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***print name on the line above as your signature***

**INSTRUCTIONS:**

1. This Exam #2 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 these exams will be posted to O'Hara's web  
no later than 5:00 PM Tuesday, April 15.
4. Grades will be posted to O'Hara's web site no later than  
5:00 PM Wednesday, April 16. An email notice of that posting will be sent.
5. This Exam #2 is worth 40% of the course grade.  
The True-False form of this exam has 53 questions graded as if there are 50.  
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 FOUR**  
questions on this exam will *that* student's exam grade change  
by the number of successful appeals in excess of three 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 Tuesday, April 22.**

**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.*, *UCC section 2-318*). On this exam, all such references are true.

**NOTE #3:** The acronyms "UCC" and "CISG" will be used in this exam  
rather than their fully spelt out names, respectively,  
of "Uniform Commercial Code" and of  
"Convention on International Sale of Goods".

### QUESTIONS:

1. **T F** The elements of a contract are  
reality of assent, legal subject matter, form,  
consideration, capacity, **and** agreement.
2. **T F** If  
a contract-in-law  
is  
**unconscionable**,  
then  
it is **unenforceable**;  
whereas  
a contract-in-fact  
is a *quasi*-contract **and** thus is **not** a valid contract.
3. **T F** The law often uses "material" as one component of a cause of action.  
In the common law "material" has a single definition  
(*i.e.*, *big enough that it would have changed your mind*),  
**but**,  
the application of that definition varies substantially by legal context  
(*e.g.*, *mutual mistake versus common law fraud*).  
The material terms of a contract are  
parties, time, consideration, **and** subject matter.
4. **T F** A signature  
is any mark with the current intent to authenticate the document.  
The USA federal government has preempted the USA State governments  
on the legal question of whether a mouse click is a mark for transactions  
by merchants that are in commerce  
**and**  
by merchants that are **not** arguably **also** an Act of State by a USA State.

5. **T F** If the parties fail to achieve an enforceable contract by way of law, then the parties might obtain enforcement by way of equity in the form of promissory estoppel. Promissory estoppel exists when a promisor make a clear **and** definite promise thereby inducing the promisee's reasonably foreseen justifiable **and** detrimental reliance, **and** when justice will be served by enforcement.
6. **T F** The common law of contracts requires compliance with the Mirror Image Rule. The UCC rejects the Mirror Image Rule. The CISG, in practice, requires compliance with the Mirror Image Rule.
7. **T F** The technological change of email replacing surface mail for many transactions did **not** change the Mail Box Rule.
8. **T F** Typically, objectively, silence is **not** acceptance. However, what is the objective meaning of silence may be defined by the parties. The objective meaning of silence **also** depends upon circumstances. Acceptance of contract is **not** a legally equivant circumstance to waiver of breach of contract.
9. **T F** To create an enforceable contract at least one of multiple parties must engage in a bargained for exchange of legally sufficient value with at least one of the other multiple parties.
10. **T F** The law typically relies upon freedom **\_of\_** contract; however, the law **and/or** equity may provide freedom **\_from\_** contract. A Nebraska court is far less likely to provide a party with freedom **\_from\_** contract if the contract is a statutory **unconscionable** contract versus an equity **unconscionable** contract; as well as far less likely to provide the remedy of reforming that **unconscionable** contract versus voiding it.

- 11. T F** A mutual rescission is a substituted agreement  
whereas  
a unilateral restitution is an equitable remedy.
- 12. T F** **No** contract is formed if the underlying promise is illusory.  
**Unless** quantity is expressly specified in numbers,  
both a requirements contract **and** an output contract are illusory.
- 13. T F** All legal transactions require some degree of capacity  
(*i.e., ability to grasp the natural consequences of one's behavior*).  
Contracts require less capacity than crime.
- 14. T F** The law uses a rebuttable presumption of capacity  
for every natural person who obtains the age of majority.  
**But,**  
if  
a judicial determination is made that a specific individual minor  
objectively possesses subjective capacity,  
then  
that individual minor may act as an adult for the purposes of contract  
(*i.e., emancipation*)  
**and** may be treated as an adult for the purposes of crime  
(*i.e., be tried as an adult*).  
In contrast,  
a minor's purchase of necessities is **not** that minor contracting as an adult.
- 15. T F** "Contracts" purportedly entered into by  
an **involuntarily** intoxication natural person are void.
- 16. T F** All gambling contracts create **and** allocate new risk  
while  
all insurance contracts allocate existing risk.
- 17. T F** A mutual mistake can **not** simultaneously be a unilateral mistake.
- 18. T F** An express statement of value  
can **not**  
be the basis for a successful suit for common law fraud.

- 19. T F** To be legally recognized as "duress"  
the pressure applied must be sufficiently objective  
that  
a court will set aside the presumption of the exercise of liberty  
**and**  
the court to substitute its judgment for that of a free Individual.  
The cause of action "undue influence"  
makes it easier for the court to provide a remedy  
by specifying transaction characteristics  
(*i.e., opportunity, inclination, and result*)  
that make it easier for the court to clearly see an objective theft of capacity.
- 20. T F** The parole evidence rule  
requires contracts to contain an incorporate by reference clause.
- 21. T F** Because of the Statute of Frauds, all surety contracts are formal contracts.
- 22. T F** A contract for an "assignment of all rights"  
is so close to being a novation  
that an "assignment of all rights" necessarily is **unenforceable**  
because it is  
an **unreasonable and** material alteration of the reasonable expectations  
of the parties to the original contract.  
However, if  
the original contract is a contract for personal services,  
then  
the "assignment of all rights" is enforceable.
- 23. T F** A vested incidental donee third party  
has privity with all of the original parties to the contract.
- 24. T F** Perfect tender ordinarily is an implied condition concurrent;  
while  
an exculpatory clause ordinarily is an express condition subsequent.
- 25. T F** Contract performance that is substantial performance simultaneously  
acts as a condition subsequent that  
discharges the performing party's duty to provide complete performance  
**and**  
acts as a condition precedent for  
the performing party's duty to pay damages.  
A material breach, however,  
**neither** discharges the duty to perform  
**nor** starts the duty to pay damages.

