

**STETSON UNIVERSITY COLLEGE OF LAW
Gulfport, 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 may use the textbook for the course, your notes, any handouts distributed in class, and outline(s) you prepared either alone or in conjunction with others.
2. This examination consists of five (5) pages. You should check now that you have all pages.
3. The examination consists of a single essay question in connection with which you will be asked to provide advice concerning certain remedial issues. If you believe that you require any additional facts, need to make any assumptions, or are applying a certain legal principle, make sure that you identify such matters in your answer.
4. When answering the essay question, 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.

END OF INSTRUCTIONS – GOOD LUCK!!

PLEASE TURN THE PAGE AND BEGIN THE EXAM WHEN YOU ARE READY

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EXAMINATION QUESTION

Marbury is the fifty-first state in the United States of America. You should assume that Marbury has adopted all of the statutes that are contained in the Florida Statutory Supplement (the document with the blue cover) distributed in this course. In all other respects, Marbury is a standard common law jurisdiction.

One of Marbury's most famous residents is the actress Nicole Kidman who moved to the state to get away from the pressure of living near Hollywood. She lives on Jefferson Island, the most exclusive area in the state. You are one of Ms. Kidman's lawyers. As explained in this question, she has asked for your advice concerning what remedies she may pursue against a number of individuals. She also seeks some advice concerning the remedies that may be awarded against her in a potential lawsuit. Her story is as follows:

When Ms. Kidman moved into her new house, one of the first things she did was find a place to put the Oscar she recently won. As you might expect, the Oscar was quite special to her. She searched and searched for the perfect piece of furniture to use to display the statue. She finally found a local shop called **Special Memories** that promised to build a bookcase to resemble an Oscar right down to the smallest detail. Ms. Kidman entered into a contract with **Special Memories** in which she agreed to buy the bookcase for \$10,000. It was to be delivered on May 15th. The contract contained a provision stating that "under no circumstances shall **Special Memories** be held liable for consequential damages flowing from any breach."

Special Memories completed the bookcase and was about to deliver it on May 14th. At that point, it found out that it could sell the bookcase to Tom Cruise for \$50,000. **Special Memories** would earn a profit of \$45,000 on the Cruise transaction. **Special Memories** repudiated the contract with Ms. Kidman and told her that it was going to sell it to Mr. Cruise instead. As of May 14th, Ms. Kidman could have had another bookcase commissioned at a cost of \$25,000. The only place that could make the bookcase was in Sao Paulo Brazil. She understands that it would cost about \$2,000 to have the bookcase shipped safely to Marbury in the United States. You should assume that a bookcase is a "good" under the Uniform Commercial Code.

An additional problem concerning the Oscar is that Ms. Kidman has been dropped from appearing in a coffee table book on recent Oscar winners. She was going to be in the book, as she told **Special Memories**, precisely because of the special bookcase. Without the bookcase, the book dropped her because it was running up against a publishing deadline. Ms. Kidman was to have received \$100,000 as part of the book deal.

Just as she is wrestling with these issues, Ms. Kidman also had an altercation with one of her neighbors, **Arthur Read**. Ever since she moved into the neighborhood, Kidman and **Read** had feuded over a number of issues. They simply did not get along. Indeed, as part of a prior lawsuit between **Read** and Kidman, a court had entered a permanent injunction prohibiting **Read** from entering Kidman's house for any reason.

One day, after a particularly intense argument on the street, **Mr. Read** barged into Kidman's house, grabbed the Oscar off the shelf (on which it was placed until a suitable bookcase was located) looked right at Kidman and said "I am sick of you!" At that point **Mr. Read** shattered the Oscar by slamming it into the floor. The Oscar could not be repaired. While it is possible to get a replacement Oscar, Kidman said she did not want it. The one **Read** destroyed was hers and now it is gone. You should be aware that Marbury recognizes the tort of intentional infliction of emotion distress and does not require that any physical injury occur to recover under the tort.

Ms. Kidman also has certain problems related to her career. To begin with, Ms. Kidman has learned that a woman named **Dorothy Saur** is running a BBQ restaurant no Jefferson Island. The restaurant's slogan is "all the best meat to eat!" The problem as far as Kidman is concerned is that **Ms. Saur** is using a picture of Kidman as part of the restaurant's advertising. **Saur** took the picture when Kidman was walking in town. It turns out that **Saur** has been using the picture for the past five months. It bothers Ms. Kidman because she is a vegetarian and does not want to be associated with meat. She has asked **Ms. Saur** to stop using the picture, but **Saur** has refused. In fact, **Saur** said that for the five months she used the picture she made \$5,000 in revenue each month compared with \$1,000 during most months before using the picture. Of course, she also introduced a new sandwich at the same time she first used the picture.

The bottom line is that **Ms. Saur** told Kidman that she was not going to stop using the picture. In any event, she told Kidman that if Kidman was so upset about the picture, she should have said something before. If **Saur** had known about Kidman's objection in the first month, she might have stopped using it. As things stand now, however, Kidman's silence led her to think that everything was okay. In short, at least a part of her business now relies on the picture attracting business. By the way, you should assume that Marbury recognizes the tort of misappropriation of personal likeness. You should further assume that **Saur's** conduct amounts to such misappropriation with respect to Kidman's likeness. The statute of limitations for the misappropriation claim is one year from the date of the first act of misappropriation.

Finally, Ms. Kidman has a dispute with **Super Studios**. This time, however, Ms. Kidman is on the other end of the dispute. It seems that Kidman entered into a contract with **Super Studios** in which she agreed to appear in a movie. The contract provides that Kidman would work on the **Super Studios** movie for all of 2004. The title of the movie is The Minutes.

Ms. Kidman also has received an offer to star in a remake of the Sound of Music. She thinks that this movie will be very successful given the renewed interest in musicals. The problem is that the Sound of Music is set to shoot during 2004 at the same time as The Minutes. Kidman just could not resist the Sound of Music. She notified **Super Studios** that she would not appear in The Minutes.

Super Studios has now sued Ms. Kidman for breach of contract. **Super Studios** has sought only two remedies in the suit. First, **Super Studios** seeks an order requiring Kidman to fulfill her obligations under the contract. Second, and in the alternative, **Super Studios** seeks an

order prohibiting Kidman from working for any other studio during 2004.

Ms. Kidman has asked you to:

- A. Advise her as to her possible remedies in lawsuits that might be filed against the following people or entities. Please be sure to be comprehensive, but realistic. Also, please be sure to assess the chances of success with respect to each remedy you identify. To the extent that you have sufficient information to suggest the amount of any monetary recovery, you should do so. If it is not possible to specify the amount of any monetary recovery, you should suggest methods by which you could calculate the recovery. Finally, if there are any additional facts you would like or if you make any assumptions, please state them.**
- **Special Memories (30 points)**
 - **Arthur Read (30 points)**
 - **Dorothy Saur (30 points)**
- B. Advise her with respect to the likely success of both claims for relief asserted against her by Super Studios. Please be sure to assess the chances that her defense(s) would be successful. If there are any additional facts you would like or if you make any assumptions, please state them. (10 points).**

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

EXAM NO. _____

END OF EXAMINATION
HAVE A WONDERFUL SUMMER