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

**INSTRUCTIONS:**

1. This comprehensive Final Exam must be completed within the allocated time  
(*i.e., the 120 minutes between 11:30 AM and 1:30 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 120 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 Wednesday, May 6. An email notice of the posting will be sent.

5. This comprehensive Final Exam is worth 30% of the course grade. The True-False form of this exam has 105 questions graded as if there are 100. 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 SIX** questions on this exam will *that* student's exam grade change by the number of successful appeals in excess of FIVE 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 a Dean's Office secretary in RH 414 no later than the 12:00 PM (i.e., noon) on Friday, May 8.

**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. Other parts of a question might be false; but, that reference is 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 from Exam FIRST:**

1. **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; **and** implied is in acts, words, **and/or** circumstances.
  
2. **T F** Knowing comes in three forms: actual knowledge (*i.e., 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 natural persons who obtain the age of majority are rebuttable presumed to have capacity. Different areas of law require different amounts of capacity: crime > contract > tort > wills.

3. **T F** Central to the organization of USA law is the separation of powers. The Nebraska's *Constitution* has an implied separation of powers while the USA *Constitution* has an express 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.
4. **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. To be a fundamental right the right must be express (*e.g., religion*).  
Procedural due process  
is notice **and** hearing, either proportional to the interests involved. Most frequently the judicial protection of fundamental rights is to require procedural due process of law.
5. **T F** Judicial review  
is the implied power of the judiciary to interpret the *Constitution* **and** to declare **un**constitutional any act of any USA government.
6. **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 clear **and** convincing evidence.
7. **T F** Both the Motion to Dismiss **and** the Motion for a Summary Judgment eliminate all material questions of law **and** thus leave the trial court solely with questions of fact.
8. **T F** To be binding precedence  
the precedence must be either authoritative **or** persuasive.
9. **T F** Good faith comes in four forms.  
All four forms use an identical subjective good faith (*i.e., honesty in fact*). However, each of the four differs materially on objective good faith.

- 10. T F** Each USA States has all of the powers of any government **unless**:  
[i] in the USA *Constitution*  
the USA States grants that power to the federal government; **or**  
[ii] in the USA *Constitution*  
the USA States take that power away from the USA States; **or**  
[ii] in that State's *Constitution*  
the People of that State take that power away from that USA State.
- 11. T F** Police Power  
is the power of each State government to regulate for the People's  
health, safety, morals, **and** general welfare.
- 12. T F** Any government in the USA may take any private property  
if  
government takes that private property  
[i] for a public use; **and**  
[ii] pays just compensation.
- 13. T F** If  
the federal government has power,  
then  
preemption might be feasible,  
**but** preemption is **not** automatic even  
if  
there is express intent of Congress **and** a need for uniformity.
- 14. T F** One of the broadest federal powers is the Commerce Clause  
(*i.e., USA Constitution Art. I, sec. 8, cl. 3*).  
The Commerce Clause  
grants the federal government power to regulate commerce  
among the foreign nations, among the several States, **and** among 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 emanation is retail.
- 15. 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, **and** manner of that speech.

- 16. 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 the executive seeks to conduct any search **or** seizure. 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.
- 17. T F** Both the Fifth Amendment **and** the Fourteenth Amendment of the USA *Constitution* contain identically worded due process clauses. Both expressly require due process of law if a government is to deny any person's life, liberty, **or** property. The Absorption Doctrine is a judicial interpretation of the Fourteenth Amendment's due process clause as binding the USA States to honor the verbatim rights of the Bill of Rights.
- 18. T F** The Ninth Amendment  
(*i.e., enumeration of rights does **not** disparage other retained rights of the People*) **and**  
**and** the Tenth Amendment  
(*i.e., powers **not** delegated to the federal **nor** denied are reserved to States **and/or** the People*)  
**unambiguously identify the Individual as superior to government (*especially the federal government*).**
- 19. T F** Comity is an international tradition **and** is a domestic express USA *Constitution* requirement (*i.e., Article IV*). A receiving jurisdiction will grant comity (*i.e., will enforce*) the sending jurisdiction's law (*e.g., marriage*) as long as the sending jurisdiction's law is viewed by the receiving jurisdiction as **not** completely **inconsistent** with the public policy of the receiving jurisdiction.
- 20. T F** There are four material terms. The four material terms are:  
[i] parties;  
[ii] time;  
[iii] consideration; **and**  
[iv] subject matter.

