
print name

INSTRUCTIONS:

1. The Comprehensive Final Exam must be completed within the allocated time (*i.e.*, 11:30 AM - 1:30 PM). It is a closed book, solo exam.
2. **Please read carefully.** Sentence structure influences the meanings of words. **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 a answer key and leave the exam room until after the end of the exam (*i.e.*, 1:30 PM, unless all students finish earlier).
4. Exam grades and preliminary course grades will be posted to BlackBoard no later than 5:00 PM, Friday, May 6. 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 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. *An appeal only affects the exam grade of the student who has made 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 the argument 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* **no later than 6:01 PM on Tuesday, May 10 in RH 218.** Course grades will be posted to EBRUNO after appeals are resolved.

QUESTIONS:

1. **T F** The objective can be either express
(*i.e., in words: oral **or** written*)
or implied
(*i.e., via acts, words, **and/or** circumstances*).
2. **T F** To have standing to sue in a court of law
the cause of action must be filed before
the tolled Statute of Limitations has run **or** the Statute of Repose has run.
3. **T F** All consumers **and** all citizens are natural persons;
but only some legal persons are natural persons.
4. **T F** Jurisdiction (*i.e., the authority to act*) comes in many forms.
If
the court is to exercise the State's long arm jurisdiction,
then
the defendant must have
substantial minimal contacts with the State's geographic jurisdiction.
Subject matter jurisdiction
requires a grant of power from a relevant *Constitution*,
relevant legislative act, **or** inherent common law power of that court.
Typically,
federal courts have concurrent jurisdiction
rather than exclusive jurisdiction.
5. **T F** The person suing on a cause of action
(*e.g., the plaintiff*)
is required to have standing to sue
(*i.e., injury in fact **and** within the zone of protected interests*)
for that cause of action; **or** a motion to dismiss will be granted.
6. **T F** In the USA **and** its States,
the parties to a contract have the freedoms of
choice of law
choice of forum
(*e.g., Nebraska federal District Court*);
choice of venue
(*e.g., federal courthouse in Omaha, rather than in Lincoln*);
and
choice of language (*e.g., Spanish*) for their contract.

7. **T F** If the trial court makes a clear error of fact, a **non-harmless** error of procedure, **or** any error of law, then the appellate court will reverse the trial court.
8. **T F** By statute, the federal government has preempted the States on the issue of parties to an enforceable contract in commerce among the several States agreeing to substitute binding arbitration for the State's judicial process.
9. **T F** Intentional interference with contractual relations, **but not** negligent interference with contractual relations, is a tort.
10. **T F** The power of Judicial Review is an implied power in the USA *Constitution*.
11. **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 a person's life, liberty, **or** property to be done via due process of law.
Substantive due process provides judicial protection of a legal person's fundamental right
(*e.g., privacy as a fraction of liberty*).
The courts often focus on procedural due process when seeking to provide substantive due process.
Procedural due process requires a notice **and** a hearing, both proportional to the interest involved.

- 12. 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. Prior to the year 1937 the USA Supreme Court interpreted the meaning of the word “among” as granting power over a “direct **E**ffect” on commerce between the States; while after the year 1937 the USA Supreme Court interprets the meaning of the word “among” as granting power over “close and substantial **A**ffects” on commerce between the States.
- 13. T F** The Police Power is the power of a USA State to regulate for the People’s health, safety, morals, **and** general welfare. The federal government only has zero direct power over health, safety, **and** morals. To reach those issues the federal government must act **i**ndirectly using a grant of power the States did give the federal government (*e.g., Commerce Clause*).
- 14. T F** If Congress expressly states a need for uniformity **and** Congress expressly asserts federal preemption of State laws, then the courts must enforce that federal preemption via the Supremacy Clause.
- 15. T F** The Amendment XIV Equal Protection Clause reduces the power of State legislatures with respect to defining similarly situated persons as being treated similarly. The reduction of State power is greatest for State discrimination based on social regulation **and** economic regulation (*e.g., State discrimination based on gender*).
- 16. T F** The Article IV Full Faith and Credit Clause is an express acceptance, by each USA State, of a duty of domestic comity in place of the otherwise mere international custom of comity.

