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As your signature, legibly **PRINT** your name on the line above: minus 1% if fail to do so.  
**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*);  
as well as the material difference between the conjunctives **and** versus **or**.
3. As each student finishes this Final Exam,  
that student shall return the 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 **Thursday, May 3**.  
An email notice of the posting will be sent.
5. For most students, this Final Exam is worth 40% of your 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.  
Via an appeal in equity any student may appeal the grading of any of the 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** a Dean's Office secretary in RH 414  
no later than 4:00 PM on Friday, May 4.

**NOTE:** For all questions below **UCC** means Uniform Commercial Code, Article 2 and **CISG** means the United Nations' Convention on Contracts for the International Sale of Goods.

**QUESTIONS:**

1. **T F** USA law allocates liability towards actions that are both knowing **and** voluntary (*e.g., assumption of the risk defense in tort*). Also, USA law favors the objective over the subjective. Knowing comes in three forms: actual knowledge (*subjective [i.e., scienter]*), receipt of notice (*objective*), **and** reason to know (*objective*).
2. **T F** Objective can be express (*i.e., written*) **or** can be implied (*i.e., acts, words, and circumstances*).
3. **T F** Equity relies upon maxims; in contrast, the common law relies upon rules. *Stare decisis*, once established, is reversed when that reversal [a] can accommodate the People's settled expectations; [b] is consistent with the court's legitimacy (*e.g., jurisdiction*); **or** [c] is workable (*e.g., technological change has eroded the precedence*).
4. **T F** A cause of action's standing to sue requires the plaintiff to both suffer an injury in fact (*i.e., objective injury*) **and** to be within the zone of protected interests (*i.e., make arguments consistent with public policy*).
5. **T F** When physically within the USA, all natural persons are legal persons.
6. **T F** A common law consumer who acts with scienter of honesty acts in good faith.
7. **T F** When an appellate court finds an error by the trial court that appellate court will affirm that trial court **unless** the appellate court finds a clear error of fact, *non-harmless error of procedure*, **and** an error of law.

8. **T F** The power of judicial review is an implied authority found in the USA *Constitution's* Article VI Supremacy Clause **and** it empowers the courts to declare **un**constitutional acts of the government.
9. **T F** A court must have jurisdiction (*i.e., either subject matter [e.g., bankruptcy] jurisdiction or geographic [i.e., substantial minimal contacts] jurisdiction*).
10. **T F** A Motion to Dismiss requires the trial court to resolve, **but** a Summary Judgment does **not** require the trial court to resolve, a question of material fact.
11. **T F** The vast majority of regulation of business is a taking. A government within the USA may take all of a business' private property as long as that government provides the business with procedural due process (*i.e., notice **and** hearing both proportional to the interests involved*), just compensation (*i.e., fair market value*), **and** the taking is for a public use.
12. **T F** The required level of the burden of proof is much higher for conviction in a criminal cases (*i.e., beyond a reasonable doubt*) than is ordinarily used for a decision in a civil case (*i.e., preponderance of the evidence*).
13. **T F** The Police Power is the power of the State government to regulate for the People's health, safety, morals, **and** general welfare. A State **also** might choose to use its power to tax. However, since a State may **not** do **indirectly** that which it may **not** do directly, the State must be careful to avoid a tax that discriminates against interstate commerce in the form of taxation that is an exercise of the power to destroy.

- 14. T F** Preemption is **not** favored, **but** may be allowed if  
(a) express intent of Congress  
    **and** national interests outweigh State interests; **or**  
(b) clear intent of Congress **and** need for uniformity.  
For example,  
the federal government has expressly preempted the State judiciaries  
on the question of enforceability of arbitration contracts in Commerce.
- 15. T F** Pre-1937  
the USA Supreme Court interpreted the word "among"  
in the Commerce Clause as "between"  
by using the concept of direct **effect** (*i.e., cause*) in commerce;  
while  
post-1937  
the USA Supreme Court interprets "among" as "within"  
by using the concept of close **and** substantial **affect** (*i.e., result*)  
on commerce between the USA States.  
Pre-1937  
federal regulation of transportation was **un**constitutional.
- 16. T F** Content regulation of free speech is permissible when  
that regulation:  
[a] directly furthers a substantial government interest;  
[b] is proportional to that interest; **and**  
[c] is the least restrictive alternative for regulating.  
Some speech is **un**protected speech (*e.g., defamatory; obscene*).
- 17. T F** The USA *Constitution's* Bill of Rights focuses upon the  
separation of powers between the Individual **and** government.  
Amendment IX **and** Amendment X, in particular,  
provide for the inferiority of the federal government.
- 18. T F** Due process is either  
substantive (*i.e., fundamental right*) due process **or**  
procedural due process.  
Privacy is an implied substantive due process right of the People, procedural due  
process protects one's reasonable expectation of privacy.
- 19. T F** The triad used to interpret the Equal Protection Clause is  
the Rational Basis Test  
    (*i.e., social **or** economic regulation that has a rational basis **and**  
    a legitimate governmental interest [e.g., Police Power]  
    is presumed valid*);  
Heightened Judicial Review; **and** Strict Scrutiny.