- 26. T F** The running of a Statute of Limitation may be tolled until such time as the time limit set by its companion Statute of Repose.
- 27. T F** If the contracting parties include a *Force Majeure* Clause in their contract, then the parties reduce the range of **un**foreseen risks that a court might recognize **either** as a commercial impracticability **or** as commercial impossibility.
- 28. T F** Under the common law of contracts compensatory damages (*i.e., benefit of the bargain*) include incidental damages (*e.g., cost of entering the market as part of discharging one's duty to mitigate damages*).
- 29. T F** Under the common law of contracts consequential damages typically are **not** included within compensatory damages because both parties typically fail to have **either** subjectively **or** objectively foreseen the consequential damages.
- 30. T F** Under the common law of contracts ordinarily even the most abusive practices by a breaching party will **not** expose that abusive breaching party to punitive damages; **and**, if those abusive practices amounted to a tort (*i.e., defendant breaches of a duty of care owed to the plaintiff when that breach proximately causes injury*), then **not** even nominal damages will be awarded by the court for that economic loss.
- 31. T F** An accord **and** satisfaction **either** must be supported by a liquidated debt **or** must be supported by liquidated damages.

- 32. T F** The phrase "election of remedies" has different meanings. For example, when dealing with an anticipatory breach the phrase means the **non-breaching party** must choose between alternative causes of action (*e.g., breach of contract versus promissory estoppel*).
- 33. T F** The law seeks to satisfy the People's reasonable expectations. However, the law can **not** anticipate. Accordingly, technological change can cause the People's reasonable expectations to change so much **and** so fast that the law substantially lags the People's reasonable expectations **and** must change substantially to match the People's reasonable expectations.
- 34. T F** Goods are tangible **and** movable personal property.
- 35. T F** All natural persons are consumers.
- 36. T F** A merchant is a person who deals in goods of that kind, hires an agent who is a merchant, **and/or** holds self out as a merchant. A merchant's firm offer is an option contract that does **not** require consideration from a consumer.
- 37. T F** The parties to a UCC Article 2 Sale of Goods contract may disclaim all **but** two provisions of the UCC Article 2 Sale of Goods: duty of good faith **and** personal injury for consumer goods.
- 38. T F** The UCC allows the parties to form a contract upon merely objectively manifesting an intent to be bound **and** specifying the quantity. Accordingly, the parties may leave some terms as open terms, **and/or** make an expression of acceptance by specifying additional terms that do **not** materially alter the contract. Open terms and **any** additional terms must be commercially reasonable.
- 39. T F** An accommodation is an acceptance via material breach.

- 40. T F** Identification of goods requires the goods both to be in existence **and** to be designated by the seller as the subject matter of the UCC 2 contract. If goods are identified, then the buyer has **no** less than **\_an\_** insurable interest, **and** the buyer might have as much as **\_the\_** insurable interest.
- 41. T F** Both the UCC **and** the CISG largely follow the Statute of Frauds. However, only the UCC implies a merchant's signature from a merchant's ten days of silence following receipt of a written **and** signed contract from the other party.
- 42. T F** A bulk transfer sale of goods entrusted to merchant when purchased by a good faith buyer for value results in the buyer obtaining good title.
- 43. T F** If a common carrier's actions proximately cause destruction of goods, **and** if transportation was pursuant to a shipment contract, then the seller has **\_the\_** risk of loss; **but** if transportation was pursuant to a destination contract, then the buyer has **\_the\_** risk of loss.
- 44. T F** Some transactions (*e.g., bailment, employment, warranty*) can be enforceable **without** being contracts.
- 45. T F** Springing from the UCC's duty of good faith are the Right of Assurance **and** the Duty of Cooperation.
- 46. T F** The buyer has a reasonable right to inspection. A latent defect is a defect that a reasonable inspection would **not** discover.

- 47. T F** Under the UCC,  
the **non**-breaching party has a duty to cover  
as part of the duty to mitigate damages.
- 48. T F** Under the UCC,  
the breaching party has a duty to cure an anticipatory breach.
- 49. T F** Under the UCC,  
an express warranty **and**  
an implied warranty for fitness for a particular purpose  
can provide the buyer with cumulative rights **and**  
thus expand the seller's product liability.
- 50. T F** Under the UCC,  
the implied warranty of merchantability  
may be disclaimed by a merchant in clear **and** conspicuous terms  
(*e.g., goods sold as is*).
- 51. T F** The federal Magnuson-Moss Warranty Act  
defines the words "full" **and** "limited" for all warranties in commerce.
- 52. T F** Under the UCC,  
both a consumer buyer **and** a merchant seller owe a duty of good faith  
(*i.e., honesty in fact and commercial reasonableness*).
- 53. T F** Answer with the letter to the right of the copyright date  
that is on the bottom of each page.