- 21. 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., even the weakest portion of the 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*).

**QUESTIONS from Exam SECOND:**

- 22. T F** The elements of a contract are agreement, consideration, capacity, reality of assent, form, **and** subject matter.
- 23. T F** The law is subdivided into the subdivisions law **and** equity. Implied-in-fact contracts are part of the subdivision law; while implied-in-law contracts are part of the subdivision equity.

- 24. 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** warranties need **not** be contracts.
- 25. T F** The common law definition of material is big enough it would have changed your mind.
- 26. 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 offerEE 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.
- 27. 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 in equity that are **not** available in law. For example, if predatory economic duress causes a lack of reality of assent, then the equitable remedy of mutual rescission will be granted, that, if it is appropriate, will be paired with a duty of restitution.
- 28. 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.

- 29. T F** Generically,  
the common law provides for freedom **of** contract,  
**but**  
sometimes equity provides for freedom **from** contract.  
If  
statutory law (*e.g., UCC*), as contrasted with the equity,  
provides for freedom **from** contract,  
then  
a Nebraska court is most likely to void the contract.
- 30. T F** An illusory promise exists  
if  
the parties' agreement is **not** sufficiently definite that  
the court could enforce the parties' objective agreement.  
However,  
quantity is **not** illusory  
if  
quantity is specified by a requirements contract **or** an output contract.
- 31. T F** Past consideration is sufficient for an accord **and** satisfaction.
- 32. T F** Both a mutual mistake **and** a unilateral mistake  
require a material mistake of fact.
- 33. T F** The cause of action **undue** influence  
(*i.e., opportunity, inclination, and result*)  
is far more difficult to prove by a preponderance of the evidence than is  
the cause of action emotional duress.
- 34. 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 much harder to prove than  
the identically named statutory cause of action.
- 35. T F** The Statute of Frauds  
requires some contracts  
(*e.g., might last more than one year*)  
to be in a written memorandum of sufficient definiteness that  
the court can enforce the parties' objective agreement, **and**  
that writing requires the signature party to be sued.

- 36. T F** A written contract that contains a merger clause includes within the four corners of that contract all documents that are covered by an incorporation by reference clause.
- 37. T F** Because of USA *Constitution* Amendment XIII, a court of equity will **not** grant the remedy of specific performance for the performance of personal services contract.
- 38. 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 substantial performance*).
- 39. T F** Performance of a construction contract that is mere substantial performance of an express condition is a material breach.
- 40. 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 anticipatory repudiation as an immediate breach **or** to merely wait for performance that is either complete performance **or** a breach.
- 41. 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*).
- 42. T F** Tort law's compensatory damages seek to make the plaintiff whole while contract law's compensatory damages seek to give the plaintiff the benefit of the bargain. Contract law's incidental damages are part of compensatory damages.

43. **T F** Typically, lost profits are included within common law consequential damages **and** thus usually are **not** recovered for a breach of contract.
44. **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 material breach of an insurance contract **or** for an employer's material breach of an employment contract the court may award punitive damages.
45. **T F** The breaching party has a duty to mitigate damages.
46. **T F** If a merchant in an adhesion contract with a consumer imposes a harsh liquidated damages clause, 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.
47. **T F** If the **non**-breaching party knows of a breach **and** is silent in response to the breach, then the **non**-breaching party has **not** necessarily waived that breach, because the **non**-breaching party's silence serves **neither** as creating an ambiguity to be resolved by the course of performance definition of the contract's terms **nor** create an implied modification of the contract.
48. **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.

49. **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 had made 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 that promise by the defendant.
50. **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 an electronic signature in commerce is  
a "signature"  
(*i.e., any mark with the current intent to authenticate the document*).

### **QUESTIONS from Exam THIRD:**

51. **T F** The elements of a contract are  
agreement, consideration, reality of assent, form, **and** legal subject matter.
52. **T F** The UCC focuses  
upon the parties' objective intent **and**  
upon the reasonably certain terms of contract.  
The UCC allows for open terms  
**and**  
the court shall supply all missing terms with commercially reasonable terms.  
**But**, the parties must have specified quantity.

