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

**INSTRUCTIONS:**

1. This THIRD Exam must be completed within the allocated time  
(*i.e., after the Q&A starting at 10:00 AM and ending by 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 those 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, April 16.  
An email notice of the posting will be sent.
5. This THIRD Exam is worth 20% of the course grade.  
The True-False form of this exam has 26 questions graded as if there are 25.  
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 in the RH 306 classroom  
**no later than the 10:15 AM on Monday, April 20.**

- 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:** The typing "**Principal**" and the typing "**Agent**" are used to refer to those two generic relationships with their three specific relationships. That is, "Principal" is used to refer to principal of an agent, principal of an independent contractor (IC), **AND** employER of an employEE; while, "Agent" is used to refer to agent of a principal, independent contractor (IC) of a principal, **AND** employEE of an employER.

### QUESTIONS:

- 1. T F** The "Principal" **and** "Agent" relationship must be a knowing **and** voluntary arrangement, **but** need **not** be a contract. Liability in a "Principal" **and** "Agent" relationship flows towards the party with control.
- 2. T F** Generically, an "Agent" is **not** personally liable for actions as an "Agent". The "Agent" is not personally liable for actions as an "Agent" because an "Agent" acts instead of **and** acts on behalf of the "Principal" when the "Agent" acts within the scope of authority. In addition to the action being within the scope of the "Agent's" authority, if it is reasonably foreseeable to the "Agent" to be material to the transaction with the third party, then the agency must be disclosed **and/or** the "Principal" must be disclosed. Both the "Agent" **and** the "Principal" are a fiduciary to the other.

3. **T F** Because of the USA *Constitution* Amendment XIII  
(*i.e., no involuntary servitude*),  
the USA more than most common law jurisdictions is "at will".  
All "Agents" **and** all "Principals"  
always have the legal power,  
**but** might **not** have the legal right,  
to terminate their relationship.
4. **T F** The "Principal" creates the "Agent's" authority.  
The "Agent" can **not** unilaterally create  
that "Agent's" authority to act as an "Agent" of that "Principal".
5. **T F** The signature of the maker **or** of the drawer that is required for a  
negotiable instrument  
can be made by the "Agent" for the "Principal".  
However,  
if  
the "Agent's" signature  
does **not** disclose both the agency relationship **and** the "Principal",  
then  
the "Agent" has signed personally.
6. **T F** Strict liability for torts of an "Agent"  
always goes to the principal of an independent contractor;  
**but**,  
might be shared by a principal **and** the agent.
7. **T F** Were it **not** for  
the Clayton Act section 6 antitrust exemption  
defining labor as an article of commerce  
**and**  
were it **not** for  
other specific statutes (*e.g., Norris-LaGuardia Act*)  
controlling the general statute of the federal 1890 Sherman Antitrust Act,  
any labor contract proposed by management that a union signed  
would be a Per Se **Un**reasonable antitrust felony  
(*i.e., price fixing*)  
so **too** would  
any strike by a labor union  
(*i.e., group boycott*).

8. **T F** Under the pre-1937 judicial interpretation of the Commerce Clause a federal workers' compensation law **and** a federal **un**employment insurance law clearly would have been **un**constitutional.  
**Also,**  
under the post-1937 judicial interpretation of the Commerce Clause the federal Occupational Safety and Health Act (OSHA) clearly is constitutional.
9. **T F** Pursuant to federal statute, all employees have zero reasonable expectation of privacy while at work.
10. **T F** All natural persons always are members of all protected classes (*e.g., color*) for the purposes of employment discrimination.
11. **T F** Disparate impact requires subjective intent objectively proved.  
Disparate treatment requires objective intent objectively proved.
12. **T F** Similar to anti-trust law's Rule of Reason, with respect to employment discrimination all employers always may engage in discrimination that is proportionally to that employer's legitimate business interests (*e.g., business necessity, BFOQ*).  
Very frequently this is an effective defense for employers.
13. **T F** A natural person acting as a sole proprietor **and** buying in small quantities buys as a consumer.
14. **T F** Like federal regulation of securities, federal regulation of franchises focuses upon disclosure.
15. **T F** Each partner either acts as a principal for all other partners **or** acts as an agent for all other partners.

- 16. T F** Each business entity that is a legal person (*e.g., general partnership*) ordinarily shields its investors (*e.g., general partners*) from liability greater than the amount of their investment. However, that limited liability comes at the expense of both the business entity paying income taxes as a legal person **and** the investor paying income taxes as a legal person (*when the business entity distributes income to the investors*).
- 17. T F** Ordinarily, in all business transactions with a business entity some person(s) always has **unlimited** personal liability (**excluding** most checks).
- 18. T F** A corporation formed under the authority of the State of Iowa with its headquarters in New York City is an alien corporation when doing business in Omaha.
- 19. T F** If a court of equity pierces the corporate veil, then parties whose liability had been limited either to their investments (*i.e., shareholders*) **or** by their representative status (*e.g., directors **and/or** officers*) can have **unlimited** personal liability imposed for corporate debts. Personal use of corporate assets may authorize piercing the corporate veil.
- 20. T F** Members of the corporation's Board of Directors **and** the corporation's officers are agents.
- 21. T F** The Business Judgment Rule (BJR) limits the personal liability of both the members of the corporation's Board of Directors **and** the corporation's officers. Speaking broadly, **neither** directors **nor** officers are personally liable for good faith mistakes; **but**, the BJR good faith is more finely detailed by the law than the law's detailing of a fiduciary's good faith (*i.e., honesty in fact **and** personalized objective*). . In a well run corporation, **but** rarely in large American business corporations, directors receive more protection from the BJR than do officers.

- 22. T F** If corporation A consolidates with corporation B, then only one corporation remains: either corporation A **or** B. If corporation A merges with corporation B, then only one corporation remains: corporation C. For both mergers **and** consolidations all dissenting shareholders' have appraisal rights (*i.e., forced purchase of dissenting shareholder's shares of the shareholder's corporation at the price of fair market value on the day of the merger **or** consolidation*).
- 23. T F** A security is an investment in an enterprise with an expectation of profit; that profit derived from the **undeniably** significant efforts of others.
- 24. T F** Both federal **and** USA State regulation of securities focus disclosure prior to first sale (*i.e., issue*) of a security **and** continuing disclosure prior to subsequent sales (*i.e., trading*) of securities. Some transaction sales of securities are exempt from some federal disclosure requirements because it is questionable whether the federal government has jurisdiction (*i.e., either the sale is **not** close to [i.e., intRAstate] **or** does **not** have a substantial affect [i.e., small] on Commerce between the several States*) **or** because there is limited need for the protection of regulation (*i.e., accredited investors*).
- 25. T F** Security law fraud exists when there is a **misrepresentation **or** omission** of a material fact that causes injury. A statutory insider (*i.e., 10% shareholder, director, **or** officer*) is more likely to be found guilty of the felony of security law fraud than is a tippee trading on material **non**-public information obtained via a breach of fiduciary duty who discloses that breach prior to trading.

- 26. T F** A wise small business owner will hire an independent contractor (IC) that uses the IC's Social Security number as the IC's TIN (*i.e., Tax Identification Number*).
- A wise small business owner always will chose a form of business (*e.g., general partnership*) only after obtaining **and** following advice from legal counsel.
- A wise small business owner always will hire a tax accountant who is licensed in that State both as a CPA **and** as an attorney.