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

**INSTRUCTIONS:**

1. This Exam FIRST must be completed within the allocated time  
(*i.e., the 75 minutes between 11:30 AM and 12:45 PM*).  
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 to the instructor the student's photo ID;  
[3B] present the student's completed answer sheet;  
[3C] exchange the completed answer sheet for an answer key; and  
[3D] then leave the exam room until after the end of the exam  
(*e.g., all students finish in less than the 75 minutes*).  
**To find your individual exam grade you must use your marked up exam.**
4. Preliminary exam grades and course grades (*i.e., prior to resolving any appeals*)  
of the class **but not with individual students identified**  
will be posted to O'Hara's web site no later than 4:00 PM Thursday, February 12.  
An email notice of the posting will be sent.
5. This Exam FIRST is worth 20% of the course grade.  
The True-False form of this exam has 34 questions graded as if there are 33.  
Based upon the instructor's 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 **TWO** questions on this exam will *that* student's exam grade change  
by the number of successful appeals in excess of ONE successful appeal.  
*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 instructor's suite secretary in RH 502  
**no later than the 11:35 AM on Monday, February 16.**

**NOTE #1:** On the blue computer graded answer sheet provide your name (last, first) both in numeral and in bubble and provide your NU ID number both in numeral and in bubble.

**NOTE #2:** 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 #3:** 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 #4:** 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".

**NOTE #5:** Answer question #34 prior to answering any other question or risk earning an exam grade of zero.

### QUESTIONS:

1. **T F** USA law seeks to satisfy the reasonable expectations of a Reasonable Person. Because the law seeks to serve the reasonable expectations of the People, the law can **not** anticipate. For example, technology often changes reasonable expectations.
2. **T F** USA law favors assigning legal liability to those persons whose actions are both knowing **and** voluntary. For example, Assumption of the Risk is a defense to a fault based tort **and** exists if the plaintiff knowing **and** voluntarily exposes the plaintiff to the risk of harm created by the defendant.
3. **T F** USA law favors assigning liability based upon the objective rather than the subjective. The objective is what a Reasonable Person would perceive. The subjective is what a natural person personally experiences. The objective comes in two forms. Express is in words: oral **or** written. Implied is in acts, words, **and/or** circumstances.

4. **T F** Knowing comes in three forms:  
 actual knowledge (*a.k.a. scienter*); receipt of notice; **and** reason to know.  
 Capacity  
 is the minimum component of the knowing component of the law.  
 Capacity  
 is the ability to grasp the natural consequences of one's action.  
 All persons who obtain the age of majority are presumed to have capacity.  
 Different areas of law require different amounts of capacity:  
 contract > tort > crime > wills.
5. **T F** Person is a key concept of USA law.  
 Most important is a natural person (*i.e., human*).  
 Least important are mere legal persons (*e.g., corporation*).  
 Most frequently USA law uses the legal fiction of a Reasonable Person  
 (*i.e., the objective legal standard of behavior that others may reasonably expect*).  
 All citizens **and** all consumers are natural persons.
6. **T F** Central to the organization of USA law is the separation of powers.  
 The Nebraska's *Constitution* has an express separation of powers  
 while the USA *Constitution* has an implied separation of powers.  
 The separation of powers comes in three main forms.  
 [i] Individual v. government  
 [ii] federal v. State  
 [iii] legislative v. executive v. judicial  
 The legislature makes law via statutes;  
 the executive enforces law and might use regulations; **and**  
 the judiciary interprets law via cases.
7. **T F** All governments in the USA always owe all persons due process of law.  
 Due process of law comes in two forms.  
 Substantive due process  
 which requires active judicial protection of  
 fundamental constitutional rights: more so if the right is express.  
 Procedural due process  
 is notice **or** hearing, either proportional to the interests involved.  
 Most frequently the judicial protection of fundamental rights  
 is to require procedural due process of law.
8. **T F** Judicial review  
 is the express power of the judiciary to interpret the *Constitution*  
**and** to declare **un**constitutional any act of any USA government.

