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print name

**INSTRUCTIONS:**

1. The Comprehensive Final Exam must be completed within the allocated time  
(*i.e., 10:00 AM - 12:00 noon on Tuesday, December 14*).  
It is a closed book exam.
2. **Recall the material difference between**  
**e.g. (for example) and i.e. (that is).**
3. As each student finishes this exam,  
that student will exchange the student's answer sheet for the answer key  
and leave the exam room until after the end of the exam  
(*i.e., 12:00 noon, unless all students finish earlier, which is likely*).
4. Grades will be posted to BlackBoard  
no later than 5:00 PM Wednesday, December 15.  
An email notice of the posting will be sent.
5. The Comprehensive Final Exam is worth 30% of the course grade.  
This exam has 105 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  
for all similarly situated students.  
Any student may appeal the grading of these 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 questions.  
*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 social security number; [6C] in sequence,  
list, immediately following the signature, each of the questions, by number,  
being appealed; [6D] after the [6C] list, argue each question, one at a time;  
[6E] at the beginning of each question's appeal, identify two or more  
reasonable meanings that the question could have had; [6F] argue why one or  
more of the 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 to a CBA Dean's Office  
RH 414 secretary **no later than 11:00 PM, Tuesday, December 21.**

**QUESTIONS:***Questions from Unit Exam One:*

1. **T F** The law favors the objective over the subjective.  
The objective can be either  
express (*i.e., words: oral **or** written*)  
**or**  
implied (*i.e., acts, words, **and/or** circumstances*).
2. **T F** Courts of law operate differently than courts of equity.  
For example,  
to have standing to sue  
(*i.e., injury in fact **or** within the zone of protected interests*)  
in a court of equity  
the plaintiff must have **no** adequate remedy at law.
3. **T F** All natural persons that are consumers are legal persons.
4. **T F** A court must have geographic jurisdiction  
(*i.e., substantial minimal contacts*).
5. **T F** In the USA, the parties to a contract have freedom to  
choose the law, the forum, the venue, **and** the language  
governing their contract.  
The choice of forum identifies the court where the suit will be tried  
while  
the choice of venue identifies the city where suit will be filed.
6. **T F** The appellate court will affirm the trial court  
**unless** the trial court makes  
a clear error of fact,  
an error of procedure, **or**  
any error of law.
7. **T F** Wrongful interference with contractual relations **or** with business relations  
that amounts to a tort  
often is predatory.  
However,  
a defendant's interference might be privileged **and** thus **not** a tort.
8. **T F** The power of Judicial Review is a power implied in the USA *Constitution*.

9. T F Both Amendment V (*i.e., governing the federal government*) and Amendment XIV (*i.e., governing the State governments*) require all governmental denials of person's life, liberty, **or** property to be done via due process of law.  
Due process of law has two components: procedural **and** substantive.  
Procedural due process requires a notice **and** a hearing, either proportional to the interest involved (*e.g., property*).  
Substantive due process, in contrast, provides judicial protection of the constitutional minimum of a person's fundamental right (*e.g., privacy*).
10. T F In the USA *Constitution* the States granted to the federal Congress the power to regulate commerce with the foreign nations, among the several States, **and** with the Indian Tribes.  
After the year 1937 the USA Supreme Court interprets the meaning of the word "among" as granting power over all "close and substantial **Affects**" on commerce between the States.
11. T F The Police Power is the power of a State to regulate for the People's health, safety, morals, **and** welfare.
12. T F Preemption is **not** favored, **but** may be allowed, if:  
there is a clear intent of Congress **and** national interests outweigh State interests;  
**or**  
there is an express intent of Congress **and** a need for uniformity.

