

Name _____

DIRECTIONS: In each question below, circle the letter of the best answer. Be sure to read all foils before responding. If you change your mind about an answer, make sure your final response makes clear what your choice is; if two answers are circled, you obviously cannot get any credit. If any facts are given in a question, you may assume that those facts are not subject to problems of proof and can be definitely established in court.

1. The person who brings a lawsuit is called the
 - a. plaintiff
 - b. defendant
 - c. appellant
 - d. appellee

2. Bankruptcy and patent proceedings must be heard in _____ court.
 - a. state
 - b. federal
 - c. the US Supreme
 - d. appellate

3. A newspaper reports that Acme Corporation is discharging toxic waste into an adjacent river, and that the state Attorney General is, pursuant to a state statute, seeking a court order prohibiting him from doing so in the future. What kind of relief is the Attorney General seeking?
 - a. equitable
 - b. legal
 - c. punitive
 - d. quasi-contractual

4. In the preceding question, in what tribunal will the Attorney General seek this relief?
 - a. state district court
 - b. federal district court
 - c. the Eighth Circuit Court of Appeals
 - d. an administrative agency

5. In question 3, who will decide whether to grant this relief?
- a jury
 - a district court judge
 - either a judge or jury, depending on what the Attorney General requests
 - a jury if requested by one of the parties, otherwise a judge
6. In question 3, suppose Acme Corporation goes out of business during the pendency of the proceedings, and ceases all activities. The court order would likely be denied because of
- lack of standing
 - mootness
 - lack of ripeness
 - lack of personal jurisdiction
7. In question 3, suppose that (prior to Acme going out of business) Joe Smith, a citizen of the state who does not live anywhere near Acme's headquarters or the polluted river (but who is passionately concerned about the environment) decides to sue Acme for emotional distress damages. His lawsuit would likely be dismissed because of
- lack of standing
 - mootness
 - lack of ripeness
 - lack of personal jurisdiction
8. Currently pending before the Iowa Supreme Court is the question of whether the state law prohibiting same-sex marriage violates the state Constitution. No federal constitutional issues are raised in that case. The decision of the Iowa Supreme Court on this issue will be subject to review by what court?
- the Iowa Court of Appeals
 - the Eighth Circuit Court of Appeals
 - the US Supreme Court
 - none of the above
9. The term "common law" refers to
- laws passed by the legislature and signed by the governor
 - administrative rules passed by agencies
 - holdings of appellate court decisions

d. provisions of the state constitution

10. If an administrative agency passes a valid rule that conflicts with an existing decision of the Iowa Supreme Court, then

- a. the administrative rule takes precedence over the appellate court decision
- b. the rule takes precedence only if it is passed by a federal, rather than state, agency
- c. the rule is void because the Iowa Supreme Court is the final arbiter of state law
- d. the rule is void because of the principle of stare decisis

11. The term “voir dire” refers to

- a. respect for precedent
- b. jury selection
- c. subject matter jurisdiction
- d. none of the above

12. Which of the following things *must* take place in *any* lawsuit?

- a. filing a petition
- b. a motion for summary judgment
- c. depositions
- d. none of the above

13. One drawback to depositions as a means of discovery is

- a. lack of spontaneity
- b. expense
- c. they require court permission to take
- d. statements made in them are not under oath

14. A person who has just lost a jury trial might consider

- a. filing a motion for summary judgment
- b. filing a counterclaim
- c. filing a motion for new trial
- d. filing a motion to dismiss for failure to state a claim

15. In terms of contract law, a contractor’s bid on a construction project is

- a. an offer
- b. the acceptance of the owner's offer
- c. the consideration for the contract
- d. none of the above

16. If a private, non-governmental, landowner solicits bids for the construction of an apartment building on property owned by him, then he

- a. is obligated to accept the lowest bidder
- b. is obligated to accept the lowest qualified bidder
- c. must reject any bid that deviates in any way from the bidding instructions
- d. has virtually complete discretion as to what bid he will accept

17. Joe Smith owns a racehorse named Speed King. On Monday he writes John Doe a letter offering to sell him Speed King for seventy-five thousand dollars. The letter reaches Doe on Tuesday, and on the same day he writes back "that's too much money, but I'll pay you sixty-five thousand dollars for him." This letter reaches Smith on Wednesday, and at noon Wednesday Smith mails a letter to Doe stating "you have a deal". Unknown to Smith, however, one hour earlier Doe had put a letter in the mailbox saying "cancel my letter mailed yesterday; I've decided not to buy the horse at any price." The offer for seventy-five thousand dollars was

