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**PRINT NAME** to be eligible to earn an exam grade above zero.  
**Name left blank and names in script earn an exam grade of zero.**

***ON THE ANSWER SHEET PRINT YOUR ANSWERS.***

**Turn in your answer sheet; you may keep your copy of the exam questions.**  
**You will get an answer key (i.e., page 23 Of 23) upon completion and exit.**  
Only one word is required for each answer, unless answer sheet notes otherwise.  
**Present your student ID when turning in your exam materials.**

**NOTE #1:**

**Unlike the quizzes** and unlike the exams there is a different pattern in the answers. On the quizzes and the exams the pattern was numbering via first use. That made great sense in smaller testing devices. This comprehensive exam uses a different pattern. **The blank numbers are assigned alphabetically.** Thus blank \_\_\_[1]\_\_\_ might appear in question AA along with blank \_\_\_[108]\_\_\_. To help orient you on the answer sheet the first letter of the answer is noted for every third letter in the alphabet (e.g., A, D, G, etc.). Lastly, since the blanks are assigned numbers alphabetically all blanks use the format \_\_\_[1]\_\_\_ and none use the format \_\_[1]\_\_\_\_\_.

**NOTE #2:**

**Unlike the quizzes** and the unlike the unit exams which had partial credit, on this comprehensive final exam **no partial credit is earned.** The alphabetized answer sequence ought to eliminate many errors.

**NOTE #3:**

**Like the quizzes** and the like the unit exams you may answer with the shortest version of a **root word** or any version of the root word. The answer know is correct for all of the following words know, known, knows, knowing, knowingly, knowledge, knowledgeable, etc.: and any of the other words are correct for all of those other uses of know.

## UNIT ONE EXAM

### Quiz Chap. 2 & 3 Aug 29

- AA. The plaintiff's \_\_\_[13]\_\_\_ has three parts: cause of action; court's \_\_\_[48]\_\_\_ (both geographic \_\_\_[48]\_\_\_ and subject matter \_\_\_[48]\_\_\_); and remedy.
- AB. If the parties to a dispute are seeking a private resolution of that dispute with the aid of a neutral third party, then they might be engaged in \_\_\_[5]\_\_\_ or they might be engaged in mediation but, they are not likely to be engaged in negotiation.
- AC. A trial court focuses upon questions of fact and applying the law. In contrast, an appellate court focuses upon questions of interpreting law and finding \_\_\_[30]\_\_\_ by the trial court. The appellate court reviews the trial court's decision for any one of three types of \_\_\_[30]\_\_\_: clear \_\_\_[30]\_\_\_ of fact; **non**-harmless \_\_\_[30]\_\_\_ of \_\_\_[78]\_\_\_; or any \_\_\_[30]\_\_\_ of law.
- AD. At a minimum, discovery involves the use of interrogatories (i.e., \_\_\_[108]\_\_\_ questions), or depositions (i.e., oral questions), or both.

### Quiz Chap. 4 Sep 5

- AE. Due process of law comes in two forms: \_\_\_[91]\_\_\_ due process, and \_\_\_[78]\_\_\_ due process of law. \_\_\_[91]\_\_\_ due process is provided to \_\_\_[37]\_\_\_ constitutional \_\_\_[85]\_\_\_. However, ordinarily, all that government need provide is \_\_\_[78]\_\_\_ due process. \_\_\_[78]\_\_\_ due process requires the government to provide \_\_\_[62]\_\_\_ and \_\_\_[39]\_\_\_, both \_\_\_[79]\_\_\_ to the interests involved.
- AF. The individual USA State's power to regulate the local actions of business is the \_\_\_[68]\_\_\_ Power (i.e., the power of a USA State to regulate for the \_\_\_[66]\_\_\_'s health, safety, \_\_\_[57]\_\_\_, and general welfare). To regulate business the \_\_\_[34]\_\_\_ government uses the Article I, section 8, clause 3, \_\_\_[11]\_\_\_ Clause power; but the \_\_\_[34]\_\_\_ government has no \_\_\_[68]\_\_\_ Power.
- AG. Sometimes, but far from always, the \_\_\_[34]\_\_\_ government has the power to \_\_\_[72]\_\_\_ the laws of the State governments by way of the \_\_\_[34]\_\_\_ power granted in Article VI, section 2 of the USA *Constitution*, which is \_\_\_[50]\_\_\_ as the Supremacy Clause.

AH. The USA *Constitution*; is a constitution of granted powers. That is, the \_\_\_[34]\_\_\_ government only has those powers granted to it. Whereas, each USA State government has all governmental powers except those [i] granted to the \_\_\_[34]\_\_\_ government by the USA States in the USA *Constitution* (thus, implicitly reducing the remaining powers of each State); or [ii] denied the States by the States in the USA *Constitution*, but not granted to the \_\_\_[34]\_\_\_ government; or [iii] taken away from the States by their \_\_\_[66]\_\_\_ in that State's *Constitution*. There are several examples of the \_\_\_[34]\_\_\_ government having exclusive powers because the States have both granted that power to the \_\_\_[34]\_\_\_ government and have denied that power to the States. Some examples of exclusive \_\_\_[34]\_\_\_ powers are to coin money, bankruptcy, and naturalization. Major example of the States taking a power away from the States can be found in Amendment XIV, both in its Due Process Clause and in its Equal Protection Clause (i.e., \_\_\_[82]\_\_\_ Basis Test [e.g., health and safety]; Heightened \_\_\_[47]\_\_\_ Review [e.g., gender]; \_\_\_[88]\_\_\_ Scrutiny [e.g., race, alienage, national origin]).

### Quiz September 10: Chapter 52

- AI. A \_\_\_[97]\_\_\_ is an agreement or contract between two or more nations that must be authorized and ratified by the \_\_\_[92]\_\_\_ power of each nation. In the USA, the President negotiates a \_\_\_[97]\_\_\_ and then must obtain the 2/3rds approval of the USA Senate for the \_\_\_[97]\_\_\_. Once ratified by the USA Senate, a \_\_\_[97]\_\_\_ is the \_\_\_[92]\_\_\_ law of the land.
- AJ. The USA *Constitution's* Article IV, section 1's Full \_\_\_[33]\_\_\_ and Credit clause is the domestic version of international tradition of \_\_\_[10]\_\_\_ between two USA States as each USA State agrees to defer and to give effect to the laws and \_\_\_[47]\_\_\_ decrees of all sister USA States (e.g., if married in Iowa, then married in Nebraska).
- AK. The Act of State Doctrine is a \_\_\_[47]\_\_\_ created doctrine that provides that the \_\_\_[47]\_\_\_ branch of one country \_\_\_[107]\_\_\_ not examine the validity of public acts committed by a recognized foreign government within that foreign government's own territory.
- AL. The USA *Constitution's* Amendment XI grant of sovereign \_\_\_[42]\_\_\_ to each USA State means that each USA State is \_\_\_[42]\_\_\_ from suit within courts of the USA \_\_\_[34]\_\_\_ government unless a \_\_\_[90]\_\_\_ amendment grants the USA \_\_\_[34]\_\_\_ government authority over the individual State governments.

