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***print name on the line above as your signature***

**INSTRUCTIONS:**

1. This FIRST Exam must be completed within the allocated time  
(*i.e., the 75 minutes between 10:00 AM and 11:15 AM*).  
It is a closed book exam.
2. **Recall the material difference between  
e.g. (for example) versus i.e. (that is).**
3. As each student finishes this exam, that student shall  
[3A] present to the instructor the student's photo ID;  
[3B] present the student's completed answer sheet;  
[3C] exchange the completed answer sheet for an answer key; and  
[3D] then leave the exam room until after the end of the exam  
(*e.g., all students finish in less than the 75 minutes*).  
***To find your individual exam grade  
you must use your marked up exam.***
4. Preliminary exam grades and course grades (*i.e., prior to resolving any appeals*)  
of the class ***but not with individual students identified***  
will be posted to O'Hara's web site no later than 4:00 PM Thursday, February 12.  
An email notice of the posting will be sent.
5. This FIRST Exam is worth 20% of the course grade.  
The True-False form of this exam has 32 questions graded as if there are 33.  
Based upon the instructor's statistical analysis of all students' answers,  
the instructor unilaterally may alter the grading of specific exam questions.  
Any student may appeal the grading of any other exam questions.  
However, only if a student successfully appeals the ambiguity of  
AT LEAST **TWO** questions on this exam will *that* student's exam grade change  
by the number of successful appeals in excess of ONE successful appeal.  
*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] immediately following the signature, list in sequence, *solely by number*,  
each of the questions 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 the instructor's suite secretary in  
RH 502 no later than the 11:35 AM on Monday, February 16.

**NOTE #1:** On the blue computer graded answer sheet provide your name (last, first) both in numeral and in bubble and provide your NU ID number both in numeral and in bubble.

**NOTE #2:** On the computer graded answer sheet, **use A to indicate that the statement is TRUE;** and use B to indicate that the statement is FALSE.

**NOTE #3:** A statement never is false because of a numerical reference to a law (*e.g., UCC section 2-318*). On this exam, all such references are true.

**NOTE #4:** The acronyms "UCC" and "CISG" will be used in this exam rather than their fully spelt out names, respectively, the "Uniform Commercial Code" and the United Nations' "Convention on Contracts for the International Sale of Goods".

**NOTE #5:** Answer question #33 prior to answering any other question.

### QUESTIONS:

- 1. T F** The law favors the objective over the subjective. Both the law **and** economics seek transactions that are both knowing **and** voluntary (*e.g., Assumption of the Risk*). The law recognizes three levels of knowing: subjective actual knowledge **and** objective knowledge in the forms of receipt of notice **and** reason to know.
- 2. T F** Two major examples of the law making binary decisions using triad analysis can be seen in the judicial interpretation of the USA *Constitution's* Commerce Clause in Article I, section 3, clause 3 **and** Amendment XIV's Equal Protection Clause.
- 3. T F** The federal versus State separation of powers is partly seen in the relative magnitude of powers **and** scope of powers involved with the States' Commerce Clause versus federal Police Power.

4. **T F** Proximate cause  
(*i.e., at the time of the defendant's action  
a Reasonable Person in the position of the defendant  
could reasonably foresee the plaintiff's injury*)  
is an example of the law's use of Bounded Rationality.
5. **T F** Judicial Review  
is weakest when the courts are enforcing the separation of powers between  
the Individual **and** government.
6. **T F** Intentional torts, negligence torts, **and** strict liability torts  
each has the same elements:  
(*i.e., a defendant's breach of a duty of care owed to the plaintiff  
is the proximate cause of the plaintiff's damages,  
**and** the defendant has **no** defenses*).
7. **T F** A defendant commits common law fraud  
when the defendant knowingly  
**mis**represents a material fact  
thereby  
inducing the plaintiff's justifiable reliance **and**  
proximately causing the plaintiff's damages.
8. **T F** Objectively, typically, silence is acceptance;  
for example,  
under the UCC a merchant's 10 days of silence  
following receipt of a signed contract is  
both that merchant's acceptance **and** signature.
9. **T F** Tort compensatory damages (*i.e., make the plaintiff whole*)  
**and**  
contract compensatory damages (*i.e., benefit of the bargain*)  
are similar, **but** materially different.  
Contract compensatory damages include incidental damages;  
however,  
common law contract incidental damages are far more narrowly defined  
(*e.g., cost of entering the market to mitigate compensatory damages*)  
than  
UCC contract incidental damages  
(*e.g., lost profits are **ir**rebuttably presumed reasonably foreseen*).
10. **T F** Both the common law of contracts **and** the UCC require  
satisfaction of the Mirror Image Rule.