- a. rejected on Tuesday
- b. rejected on Wednesday
- c. never rejected at all because Doe never actually said he would not pay that amount
- d. revoked on Tuesday

18. In the previous question, a contract

- a. was not formed because Doe's rejection was mailed before Smith's acceptance
- b. was not formed because there are two different figures being quoted
- c. was formed for sixty-five thousand dollars
- d. was formed for seventy-five thousand dollars
- e. was formed for sixty thousand dollars because a court will split the difference

19. The term "quantum meruit" refers to

- a. the latest James Bond movie
- b. the reasonable value of goods or services
- c. a requirement that contracts be in writing
- d. none of the above

20. The Iowa statute of frauds

- a. prohibits deception in the formation of contracts
- b. specifies a time period in which to sue for breach of contract
- c. specifies that certain contracts must be in writing to be enforceable
- d. imposes criminal penalties

21. Harry Homeowner contracts with Carl's Contractors to build a swimming pool on his property. The contract says nothing about the soil conditions on Harry's property, but Carl, who built swimming pools on other property in the neighborhood, assumes from these prior experiences that the ground will be easily excavated. Instead, part-way through construction, he encounters a thick layer of rock that makes construction somewhat more expensive than he originally thought it would be. This layer of rock would be characterized as

- a. a differing site condition
- b. an unforeseen site condition
- c. a Type I condition
- d. an Act of God

22. Under the facts of the preceding problem, if Carl sues Harry for the increased costs, he will likely

- a. lose, because no increased payment is ever allowed in a construction contract
- b. lose, because Harry made no representation as to the soil quality
- c. win, because this case is just like *Midwest Dredging*
- d. win, because this is a "Type II" condition

23. Under the facts of the preceding problem, if the contractor abandons the project, and Harry's neighbor, who was hoping to soon be living next door to a house with a pool that he could use, sues the contractor for breach of contract, then the neighbor will likely

- a. win, because he has suffered some detriment from the breach of the contract
- b. lose, because no person who is not a party to a contract can ever sue for its breach
- c. lose, because the contract between Harry and Carl was not intended for the neighbor's benefit
- d. be able to sue for an injunction, but does not have standing to sue for money damages

24. In Orthodox Jewish congregations, men and women are generally seated in separate areas. An Orthodox congregation enters into a contract with a professional rabbi/cantor to officiate at High Holy Day services. The contract makes clear that the congregation is an Orthodox one, but is silent as to the seating arrangements of men and women. After the rabbi signs the contract, the congregation votes to break with tradition and allow men and women to be seated together. When the rabbi learns of this, he refuses (based on his religious beliefs) to officiate, and brings

suit against the congregation for breach of his employment contract. A principle of contract interpretation that he might wish to invoke in his lawsuit is

- a. course of dealings between the parties
- b. custom and usage
- c. latent ambiguity
- d. patent ambiguity

25. State law

- a. always allows a prime contractor to withdraw a mistaken bid
- b. never allows a prime contractor to withdraw a mistaken bid
- c. rarely if ever allows a prime contractor to reform a mistaken bid
- d. none of the above

26. An example of a performance specification is

- a. "Install steel doors capable of withstanding a windload of 20 psf."
- b. "Install drainage course on horizontal surfaces in strict compliance with specifications."
- c. "Install J.R.Smith 2110-Y cast iron floor drain with 8-inch diameter bar grate."
- d. None of the above

27. The *Drennan* rule works to the disadvantage of

- a. subcontractors
- b. prime contractors
- c. owners
- d. engineers

28. The purpose of an award of contract damages is to

- a. punish the breaching party
- b. make sure the breaching party never again breaches a contract
- c. give the non-breaching party the benefit of his bargain
- d. all of the above

