1. You should read the instructions, the entire exam and all of the questions before answering any of the questions.

2. This is an open-book (but not open network), three-hour in-class examination. You may consult any materials you wish, except that (i) you may not consult anyone else and (ii) you may not use the Internet or any database service (such as Westlaw or Lexis/Nexis). Please do not discuss the exam with anyone until the examination period is over.

3. This examination consists of three (3) pages. Please make sure that you have all of the pages.

4. There are three (3) questions, with a total of ten (10) units for weighting purposes for grading. The weight for the question is set forth next to the question.

5. I grade each question separately, so you should not cross reference answers across questions.

6. Your answer should be no more than 3000 words (approx. 300 words per unit). Please provide a word count at the end of the exam.

7. Answers should be written in full English sentences and should refer to specific statute sections and cases where relevant. If an exam question is unclear, point out the ambiguity and then answer the question to the best of your ability.

8. In answering the questions, you should assume, except as otherwise provided in the exam itself, that the applicable version of any relevant statute is that set forth in the class materials. The law is the law of today, even if the exam is set at a different time.

9. Good luck.
NOTE: APPLY THE LAW AS IT EXISTS TODAY

Question 1 (4 units)

The year is 1980. The credit card industry lives in the dark ages using a paper-based system. There is no credit card “swiping” to make payments. Instead, when a consumer seeks to pay using a credit card, the merchant takes the card, attaches it to a so-called “zip-zap” machine and makes an imprint of the raised numbers on the cards to create a physical paper copy of the bill. The consumer signs that and the merchant keeps one copy as would the consumer. Merchants concerned about possible credit card fraud could look up the card number in large physical paper lists (“fraud lists”) distributed by the credit card companies.

But new technology promised to improve this system dramatically and four pieces of technology are key here: (1) the magnetic stripe, which could be embedded on the back of the credit card and which would contain detailed identification information; (2) point-of-sale (POS) terminals that could read the stripes (creating swiping as we know it); and (3) access to the phone network to establish communications from the POS terminal to (4) one or more credit card data processing centers that would substitute for the fraud lists. All of this promised to substitute a highly efficient electronic system for an unbelievably clunky paper-based system.

Assume that the credit card landscape in 1980 consisted of four pieces: (1) Visa, a general-use credit card organized by a group of banks to issue cards under a common brand; (2) Master Card, with a similar approach to Visa, but different banks; (3) American Express, a free-standing company with its roots in the old express business; and (4) single-merchant credit cards, meaning cards that could be used only at single merchant (say Sears, a once prominent department store).

Also recall that the government’s antitrust lawsuit against AT&T was resolved in August, 1983, meaning that while competition was growing in long-distance telecommunications, the phone market was still characterized by local monopolies.

Question: Assume that there are anywhere from two to four ways of designing the new magnetic stripes and that the POS terminals can either be designed to read a particular type of magnetic stripe or can instead, at greater cost, be designed to read different types of magnetic stripes. Assume further that each of the three leading general-purpose cards has a preference for one or another approach to magnetic stripes, but are also willing to consider a common approach. Discuss the issues raised by all of this and also be sure to address the extent to which Congress should consider intervening in this situation and what kind of legislation might be appropriate and why.
Question 2 (3 units)
Consider this statement:

“We are currently living with an out-of-date list of public utilities for communication. No one really cares about the post office and the action isn’t so much in figuring out how to regulate physical networks but what types of regulations we should bring to bear on the virtual networks that define modern communications. Platforms like Facebook, Google and Twitter have a level of control over communications that a telephone company executive from the 1920s would instantly recognize and admire. They have near absolute power to include or exclude and can do so virtually arbitrarily with no real consequences. All of the principles that led to extensive, ongoing regulation of physical telecommunications in the U.S. suggest that a similar regulatory structure should be brought to bear on these dominant virtual communications platforms.”

**Question:** Discuss. Be sure to explain to what extent the regulatory principles from the course apply, or do not apply, to these platforms and the potential advantages and disadvantages of possible regulatory strategies for these platforms.

Question 3 (3 units)
Consider this statement:

“The history of regulation in these areas for at least half a century if not longer is one of perpetual failure by the government. Congress inevitably regulates in vague terms and punts actual implementation to regulators, either state or federal. State legislatures do no better: they find it easy to have grand visions and much more difficult to implement effective reform. The things that are being regulated are inevitably more complex than the government can grasp and industry incumbents inevitably have strong incentives to resist meaningful changes. Technology raises ahead at a speed that the legal system can’t begin to match and regulators have very little hope of staying anywhere near the cutting edge of that technology. All of that generates a legal system that careens wildly and that can’t begin to provide the firm hand that would be required for policy to be useful in these areas.”

**Question:** Discuss. Agree or disagree, in part or in full, but be sure to draw upon specific examples from the course that support your views.