

**STETSON UNIVERSITY COLLEGE OF LAW  
Gulfport, Florida**

**GENERAL INSTRUCTIONS**

**THE ATTENTION OF ALL STUDENTS IS CALLED TO THE  
FOLLOWING INSTRUCTIONS:**

1. The answers and the pledge are to be identified by examination number only. **DO NOT WRITE YOUR NAME ON ANY BLUEBOOKS OR ANYWHERE ON THE EXAMINATION; USE YOUR EXAMINATION NUMBER INSTEAD.**
2. During the course of the examination, the examination and answers may not be removed from the rooms prescribed for taking the examination as posted on the Bulletin Board.
3. This examination ends at the expiration of the time indicated, 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 method indicated by the instructor.
5. At the conclusion of the time prescribed for the examination, students are forbidden from communicating with the instructor with reference to the final examination until the grades have been turned in to the Registrar's Office except that students may communicate with the instructor at any time concerning matters related to the Code of Student Professionalism and Conduct or the Academic Honor Code.

**TIME: 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 not bring any of my past exams or answers or any commercial materials other than the textbook and supplement. You may bring a calculator with you if you so desire.
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 two questions. **YOU MUST ANSWER BOTH 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	50	1 hour and 45 minutes
2	50	1 hour and 45 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 an appendix 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!!**

You are a lawyer in the state of Stetson. All relevant Stetson statutes are included as part of the appendix to this examination. Stetson is one of the United States and, as such, the United States Constitution applies. Stetson is also a common law jurisdiction with traditional common law rules. If you are unsure about the content of any applicable common law rules, explain the various possibilities and discuss any relevant issues under the various formulations of the rules.

Weaver Bus Company (“Weaver”) has come to seek your advice concerning two matters. Each issue is set forth separately below. In the paragraph immediately below, I have provided some general background information. You should assume that Weaver has come to see you in May 2006.

Weaver is a corporation organized under Stetson law with its principal place of business in Stetson. It has two main lines of business. First, it provides charter bus services specializing in entertainment matters. For example, it often provides transportation services for musical acts while touring in the state of Stetson. Second, Weaver provides management services for other bus lines. So, for example, for a fee, Weaver will create routes for other bus lines. Weaver has run into problems with respect to both aspects of its business. It seeks your advice on the two specific questions set forth below.

**Question #1:**

**Suggested Time= One Hour and Forty-Five Minutes  
Points= fifty (50) points**

Weaver’s first problem concerns its provision of transportation services for touring musical groups. Weaver and the Shoben Rock Group, Inc. (“Shoben”) entered into a contract whereby Weaver would provide bus transportation services for Shoben’s tour in Stetson. The relevant portions of the Weaver-Shoben contract are as follows:

**Weaver-Shoben Contract**

1. Weaver agrees to provide bus transportation to Shoben during the period of Shoben’s tour in the state of Stetson.
2. Shoben has provided Weaver with Shoben’s concert schedule. It is Weaver’s responsibility to plan the routes.
3. In exchange for Weaver’s services, Shoben agrees to pay Weaver \$15,000 at the conclusion of Shoben’s tour.
4. The parties agree that Weaver shall be in breach of this agreement if, through the fault of Weaver, Shoben misses a scheduled concert date.

5. The parties agree that should Weaver be in breach of this agreement Shoben may recover damages of \$50,000 per missed performance. The parties agree that this provisions does not include appearances at “promotional events.”
6. In no event shall either party be liable for consequential damages flowing from the breach of this contract.
7. Each party acknowledges that they have had an opportunity to consult with legal counsel prior to entering into the contract.

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Shoben’s Stetson tour was to begin on June 10, 2005 with two performances in the City of Darby. The group was not all that excited about the tour. To be frank, ticket sales had not been that great. While things looked quite good when Shoben had contracted with Weaver, the sales just did not track what everyone had thought would happen.

The group landed at the airport in the City of Lee and was picked up by a Weaver bus. The bus was driven by Mr. Kelly, a Weaver employee. Unfortunately for everyone involved, Kelly was going through a rough period in his life. His wife had left him and he was depressed. As a result, he was drinking heavily. In fact, he had a few drinks at the airport while waiting for the Shoben group to arrive.

Kelly started off on the trip to Darby, but things soon went wrong. The Weaver bus was crossing a bridge over the Stetson River when Kelly lost control of the bus. As a result, three things happened: (1) The bus crossed the center lane and hit a car driven by Laycock, a salesman for a sporting goods manufacturer. Laycock was severely injured. Specifically, Laycock broke both his legs and required several operations to repair the injuries he sustained. He fully recovered but was out of work for six months. (2) Fuel from the bus spilled into the Stetson River requiring the river to be closed to all boating traffic for five days; and (3) the Shoben group missed the two performances it was to have in Darby. No other performances were missed. However, the group did miss an appearance at a “promotional event.” As a result of missing the event, the group was contractually required to (and did) pay the sponsor of the promotional event \$25,000.