(The remaining questions on this exam all refer to the following set of facts.) On Monday, Alan, while engaged in a long visit at a neighborhood bar, notices that Charlie, the owner of the bar, has a painting in on the wall there. Alan believes that this is a hitherto unknown painting of Pollack Johnson, a famous deceased artist, and is worth at least 50,000 dollars. He also believes that Charlie has no knowledge of this fact, and so offers Charlie five hundred dollars for the

painting. Charlie says he wants two thousand dollars. Alan says he will think about it, which Charlie says is fine with him. The next day, Tuesday, Alan talks to his friend Bob and suggests that one way in which Charlie may be induced to sell the painting for less money is if Bob were to make an offer of only one hundred dollars for it. Bob says to Alan “I don’t want to buy a painting for a hundred bucks. What if he says yes?” Alan replies: “There’s no way that can happen because I already have a pending offer of five times that amount. In any event, if he sells you the painting for a hundred dollars, I’ll take it off your hands for that amount.” Bob agrees to do this because he has been friends with Alan for a long time and wants to do him a favor. On Wednesday Bob mails a letter to Charlie offering him a hundred dollars for the painting. On the same day, Alan revisits the bar, and, in the cold (and more sober) light of day, realizes the painting was not made by any famous artist after all, and is in fact a piece of junk that is essentially worthless. He tells Charlie he will not pay the two thousand dollars for it. Charlie receives Bob’s pretend offer on Thursday, and, realizing that he’s not going to get any more money for it, puts a letter in the mail the same day accepting the offer of one hundred dollars for the painting. When Bob gets the letter of acceptance, on Friday, he immediately calls his friend Alan, who tells him that he has changed his mind and really doesn’t want to pay him or Charlie, one hundred dollars for something that is not worth anything at all. Bob, of course, is angry, since he never intended to enter into a contract with Charlie and only offered one hundred dollars to Charlie out of friendship and the belief that he would be reimbursed for the money if Charlie accepted his offer.

29. If Bob asserts that Alan is contractually obligated to reimburse him for anything he spends on the painting, Alan might reasonably argue in reply that

- a. there is no contract because there was no offer
- b. there is no contract because there was no acceptance
- c. there is no contract because there is no consideration
- d. there is no contract because Bob was mistaken about Charlie accepting

30. Assuming that a court finds that, for one of the reasons expressed in the previous question, there is no contract between Bob and Alan, Bob

- a. has no cause of action against Alan
- b. can possibly recover on a theory of “promissory estoppel”
- c. can still demand specific performance from Alan
- d. none of the above

31. If Bob tells Charlie that he will not pay any money for the worthless painting because his offer was only in jest, Charlie

- a. has no basis for seeking contract damages because an offer in jest is never enforceable
- b. has no basis for seeking contract damages because the issue is moot
- c. should immediately file a counter-claim against Alan
- d. can reasonably argue that, objectively speaking, Bob seemed serious

32. Suppose that on Wednesday, after Alan tells Charlie that he will not pay two thousand dollars for the painting, Charlie immediately says to Alan “well, nothing ventured, nothing gained; I’ll take the five hundred you offered.” The best answer to the question of whether there is a five hundred dollar contract between Alan and Charlie is

- a. no, because mutual mistake invalidates any contract
- b. yes, because Charlie accepted Alan’s offer of that amount
- c. no, because of Charlie’s initial demand for two thousand dollars
- d. yes, unless Alan can persuade the jury that he was too drunk to enter into a contract

33. To make life considerably simpler than this complicated hypothetical, assume now that on Monday, when Alan initially made the offer to buy the painting for five hundred dollars, Charlie immediately said yes. On the next day, when Alan goes to pick up the painting and give Charlie the money, he realizes the painting is worthless, and refuses to go through with the deal. Assuming that Alan did in fact have the capacity to enter into a contract on Monday, the likely outcome of Charlie’s suit against Alan would be

- a. a verdict in favor of Alan because the contract was not in writing
- b. a verdict in favor of Alan because of the doctrine of mutual mistake
- c. a verdict in favor of Alan because of the doctrine of unilateral mistake
- d. a verdict in favor of Charlie

34. Under the circumstances of the preceding problem, assume that a judge determines on summary judgment (correctly or incorrectly) that there is a valid contract between Alan and Charlie and that the contract was breached. Assuming also that the painting really is worthless (as is the frame) and that Charlie, after diligent effort, was unable to find any person to give him any money for the painting at all, then the most appropriate measure of Charlie’s damages would be

- a. five hundred dollars
- b. five hundred dollars plus Charlie’s attorney fees
- c. five hundred dollars plus punitive damages, but no attorney fees
- d. five hundred dollars plus punitive damages and attorney fees