
print name on the line above as your signature

INSTRUCTIONS:

1. This Comprehensive Final Exam must be completed within the allocated time
(*i.e., Regent's scheduled time of 120 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] present 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 120 minutes*).

Tuesday exam takers may retrieve their exams and an answer key after the administration of the Thursday exam.

4. Exam grades prior to resolving any appeals and preliminary course grades will be posted to O'Hara's web site no later than 5:00 PM Monday, May 12.
An email notice of the posting will be sent.
After all appeals have been resolved, EBRUNO course grades will be posted no later than 6:00 PM on Wednesday, May 14.

5. This Comprehensive Final Exam is worth 30% of the course grade. The True-False form of this exam has 106 questions graded as if there are 100. 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 SEVEN** questions on this exam will *that* student's exam grade change by the number of successful appeals in excess of six successful appeals. *Appeals only affect the exam grades of those students that appeal.*

6. All appeals of this exam's questions must be:
 [6A] typed; [6B] signed by the student in three ways, typed name, handwritten signature, and typed university identification number; [6C] immediately following the signature, list in sequence, *solely by number*, each of the questions being appealed; [6D] after the [6C] list, argue each question, one at a time; [6E] at the beginning of each question's [6D] appeal, identify two or more reasonable meanings that the question could have had; [6F] argue why one or more of the [6E] identified reasonable meanings is as appropriate or is more appropriate than the meaning used for the answer key answer; and [6G] personally handed to the instructor or the Dean's Office secretary in RH 414 no later than the 4:00 PM on Wednesday, May 14.

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,
the "Uniform Commercial Code" and the United Nations'
"Convention on Contracts for the International Sale of Goods".

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.
Implied is known by acts **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 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.
Infrequently the law uses the Rational Person standard,
a Rational Person is more objective 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 to be 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. 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 as obligating all USA States to provide all persons with all fundamental rights protected by 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 implied separation of powers between the three branches of government.
7. **T F** The power of Judicial Review is an express power granted by 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** A court's jurisdiction has two dimensions: subject matter **and** geographic. A person may purposefully avail that person of a State's laws **or** courts (*e.g., contractual exercise of the freedom to make a choice of forum, venue, law, **and** language*), **and** thereby establish substantial minimal contacts with that State.

9. **T F** An appellate court will affirm the trial court **unless** the trial court makes any error of fact, **or** a **NON**-harmless error of procedure, **or** a clear error of law.
10. **T F** A plaintiff has standing to sue when **either** the plaintiff suffers an injury in fact **or** the plaintiff is within the zone of protected interests.
11. **T F** A case of first impression produces precedence; which might yield binding, authoritative, **or** merely persuasive precedence depending upon the jurisdiction of the subsequent court.
12. **T F** Both a Motion to Dismiss **and** a Motion for a Summary Judgment leave **no** material questions of law for the trial judge to resolve.
13. **T F** 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 any USA government to regulate for the People's health, safety, morals, **and** general welfare. 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.
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.

- 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 Effect*); while post-1937 the word "among" is interpreted broadly to mean within (*i.e., close and substantial Affect*).
- 18. T F** Preemption will be allowed if there is:
[i] a clear intent of Congress **and** national interests outweigh State interests;
or if there is
[ii] an express intent of Congress **and** a 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 is interpreted as denying 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** All conversations between a client **and** the client's attorney directly related to the attorney's representation of the client are both confidential **and** privileged.
- 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 when taken by a government acting domestically (*e.g., Canada in Canada*) might **not** be granted comity **and** thus **not** treated as an Act of State by a foreign government when an identical action is taken in that foreign government's jurisdiction (*e.g., Canada in USA*).
- 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; the amendments subsequent to Amendment XI of the USA *Constitution* **either** by implication **and/or** expressly amend Amendment XI **and** thus reduce that sovereign immunity.
- 27. T F** 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. If the plaintiff's injury was foreseen by the defendant, then proximate cause exists.

- 28. T F** The plaintiff's comparative negligence is a bar to suit.
- 29. T F** If the plaintiff knowing **and** the plaintiff voluntarily exposes the plaintiff to the harm **or** risk of harm created by the defendant, then the defendant has the defense of Assumption of the Risk.
- 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 **misrepresentation** a material fact, thereby inducing the plaintiff's justifiable reliance **and** actually 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 **not** mentally competent*).
- 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]*). Every natural person who is a victim of a crime has standing to sue for that crime.
- 34. T F** An agent of a principal, **but neither** an independent contractor **nor** an employee, engaged in an ultra hazardous activity has strict liability.

