherine pointed to the contract they both signed, which contained a clause saying, "Buyer accepts the car as is, with all faults. Buyer assumes all responsibility for any repairs to the car." Daniel said he wasn't going to continue making payments unless Catherine repaired the transmission. Catherine responded, "Okay, if you pay me \$500 by the end of January, I will cancel the other payments." If Daniel pays \$500 to Catherine by the end of January, is the rest of his debt canceled?

- a. Yes, but only if Catherine actually lied to him about the car;
- b. Yes, because there is consideration for the modification of their contract;
- c. No, but only if Catherine didn't misrepresent the condition of the car;
- d. No, because Daniel had a pre-existing duty to pay.

14. James Woodland, doing business as Woodland Loggers, operated a tree removal business cutting down and removing trees for property owners. Rachelle Lumber Company ("Rachelle") offered a contract to Woodland to purchase all of the marketable logs from trees he cut down. The contract duration was five years. The price to be paid for each log was calculated based on the diameter and length of each log. Woodland accepted the offer and both parties signed the contract. The first year of the contract Woodland didn't sell any logs to Rachelle because he spent the entire year building a house. Rachelle assumed he had gone out of business and made contracts with other loggers to insure an adequate supply. After he finished with building his house, Woodland returned to the logging business and showed up at Rachelle with a truckload of logs. Rachelle turned him away. If Woodland sued Rachelle for breach of contract, what result?

- a. Woodland would win, because he had no duty to furnish logs the first year;
- b. Woodland would win, but only if Rachelle waived its contractual rights for the first year;
- c. Rachelle would win, because his failure to deliver logs in the first year would be considered anticipatory repudiation;

- d. Rachelle would win because it was reasonable to assume that Woodland was no longer in business.

15. Norman worked for WeMakeRain, a company that installed sprinkler systems. Jim, a high school friend of Norman's, owned a house in Springfield, Everglade, as well as a lake cabin. Jim wanted a sprinkler system installed at his lake cabin on Silver Lake, and so he called WeMakeRain and told them he wanted to have a system installed "in the backyard at my place on Silver Lake." Susan, an employee at WeMakeRain, asked how large his backyard was and Jim gave the dimensions. Susan quoted Jim a price of \$5,000 and Jim said, "Sounds good." Susan emailed Jim the paperwork and Jim signed the contract and mailed it back. Susan told Norman that his friend Jim had called and asked to have a sprinkler system installed in his backyard. Susan didn't know that the "place" on Silver Lake was a lake cabin, and Norman assumed that Jim had ordered a system for his house in Springfield. Jim had a cancellation the next day, and so he drove to Jim's house to begin work. Jim was away on a business trip but his wife was home. When Jim said he was there to install a sprinkler system she said "Okay," thinking it was something Jim had ordered. Jim then installed a sprinkler system worth \$3,000. When Jim returned from his business trip he discovered the new system and called WeMakeRain to say they had made a mistake. Does Jim owe WeMakeRain \$3,000?

- a. No, because WeMakeRain made the mistake;
- b. No, because there was no contract;
- c. Yes, but only if it would be unjust to allow Jim to retain the benefit of the system without paying \$3,000;
- d. Yes.

ESSAY QUESTION #1 (60 points)

Wendy and Howard started living together in 2014. (Assume for purposes of this question that Everglade is not a community property state.) For eight years they bought a house and a car together, and owned and operated a company called Echo Systems, Inc., which offered hardware and software support to businesses. In addition, the business computers were used to mine, trade, and store cryptocurrencies. In 2022 their relationship was falling apart, and so they began to discuss how they would divide up the assets that they had accumulated together. Eventually they sought the services of a mediator, and in the course of the mediation Wendy proposed, “I think we should divide things 50-50.” Howard replied, “Well, that’s fair. I think the equity in the house along with the car are worth about what the business is worth. What if you get the house and the car, and I get the business?” “Okay,” said Wendy, “except that I also want to keep my computers and stuff.” Howard said, “Agreed.”