AM. The USA legal system (other than in the USA State Louisiana) is a common law system wherein the \_\_\_[47]\_\_\_ develops precedence via cases of first impression as well as applies \_\_\_[29]\_\_\_ using \_\_\_[29]\_\_\_ maxims rather than precedence. Many other countries use a code law system (also \_\_\_[50]\_\_\_ as a civil law system) wherein the \_\_\_[52]\_\_\_ enacts into law an ordered grouping of legal principles.

### Unit One Exam New questions

AN. \_\_\_[47]\_\_\_ review is the power of the courts to declare unconstitutional acts of either the \_\_\_[52]\_\_\_ branch of government or the executive branch of government.

AO. In the USA, the law seeks to satisfy the \_\_\_[66]\_\_\_'s \_\_\_[83]\_\_\_ expectations. This can be seen in the law's focuses upon the \_\_\_[63]\_\_\_ instead of the \_\_\_[89]\_\_\_. The \_\_\_[63]\_\_\_ can be \_\_\_[50]\_\_\_ either by \_\_\_[32]\_\_\_ proof or by \_\_\_[43]\_\_\_ proof. Proof that is \_\_\_[32]\_\_\_ is in words: \_\_\_[108]\_\_\_ or oral. \_\_\_[43]\_\_\_ proof is shown by acts, words, or circumstances.

AP. If a court is to have geographic \_\_\_[48]\_\_\_, then the defendant must have substantial minimal contacts with that court's geographic \_\_\_[48]\_\_\_. To measure whether the defendant has had substantial minimal contacts the court looks to whether the defendant has purposefully availed the defendant of the geographic \_\_\_[48]\_\_\_.

AQ. The plaintiff filing a \_\_\_[13]\_\_\_ must state a cause of action and the plaintiff must have standing to sue the defendant. The requirements for standing to sue are that the plaintiff has suffered an injury in fact (i.e., an \_\_\_[63]\_\_\_ injury) and the plaintiff is within the zone of protected interests.

AR. Because of a shared culture reinforced by the USA States' \_\_\_[58]\_\_\_ adoption of the \_\_\_[97]\_\_\_ \_\_\_[50]\_\_\_ as the USA *Constitution*, every legal person within the USA, when engaged in \_\_\_[11]\_\_\_, has four freedoms to choose how their contracts are handled within the courts of the USA \_\_\_[34]\_\_\_ government and each USA State. The four freedoms to choose allow the contracting parties their choice of law, choice of forum, choice of venue, and choice of language. In most other countries, none of these four freedoms to choose are allowed.

- AS. A court has the power to grant a Motion to Dismiss or to grant a Motion for a Summary Judgment in part because with both of these motions are no remaining genuine issue of fact. These two motions reach the position where the court only confronts a question of law in different ways. In a Motion to Dismiss there is no genuine issue of fact because the moving party asks the court to assume away all questions of fact by granting for the sake of the motion all allegations of fact by the other party as well as all \_\_\_[83]\_\_\_ inferences. However, with a Motion for a Summary Judgment the parties agree on all issues of fact, thus all that remains are questions of law.
- AT. In a civil case the plaintiff bears the main \_\_\_[8]\_\_\_ of proof for all facts by a \_\_\_[73]\_\_\_ of the evidence. In a criminal case the government always is the plaintiff, which raises questions of \_\_\_[37]\_\_\_ constitutional \_\_\_[85]\_\_\_, thus that \_\_\_[8]\_\_\_ of proof is increased so that the government must prove each element of the alleged crime beyond a \_\_\_[83]\_\_\_ doubt.
- AU. The USA *Constitution's* first ten amendments are referred to as the Bill of \_\_\_[85]\_\_\_. In the separation of powers the Bill of \_\_\_[85]\_\_\_ focuses upon the Individual versus government separation of power. For example, Amendment IV prohibits **un**\_\_\_[83]\_\_\_ searches and seizures except upon a \_\_\_[106]\_\_\_ supported by probable cause. Amendment V bars a government in the USA from taking private property unless the government provides \_\_\_[78]\_\_\_ due process, takes for a public use, and pays the property owner \_\_\_[49]\_\_\_ compensation.
- AV. Amendment I of the USA *Constitution* protects the \_\_\_[66]\_\_\_'s freedom of religion, freedom of speech, freedom of the press, freedom to assemble peaceably, and freedom to petition government. Like nearly all laws, free speech exists along a continuum from most protected to least protected. The most protected speech is \_\_\_[69]\_\_\_ free speech (i.e., no content regulation; only \_\_\_[83]\_\_\_ \_\_\_[94]\_\_\_, place, and manner regulations). Some protection is provided to \_\_\_[11]\_\_\_ free speech (i.e., some content regulation; but only if that content regulation serves a substantial governmental interest, \_\_\_[25]\_\_\_ furthers that interest, is \_\_\_[79]\_\_\_ to that interest, and is the least restrictive regulation that achieves that interest). Some speech is **un**protected (e.g., tort of defamation).

AW. An Individual's \_\_\_[85]\_\_\_ to \_\_\_[76]\_\_\_ is not an \_\_\_[32]\_\_\_ constitutional \_\_\_[85]\_\_\_ of the \_\_\_[66]\_\_\_. Rather, it is \_\_\_[43]\_\_\_ from the USA *Constitution's* Amendment IX and Amendment X. Amendment IX provides: "The enumeration in the *Constitution*, of certain \_\_\_[85]\_\_\_, shall not be construed to deny or disparage others retained by the \_\_\_[66]\_\_\_." Amendment X provides: "The powers not delegated to the United States by the *Constitution*, nor prohibited by it to the States, are reserved to the States respectively, or to the \_\_\_[66]\_\_\_." Accordingly, an activist judge would \_\_\_[46]\_\_\_ that an Individual's \_\_\_[85]\_\_\_ to \_\_\_[76]\_\_\_ is not a \_\_\_[37]\_\_\_ constitutional \_\_\_[85]\_\_\_.

## UNIT TWO EXAM

### QUIZ Sep. 17: Chap. 6

BA. Defamation of character includes wrongfully hurting a person's \_\_\_[38]\_\_\_ reputation. If that defamation is oral, then that is slander. If that defamation is \_\_\_[108]\_\_\_, then that is libel. Libel \_\_\_[67]\_\_\_ can be either slander or libel, but must be defamation on a topic that creates a \_\_\_[74]\_\_\_ of damages. Topics that create a \_\_\_[74]\_\_\_ of damages include communicable diseases, felony behavior, professional misconduct, and/or serious sexual transgressions.

BB. A defendant commits common law \_\_\_[36]\_\_\_ of misrepresentation when the defendant \_\_\_[50]\_\_\_ and \_\_\_[105]\_\_\_ misrepresents a \_\_\_[54]\_\_\_ fact thereby inducing the plaintiff's \_\_\_[49]\_\_\_ reliance and \_\_\_[80]\_\_\_ causing the plaintiff's injury.

BC. The \_\_\_[34]\_\_\_ CAN-SPAM Act \_\_\_[72]\_\_\_ the SPAM laws of the individual USA States except for certain provisions related to deceptive email practices.

