

1. **T F** The law favors the objective over the subjective.  
Both the law **and** economics seek transactions that are both knowing **and** voluntary (*e.g., Assumption of the Risk*).  
The law recognizes three levels of knowing:  
subjective actual knowledge **and**  
objective knowledge in the forms of receipt of notice **and** reason to know.
2. **T F** The objective can be either  
express (*i.e., words: oral **or** written*) **or**  
implied (*i.e., acts, words, **and/or** circumstances*).  
For example, the express Article VI, paragraph 2 Supremacy Clause  
is implemented by the Preemption Doctrine that recognizes  
both implied **and** express mechanisms for  
USA federal preemption of the USA States' authority.  
That is,  
preemption is **not** favored, **but** may be allowed if:  
(1) clear intent of Congress  
**and**  
national interests outweigh State interests  
(*e.g., dormant Commerce Clause*);  
**or**  
(2) express intent of Congress  
**and**  
a need for uniformity.  
Expressly, the USA federal government has preempted the USA States  
with respect to arbitration contracts in commerce  
(*but not mere arbitration agreements*) **and**  
electronic signatures in commerce  
(*but not USA State's Act of State*  
[*e.g., definition of what is a signature on a will*]).
3. **T F** In the USA the separation of powers takes several forms,  
the most important form is Individual versus government.  
In the relationship between an Individual **and** government,  
the government always owes every person due process of law.  
In the separation of powers between  
the legislative, executive, **and** judicial branches of government  
the power of Judicial Review is an implied power.  
Substantive due process  
obligates the judiciary to actively provide protection of  
fundamental constitutional rights (*e.g., privacy*).  
Most frequently, however,  
procedural due process  
(*i.e., notice **and** hearing, both proportional to the interests involved*)  
is all that the courts will require government to provide Individuals  
as protection against governmental action.  
The implied fundamental constitutional right to privacy

springs from the interaction of the USA *Constitution's* Amendment IX (*enumeration does **not** disparage*) **and** Amendment X (*powers **not** granted **nor** denied are reserved*) which support the implication of privacy as a penumbra **and/or** an emanation of the USA Constitution's Amendments I (*religion, speech, press, assembly, petition government*); II (*bear arms*); III (*quarter soldiers*); IV (*search **and** seizure*); V (*incriminate self; life, liberty, **and** property*); VI (*public trial, advice of counsel*); **and** VII (*jury trial*).

Very importantly, in the USA the implied constitutional right to privacy only exists between Individual **and** government; whereas, the European Union's express constitutional right to privacy exists between both between Individuals **and** governments **as well as** between all Individuals.

4. **T F** Two major examples of the law making binary decisions using triad analysis can be seen in the judicial interpretation of the USA *Constitution's* Commerce Clause in Article I, section 3, clause 3 **and** Amendment XIV's Equal Protection Clause (*i.e., Rational Basis Test, Heightened Judicial Review, **and** Strict Scrutiny*).
5. **T F** The federal versus State separation of powers is partly seen in the relative magnitude of powers **and** scope of powers involved with the federal Commerce Clause (*i.e., power to regulate close **and** substantial Affect on commerce between USA States*) versus States' Police Power (*i.e., power to regulate for the People's health, safety, morals, **and** general welfare*).
6. **T F** The authority of a court depends upon its jurisdiction: both subject matter (*e.g., standing to sue [i.e., injury in fact **and** within the zone of protected interests]*) **and** geographic (*i.e., substantial minimal contacts that objectively demonstrate that the defendant has purposefully availed the defendant of that jurisdiction*). An appellate court will affirm a trial court

**unless** the appellate court finds the trial court has made an error  
(*i.e., clear error of fact, non-harmless error of procedure, or any error of law*).

