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*print name on the line above as your signature*

**INSTRUCTIONS:**

**1. NOTICE: SYLLABUS REVISION.**

At PDF page 2 of 6 of the Syllabus a post-Exam #4 course point total of 800 points is required to earn the right to elect to take the Optional Comprehensive Final Exam. That 800 points has been reduced so that only 770 points are required.

<http://cba.unomaha.edu/faculty/mohara/web/BLFf10-Syllabus.pdf>

2. This Exam #4 must be completed within the allocated time (i.e., *between 10:30 AM and 11:45 AM*). It is a **closed book** and open mind exam.
3. **Recall the material difference between i.e.** (that is) **versus e.g.** (for example).
4. When you finish your exam, collect all of your personal items before approaching the professor since you must promptly exit the exam room upon finishing. As students finish their exams they will receive an answer key in exchange for their completed blue bubble answer sheets. *For you to learn your individual exam grade you must use your marked up copy of your exam, so be sure to mark your answers on your copy of the exam.*
5. This Exam #4 is worth 200 of the course total of 1,000 points. This objective exam has 102 questions graded as if there are 100. Each correct answer on this Exam #4 is worth 2.0 course points. Based upon the instructor's statistical analysis of all students' answers, the instructor unilaterally may alter the grading of specific exam questions. Any student may appeal the grading of any other exam questions. However, only if a student successfully appeals the ambiguity of **AT LEAST THREE** questions on this exam does that student objectively demonstrate non-harmless error due to any ambiguities. Also, a successful appeal only will change *that* student's exam grade and only will do so by the number of successful appeals in excess of **TWO** successful appeals. *Appeals only affect the exam grades of those students that appeal.*
6. **All appeals** of this exam's questions must be:
  - [6A] typed;
  - [6B] signed by the student in three ways, typed name, handwritten signature, and typed university identification number;
  - [6C] immediately following the signature, list in sequence, *solely by number*, each of the questions being appealed;
  - [6D] after the [6C] list, argue each question, one at a time;
  - [6E] at the beginning of each question's [6D] appeal, identify two or more reasonable meanings that the question could have had;
  - [6F] argue why one or more of the [6E] identified reasonable meanings is as appropriate or is more appropriate than the meaning used for the answer key answer; and
  - [6G] personally handed to the instructor or to the instructor's suite secretary in MH 228 no later than 11:30 AM, Wednesday, December 8, time is of the essence.

**NOTES:**

- A.** Recall the material difference between **i.e.** (that is) versus **e.g.** (for example).
- B.** Use bubble **A** for **TRUE** and use bubble **B** for **FALSE**.
- C.** If a question contains a number (e.g., Amendment IX), then the truth or falsity of that question never depends upon that number.  
This is not a test of trivia recall.  
It is an objective demonstration of your subjective knowledge.
- D.** For clarity in distinguishing a "principal" from a principal as well as distinguishing from an "agent" from an agent,  
quote marks will be used for the generic words "principal" and "agent"  
and  
no quote marks will be used for the specific words principal and agent.  
That is, "principal" **and** "agent" refer to all three relationships  
(*i.e.*, *principal and agent*; *and principal and independent contractor*; *and employER and employEE*).
- E.** For clarity in distinguishing enforceable from **unenforceable** transactions,  
the word contract is **not** in quotes for an enforceable contract  
(e.g., a voidable contract), whereas  
the word "contract" is in quotes for a transaction that is **not** an enforceable contract  
(e.g., a void "contract").

**QUESTIONS:**

**Questions #1 through #20 are from Exam #3.**

**Questions #21 through #88 cover new law material.**

**Questions #89 through #102 cover review of economics material.**

- 1. T F** You can **not** have a legal duty to do an action  
**unless** you physically can complete that action. (3:1)
- 2. T F** If  
knowledge is objective implied knowledge,  
then  
that knowledge is objective express knowledge. (3:3)
- 3. T F** If  
a precedence either is authoritative **or** is persuasive precedence,  
then  
that precedence is binding. (3:6)