### QUIZ Sep. 19: Chap. 7

BD. A defendant commits a tort when the defendant breaches a \_\_\_[27]\_\_\_ of care owed to the plaintiff when that breach by the defendant is the \_\_\_[80]\_\_\_ cause of the plaintiff's injury; and, when the defendant has no defenses.

BE. Legal liability requires causation. Causation for legal liability via tort law requires both \_\_\_[1]\_\_\_ causation (i.e., chain of events) and \_\_\_[80]\_\_\_ causation (i.e., \_\_\_[83]\_\_\_ foreseeable consequences).

BF. A defendant has the tort defense of assumption of the \_\_\_[86]\_\_\_ when the plaintiff \_\_\_[50]\_\_\_ and \_\_\_[105]\_\_\_ exposes the plaintiff to the \_\_\_[86]\_\_\_ of harm created by the defendant.

## QUIZ Sep. 24: Chap. 9

- BG. In a civil law suit the plaintiff bears the \_\_\_[8]\_\_\_ of proof to prove each element of the causes of action; typically, by the \_\_\_[73]\_\_\_ of the evidence, but occasionally by clear and convincing evidence. In a criminal law suit the plaintiff always is the government, and the government bears the \_\_\_[8]\_\_\_ of proof to prove each element of the crime beyond a \_\_\_[83]\_\_\_ doubt.
- BH. All crimes have three elements. Those three elements of every crime are performance of a \_\_\_[52]\_\_\_ defined prohibited action (i.e., *actus rea*), doing that action with a wrongful state of mind (i.e., *mens rea*), and the defendant has no defense.
- BI. The exclusionary rule is an example of the exercise of \_\_\_[47]\_\_\_ review. The exclusionary rule is an \_\_\_[46]\_\_\_ of the constitutional protections of the separation of powers between the Individual versus government. The USA *Constitution's* Amendment IV (e.g., \_\_\_[106]\_\_\_ required if a search is **un**\_\_\_[83]\_\_\_), Amendment V (e.g., \_\_\_[85]\_\_\_ against self incrimination), and Amendment VI (e.g., \_\_\_[85]\_\_\_ to an attorney) identify some of these constitutional protections. The exclusionary rule excludes from a court any proof of an alleged crime that was collected in violation constitutional protections, including any fruit of that poisonous tree.

### Unit Two Exam Start of New Questions:

- BJ. Broadly speaking, there are three types of torts: [i] intentional torts, [ii] \_\_\_[60]\_\_\_ torts, and [iii] \_\_\_[88]\_\_\_ liability torts. With intentional torts the defendant creates a harm; with \_\_\_[60]\_\_\_ torts the defendant creates a \_\_\_[86]\_\_\_ of harm; and with \_\_\_[88]\_\_\_ liability torts there is social \_\_\_[86]\_\_\_ allocation for abnormally dangerous activities that create \_\_\_[86]\_\_\_ of serious injury, when that \_\_\_[86]\_\_\_ is great can not be guarded against, and that \_\_\_[86]\_\_\_ is not customary in that activity or area.
- BK. \_\_\_[38]\_\_\_ \_\_\_[33]\_\_\_ is measured by both \_\_\_[89]\_\_\_ \_\_\_[50]\_\_\_ and by \_\_\_[63]\_\_\_ \_\_\_[50]\_\_\_.  
The \_\_\_[89]\_\_\_ \_\_\_[50]\_\_\_ is measured by \_\_\_[40]\_\_\_ in fact.  
The \_\_\_[63]\_\_\_ \_\_\_[50]\_\_\_ is measured differently depending upon the person whose actions are being judged. For example, a common law consumer \_\_\_[63]\_\_\_ \_\_\_[50]\_\_\_ nothing whereas a UCC merchant \_\_\_[63]\_\_\_ \_\_\_[50]\_\_\_ that which is \_\_\_[11]\_\_\_ \_\_\_[83]\_\_\_.

- BL. The business tort of wrongful interference with contractual relations is similar to but very different than the business tort of wrongful interference with business relations. Both of these torts differentiate between privileged behavior and \_\_\_[71]\_\_\_ behavior. Both of these torts require the defendant's actions to be both \_\_\_[50]\_\_\_ and \_\_\_[105]\_\_\_; but, both the \_\_\_[50]\_\_\_ and the \_\_\_[105]\_\_\_ need only satisfy the \_\_\_[63]\_\_\_ standard rather than the \_\_\_[89]\_\_\_ standard. Because of \_\_\_[11]\_\_\_ free speech via the First Amendment to the USA *Constitution* as well as because of at-\_\_\_[107]\_\_\_-employment via the Thirteenth Amendment to the USA *Constitution*, attracting applications from a competitor's employees via placing an advertisement in a newspaper is a form of *bona fide* competitive behavior rather than \_\_\_[71]\_\_\_ behavior, even if the advertiser has \_\_\_[1]\_\_\_ \_\_\_[50]\_\_\_ of the competitor's business.
- BM. \_\_\_[63]\_\_\_, a plaintiff does not assume the \_\_\_[86]\_\_\_ of a latent defect. The legally \_\_\_[49]\_\_\_ Bounded \_\_\_[82]\_\_\_ of the consumer coupled with the \_\_\_[63]\_\_\_ \_\_\_[50]\_\_\_ of the seller creates within the seller a \_\_\_[27]\_\_\_ to \_\_\_[26]\_\_\_. Failure to \_\_\_[26]\_\_\_ can expose the seller to legal liability for damages. Those damages might be \_\_\_[61]\_\_\_ damages (i.e., \$1); or, might be \_\_\_[12]\_\_\_ damages (i.e., monetary sum needed to make the plaintiff whole), potentially coupled with punitive damages (i.e., monetary sum calculated to punish this defendant and/or to deter this and/or future defendants).
- BN. All causes of action require, at a minimum, \_\_\_[1]\_\_\_ causation (i.e., chain of events); but, in the USA typically legal liability only extends as far as \_\_\_[80]\_\_\_ causation (i.e., \_\_\_[83]\_\_\_ foreseeable consequences [i.e., within the actor's Bounded \_\_\_[82]\_\_\_). Because basing legal liability only upon \_\_\_[1]\_\_\_ causation extends the defendant's liability in an **un**\_\_\_[53]\_\_\_ed fashion into the future USA tort law always has applied some method to cut off that liability once it starts. Prior to the switch from solely using \_\_\_[1]\_\_\_ causation to the current practice of using \_\_\_[80]\_\_\_ causation, liability was cut off by superseding cause and/or \_\_\_[19]\_\_\_ \_\_\_[60]\_\_\_, both of which acted as a bar to suit (i.e., \_\_\_[14]\_\_\_ defense). With the switch to \_\_\_[80]\_\_\_ causation, those bars to suit were not as appropriate as before, and the USA law also switched to comparative \_\_\_[60]\_\_\_ in place of \_\_\_[19]\_\_\_ \_\_\_[60]\_\_\_.
- BO. The contours of the \_\_\_[27]\_\_\_ of care for a tort might be specified by statute (e.g., road's speed \_\_\_[53]\_\_\_). When the \_\_\_[27]\_\_\_ of care is specified by a statute, then to violate the statute also is to breach that \_\_\_[27]\_\_\_ of care. Breaching a statutorily defined \_\_\_[27]\_\_\_ of care is \_\_\_[60]\_\_\_ \_\_\_[67]\_\_\_. In contrast, *res ipsa loquitur* is a method of proving the breach of a \_\_\_[27]\_\_\_ of care. When the facts speak for themselves, breach of the \_\_\_[27]\_\_\_ of care \_\_\_[107]\_\_\_ be presumed.