17. **T F** A transaction with commercial attributes that is completed by one government within the geographic jurisdiction of another government is an Act of State **and** is covered by sovereign immunity.
18. **T F** All torts (*i.e., intentional torts, negligence torts, and strict liability torts*) are based upon the trier of fact's finding of fault.
19. **T F** The defendant has committed a tort if the defendant breaches a duty of care owed the plaintiff, **and** that breach is the proximate cause (*i.e., foreseen*) of the plaintiff's injury.
20. **T F** If the plaintiff knowingly exposes the plaintiff to the harm **or** the risk of harm created by the defendant's act, then the plaintiff has assumed the risk.
21. **T F** The old common law of torts used proximate causation **and** comparative negligence while the new common law of torts uses actual causation **and** contributory negligence.
22. **T F** Common law fraud exists when the defendant knowingly **misrepresents or** omits a material fact, thereby inducing the plaintiff's justifiable reliance **and** causing the plaintiff's injury.
23. **T F** A latent defect is a defect that the plaintiff's inspection did **not** reveal.
24. **T F** The USA *Constitution* expressly protects privacy.
25. **T F** The Statute of Repose may be tolled; **but,** the longest tolling is cut off by the Statute of Limitations. However, the legislature's discretion for adopting a Statute of Limitations is limited by substantive due process.

26. **T F** Because the USA *Constitution* provision granting the federal government power over intellectual property does **not** apply to trademark
(*i.e., trademarks are not exclusive*
[e.g., Acme Baking as well as Acme Car Repair]
and *trademarks are not for a limited duration*),
and
because the federal government must rely on its Commerce Clause power to regulate trademarks, the federal power over trademarks is too weak for federal registration of a trademark to preempt a State's trademark registration protection of confusing similar marks.
27. **T F** Both federal patent law
and
State trade secret law
allocate initial ownership of an employEE's creative effort to the employER.
28. **T F** Parody of a copyrighted work
as well as
parody of a trademark
is a form of constitutionally protected free speech.
29. **T F** The federal government's power to grant patents **and** to grant copyrights is narrow.
Accordingly,
Congress lacks to the power to protect domestic trade secrets because
trade secrets are **not** for limited durations **and** are **not** exclusive.
30. **T F** Via Amendment IX
(*i.e., enumeration does not disparage*) **and**
via Amendment X
(*i.e., reserved unless expressly granted or expressly denied*),
the USA *Constitution's* separation of powers
expressly the powers of the federal government are to be read broadly
and
expressly the powers of the People are to be read narrowly.

31. **T F** If the government is the victim of a crime, **and** if that crime's elements **also** prove a tort, then the government has standing to sue both for a tort **and** a crime.
32. **T F** In both civil **and** criminal suits, the plaintiff bears the burden of proof. The civil burden of proof is by clear **and** convincing evidence, **and** that civil burden is much lower than the criminal burden of proof of beyond a reasonable doubt.
33. **T F** A defendant commits a crime by doing the bad deed with the bad thought. The government must prove objectively the defendant's subjective state of mind.
34. **T F** The Exclusionary Rule is an application of substantive due process.
35. **T F** All treaties made under the authority of the United States (*e.g., United Nations treaty*) are the Supreme Law of the land.
36. **T F** The common law of today uses the objective theory of contracts. Both the Mirror Image Rule **and** the Plain Meaning Rule are examples of the objective theory of contracts.
37. **T F** All of the elements of a contract are offer **plus** acceptance, capacity, consideration, genuineness of assent, form, **and** legal subject matter.
38. **T F** Silence may serve as acceptance a contract.
39. **T F** A party to a contract must have an adequate remedy at law, for that party may obtain a remedy in a court of law. If a contract fails to form for want of consideration, then the court of law may grant a remedy for the cause of action of *quasi* contract **or** the cause of action of promissory estoppel.
40. **T F** An agreement to agree is an agreement that forms a contract.

