
print name on the line above as your signature

INSTRUCTIONS:

1. This Exam FOURTH 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, April 30. An email notice of the posting will be sent. **RECALL: Any student with an 87.0% average after this Exam FOURTH may elect to skip the Comprehensive Final Exam and take a course letter grade of "A-".**
5. This Exam FOURTH is worth 10% of the course grade.
The True-False form of this exam has 35 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 **THREE** questions on this exam will *that* student's exam grade change by the number of successful appeals in excess of TWO 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 RH 502 suite secretary or personally handed to the instructor
no later than 4:30 PM on Friday, May 1.

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".

QUESTIONS:

1. **T F** In the Enabling Act the legislature creates each administrative agency **and** the agency only has that authority delegated to it by the legislature. The agency is subject to a separation of powers both outside the agency **and** within the agency.
2. **T F** Rulemaking by an administrative agency must satisfy both substantive due process (*i.e., direct judicial protection of fundamental constitutional rights*) **and** procedural due process (*i.e., notice **and** hearing, **both** proportional to the interests involved*). By default, the Administrative Procedures Act of 1946 governs **unless** the Enabling Act expressly grants the agency other powers.
3. **T F** A legislative rule has the force of law (*i.e., binds an Article III judge*). An interpretive rule only binds the agency. Today, administrative agency rules are adopted using the notice of publication in the *Federal Register* **and** the hearing of a comment period for written comments, with the final rule effective once published in the *Code of Federal Regulations*.

4. **T F** Administrative agencies are subject to judicial review both outside **and** within the agency itself.
Within the agency
a party must exhaust all administrative remedies before having standing to sue
(*i.e., injury in fact and within the zone of protected interests*)
in an Article III court.
Once in an Article III court,
the relationship between the agency and the court is analogous to the relationship between a trial court **and** an appellate court.
That is,
an Article III court will affirm the administrative agency **unless**
the agency makes a clear error of fact,
a **non**-harmless error of procedure, **or** any error of law;
but,
an Article III court will be noticeably more hostile to an agency on questions of procedure than would an appellate court be towards a trial court.
5. **T F** In the USA, privacy is an express constitutional right in USA *Constitution* **and** in the individual USA State *Constitutions*. **But**, in the USA privacy is a right of the People versus government. whereas, in the European Union (EU) **and** in Canada, privacy is a right of the individual against both governments **and** other individuals.
Accordingly,
in the USA statutes routinely provide that a person must opt-out while
in the EU statutes routinely provide that a person must opt-in.
6. **T F** Political free speech focuses on the rights of the speaker whereas
commercial free speech focuses on the rights of the listener.
Also, as a matter of law, there is **no** objective truth in political free speech whereas
there is objective truth in commercial free speech.
Accordingly,
no content regulation of political free speech is allowed whereas
content regulation of commercial free speech may be allowed.
Content regulation of commercial free speech is permitted if **and** only if
the regulation directly furthers a legitimate government interest
(*e.g., general welfare portion of the Police Power*);
is proportional to that legitimate governmental interest; **and**
is a less restrictive regulatory alternative.

7. **T F** In the USA (***unless there is an adequate statutory exemption***), USA governments may **not** collect information about natural persons, must allow those persons to review all collected information, **and** must make corrections to errors in that collected information. However, in the USA private parties (*e.g., Yahoo*) may collect, may refuse to disclose, **and** may refuse to correct information.
8. **T F** The **1890** federal Sherman Act made it a felony to destroy competition. Each USA State has adopted similar State statutes. Sherman Act section 1 makes restraints of trade a felony. Sherman Act section 2 makes monopolies a felony.
9. **T F** Sherman Act section 1 restraints of trade are evaluated using either the Rule of Reason Test **or** the *Per Se Unreasonable Test*. USA law views vertical restraints (*e.g., local Ford dealer versus local Ford dealer*) as typically damaging competition more than horizontal restraints (*e.g., Ford versus GM*).
10. **T F** The Rule of Reason authorizes as lawful any restraint of trade if that restraint is proportional to the restraining firm's/firms' business interest.
11. **T F** Proportionality for the Rule of Reason is measured by the purpose for the restraint; effect of the restraint on the market, **and** power conferred on the restraining party over the market.
12. **T F** Often, a change in any one of the **non-price** determinants (*e.g., income*) of supply **or** demand will tend to have a larger effect on the market than the typical change in either price **or** quantity of the item itself. However, sometimes a change in a **non-price** determinant can have an identical effect (*e.g., change in the price of a complement*).