4. **T F** Government may "take" any **and** all private property if government takes that private property using due process of law, for a public use, **and** by paying just compensation. If beyond a reasonable doubt a government regulation reduces a firm's profit, then that regulation is a "taking". (3:8)
5. **T F** The plaintiff must have standing to sue (*i.e., zone of protected interest*). (3:9)
6. **T F** A crime requires the defendant have committed a bad act with a bad thought. The required bad thought is scienter. (3:21)
7. **T F** Unilateral rescission is an example of freedom **of** contract. Mutual rescission is an example of freedom **from** contract. (3:23)
8. **T F** **Never** are all ambiguities in any adhesion contract always are interpreted against the drafter. (3:24)
9. **T F** A unilateral mistake exists when the **non**-mistaking party objectively knows the mistaking party is making a mistake of fact. (3:27)
10. **T F** The Uniform Commercial Code (UCC) keeps many rules of the common law of contracts (*e.g., capacity is needed under both*) **and** changes many rules of the common law of contracts (*e.g., under the UCC do **not** need agreement*) because the UCC imposes on the parties an obligation of good faith. (3:31)
11. **T F** All persons who buy goods are UCC consumers. (3:38)
12. **T F** Both the common law of contracts **and** the UCC allow contract modification; **but** the common law of contracts requires consideration while the UCC only requires modifications to be in writing. (3:47)
13. **T F** Goods are identified when the seller's goods exist. (3:53)

- 14. T F** During a shipment contract the seller has \_\_\_the\_\_\_ risk of loss. (3:60)
- 15. T F** The common law ordinarily requires a person to transfer good title. That is, if a seller has a void title, then buyer only gets a void title. However, the UCC routinely allows a merchant seller to transfer good title when the merchant seller has **no** right to make that sale. (3:61)
- 16. T F** The UCC entrustment rule provides that the buyer is obligated to hold the seller's goods in good faith until the buyer both has completed the buyer's inspection **and** the buyer has paid the seller (*i.e., until title transfers from the seller to the buyer*). (3:63)
- 17. T F** All UCC buyers receive from all merchants a warranty that the goods are reasonably fit for the ordinary purpose. (3:81)
- 18. T F** The *Restatement of the Law of Torts, Second* contains Section 402 A. Section 402 A applies to all sellers of **un**reasonably defective products which are the proximate cause of a buyer's serious physical injury. (3:94)
- 19. T F** Both the UCC **and** the U.N. Convention on Contracts for the International Sale of Goods (CISG) requires the contracting parties to specify quantity. (3:97)
- 20. T F** CISG eliminates the Mirror Image Rule. (3:100)
- 21. T F** An administrative agency is created by **and** has authority delegated by the executive.
- 22. T F** The separation of powers allocates powers both within the agency **and** outside the agency.
- 23. T F** Rulemaking by an administrative agency must satisfy both substantive due process **and** procedural due process.
- 24. T F** By default, the Administrative Procedures Act of 1946 governs an agency's authority **unless** the Enabling Act expressly grants the agency other powers.
- 25. T F** An interpretive rule has the full force of law to bind an Article III judge.
- 26. T F** A legislative rule has a limited force of law that only binds the agency.

- 27. T F** Today, administrative agency rules are adopted using the notice of publication in the *Federal Register* **and** the hearing of a comment period for written comments, with the final rule effective once published in the *Code of Federal Regulations*.
- 28. T F** Administrative agencies are subject to judicial review both within **and** outside.  
An plaintiff has standing to sue in an Article III court as soon as the agency makes a decision against the interests of that plaintiff.
- 29. T F** Once in an Article III court, the relationship between the agency **and** the court is analogous to the relationship between a trial court **and** an appellate court.
- 30. T F** In the USA, privacy is an implied fundamental USA Constitution right. Your substantive due process right is to a reasonable expectation of privacy.
- 31. T F** The individual USA State constitutions range from an express right to privacy to **not** even an implied right to privacy.
- 32. T F** The separation of power between the Individual **and** government, in the USA, includes the federal constitutional right to privacy.
- 33. T F** Both via implied constitutional law **and** via USA tort law an individual has privacy rights against encroachment by other individuals.
- 34. T F** In the European Union **and** in Canada privacy is an express right of the individual against both governments **and** other individuals.
- 35. T F** In the EU statutes routinely provide that a person must opt-out to surrender privacy.
- 36. T F** In the USA statutes routinely provide that a person must opt-in to claim privacy.

