

**STETSON UNIVERSITY COLLEGE OF LAW
St. Petersburg, Florida**

GENERAL INSTRUCTIONS

I DIRECT THE ATTENTION OF ALL STUDENTS TO THE FOLLOWING:

1. The answers and the pledge are to be identified by examination number only.
2. During the course of the examination, the examination and answers may not be removed from the rooms prescribed for taking the examination.
3. This examination ends at the expiration of the time allotted, or when the examination is turned in, whichever comes first.
4. The instructor will be permitted to grade only answers that have been submitted during the examination, in the manner indicated by the instructor.
5. From the conclusion of the time prescribed for the examination, students are forbidden from communicating with the instructor with reference to this examination until grades have been turned into the Registrar's Office except that students may communicate with the instructor at any time concerning matters related to the Code of Student Professional Responsibility.

TIME FOR EXAMINATION: THREE AND ONE-HALF HOURS

SPECIAL INSTRUCTIONS

1. This is a LIMITED OPEN BOOK examination. You previously have been advised as to which materials you may use during the examination. If you had a question about whether a particular item was allowed in the examination, you should have raised that question before the examination. If you are in doubt, do not bring the item to the exam.
2. This examination consists of nine (9) pages. You should check now that you have all pages.
3. The examination is in two Sections.
 - Section I of the examination requires you to provide answers to five (5) essay questions based on a single hypothetical fact situation. Section I is worth a total of eighty-five (85) points. You must answer all of the questions raised in Section I.

My suggestion is that you allot three hours to Section I. As you will see, I have assigned points to each essay questions. I suggest that you divide your three hours among the questions with an eye toward the points allotted to each sub-part.

- Section II requires you to select one of three essay questions to answer. You should answer **ONLY ONE** of the questions in Section II. Your answer to the question you choose in Section II will be worth a maximum of fifteen (15) points. My suggestion is that you allot thirty (30) minutes to Section II.
4. Please put your answer to Section II in its own blue book or begin it on a new page if you are using a computer.
 5. When answering the essay questions, you should disregard whether (1) interest would or should be awarded on any monetary recovery, (2) any monetary recovery would or should be reduced to present value, and (3) costs, including attorneys' fees, would or should be awarded in conjunction with any other remedy.
 6. In all the lawsuits that are hypothesized on this examination, please assume that Florida law applies. If we have not addressed what Florida law is with respect to any topic relevant to a question, please assume (solely for the purposes of this examination) that the general concepts we have discussed in class are applicable in Florida.
 7. You should assume that unless stated otherwise in the question, the events at issue are taking place in 2002.
 8. With respect to Section I, you may use any facts found anywhere in the Section in order to respond to the six sub-parts.

END OF INSTRUCTIONS – GOOD LUCK!!

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Section I: (Suggested Time: Three Hours)
(Total Points: Eighty-Five (85) Points)

ANSWER ALL QUESTIONS IN SECTION I

Sally Ride was the first American woman in space. After she retired from the astronaut corps, she decided to get into the commercial space business. Specifically, in 1990 Sally bought a piece of property in Northern Florida from which she would be able to launch private rockets into space. Given her prominence in the astronaut world, she was able to do quite well in starting up her business.

The property Sally purchased is located on the Blue River. You can see a crude map of the area as relevant to this examination on Attachment A to this examination. On the other side of the Blue River from Sally's property is the Blue River Country Club and The Marina, two hangouts of the local rich and famous.

Let's start our tale of woes with Sally. The first thing Sally did after getting the property was to build launch pad #1 and launch pad #2 on her land. Thereafter, she started drumming up business. Due to her efforts, she landed a contract with NASA to launch satellites. Her first launch was in 1995. Sally launched three satellites into orbit each year from 1995 through and including 2001 under her NASA contract. The NASA contract continues through 2005. All of these launches were from launch pad #1 and all involved the same type of rocket carrying the same payload. All of the launches took place between 8:00 a.m. and noon during the work week (*i.e.*, Monday through Friday). As a result of her success, Sally now employs 15 people full-time, in addition to herself.

Sally has now entered into a second contract with NASA. This contract calls for Sally to get involved in the building of the international space station. In essence, Sally is supposed to build and launch a spacecraft that can act as a type of orbital shuttle bus between and among manned objects in space. All launches for this second NASA contract will be from launch pad #2. Of course, the project is confidential and has not been publicized. The contract with NASA is quite complex. In fact, Sally is still trying to figure out just how much money she can expect to make over the life of the deal.