- 35. T F** The elements of a contract are subject matter, agreement, reality of assent, capacity, **and** form.
- 36. T F** A contract-in-fact if **unconscionable** is **unenforceable**; whereas a contract-in-law is a *quasi*-contract **and** thus is **not** a valid contract.
- 37. T F** 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. The material terms of a contract are parties, time, price, **and** legal subject matter.
- 38. T F** A signature is any mark with the current intent to authenticate the document. Using the core of the Commerce Clause power (*i.e., transportation*), the USA federal government has preempted the USA State governments on the legal question of whether a mouse click is a signature if that click is complete any transaction in commerce.
- 39. T F** Promissory estoppel exists when a promisor make a promise thereby inducing the promisee's foreseen justifiable **and** detrimental reliance, **and** when justice will be served by enforcement.
- 40. T F** The common law of contracts requires compliance with the Mirror Image Rule. However, **neither** the UCC **nor** the CISG do so.
- 41. T F** By changing reasonable expectations the technological change of email replacing surface mail for many transactions has changed the Mail Box Rule.
- 42. T F** Typically, objectively, silence is **not** acceptance.
- 43. T F** To create an enforceable contract all of the original parties must engage in a bargained for exchange of legally sufficient value with all of the other original parties to that contract.

- 44. T F** A Nebraska court is far more likely to provide a party with freedom **_from_** contract if the contract is a statutory **unconscionable** contract versus an equity **unconscionable** contract.
- 45. T F** A mutual rescission is a substituted agreement whereas a unilateral restitution is an equitable remedy.
- 46. T F** A requirements contract **as well as** an output contract avoids being an illusory promise by using circumstances to define quantity.
- 47. T F** All legal transactions require some degree of capacity (*i.e., ability to grasp the natural consequences of one's behavior*). Crime require more capacity than contracts; contracts require more than torts; **and** torts require more than wills.
- 48. T F** If a judicial determination is made that a specific individual minor objectively possesses subjective capacity for that type of transaction, then that individual minor may act as an adult for the purposes of contract (*i.e., emancipation*) **and/or** may be treated as an adult for the purposes of crime (*i.e., be tried as an adult*).
- 49. T F** Transactions seeking to create contracts with a natural person who has been adjudicated **not** mentally competent merely create voidable contracts.
- 50. T F** All gambling contracts create risk **and** allocate that risk on chance, while all insurance contracts allocate existing risk on chance.
- 51. T F** A mutual mistake exists when one party objectively knows the other mistaking party is making a material mistake of fact.

- 52. T F** An expert's opinion typically is a necessary part of a successful suit for common law fraud.
- 53. T F** To be "duress" the **unlawful** pressure must be sufficiently objective for a court to set aside the presumption of the exercise of liberty **and** for 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.
- 54. T F** The parole evidence rule bars from court all oral testimony about a written contract.
- 55. T F** Because of the Statute of Frauds all guarantee contracts are formal contracts.
- 56. T F** If the original contract is a contract for personal services, then the "assignment of all rights" is enforceable.
- 57. T F** An intended creditor third party can while an incidental donee third party can **not** have privity with all of the original parties to the contract.
- 58. T F** Perfect tender ordinarily is an implied condition precedent; while an exculpatory clause ordinarily is an express condition concurrent.
- 59. 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 that party's duty to pay damages. A material breach, in contrast, does **not** discharge the duty to perform **but** does start the duty to pay damages.
- 60. T F** The running of a Statute of Repose may be tolled until such time as the time limit set by its companion Statute of Limitation.

- 61. T F** Contracting parties that include a *Force Majeure* Clause in their contract change what a court may recognize **either** as a commercial impracticability **or** as commercial impossibility.
- 62. T F** Under the common law of contracts compensatory damages
(*i.e., difference between contract price **and** market price*) include incidental damages
(*e.g., cost of entering the market as part of discharging one's duty to mitigate damages*).
- 63. T F** Consequential damages (*e.g., lost profits*) objectively foreseen by both parties are recoverable damages under the common law of contracts.
Under the UCC lost profits are part of incidental damages.
- 64. T F** Under the common law of contracts ordinarily even the most abusive practices will **not** expose a breaching party to punitive damages; **and**,
if
those abusive practices amounted to a tort
then
not even nominal damages will be awarded by the court for that economic loss.
- 65. T F** An accord **and** satisfaction may be supported by a liquidated debt.
- 66. T F** When pleading in the alternative for a common law suit election of remedies means
the plaintiff, after presenting its case, must choose
between alternative causes of action plead in the complaint
(*e.g., breach of contract versus promissory estopple*).
The UCC expressly rejects this election of remedies.
- 67. T F** The law seeks to satisfy the People's reasonable expectations.
The law can **not** anticipate.
Technological change
can cause the People's reasonable expectations so much that
the law changes substantially.
- 68. T F** All tangible **and** movable personal property are "goods".
- 69. T F** All citizens are consumers.

