
print name on the line above as your signature
INSTRUCTIONS:

1. This Exam #1 must be completed within the allocated time
(*i.e.*, 60 minutes).
It is a closed book exam.
2. **Recall the material difference between**
e.g. (for example) versus i.e. (that is).
3. As each student finishes this exam, that student shall
 - [3a] present the student's photo ID;
 - [3b] return both the student's exam and the answer sheet; and
 - [3c] then leave the exam room until after the end of the exam
(*e.g.*, all students finish in less than 60 minutes).Copies of the exams will be posted to O'Hara's web
no later than 5:00 PM Thursday, February 14.
4. Grades will be posted to O'Hara's web site no later than
5:00 PM Monday, February 18. An email notice of the posting will be sent.
5. This Exam #1 is worth 30% of the course grade.
The True-False form of this exam has 35 questions graded as if there are 33.
Harmless errors are far more likely than non-harmless errors in this test design.
Based on a 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 will *that* student's exam grade change
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
no later than the start of class on Thursday, February 21.

NOTE #1: On the computer graded answer sheet,
use A to indicate that the statement is TRUE;
and
use B to indicate that the statement is FALSE.

NOTE #2: A statement never is false because of a numerical reference to a law
(*e.g., Amendment 1*). On this exam, all such references are true.

QUESTIONS:

1. **T F** All of USA law tends to attach legal liability on those whose actions are both knowing **and** voluntary.
Knowing can exist in three forms:
actual knowledge, which is subjective (*i.e., scienter*);
receipt of notice, **and**
reason to know; both receipt of notice **and** reason to know are objective.
2. **T F** USA law favors the objective over the subjective.
The objective can be known either by the express or by the implied.
Express is known by words: oral **or** written.
Implied is known by acts, words, **and/or** circumstances.
3. **T F** The law distinguishes
between an entity that is a "person" **and** entity that is **not** a "person".
The law further distinguishes between types of persons.
A natural person is a human being,
and, among all persons the natural persons
have the most rights, privileges, **and** immunities.
All consumers **and** all citizens are natural persons.
A legal person is a person subject to the laws of that jurisdiction.
A legal person might be a natural person (*e.g., illegal alien*)
or might **not** be a natural person (*e.g., corporation*).
A Reasonable Person
is **not** a natural person; rather, a Reasonable Person is a legal fiction.
If
a person's behavior fails to meet the Reasonable Person standard,
then
legal liability to attach to a person's behavior.
The lawful behavior of a Rational Person
is less subjective than a Reasonable Person
4. **T F** Good faith has two dimensions (*i.e., subjective and objective*)
and good faith varies across four different roles
(*i.e., common law consumers, UCC consumers,*
merchants, and fiduciaries).
All four roles require the actor to act with the same subjective good faith
(*i.e., honesty in fact*).

5. **T F** All governments in the USA always must provide due process of law to all persons denied life, liberty, **or** property as a consequence of an action by that government. That due process of law has two dimensions: substantive due process **and** procedural due process. Substantive law creates rights while procedural law enforces rights. Procedural due process requires the government to provide notice **and** hearing, both proportional to the interest(s) involved (*e.g., life, liberty [e.g., privacy], and property*). The USA *Constitution* Amendment XIV contains a Due Process Clause. That Amendment XIV Due Process Clause is interpreted by the USA Supreme Court using the Absorption Doctrine; thus, States are obligated to provide all persons the fundamental rights of the Bill of Rights.
6. **T F** Both the USA federal government **and** the each USA State's government reflect a separation of powers across three dimensions: Individual versus government; federal versus State governments; **and** legislative versus executive versus judicial branches of government. Nebraska, **unlike** the federal government **and** most other USA State governments, has an express separation of powers between the three branches of government.
7. **T F** The power of Judicial Review is implied from the USA *Constitution* Article VI, paragraph 2 (*a.k.a., Supremacy Clause*). Judicial Review is the power of the judiciary to declare **un**constitutional acts of government, including acts of the legislative **and** executive branches of government.
8. **T F** The authority of a court is referred to as the court's jurisdiction. Jurisdiction has two dimensions: subject matter **and** geographic. Persons in the USA have the freedom of choice with respect to forum, venue, law, **and** language. A person may purposefully avail that person of a State's laws **or** courts, **and** thereby establish substantial minimal contacts with a State.
9. **T F** An appellate court will affirm the trial court **unless** the trial court makes a clear error of fact, **or** a **NON**-harmless error of procedure, **or** any error of law.

