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**print name**

**INSTRUCTIONS:**

1. Exam #2 must be completed within the allocated time (*i.e.*, 6:30 - 7:30). It is a closed book exam.
2. **Recall the material difference between e.g. (*for example*) and i.e. (*that is*).**
3. As each student finishes the Exam #2, that student will receive an Exam #2 answer sheet **and** will then leave the exam room until Exam #2 ends (*i.e.*, 7:30, *unless all finish earlier, which is quite likely*).
4. Grades will be posted to O'Hara's web site no later than 5:00 PM Wednesday, June 11. An email notice of the posting will be sent.
5. The Exam #2 is worth 30% of the course grade. The Exam #2 has 35 questions graded as if there are 33. Harmless errors are far more likely than non-harmless errors in this test design. Any student may appeal the grading of Exam #2 questions. However, only if a student successfully appeals the ambiguity of **AT LEAST THREE** questions on the Exam #2 will *that* student's exam grade change by the number of successful appeals in excess of two questions. *Appeals only affect the exam grades of those students that appeal.* 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. Email notice of this will be sent no later than noon on Tuesday.
6. **All appeals** of Exam #2 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] at the beginning of the appeal of each question appeal, identify two or more reasonable meanings that the question could have had; [6E] argue each question, one at a time, arguing why one or more of the student identified reasonable meanings is *as* appropriate or *more* appropriate than the meaning used for the answer key answer; and [6F] received in the instructor's RH 502 mailbox (*i.e.*, *no email*)  
**no later than 1:30 PM on Wednesday, June 11.**

**QUESTIONS:**

**NOTE:** *When referring to a generic "principal" (i.e., principal, principal, **AND** employer) **and** when referring to a generic "agent" (i.e., agent, independent contractor, **AND** employee), then quote marks will be used (e.g., "agent").*

1. **T F** The legal risks a corporate Officer **and** a corporate Director face are materially identical.  
An "agent" lawfully may act contrary to the "principal's" interests on any conflict of interest that the "agent" discloses to the "principal" **and** that the "principal" waives.  
Since a corporate Officer is an agent, the Officer, **unlike** a member of the corporation's Board of Directors, is exposed to strict liability, **but** may act on all waived conflicts.
2. **T F** All fiduciary relationships **and** many other relationships create a duty to protect information received in confidence.  
In contrast, there are only a few fiduciary relationships that require so much trust that the law strengthens that duty to the level of a privilege.
3. **T F** Typically, **neither** Officers **nor** Directors are insurers of the corporation.  
Typically, the honest mistakes of both Officers **and** Directors are immunized by the Business Judgment Rule.  
However, to be immunized the action of the Officer **and/or** the Director must be:  
made in pursuit of the corporation's best interests;  
made when the decision maker has **no** barring conflicts of interest;  
made using the decision maker's best judgment;  
made as an informed decision with a reasonable basis;  
made within the decision maker's scope of authority; **and**  
made with the care of ordinarily prudent person in like position **and** circumstance.

4. **T F** An efficient breach is **unlawful, but it also** is ethical.  
If  
an employer binds an employee to  
a facially valid Covenant **not** to Compete  
using an adhesion contract,  
while barely avoiding **unlawful** economic duress, **and**  
that Covenant, in fact,  
does **not** proportionally protect the parties' legitimate business interests,  
**and** was sought by the employer with predatory intent,  
then  
the employee might implement an efficient breach.
5. **T F** Mutual mistakes **and** unilateral mistakes prevent contract formation.  
Because  
venture capitalists justifiably assume entrepreneurs understand  
"club rules" (*e.g., jargon*),  
entrepreneurs  
seeking equity funding from venture capitalists  
may be a greater risk of mistake,  
**but not** legally objectionable unilateral mistakes.  
Because  
venture capitalists wish to effectively manage the risks they take up,  
**and** because  
the venture capitalist's due diligence might **not uncover** latent defects,  
venture capitalists desire  
entrepreneurs to affirmatively disclose all material risks,  
**and** venture capitalists desire  
contract specifications of milestones (*e.g., registration rights*).
6. **T F** Legally,  
if  
a merchant is in an identical circumstance with a consumer  
then  
the merchant is more likely than the consumer to have assumed the risk.
7. **T F** An "agent" acts instead of **and** on behalf of the "principal".  
The "principal" must expressly create the agency.
8. **T F** The law recognizes different types of persons  
with different powers **and** duties.  
A natural person might be consumer **and** might be a citizen.  
A legal person might be a merchant **and** might be a corporation.  
Typically, a general partnership is **not** a person.

