
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 words*) **or** can be implied (*i.e., acts, words, **or** circumstances*).
3. **T F** Equity has **no** precedence; in contrast, the common law uses precedence. *Stare decisis* once established is **not** reversed.
4. **T F** Standing to sue requires the plaintiff to both suffer an injury in fact **and** to be within the zone of protected interests (*i.e., make arguments consistent with public policy*).
5. **T F** All citizens are both natural persons **and** legal persons.
6. **T F** Both a common law consumer **and** a UCC consumer must act with honesty in fact for the action to be in good faith.
7. **T F** If an appellate court finds an error by a trial court, then that appellate court most likely will affirm the trial court.
8. **T F** All three branches of government have an implied authority found in the USA *Constitution's* Article VI Supremacy Clause to declare **un**constitutional acts by any branch of government.
9. **T F** A court must have jurisdiction (*i.e., both subject matter [e.g., crime] **and** geographic [i.e., substantial minimal contacts]*).
10. **T F** **Neither** a case where in a Motion to Dismiss is made, **nor** a case wherein a Summary Judgment is made, is there a material question of fact in the case.

- 11. T F** The vast majority of regulation of business is mere regulation **and** does **not** amount to a taking.
Even a regulation that extinguishes all value is mere regulation.
A government within the USA may take all of a business' private property.
- 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 in a civil case
(*e.g., 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, **and** general welfare.
A State **also** might choose to use its power to tax,
even if that tax is an exercise of the power to destroy.
- 14. T F** Preemption is **not** favored, **but** may be allowed if
(a) clear intent of Congress
and national interests outweigh State interests; **or**
(b) express intent of Congress **and** need for general welfare.
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., result*) in commerce;
Post-1937
the USA Supreme Court interprets "among" as "within"
by using the concept of close **and** substantial **affect** (*i.e., cause*)
on commerce between the USA States.
The Commerce Clause power (*as are many governmental powers do*)
exists across a triad continuum ranging from strongest to the weakest,
from the core, to the penumbra, **and** finally the emanations:
Respectively, the Commerce Clause's triad is
retail, transportation, **and** manufacturing.
- 16. T F** All speech is subject to reasonable time, place, **and** manner regulations.
No content regulation is permitted for political speech.
Content regulation of **commercial** speech is permitted.
But, content regulation of commercial speech is permissible
if **and** only if that regulation:
[a] furthers a substantial government interest; **and**
[b] is proportional to that interest.
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, provides for the inferiority of the federal government.
18. **T F** Due process is either substantive due process (*i.e., fundamental constitutional right*) **or** procedural due process (*i.e., notice **and** hearing, both proportional to the interests involved*). Privacy is an implied substantive due process right that is protected by procedural due process enforcing 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 on every issue.
21. **T F** To be an Act of State the action typically must be a core power of that State. However, even if an act is an Act of State in that State's domestic jurisdiction, that same action taken in a foreign jurisdiction might be treated as a mere commercial act; **and also not** protected by sovereign immunity.
22. **T F** All ethical responsibility **and** typically legal liability requires the actor to have the power to act.
23. **T F** All ethical responsibility **and** typically legal liability is limited by **and** to the actor's Bounded Rationality.

24. **T F** Business ethics requires both profit maximization by the individual **and** society's (*e.g., competition*) imposition of cost minimization on the individual as the only path to that profit maximization.
25. **T F** There are three types of torts intentional torts, negligence torts, **and** strict liability torts. Only one of the three is based on the defendant's fault.
26. **T F** If the defendant has **no** defense, 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** Proximate cause requires actual cause.
28. **T F** If the jury finds, based upon a preponderance of the evidence that the defendant has knowingly **and** intentionally **misrepresented or** omitted a material fact (*e.g., expert's opinion*) thereby inducing the plaintiff's justifiable reliance **and** proximate causing the plaintiff's damages, then the defendant has committed common law fraud.
29. **T F** Reverse engineering of a patent creates a new owner.
30. **T F** Parody of a trademark is an infringement.
31. **T F** An artist's moral right in copyright is weaker than a scientist's moral right in patent.
32. **T F** Punitive damages are subject to a substantive due process limitation; whereas special damages for torts 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 the complete defense of contributory negligence (*i.e., bar to suit because of plaintiff's own negligence*), **or** may raise the fractional defense of comparative negligence (*i.e., an offset for the amount of the plaintiff's 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. Typically, 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. In Nebraska, the defense of self defense authorizes a citizen to use deadly force (*e.g., a gun*) to prevent felony theft of personal property.
- 36. T F** A bailment, a license, a warranty **and/or** an employment agreement can be a contract. **But**, if both parties are merchants, then each of these types of transactions must be in the form of a contract.
- 37. T F** If the parties are *in pari delicto*, then proof by *res ipsa loquitur* will **not** result in liability for the defendant in either a court of law **or** a court of equity.
- 38. T F** If a merchant uses a contract to impose predatory economic duress on a consumer, then a Nebraska court will void the whole contract.