- 11. T F** The UCC **and** the CISG differ in multiple material respects. The CISG does **not** have a Statute of Frauds; **and** contractual specification of price under the CISG is required versus quantity (*e.g., output or requirements contract*) under the UCC. It is particularly important that the parties use a *Force Majeure Clause* since the CISG is silent on choice of law, forum, venue, **and** language.
- 12. T F** Ordinarily, the law limits one's legal liability to those others that are in privity. However, product liability law tends towards expansive strict liability. A product defect (*e.g., design, manufacture, and/or label*) create liability. Both the Restatement section 402A **and** UCC 2-318 Options A, B, **and** C dramatically relax, **but not** eliminate, privity for product liability.
- 13. T F** The UCC's right to cure must be exercised prior to the **non**-breaching party's justifiable **and** detrimental reliance upon the breach. Additionally, the UUC obligation of good faith **also** expands the rights of the **non**-breaching party when discharging the duty to mitigate damages by creating a right to cover.
- 14. T F** USA antitrust law's Rule of Reason holds that any **and** all restraints of trade are legal if the restraint serves a legitimate business interests.
- 15. T F** Wills must satisfy statutory requirements (*i.e., capacity* [*i.e., understand signature, understand property, and understand natural objects of one's bounty*], *intent to create a will, a writing, the testator's signature* [*i.e., any mark with the current intent to authenticate the document {e.g., record}*], *witnesses, and published*).

- 16. T F** There are four levels of good faith:  
 common law consumer;  
 UCC consumer;  
 merchant  
*(i.e., honesty in fact **and** commercial reasonableness);*  
**and**  
 fiduciary  
*(i.e., honesty in face **and** personalized objective).*
- 17. T F** Because the law serves the People's reasonable expectations,  
 the law can **not** anticipate.  
 Accordingly,  
 technological change  
 which both  
 alters the economic context  
**and**  
 alters the fit between the law **and** the People's reasonable expectations,  
 induces change in the law.
- 18. T F** If  
 an action is ethical,  
 then  
 that action is legal.
- 19. T F** If  
 a set of consequences of a natural person's action are beyond that person's  
 Bounded Rationality,  
**and**,  
 that person has **no** actual knowledge of that set of consequences,  
 then  
 whether that action is an ethical action for that natural person  
 is **not** dependent upon that set of consequences.
- 20. T F** When acting legally  
 a UNO BSBA graduate is far more likely to be acting **unethically**  
 than is  
 an ordinary merchant.
- 21. T F** The owner of the fee simple absolute for real property  
 owns all of the surface **and** subsurface (*e.g., ground water*) rights  
 that can be legally owned.
- 22. T F** Any personal property that ordinarily is a trade fixture can **not** be a fixture.
- 23. T F** Any owner of an estate that is less than fee simple absolute  
 is capable of committing waste,  
**but is not** capable of suffering waste.

24. **T F** Goods are tangible **and** movable personal property.
25. **T F** If a corporation (*e.g., mere legal person*) takes up the duties of a bailee, then the bailor must prove the bailee was negligent as a condition precedent for the bailee being legally liable to the bailor for damage to the bailed personal property during the bailment.
26. **T F** "Finders, keepers" accurately describes the law of personal property that has been mislaid, **or** has been lost, **or** has been abandoned.
27. **T F** The USA federal government has exclusive authority over patents **and** copyrights.
28. **T F** A prior USA State granted trademark is preempted by a subsequently granted federal trademark.
29. **T F** The subject matter protectable by the trade secret laws of the USA States includes all of the subject matter protectable by patent law **and** none of the subject matter protectable by copyright law.
30. **T F** Following the Industrial Revolution, both the quantity of **and** the quality of pollution has materially changed.
31. **T F** Federal preemption of USA State environmental laws is routine. However, because of the constitutional limits on federal preemption when the USA States are at the core of their Police Power, that preemption does **not** prohibit a USA State from choosing an environment that is more clean than the environment that is chosen by the federal government.
32. **T F** CERCLA (*i.e., Comprehensive Environmental Response, Compensation, and Liability Act*) allows the fee simple absolute owner of real estate that becomes polluted during that ownership to abandon that property to federal ownership.
33. **T F** **Answer question #33 with the answer E.**