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**print name on line above**  
**INSTRUCTIONS:**

1. This Final Exam must be completed within the allocated time  
(*i.e., 120 minutes*).  
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 return both the student's exam and answer sheet  
and then leave the exam room until after the end of the exam  
(*e.g., all students finish in less than 120 minutes*).
4. Grades will be posted to BlackBoard no later than 5:00 PM Friday, December 15.  
An email notice of the posting will be sent.
5. This Final Exam is worth 40% of the course grade.  
The True-False form of 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 university identification 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 [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 to a CBA Dean's Office RH 414 secretary  
**no later than 4:00 PM on Wednesday, December 20.**

## QUESTION TOPICS from EXAM #1:

1. **T F** USA law favors the objective over the subjective.  
The objective can be express **or** can be implied.  
Express is in words: oral **or** written.  
Implied is in acts, words, **and/or** circumstances.
2. **T F** Knowing can take any of three forms:  
actual knowledge (*e.g., scienter*), receipt of notice, **or** reason to know.
3. **T F** Substantive due process is satisfied when a government provides  
notice **and** hearing,  
both proportional to the interests (*e.g., liberty*) involved.
4. **T F** The law seeks to satisfy the reasonable expectations of each person.
5. **T F** All three forms of the separation of powers are expressly stated  
in the Nebraska *Constitution* **and** in the USA *Constitution*.
6. **T F** A court must have the authority to act  
(*i.e., both subject matter jurisdiction and geographic jurisdiction*).
7. **T F** If  
the government uses procedural due process to implement a taking,  
then  
that taking of private property is constitutional.
8. **T F** A plaintiff who has purposefully availed  
the plaintiff to the benefits of a geographic jurisdiction  
has satisfied the Long Arm Statute's  
requirement for substantial minimal contacts.
9. **T F** One consequence of globalization of the world economy has been  
the legal power of each nation's citizens to choose  
the law, the forum, the venue, **and** the language  
that will govern their legal relationships (*e.g., contracts*),  
subject only to the requirement of substantial minimal contacts.
10. **T F** To have standing to sue a defendant must have  
either an injury in fact **and** be within the zone of protected interests.
11. **T F** An appellate court will affirm a trial court **unless** the trial court has made  
an error of fact, an error of procedure, **or** an error of law.
12. **T F** All consumers are both natural persons **and** legal persons.

- 13. T F** A fiduciary's subjective good faith is commercial reasonableness.
- 14. T F** At the core of the Commerce Clause federal law preempts the States on the question of enforceability of arbitration agreements.
- 15. T F** Both a Motion to Dismiss **and** a Summary Judgment require the trial court to resolve a question of law.
- 16. T F** In a civil case the plaintiff has the burden of providing proof by a preponderance of the evidence.
- 17. T F** The Police Power is the power of a USA State to regulate for the People's health, safety, morals, **and** general welfare.
- 18. T F** Post-1937 the Commerce Clause is interpreted as authorizing federal regulation of all commerce with a close **and** substantial Affect on commerce between the States.
- 19. T F** Preemption is **not** favored, **but** may be allowed if:  
[1] clear intent of Congress **and** a need for uniformity;  
**or**  
[2] express intent of Congress **and** national interests outweigh State interests.
- 20. T F** Any USA government may regulate any political speech to the extent of reasonable regulations of the time, place, **and** manner of that political speech.
- 21. T F** All corporate citizens have the constitutional right against of self incrimination.
- 22. T F** A USA State's regulation is presumed valid.
- 23. T F** A USA State's discretion under domestic comity is limited to fundamental questions of public policy.
- 24. T F** If the State has sovereign immunity for an action, then that action is an Act of State.
- 25. T F** If an action is ethical, then that action is legal.
- 26. T F** Both the law **and** ethics require that a person have subjective capacity for the action.

27. **T F** If a business profit maximizes, then the business is acting ethically.
28. **T F** Torts are fault based.
29. **T F** The defendant has committed a tort if the plaintiff can prove by a preponderance of the evidence that the defendant owed **and** breached a duty of care to the plaintiff, **and** that breach was the proximate cause of the plaintiff's injury.
30. **T F** If the plaintiff knowingly **and** voluntarily exposes the plaintiff to the risk of an injury, then the plaintiff has assumed the risk of that injury.
31. **T F** A defendant commits common law fraud if the defendant knowingly **and** intentionally **misrepresents** a material fact, thereby inducing the plaintiff's justifiable reliance **and** proximately causing the plaintiff's damages.
32. **T F** Parody of a trademark is Fair Use.
33. **T F** Reverse engineering creates a new owner of a patent.
34. **T F** The victim of a crime might have standing to sue the defendant for a tort in civil court.
35. **T F** The government always is the plaintiff in a criminal court.

**QUESTION TOPICS from EXAM #2:**

36. **T F** The six elements of a contract are: agreement (*i.e., offer **and** acceptance*), capacity, consideration (*i.e., value*), reality of assent, form, **and** legal subject matter.
37. **T F** A *quasi*-contract is a contract.