- 41. T F** The Statute of Frauds requires a written memorandum of sufficient definiteness that the court can enforce the parties' objective agreement. To satisfy this requirement the material terms *(i.e., parties, time, consideration, **and** subject matter)* of the contract must be in a writing signed by the party being sued.
- 42. T F** A voidable contract is enforceable by the protected party.
- 43. T F** If any of the parties' purported exchange of consideration is a preexisting duty **or** is a consideration currently used in a past contract, then a common law contract is **not** formed.
- 44. T F** Consideration equals value. Consideration is legally sufficient if the contract reflects a fair price.
- 45. T F** Agreement on quantity is critical to contract formation. If the contract merely uses the output ability of the seller **or** merely uses the purchasing requirements of buyer, then the quantity is **not** sufficiently objective.
- 46. T F** The elements of the equitable remedy of promissory estoppel are the promisOR makes a promise reasonably expecting the promisEE's justifiable reliance, **and** the promisEE performs the promised performance.
- 47. T F** If a minor, an objectively intoxicated person, **or** an objectively insane person seeks to enter a contract, then that contract is void.
- 48. T F** Generically, insurance contracts *(i.e., creation of new risk **and** the allocation of that risk by chance)* are legal subject matter. In stark contrast, generically, gambling contracts are **not** legal subject matter.

49. **T F** If a covenant **not** to compete claims an **unreasonable** time **or** claims an **unreasonable** area, then the Nebraska judicial response will be to reform it to within lawful limits.
50. **T F** Liquidated damages clauses **and** exculpatory clauses are viewed by the courts as sophisticated risk management tools.
51. **T F** A mutual mistake exists if both parties make the same material mistake of fact. A unilateral mistake exists if the **non**-mistaking party objectively knows the mistaking party is making a material mistake of fact. A common law fraud exists if the defendant knowingly **and** intentionally **mis**represents a material fact thereby inducing the plaintiff's justifiable reliance **and** injury. The material fact is largest from mutual mistake **and** the material fact is smallest for common law fraud.
52. **T F** Law in the USA is more likely to see **unlawful** physical duress than **unlawful** emotional duress, **and** the law is more likely to see lawful privileged economic duress than **unlawful** predatory economic duress.
53. **T F** Every express contract satisfies the Parol Evidence Rule **and** the Statute of Frauds.
54. **T F** Intended creditor third parties are far more likely to be able to vest than incidental beneficiary third parties.
55. **T F** If an assignment of rights **or** a delegation of duties fulfills the parties' reasonable expectations, then the assignment **or** the delegation is enforceable.

- 56. T F** A merger clause is the ordinary contract clause for creating an enforceable delegation of duties. Failure to use a merger clause creates a surety instead of a guarantee.
- 57. T F** A condition precedent creates a duty. A condition concurrent is a simultaneous duty. A condition subsequent discharges a duty. Because tender is a condition concurrent, if a party owing a duty to perform tenders performance (*i.e., ready, willing, **and** able to perform*) when due, then that duty to perform is discharged if the party owed the duty rejects the tender.
- 58. T F** Timely complete performance following a repudiated anticipatory breach discharges the duty to perform **and** there are **no** damages. While substantial performance discharges the duty to perform it **also** creates liability for contract damages from the breach. Material breach (*e.g., substantial performance of an express condition*) does **not** discharge the duty to perform **and** creates liability for contract damages from the breach.
- 59. T F** The original parties to an executory contract subject that is the subject of a good faith dispute may discharge that contract by agreement. For example, those parties may use mutual rescission, a substitute agreement, **or** a novation.
- 60. T F** Contracting parties have freedom **of** contract **and** the law will **not** save the parties from their own choices. However, if **no** reasonable person would have agreed to the contract, then the court may discharge a contract rendered objectively impossible.