After the accident, Weaver faced lawsuits from three parties:<sup>1</sup> (A) Laycock; (B) Shoben; and (C) the Partlett Boat Company, (Partlett) a company that runs boat tours on the Stetson River. You should not concern yourself with any claim that may have been filed against Kelly individually. You should also assume that both Partlett and Shoben

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<sup>1</sup>Of course, in some ways Weaver felt lucky. It has been required to pay the maximum possible state fine for having a drunk driver in an accident – \$5,000. The lucky feeling was because the company had avoided the much harsher penalty of the revocation of it bus transportation license in the state. If the licence had been revoked, Weaver would have been out of business.

are entities capable of bringing suit under Stetson law. Weaver is also an entity capable of being sued. Each claim is discussed below.

### **Laycock**

Laycock's claim was that Weaver was liable based on principles of vicarious liability for the actions of Weaver's driver, Kelly. You should assume that substantive Stetson tort law would impose vicarious liability on Weaver for the actions of a drunk employee acting within the scope of his or her employment. At the time of the accident, it is uncontested that Kelly was drunk. It is also uncontested that at the time of the accident Kelly was acting within the scope of his employment at the time of the accident. At trial, the evidence showed that Weaver had a system of random urine tests for alcohol and drugs, but that Kelly was able to "beat" the tests through no fault of Weaver.

The jury returned a verdict against Weaver based on the actions of Kelly. It awarded Laycock compensatory damages as follows: \$200,000 in medical expenses; \$100,000 in lost wages; and \$2,500,000 in pain and suffering. The lost wages amount was based on testimony that Laycock would have earned base pay of \$65,000 for the six months he was not able to work. The balance was apparently based on Laycock's claim that he would have received commissions on a couple of big sales that were pending at the time of the accident. The sales were never made, but Laycock claimed he could have closed them. The judge entered judgment in the full amount of these compensatory damages, (i.e. \$2,800,000), rejecting all Weaver's arguments.

You may want to know that Laycock received two payments after the accident. First, he received \$100,000 in insurance payments that defrayed some medical expenses. (Laycock was secretly happy about the payment because he felt he really got his money's worth. He had only paid \$1,000 in premiums to this company under the policy. Moreover, the insurer did not require that Laycock repay the company for any amounts even if Laycock recovered money in a suit against Weaver or Kelly.). The second payment to Laycock was \$100,000 from his church to "help out" with the medical expenses not covered by insurance.

In addition to the compensatory award, the jury awarded Laycock \$30,000,000 in punitive damages based on Kelly's intentional tortuous activity. The judge also rejected all challenges to this award.

### **Shoben**

Shoben's claim against Weaver was for breach of contract. Shoben sought total compensatory damages of \$125,000. That figure came from: claims for \$100,000 in damages because the group missed two performances as a result of the accident; and \$25,000 as a result of the missed promotional event. Of course, Shoben was secretly glad about missing the two performances in Darby. The reality is that the two missed performances would have ended up costing the group money (in other words, its profit would have been less than \$0). So, the group really did not mind missing the events.

And what is more, the group held a spontaneous concert at the sight of the accident and earned \$10,000 in profit without any expenses!

The trial judge granted Shoben's motion for summary judgment on the contract claim and awarded damages in the amount of \$100,000. The claim for the \$25,000 went to the jury. That body awarded Shoben \$25,000 for the missed promotional event. The judge allowed the claim to get to jury by striking paragraph 6 of the contract based on the doctrine of unconscionability. Weaver did not contest liability. Its sole argument concerns the damages awarded.

### **Partlett**

Partlett is in the business of using its fleet of boats to run a sightseeing business on the Stetson River. Partlett had been in business for only five months before the accident. Partlett sued Weaver in tort because Partlett was unable to run its tours for five days. During this five day period, state authorities restricted boat traffic on the Stetson River while the fuel spilled during the accident was cleaned-up.

At trial, Partlett introduced expert testimony to the effect that Partlett lost \$12,000 each day in profit and, therefore, the total damages due to the fuel spill was \$60,000. The expert admitted that Partlett's five month experience in business was not all that impressive. In fact, Partlett had not made more than \$1,000 per day before. The expert explained that she believed Partlett had "turned the corner" and was now profitable on a daily basis. The jury obviously agreed because it awarded \$60,000 to Partlett.