9. **T F** Because,  
the Nebraska *Constitution* uses a strong separation of the powers  
for the three branches of State government  
(*i.e., legislative, executive, and judiciary*),  
the Nebraska Supreme Court has ruled that  
contracts have an implied obligation of good faith.
10. **T F** A lawsuit to Pierce the Corporate Veil requires standing to sue.  
In a derivative lawsuit to Pierce the Corporate Veil  
a shareholder sues in the name of the corporation,  
in much the same way  
a child's parent has standing to protect the interests of the injured child.  
A shareholder plaintiff suing to Pierce the Corporate Veil  
must allege **and** must prove by a preponderance of the evidence  
that the defendant Directors **and/or** defendant shareholders  
used the corporate form to commit fraud (*e.g., party*),  
engaged in an **illegality or an injustice**,  
ignored required formalities, thinly capitalized the corporation,  
usurped corporate assets to personal use, **and/or** commingled assets.
11. **T F** The judicial powers are held by different types of courts.  
For example,  
trial courts apply law while appellate courts interpret law, **and**  
typically law courts award compensation while equity courts award action.  
A trial court in law may,  
depending upon the relevant precedence,  
react to an over broad Covenant **not** to Compete  
that is covers an **unreasonable time or** covers an **unreasonable area** by  
reforming the offensive term, severing the offensive Covenant, **or**  
voiding the entire transaction (*e.g., Nebraska*).  
Likewise, an equity court at trial may,  
as appropriate to the unique circumstances of the parties,  
impose a *de facto* corporation **or** a *de jure* corporation.
12. **T F** The USA federal government has **no** Police Power.
13. **T F** The law tends to view each of the separated powers with varied strengths  
(*i.e., a core, a penumbra, and emanations*).  
The USA Supreme Court interprets the Commerce Clause this way.  
Accordingly,  
federal preemption of a State's security regulation is narrow.

- 14. T F** Both the USA and the European Union protect privacy of persons. However, because of the separation of powers **and** due process, the EU provides more protection of privacy from invasion by private parties.
- 15. T F** Each USA State has committed, in the Fourteenth Amendment to the USA *Constitution*, to provide all legal persons subject to that State's jurisdiction the fundamental rights of the Bill of Rights **as well as** equal protection of that State's laws.
- 16. T F** Because the Full Faith **and** Credit Clause of the USA *Constitution* makes the international law principle of comity an express commitment of each USA State, in the USA, **unlike** the most of the rest of the world, parties to a contract largely have freedom of choice of law, of forum, of venue, **and/or** of language. All that the contracting parties need to have is substantial minimal contacts with the chosen jurisdiction.
- 17. T F** **Neither** an employment agreement, **nor** a bailment, **nor** a warranty need be a contract; **but** each can be a contract if all elements of a contract are present (*i.e., agreement, consideration, capacity, reality of assent, form, and legal subject matter*).
- 18. T F** Rarely is economic duress predatory, typically it is privileged.
- 19. T F** Because venture capitalists focus on liquidation of their investment, venture capitalists focus on the contractual terms defining exit. Because of the Rule of 70 (*i.e., 70 divided by the interest rate stated as an integer identifies the number of periods necessary to double a value earning interest **or** to halve a value obligated to pay interest*) the typical venture capitalist has a much shorter duration of investment than the duration typically desired by an entrepreneur.

- 20. T F** The Statute of Frauds requires five types of contracts to have their material terms (*i.e., parties, time, consideration, **and** subject matter*) in a written memorandum of sufficient definiteness that the court can enforce the parties agreement **and** to have the signature (*i.e., any mark with the current intent to authenticate the document*) of the party being sued for the enforcement of the contract. The Equal Dignity Rule uses the Statute of Frauds to set maximum limits on the parties' reasonable expectations of the scope of authority of an "agent" to enter into a contract if the "agent" does **not** have written **and** signed authority to do so.
- 21. T F** A tort (*e.g., negligence*) requires proximate cause (*i.e., the injury is reasonably foreseeable*). Privity limits the defendant's liability in addition to the defendant's liability being limited by proximate cause. Nebraska uses the *Ultramares* rule to expand liability for professionals. The *Ultramares* rule relaxes the privity rule **and** grants standing to persons who were the primary beneficiaries of the actions of the negligent professional.
- 22. T F** Since the Industrial Revolution, both the quantity **and** the quality of pollution has increased materially. Because of the bounded rationality of humans, humans stand behind the veil of ignorance when choosing current pollution levels that may **or** may **not** exceed either dynamic **and/or** static limits of needed ecosystems.
- 23. T F** A crime must be created by the legislature.