- 61. T F** The remedy for breach of a common law contract is money damages, **and** loss of the benefit of the bargain is the generic measure of these damages. If, money damages cause an **injustice**, then a court of equity might use an alternative remedy (*e.g., rescission*).
- 62. T F** The plaintiff **non**-breaching party has a duty to mitigate damages. Additionally, the plaintiff's complaint must make an election of remedies. For example, the plaintiff must request the remedy of consequential damages (*i.e., damages foreseen by the parties as part of the bargain*).
- 63. T F** Technological change often changes the reasonable expectations of the People, which in turn prompts the law to change. For example, web based commerce prompted the law to be more welcoming to adhesion contracts between merchants **and** consumers.
- 64. T F** The USA States adopted the Uniform Commercial Code (UCC) after the 1937 broadening of the judicial interpretation of the federal Commerce Clause. The UCC counter balanced that broadening by reducing the federal power of preemption on the issue of the sale of goods.
- 65. T F** Under the UCC, the parties are free to use terms other than the UCC provisions in their contract. There only are two provisions of the UCC, however, that the parties to the contract for the sale of goods may **not** eliminate: the obligation of "good faith" **and** a merchant's liability for personal injury of a consumer from those goods. The UCC uses the same definition of "good faith" for both consumers **and** merchants: honesty in fact **and** commercial reasonableness.

- 66. T F** If both services **and** “goods” (*i.e., tangible personal property*) are included in the sale, then the entire transaction is categorized as a sale of “goods”.
- 67. T F** A seller’s prompt shipment of **non**-conforming goods is both the seller’s acceptance of the buyer’s offer (*thus forming a contract*) **and** a material breach by the seller that empowers the buyer to recover consequential damages due to the **non**-conforming goods.
- 68. T F** Under the UCC, the sale of specially manufactured goods allows the buyer to both have access to the remedy of specific performance (*if the seller breaches*) **and** have access to an exception to the Parol Evidence Rule.
- 69. T F** As soon as the seller identifies the goods the buyer has an insurable interest **and** the risk of loss might transfer from the seller to the buyer. Commingling fungible goods **not** of like grade **and** quality may **or** may **not** transform those commingled goods into **non**-fungible goods.
- 70. T F** Entrustment of goods to a merchant (*i.e., deals in goods of that kind, hires an agent who is a merchant, **and/or** holds self out as a merchant*) by the true owner of the goods empowers the merchant, by lawful transfer **and/or** by **unlawful** transfer, to create good title in a good faith purchaser in the ordinary course of business.
- 71. T F** The common law of contracts requirement of perfect tender by both the buyer **and** the seller is reduced by the UCC’s duty to cure. Similarly, all buyers **and** all sellers must provide the other party with both cooperation **and** assurance when requested by the other party.

72. **T F** Buyers have an absolute right of inspection.
73. **T F** The UCC provides for cumulative remedies, **unless** the parties agree that a remedy is to be exclusive.
74. **T F** The UCC right to cover modifies the common law of contracts duty to mitigate damages.
75. **T F** All merchants selling goods provide all of the following implied warranties **unless** a merchant appropriately **disclaims** the implied warranty:
good title,
no liens,
no infringement, **and**
merchantability of fitness for the ordinary purpose.
76. **T F** The federal Magnuson-Moss Warranty Act requires every covered seller to consumers in interstate commerce to provide “full” warranties **or** to provide “limited” warranties.
77. **T F** Tangible personal property becomes part of the real property (*i.e., fixture*) when the objective intent of the owner of the personal property is that the personal property become a fixture. The objective intent for trade fixtures (*e.g., commercial store fixtures*) is that the personal property is a fixture.
78. **T F** Any two natural persons in Nebraska may share ownership of real property via tenancy by the entirety.
79. **T F** The owner of real property upon which mislaid **or** lost personal property is found becomes the true owner of that mislaid **or** lost property. However, if the personal property was abandoned, then the finder of the abandoned personal property becomes the true owner.
80. **T F** A bailment, a warranty, **or** an employment agreement to be enforceable must be a contract.