- BP. Typically, the \_\_\_[50]\_\_\_ element of every crime only requires \_\_\_[63]\_\_\_ \_\_\_[50]\_\_\_. When the criminal law requires \_\_\_[89]\_\_\_ \_\_\_[50]\_\_\_, then the law uses the word \_\_\_[87]\_\_\_. Because of the \_\_\_[50]\_\_\_ element of every crime and because businesses have successfully lobbied the \_\_\_[52]\_\_\_ to make \_\_\_[87]\_\_\_ an element of nearly all business crimes committed by a \_\_\_[20]\_\_\_, it is very difficult to hold criminally liable a legal person in the form of a \_\_\_[20]\_\_\_. For the \_\_\_[20]\_\_\_ to be criminally liable the legally recognized level of \_\_\_[50]\_\_\_ of the \_\_\_[20]\_\_\_ must reach the level of \_\_\_[87]\_\_\_, but also must do so as a result of \_\_\_[89]\_\_\_ \_\_\_[50]\_\_\_ from the \_\_\_[20]\_\_\_'s agents (e.g., officers, directors). In contrast to the \_\_\_[20]\_\_\_ itself, the \_\_\_[59]\_\_\_ persons serving as the \_\_\_[20]\_\_\_'s officers or serving as the \_\_\_[20]\_\_\_'s directors typically do not have the defense of a lack of vicarious \_\_\_[50]\_\_\_.
- BQ. The ability to \_\_\_[50]\_\_\_ is referred to a capacity. If a \_\_\_[59]\_\_\_ person or a legal person lacks capacity, then that is a defense to every crime. \_\_\_[63]\_\_\_, all \_\_\_[59]\_\_\_ persons who reach the age of majority (i.e., no longer have the defense of infancy) and are presumed to have capacity. That presumed capacity can be rebutted (i.e., disproved) by the defendant by a \_\_\_[73]\_\_\_ of the evidence. For example, if a \_\_\_[59]\_\_\_ person is **in** \_\_\_[105]\_\_\_ intoxicated or is adjudicated insane, then capacity is \_\_\_[63]\_\_\_ lost.
- BR. The seriousness of crimes, broadly, is divided into two classes of crimes: felony (i.e., potential of prison \_\_\_[94]\_\_\_ of one year or more) and misdemeanor (i.e., potential of jail \_\_\_[94]\_\_\_ of less than one year). Because of \_\_\_[91]\_\_\_ due process, the \_\_\_[78]\_\_\_ due process (i.e., \_\_\_[62]\_\_\_ and \_\_\_[39]\_\_\_, both \_\_\_[79]\_\_\_ to the interests involved) is much greater for felony than for misdemeanor.

BS. Both torts and crimes are about \_\_\_[63]\_\_\_ injuries; but they have different means of \_\_\_[63]\_\_\_ defining no \_\_\_[63]\_\_\_ injury due to the passage of \_\_\_[94]\_\_\_. The \_\_\_[29]\_\_\_ defense of \_\_\_[51]\_\_\_ (i.e., the plaintiff engages in **un**\_\_\_[83]\_\_\_ delay) requires the defendant to be able to \_\_\_[50]\_\_\_ that after some passage of \_\_\_[94]\_\_\_ no cause of action \_\_\_[107]\_\_\_ be legally recognized. The \_\_\_[52]\_\_\_ has created a defense for use in courts of law that parallels this \_\_\_[29]\_\_\_ defense. The \_\_\_[52]\_\_\_ has adopted statutes of \_\_\_[53]\_\_\_ and statutes of \_\_\_[84]\_\_\_. A statute of \_\_\_[53]\_\_\_ defines the \_\_\_[63]\_\_\_ duration within an injury must be claimed by the plaintiff filing a \_\_\_[13]\_\_\_ (i.e., cause of action, \_\_\_[48]\_\_\_, and remedy), or as a matter of law the plaintiff was not \_\_\_[63]\_\_\_ injured or has waived that injury. Because a statute of \_\_\_[53]\_\_\_ may be \_\_\_[96]\_\_\_ by the trial court (reminiscent of \_\_\_[52]\_\_\_ origins in \_\_\_[29]\_\_\_) to accommodate a plaintiff's \_\_\_[63]\_\_\_ verifiable justifications for that delay, the statute of \_\_\_[53]\_\_\_ necessarily is for a shorter duration than its companion statute of \_\_\_[84]\_\_\_. A statute of \_\_\_[84]\_\_\_ can not be \_\_\_[96]\_\_\_; accordingly a statute of \_\_\_[84]\_\_\_ raises questions of \_\_\_[91]\_\_\_ due process.

### UNIT THREE EXAM

#### Quiz October 1: Chapters 10 and 11

- CA. A contract has four elements: the parties must reach an agreement (i.e., offer and acceptance), \_\_\_[18]\_\_\_ (i.e., \_\_\_[6]\_\_\_ for \_\_\_[31]\_\_\_ of legally sufficient \_\_\_[102]\_\_\_); contractual capacity; and legal subject matter. There are two defenses to a transaction that satisfies those four elements: the necessity of genuineness of assent; and the necessity a specific form (e.g., \_\_\_[108]\_\_\_) for some types of contracts.
- CB. How a contract comes into existence varies. Some transactions are \_\_\_[32]\_\_\_ contracts wherein all of the terms of that contract are \_\_\_[50]\_\_\_ by the parties' words: \_\_\_[108]\_\_\_ or oral. Other transactions are \_\_\_[43]\_\_\_ contracts wherein all of the terms of that contract are \_\_\_[63]\_\_\_ \_\_\_[50]\_\_\_ by the parties' acts, words, and/or circumstances. Still other transactions are *quasi* contracts which are not contracts, but instead are an \_\_\_[29]\_\_\_ remedy.
- CC. The agreement of every contract must satisfy the Mirror Image Rule because the acceptance must match the offer. However, far from all contracts must satisfy the Mail Box Rule because Mail Box Rule only is relevant when the offerOR and offerEE are not \_\_\_[23]\_\_\_ face-to-face.

### Quiz October 3: Chapter 12

CD. An accord and satisfaction requires both an accord and a satisfaction. The accord is a new contract between the debtor and the creditor. The satisfaction is \_\_\_[18]\_\_\_ based upon a \_\_\_[38]\_\_\_ \_\_\_[33]\_\_\_ dispute between the debtor and the creditor about that debt.

