

**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 and supplement for the course, your notes, any handouts distributed in class, and outline(s) you prepared either alone or in conjunction with others. You may also use a calculator. You may not bring any of my past exams or answers or any commercial materials other than the textbook and supplement.
2. This examination consists of eleven (11) pages. You should check now that you have all pages.
3. The examination consists of a single fact pattern in connection with which you will need to answer three questions. **YOU MUST ANSWER ALL THREE QUESTIONS.** The point breakdowns and suggested amounts of time to devote to each question are as

follows:

<u>Question #</u>	<u>Points</u>	<u>Suggested Time</u>
1	18	40 minutes
2	60	2 hours
3	22	50 minutes

4. If you believe that you require any additional facts or need to make any assumptions, make sure that you identify such matters in your answer. When you are able to come to a specific dollar figure, you should do so. In those situations in which you cannot do so, you should explain the way in which you would reach such a figure.
5. Any statutes that you may need to consult in connection with this exam are included as Exhibit A to this document. Unless you conclude one of those statutes apply, you should assume that the issue will be governed by common law principles. To the extent you believe there are competing common law principles, you may wish to address all of them when rendering your advice.
6. When answering the questions, you should disregard whether (1) interest would or should be awarded on any monetary recovery, and (2) any monetary recovery would or should be reduced to present value.

END OF INSTRUCTIONS – GOOD LUCK!!

Benjamin Todd (“Todd”) had been an adequate professional tennis player. When he retired from the tennis circuit he went into coaching. It turned out he was an amazing coach. He became quite successful in that role, coaching many of the game’s top players. Todd has come to see you, a lawyer, about some legal problems he is having.

Both Todd and you live in the State of Stetson. Stetson is the 51st state of the United States. You are admitted to the Stetson Bar. All potentially relevant Stetson statutes are included as part of Exhibit A to this exam. Stetson also is a traditional common law jurisdiction. To the extent a statute does not cover an issue, you should give your advice based on the common law principles we have studied. You should be sure to identify the rules you are applying.

Below is Todd’s tale of woes. At the conclusion of his story, Todd will pose three distinct questions for you to address.

Todd lives in an exclusive community called Darbyville in Lee City in Stetson. All homes in Darbyville are governed by a set of covenants with which an owner agrees he or she will comply. All owners in Darbyville agree to the exact same covenants. The covenants are contracts under Stetson law. The only covenant that is relevant to Todd’s problems is covenant #1, which provides as follows:

1. Owner agrees that he or she will not conduct a business-for-profit from Owner’s property. The Darbyville Homeowners Association, through its Board of Directors, is the only entity capable of enforcing this covenant.

Five years ago when Todd was looking into moving into a community in Lee City, he considered Darbyville. The Darbyville Homeowners Association (the “Association”) is the legal entity representing all Darbyville homeowners. The Association is not a governmental agency or subdivision. The Association very much wanted to get Todd to join the community. He was a famous tennis coach at this point and the Association thought his presence would help attract other residents.

Todd loved Darbyville. He was interested in buying a large house on a significant piece of real estate. In addition to the house and land, Todd was particularly attracted to this particular property because it had a professional quality clay tennis court. The problem was that Todd planned to coach tennis at his home. It seemed that covenant #1 would ban such coaching since it was most certainly going to be a business-for-profit.

Todd met with the Board of Directors of the Association. He explained his problem. The Board unanimously told Todd that it could not amend the covenant. However, the Board further explained that since only the Board could enforce the covenant, it would give Todd an informal, oral assurance that it would not enforce the covenant at any point in the future.

After reflection, Todd decided to move into Darbyville. He was worried about not having anything in writing about the business issue. This was especially so because he had an offer to move into another development in the area that would allow him to conduct the lessons at his house. But he liked Darbyville better for a number of reasons, including the views of the ocean. In the end, Todd decided to trust the Association's assurances and go with Darbyville. He moved in four years ago and immediately began conducting tennis lessons at his home. He has continued this business activity for profit during the entire time he has lived in Darbyville.

There has been a recent change in the membership of the Association's Board. The new Board was surprised to learn that covenant #1 was not being enforced as it related to Todd's coaching activities. It has even threatened to file suit to enforce covenant #1.

The Association's threats to sue have been disturbing to Todd because he has been amazingly successful as a tennis coach at his Darbyville home. One of the principal reasons for this success is Todd's development of an original method for teaching the serve. The method was totally unique and it drew some of the very top players in the world to be taught by Todd. You should assume that Todd's method for teaching the serve was a "trade secret" under the relevant Stetson statute (Stetson statute #1).

Todd had only agreed to let one other person use his technique to teach the serve. His old coach Tom Smith now only coached players on what was called the "senior circuit." That is, he coached professional players who only competed in tournaments for older players. Thus, Smith was not in competition with Todd. Because of Todd's warm feelings for Smith, he agreed to let Smith use the serve coaching technique for only a one time fee of \$50,000. Smith readily had agreed to this great deal.