After Sally got the contract she began to search for a piece of equipment to use as the orbital shuttle bus. She first looked into having the shuttle bus built to order by Boeing. She rejected this suggestion because the cost of the project would have been \$1,000,000 to construct a space shuttle bus. Several other aerospace companies have confirmed this \$1,000,000 figure. Sally then turned to used equipment to see if she could find anything to use as a space shuttle bus. She finally found something in Russia of all places.

The Russian government was selling the hull of one of its decommissioned nuclear submarines (referred to hereafter as the "Russian Hull"). The Russian Hull was perfect for use in the space shuttle bus project. All that was needed was a little retrofitting. Sally really could

not believe her good fortune. The Russian Hull was the only one the government had for sale. It was also far better for Sally's purposes than submarine hulls built in the West. After an open bidding process in which about 100 people participated, the Russian government sold Sally the Russian Hull for \$50,000.

As mentioned before, Sally was planning to retrofit the Russian Hull in a project that would cost \$35,000. Fate intervened, however, after the Russian Hull was shipped back to Florida but before the retrofitting operation. While Sally was driving on the interstate to get to her Blue River property, Mario Andretti hit the truck on which the Russian Hull was sitting. Sally was not hurt. The Russian Hull and Sally's truck, however, were both totally destroyed. Without the Russian Hull, Sally doesn't know what she will do about the NASA contract to provide the space shuttle bus.

For your information, the truck Sally was driving when Mario hit her was ten years old. It had cost \$50,000 new. The blue book value of the truck (assume the blue book calculation is based on depreciated value) is now \$5,000. An equivalent replacement truck costs \$75,000 today.

After the accident, Sally learned that Mario was on his way back from a party at which he had consumed five beers in one hour. Police tests confirm that Mario was legally intoxicated at the time of the accident. It turns out that Mario had five previous citations for driving under the influence of alcohol.

1. Advise Sally with respect to what damages she might be entitled to receive in a lawsuit against Mario Andretti concerning the destruction of the Russian Hull and the truck. (28 Points)

While all of this with the Russian Hull was going on, Sally actually got some good news. She got another contract, this one from the European Union Space Agency (the "EU Agency"). The EU Agency wanted Sally to be its main contractor to send communication satellites into orbit. The contract would provide Sally approximately \$1,000,000 in revenue over the next five (5) years. In order to perform the EU Agency contract, Sally decided to build launch pad #3. The pad needed to have certain equipment to meet the EU Agency's requirements. Once built, however, Sally could also use the pad for other, as yet unspecified, launches. You can see the locations for the various launch pads on Attachment A.

Sally hired Bob the Builder to construct launch pad #3. The contract between Bob and Sally provided that Bob would be paid \$250,000 to complete the pad, resulting in a profit of \$25,000 to Bob. Bob, however, ran into a number of problems with the construction of the pad. When he was 95% finished, he had already spent \$425,000 on the project. His projections indicated that the pad when finished would cost him \$450,000 to build. Assume that for the reasons described in the next paragraph Sally breached her contract with Bob by instructing him to stop work on launch pad #3. Bob was still 95% complete with the project at the time of Sally's breach of contract.

2. Advise Bob the Builder concerning his possible recoveries against Sally for breach of the contract to build launch pad #3. (12 Points)

Also in connection with the EU Agency contract, Sally entered into a contract with Space-Parts-R-Us to provide a custom launch pad control system. This system is essential to complying with the requirements imposed by the EU Agency under its contract with Sally. Relevant portions of the contract between Space-Parts and Sally are attached to the examination as Attachment B. The contract provides important facts about this problem.

Space-Parts-R-Us delivered the launch pad control system and Sally paid the contract price upon delivery. The system never worked properly. Space-Parts could not fix the system after months of trying. In addition, Space-Parts has thus far resisted Sally's efforts to have the company replace the system. The company has told Sally that it is not going to put a new system into her pad when it can sell it to someone else. The company insists that it will eventually fix the system.

In the meantime, Sally has not been able to get a similar system from any other manufacturer. Her lack of success should not be taken to mean that Sally has not tried to find a replacement. In fact, she has spent nearly \$10,000 trying to find a replacement system. Because she does not have the required launch pad control system in place, the EU Agency has indicated that it will cancel the contract with Ride if the system is not installed in two weeks.