### Quiz October 8: Chapter 13

CE. An \_\_\_[2]\_\_\_ contract typically is the result of \_\_\_[78]\_\_\_ \_\_\_[100]\_\_\_. \_\_\_[78]\_\_\_ \_\_\_[100]\_\_\_ can result either from a lack of sufficient \_\_\_[50]\_\_\_ or a lack of sufficient \_\_\_[105]\_\_\_. That lack of \_\_\_[50]\_\_\_ can come from overly complex contract form or from inconspicuous contract terms within the form. That lack of \_\_\_[105]\_\_\_ can be due to a large disparity of \_\_\_[6]\_\_\_ power. Both of the lack of \_\_\_[50]\_\_\_ and the lack of \_\_\_[105]\_\_\_ might be seen when a dominate party drafts a take-it-or-leave-it \_\_\_[2]\_\_\_ contract.

CF. The parties to an attempted contract whose terms are illegal typically are held by the courts to be *in pari delicto* (i.e., equally at fault) and the court refuses all remedy because the transaction is \_\_\_[104]\_\_\_ (i.e., court treats it as if it never happened).

### Quiz October 10: Chapters 14 & 15

CG. The contract defense of lack of genuineness of assent can be proved in several ways. One way is with proof the common law tort of \_\_\_[36]\_\_\_ misrepresentation. That \_\_\_[36]\_\_\_ is proved when the plaintiff proves by a \_\_\_[73]\_\_\_ of the evidence that the defendant \_\_\_[50]\_\_\_ and \_\_\_[105]\_\_\_ misrepresented a \_\_\_[54]\_\_\_ fact that induces the plaintiff's \_\_\_[49]\_\_\_ reliance and \_\_\_[80]\_\_\_ causes the plaintiff's injury.

CH. The Statute of \_\_\_[36]\_\_\_ requires five different types of contracts to be in a specific form of a \_\_\_[108]\_\_\_ memorandum of sufficient \_\_\_[24]\_\_\_ that the court can enforce the parties' \_\_\_[63]\_\_\_ intent. Those five types of contracts are: sale of interest in land; sale of \_\_\_[38]\_\_\_ at or over \$5,000; must take longer than one year to \_\_\_[14]\_\_\_ the contract's terms; guarantee the debt of another; and promises in \_\_\_[18]\_\_\_ of marriage.

### Quiz October 16: Chapter 16

- CI. The original parties to a contract each are \_\_\_[25]\_\_\_ parties to that contract and each of the original parties to that contract share \_\_\_[77]\_\_\_ of contract. \_\_\_[25]\_\_\_ parties to a contract normally are the only parties that have enforceable \_\_\_[85]\_\_\_ or liabilities based upon that contract. However, if a third party to a contract (e.g., intended creditor beneficiary) has \_\_\_[103]\_\_\_ then that third party becomes a \_\_\_[25]\_\_\_ party with \_\_\_[77]\_\_\_ and may enforce contract \_\_\_[85]\_\_\_ against the original parties.
- CJ. Typically, contract \_\_\_[85]\_\_\_ may be assigned. In contrast, typically, contract \_\_\_[27]\_\_\_ may not be delegated. An assignment that \_\_\_[23]\_\_\_ with a topic \_\_\_[21]\_\_\_ by the Statute of \_\_\_[36]\_\_\_ must be an assignment in the form that satisfies the requirements of the Statute of \_\_\_[36]\_\_\_ (i.e., a signed \_\_\_[108]\_\_\_ memorandum of sufficient \_\_\_[24]\_\_\_ that the court can enforce the parties' \_\_\_[63]\_\_\_ intent).

### Quiz October 17: Chapter 17

- CK. A contract can contain many conditions and those contract conditions can take different forms. A condition \_\_\_[70]\_\_\_ requires that the condition must be \_\_\_[14]\_\_\_ before the \_\_\_[27]\_\_\_ comes into existence. A condition \_\_\_[15]\_\_\_ requires that both parties confront contract conditions and that both parties must discharge their conditions simultaneously. The most frequent contract condition is the condition \_\_\_[15]\_\_\_ of \_\_\_[93]\_\_\_ (i.e., ready, \_\_\_[107]\_\_\_, and able to perform). A condition \_\_\_[90]\_\_\_ terminates a contractual \_\_\_[27]\_\_\_ upon the occurrence of the condition \_\_\_[90]\_\_\_.
- CL. A contract can be discharged in many different ways. Most contracts are discharged by substantial performance rather than by \_\_\_[14]\_\_\_ performance. Some contracts are discharged by agreement. Some of the forms of discharge by agreement are \_\_\_[58]\_\_\_ rescission, novation (i.e., original parties agreement to substitute a new party and excuse one of the original parties), an accord and satisfaction (i.e., parties have a \_\_\_[38]\_\_\_ \_\_\_[33]\_\_\_ dispute over a executory contractual \_\_\_[27]\_\_\_). Some contracts are discharged by operation of law. Some of the forms of discharge by operation of law are \_\_\_[101]\_\_\_ rescission, statute of \_\_\_[53]\_\_\_ or statute of \_\_\_[84]\_\_\_, \_\_\_[11]\_\_\_ impracticability (i.e., 3x change), \_\_\_[11]\_\_\_ impossibility (i.e., 10x change).

### Quiz October 24: Chapter 18

CM. Damages for breach of contract come in many different forms. Typically, a party is awarded only one of these forms of damages. Some of the forms of damages are \_\_\_[61]\_\_\_ damages (i.e., \$1 as full payment for breach of a legal \_\_\_[85]\_\_\_); \_\_\_[12]\_\_\_ damages (i.e., loss of the benefit of the \_\_\_[6]\_\_\_); \_\_\_[44]\_\_\_ damages (i.e., losses \_\_\_[25]\_\_\_ related to the \_\_\_[12]\_\_\_ damages); \_\_\_[17]\_\_\_ damages (i.e., only recovery as contract damages if \_\_\_[83]\_\_\_ foreseen by the parties); punitive damages (e.g., typically not available for breach of contract, except against employers and insurers); liquidated damages (i.e., contract specified damages); and economic losses (i.e., not recoverable as contract damages because these are tort damages). The **non**-breaching party has \_\_\_[27]\_\_\_ to \_\_\_[56]\_\_\_ damages rather than to sit idly by as damages grow.

CN. Some remedies are in law and other remedies are in \_\_\_[29]\_\_\_. Damages are but one remedy in law for breach of contract. Money restitution is a remedy in law (i.e., monetary \_\_\_[102]\_\_\_ of the benefit of obtained by the defendant via breach of the contract). \_\_\_[101]\_\_\_ restitution is a remedy in \_\_\_[29]\_\_\_ (i.e., rescission of the contract and restitution of the \_\_\_[18]\_\_\_). Specific performance (i.e., delivery of the unique item that served as \_\_\_[18]\_\_\_ [e.g., specially manufactured \_\_\_[38]\_\_\_] in common law is an \_\_\_[29]\_\_\_ remedy; but, increasingly, \_\_\_[52]\_\_\_ have passed statutes creating specific performance as a remedy in law.

### Quiz October 29: Chapter 19

CO. The common law recognizes the on-line business environment for contract formation as different than the face-to-face business environment for contract formation. The common law recognizes the sale of licensed software as different than the retail sales of "\_\_\_[38]\_\_\_". In both instances the common law enforces \_\_\_[2]\_\_\_ contracts for many on-line transactions and for many retail sales of licensed software that the common law would not enforce for ordinary face-to-face business environment or for the ordinary retail sale of "\_\_\_[38]\_\_\_".