7. **T F** Most persons are natural persons **and** some persons are mere legal persons (*e.g., corporations*). All consumer **and** all citizens always are natural persons. All constitutional rights (*e.g., probable cause*) are greater for natural persons than for mere legal persons.
8. **T F** The law focuses upon knowing **and** voluntary. Proximate cause (*i.e., at the time of the defendant's action a Reasonable Person in the position of the defendant could reasonably foresee the plaintiff's injury*) is an example of the law's use of Bounded Rationality so that legal liability is most frequently limited to knowing **and** voluntary actions.
9. **T F** Both Nebraska **and** California expressly address in their constitutions the separation of powers between the legislative, executive, **and** judicial branches of government: **but, not** in the same way. Because of the difference between their express provisions, in Nebraska good faith only is owed in UCC contracts, whereas in California good faith is owed in all consumer contracts.
10. **T F** Capacity is the ability to grasp the natural consequences on one's actions. The amount of capacity that the law requires for a crime is greater than a contract; **and** more for a tort than a will. Typically, in the law mere reason to know will suffice **and** scienter is **not** required. Given the separation of powers between Individual **and** government, **and** the express fundamental constitutional right to liberty, courts presume capacity, even for criminal law, once a natural person reaches the age of majority (*i.e., age 19 in Nebraska*). The difficulty of rebutting that presumption varies significantly (*e.g., rebutting when involuntarily intoxicated is easier to accomplish than rebutting when objectively insane*).
11. **T F** That the USA is a Capitalist nation can be seen in the change of phrasing

between the Declaration of Independence **and** the USA *Constitution*.  
Additionally,  
the *Constitution's* Amendment V Taking Clause  
prevents government to obtaining all private property  
via the coercive power of government.

- 12. T F** Judicial Review  
is strongest when the courts are enforcing the separation of powers  
between the Individual **and** government.  
An administrative agency may be delegated  
legislative, executive, **and/or** judicial powers;  
**but**,  
to be constitutional such delegations must submit  
the agency **and** its actions to judicial review by the courts.  
As a condition precedent for standing to sue in the courts,  
a person must exhaust all administrative remedies within agency  
before  
seeking judicial remedies outside of the agency.
- 13. T F** The law uses a variety of burdens of proof (*e.g., clear **and** convincing*),  
each of which reflects different aspects of  
the separation of powers between Individual versus government  
**as well as** different aspects of  
due process (*both procedural **and** substantive*).  
The legislature must define the elements of crime  
(*i.e., bad deed [i.e., actus rea],  
bad thought [i.e., mens rea], **and**  
**no** defenses*);  
whereas  
both the legislature **and** the judiciary  
may define components of the civil law (*e.g., specific torts*).
- 14. T F** The USA *Constitution* expressly protects free speech.  
Accordingly,  
**no** content regulation is allowed for political free speech;  
while  
commercial free speech is subjected to both  
regulation reasonable as to time, place, **and** manner  
**as well as**  
regulation of content  
(*albeit, content regulation that is  
severely limited by procedural due process protections*).
- 15. T F** Comity,  
in international law is a mere tradition;  
**but**,  
in domestic USA law is an express commitment in Article IV, paragraph 1

of each USA State to every other USA State.

Sovereign immunity

in international law always applies when a government acts domestically

**and**

often is respected by other foreign governments when action is taken abroad;

**but,**

in domestic USA law

sovereign immunity is an express commitment in Amendment XI

by the USA federal government to each USA State

**as well as**

an implied commitment in Article IV, paragraph 1

by each USA State to every other USA State.

An Act of State

*(e.g., electricity generation in Nebraska)*

usually is granted comity **and** cloaked with sovereign immunity.

- 16. T F** Torts of the common law variety can be intentional torts, negligence torts, **and** strict liability torts.  
Torts of every variety have the same elements  
*(i.e., a defendant's breach of a duty of care owed to the plaintiff is the proximate cause of the plaintiff's damages, and the defendant has no defenses [e.g., privilege]).*
- 17. T F** A defendant commits common law fraud when the defendant knowingly **and** intentionally **misrepresents** a material fact *(e.g., expert's opinion)* thereby inducing the plaintiff's justifiable reliance **and** proximately causing the plaintiff's damages.
- 18. T F** The four material terms *(i.e., parties, time, consideration, and subject matter)* are the same for mutual mistake, *(i.e., both parties make the same mistake of material fact)*, unilateral mistake, *(i.e., non-mistaking party objectively knows the mistaking party is making a material mistake of fact)*, common law fraud, **and** security law fraud.  
However, the magnitude of what is required for a fact to be material varies substantially across those four legal situations; with the first three using one definition *(i.e., big enough it would have changed the party's mind)*  
**and**

the fourth using another definition of material  
(*i.e.*, what a reasonably prudent investor would want to know).