13. T F The Amendment XIV Equal Protection Clause strips the State legislatures of power.  
With respect to social **and** economic regulation the States are stripped of very little power of their original power.  
But, with respect to regulation on the basis of race, alienage, **or** national origin the States are stripped of almost all of their original power.
14. T F The Article IV Full Faith **and** Credit Clause is an express commitment to comity,  
**and** thus significantly reduces the power of each State.
15. T F If a commercial transaction is an Act of State, then the commercial transaction usually is covered by sovereign immunity.
16. T F There are three types of torts: intentional torts, negligence torts, **and** nuisance (*i.e., public and private*) torts.
17. T F If the defendant proximately causes the plaintiff's injury by breaching a duty of care owed to the plaintiff, **and** the defendant has **no** defenses, then the defendant has committed a tort.
18. T F Assumption of the risk exists when the plaintiff knowingly **or** voluntarily exposes the plaintiff to the harm **or** the risk of harm created by the defendant's act.
19. T F The old common law of torts used actual causation **and** contributory negligence while the new common law of torts uses proximate causation **and** comparative negligence.

20. T F Common law fraud exists when the defendant knowingly **and** intentionally misrepresents **or** omits a material fact, thereby inducing the plaintiff's justifiable reliance **and** causing the plaintiff's injury.
21. T F A latent defect in a consumer product is a condition precedent to a seller's duty to warn about a defect; **but** a merchant has a duty to warn of a defect prior to the defect being latent.
22. T F The right to privacy is an express provision of the Bill of Rights in the USA *Constitution*.
23. T F Federal registration of a trademark preempts all previous **and** all subsequent State protections of any similar trademark that creates a reasonable likelihood of confusing a reasonable consumer.
24. T F Respectively, under patent law **and** copyright law, the employer owns the respective patent **or** copyright, **unless** there is a prior, written, signed, contract identifying the employee as the owner of the respective patent **or** copyright.
25. T F Parody of a copyrighted work **or** parody of a trademark is an implied constitutional right (*i.e., free speech*).
26. T F Reverse engineering of a trade secret reveals the secret **and** thus destroys the trade secret.

27. T F If the government obtains evidence in an **un**constitutional manner then the that evidence is admissible **only if** the evidence proves beyond all doubt the defendant committed the criminal bad deed with the criminal bad thought.
28. T F The victim of a crime (*e.g., embezzlement*) has standing to sue for the crime.
29. T F In both civil **and** criminal suits, the plaintiff bears the burden of proof. The civil burden of proof is by a preponderance of the evidence, **and** is much lower than the criminal burden of proof of beyond all doubt.
30. T F If the jury in a criminal case finds that the government satisfies its burden of proof that the defendant committed the legislatively defined bad deed **and** did so with the legislatively defined bad thought, then the defendant has committed a crime.
31. T F The separation of powers between Individual versus government can be seen in procedural due process **and** substantive due process. The separation of powers between federal versus State can be seen in the allocation of power over intellectual property. The separation of powers between legislature versus executive versus judiciary can be seen in the power of Judicial Review.

*Questions from Unit Exam Two:*

32. T F The law focuses upon the plain meaning of the contract terms;  
**and**  
if  
a term is ambiguous,  
then  
the court objectively identifies the parties' objective intent.
33. T F All of the elements of a contract are:  
agreement, capacity, consideration,  
genuineness of assent, form, **and** legal subject matter.
34. T F While all express contracts **also** are implied contracts,  
far less than all implied contracts are express contracts.  
**But** note,  
**none** of the express contracts **and none** of the implied contracts are  
*quasi* contracts.
35. T F Parties to a contract  
for the sale of services,  
**but not** for the sale of goods,  
must reach an agreement that satisfies the Mirror Image Rule.
36. T F There are four contract terms that routinely are  
material:  
parties, time, consideration, **and** subject matter.
37. T F The offeree has the power to create a contract with an acceptance.  
However,  
an effective revocation by the offeror **or**  
an effective rejection **or** counter offer by the offeree  
terminates that power **and** the offer.  
The offeree's silence is acceptance  
if  
the parties' previously agreed silence is acceptance  
**or** if  
a minor does **not** disclaim a voidable contract  
within a reasonable time after reaching the age of majority.
38. T F Promissory estoppel is an equitable remedy.