- 10. T F** A plaintiff has standing to sue when the plaintiff suffers an injury in fact **and** the plaintiff is within the zone of protected interests.
- 11. T F** A case of first impression produces precedence; which can be binding, authoritative, **and** merely persuasive precedence depending upon the jurisdiction of the subsequent court.
- 12. T F** Both a Motion to Dismiss **and** a Summary Judgment eliminate all material questions of fact leaving only questions of law for the trial judge to resolve.
- 13. T F** Each law suit is an adversarial process **and** the plaintiff bears the burden of proof.
In criminal cases the government always is the plaintiff **and** it must prove beyond a reasonable doubt all elements of the crime.
In most civil cases the plaintiff must prove to the trier of facts the elements of the cause of action by the preponderance of the evidence.
- 14. T F** The Police Power is the power of the State government to regulate for the People's health, safety, morals, **and** general welfare. There is **no** federal Police Power.
Each USA State **also** has the very strong power of the power to **tax**, which can be so great as to be the power to destroy.
However, a USA State power can be constrained by a federal power. Which in turn might trigger a general constraint on all government's exercise of any power:
no government may do **indirectly** that which it may **not** do directly.
- 15. T F** Most governmental regulation is a mere regulation rather than a taking. A taking, in addition to providing due process of law, would require the government to take for a public use **and** pay just compensation for private property taken.
- 16. T F** Comity
in international law
is an implied tradition of respecting judicial acts of other governments.
In stark contrast, comity
in USA domestic law
is an express obligation of each USA State
by way of the Full Faith **and** Credit Clause of the USA *Constitution* Article IV, section 1
which applies to all three branches of each USA State's government.

- 17. T F** The USA *Constitution* Article I, section 8, clause 3, the Commerce Clause, expressly grants the USA federal government the power to regulate commerce with the foreign countries, **and** among the several States, **and** with the Indian Tribes. The USA Supreme Court pre-1937 interpreted the word "among" narrowly to mean between (*i.e., a direct **E**ffect*); while post-1937 the word "among" is interpreted broadly to mean within (*i.e., close and substantial **A**ffect*).
- 18. T F** Preemption is **not** favored (*i.e., presume concurrent USA State **and** USA federal powers if the federal government has a power*), **but** may be allowed if:
[i] clear intent of Congress **and** national interests outweigh State interests; **or**
[ii] express intent of Congress **and** need for uniformity.
- 19. T F** The federal government has expressly preempted the USA States on the specific question of enforceability of arbitration contracts in Commerce. However, a USA State's general law rendering adhesion contracts **unenforceable** has **not** been preempted.
- 20. T F** The USA *Constitution* Amendment I denies every USA government the power to regulate the content of political free speech; **but**, every USA government has the power to reasonably regulate the time, place, **and** manner of all speech.
- 21. T F** The USA *Constitution* protection in Amendment IV against **unreasonable** searches **and** seizures except with a court granted warrant upon proof of probable cause as well as the protection in Amendment V against self incrimination both are greater for a natural person than for a mere legal person.