- 81. T F** The bailee's liability might be slight **or** might be great for damage to the corpus of the bailment during the bailment. A few bailees (*i.e., common carriers, innkeepers*) have strict liability.
- 82. T F** Either an easement **or** a profit may be, **but** need **not** be, personal. A license always is personal.
- 83. T F** A deed must be written, signed by the grantor, **and** describe with sufficient definiteness the land being transferred. A race statute violates the USA *Constitution*.
- 84. T F** The judicial remedy for nuisance has been substantially supplanted by the legislated remedy of zoning. Aggressive zoning might be an exercise of eminent domain **and** a taking requiring both a public purpose **and** just compensation.
- 85. T F** A seller of commercial real estate has a duty to reveal a material latent defect **and** makes an implied warranty of habitability.
- 86. T F** The landlord's liability is limited to those with privity.
- 87. T F** The insurable interest of the insured must exist at the time of loss for life insurance; **but** must exist at the time of contract for property insurance.
- 88. T F** The moral hazard of insurance law refers to covered risk being under the control of the insured.
- 89. T F** The capacity required for a will is small relative to the capacity required for a contract.
- 90. T F** A trust is created when the owner of the sufficiently identified corpus of the trust, with the intent to create a trust, actually delivers to the trustee the corpus of the trust for the lawful benefit of the beneficiary. Ideally, the trust creation is done by a writing signed by both the grantor **and** the trustee.

91. **T F** A durable power of attorney is necessary if one natural person is to exercise decision making for the life **and** death medical care of another natural person.
92. **T F** The negligence liability of State licensed professionals (*e.g., accountants*) is broadened by the *Ultramares* Rule's (*i.e., liable to both those in privity **and** those with near privity [e.g., **un**vested intended third party creditor]*).
93. **T F** An accountant who performs due diligence during the accountant's client's issuance of an SEC registered security avoids liability for omissions of material facts.
94. **T F** Some conversations, between some State licensed professionals (*e.g., lawyer*) **and** that professional's client that deal with the professional engagement (*e.g., past crimes*) are both confidential **and** privileged.
95. **T F** If competition is effective **and** thus forces all firms in the market to use cost minimization as their only path to profit maximization, then the market's collective transactions yield efficiency as ethics. However, because of the time value of money (*e.g., Rule of 72*), efficiency as ethics now is **not** necessarily efficiency as ethics later.
96. **T F** Ethics can be taught.
97. **T F** If one accepts efficiency as ethics then one can **not** equate profitable with ethical.
98. **T F** An illegal action can be ethical, **and** a legal action can be **un**ethical.
99. **T F** Technological change often alters reasonable expectations **and** which actions are ethical.

- 100. T F** A corporation owes an ethical duty of social responsibility, **but not** a legal duty.
- 101. T F** An ethical duty springing from a fiduciary duty is **not** the same as the ethical duty springing from privity.
- 102. T F** A Covenant **not** to Compete adhesion contract protecting a trade secret is more ethical than a residential lease adhesion contract with an exculpatory clause.
- 103. T F** The ethics of freedom **of** contract directly controls more transactions than the ethics of freedom **from** contract.
- 104. T F** Privileged economic duress is more likely to be ethical than predatory economic duress.
- 105. T F** If a State licensed professional, who is capable of receiving privileged communications (*e.g., attorney*), while in the performance of professional duties for a client receives a description of the past criminal action from the client; **and** if that information creates in the professional a reasonable belief of a past criminal act by the client, **and** if that past criminal act by the client did cause serious financial harm to a person **not** in privity with the professional, then the professional acts ethically when the professional maintains the client's confidence **and** privilege by the professional remaining silent.