- 20. T F** The USA *Constitution's* Article IV contains the Full Faith **and** Credit Clause which is an express commitment by each USA State to provide domestic comity to sister States subject only to a sister State's discretion consistent with its fundamental public policy.
- 21. T F** If an act by a government is cloaked with sovereign immunity, then that act is an Act of State.
- 22. T F** Always ethical responsibility **and** typically legal liability requires the actor to have the power to act.
- 23. T F** Always ethical responsibility **and** typically legal liability is limited by **and** to the actor's Bounded Rationality.
- 24. T F** Given the requirements of business ethics, a monopolist can **not** act within business ethics.
- 25. T F** There are three types of fault-based torts intentional torts, negligence torts, **and** strict liability torts.
- 26. T F** If a defendant with **no** defenses owes a duty of care to the plaintiff **and** the defendant's action is the proximate cause of the plaintiff injury, then the defendant has committed a tort.
- 27. T F** Actual cause is a necessary, **but is not** a sufficient, requirement of proximate cause.
- 28. T F** The defendant commits common law fraud if the defendant knowingly **and** intentionally **misrepresents or** omits a material fact (*e.g., expert's opinion*) thereby inducing the plaintiff's justifiable reliance **and** proximate causing the plaintiff's damages.
- 29. T F** Reverse engineering of a trade secret creates a new owner.

- 30. T F** Parody of a copyright, statutorily, is Fair Use.
- 31. T F** A moral right exists in trade secret law, **but** does **not** exist in patent law.
- 32. T F** Punitive damages are subject to a substantive due process limitation; whereas specially damages are limited by the actual economic losses that can be proved via procedural due process.
- 33. T F** If a defendant is sued for the tort of negligence, then the defendant, depending upon the jurisdiction's laws, may raise either the complete defense of comparative negligence **or** the fractional defense of contributory negligence.
- 34. T F** Some contracts must be adhesion contracts (*e.g., due to Equal Protection Clause*), in which case the law is less hostile. Ordinarily, an ambiguity in an adhesion contract is interpreted against the drafter; **unless** the **non**-drafting party had a reasonable opportunity to discover **and** to object to the ambiguity.
- 35. T F** The elements of crime are a legislatively defined *actus reus* (*i.e., bad act*), *mens rea* (*i.e., bad thought*), **and** **no** defenses.
- 36. T F** A warranty, an employment agreement, a license, **or** a bailment can be, **but** need **not** be, a contract.
- 37. T F** If the parties are *in pari delicto*, then both parties are liable *per stirpes* because either of *ex post facto* **or** *post hoc ergo propter hoc*; **unless** one party can raise the valid defense of *res ipsa loquitur*.

- 38. T F** If a merchant imposes predatory economic duress on a consumer, then the court may reform each offensive material term in the contract.
- 39. T F** If a unilateral contract is executory with respect to acceptance, then that contract only can be discharged when the parties satisfy the Mirror Image Rule with their words.
- 40. T F** The Statute of Frauds, under both the common law **and** under the UCC, bars silence as acceptance by requiring the signature of party to be sued.
- 41. T F** Security law fraud is a form of gambling.
- 42. T F** Under the old common law of assignments **and** delegations, most assignments **and** most delegations are **unenforceable**.
- 43. T F** An assignment of "all rights" is an example of freedom **of** contract versus freedom **from** contract.
- 44. T F** If due to mutual mistakes of material facts a contract is a bargained for exchange of **illusory** promises, then a court of equity may discharge it by unilateral rescission **and** order restitution.
- 45. T F** An **involuntarily** intoxicated legal person can **not** provide a signature.
- 46. T F** A liquidated damages clause is activated by its condition precedent.
- 47. T F** Prior to the age of majority, using the common law, the court reforms an **unconscionable** contract; after the age of majority, using the common law, the court voids an **unconscionable** contract.
- 48. T F** Federal law preempts all State laws with respect to whether an electronic signature is a signature.
- 49. T F** A liquidated debt can be consideration for a novation.