Todd loved getting the top players for many reasons. Two major ones were (1) that it increased his reputation as a coach and (2) as compensation for coaching the top players, he received 10% of the players' winnings over a single tennis season. This compensation feature had earned him between \$75,000 and \$1,500,000 per year in the past four years; it was certainly a variable, but also potentially lucrative, flow of income.

One of Todd's main rivals in the tennis coaching world was Sam Cheata ("Cheata"). Cheata and Todd had always been competitive as players and the competition continued as coaches. Cheata was jealous of Todd's success in getting top players to sign on with him. Cheata was convinced this success was due in part to Todd's service coaching technique. So, Cheata decided to take things into his own hands.

Cheata bought a special high speed video camera and spent several weeks taking secret films of Todd's teaching techniques for the serve. Thereafter, Cheata spent time looking at the films in extreme slow motion in order to figure out Todd's method. After figuring out the technique, Cheata began to use it to teach professional tennis players.

Cheata used the technique for six months until Todd found out about Cheata's actions. (Todd found out yesterday after he heard some professional tennis players discussing Cheata's activities. The discussion of Cheata's use of the technique came up only after the first player he coached with the technique competed in public.) During that six month period, Cheata had a total of 10 clients, all of them new clients. Each client paid a flat fee for Cheata's services. Each of the ten clients paid Cheata \$100,000. He used the serve technique with all of the clients. He had no other professional tennis players as clients during this period of time.

There are a few additional facts that might be of interest to you. First, experts in tennis consider the serve to be about 30% of a professional player's game. Second, Cheata's method of teaching a professional tennis player was to follow the same seven hour routine each day he taught. Three hours were spent on ground strokes (the forehand and the backhand). Two hours were spent on volleys and overheads (hitting at the net). One hour was spent on the serve and one hour was spent on general tactics and strategy.

Finally, Cheata conducted one other type of activity in his tennis coaching life, also out of the same rented facilities at which he conducted his professional lessons. This other activity was providing lessons for the general public (whom he attracted through advertisements as opposed to his professional players who he got by attending various professional tennis events and recruiting players). Cheata did not use Todd's serving technique teaching method in any lessons for the public. While Cheata earned far less from the lessons for the general public than he did from working with professional players, he spent about 50% of his time with the public lesson groups. In addition, about 80% of his tennis equipment was used in connection with the public lessons.

All of Cheata's expenses and revenue in the relevant six month period are as follows:

Revenues

Activity	Revenue
Professional Coaching	\$1,000,000
General Public Coaching	\$200,000
TOTAL	\$1,200,000

Expenses

Expense	Amount
Facility Rental	\$150,000
Advertising	\$25,000
General Equipment (balls, cones, etc.)	\$50,000
Travel to Professional Tennis Events	\$100,000
TOTAL	\$325,000

Todd was very upset about Cheata's use of the service coaching technique. In fact, Todd was sure some of the clients Cheata had during this six month period would have come to him if Cheata had not stolen his technique.

Even while Todd was considering what to do about the situation with Cheata, he also was developing a new business. He decided that in addition to coaching professional tennis, he was going to open what he called the "grass tennis experience" where ordinary people could experience playing tennis on grass like at Wimbledon. He had two independent business appraisals done, both showing that he would earn at least \$250,000 per year after all expenses had been paid by operating the grass tennis experience.

In order to implement the plan, Todd arranged to construct a grass tennis facility at a location where it was lawful to conduct a business for profit. One of the contractors Todd dealt with was Eve Grass Corp. ("Eve"), a company in the horticultural industry. After the main part of the tennis court was completed, Todd and Eve entered into a contract under which Eve was to place the grass on the court surface. Todd selected Eve because the company had grass at the correct level of maturity for use on a court. No other company had such grass, which took one year to grow in order to be used on a tennis court. Relevant terms of the Eve-Todd contract are set out below:

Benjamin Todd ("Todd") and Eve Grass Corp. ("Eve") agree as follows:

1. Eve agrees to plant grass appropriate for athletic use on a tennis court prepared by or on behalf of Todd. Eve agrees to perform its services to the standard of care applicable to a competent professional in the horticultural business.
2. Todd agrees to pay Eve \$10,000 upon completion of the project.
3. Under no circumstances will either party be liable for consequential damages on account of breach of this contract.

4. In any suit for breach of this contract, the parties agree that the person prevailing in such a suit shall be entitled to be reimbursed for reasonable attorney's fees incurred in connection with such suit.

5. The parties acknowledge that they have had the opportunity to have this contract reviewed by a lawyer prior to execution.