39. **T F** The Mirror Image Rule does **not** apply to unilateral contracts.
40. **T F** Silence can **not** be acceptance of a contract.
41. **T F** Both gambling **and** insurance involve one party paying the other party upon the condition precedent of a chance event, typically.
42. **T F** Under the old common law of assignments **and** delegations, typically most assignments are enforceable **and** most delegations are **not**.
43. **T F** The assignment of "all rights" rule of law is an example of freedom **of** contract over freedom **from** contract.
44. **T F** A court of equity may discharge a contract by unilateral rescission **and** award restitution.
45. **T F** A natural person who has been adjudicated **in**competent can **not**, personally, provide a signature.
46. **T F** If it is sophisticated risk management by both merchant parties, then that liquidated damages clause will be enforced by a court.
47. **T F** The age of majority in all USA States is age 19, **unless** emancipated by marriage at an earlier age.
48. **T F** In some, **but not** in all, transactions, both in int**ER**state commerce **and** in int**RA**state commerce, is an electronic signature a signature.
49. **T F** A liquidated debt is adequate consideration for modification of a UCC contract **but is not** adequate consideration for modification of a common law contract.

50. **T F** If a Reasonable Person in the position of the other party to the contract objectively would perceive great intoxication, then the intoxicated natural person only creates void contracts; regardless of whether that intoxication is **in**voluntary or is voluntary.
51. **T F** A minor has sufficient capacity to contract for a necessity.
52. **T F** If a fact is material for a unilateral mistake, then that fact is material for all mistakes.
53. **T F** Economic duress that is privileged, rather than predatory, typically involves the abusing party using power **not** created by the abusing party.
54. **T F** An output contract that assigns ownership of all patented works created by an independent contractor requires a signature.
55. **T F** 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 a **non**-material change, then the offerEE has made a counter offer under the common law of contracts, **but** has made an acceptance under the UCC.
56. **T F** A court of equity may, **but** a court of law can **not**, award specific performance to compel completion of a partially performed personal services contract.
57. **T F** A vested incidental donee third party merchant has standing to sue for on the contract.
58. **T F** Breach of an express condition, typically, is a material breach.
59. **T F** Substantial performance is a breach of contract; **but**, the contract is discharged by that breach.

- 60. T F** If the recipient of a breach by anticipatory repudiation fails to promptly mitigate damages, then the parties are *in pari delicto*.
- 61. T F** A profit maximizing seller of fungible goods in a perfectly competitive market can act in a manner that satisfies the requirements of business ethics; all other businesspersons can **not**.
- 62. T F** Under both the common law of contracts **and** under the UCC, the parties' *Force Majeure* Clause necessarily reduces the court's power to use **and** its use of impracticability to discharge the parties' contract by operation of law.
- 63. T F** It is more difficult for a businessperson to act ethically when acting as an employER than when acting as a buyer of goods.
- 64. T F** Under the UCC lost profits are incidental damages, while under the common law lost profits are economic loss damages.
- 65. T F** Generally, punitive damages only are recoverable for tort; **but**, a bad faith breach by an employER **or** by an insurER may result in an award of punitive damages for breach of contract.
- 66. T F** Nominal damages may be awarded to a plaintiff who clearly suffers **non**-pecuniary losses, while suffering **no** pecuniary losses.
- 67. T F** If **non**-breaching party grants a waiver of a breach of contract, **without** the breaching party expressly requesting that waiver, then the parties' contract is modified if their contract is under the UCC and is **not** modified if their contract is under the common law.