CP. A signature is any mark with the current intent to authenticate the document. In the on-line business environment the concept of document becomes the concept record. Also, in the on-line business environment a click can be that mark. The \_\_\_[34]\_\_\_ government using its \_\_\_[11]\_\_\_ Clause power has \_\_\_[72]\_\_\_ the State's governments on the question whether a merchant's click is a signature for on-line contracts in \_\_\_[11]\_\_\_. For consumer transactions within \_\_\_[11]\_\_\_ and for transactions that are part of an Act of State the \_\_\_[34]\_\_\_ government often lacks the power to \_\_\_[72]\_\_\_ State laws and/or has \_\_\_[32]\_\_\_ chosen to not attempt to \_\_\_[72]\_\_\_ State laws on whether a click is a signature.

**UNIT FOUR EXAM**  
**CHAPTER 20**

- DA. The Uniform \_\_\_[11]\_\_\_ Code, Article 2 (UCC-2) governs the Sale of \_\_\_[38]\_\_\_. \_\_\_[38]\_\_\_ are tangible and movable personal property. When a transaction combines both the sale of \_\_\_[38]\_\_\_ and the sale of services, then the predominate nature of the transaction determines whether the common law of contracts governs that transaction or whether UCC-2 governs that transaction.
- DB. The UCC-2 uses different rules for transactions between two merchants, between a merchant and a consumer, and between two consumers. A merchant is any person (i.e., either a \_\_\_[59]\_\_\_ person or a legal person) who either \_\_\_[23]\_\_\_ in \_\_\_[38]\_\_\_ of that kind (i.e., \_\_\_[83]\_\_\_ to \_\_\_[50]\_\_\_); or hires an agent who is a merchant (i.e., vicarious \_\_\_[50]\_\_\_); or holds self out as a merchant (i.e., estoppel). All consumers are \_\_\_[59]\_\_\_ persons.
- DC. The UCC-2 repeals the Mirror Image Rule by authorizing \_\_\_[64]\_\_\_ terms. The \_\_\_[63]\_\_\_ intent of the parties to be bound to a contract, when coupled with the obligation of \_\_\_[38]\_\_\_ \_\_\_[33]\_\_\_ (which may not be disclaimed), allows the court to \_\_\_[14]\_\_\_ most \_\_\_[64]\_\_\_ terms with \_\_\_[11]\_\_\_ \_\_\_[83]\_\_\_ terms. However, only the \_\_\_[81]\_\_\_ term may not be an \_\_\_[64]\_\_\_ term. A \_\_\_[81]\_\_\_ term is not \_\_\_[64]\_\_\_ if the contract is an \_\_\_[65]\_\_\_ contract or a requirement contract. For the CISG, however, only the \_\_\_[75]\_\_\_ term may not be an \_\_\_[64]\_\_\_ term.
- DD. The UCC-2 includes the Statute of \_\_\_[36]\_\_\_. The Parole Evidence Rule helps enforce the Statute of \_\_\_[36]\_\_\_ by barring from court oral evidence that seeks to contradict or vary the \_\_\_[108]\_\_\_ terms of the contract. If a \_\_\_[108]\_\_\_ contract term is \_\_\_[4]\_\_\_, then oral evidence is allowed to determine the parties' \_\_\_[63]\_\_\_ intent. If the Plain Meaning Rule does not remove the \_\_\_[4]\_\_\_, then the court might use as the parties' \_\_\_[63]\_\_\_ intent to find the meaning for that \_\_\_[4]\_\_\_ term based upon the parties' course of performance, the parties' course of \_\_\_[23]\_\_\_, or the usage of trade.

## CHAPTER 21

- DE. Before any interest in specific \_\_\_[38]\_\_\_ can pass from the seller to the buyer the \_\_\_[38]\_\_\_ must be in existence and must be \_\_\_[41]\_\_\_. The \_\_\_[38]\_\_\_ are \_\_\_[41]\_\_\_ when the \_\_\_[38]\_\_\_ are designated as the subject matter of the sale contract. Typically, when the \_\_\_[38]\_\_\_ are part of a larger mass, then the seller seeking to designate the particular \_\_\_[38]\_\_\_ must separate the designated \_\_\_[38]\_\_\_ from the mass so as to accomplish identification. However, commingled fungible \_\_\_[38]\_\_\_ are owned by tenants in common and need not be separated to achieve the designation needed for identification. Under the UCC-2, \_\_\_[95]\_\_\_ passes from the seller to the buyer at the \_\_\_[94]\_\_\_ of and at the place of the seller performing physical delivery of the \_\_\_[38]\_\_\_.
- DF. Ordinarily, a seller only can transfer as \_\_\_[38]\_\_\_ a \_\_\_[95]\_\_\_ as the seller has. For example, since the \_\_\_[95]\_\_\_ of a thief is a \_\_\_[104]\_\_\_ \_\_\_[95]\_\_\_, the buyer from that thief only gets a \_\_\_[104]\_\_\_ \_\_\_[95]\_\_\_. However, a seller with a \_\_\_[104]\_\_\_able \_\_\_[95]\_\_\_ can transfer \_\_\_[38]\_\_\_ \_\_\_[95]\_\_\_ to a \_\_\_[38]\_\_\_ \_\_\_[33]\_\_\_ purchaser for \_\_\_[102]\_\_\_ and without \_\_\_[50]\_\_\_ of the seller's defective \_\_\_[95]\_\_\_. Additionally, the \_\_\_[28]\_\_\_ rule allows a merchant who \_\_\_[23]\_\_\_ in \_\_\_[38]\_\_\_ of that kind to create \_\_\_[38]\_\_\_ \_\_\_[95]\_\_\_ in a \_\_\_[38]\_\_\_ \_\_\_[33]\_\_\_ purchaser for \_\_\_[102]\_\_\_ in the ordinary course of business and without \_\_\_[50]\_\_\_ of the claims of others.
- DG. Under the UCC-2 the \_\_\_[86]\_\_\_ of loss does not necessarily pass with \_\_\_[95]\_\_\_. If the parties' contract does not specify when the \_\_\_[86]\_\_\_ of loss passes, then the UCC-2 provides rules for the passing of the \_\_\_[86]\_\_\_ of loss. Under the UCC-2 if the parties' contract is a shipment contract, then the \_\_\_[86]\_\_\_ of loss passes from the seller to the buyer upon the seller's due delivery of the \_\_\_[38]\_\_\_ to the carrier. Under the UCC-2, if the parties' contract is a destination contract, then the \_\_\_[86]\_\_\_ of loss passes from the seller to the buyer upon the carrier's due delivery at the contract specified destination. A buyer obtains an \_\_\_[45]\_\_\_ interest in the \_\_\_[38]\_\_\_ as soon as the \_\_\_[38]\_\_\_ are \_\_\_[41]\_\_\_. The seller retains an \_\_\_[45]\_\_\_ interest in the \_\_\_[38]\_\_\_ as long as the seller has \_\_\_[95]\_\_\_ to the \_\_\_[38]\_\_\_.