13. **T F** Since expectations are objective, expectations are volatile
(*i.e., capable of swift **and** large changes*).
Technology is dynamic
(*i.e., capable of altering all of the other **non-price** determinants*).
Since the law is proactive, it would be
more accurate to say that
the law controls technology
than to say that
technology controls the law.
14. **T F** The elements **and** the functions of Capitalism
make clear that the primary regulatory force in Capitalism is government.
In Capitalism,
the role of government is to facilitate the other four elements of Capitalism
by defining rights
(*i.e., private property, contracts, torts, **and** crimes*)
and
by setting transaction costs
(*e.g., clear **and** convincing evidence*).
15. **T F** The Minimum Efficient Size (*MES*) graph shows that bigger is cheaper.
Accordingly,
a firm lawfully restrains competition
when that firm successfully seeks a larger market share.
Because,
under USA law big is **not** bad,
obtaining a market share greater than the *MES* always is lawful.
16. **T F** For society (*as contrasted as for the firm*), the results
of a competitive market
(*e.g., free entry **and** exit **along with**
a "large" number of sellers **and** buyers*),
with competition setting price at the equilibrium **and**
competition allocating the consumer surplus to consumers
typically
are results superior to
the results of a market with a monopoly firm
with the monopolist setting quantity
so that the monopolist profit maximizes
so that consumers pay more **and** get less.
17. **T F** Experience teaches that the anti-competitive consequences of
some restraints are consistently **disproportionate**.
The *Per Se Unreasonable* test
applies to
price fixing; horizontal division of territories; group boycott; **and** tying.

- 18. T F** The specific controls the general.
In 1914 Congress adopted the Clayton Act to address specific situations that
the general criminal law the 1890 Sherman Act could **not** make **unlawful**.
- 19. T F** First Amendment free speech
includes the express right to petition government (*e.g., lobbying*).
When before the legislative **and** executive branches
a person petitioning government is at the core of political free speech
(*e.g., Noerr-Pennington Doctrine*);
in stark contrast,
every party is obligated to speak truthfully when making a filing in a court.
- 20. T F** Both gambling **and** insurance allocate risk upon chance.
However,
gambling creates a new risk while insurance pools an existing risk.
- 21. T F** Ambiguities in all contracts
(*e.g., insurance contracts*)
always are interpreted against the drafter.
- 22. T F** All insurance contracts require the insurED to have an insurable interest
at time of loss.
- 23. T F** Risk is the subject matter of an insurance contract, thus all risk is material.
But,
the insurER has a duty to timely discover insurED's **mis**representations.
If
the insurER fails to timely discover,
then
a statutorily required **in**contestability clause (*e.g., statute of repose*)
will require the court to enforce the insurance contract
(*often, with a statutorily specified reformation*).
- 24. T F** Moral hazard
exists when those that have the insured risk
(*e.g., gene for a type of cancer*)
are more likely to purchase insurance.
- 25. T F** Adverse selection
exists when the insurED
(*i.e., person who buys insurance*)
controls the insured risk.

- 26. T F** The purpose of the deductible **and** the co-pay is to manage the adverse selection; whereas, the stop loss recognizes that the adverse selection has been managed. The purpose of the policy limit is to limit the total risk transferred to the insurER to a manageable amount.
- 27. T F** Like all guarantors **and** all sureties, an insurER, has the duty of subrogation.
- 28. T F** If an insurED has multiple policies providing cumulative insurance coverage (*e.g., a pair of policies, each 80% coverage **and** 20% co-pay*), then all jurisdictions (*e.g., Nebraska*) limit the insurED's maximum recovery to the coverage of the largest policy **as well as** entitles each insurER to a *pro rata* right of contribution from each of the other insurERs.
- 29. T F** The principal of an insurance agent is the insurED. The principal of an insurance broker is the insurER. Either an agent **or** a broker may issue a binder; **and** the principal of that agent/broker is liable if that agent/broker fails to procure the insurance policy.
- 30. T F** If an insurER engages in a bad faith breach of the policy (*i.e., insurER refuses to pay a claim made by the insurED that an insurER acting in good faith would have paid*), then the court of law may award the insurED punitive damages.

- 31. T F** Capacity
is the ability to grasp the natural consequences on one's actions.
Because
the Reasonable Person can **not** fully grasp that person's own death,
the law requires
the most capacity for contracts **and** the least for wills.
For wills
the testator must grasp that the testator
is signing;
owns property **and** the general nature of that property; **and**
the natural objects of one's bounty.
- 32. T F** Nebraska is a *per capita* jurisdiction.
- 33. T F** By statute, all jurisdictions require
capacity;
intent to create a will **and** to sign;
a writing;
signature;
witnesses; **and**
to publish the will.
- 34. T F** A trust
is created when
the grantor makes actual delivery of the corpus of the trust
to the trustee
in such a way that legal title passes to the trustee,
with
the trustee holding legal title for the benefit of the beneficiary,
and
with the beneficiary holding beneficial title in the corpus.
- 35. T F** A trustee
owes a duty of utmost good faith.
A trustee
is a fiduciary of the both the beneficiary **and** the grantor.