- 37. T F** Because of the Individual's right to privacy versus governmental action, generically, governments in the USA:
- [i] may **not** collect information about individuals;
  - [ii] must allow the individual to view any collected information (*e.g., FOIA*); **and**
  - [iii] must accept **and** make suggested corrections of any identified errors.
- 38. T F** As part of the procedural due process of the People's privacy, the government is itself recognized as having a very limited reasonable expectation of privacy. Accordingly, many, **but** far from all, governmental actions must comply with "open meetings laws". Generically, open meetings laws require 24 hour notice of agenda items, require public copies of all documents; require allowing public comment, **and** require voting in public.
- 39. T F** The **1890** federal Sherman Act made it a felony to destroy competition. Each USA State has adopted similar State statutes.
- 40. T F** Sherman Act section 1 makes restraints of trade a felony. Sherman Act section 2 makes monopolies a felony.
- 41. T F** Sherman Act section 1 restraints of trade are evaluated using either the Rule of Reason Test **or** the *Per Se Unreasonable* Test.
- 42. T F** From the perspective of USA law, horizontal restraints (*i.e., direct competitors*) typically damage competition more than vertical restraints.
- 43. T F** The Rule of Reason authorizes as lawful any restraint of trade if that restraint is:
- [i] proportional to the restraining firm's;
  - [ii] legitimate;
  - [iii] business;
  - [iv] interests.

- 44. T F** Proportionality of a restraint under the Rule of Reason analysis is measured by the:
- [i] purpose of the restraint;
  - [ii] intent of the restraining party;
  - [iii] effect of the restraint on the market, **and**
  - [iv] power conferred on the restraining party over the market.
- 45. T F** Experience teaches that some restraints consistently are **disproportionate, and** thus those restraints are *Per Se Unreasonable*.
- 46. T F** The *Per Se Unreasonable* test applies to:
- [i] price fixing;
  - [ii] division of territories;
  - [iii] boycotts (*e.g., strikes*);
  - [iv] tying.
- 47. T F** The general controls the specific .
- 48. T F** Criminal laws are void for vagueness if a reasonable person upon reading the criminal statute can **not** be reasonably certain as which deeds are bad deeds.
- 49. T F** In 1914 Congress adopted the Clayton Act to address situations that the criminal law of the Sherman Act could **not** make **unlawful**.
- 50. T F** Clayton Act section 4 created double punitive damages for antitrust violations.
- 51. T F** Clayton Act section 6 created antitrust exceptions. Two of those exceptions are labor (*i.e., not an article of commerce*) **and** agricultural co-ops (*i.e., countervailing power*).
- 52. T F** The right to petition government is an implied right based upon the express free speech rights found in the First Amendment.
- 53. T F** Government has reasonable authority over the content of political free speech.
- 54. T F** The core of political speech is lobbying before the legislative **and** executive branches. The *Noerr-Pennington Doctrine* exempts lobbying from antitrust laws.

55. **T F** Every party is obligated to speak truthfully when making a filing in a court.
56. **T F** Gambling transfers **and** allocates existing risk upon chance for a price.
57. **T F** An insurance policy pools existing risk **and** transfers **and** allocates that risk in exchange for average price premium.
58. **T F** Most jurisdictions make most gambling **unlawful**, **and** tightly regulate lawful gambling.
59. **T F** Most jurisdiction make most insurance lawful, **and** tightly regulate lawful insurance.
60. **T F** By necessity (*i.e., to pool risk*), insurance contracts must be adhesion contracts.  
All ambiguities in all insurance contracts always are interpreted against the insurER.
61. **T F** Insurance contracts pool legally identical risks.
62. **T F** Policy premiums recover the average price of those legally identical risks.
63. **T F** An insurable interest differentiates a gambling contract from an insurance contract. Identification under the UCC Article 2's sale of goods is the difference between   a   risk of loss versus   the   risk of loss.
64. **T F** If the insurED has an insurable interest at the time of contract, **but** does **not** have an insurable interest (*e.g.,   the   risk of loss*) at the time of loss, then a property insurance contract is void both at the time of contract **and** at time of loss.
65. **T F** If the insurED has an insurable interest at the time of contract, **but** does **not** have an insurable interest at the time of loss, then a life insurance contract is enforceable **and** the insurED may collect on the policy both at the time of contract **and** at time of loss.