- 70. T F** A UCC merchant's firm offer is an option contract that does **not** require consideration from the party holding the option.
- 71. T F** The parties to a UCC Article 2 Sale of Goods contract may disclaim all **but** one provision of the UCC Article 2 Sale of Goods: good faith.
- 72. T F** The UCC allows the parties to form a contract upon 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.
- 73. T F** A UCC seller may accept by promptly shipping **non**-conforming goods; **unless** that seller's **seasonable** notice of accommodation prevents an acceptance.
- 74. T F** Identification of goods requires the goods to be designated by the seller as the subject matter of the UCC 2 contract. As soon as goods are identified the buyer has **_the_** risk of loss.
- 75. T F** Under the UCC, a merchant's signature needed for the Statute of Frauds is implied from the merchant's ten days of silence following receipt of a written **and** signed contract from the other party.
- 76. T F** Goods entrusted to merchant who deals in goods of that kind **and** sold in the ordinary course of business to a good faith buyer results in that buyer obtaining good title.
- 77. T F** If a common carrier's actions proximately cause destruction of goods, then typically, both the seller **and** the buyer have some risk of loss.
- 78. T F** Some transactions (*e.g., bailment, employment, warranty*) can be enforceable by a court of law (*rather than a court of equity*) **without** being contracts.

- 79. T F** A UCC seller's written claim of Right of Assurance made upon a reasonable basis for that claim, requires the buyer to provide a timely response in writing due to the UCC Duty of Cooperation that springs from the duty of good faith.
- 80. T F** The buyer has an absolute right to inspection prior to acceptance. A latent defect is a defect that a reasonable inspection would **not** discover.
- 81. T F** The **non**-breaching party has a greater right to cover under the common law than under the UCC.
- 82. T F** The breaching party's the right to cure an anticipatory breach springs from the **non**-breaching party's duty to mitigate damages under both the common law **and** under the UCC.
- 83. T F** Under the UCC rules regarding election of remedies, 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.
- 84. T F** Under the UCC, the implied warranty of merchantability may **not** be disclaimed by a merchant; **but**, may be disclaimed by a consumer making a second-hand sale if that disclaimer is in clear **and** conspicuous terms (*e.g., sold as is*).
- 85. T F** The federal Magnuson-Moss Warranty Act defines the words "full" **and** "limited" for all written express warranties granted by merchants selling consumer products in commerce at a price of at least \$25.
- 86. T F** Under the UCC, all consumer buyers **and** all merchant sellers owe a duty of good faith (*i.e., honesty in fact and commercial reasonableness*).

- 87. T F** When a legislative creation of an administrative agency is constitutional, the legislature must provide a clear **and** definite delegation of authority
(*e.g., FTC's jurisdiction over **unfair and** deceptive trade practices*)
to that agency
both to guide that agency **and** to guide the court's judicial review.
The legislature's authority to delegate
(*i.e., both USA federal **and** USA State*)
is closer to its core powers
when
a superior legislative response is
a specific administrative rule rather than a general statute;
and, when
the risk to the public increases
(*e.g., **in** the human body versus **on** the human body*).
- 88. T F** Administrative agencies are subservient to the People's substantive due process rights **and** procedural due process rights.
For example,
the notice **and** hearing requirements of probable cause
are much lower
(*e.g., statistical proof rather than personalize evidence*)
for an industry **and** all merchants in that industry
that has been subjected to extensive regulation
(*e.g., alcohol, tobacco, firearms*)
by the legislature.
As another example,
the agency might offer an accused legal person
the option of voluntarily entering into a consent decree
(*i.e., confess to wrong doing, **but** be sentenced to a lower penalty*).
- 89. T F** The USA federal constitutional right to privacy
is a right of the Individual versus the government.
In stark contrast,
in the European Union (EU) the equivalent right to privacy
is a pair of rights of the Individual
(*i.e., against both the government **and** other Individuals*).
Accordingly,
the EU's default approach is opt-out
while
the USA's default approach is opt-in.