39. T F Consideration must be legally sufficient **and** must be a bargained for exchange.
40. T F A contract's terms must be sufficiently definite so that the court can enforce the contract.  
A requirements contract uses the objective needs of the buyer while  
an output contract uses the objective abilities of the seller to measure the quantity obligations of the contract.
41. T F A contract with liquidated debts can support an accord **and** satisfaction, **and** can support a release.
42. T F Capacity is a concept used by the law in different contexts **and** the amount of capacity required varies by context.  
The four contexts are:  
contract, crime, tort, **and** wills.
43. T F A covenant **not** to compete has two prime requirements in all jurisdictions:  
a reasonable time **and** a reasonable area.  
Jurisdictions vary widely in what is seen as reasonable **as well as** how to respond to an **unreasonably** excessive time **or** area.  
Some jurisdictions reform an excessive covenant, others sever the excessive term, **and** still others void the excessive term **or** void the whole transaction.
44. T F A contract might be **unconscionable** either via procedural **unconscionability** **or** via substantive **unconscionability**.  
An adhesion contract containing an exculpatory clause is far more likely to be an **unconscionable** contract if  
that contract is between a merchant **and** a consumer than if  
that contract is between two sophisticated businesspersons.

45. T F Material is a concept used by the law in various contexts. The four contexts of material are: common law fraud, mutual mistake (*i.e., both parties make the same mistake of material fact*), security law fraud **and** unilateral mistake (*i.e., the **non**-mistaking party subjectively knows [i.e., has actual knowledge] the mistaking party made a mistake of material fact*),
46. T F The defendant commits common law fraud if the defendant knowingly **and** intentionally **misrepresents** a material fact thereby inducing the plaintiff's reliance **and** causing the plaintiff's injury.
47. T F The law is more likely to see legally objectionable duress if it is physical duress than emotional duress **or** economic duress. Similar to emotional duress is the separate cause of action called **undue** influence. Economic duress is far more likely if the behavior is predatory instead of privileged.
48. T F A signature is any mark with the current intent to authenticate the document. Federal law has **not** preempted the States with respect to electronic signatures for many transactions the State completes (*e.g., wills, deeds*).

- 49. T F** The Statute of Frauds requires five types of contracts to have their material terms in a written memorandum of sufficient definiteness that the court can enforce the agreement of the parties' **as well as** signed by all parties to the contract. The five types of contracts are:  
sale of "goods" at **or** over \$5,000;  
sale of an interest in land;  
must take longer than one year;  
guarantee the debts of another; **and**  
in consideration of marriage.
- 50. T F** Privity of contract includes all parties  
(*i.e., including vested intended beneficiaries*)  
to the contract.
- 51. T F** With respect to assignment of rights **and** delegation of duties, both the old common law **and** the new common law at their core share the same focus: the parties' reasonable expectations. However,  
the old common law presumes all assignments **and** all delegations materially alter the parties' reasonable expectations.  
In contrast,  
the new common law presumes most assignments satisfy the parties' reasonable expectations.
- 52. T F** A condition concurrent  
(*e.g., tender [i.e., ready, willing, **and** able]*)  
involves multiple simultaneous condition precedents,  
which  
if **not** reciprocated  
act as a condition subsequent.

53. T F Ideally, contracts are discharged with complete performance. Substantial performance discharges the duty to continue to perform **but** creates liability for damages. However, an express condition, **unlike** an implied condition, classifies substantial performance as a material breach.
54. T F Receipt of an anticipatory breach empowers the **non**-breaching party to either sue immediately **or** to wait **and** sue on the due date. For example, if the **non**-breaching party elects to await performance, **and** if the breaching party effectively repudiates the anticipatory breach prior to the due date **and** tenders performance by the due date, then, on the due date the **non**-breaching party may sue for the anticipatory breach.
55. T F Each of the following is a contract: an accord **and** satisfaction, a mutual rescission, **and** a novation.
56. T F A party breaching a contract is legally liable for economic losses **and** for consequential damages.
57. T F The party breaching a contract has a duty to mitigate damages.
58. T F In an adhesion contract between a consumer **and** a merchant a liquidated damages clause is **unconscionable**. A valid liquidated damages clause exists if at the time of contract it was reasonable for the parties to believe that at the time of loss estimation of damages would be difficult, **and** at the time of contract the parties' make a reasonable estimation of what the losses will be at the time of loss.