- 9. T F** In the USA the law is divided into a pair of broad categories: law **and** equity.  
 Law  
 seeks to be predictable, thus is based upon rules **and** precedence.  
 Equity  
 seeks unique solutions, thus is based upon maxims **and no** precedence.  
 Laches  
 is a defense to suit in a court of equity; whereby  
 the court of equity has the discretion to bar the plaintiff's suit  
 if  
 the plaintiff waited an **unreasonable** time prior to initiating suit.  
 The legislature specifies what is an **unreasonable** delay  
 for suits in a court of law.  
 A statute of limitation  
 can be tolled.  
 Tolling  
 stops the clock of a statute of limitations.  
 A statute of repose  
 sets a maximum duration on tolling a statute of limitations.
- 10. T F** Jurisdiction  
 is the authority (*i.e., power*) to act.  
 A court's jurisdiction comes in two forms:  
 subject matter jurisdiction (*e.g., bankruptcy*),  
**and**  
 geographic jurisdiction (*i.e., substantial minimal contacts*).  
 A court may claim geographic jurisdiction  
 (*e.g., long arm statute*)  
 over a party  
 if  
 that party has purposefully availed itself of that geographic jurisdiction.
- 11. T F** The plaintiff's complaint must allege:  
 [i] cause of action;  
 [ii] court's jurisdiction; **and**  
 [iii] pray for a remedy the court has the power to grant.  
 The defendant must have standing to sue  
 (*i.e., injury in fact and within the zone of protected interests*).
- 12. T F** The law requires proof.  
 The amount of proof required varies by the type of legal action.  
 The highest burden of proof is in criminal suits where the burden is  
 beyond a reasonable doubt.  
 The most frequently used burden of proof is the civil burden of  
 preponderance of the evidence.

13. **T F** Both the Motion to Dismiss **and** the Motion for a Summary Judgment eliminate all material questions and fact **and** thus leaves the trial court solely with questions of law.
14. **T F** An appellate court will affirm the trial court **unless** the appellate court finds trial court error that is:  
[i] a clear error of fact;  
[ii] a **NON**-harmless error of procedure, **or**  
[iii] any error of law.
15. **T F** To be binding precedence must be both authoritative **and** persuasive.
16. **T F** Good faith comes in four forms.  
All four forms use an identical objective good faith (*i.e., honesty in fact*).  
Each of the four differs materially on subjective good faith.
17. **T F** Each USA States has **no** powers of any government **unless**:  
[i] in the USA *Constitution* grants the States that power; **or**  
[ii] the People of a State grants that power to that State in the State's *Constitution*.
18. **T F** Police Power  
is the power of the federal government to regulate health, safety, morals, **and** general welfare.
19. **T F** Government may take any private property if government takes that private property  
[i] with due process of law;  
[ii] for a private use; **and**  
[iii] pays some compensation.
20. **T F** If the federal government has power, then preemption automatically exists if there is express **or** implied intent of Congress **and** a need for uniformity.

- 21. T F** One of the broadest federal powers is the Commerce Clause  
(*i.e.*, Art. I, sec. 8, cl. 3).  
The Commerce Clause grants the federal government power to regulate commerce with the foreign nations, among the several States, and with the Indian Tribes.  
Pre-1937,  
legally, the meaning of among was between; **and** the law used the phrase direct effect  
Post-1937,  
legally, the meaning of among is within; **and** the law uses the phrase close **and** substantial affect.  
Transportation is the core of the Commerce Clause (*i.e.*, *direct effect*), the penumbra is manufacturing, **and** the emanations are retail.
- 22. T F** The First Amendment has five express freedoms  
(*i.e.*, *religion, speech, press, assembly, and petition government*).  
Any USA government always may regulate all free speech reasonably with respect to the time, place, manner, **and** content of that speech.
- 23. T F** The Fourth Amendment requires a USA government to provide probable cause to the judiciary as a condition precedent to obtaining a warrant if a search or seizure is **un**reasonable.  
The requisite probable cause is greater for a natural person than for a mere legal person; **and** the requisite probable cause is less for a regulated industry.
- 24. T F** The Fifth Amendment imposes many express limitations on governmental action including **but not** limited to **no** double jeopardy, **no** self incrimination, grand jury for federal felonies, **and** due process of law to deny a person's life, liberty, **or** property.  
The Absorption Doctrine is a judicial interpretation of Amendment Fourteen's due process clause as binding the USA States to honor the fundamental rights of the Bill of Rights.