- 19. T F** All contracts (*e.g.*, novation) have the same elements:  
agreement (*e.g.*, satisfy Mirror Image Rule),  
consideration (*e.g.*, acceptance via performance of a unilateral contract),  
capacity (*e.g.*, subjectively **insane** **but** objectively sane),  
reality of assent (*e.g.*, **no** predatory economic duress),  
form (*e.g.*, bill of sale for an automobile in Nebraska), **and**  
legal subject matter (*e.g.*, gambling that is lawful in that jurisdiction).
- 20. T F** Objectively, typically, silence is **not** acceptance  
(*e.g.*, silence in response to a breach  
is **not** waiver of that breach).  
However, under the UCC a merchant's 10 days of silence  
following receipt of a signed contract is  
both that merchant's acceptance **and** signature.
- 21. T F** The law is subdivided into law **and** into equity.  
A court of law  
is governed by rules  
(*e.g.*, elements of a contract) **and**  
follows precedence  
(*e.g.*, case of first impression).  
A court of equity  
is government by maxims  
(*e.g.*, Those that seek equity must come with clean hands.) **and**  
does **not** follow precedence  
(*i.e.*, unique solutions for each plaintiff **and** defendant).  
If  
a party has an adequate remedy at law (*e.g.*, nominal damages),  
then  
that party lacks standing to sue in a court of equity.  
Equity remedies include promissory estoppel **and** unilateral rescission.
- 22. T F** Consideration  
requires a bargained for exchange of legally sufficient value.  
A liquidated debt is **not** consideration for an accord **and** satisfaction.  
Depending  
upon the stage of contract **and** the exchange,  
a preexisting duty  
either is **or** is **not** consideration for a mutual rescission
- 23. T F** Every USA trial court  
is more likely to find a transaction to be  
a statutorily **unconscionable** contract  
than to find a transaction to be

an equitably **unconscionable** contract.

**Also**, a Nebraska trial court is far more likely to reform **or** to sever a statutorily **unconscionable** contract than it is to reform **or** to sever an equitably **unconscionable** contract.

- 24. T F** The Parole Evidence Rule  
(*i.e., no oral testimony to contradict or vary the written terms*) helps enforce the Statute of Frauds.  
The Statute of Frauds requires some contracts  
(*e.g., sale of goods at or over \$5,000*) to include a signed,  
(*i.e., any mark with the current intent to authenticated the document [e.g., record]*) written memorandum of the material terms sufficient for the court to enforce the parties' objective agreement.
- 25. T F** With respect to assignment **and** delegations, both the old common law **and** the new common law seek to satisfy the parties' reasonable expectations.  
**But**, the old common law views who are the parties to an assignment as far more material than does the new common law.  
Under both the old common law **and** the new common law any third party  
(*whether intended or incidental and whether creditor or donee*) can vest **and** by vesting obtain privity;  
**but**, it is far easier for an intended creditor third party to vest than it is for an incidental donee third party to vest.
- 26. T F** Perfect tender  
(*i.e., ready, willing, and able to provide complete performance*) under both the common law of contracts **and** the UCC law of contracts is a condition concurrent.  
One party's complete failure to provide a condition  
(*e.g., either precedent or concurrent*) might be substantial performance **or** might be a material breach.
- 27. T F** If the parties' contract contains a *Force Majeure* Clause, then the courts will look to that clause to discharge their contract more than the courts will look to common law to discharge their contract

via commercial impracticality **or** commercial impossibility.  
Their *Force Majeure* Clause  
will **not** alter the application (*e.g., tolling*) of the statute of limitations  
**nor** alter the application of the statute of repose.

- 28. T F** The UCC defines goods  
as tangible **and** movable personal property.  
The legal separation between goods, services, **and** products  
depends upon  
the predominate nature of the transaction.  
The UCC governs the sale of goods;  
**and not** the bailment of goods **nor** the placement of goods into a trust.
- 29. T F** Far fewer that all injuries are legally recognized as worthy of damages.  
Both torts **and** contracts generate some injuries worthy of  
compensatory damages;  
however,  
what is compensatory is very different between  
torts  
*(i.e., make the plaintiff whole)* **and**  
contracts  
*(i.e., benefit of the bargain)*.  
Compensatory damages include incidental damages;  
however,  
common law contract incidental damages are far more narrowly defined  
*(e.g., cost of entering the market to mitigate compensatory damages)*  
than  
UCC contract incidental damages  
*(e.g., lost profits are irrebuttably presumed reasonably foreseen)*.  
If  
the parties are in a contract,  
then  
tort damages are a mere economic loss  
**and not** worthy of contract damages.
- 30. T F** The **non**-breaching party has duty to mitigate damages.  
This is one legitimate business interest for the parties to engage in  
sophisticated risk management  
such as a liquidated damages clause **and/or** an exculpatory clause  
coupled with the purchase of insurance.  
However,  
if  
a merchant uses such clauses in an adhesion contract with a consumer,  
then  
the courts are more likely to see an **unenforceable** contract penalty.