- 90. T F** The industrial revolution **as well as** subsequent technological changes in the manufacture of products **and** services, the wholesaling of products **and** services, **as well as** the retailing of products **and** services have fundamentally changed the control of risk related to products **and** services.
Today, from the perspective of the consumer, there are far more latent defects. In addition to pre-sale environment, the post-sale environment **also** has fundamentally shifted what can be known **and** thus has fundamentally shifted the control of risk from an equal sharing of risk between consumer **and** merchant (*i.e., that justified caveat emptor*) to an **unequal** control of risk where the merchant has far more control (*i.e., that justifies strict liability*).
- 91. T F** USA federal response tends to focus on the cause of a problem while a USA State's response tends to focus on the symptom of a problem. For example, the FTC rule creates a 3 day cooling off period for in-home sales coupled with a promissory note so that consumers can void that promissory note before any bank can factor that paper **and** become an HDC (*Holder in Due Course*). As another example, the Fed's (*Federal Reserve Board's*) Regulation Z empowers consumers to have access to their credit reports **and** empowers consumers to demand in writing corrections to those reports.
- 92. T F** Using zip codes to sort economic data **and** then to establish criteria for one's willingness to enter into financial transactions with consumers based upon statistically significant differences in that economic data is **not** red lining.
- 93. T F** Garnishment is a remedy that only is available to creditors seeking repayment from a debtor who is some other person's employEE.

- 94. T F** Under the Rule of Reason
all actions that are proportional to the firm's legitimate business interests are lawful.
For example,
a natural monopoly does **not** violate the Rule of Reason.
- 95. T F** Experience has taught the courts that some actions are Per Se **Un**reasonable.
The court's have identified some transactions for which the court will **not** accept evidence of reasonableness of that restraint of trade. Those transaction are:
tying, group boycotts, **and** horizontal division of territories/customers.
- 96. T F** The *Noerr-Pennington Doctrine* applies automatic punitive damages in the form of treble damages when
a defendant seeks to exempt labor from the anti-trust laws by creating countervailing power (*e.g., group boycott of a strike*).
- 97. T F** The EU sees most competition as taking place in the vertical dimension of the market
(*e.g., one Ford dealer versus another Ford dealer*),
while
the USA sees most competition as taking place in the horizontal dimension of the market
(*e.g., Toyota versus General Motors*).
Accordingly, the EU reaches very different conclusions than the USA when applying the Rule of Reason.
- 98. T F** Risk is the subject matter of an insurance contract
(*i.e., insurance policy*).
Adverse selection **and** the moral hazard increase the insurER's difficulty with managing the accepted risk.
An insurER's right to subrogation
minimizes the risk of adverse selection
(*especially in the Nebraska version of subrogation*).
The deductible **and** the co-pay
minimize the risk of the moral hazard.

- 99. T F** Insurance companies insist upon being the offerEE.
Nearly always the person seeking to become the insurED
must deal with an intermediary party who makes the offer to the insurER.
If
the insurER is the principal of that intermediary,
then
that intermediary is an insurance agent.
If
the insurED is the principal of that intermediary,
then
that intermediary is an insurance broker.
If
the offer is flawed,
then
the losses proximately caused by the flaws are the liability of the principal.
- 100.T F** The insurable interest
must exist at the time of loss for a property insurance policy;
but,
must exist at the time of contract for a life insurance policy.
- 101. T F** Necessarily,
all insurance policies are adhesion contracts.
All insurERs who breach an insurance policy by an act of bad faith
(*i.e., worse than merely **not** good faith*)
are liable for punitive damages for that breach of contract.
- 102.T F** If
the testator's signature is applied to the document
and
the testator publishes the document as the testator's will
before two disinterested witnesses who attest to the
voluntariness of the signature **and** the testator's capacity,
then
the elements of a will are present.

103. T F In Nebraska,
the will of the deceased testator is required by statute to comply with
per stripes,
and
if
the will does **not** do so,
then
the court will enforce upon the estate the statutory preference for
per stripes
prior to enforcing other provisions of the will.

104. T F If
Person A grants legal title to Person B
and
Person A grants beneficial title to Person C,
then
Person A has created a trust as the grantor of that trust,
Person B is the trustee of that trust, **and**
Person C is the beneficiary of that trust.

105. T F A trustee of a trust is a fiduciary to the beneficiary;
but,
the trustee is **not** a fiduciary to the grantor.
That fiduciary status comes with the obligation of utmost good faith
(*i.e., honesty in fact and personalized objective*).

**106. Answer with the letter that is to the right of the copyright date
at the bottom right of each page.**