- 22. T F** Conversations between a client **and** the client's attorney related to that attorney's representation of that client are both confidential **and** privileged. Additionally, in all USA States some pre-trial settlement conferences are privileged, as are some mediation conferences in some USA States (*e.g., Nebraska*).
- 23. T F** The USA *Constitution* Amendment IX expressly reserves to the Individual rights **not** expressly listed in the USA *Constitution* (*e.g., travel, privacy*); **and** the USA *Constitution* Amendment X expressly reserves to the People **and** to each USA State all powers of government **not** delegated by the USA States to the USA federal government **and** **not** denied the USA States by the USA States in the USA *Constitution*.
- 24. T F** The law reaches binary conclusions (*e.g., plaintiff wins*) based upon triad analysis (*e.g., core, penumbra, and emanations*). An example of triad analysis can be seen in the USA Supreme Court's interpretation of the USA *Constitution* Amendment XIV, section 1 Equal Protection Clause. The Equal Protection Clause is interpreted using the Rational Basis Test, Heightened Judicial Review; **and** Strict Scrutiny.
- 25. T F** What is an Act of State varies by the laws **and** the culture of the jurisdiction in question. What is an Act of State when taken by a government domestically might **not** be granted comity **and** treated as an Act of State by the foreign government when an identical action is taken in that foreign government's jurisdiction. For example, if Nation A owns a domestic industry monopoly which also exports, then those exports when imported into Nation B might be received by Nation B as **unlawful dumping** **and** **not** as an Act of State by Nation A protected by sovereign immunity.
- 26. T F** Every sovereign government has sovereign immunity. While USA *Constitution* Amendment XI expressly recognizes the sovereign immunity of each USA State from suit in USA federal courts, USA *Constitution* amendments subsequent to Amendment XI amend Amendment XI and reduce that sovereign immunity.

- 27. T F** There are three types of torts: intentional; negligence; **and** strict liability. The first two are fault based **and** the third is social risk allocation. A tort exists if the defendant breaches a duty of care owed to the plaintiff, **and** if that breach is the proximate cause of the plaintiff's injury; when the defendant has **no** defenses. Proximate cause exists if actual cause exists **and** if at the time of the defendant's breach the plaintiff's injury would have been reasonably foreseeable to a Reasonable Person in the position of the defendant.
- 28. T F** When only actual cause was used in tort law, a major defense was the plaintiff's contributory negligence. The plaintiff's contributory negligence was a bar to suit. After the switch to proximate cause that type of defense was greatly weakened. Today, the plaintiff's comparative negligence is a mere offset rather than a bar.
- 29. T F** The defendant has the defense of Assumption of the Risk when the plaintiff knowing **and** the plaintiff voluntarily exposes the plaintiff to the risk of harm created by the defendant.
- 30. T F** **Unlike** most defamation lawsuits, where a Motion to Dismiss is granted for lack of proof of damages, in a suit for slander *per se* there is a presumption that the plaintiff suffered legally recognized damages.
- 31. T F** The defendant commits common law fraud when the defendant knowing **and** intentionally **misrepresentation** a material fact, thereby inducing the plaintiff's justifiable reliance **and** proximate causing the plaintiff's damages.

- 32. T F** The age of majority in Nebraska is age 19.
Reaching the age of majority creates a presumption of objective capacity
(*i.e., the ability to grasp the natural consequences of one's actions*).
That presumption of capacity can be lost temporarily
by the acts of the parties' (*e.g., involuntary intoxication*)
or
by an act of law (*e.g., adjudicated mentally incompetent*).
- 33. T F** Only the legislature can create a crime.
The legislature must objectively define
the *actus reus* (*i.e., bad act*)
and
the *mens rea* (*i.e., bad thought [e.g., scienter]*).
No natural person
has standing to sue for a crime;
but,
a natural person that was a victim both of a crime **and** of a parallel tort
might have standing to sue for that parallel tort
(*e.g., crime of rape and tort of assault*).
- 34. T F** An independent contractor
does **not** have strict liability
when engaged in an ultra hazardous activity
selected by the principal.
- 35.** ***The correct answer to question #35 is the version of this exam.
Use the letter
following the copyright year in lower right corner of this page.***