## CHAPTER 22

- DH. \_\_\_[16]\_\_\_ \_\_\_[38]\_\_\_ are \_\_\_[38]\_\_\_ that match exactly to the description of the \_\_\_[38]\_\_\_ in the contract. \_\_\_[16]\_\_\_ \_\_\_[38]\_\_\_ are \_\_\_[14]\_\_\_ performance with respect to the subject matter of the contract. While the UCC-2 nearly \_\_\_[14]\_\_\_ eliminated the Mirror Image Rule, the UCC-2 retains the \_\_\_[15]\_\_\_ condition of the Perfect \_\_\_[93]\_\_\_ Rule (i.e., ready, \_\_\_[107]\_\_\_, and able to provide \_\_\_[14]\_\_\_ performance).

DI. Damages obtainable under the UCC-2 are greater than damages obtainable under the common law of contracts in several ways. For example, while both the common law of contracts and the UCC-2 include \_\_\_[44]\_\_\_ damages within \_\_\_[12]\_\_\_ damages, the UCC-2 includes within \_\_\_[44]\_\_\_ damages the **non**-breaching party's lost profits which would be \_\_\_[17]\_\_\_ damages under the common law of contracts. However, the UCC-2 also seeks to reduce the scope of obtainable damages. For example, both the common law of contracts and the UCC-2 creates in the **non**-breaching party a \_\_\_[27]\_\_\_ to \_\_\_[56]\_\_\_ damages, but the UCC-2 creates a \_\_\_[85]\_\_\_ of the **non**-breaching party to \_\_\_[21]\_\_\_ by entering the market to obtain substitute \_\_\_[16]\_\_\_ \_\_\_[38]\_\_\_. Also, the UCC-2 creates a new \_\_\_[85]\_\_\_, relative to the common law of contracts, whereby the breaching seller whose performance is delivered prior to the \_\_\_[94]\_\_\_ that the contract calls for performance may \_\_\_[22]\_\_\_ **non**-\_\_\_[16]\_\_\_ \_\_\_[38]\_\_\_ by \_\_\_[93]\_\_\_ of \_\_\_[16]\_\_\_ \_\_\_[38]\_\_\_ by the \_\_\_[94]\_\_\_ performance is due.

### CHAPTER 23

DJ. A Statute of \_\_\_[53]\_\_\_ provides \_\_\_[78]\_\_\_ due process while a Statute of \_\_\_[84]\_\_\_ seeks to satisfy \_\_\_[91]\_\_\_ due process. A Statute of \_\_\_[53]\_\_\_ can be \_\_\_[96]\_\_\_, a Statute of \_\_\_[84]\_\_\_ can not be \_\_\_[96]\_\_\_. Accordingly, the Statute of \_\_\_[84]\_\_\_ sets a firm deadline for when the plaintiff must file suit of lose the plaintiff's standing to sue because, although the plaintiff still might have suffered an injury in fact, that injury no longer is sufficiently \_\_\_[63]\_\_\_ to continue to include the plaintiff within the zone of protected interests.

DK. Product liability is a form of \_\_\_[88]\_\_\_ liability, with the social \_\_\_[86]\_\_\_ allocation motivated by the merchant's superior abilities (relative to the consumer) for controlling the \_\_\_[86]\_\_\_ of harm as well s superior abilities for financing preventative measures. The merchant is \_\_\_[88]\_\_\_ liable for allowing an **un**\_\_\_[83]\_\_\_ dangerous product to be sold to the consumer. Under the common law of contracts only those parties that shared \_\_\_[77]\_\_\_ of contract could be liable; however, product liability imposes liability on manufacturers who do not have \_\_\_[77]\_\_\_ of contract with consumer. There is no \_\_\_[77]\_\_\_ of contract between manufacturers and consumer when those manufacturers do not sell \_\_\_[25]\_\_\_ to the consumer; but instead, those manufacturers sell \_\_\_[25]\_\_\_ to wholesalers, who in term sell \_\_\_[25]\_\_\_ to retailers, who in term sell \_\_\_[25]\_\_\_ to the consumer.

DL. All merchant selling \_\_\_[38]\_\_\_ convey those \_\_\_[38]\_\_\_ along with an \_\_\_[43]\_\_\_ warranty of \_\_\_[55]\_\_\_. Because the UCC-2 does not require an election of remedies, in addition to that \_\_\_[43]\_\_\_ warranty of \_\_\_[55]\_\_\_ a consumer might also have claims against the merchant seller based upon additional warranties. For example, a merchant seller might have given the consumer an \_\_\_[43]\_\_\_ warranty of fitness for a particular purpose (i.e., seller \_\_\_[50]\_\_\_ of the particular purpose and the seller \_\_\_[50]\_\_\_ the buyer is relying upon the seller's skill to select suitable \_\_\_[38]\_\_\_) and/or the seller might have given the consumer an \_\_\_[32]\_\_\_ warranty (e.g., seller's affirmation of fact that is part of the basis for the \_\_\_[6]\_\_\_). The \_\_\_[34]\_\_\_ Magnuson-Moss Warranty Act only regulates \_\_\_[32]\_\_\_ warranties by merchant selling products in \_\_\_[11]\_\_\_ to consumer; and, the Magnuson-Moss Warranty Act does so by defining the words full and limited used to describe the warranty.

## UNITS NINE AND ELEVEN EXAM CHAPTER 43

- EA. The \_\_\_[52]\_\_\_ branch by adopting the Enabling Act both creates an administrative agency and delegates powers to that agency. \_\_\_[91]\_\_\_ due process requires that sufficient \_\_\_[78]\_\_\_ due processes controlled by the \_\_\_[52]\_\_\_, executive, and/or \_\_\_[47]\_\_\_ branches exists for oversight and control of that administrative agency.
- EB. Administrative agencies frequently possess powers that ordinarily are held separately by the \_\_\_[52]\_\_\_, executive, or \_\_\_[47]\_\_\_ branches. Rulemaking is a delegated \_\_\_[52]\_\_\_ power. To use the rulemaking power the agency must provide the \_\_\_[78]\_\_\_ due process of publishing the proposed rule in the \_\_\_[34]\_\_\_ *Register* and publish the final rule in the *Code of \_\_\_[34]\_\_\_ Regulations*. The investigation power might be either a delegated \_\_\_[52]\_\_\_ power or a delegated executive power; but, the inspection power only is a delegated executive power. An administrative law judge (ALJ) is not an Article III judge the ALJ generally acts like a trial judge within the scope of the administrative agency's \_\_\_[47]\_\_\_ powers.
- EC. A person's (both \_\_\_[59]\_\_\_ and legal, not \_\_\_[49]\_\_\_ a \_\_\_[9]\_\_\_) Amendment IX \_\_\_[43]\_\_\_ \_\_\_[85]\_\_\_ to \_\_\_[76]\_\_\_ is a \_\_\_[85]\_\_\_ of the \_\_\_[66]\_\_\_ against governmental acts. Broadly, the government violates the \_\_\_[66]\_\_\_'s \_\_\_[85]\_\_\_ to \_\_\_[76]\_\_\_ when the government seeks either to: [i] collect information about a person; or [ii] retain collected information about that person; or [iii] conceal collected information about that person from that person; or [iv] conduct government business out of the view of the \_\_\_[66]\_\_\_. The Freedom of Information Act (FOIA), the Government in the Sunshine Act, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act (SBREFA) all provide \_\_\_[32]\_\_\_ reinforcement for this \_\_\_[43]\_\_\_ constitutional \_\_\_[85]\_\_\_.