- 38. T F** There are four terms of all contracts that are material terms:  
parties, time, capacity, **and** subject matter.
- 39. T F** The Mirror Image Rule requires an offerEE's acceptance to be **not** materially different from the offerOR's offer.
- 40. T F** If  
a minor's contract fails to form,  
then  
the defendant adult's promise might still be enforceable via  
the equitable remedy of promissory estoppel.
- 41. T F** The Objective Theory of Contracts makes silence acceptance.
- 42. T F** The Mail Box Rule  
allows the offerOR to become bound to a common law contract  
based on the offerOR's objective knowledge.
- 43. T F** Legally sufficient value alone is **not** consideration.
- 44. T F** How each State defines  
reasonable time **and** reasonable area for covenants **not** to compete  
reflects the difference between  
Freedom **of** Contract  
and  
Freedom **from** Contract.
- 45. T F** An **illusory** promise is **not** consideration.  
However,  
a requirements contract **and/or** an output contract  
each is enforceable  
because each uses an objective definition of the contract's quantity.
- 46. T F** A person with contractual capacity  
has the ability to grasp the natural consequences of that person's actions.
- 47. T F** Every person who is objectively intoxicated lacks capacity.
- 48. T F** All transactions by an adjudicated **incompetent** person are voidable.
- 49. T F** All USA States make many gambling contracts **illegal** subject matter;  
**and**  
all USA States make many insurance contracts legal subject matter.

50. **T F** An adult may seek the equitable remedy of restitution  
(*i.e., majority rule is the return of the consideration value at the time of the transaction*)  
if  
the minor child (*i.e., under age 20 in Nebraska*)  
**disaffirms** the child's voidable contract.
51. **T F** If  
a common law contract for the sale of services  
is an **unconscionable** contract,  
then  
an identical UCC contract for the sale of goods is **unconscionable**.
52. **T F** A common law contract containing an overbroad covenant **not** to compete  
will have the offensive covenant reformed (*i.e., rewritten*)  
by a Nebraska court so that the covenant is consistent with public policy.
53. **T F** A unilateral mistake  
requires a larger "material" than common law fraud;  
which means common law fraud provides more Freedom **of** Contract.
54. **T F** Both the Chief Executive Officer (*CEO*) **and** Chief Financial Officer (*CFO*)  
are required by the Sarbenes-Oxley Act (*SOxA*)  
to personally sign an affirmation of the corporation's financial statements.  
If  
the CEO **or** the CFO has actual knowledge of a common law fraud  
being perpetrated by the corporation,  
then  
the CEO **or** CFO ethically gets away with it if **no** one ever finds out.
55. **T F** A corporate employEE's ethical duties as a natural person,  
as contrasted with the ethical duties  
that spring solely from the employment relationship,  
given the different definitions of "material",  
are greatest with respect to securities law fraud.
56. **T F** In Nebraska, a fiduciary is rebuttably presumed  
to have the opportunity for,  
the inclination to exercise, **and**  
to have generated a result consistent with,  
**undue** influence.
57. **T F** Privileged economic duress can **not** be legally objectionable duress.

58. **T F** A guarantee contract must be in a signed, written memorandum of sufficient definiteness that the court can enforce the parties' agreement.
59. **T F** The federal government has preempted the individual USA States on the question of whether a consumer's mouse click is a signature for the web purchase of "goods".
60. **T F** An incorporation by reference clause in a contract necessarily creates a material ambiguity if the contract **also** has a merger clause.
61. **T F** Both the Old Common Law **and** the New Common Law governing assignment of contract rights **and** delegation contract duties focus on any material alteration of the parties' reasonable expectations. Accordingly, if a contract is for land **or** for specially manufactured goods, then the contracting parties' remedies can include specific performance.
62. **T F** An intended creditor beneficiary third party to a contract is **not** a party to the contract (*i.e., lacks privity*) at the time of contract formation.
63. **T F** Perfect tender is an implied condition concurrent in all contracts.
64. **T F** An express condition precedent transforms performance that ordinarily would have been substantial performance into a material breach; thus the contractual duties are **not** discharged **and** damages are owed.
65. **T F** The duty to mitigate damages starts upon the **non**-breaching party's receipt of an anticipatory breach.
66. **T F** Substantive due process limits the procedural due process choice available to the legislature (*e.g., minimum duration of tolling prior to a Statute of Repose terminating standing to sue*).

- 67. T F** If the parties do **not** exercise their Freedom **of** Contract by agreeing to a *Force Majeure* Clause, then the law will be slow to impose Freedom **from** Contract upon the parties by implying a condition subsequent of commercial impracticality **or** commercial impossibility.
- 68. T F** Contractual damages under the common law of contracts ordinarily are limited to compensatory damages  
(*i.e., the difference between the contract price **and** the market price*) **plus** incidental damages.  
If a loss is an economic loss  
(*i.e., tort committed within the contractual relationship*), then that loss is **not** recoverable via contract damages.
- 69. T F** If one merchant obtains another merchant's contractual agreement to expressly **and** reciprocally disclaim both parties clearly foreseen lost profits, then both merchants act both legally **and** ethically.
- 70. T F** A liquidated damages clause between two merchants engaged in sophisticated risk management acts a condition precedent for the creation of a liquidated debt for the related breach **and** acts as a condition subsequent to discharge the duty to perform.

