

Instructions: When you complete your exam please fold it in half along the long axis and place your name on the outside. Your name should appear nowhere else on your paper. You may not use notes or any other outside assistance on this examination, except for one 3x5 card of notes. You will have the full period within which to complete this examination. Answer all questions using only the space provided. Do not use the back of your exam paper. Please record your exam number so that you can identify your grade. If you want your grades (anonymously by exam number) on the class sheet, please sign the permission slip at the end of the exam.

1. (a) Define retroactive liability in the context of CERCLA. (No more than 2 sentences)  
(2 points)

(b) Define strict liability in the context of CERCLA. (No more than 2 sentences)  
(2 points)

(c) Define "joint and several liability" in the context of CERCLA. (No more than 2 sentences)  
(2 points)

2. True or False. (Circle one.) The 1996 amendment of the CERCLA lender liability exemption means that banks will be more likely to lend money to developers of real property.

3. True or False. Under the 1996 amendment of the CERCLA lender liability rule, banks may now be liable for CERCLA cleanup as a result of their normal lending practices.

4. How can a purchaser of real property avoid liability under CERCLA? (2 points.) Even if cleanup liability under CERCLA is avoided, can the purchaser protect his or her investment in the property? (3 points) (7 sentences or less)

5. List 3 sources of law. (3 points)

6. True or False. Federal statutes, arranged by subject matter, are codified in the Code of Federal Regulations.

7. True or False. Laws enacted by the General Assembly of North Carolina are codified in the General Statutes of North Carolina.

8. True or False. If a conflict exists between a federal statute and a federal regulation, a court should follow the regulation.

9. Compare and contrast the standard of proof in a civil case with the standard of proof in a criminal case. (5 sentences or less, 5 points)

10. True or False. Strict liability is based upon the defendant's fault.

11. True or False. Joint and several liability means that, where multiple potential defendants exist, a plaintiff may sue any one, all, or any subgroup of the potential defendants, and recover the entire amount due from any one without regard to that defendant's or defendants' proportionate share.

12. If EPA recovers the entire cost of cleaning up a site from one of several prp's, that prp may recover a proportionate (equitable) share of the cleanup costs from the other prp's by suing for \_\_\_\_\_.

13. True or False. CERCLA permits citizen suits only if EPA is also bringing an action under CERCLA related to the same site.
14. True or False. Liability under CERCLA is a form of common law tort liability.
15. True or False. A buyer of real property may protect herself from CERCLA liability by causing a preliminary environmental site assessment to be conducted prior to closing on the property.
16. If the preliminary environmental site assessment shows that a property is severely contaminated, and the buyer goes ahead and purchases it anyway, will the buyer be liable under CERCLA? Yes or No.
17. The duties of administrative agencies include (choose the one best answer):
- a. Rule making.
  - b. Adjudication of individual cases.
  - c. Administrative activities.
  - d. All of the above.
18. True or False. The head of an executive federal agency may be removed from office by the President, without cause.
19. True or False. The Administrator of the Environmental Protection Agency (EPA) may be removed by the President without cause, even though the EPA is an independent agency.
20. List the five steps in hybrid rule making (5 points):
21. Explain the difference between formal, informal and hybrid rule making. (3 points)
22. Are administrative agencies a co-equal, fourth branch of the federal government? (1 point)  
Why? (2 points)

23. How do administrative agencies act as legislative (lawmaking) bodies? (2 points)
24. How do administrative agencies act in an executive role? (2 points)
25. How do administrative agencies act in a judicial role? (2 points)
26. Give two examples of exempted rule making (2 points):
27. True or False. The EPA was created by executive order.
28. True or False. Presidential nominees to head administrative agencies must be approved by the House.
29. True or False. Local governments may be a source of law.
30. True or False. Under the principal of *stare decisis* a court is bound to follow the published opinion of itself or an appellate court above it.
31. Appellate courts decide only issues of \_\_\_\_\_.
32. Trial courts decide issues of \_\_\_\_\_ and \_\_\_\_\_.  
(2 points)
33. What must an appellate court do if it determines that there was no factual basis to support the findings of fact made by the trial court?
34. Define “case of first impression”.