At the conclusion of the mediation, a property settlement agreement (PSA) was written which both Wendy and Howard signed. It said, among other things, “Wendy shall be given clear title to the residence, 516 Pine St., and the Jeep Grand Cherokee, VIN 1C4RJEBGXFC665702. Howard shall retain the assets of the business, Echo Systems Inc., except for Wendy’s Mac computer and printer, iPhone, iPad and laptop, which Wendy will retain.”

After the agreement was signed, Howard moved out of the home, bought a used car, and went to work making sure the customers of Echo Systems, Inc. were happy. A month later, Howard received a notice about a hacking event related to the cryptocurrency account. Howard then looked on line to find out what the cryptocurrencies were worth, and discovered to his surprise that they were now worth approximately \$200,000. The last time Howard or Wendy had checked, they were worth between \$5,000 and \$10,000.

Jill, a part-time receptionist at Echo Systems, heard Howard exclaim, “Hallelujah,” and walked over to his desk to see what was happening. Howard explained what he had just learned, and Jill saw the numbers on Howard’s computer monitor. Jill said, “Wendy will be happy, too.” Howard said, “What do you mean?” Jill said, “I thought you agreed to split things 50-50.” “Yeah, but we’re not together anymore.” Jill shook her head and walked away. She later called Wendy to tell her what had just transpired. Wendy then hired a lawyer, and the lawyer sent Howard a letter demanding half of the \$200,000.

Your firm has been hired to represent Howard. Assume for purposes of your analysis that neither Wendy nor Howard thought about the cryptocurrencies at the time they entered into the property settlement agreement.

ESSAY QUESTION #2 (60 points)

Linda Pearce was the daughter of Jeremy Kohl, a well known actor who starred in a very successful TV mini-series. Pearce herself appeared as a child actor in TV shows and movies with which her father was associated. Her father handled all of the business dealings and managed the money that she earned as a result of her appearances.

In 2022, when Pearce was 17 years old, she was contacted by Michael Craven, a film producer whom she had met at social events. Craven knew her father and had seen her performance. Craven thought Pearce would be perfect to appear in an upcoming movie starring Terry Tompkins, a 22-year-old actor. Pearce would play the girl who falls in love with him. Craven called Pearce to ask her whether she would accept the role he had in mind. Pearce asked him, "What does it pay?" Craven answered, "You'll get \$50,000 up front, plus residuals." Pearce said, "Sure, I'm in." Craven responded, "I'll send the paperwork to your dad. Filming starts on June 1." Pearce replied, "Oh, don't send it to my dad. He hasn't done a good job managing my money. Besides, I'm old enough to make my own deals. Send me the paperwork and I'll sign it." Craven was surprised, but assumed that she had turned 18, and so he sent her a contract, which he had signed. The contract included the following language:

"Upon appearing on the set on the first day of filming, Pearce will be paid \$50,000. After the movie is released, Pearce will receive .5% of all net profits."

Pearce signed the agreement and sent it back to Craven. She got a copy of the script and began reading it, preparing for filming. She saw that one of the scenes included extended kissing with Tompkins, and she resolved to tell Craven that he would have to change the script.

On May 25 Terry Tompkins told Craven, "I want my girlfriend to be the love interest in the movie." "But I've already promised the part to Linda Pearce," said Craven. "Square it up with her dad. I'm sure he'd be cool with it." "But I made the deal with her, not her dad," said Craven. "Really?" said Tompkins. "I didn't think she was old enough." Craven then looked up her up on line, and discovered that she was indeed still 17. "Okay," said Craven. "Your girlfriend is in." Craven told security that Pearce was no longer part of the movie and to turn her away at the gate.

On June 1, Pearce arrived early at the studio entrance for filming. When she pulled up to the security gate the guard recognized her but said, "I'm sorry, I've been told not to let you in." "What?" said Pearce. She called Craven, who wouldn't answer his phone, so she texted him. "Why won't you let me in?" she texted. Craven texted back: "Sorry, dear, but we decided to go a different direction." Pearce turned around and went home crying.

Pearce has now come to your office asking whether she has any remedies against Craven. What would you tell her?