59. T F Because the worldwide web is inherently multi-jurisdictional, international law strongly discourages express contract clauses that make a choice of law, choice of forum, choice of venue, **and** choice language.
60. T F The generic public policy hostility towards adhesion contracts is increased in the context of the worldwide web.
61. T F With the advent of the worldwide web the law switched to the eMail Box Rule.

*Questions from Unit Exam #3:*

62. T F Under the UCC (*i.e., Uniform Commercial Code*) sale of goods, **both** a consumer (*i.e., natural person buying for personal use*) **and** a merchant (*i.e., deal in goods of that kind, hire an agent who is a merchant, or hold self out as a merchant*) may **disclaim** the obligation of good faith.
63. T F Goods are tangible **and** movable (*e.g., trade fixtures*). It is a question of law for the court to determine whether a mixed transaction (*e.g., simultaneous sale of goods **and** sale of services*) has as its predominate nature a sale of goods **and** is covered by the UCC.
64. T F The UCC (*i.e., Uniform Commercial Code*) via open terms relaxes the requirements for formation of a contract; **but**, the parties still must agree on the quantity to be sold (*except for output contracts **and** for requirements contracts*).

65. T F Under the UCC,  
acceptance of the buyer's offer may be manifested  
by the seller  
promptly shipping **non**-conforming goods as an accommodation  
**and/or**  
by the seller  
agreeing to the buyer's offer **but**  
the seller insisting upon additional terms.
66. T F A fungible good that is commingled  
can be identified only by severing it from the mass.
67. T F Entrustment requires that the bailee of the good be a merchant.
68. T F If  
the goods are identified,  
then  
the buyer has an insurable interest in the goods.
69. T F Good faith,  
under the UCC,  
is a question of law; **and**  
for both the consumer **and** the merchant good faith requires  
honesty in fact **and** commercial reasonableness.
70. T F Under the UCC,  
while the buyer  
might expect perfect tender by the seller  
the seller has the option of providing **non**-conforming goods  
subject to the buyer's timely rejection **or** revocation of acceptance, **and**  
subject to the buyer's right to cure.

71. T F Under the UCC,  
if  
the seller has reasonable grounds for **insecurity**,  
then  
the seller has the right to demand adequate assurance from the buyer.  
If  
the seller demands adequate assurance,  
then  
the buyer might remove some reasonable grounds for **insecurity**  
by supplying a Letter of Credit.
72. T F Under the UCC,  
the buyer's inspection  
is a condition precedent to the buyer's duty to pay.
73. T F Under the UCC, like the common law of contracts,  
remedies are cumulative.
74. T F Generally,  
under the UCC,  
the **non**-breaching party is entitled to contract damages  
*(i.e., difference between the contract price **and** the market price)*  
**plus** incidental damages, **and**,  
consequential damages *(e.g., lost profits)*,  
**unless** the consequential damages are **disclaimed or** forfeited.
75. T F Under the UCC,  
the breaching party's duty to mitigate damages  
includes the breaching party's right to cover  
*(i.e., upon anticipatory repudiation **or** upon failure to perform,  
breaching party enters the market **and** obtains substitute goods).*
76. T F The buyer's rejection of the seller's goods  
must be made within a **Reasonable time and**  
the buyer must provide the seller with notice of both  
the rejection **and** the good's defects within a **Seasonable time; or**  
the buyer forfeits some of the buyer's UCC rights.
77. T F A seller's  
affirmation of fact that becomes the basis of the bargain  
creates an express warranty  
in the sale of goods.

78. T F A seller of goods, by the act of selling goods, creates an implied warranty that the goods are reasonably fit for the ordinary purpose for which such goods are used.
79. T F The personal property owner's objective intent determines whether personal property is a fixture **or** a trade fixture.
80. T F A gift requires the donOR to intend a gift **and** to deliver a gift **as well as** the donEE to accept the gift.
81. T F Some bailed property controlled by a negotiable document of title is in the types of bailment that impose strict liability on the bailEE if the bailed property is damaged during the bailment.
82. T F Adverse possession is a means of gaining ownership of an easement **or** a profit; **and** a quit claim deed is a means of ending an easement **or** a profit.
83. T F If the use of the legislative power of zoning is too restrictive, then the zoning becomes a taking via eminent domain rather than a mere regulation.
84. T F A tenant of a residential property may successfully sue the landlord for constructive eviction alleging the landlord breached the implied warranty of habitability; **but** only if the tenant vacates the residential property.