35. Define “precedent” in the context of the judicial system.
36. True or False. The principal of *stare decisis* requires that the N.C. Supreme Court follow the decisions of the S.C. Supreme Court.
37. True or False. The principal of *stare decisis* does not require that a N.C. Superior court follow the decision of the N.C. Supreme Court, when the facts in the case before the superior court are not the same as the facts in the case decided by the N.C. Supreme Court.
38. True or False. The principal of *stare decisis* requires that the N.C. Supreme Court follow decisions of the U. S. Supreme Court.
39. True or False. The N.C. Supreme Court is a unit of the federal court system.
40. True or False. Assuming identical facts, the U.S. District Court for the Middle District of North Carolina must, under the principal of *stare decisis*, follow a decision by the U.S. Fourth Circuit Court of Appeals.
41. If a court chooses not to follow one of its own prior decisions, it is said to \_\_\_\_\_ the decision.
42. The power of the U.S. Supreme Court to review laws passed by Congress for constitutionality was created in which early U.S. Supreme Court case.
43. The federal government is a government of \_\_\_\_\_ powers.
44. True or False. The federal government has only that power that was granted to it by the states when the Constitution was ratified.
45. True or False. The power of states is limited only by their respective constitutions and limits established in the U.S. Constitution.
46. Does the U.S. Constitution provide for environmental protection? Yes or No.
47. Both the federal and state government may act where there exists \_\_\_\_\_ authority.
48. Where a federal law overrides a state law, the state law is said to be \_\_\_\_\_.
49. Which clause of the U.S. Constitution is the primary authority for federal regulation of the environment? (1 point) Why? (2 points)

50. Does the Fifth Amendment prohibit governmental takings of private property? Yes or No. (1 point) What does it require? (1 point)

51. May one state make an agreement with another state to regulate the environment? Explain. (2 points)

52. The Senate must approve any treaty negotiated by the President by a \_\_\_\_\_ vote.

Bonus: How did Comerica Bank come to be a defendant in *Z&Z Leasing Inc. v. Graying Reel, Inc.*? (2 points)

53. Coriander decided to purchase a tract of land, Awful Acres, for her organic herb business. Unbeknownst to her the site had previously been the location of a pesticide mixing plant. The pesticide mixing plant was destroyed by fire in 1955 and all of the debris was buried on the site. No debris was evident on the site; however, about a third of the site miraculously contained no vegetation whatsoever. Coriander, however, would not have noted this because she never visited the site prior to purchasing it from Fraud U. Lent, Jr. Mr. Lent was well aware of both the previous use of the site and Coriander's intended use for the site. Mr. Lent is the son of F. U. Lent, Sr., the owner of the pesticide mixing plant. Mr. Lent inherited the site after Mr. Lent, Sr. died an untimely death from arsenic ingested while fighting the mixing plant blaze. Mr. Lent, Jr. has done nothing with the property since he inherited it. The debris on the property was buried by Mr. Lent, Sr.'s executor prior to settling his estate. After Coriander bought the property several neighbors told her the history of the property. She promptly dug up the debris and placed it on an adjoining vacant lot. The state where the property is located has a statute that tracks CERCLA in all important regards. Coriander has received numerous letters from EPA and its state counterpart ordering her to submit a plan for cleanup immediately. She has to date ignored these letters and has even added to the pile of debris on the adjoining lot. What concerns her now is that an attorney friend of hers has told her that both the federal and state governments have been known to bring criminal prosecutions against people such as herself. Her friend suggested that she talk with you because of your reputation as an attorney with CERCLA experience. Identify and discuss all relevant issues for Coriander in the space provided. (16 points)

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