* * *

When the time came to install the grass, Eve decided to transport it to the tennis facility using a normal flatbed truck. It did so even though no reputable landscaping professional would have used such a truck because of the damage it would cause to the special, athletic-use grass. The result of this transportation was that the grass was damaged and could not be installed. Needless to say, Todd did not pay Eve.

Everything else about the "grass tennis experience" was ready to go except the grass. Todd looked but could not find any company in the relevant geographic area that had grass capable for use in athletics. Even Eve did not have other appropriate grass available. The best Todd could do was find a company that could grow grass in one year. The price was \$25,000. Todd placed the order, but had to defer opening his grass tennis experience for one full year. Todd sold the now defective grass Eve had delivered to a local farmer for \$3,000. It took him 3 weeks to make the sale during which time he stored the grass at a storage facility. He paid \$100 per week for the storage. The only bright spot of an otherwise dreadful experience with the grass is that Todd was actually able to collect \$7,500 under a comprehensive business risk insurance policy he had. The payment was based on the delay in opening the business as a result of the problem with the grass.

Based on his tale of woes, Todd has three questions for you. You should answer each question separately although you may use any facts in connection with any answer.

Question 1: (18 points; suggested time: 40 minutes)

Todd has been sued in Stetson state court by the Association for breach of covenant #1 in the Darbyville community's homeowner agreement. The Association is seeking only specific performance of the contract. Assuming that Todd has no defense on the merits, what advice do you have concerning Todd's possible litigation options? Also, is there anything Todd could seek affirmatively in the Association's lawsuit in terms of a remedy, even if we assume he has suffered no harm and is in no immediate danger of suffering harm? Please explain.

Question 2: (60 points; suggested time: 2 hours)

Todd would like to sue Cheata in Stetson state court in connection with his theft of Todd's trade secret. Please describe for Todd his various remedial options against

Cheata assuming Todd will prevail on the merits of his trade secret claim. Be as comprehensive as is appropriate given the facts. Make sure to address all remedial possibilities that are available under the facts.

Question 3: (22 points; suggested time: 50 minutes)

Todd would like to sue Eve in Stetson state court for breach of contract and violation of the Stetson Horticultural Malpractice Act. Please describe for Todd his various remedial options against Eve assuming Todd will prevail on the merits of these claims. Be as comprehensive as is appropriate given the facts. Make sure to address all remedial possibilities that are available under the facts.

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

EXAM NO. _____

END OF EXAMINATION. ENJOY YOUR BREAK

EXHIBIT A BEGINS ON THE FOLLOWING PAGE

EXHIBIT A

This Exhibit contains the relevant portions of all relevant Stetson statutes.

Stetson Statute #1:

Trade Secret Statute

(1) It shall be unlawful for any person to take, copy, or use the trade secret of another person. Upon a finding of liability for violation of this statute a person whose trade secret has been taken, copied or used unlawfully shall be entitled to the following:

- (a) actual damages suffered provided such damages are proven to a reasonable degree of certainty;
- (b) the profits of the unlawful activity provided such profits are proven to a reasonable degree of certainty;
- (c) double the actual damages awarded under sub-section 1(a) above; and
- (d) reasonable attorneys' fees incurred in connection with any action filed pursuant to this statute.

(2) Nothing in this statute shall be interpreted to restrict any person from obtaining additional remedies provided by relevant law in connection with actions that violate this statute.

Stetson Statute #2:

Attorneys' Fees

No attorneys' fees shall be awarded in any action unless the award of such fees is authorized by statute or is otherwise required.

Stetson Statute #3:

Statute of Limitations: Breach of Contract

Any action for breach of a written contract must be brought within three (3) years of date of the breach.

Stetson Statute #4:

Declaratory Judgment

The courts of the State of Stetson shall have jurisdiction to issue declaratory judgments resolving an actual controversy between persons. It shall not be a defense to such action that some other legal or equitable remedy is adequate. The term "person" includes natural persons as well as legal entities.

Stetson Statute #5:

Horticultural Malpractice Statute

A person (natural or legal) who is actually injured by the failure of a person engaged the horticultural industry to perform horticultural related services to the standard of care of a competent professional in the horticultural business shall be able to recover its actual damages caused by such breach of the standard.

Stetson Statute #6:

Punitive Damages

(1) A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence. As used in this section, the term:

(a) "Intentional misconduct" means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.

(b) "Gross negligence" means that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

(2)(a) Except as provided in paragraphs (b) and (c), an award of punitive damages may not exceed the greater of:

1. Three times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or

2. The sum of \$ 500,000.

(b) Where the fact finder determines that the wrongful conduct proven under this section was motivated solely by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the

conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages not to exceed the greater of:

1. Four times the amount of compensatory damages awarded to each claimant entitled thereto, consistent with the remaining provisions of this section; or

2. The sum of \$ 2 million.

(c) Where the fact finder determines that at the time of injury the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there shall be no cap on punitive damages.