**25. T F** The Ninth Amendment

*(i.e., enumeration of rights does **not** disparage additional rights of the People) and*

the Tenth Amendment

*(i.e., powers **not** delegate **nor** denied are reserved to States **and/or** the People)*

**unambiguously identify government (especially the federal government) as superior to the Individual.**

**26. T F** Interpretation of the Fourteenth Amendment's Equal Protection Clause

uses the triad of core, penumbra, **and** emanations.

The core

of a USA State's legislative power is the Rational Basis Test.

Under the Rational Basis Test

when

the State engages in social or economic regulation, whereupon

a State's legislative action is presumed valid **and**

the State only needs to show a rational relationship between the State's legitimate governmental interest (*e.g., Police power*) **and** its regulation.

The penumbra of a USA State's legislative power is

Heightened Judicial Review.

When using Heightened Judicial Review

if

the State regulates gender, legitimacy, **or** handicap

*(i.e., topics of known historically irrational regulation),*

then

the State must demonstrate a substantial relationship

between the State's regulation **and**

an important governmental interest (*e.g., health **or** safety*).

The emanation of a State's legislative power is

Strict Scrutiny.

If

the State regulates a topic over which it has **no** authority

*(i.e., race, national origin, **or** citizenship),*

then

the State must demonstrate that the State's

regulation is necessary to achieve a compelling governmental interest (*e.g., life*).

- 27. T F** Comity  
 both internationally **and** domestically is an implied tradition  
 that encourages the receiving jurisdiction  
 to enforce  
 the sending jurisdiction's law (*e.g., marriage*)  
 if  
 the sending jurisdiction's law  
 is  
 viewed by the receiving jurisdiction as completely consistent with  
 the public policy of the receiving jurisdiction.
- 28. T F** All governments have  
 sovereign immunity  
 for all acts by that government within its own jurisdiction:  
**unless**  
 that government itself waived **or** surrendered sovereign immunity.  
 Amendment XI  
 reserves to each USA State sovereign immunity in the federal courts.  
 An Act of State  
 is an action by a government as a government.  
 The judiciary of Nation A will **not** review  
 Nation B's domestic governmental acts take occur in Nation B.  
**But, if**  
 Nation B takes an action within Nation A,  
 then  
 Nation B may need Nation A to grant comity **and** thereby have  
 Nation A recognize that foreign action of Nation B as an Act of State.
- 29. T F** There are three types of torts:  
 [i] intentional torts;  
 [ii] negligence torts; **and**  
 [iii] strict liability torts.  
 Intentional torts **and** negligence torts are based on fault.  
 Strict liability torts are **not** based on fault,  
**but** instead are based on social risk allocation.
- 30. T F** Common law fraud  
 exists  
 if  
 the defendant  
 [i] knowingly **and**  
 [ii] intentionally  
 [iii] **misrepresents** a material fact  
 thereby  
 [iv] inducing the plaintiff's justifiable reliance **and**  
 [v] proximately causing  
 [vi] the plaintiff's damages.

- 31. T F** The material terms are:  
[i] parties;  
[ii] location;  
[iii] capacity; **and**  
[iv] subject matter.
- 32. T F** A tort involves harm to an individual with a remedy of compensatory damages.  
A crime involves harm to society a remedy of punishment.  
Due to the separation of powers,  
only the legislature has the power to create a crime.
- 33. T F** The elements of a crime are:  
[i] *actus reus (i.e., bad deed)*;  
[ii] *mens rea (i.e., bad thought)*; **and**  
[iii] **no** defenses.  
In criminal law, due to the separation of powers,  
normally, a subjective bad thought (*i.e., scienter*) is required.
- 34.** **Answer question #34 with the VERSION LETTER of your exam. You shall find the version letter of your copy of this exam in the LOWER RIGHT CORNER of each page, after the copyright notice.**  
**Failure to so answer automatically earns a student an exam grade of zero.**