## CHAPTER 44

- ED. All consumers and all \_\_\_[9]\_\_\_ are \_\_\_[59]\_\_\_ persons. No consumers merely are legal persons. A merchant might be either a \_\_\_[59]\_\_\_ person or a legal person.
- EE. The \_\_\_[34]\_\_\_ Trade Commission (FTC) is an administrative agency whose Enabling Act contains a \_\_\_[48]\_\_\_ command to prevent unfair and deceptive trade practices. The FTC has adopted rules aimed at bait-and-switch advertising as such advertising is both unfair and deceptive.
- EF. The FTC can use the enforcement tool of a cease-and-desist order after the FTC successfully proves that a trade practice is either unfair or deceptive. The defendant also may \_\_\_[105]\_\_\_ agree to enter into a cease-and-desist order (i.e., consent decree) so as to avoid a \_\_\_[39]\_\_\_ and/or a potentially more costly outcome.
- EG. Congress has adopted the Truth-in-Lending Act (TLA) which is administered by the \_\_\_[34]\_\_\_ Reserve Board (the Fed). However, the Fed is not your typical administrative agency because while the Fed is an agency most of the \_\_\_[34]\_\_\_ Reserve System members are private \_\_\_[20]\_\_\_. To implement the TLA the Fed has adopted Regulation Z.

## CHAPTER 46

- EH. Under USA law, big is not bad; but, how a firm gets big or how a firm uses its large market power can be a felony. The Sherman Act of 1890 makes unlawful via section 1 restraint of trade and via section 2 monopolize or attempt to monopolize. The Rule of \_\_\_[83]\_\_\_ allows as lawful any restraint that is \_\_\_[79]\_\_\_ to firm's legitimate business interests. The \_\_\_[67]\_\_\_ **Un**\_\_\_[83]\_\_\_ Rule, based upon experience that teaches these restraints are **dis**\_\_\_[79]\_\_\_, makes \_\_\_[75]\_\_\_ fixing, horizontal division of customers or territories, group \_\_\_[7]\_\_\_, and \_\_\_[99]\_\_\_ arrangement to be felonies.
- EI. In the Clayton Act of 1914 Congress addressed specific restraints that have been found lawful by the \_\_\_[47]\_\_\_ using the Rule of \_\_\_[83]\_\_\_ but which Congress wished to make civil unlawful rather than criminally unlawful. These specifically addressed restraints included \_\_\_[75]\_\_\_ discrimination; exclusive \_\_\_[23]\_\_\_ (e.g., \_\_\_[65]\_\_\_ contracts and requirements contracts) and \_\_\_[99]\_\_\_ ; mergers; and interlocking directorates. Additionally, in the Clayton Act Congress also creates exemptions from the anti-\_\_\_[98]\_\_\_ laws; most notably labor was defined as not an article of \_\_\_[11]\_\_\_ and agricultural cooperatives were authorized.

EJ. The USA, given the breadth of the *Constitution's* \_\_\_[11]\_\_\_ Clause, gives an extra-territorial application to the USA's anti-\_\_\_[98]\_\_\_ laws. The European Union (EU) also has anti-\_\_\_[98]\_\_\_ laws. However, the EU \_\_\_[54]\_\_\_ differs from the USA in whether legitimate business interests exists and how large those legitimate business interests are in the context of vertical restraints. The EU also \_\_\_[54]\_\_\_ differs from the USA with respect to the application of anti-\_\_\_[98]\_\_\_ laws to an Act of State.

## CHAPTER 49

EK. All \_\_\_[48]\_\_\_ outlaw some gambling contracts and all \_\_\_[48]\_\_\_ make lawful most insurance contracts. Gambling contracts create \_\_\_[86]\_\_\_ and then allocates that \_\_\_[86]\_\_\_ by chance for a payment. Insurance contracts pool existing \_\_\_[86]\_\_\_ and then in \_\_\_[31]\_\_\_ for an average \_\_\_[75]\_\_\_ transfer that \_\_\_[86]\_\_\_ to be allocated by chance.

EL. InsurERs seek to manage the \_\_\_[86]\_\_\_ transferred by the insurED to the insurER. \_\_\_[3]\_\_\_ selection occurs when a **dis**\_\_\_[79]\_\_\_ number of high \_\_\_[86]\_\_\_ persons seek to become insurEDs of the insurER. The \_\_\_[57]\_\_\_ hazard exists every \_\_\_[94]\_\_\_ the insurED has some control over the occurrence of the \_\_\_[86]\_\_\_ \_\_\_[21]\_\_\_ by the insurance policy. The \_\_\_[57]\_\_\_ hazard is why statutes require some degree of self insurance by the insurED (e.g., deductible and/or co-pay).

EM. An \_\_\_[45]\_\_\_ interest distinguishes a gambling contract from an insurance contract. For property insurance the \_\_\_[45]\_\_\_ interest must exist at the \_\_\_[94]\_\_\_ of loss. For life insurance the \_\_\_[45]\_\_\_ interest must exist at the \_\_\_[94]\_\_\_ of contract

EN. All insurance contracts, because of the necessity of \_\_\_[86]\_\_\_ pooling, are \_\_\_[2]\_\_\_ contracts. Unlike the typical \_\_\_[2]\_\_\_ contract where an ambiguity discovered by the **non**-drafting party is interpreted \_\_\_[83]\_\_\_ , all ambiguity in an insurance contract are interpreted against the insurER.

## CHAPTER 50

EO. To create a \_\_\_[107]\_\_\_ requires: [i] capacity (i.e., ability to grasp the \_\_\_[59]\_\_\_ consequences of one's actions); [ii] an intent to create a \_\_\_[107]\_\_\_ and to affix a signature; [iii] the \_\_\_[107]\_\_\_ nearly always must be \_\_\_[108]\_\_\_; [iv] signature (i.e., any mark with the current intent to authenticate the document); [v] disinterested witnesses of the capacity and of the signature; and [vi] published.

EP. To create a \_\_\_[98]\_\_\_ requires: [i] a grantor; [ii] a corpus of the \_\_\_[98]\_\_\_ ; [iii] trustee (gets legal \_\_\_[95]\_\_\_); [iv] \_\_\_[95]\_\_\_ passes; [v] \_\_\_[1]\_\_\_ delivery; and [vi] beneficiary (gets beneficial \_\_\_[95]\_\_\_).

EQ. The trustee is a \_\_\_[35]\_\_\_ who owes an obligation utmost \_\_\_[38]\_\_\_ \_\_\_[33]\_\_\_ (i.e., \_\_\_[40]\_\_\_ in fact and personalized \_\_\_[63]\_\_\_) to the beneficiary; but, not to the grantor.