- 24. T F** The law sometimes allows some persons to act with limited liability. However, typically, in transactions some person has **unlimited** personal liability: i.e., in a general partnership, the partnership **and** each one of the partners has **unlimited** personal liability; in a limited partnership, the partnership has **and** all general partners have **unlimited** personal liability; **and** in a corporation, the corporation has **unlimited** personal liability.
- 25. T F** The legitimate business interests in a close corporation are greater; accordingly, shareholder agreements may contain proxy voting agreements that defeat cumulative voting rights **and** proxy voting with respect to a Board member's votes on the Board.
- 26. T F** A security is an investment of money in a common enterprise with an expectation of profit derived from the **undeniably** significant efforts of others.
- 27. T F** Common law fraud  
*(i.e., the defendant knowingly and intentionally misrepresents a material fact inducing the plaintiff's justifiable reliance **and** causing the plaintiff's injury)*  
is far more difficult to prove than security law fraud  
*(i.e., the defendant misrepresents **or** omits a material fact causing the plaintiff's injury).*
- 28. T F** The law uses the word "material" in many contexts. However, the meaning of material in one legal context can be materially different than the meaning of material in another legal context.

- 29. T F** A prospectus is required prior to the sale of a registered security. However, there are three major exempt transactions that do **not** require a prospectus. They are:  
intra-state  
(*i.e., seller, buyer, and capital all in one State*);  
small issue  
(*i.e., \$1 million*), **and**  
private issue  
(*i.e., a limited number of sophisticated investors with access to information that would have been disclosed*).  
A private issue may use a Private Placement Memorandum (*e.g., PPM*) instead of a prospectus.
- 30. T F** The **non**-breaching party has a duty to mitigate damages. Some of the damages that the **non**-breaching party may recover from the breaching party are expectation damages **and** reliance damages; which includes compensatory damages **and** consequential damages. Especially between merchants who are engaged in a sophisticated allocation of risk of loss, as partially evidenced by the insurance the parties' purchase, a liquidated damages clause might be enforceable. However, especially in an adhesion contract imposed on a consumer, a liquidated damages clause might be seen as an **unenforceable** penalty.
- 31. T F** Under the Uniform Commercial Code (*i.e., UCC*) Article 2, Sale of Goods, all parties lack the legal power to disclaim the obligation of good faith **and** a merchant's liability for a consumer's personal injury. These two provisions are reflective of when the legislature tends to react, **as well as** the parties' relative ability to bear **and** to spread the risk of loss.

- 32. T F** A mutual mistake can prevent formation of a contract.  
If performance becomes commercially impossible (*e.g., 10x change in price*) then the contract may be terminated by law.  
The parties may agree in the contract to terminate the contract even prior to commercial impracticability (*e.g., 3x change in price*) by using a *Force Majeure* clause that identifies what the parties agree is beyond the power of the parties to control **or** accept.
- 33. T F** The implied agreement of all partners in a general partnership is that all partners share equally the profit **and** losses, management, **and** assets of the partnership. The partners are free to expressly agree otherwise. However, any such agreement between the partners is **not** binding on third parties. In contrast, in a corporation, the statutory rule is that shareholders share on a *pro rata* basis the management, the income, **and** the assets; **but** shareholder agreements for alternative divisions can be binding on third parties.
- 34. T F** Typically, vested investors in a corporation wish to avoid dilution. Dilution can be financial **or** can be structural. Financial dilution can be more easier to prove if there is a par value. Preemptive rights protect more against financial dilution than structural dilution.
- 35. T F** The USA federal government has preempted the USA State governments with respect to contracts in commerce that require arbitration. The federal government favors arbitration. However, each State may limit arbitration contracts in commerce only by using that State's general law of contracts; **no** State may make contrary, special rules governing arbitration contracts. For example, the Nebraska courts have **not** favored arbitration **and** have held that, a consumer does **not** have capacity to enter any contract to waive the right to be a plaintiff in a trial until that consumer has standing to sue. This Nebraska rule is preempted.