3. Advise Sally about all remedies she has in a lawsuit against Space-Parts-R-Us in connection with the defective launch pad control system. Make sure that your advice considers all possible avenues for monetary recovery and other appropriate relief. In other words, give Sally a full description of her options and her chances of success. (30 Points)

But let us not forget Sally's neighbor across the Blue River in our narrative, the Country Club. When Sally bought the property in 1990, the Country Club was already in operation. In 2002, the Country Club filed suit against Sally seeking a permanent injunction against the continued operation of launch pad #1. The Club does not want to stop all launches from Sally's business but only those from launch pad #1. The reason is that the noise from the pad is too loud for golfers to enjoy their game. In fact, it is so loud that the launches could have a negative impact on the golfers' hearing.

4. Assume that the Country Club has the requisite standing to assert claims on behalf of the individual golfers. Also assume that the Country Club has introduced uncontested evidence that the noise from launch pad #1 is at a level that does have a negative impact on golfers' hearing. The Country Club seeks only an injunction in the case. You represent Sally. Based on the facts in this problem, what do you consider to be your TWO BEST responses to the lawsuit, assuming your client does not want the injunction entered? Why? Please remember that you should advance only two responses, defend

why you selected them and evaluate their chances of success. (10 Points)

The Country Club is not always a plaintiff. The Club was also recently named as a defendant in a federal court lawsuit by an adjoining property owner, The Marina. As you can see from the Attachment A drawing, The Marina is located down river from the Country Club. In its lawsuit, The Marina seeks a permanent injunction against the Country Club preventing it from dumping any pesticide-contaminated turf into the Blue River. The only remedy The Marina seeks in its lawsuit is the permanent injunction.

The following facts are uncontested: (1) Several weeks before The Marina filed its lawsuit, a contractor the Country Club had retained dumped turf into the Blue River. (2) The turf was heavily contaminated with pesticides. (3) The Marina has sustained a real injury as a result of the dumping. (4) The Country Club has never done this type of thing before. (5) When it found out about the dumping, it fired the contractor involved in the incident. (6) The Country Club still intends to use pesticides to treat its turf and to replace turf when it deems necessary.

- 5. You are the judge in the case The Marina filed against the Country Club. The Country Club has requested that you deny the request for injunctive relief as moot. How do you rule and why? (5 Points).**

END OF SECTION I

TURN THE PAGE FOR SECTION II

Section II: (Suggested Time: Thirty Minutes)
(Points Allotted: Fifteen (15) Points)

ANSWER ONLY ONE QUESTION IN SECTION II.

Select only one of the following statements. Your assignment is to agree or disagree with the statement, giving reasons in support of your answer.

1. The Florida statute concerning recoveries for wrongful death, Fla. Stat. 768.21, strikes the appropriate balance in terms of the recoveries it allows and those that it does not.

2. Florida should amend its statutes to provide for 75% of all punitive damage awards to be paid into the state treasury.

3. Plaintiffs should be allowed the option of recovering in restitution (as opposed to only obtaining compensatory damages) the profits earned by companies that do not install safety devices on mass produced products when the failure to install those devices is deemed to be negligent.

**ON MY HONOR, I HAVE
NEITHER GIVEN NOR
RECEIVED AID ON THIS
EXAMINATION.**

EXAM NO. _____

END OF EXAMINATION

HAVE A WONDERFUL SUMMER

ATTACHMENTS BEGIN ON NEXT PAGE
ATTACHMENT A

ATTACHMENT B

Selected provisions from contract between Space-Parts-R-Us (“Space-Parts”) and Sally Ride (“Ride”).

* * * * *

Space-Parts and Ride agree that the sale of the launch pad control system (the “System”) under this contract is governed by Article 2 of the Uniform Commercial Code as enacted in Florida.

* * * * *

In consideration for the System, Ride agrees to pay Space-Parts-R-Us \$100,000 upon delivery of the System.

* * * * *

Space-Parts understands that the System is necessary for Ride to perform her obligations under a contract with the European Union Space Agency. Space-Parts further understands that the contract between Ride and the European Union Space Agency provides for profits to Ride of at least \$1,000,000 in revenue over five (5) years.

* * * * *

Under no circumstances will Ride be able to recover consequential damages should there be a breach of this contract. Ride’s exclusive remedy under this agreement shall be the repair of the System. In the sole discretion of Space-Parts, Space-Parts may elect to replace the System instead of repairing the System.

* * * * *

Both parties acknowledge that they have had an opportunity to review this contract. Both parties further acknowledge that the contract has been reviewed by their respective legal counsel.