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

**INSTRUCTIONS:**

1. This Exam SECOND 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;
  - [3D] retain student's marked up copy of the exam; and
  - [3E] 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, March 12. An email notice of the posting will be sent.
5. This Exam SECOND 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 11:30 AM on Friday, March 13 (i.e., BEFORE THE START OF SPRING BREAK).

**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** The elements of a contract are agreement, consideration, capacity (*i.e., ability to grasp the natural consequences of one's actions*), reality of assent, **and** legal subject matter.
2. **T F** The law is subdivided into the subdivisions law **and** equity. Implied-in- law contracts are part of the subdivision law. Implied-in-fact contracts (*a.k.a., quasi contracts*) are part of the subdivision equity.
3. **T F** For simplicity of phraseology we often refer to transactions that do **not** rise to the level of a contract as contracts. For example, **neither** void contracts **nor** unenforceable contracts are contracts; whereas both valid contracts **and** voidable contracts are contracts. There are some transactions that can be, **but** need **not** be, contracts to be enforceable. For example, employment agreements **and** bailment agreements need **not** be contracts.

4. **T F** The common law definition of material is big enough it would have changed your mind. Four contract terms always are material: parties, time, consideration, **and** subject matter.
5. **T F** The Mirror Image Rule requires the acceptance to exactly match the offer. If the offerEE's response to the offer expresses the offerEE's agreement **but** varies from the offerOR's offer (e.g., "Yes, but ... ."), then that response is both a rejection of the offer **and** a counter offer. The Mailbox Rule allows the offerEE to race ahead of the arrival of the offerEE's acceptance **and** revoke that acceptance prior to the offerOR's receipt of that acceptance.
6. **T F** USA law of contracts uses the objective theory of contracts. This can be seen in the general rule that silence is acceptance.
7. **T F** The law can be subdivided into the subdivisions law **and** equity. To exit the subdivision law **and** enter the subdivision equity requires answering "No." to the following question: "Do you have an adequate remedy at law?". Once in equity, some remedies are available that are **not** available in law. For example, if predatory economic duress causes a lack of reality of assent, then the equitable remedy of unilateral rescission will be granted, that, if it is appropriate, will be paired with a duty of restitution.
8. **T F** Consideration serves the function of objectively manifesting intent to be bound to the contract. Consideration requires a bargained for exchange of legally sufficient value.
9. **T F** Typically, the law provides for freedom **of** contract, **but** sometimes the law provides freedom **from** contract. If the law provides freedom **from** contract, then a Nebraska court is more likely to void the contract than to reform the contract.

10. **T F** An illusory promise exists  
if  
the parties' agreement is **not** sufficiently definite that  
the court could enforce the parties' objective agreement.  
For example,  
quantity is illusory  
if  
it is a requirements contract **or** it is an output contract.
11. **T F** A liquidated debt may be consideration for an accord **and** satisfaction.
12. **T F** A defendant commits common law fraud  
if  
the defendant knowingly **and** intentionally  
**misrepresents** a material fact to the plaintiff,  
thereby inducing the plaintiff's justifiable reliance **and**  
proximately causing the plaintiff's damages.
13. **T F** Both a mutual mistake **and** a unilateral mistake  
require a material mistake of fact.
14. **T F** The cause of action emotional duress  
is far more difficult to prove by a preponderance of the evidence  
than is the cause of action **undue** influence.
15. **T F** The legislature has borrowed from equity some causes of action for use in the law.  
The cause of action for **unconscionable** contract in equity  
is identical to  
the identically named statutory cause of action.
16. **T F** The Statute of Frauds  
requires some contracts (*e.g., sale of goods at **or** over \$5,000*)  
to be in a written memorandum of sufficient definiteness that  
the court can enforce the parties' objective agreement, **and**  
that writing requires one signature (*i.e., the party to be sued*).
17. **T F** A contract with a merger clause  
includes within that contract  
all documents that are covered by an incorporation by reference clause.

18. **T F** The new common law for assignment of rights **and** for delegation of duties prohibit all assignments as well as prohibit all delegations that materially alter the reasonable expectations of the parties. Rarely, will an "assignment of all rights" alter the reasonable expectations of the parties.
19. **T F** Because of USA *Constitution* Amendment XIII, a court of equity routinely will grant the remedy of specific performance for the performance of personal services contract.
20. **T F** A condition precedent typically turns on a contractual duty while a condition subsequent typically turns off a contractual duty. Nearly all contracts include the concurrent condition of perfect tender (*i.e., ready, willing, and able to provide complete performance*).
21. **T F** Except for construction contracts, performance that would be substantial performance of an implied condition is a material breach of an express condition.
22. **T F** If one party to a contract delivers an anticipatory repudiation to the other contracting party, then the receiving party may elect either to treat that repudiation as an immediate breach **or** to wait for performance at the contractually specified due date.
23. **T F** A statute of repose may be tolled until the date specified in the statute of limitations.
24. **T F** A contract may be discharged by complete performance. A contract **also** may be discharged by the parties' *Force Majeure* clause. If the parties do **not** have a *Force Majeure* clause, **and** if the future is fundamentally different than the parties' reasonably expected, then their contract might be discharged by operation of law due to commercial impossibility (*e.g., 10-fold change in price*).

25. **T F** Tort law's compensatory damages are to make the plaintiff whole while contract law's compensatory damages are to give the plaintiff the benefit of the bargain. Under contract law, incidental damages are **not** part of compensatory damages.
26. **T F** Typically, lost profits are included within consequential damages **and** are recoverable for breach of contract.
27. **T F** Tort law's damages include punitive damages. In contract law most tort law damages are mere economic loss. However, for an insurer's bad faith breach of an insurance contract **or** for an employer's bad faith breach of an employment contract the court may award punitive damages.
28. **T F** The breaching party has a duty to mitigate damages.
29. **T F** If a merchant imposes a harsh liquidated damages clause upon a consumer, then the court is likely to treat that clause as an **unenforceable** penalty. However, if the same clause is in a contract between two merchants who are engaged in sophisticated risk management, then that clause would be enforceable.
30. **T F** If the **non**-breaching party is silent in response to a breach, then the **non**-breaching party has waived that breach, since the **non**-breaching party's silence serves as an implied modification of the contract by the course of performance definition of the contract's terms.

- 31. T F** If  
a transaction lacks consideration by one party  
**and/or**  
a transaction lacks capacity by one party,  
then  
a court of equity will grant promissory estoppel  
if  
the defendant makes a clear **and** definite promise to the plaintiff  
thereby inducing the plaintiff's  
reasonably foreseen justifiable **and** detrimental reliance,  
**and**  
if  
justice will be served by enforcement of the promise.
- 32. T F** The law seeks to satisfy the People's reasonable expectations;  
accordingly,  
the law seeks to anticipate change.  
Changes in technology  
frequently materially alter the reasonable expectations of the People.
- 33. T F** Except for transactions that are Acts of State by USA States (*e.g., deeds*)  
**and**  
except for many consumer transactions,  
since commercial internet transactions take place in the core of  
the federal Commerce Clause,  
the federal government expressly has preempted the USA States  
with respect to whether electronic signatures in commerce are  
a "signature"  
(*i.e., any mark with the current intent to authenticate the document*).
- 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.**