- 31. T F** Under the UCC a consumer is a natural person who buys goods for personal use **or** for household use. Under the UCC a merchant is any person who deals in goods of that kind, hires an agent who is a merchant, **or** holds self out as a merchant. Under the UCC special rules govern the relationships between consumers **and** merchants (*e.g., risk of loss*). Additionally, the entrustment rule allows a merchant who deals in goods of that kind (*but no other type of merchant*) to transfer good title (*even when the merchant has **no** title*) to any buyer in the ordinary course of business when that buyer pays value in good faith.
- 32. T F** The UCC is the parties' default written contract for the sale of goods. The parties are free to alter the UCC's terms in any way, **except** for two mandatory provisions. First, the parties may **not** disclaim the obligation of good faith. The obligation of good faith empowers the courts to use commercially reasonable terms wherever needed. Second, the parties may **not** disclaim liability for personal injury from consumer goods: because all profit seeking merchants would do so.
- 33. T F** **Unlike** the common law of contracts that requires satisfaction of the Mirror Image Rule, the UCC allows for open terms, additional terms, **and** modifications **without** new consideration **as long as** all changes in terms are commercially reasonable terms.
- 34. T F** The UCC **and** the CISG differ in multiple material respects. The CISG does **not** have a Statute of Frauds; does require satisfaction of the (*heart of the*) Mirror Image Rule; **and** contractual specification of price under the CISG is required versus quantity (*e.g., output or requirements contract*) under the UCC. It is particularly important that the parties use a *Force Majeure* Clause since the CISG is silent on choice of law, forum, venue, **and** language.
- 35. T F** The common law of contracts focuses upon the passage of title. Instead, the UCC focuses upon identification

(*i.e., goods in existence **and** seller designates goods*) **and** insurable interest.  
Any party with **\_a\_** risk of loss has an insurable interest;  
however,  
only the party with **\_the\_** risk of loss may recover on an insurance contract.

- 36. T F** Ordinarily, the law limits one's legal liability to those others that are in privity.  
However, product liability law tends towards expansive strict liability.  
A product defect (*e.g., design, manufacture, **and/or** label*) create liability.  
Both the Restatement section 402A **and** UCC 2-318 Options A, B, **and** C dramatically relax, **but not** eliminate, privity for product liability.
- 37. T F** Because of the UCC obligation of good faith,  
a UCC breaching party has  
a right of cure  
if  
that right to cure is exercised prior to the **non**-breaching party's justifiable **and** detrimental reliance upon the breach  
(*e.g., election of remedies following an anticipatory repudiation*).  
That UCC obligation of good faith **also** creates a reciprocal Right of Assurance **and** a Duty of Cooperation.  
Additionally,  
that UCC obligation of good faith  
expands the rights of the **non**-breaching party  
when discharging the duty to mitigate damages by creating a right to cover.
- 38. T F** Legally enforceable promises can be found in contracts.  
The law allows some other transactions  
either to be enforceable **without** being contracts  
(*e.g., warranties, bailment, employment agreement*)  
**or** to be enforceable as contracts.  
The UCC provides that  
warranties (*e.g., express **and/or** implied*) shall be cumulative **unless** the parties agree otherwise.  
The federal Magnuson-Moss Warranty Act provides that  
if  
a seller of products sells to consumers in commerce **and** chooses to grant a written express warranty,  
then  
the Act defines the word full as **without** limit.
- 39. T F** The Nebraska *Constitution's* express  
versus  
the USA *Constitution's* implied  
separation of powers raises different constitutional questions when

an administrative agency is created that combines legislative, executive, **and** judicial powers.  
 With respect to enforcement of administrative agency rules, in different contexts Judicial Review uses substantive due process  
*(e.g., legislative rule with the force of law that binds courts)*  
**and**  
 procedural due process  
*(e.g., interpretive rule binding only the agency).*