- 66. T F** All risk is material to an insurance contract.
- 67. T F** If  
an insurED **mis**represents to the insurER  
a factor the insurER uses to appraise risk,  
then  
the insurED has committed common law fraud.
- 68. T F** Adverse selection  
exists when the insured controls the insured risk.
- 69. T F** Moral hazard  
exists when those that have the insured risk  
are more likely to purchase insurance.
- 70. T F** Because of the moral hazard  
nearly all jurisdictions require some form of self insurance  
(*i.e., co-insurance via a deductible **and** a co-pay*).
- 71. T F** All guarantors have rights of  
reimbursement, contribution, **and** subrogation.
- 72. T F** All sureties have rights of  
reimbursement, contribution, **and** subrogation.
- 73. T F** Subrogation rights include standing to sue as if the other party.
- 74. T F** If  
an insurED has multiple policies providing cumulative coverage,  
then  
all jurisdictions limit the insurED's maximum recovery  
to **no** more than 100% of the loss; *pro rata* paid by the insurERs.
- 75. T F** Nebraska limits maximum recovery on multiple policies  
to the coverage of the last purchased policy  
**and** then  
*pro rates* the contributions of the multiple insurers.
- 76. T F** The insurER is the principal of  
an insurance agent **and** of an insurance broker.
- 77. T F** An insurance agent may issue a binder; **but**  
an insurance broker lacks the power to issue a binder.

- 78. T F** The principal is liable for the **non**-procurement of the policy.
- 79. T F** Punitive damages ordinarily only are available in tort law.  
Both parties to an insurance contract are bound by an implied duty of good faith.  
If  
a insurer engages in a bad faith breach  
(*i.e., more than mere absence of good faith*),  
then  
the court of law may award punitive damages to the insured.
- 80. T F** Capacity is the ability to grasp the natural consequences on one's actions.
- 81. T F** The law requires  
more capacity for a crime than for a contract; **and**  
more capacity for a tort than for a will.
- 82. T F** A signature is any mark with the current intent to authenticate the record.
- 83. T F** For wills the testator must grasp:  
[i] the testator is signing ;  
[ii] owns property **and** the general nature of that property; **and**  
[iii] the natural objects of one's bounty.
- 84. T F** The authority to create a will **as well as** the requirement for a will are a subset of the common law of contracts.
- 85. T F** In all jurisdictions a valid will is created when  
the testator has capacity to create a will **and**  
signs a writing in front of witnesses.
- 86. T F** If  
a grantor makes actual delivery of the corpus to the trustee  
in such a way that legal title passes to the trustee  
with the trustee holding legal title for the benefit of the beneficiary **and**  
with the beneficiary holding beneficial title in the corpus,  
then  
a valid trust is created.
- 87. T F** A trustee is a fiduciary of the beneficiary **and** of the grantor.
- 88. T F** A trustee owes a duty of utmost good faith.

- 89. T F** Taxes **and** prices of related goods (*i.e., substitutes **and** complements*) are the **non**-price determinants that are the same for supply **and** for demand.
- 90. T F** The **non**-price determinants of supply include cost of inputs **and** the **non**-price determinants of demand include technology.
- 91. T F** Expectations are dynamic **whereas** technology is volatile.
- 92. T F** The ends of Capitalism are its elements **whereas** the means of Capitalism are its functions.
- 93. T F** Capitalism can exist with zero government; **but**, Capitalism can **not** exist **unless** it has private property, prices, markets, **and** competition.
- 94. T F** Competition will provide sufficient alternatives to assure voluntary prices **as long as** either there is free entry **and** free exit, **or** there are a “large” number of buyers **and** sellers.
- 95. T F** In Capitalism market transactions define rights.
- 96. T F** Government can counter act the transaction costs set by the market, **but** government can **not** set transaction costs.
- 97. T F** Every supply curve **and** every demand curve reflects all market participants; **and** most of those market participants are both willing **and** able to transact.
- 98. T F** Externalities (*i.e., spillovers*) rarely exist in a vibrant market.
- 99. T F** If a firm is at its MES (*Minimum Efficient Size*), then that firm is a natural monopoly.

**100. T F** Objectively,  
all firms desire to sell their products at the profit maximization price.  
All monopoly firms can do so.  
One reason monopoly is bad is that  
if  
any firm sells at its profit maximizing price,  
then  
consumers get less **and** pay more.

**101. T F** Insurance contracts have a deductible **and** a co-pay  
because of the moral hazard.

**102. Freebee: answer "E". Answer what to earn the freebee?**