85. T F A tenant of a commercial property may successfully sue the landlord for negligence alleging the landlord **either** did **not** inspect **or** did **not** repair portions of the property under the landlord's control; **or** the landlord objectively knew of a risk of crime by third parties **and** the landlord did **not** take reasonable corrective action.
86. T F The purpose of insurance is for the insurER to pool similar risks **and** then to allow the insurED to pay a policy premium equal to the average cost of the insurED's risk *(plus administrative costs and insurER's profit)* instead of the insurED setting aside the total cost of the risk via self insurance.
87. T F All contracts for insurance require the insurED to have an insurable interest. Life insurance requires an insurable interest at the time of contract. Property insurance requires an insurable interest at the time of loss.
88. T F All insurance contracts are adhesion contracts **and** all insurance contracts are interpreted against the insurER.
89. T F A will must be a signed *(i.e., any mark with the current intent to authenticate the document)* writing witnessed by two disinterested persons who can attest to the testator's capacity *(i.e., testator's intent to create a will, and testator comprehends the testator's property and comprehends the natural objects of the testator's bounty)*.

90. T F The UPC (*i.e., Uniform Probate Code*) imposes a spousal election (*i.e., a one-third minimum share of the estate*); **and**, alternatively, the UPC imposes a distribution with grandchildren of either *per capita* (*i.e., divide equally by number of surviving heirs*) **or** *per stirpes* (*i.e., divide equally at the level of the deceased's children*).
91. T F A trustee owes a merchant's level of good faith. A trust is created when the donor delivers the corpus of the trust to the trustee for the benefit of the beneficiary **and** the trustee accepts that corpus **and** duty.
92. T F Nebraska uses the *Ultramares* Rule (*i.e., the professional has foreseen the third party*).
93. T F Most communications related to professional representation between the client **and** the professional are confidential if the professional is an accountant, **and** privileged if the professional is an attorney. The professional owns **and** controls the confidence **and/or** the privilege.

*Questions from Ethics Exam:*

94. T F If an action is **IL**legal, then, conclusively, because the law springs from ethics, that action is **un**ethical.

95. T F New technology often creates new ways of acting lawfully **but** **unethically**.
96. T F Economic power might allow one party to take advantage of another party, **and** that advantage might be privileged economic duress **or** predatory economic duress; **and** **neither** form of duress necessarily is ethical **or** **unethical**.
97. T F Privity might define the legal limits of legal claims on an actor; **but**, privity does **not** define the ethical limits of ethical claims on an actor.
98. T F A fiduciary in a conflict of interest between two principal's (*e.g., insurER's agent acting as the insurED's broker*) acts ethically by serving first the interests of the party who second became a principal.
99. T F Ethically, every confidential communication deserves less protection than every privileged communication.
- 100.T F There is a little ethical difference between a breach of contract **and** a breach of a tort duty of care.

***Be sure to finish the exam.***

***Be sure to mark you answers on the back of the computer graded answer sheet for questions 101 through 105.***

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***Be sure to mark you answers on the back of the computer graded answer sheet for questions 101 through 105.***

- 101.T F** All contracts ethically require a duty of good faith.
- 102.T F** An exculpatory clause at its lawful limit is less ethical than a liquidated damages clause at its lawful limit.
- 103.T F** It usually is ethical to compel contractual performance when performance is now subject to material foreseen risks.
- 104.T F** While **none** of these three always is ethical, they are ranked from most ethical to least ethical:  
Statute of Limitations;  
Statute of Repose;  
**incontestability** clause.
- 105.T F** Answer True if you would like an extra credit question worth 0.3% of the course's total points.