68. **T F** If a businessperson's behavior in litigation avoids malicious prosecution **and** all other forms of abuse of process, then that businessperson's actions, in that litigation, are ethical.
69. **T F** It is ethical for a sole proprietor to seek to profit maximize by obtaining a genuinely knowing **and** a genuinely voluntary contract clause 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** Because business ethics requires both profit maximization **and** cost minimization, if a businessperson internalizes a spillover cost (*e.g., reduces the firm's pollution below the maximum allowed by existing governmental regulations*), then that businessperson has acted **unethically**.
71. **T F** Both the UCC **and** the CISG address contracts for the sale of goods (*i.e., tangible and moveable personal property*). Both the UCC **and** the CISG require the quantity term **and** price term to be specified in the parties' contract.
72. **T F** All natural persons are consumers.
73. **T F** Any merchant may disclaim any provision of the UCC except the obligation of good faith **and** personal injury from a consumer product.
74. **T F** Both the UCC **and** the CISG permit a merchant seller selling to a consumer buyer to modify a sale of goods contract with **no** new consideration.
75. **T F** A UCC buying merchant's signature is implied from a buying merchant's ten day silence in response to a selling merchant's prompt shipment of **non**-conforming goods accompanied by the selling merchant's 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., in existence **and** designated by the seller*), then either the buyer **or** the seller has -a- risk of loss, **but**, both do **not** have -a- risk of loss simultaneously.
78. **T F** A bailment of goods to a UCC merchant creates an entrustment.
79. **T F** The UCC's right to cure is absolute.
80. **T F** Because of the UCC's obligation of good faith (*i.e., honesty in fact*), all parties have a Right to **and** a Duty of Cooperation. Only those UCC parties with a reasonable basis to believe that future performance by the other party is in doubt have the Right of Assurance (*i.e., power to make a written demand upon the other party that the other party provide current assurance that previously promised performance will be forthcoming*).
81. **T F** The buyer has an absolute Right to Inspection.
82. **T F** A breaching seller's duty to mitigate damages includes the duty to cover.
83. **T F** The common law of contracts **and** the UCC are substantially different with respect to consequential damages, **but** are identical with respect to incidental damages.
84. **T F** The implied warranty of merchantability requires goods that can pass **without** objection in the trade.

- 85. T F** Under the common law of contracts
if
a merchant seller makes multiple warranties,
then
the implication (*reversible by express contract terms*)
is the broadest warranty is the exclusive remedy;
but
under the UCC
the implication is cumulative remedies.
- 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 firmly affix the personal property to the real property*).
- 88. T F** Confusion of fungible goods creates joint tenants.
- 89. T F** "Finders keepers" is the common law rule for bailed personal property.
- 90. T F** If
the owner of personal property bails it to a common carrier,
then
the common carrier is strictly liable
for destruction of the personal property during carriage.
- 91. T F** The owner of an easement appurtenant
may lawfully earn a net profit from that easement;
but,
only the owner of an easement in gross
may lawfully earn a gross profit.
- 92. T F** If
a life estate owner farms (*as contrasted with mines*) the ground water,
then
that life estate owner did **not** waste that ownership right.
- 93. T F** To transfer an ownership interests in real property
the owner must execute a deed.

94. **T F** Nebraska only recognizes a right to habitability that is urban, residential, **and** express.
95. **T F** Taking is a zoning.
96. **T F** Adverse selection occurs prior to the moral hazard.
97. **T F** Property insurance requires an insurable interest at the time of contract.
98. **T F** An insurance contract is an adhesion contract whose ambiguities are interpreted against the insurER even if the insurER provides the insurED with more than a reasonable opportunity both to discover **and** to object to any ambiguities.
99. **T F** The witness to a will is a witness to the testator's signature **and** publication of the will.
100. **T F** In Nebraska, when a person dies **without** a will the deceased's property passes *perfecto*.
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*.
103. **T F** Security law fraud requires either a **misrepresentation of or** an omission of a material fact (*i.e., what a reasonably prudent investor would want to know*) **and** the plaintiff's injury.
104. **T F** If an account has both scienter **and** receipt of notice of the client's security law fraud via both a **misrepresentation and** an omission of a material fact in the prospectus, then the accountant can **not** legally satisfy the due diligence defense; **and**, can **not** be acting ethically.
105. **T F** If an action is ethical, then that action is legal.