

INSTRUCTIONS

You may use one 3x5 card of notes, handwritten and two-sided. No other notes or books are permitted. Use only the space allowed for your answers. Each question is worth one point unless otherwise stated. There are 100 points available on the test, plus a five-point bonus.

Honor Pledge

*I am familiar with the North Carolina State University honor code and agree to abide thereby.
By signing below I affirm that I have neither given nor received assistance on this test.*

signature

please print name

1. Jody entered into an oral contract for stud services with Arlo whereby Arlo's stallion, Superhorse, was to be bred to Jody's mare, Pasture Perfect, in return for which Jody would pay Arlo one fourth of the proceeds from the sale of the resulting foal. Is this contract covered under the UCC? (1 point) Why? (1 point)

After Jody sold the resulting foal, she refused to pay Arlo one fourth of the proceeds. Arlo sued for one fourth of the proceeds. What result? (1 point) Why? (2 points)

2. Arn owned a mare that had conceived a foal, sired by Superhorse, and was due in four months. Alice orally agreed to purchase the foal after it was weaned for \$5,000. After the foal was weaned Alice tendered payment and Arn refused to deliver. Alice sued for specific performance. What result? (1 point) Why? (3 points)

3. Abe raises sweet potatoes in North Carolina. James buys produce, including sweet potatoes, from his headquarters in Winston-Salem. James called Abe on August 1, 1997; together they orally agreed that Abe would sell James 5,000 pounds of sweet potatoes at 15 cents per pound, and James would arrange to pick them up from Abe's storage on September 15. On August 7, James sent Abe a written confirmation of these terms by first class mail to Abe's postal address. Abe received the written confirmation and on September 10, by first class mail, notified James that there was no deal. On September 16, James purchased 5,000 pounds of sweet potatoes from another grower at the prevailing market price of 65 cents per pound. James sued Abe for breach of contract. Will James win and, if so, how much will be his damages? (2 points) Why? (2 points) What is this remedy called? (1 point)

4. Elle went to the shoe store and told the clerk that she wanted to purchase running shoes. The clerk sold her a pair of high-heeled dress shoes. Did the store violate its warranty of merchantability? (1 point) Explain. (1point)

Did the store violate its warranty of fitness for a particular purpose? (1 point) Explain. (1 point)

5. What is the effect of "as is" language in a contract? (1 point)

6. True or False. An easement is a nonpossessory interest in real property that provides some right of use.

7. True or False. Farms are not subject to municipal zoning.

8. True or False. Farms are not subject to county zoning, except for certain large hog farms.

9. List a common example of an easement in gross.

10. List a common example of an easement appurtenant.

11. List and discuss a way that an easement may be created. (2 points)

12. A provision in a deed that provides that any house built on the property must contain 2,000 square feet of space or more is an example of _____.

13. Yes or No. Is negligence an issue when one property owner damages the undeveloped property of another by undermining it?

14. What is the effect of adverse possession upon the ownership of property? (2 points)

15. List the five elements of adverse possession. (5 points)

16. For the government to take private property without the consent of the owner the purpose must be _____ (1 point) and _____ must be paid. (1 point)
17. In North Carolina, who may condemn private property? (3 points)
18. Which part of the U.S. Constitution restricts governmental takings of private property? (2 points)
19. Define the term "inverse condemnation". (2 points)
20. Define the term "regulatory taking". (2 points)
21. Cal Cain owned a tract of farmland but was never sure about the exact status of his title. Abe Able was interested in buying the property, so Cal conveyed it to him by quitclaim deed. Abe recorded the quitclaim deed immediately. Cal later discovered that he had a marketable title to the land so he executed a general warranty deed to Bill Buyer. Bill knew of the quitclaim deed since it was on record but decided to proceed anyway. He recorded his warranty deed, then attempted to have Abe give up possession in his favor. When Abe refused, Bill brought suit. Who will prevail (1 point) and why? (2 points)
22. An owner of a life estate who discovers oil and pumps it commits _____.
23. A _____ was formerly personal property that has become real property by attachment to the land.

24. Why is a counteroffer not a revocation of an option. (2 points)
25. _____ is a seller's remedy where damages are measured by the difference between the price of replacement goods and the contract price.
26. True or False. In North Carolina a deed of gift is void if not recorded within two years from the date of making.
27. Yes or No. Is the Second Circuit opinion in *Southview Farms* law in North Carolina?
28. A CAFO exists if (circle the correct letter):
- The number of animal units exceeds that number set in the regulations.
 - The animals are enclosed for 45 days or more per year where vegetation does not grow.
 - The operator cannot show that the only time that a discharge to navigable waters would occur is during a 25 year, 24-hour rainfall event.
 - All of the above.
29. Who owns the land under navigable water in North Carolina (1 point)?
- Under non-navigable water where the land on each side is owned by a different person (1 point)?
30. Point source dischargers must maintain _____ permit (1 point).
31. True or False. Survivorship property may pass by will.
32. Using only two words give the definition of a tort.
33. Using one word what is the key element of an intentional tort that distinguishes it from the other two types of tort.
34. Using one word what right of a property owner is protected by a trespass action.

35. Arnold owned a pond upon which he kept a boat. Suzy T. enjoyed using Arnold's boat without permission. Arnold repeatedly asked Suzy not to use the boat; however, she would not listen to him. Finally, in frustration, Arnold made holes in the bottom of the boat to render it unusable. One night Suzy went to Arnold's pond to use the boat. Because it was dark she did not see the holes in the bottom of the boat. Incredibly the boat floated until it reached the middle of the pond whereupon it sank swiftly. Suzy, who was unable to swim, drowned. You are an attorney who has been approached by Suzy's next of kin "to sue Arnold to the poor house." Evaluate the case. Hint: Consider which type of tort might apply; the elements of that tort and the application of the facts to those elements; Suzy's own negligence, if any; and Suzy's status as an entrant onto land. (20 points)

36. List the five elements of a valid contract. (1 point for each element)

a.

b.

c.

d.

e.

37. Name the rule that requires certain contracts to be in writing. (1 point)

38. A contract to commit murder is _____ and will not be enforced by any court.

39. The _____ bars the use of prior or contemporaneous statements to contradict the terms of a written contract.

40. Distinguish a penalty clause from a liquidated damages clause in a contract. (2 points)

41. Is the State of North Carolina a unit of the government of the United States? Yes or No.

42. The _____ Clause of the U.S. Constitution preempts state and local laws designed to control the flow of solid waste.

43. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) provides for cleanup of abandoned _____ sites.

44. What is the National Priorities List? (1 point)

45. What is the name of the defense to CERCLA liability to which a purchaser of real property is entitled if the purchaser had a preliminary environmental site assessment conducted prior to the purchase of the property (and the assessment revealed no hazardous waste present on the property)?

46. Yes or No. A preliminary environmental site assessment protects a purchaser of real property from loss of his or her investment in the property should hazardous waste subsequently be found on the property.

Bonus (5 points)

Explain the doctrine of *stare decisis*.