53. **T F** If a product is tangible **and** movable, then that product is a "goods" covered by the UCC Sale of Goods. If a sale includes both goods **and** services, then the law reacts according to the predominant nature of the transaction.
54. **T F** A UCC consumer is a natural person purchasing goods primarily for personal **or** household use.
55. **T F** A UCC merchant creates a firm offer with a signed writing. **Without** consideration, a UCC merchant's firm offer is an enforceable option contract.
56. **T F** The UCC allows a seller to accept with a prompt shipment of goods, either conforming (*i.e. complete performance*) **or non**-conforming goods (*i.e., breach*). If the seller wishes to ship **non**-conforming goods only upon the condition that the buyer waives the breach, then the seller must provide notice that the shipment is as a counter offer of shipped as an accommodation.
57. **T F** A UCC **non**-merchant does **not** make a counter offer if the UCC **non**-merchant makes a definite acceptance. Also, a merchant's acceptance of a merchant's offer may include additional terms that do **not** materially alter the offer.
58. **T F** The UCC allows the parties to a contract to modify their contract **without** requiring new consideration if those modification are made in good faith. However, under the UCC an offer may expressly require modifications to be in a writing; **and** a writing always is required if contract to be modified is a contract between a consumer **and** a merchant.

- 59. T F** The common law governing the sale of goods focuses upon title. Under the common law only one person has title at a time; **but** knowing with certainty which person in practice has title can be objectively very difficult. Legally, a common law sale **and** a UCC sale transfers title from seller to buyer upon the seller's physical delivery to the buyer. **But**, there can be many questions surrounding the words seller, buyer, **and** delivery. Accordingly, the Uniform Commercial Code has shifted from the objectively difficult title to the objectively easy identified.
- 60. T F** Under the UCC's identification goods are identified when the seller's goods exist.
- 61. T F** Physical delivery by the UCC seller to the UCC buyer may occur:
- [i] at the seller's front door  
(*e.g., to consumer buyers*);
  - [ii] at the seller's back door  
(*e.g., to merchant buyers*);
  - [iii] at a location selected by the parties; **or**
  - [iv] by delivery **without** movement of the goods  
(*i.e., documents of title*).
- 62. T F** A UCC transportation contract can be either a shipment contract  
(*i.e., seller delivers goods into the hands of a carrier*); **or** a destination contract  
(*i.e., after some carriage the seller delivers goods to a location*). The seller has at least   a   risk of loss during most transportation contracts.
- 63. T F** All UCC sellers of goods transfer a valid title if the UCC buyer buys via a contract  
(*i.e., includes consideration, **not** just value*).

- 64. T F** The UCC's entrustment rule provides that  
if  
the true owner entrusts goods  
to a merchant who deals in goods of that kind  
**and if**  
a buyer buys for value in the ordinary course of business,  
then  
the buyer obtains good title.
- 65. T F** If  
a UCC seller of goods delivers a breach to the UCC buyer,  
**and if**  
the time for performance has **not** yet arrived,  
then  
the UCC seller has the right to cure that breach  
prior to the due date.  
In effect,  
the right to cure counter acts the **non**-breaching party's rights during an  
anticipatory repudiation.
- 66. T F** The UCC changes  
the common law's commercial impossibility  
to the UCC's commercial impracticability.
- 67. T F** The UCC creates a right to cover;  
that is,  
the right of the **non**-breaching party  
to enter the market to obtain reasonable substitute performance.
- 68. T F** Based upon the act **and** circumstance of a sale of goods  
both the common law **and** the UCC impose several generic implied warranties  
(*e.g., good title, no liens, and no infringements*).
- 69. T F** The UCC specifically creates two implied warranties:  
merchantability **and** fitness for particular purpose.  
All merchants warrant that their goods are fit for the ordinary purpose.  
That is, the goods would pass **without** objection in the market.  
An implied warranty of fitness for a particular purpose  
is given by any seller that knows of the buyer's reliance upon the seller.
- 70. T F** **Unlike** under the common law,  
under the UCC there may be multiple overlapping warranties.  
Under the UCC the warranty holder has **no** duty to make an election  
as to which warranty is to be enforced: all warranties are to be enforced.