50. **T F** A natural person who has been adjudicated as mentally **in**competent only creates void contracts.
51. **T F** A minor has sufficient capacity to contract for the purchase of a necessity.
52. **T F** If  
a mistake of fact is material for the purposes of mutual mistake,  
then  
that mistake of fact is material for the purposes of a unilateral mistake.
53. **T F** Predatory economic duress  
requires a measure of material that is smaller than security law fraud.
54. **T F** An output contract  
that assigns ownership of all patented works created by an employEE  
requires a signature.
55. **T F** Under the UCC,  
if  
an offerEE responds to a written offer  
with the offerEE's **un**ambiguous expression of assent  
**and** simultaneously the offerEE **also**  
insists upon the offerOR's original written offer be expanded to include  
an incorporation by reference clause  
covering all of the seller's print advertisements,  
then  
the offerEE has made a counter offer.
56. **T F** Substantial performance of a personal services contract  
is a condition precedent to a court ordering a remedy for breach.
57. **T F** A merchant who is an incidental donee third party to a contract  
can **not** have standing to sue for contract fraud in the execution  
by one contracting party on the other contracting party  
because the third party must have contract privity to have tort privity.
58. **T F** A breach of any express condition is a material breach.
59. **T F** Substantial performance discharges the contract.
60. **T F** Receipt of communication of an anticipatory breach  
creates an election of remedies at the option of the **non**-breaching party.

- 61. T F** It is ethical for a sole proprietorship to seek to profit maximize by successfully seeking to design its products so as to avoid any of its products producing any injury to any consumer until after the Statute of Limitations has run.
- 62. T F** An otherwise enforceable guarantee that could have earned a remedy of specific performance for one party may be discharged via the remedy of mutual rescission in favor of the performing party when that performance is prevented by a *Force Majeure* that is **not** covered by the parties' written contract.
- 63. T F** It is ethical for an employER to pursue litigation that seeks to recover from its employEE those compensatory damages paid by the employER as a defendant **but** actually caused by employEE's **un**lawful downloading of copyrighted works while using the employER's computers **and** telecommunication equipment.
- 64. T F** Incidental damages are a condition precedent to compensatory damages.
- 65. T F** If a USA State's lawfully exercises its Police Power within the confines of the Rational Basis Test, then the USA State does **not** violate a commercial advertiser's Free Speech rights.
- 66. T F** Under the common law, **but not** under the UCC, lost profits are an economic loss.
- 67. T F** A **non**-breaching party's waiver of a breach must be express.
- 68. T F** Because there is **no** competition to control a litigant's profit opportunities, it is **un**ethical to seek to profit maximize via litigation.

- 69. T F** It is ethical for a sole proprietor to seek to profit maximize by contractually defining a technological change as a *Force Majeure* when that technological change is:  
[a] anticipated by both parties,  
[b] specific, **and**  
[c] **unambiguously** material.
- 70. T F** If the natural person occupying the office of CEO acts ethically, then the corporation acts ethically.
- 71. T F** Both the UCC **and** the CISG addresses contracts for the sale of goods (*i.e., tangible and moveable real property*). Both the UCC **and** the CISG allow for open terms. However, the UCC requires quantity term to be specified, while the CISG requires the price term to be specified.
- 72. T F** Objectively, all UCC merchants **and** all UCC consumers have knowledge.
- 73. T F** Any party to a UCC contract may disclaim any provision of the UCC except the obligation of good faith **and** liability for any injury to a consumer's interest proximately caused by a defective consumer good.
- 74. T F** The UCC, **but not** the CISG, permits a merchant seller selling to a merchant buyer to orally modify a sale of goods contract with **no** new consideration.
- 75. T F** Under the UCC's Statute of Frauds a buyer's signature is implied from a buyer's ten day silence in response to a seller's prompt shipment of conforming goods accompanied by a signed, written contract.
- 76. T F** Motivated both by ethics **and** a pursuit of commercial efficiency, the legislature has adopted as statutory remedies some equitable remedies (*e.g., unconscionable contracts, specific performance*).