**QUESTION TOPICS from EXAM #3:**

- 71. T F** Both the common law of contracts **and** the UCC (Uniform Commercial Code) develop the law of **unconscionable** contracts.
- 72. T F** The Uniform Commercial Code (*UCC*) Article 2 Sale of Goods covers services if the predominate nature of the transaction is a sale of goods.

73. **T F** A "consumer" is a natural person buying goods for personal use **or** household use. A "merchant" is any person that: deals in goods of that kind, hires an agent who is a merchant; **or** holds self out as a merchant.
74. **T F** The parties to a UCC Sale of Goods contract may **not** disclaim the obligation of good faith (*i.e., honesty in fact **and** commercial reasonableness*) **and** may **not** disclaim injuries proximately caused by consumer goods.
75. **T F** Both the UCC **and** the CISG (*Convention on Contracts for the Sale of Goods*) allow open contract terms by rejecting the Mirror Image Rule. However, the quantity term to be defined by the contract.
76. **T F** A seller's accommodation shipment to buyer is an acceptance.
77. **T F** The UCC allows merchant parties to alter their contract **without** requiring new consideration for mutually agreeable **and** identical additional terms **and/or** modifications.
78. **T F** A seller identifies goods when the seller designates goods in existence.
79. **T F** A seller of goods must have **a** risk of loss to have an insurable interest sufficient to purchase an insurance contract.
80. **T F** The UCC Statute of Frauds uses a dollar amount of \$5,000 **and** the implies a merchant's signature following ten days of silence after that merchant's receipt of a signed contract from the other merchant. The CISG Statute of Frauds matches the UCC.
81. **T F** If an owner bails goods to a merchant who deals in goods of that kind, then the owner has entrusted those goods to that merchant. The merchant to whom goods have been entrusted transfers good title to any buyer who purchases for value **and** **without** knowledge that the merchant lacks good title.
82. **T F** The common law of contracts, the UCC, **and** the CISG require perfect tender.

- 83. T F** A seller has a right to cure individual breaches of an installment contract at any time prior to the buyer filing a law suit.
- 84. T F** All parties to a UCC contract have a right of assurance **and** owe a duty of cooperation.
- 85. T F** The UCC buyer has an absolute right of inspection.
- 86. T F** Under the UCC Sale of Goods lost profits are an economic loss **and** thus recovered as incidental damages.
- 87. T F** The right to cover helps the **non**-breaching party to discharge the **non**-breaching party's duty to mitigate damages.
- 88. T F** The federal Magnuson-Moss Warranty Act requires privity for all merchant's written warranties.
- 89. T F** The UCC does **not** require the buyer to choose between an express warranty  
(*i.e., affirmation of fact that is the basis of the bargain*)  
**and**  
an implied warranty of fitness for a particular purpose  
(*i.e., seller objectively knows of buyer's reliance*).  
A seller may disclaim all warranties.  
All disclaimers must be conspicuous.
- 90. T F** An item that ordinarily is a trade fixture can **not** be a fixture.
- 91. T F** The original owner of lost personal property transfers ownership to the finder (*i.e., finder's keepers*) via a constructive gift.
- 92. T F** A bailment is a contract.
- 93. T F** The owner of an easement **or** a profit owns adjacent real estate.
- 94. T F** Waste exists if an owner of real estate whose ownership interest in that real estate is less than a fee simple absolute uses that real estate in a manner that exceeds those ownership rights **and** reduces the ownership rights of other owners.

95. **T F** Zoning violates substantive due process if the zoning does **not** eliminate all nuisances.
96. **T F** A seller of real property grants an implied warranty of habitability.
97. **T F** The insurED must have had an insurable interest at the time of contract to collect on an insurance contract.
98. **T F** The moral hazard is prior to formation of the insurance contract.
99. **T F** An insurance contract that is obtained for the insurED by an insurance broker is **not** an adhesion contract.
100. **T F** Testamentary capacity requires a person to grasp the natural consequence of one's actions (*e.g., to know the natural objects of that person's bounty*). Accordingly, if the testator excludes a child from the will **without** acknowledging the existence of that child, then that exclusion creates a rebuttable presumption of a lack of testamentary capacity.
101. **T F** A trustee owes a fiduciary duty to the grantor of the trust.
102. **T F** An enforceable will must be express, signed, witnessed, **and** published.
103. **T F** Nebraska requires tort **or** contract privity for liability of State licensed professionals.
104. **T F** Security law material is what a reasonable prudent investor would want to know prior to making a decision; **and** that is magnified by an affirmative duty to speak the truth.
105. **T F** The accountant's Due Diligence safe harbor is safer than the lawyer's.