71. **T F** A written **and** conspicuous disclaimer of a UCC warranty is effective **unless** it is **unconscionable** to disclaim that warranty.  
**Also,**  
**no** party may disclaim the obligation of good faith;  
**and**  
**no** party may disclaim liability for any injury from a consumer product.
72. **T F** Product liability attaches both to goods **and** to services as it attaches to products. Product liability can be based on tort (*either negligence or strict liability*) **or** contract. The *Restatement of Laws, Torts*, section 402 A (*i.e., the new common law*) by requiring
- [i] a defendant in the business of selling;
  - [ii] that product reaches the consumer **not** substantially changed;
  - [iii] the product is in a defective condition;
  - [iv] that defect makes the product **unreasonably** dangerous; **and**
  - [v] that defect is the proximate cause;
  - [vi] of the plaintiff's physical harm,
- the new common law is requiring privity.
73. **T F** Defects can be design defects, manufacturing defects, **or** labeling defects. Any of these defects can be a latent defect. A latent defect is a defect known to the seller **and** the seller knows that a reasonable inspection by a reasonable buyer can **not** reveal the defect to the buyer.

#### **QUESTIONS from Exam FOURTH:**

74. **T F** 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*.  
If an agency adopts an interpretive rule wherein the agency interprets its Enabling Act as delegating to the agency a narrower set of powers than a citizen asserts the agency has, then that interpretive rule has the force of law (*i.e., binds an Article III judge*).

75. **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., 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.
76. **T F** Privacy is an express constitutional right both 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.
77. **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 substantial government interest is proportional to that substantial governmental interest; **and** is a least restrictive regulatory alternative.

- 78. 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., HyVee*)  
may collect, may refuse to disclose, **and** may refuse to correct information.
- 79. T F** The Rule of Reason  
authorizes as lawful any restraint of trade  
if  
that restraint is proportional to  
the restraining firm's/firms' legitimate business interest(s).
- 80. 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.
- 81. 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*).
- 82. T F** Since expectations are subjective, 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.

- 83. T F** The elements **and** the functions of Capitalism make clear that the primary regulatory force in Capitalism is competition. 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., strict liability*).
- 84. T F** The Minimum Efficient Size (*MES*) graph shows that bigger sometimes is cheaper. Accordingly, a firm might lawfully restrain competition if that firm successfully seeks a larger market share to reduce its average costs. Under USA law, since big, itself, is **not** bad, obtaining a market share greater than the *MES* always is lawful.
- 85. 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.
- 86. T F** Both gambling **and** insurance allocate risk upon chance. However, gambling creates a new risk while insurance pools an existing risk.
- 87. T F** All ambiguities in all insurance contracts always are interpreted against the insurer.
- 88. T F** All insurance contracts require the insured to have an insurable interest at time of contract.
- 89. 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  
(**but, often, with a statutorily specified reformation**).

- 90. T F** Adverse selection exists when those that have the insured risk are more likely to purchase insurance.
- 91. T F** Moral hazard exists when the insured controls the insured risk.
- 92. 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.
- 93. T F** All guarantors **and** all sureties have a duty of subrogation; whereas all insurers merely have a right of subrogation.
- 94. 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 most jurisdictions (*e.g., **but not** Nebraska*) allow the insured to recover 100% of the insured's loss **as well as** entitles each insurer to a *pro rata* right of contribution from each of the other insurers.
- 95. T F** The principal of an insurance agent is the insurer. The principal of an insurance broker is the insured. Either an agent **or** a broker may issue a binder; **but** if that agent/broker fails to procure the insurance policy then that agent/broker is personally liable to third parties **and** the principal of that agent/broker is **not** liable to third parties .
- 96. T F** If an insurer engages in a bad faith breach of the policy then the court of law may award the insured punitive damages.

- 97. 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 crime **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.
- 98. T F** Nebraska is a *per capita* jurisdiction.
- 99. T F** For a will, by statute, all jurisdictions require  
capacity;  
intent to create a will **and** to sign;  
a writing that is a will;  
signature;  
witnesses; **and**  
to publish the will.
- 100.T F** A trustee owes a duty of utmost good faith.  
A trustee is a fiduciary of only of the grantor.

**QUESTIONS that had been ruled ambiguous:**

- 101. T F** The plaintiff's complaint must allege:  
[i] cause of action  
(*e.g., breach of contract*);  
[ii] court's jurisdiction  
(*i.e., both geographic and subject matter*); **and**  
[iii] pray for a remedy the court has the power to grant.  
The plaintiff must have standing to sue.
- 102.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,  
normally, only objective proof of objective bad thought is required.

- 103. T F** Both the old common law **and** 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.
- 104. T F** A statute of repose may be tolled.
- 105. T F** The UCC allows the parties to make express warranties by an affirmation of fact that is the basis of their bargain. **But** note, statements of puffery do **not** create an express warranty.