- 40. T F** Red lining is a practice by lenders **and** insurers of making decisions based upon geographic (*e.g., zip code*) characteristics (*e.g., income*) of a group rather than based upon objective characteristics (*e.g., income*) of an individual. Federal consumer protection law prohibits red lining. All persons speak **un**truths at some times; however, most persons mostly do so out of ignorance; **but**, a few persons lie  
*(i.e., knowingly **and** intentionally **mis**representing a fact).*  
 Many of those that lie do so morally  
*(e.g., severely constricted opportunity for communication that prevents accuracy **coupled** with listener understanding **in**accuracy);*  
**but**, some lie with predatory intent  
*(e.g., common law fraud).*  
 For example, many commentators in 2008 blame the subprime mortgage meltdown on a gross **mis**characterization of the federal law prohibiting red lining. Their **mis**characterization is to say that a ban on red lining is a requirement for lenders to lend to individual borrowers objectively known by the lenders to be borrowers who are **not** qualified. Such commentators either are ignorant **or** lying. **None** of these liars are lying in a morally justified manner.

- 41. T F** USA antitrust law uses the Rule of Reason. The Rule of Reason holds that any **and** all restraints of trade are legal if the restraint is proportional to legitimate business interests. Proportionality is measured by the restraint's purpose, intent, effect, **and** power conferred.

- 42. T F** In addition to the Rule of Reason, USA antitrust law **also** uses the *Per Se Unreasonable* test for when experience indicates that a particular type of restraint (*e.g., some price fixing; all horizontal division of territories*) can **not** be justified using the Rule of Reason.
- 43. T F** All jurisdictions make **unlawful** most gambling.  
All jurisdictions make **unlawful** some insurance.  
All lawful insurable contracts require an insurable interest.  
For an insurance contract to be lawful,  
the insurable interest for property insurance must exist at the time of loss;  
**and**  
the insurable interest for life insurance must exist at the time of contract.
- 44. T F** Because of the moral hazard insurance contracts are required by statute to contain a deductible **and** co-insurance.  
Subrogation  
reinforce the requirement for a deductible **and** co-insurance.  
Adverse selection is lawful, **but unprofitable**, for the insurER.
- 45. T F** Punitive damage  
are tort damages that **only** are available in contract for  
a (*typically employER's*) bad faith breach of an employment contract  
**or**  
an insurER's bad faith breach of an insurance contract.
- 46. T F** Wills must satisfy statutory requirements  
(*i.e., capacity*  
[*i.e., understand signature, understand property, and understand natural objects of one's bounty*],  
*intent to create a will,*  
*a writing,*  
*the testator's signature*  
[*i.e., any mark with the current intent to authenticate the document {e.g., record}*],  
*witnesses, and published*).
- 47. T F** If  
a person dies intestate,  
then  
property, depending upon jurisdiction, is passed either  
*per capita (i.e., equal division among heirs)*  
**or**  
*per stirpes (e.g., as in done in Nebraska).*

- 48. T F** To create a trust  
a grantor must make actual delivery of the corpus of the trust to the trustee  
**as well as**  
transfer legal title to the trustee, **and**  
must transfer beneficial title to the beneficiary.
- 49. T F** There are four levels of good faith:  
common law consumer  
(*i.e., honesty in fact*);  
UCC consumer  
(*i.e., honesty in fact and commercial reasonableness*);  
merchant  
(*i.e., honesty in fact and commercial reasonableness*);  
**and**  
fiduciary  
(*i.e., honesty in face and personalized objective*).  
A fiduciary's good faith **also** is known as  
utmost good faith.  
A fiduciary (*e.g., trustee*) in Nebraska is presumed to have exerted  
**undue influence**  
(*i.e., opportunity, inclination, and result*).  
**Undue influence** is far easier to prove than emotional duress.
- 50. T F** Because the law serves the People's reasonable expectations,  
the law can **not** anticipate.  
Accordingly,  
technological change  
which both  
alters the economic context  
(*i.e., non-price determinant of supply*)  
**and**  
alters the fit between the law **and** the People's reasonable expectations,  
induces change in the law.