77. **T F** If a good has been identified (*i.e., designated by the seller*), then both the buyer **and** the seller have **-a-** risk of loss; **however**, an insurable interest required **-the-** risk of loss.
78. **T F** A bailment is an entrustment.
79. **T F** Both the UCC **and** the CISG modify the common law rule of perfect tender with the right to cure.
80. **T F** Because of the UCC's obligation of good faith (*i.e., commercial reasonableness*), all parties have a Right to **and** a Duty of Cooperation. Fewer than all parties to a UCC sale of goods have a Right of Assurance.
81. **T F** The seller has an absolute Right to Inspection.
82. **T F** A **non**-breaching UCC parties' duty to mitigate damages includes cover.
83. **T F** Both the UCC **and** the CISG include lost profits within compensatory damages.
84. **T F** The UCC implied warranty of merchantability requires a merchant's goods to be fit for the buyer's purposes.
85. **T F** If a merchant seller makes multiple warranties, then the buyer (*whether consumer **or** merchant*) may make an election between an express warranty (*i.e., seller's affirmation of fact that is the basis of the bargain*) **and** an implied warranty of fitness for a particular purpose (*i.e., seller knows of the buyer's justifiable reliance upon the seller*), **or** may sue on both.
86. **T F** If the defect is a latent defect, then the seller knew of the defect.

- 87. T F** A fixture  
(*e.g., built-in oven in a residential kitchen*)  
is **not** a trade fixture  
(*i.e., personal property owner's objective intent is to **not** firmly affix the personal property to the real property*).
- 88. T F** Confusion of fungible goods creates a new amalgamated mass  
**and** all prior owners of the individual portions of that amalgamated mass  
automatically become tenants by the entirety.
- 89. T F** "Finders keepers" is the common law rule for mislaid personal property.
- 90. T F** If  
the owner of personal property bails it to a common carrier,  
then  
the common carrier is liable for destruction of the personal property during carriage  
only if  
the protection offered by the common carrier was  
less than commercially reasonable under the circumstances.
- 91. T F** An easement in gross can become an easement appurtenant  
if  
the owner of the burdened real property  
becomes the owner of the intervening real property.
- 92. T F** If  
a life estate owner farms (*as contrasted with mines*) ground water,  
then  
that life estate owner is **not** liable for waste.
- 93. T F** To transfer an ownership interests in real property  
the first owner must execute a license.
- 94. T F** Nebraska recognizes  
an urban residential consumer renter's implied right to habitability;  
**and**  
Nebraska will recognize  
an urban residential consumer buyer's express right to habitability.
- 95. T F** Zoning can be a taking.

- 96. T F** If an insurer avoids moral hazard, then the insurer has **not** necessarily avoided the adverse selection.
- 97. T F** Life insurance requires an insurable interest at the time of contract.
- 98. T F** An insurance contract might be, **but need not** be, an adhesion contract.
- 99. T F** The witness to a will is a witness to the testator's capacity, intent, **and** signature of the will.
- 100.T F** In Nebraska, when a person dies **without** a will the deceased's property passes *per se*.
- 101. T F** A trustee owes the beneficiary of the trust a duty of utmost good faith (*i.e., honesty in fact and personalized objective*).
- 102.T F** When imposing liability on a State licensed professional arising from contracts Nebraska uses the *Ultramares Rule* (*i.e., privity plus primary benefit*).
- 103.T F** Security law fraud requires either an omission of **or** a **misrepresentation** of a material fact (*i.e., what a reasonably prudent investor would want to know*), the plaintiff's justifiable reliance, **and** the fraud is the proximate cause of the plaintiff's injury.
- 104.T F** If an accountant has actual knowledge (*i.e., scienter*) of the client's security law fraud via an omission of a material fact from the quarterly report to the SEC, then the accountant can **not** legally, **but** can ethically, satisfy the due diligence defense.
- 105.T F** If a natural person discloses that person's past criminal actions to an attorney acting within the scope of that attorney's representation of that natural person as the client of that attorney, then both legally **and** ethically that disclosure is both confidential **and** privileged.