**Weaver has asked for your assessment as to the arguments it could make on appeal concerning the remedial issues implicated in the judgments obtained by Laycock, Shoben and Partlett. You should assume that Weaver's trial counsel made all necessary objections sufficient to preserve arguments on appeal. Please draft a memorandum to Weaver addressing the remedial issues it could raise on appeal with respect to (1) Laycock; (2) Shoben; and (3) Partlett.**

### **Question #2:**

**Suggested Time= One Hour and Forty-Five Minutes  
Points= Fifty (50) Points**

Weaver's second issue concerns the other part of its business, the designing of bus routes for other transportation companies. In January 2002 (remember we are now in May 2006), the President of Janutis Bus Company ("Janutis") visited Weaver's headquarters to consider hiring Weaver to design a bus route for Janutis. Janutis was just starting up in 2002. While he was there, the President decided that it would be a good idea to take (i.e., steal) a copy of the "Weaver bus route design manual" (the "Manual").

You should assume that the Manual was a trade secret of Weaver. The Manual explained Weaver's special system for laying out a bus route. Weaver closely guarded

the system it used for laying out routes. In fact, Weaver had never allowed another company to use its process of laying out a route. Instead, when Weaver entered into a contract to design a route, Weaver did the design work without disclosing its method.

Janutis used the Manual to layout 25% of its bus routes. The rest of the routes were dictated by the cities for whom Janutis was providing bus services. Janutis actually began operations in 2003. Here is some information about Janutis that you might find interesting.

1. Janutis has a total of 12 bus routes. 3 of those routes are run as private routes. 9 of them are ones Janutis runs as a subcontractor for cities. As mentioned above, the Weaver system was only used in connection with the private routes.
2. Approximately 10,000 per day use the 12 Janutis routes. 5,000 of those people use the combined three private routes. 5,000 use the public routes. The Janutis bus drivers were interchangeable. In other words, a driver might drive on a private route one day and a public route the next. The same basic idea was true of all other employees with the exception of “government contracting officers” who dealt only with the public bus routes.
3. During the period from January 2003 through the present time, Janutis has earned total revenues of \$3,000,000. The only business Janutis does is provide the bus services on the 12 routes mentioned above. The revenues broke down as follows: private routes: \$2,000,000 and public routes: \$1,000,000.
4. You should assume that Janutis had only the following expenses during this period:

Salaries of drivers:	\$750,000
Salaries of government contracting officers	\$100,000
Salaries of all other employees	\$500,000
Insurance	\$150,000

Thus, the total expenses during the relevant period were \$1,500,000.

Almost immediately after the Janutis president left the Weaver facility in 2002, Weaver noticed that the Manual was missing. Weaver asked Janutis if someone had “picked it up.” Weaver denied that anyone had. After the first Janutis private route began operations in 2003, Weaver noticed that the design looked very similar to one that its system – set forth in the Manual – would have created. Weaver took no action at this time. After the second and third lines opened in early 2004 Weaver again took no action.

In early 2006 when a new manager took over at Weaver, Weaver contacted Janutis about the Manual and the use of the Weaver technique to create the Janutis private routes. Janutis indicated that it would not stop using the routes, that it planned to use the same technique it had used to create its private routes when in created new routes in the future (which is was doing now), and also that it did not believe that Weaver's system was a trade secret in any event.

**Please advise Weaver about the remedial options available to it in a lawsuit against Janutis, assuming that the relevant cause of action would be one that could be classified as a common law tort. *You should not discuss punitive damages.* To the extent that there are any impediments to any remedies you identify, you should be sure to mention them in your discussion. You should assume that Janutis is an entity capable fo being sued under Stetson law.**

**END OF EXAMINATION**

**THE APPENDIX BEGINS ON THE NEXT PAGE**

**ENJOY THE SUMMER BREAK (OR GRADUATION)**

**APPENDIX**

**Constitutional Provision (Section 1, 14<sup>th</sup> Amendent U.S. Const.)**

No State shall . . . deprive any person of life, liberty or property, without due process of law . . . <sup>2</sup>

**Stetson Statute #1:**

**Statute of Limitations: Common Law Tort Actions**

Any action for any common law tort must be brought within five (5) years of date of the tort.

**Stetson Statute #2:**

**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 #3:**

**Collateral Source Payments**

(1) In any action to which this part applies in which liability is admitted or is determined by the trier of fact and in which damages are awarded to compensate the claimant for losses sustained, the court shall reduce the amount of such award by the total of all amounts which have been paid for the benefit of the claimant, or which are otherwise available to the claimant, from all collateral sources. Such reduction shall be offset to the extent of any amount which has been paid, contributed, or forfeited by, or on behalf of, the claimant or members of the claimant's immediate family to secure her or his right to any collateral source benefit which the claimant is receiving as a result of her or his injury.

(2) For purposes of this section:

(a) "Collateral sources" means any payments made to the claimant, or made on the claimant's behalf, by or pursuant to:

1. The United States Social Security Act, except Title XVIII and Title XIX; any federal,

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<sup>2</sup>Please note that the term "person" has been interpreted to include legal entities such as corporations.

state, or local income disability act; or any other public programs providing medical expenses, disability payments, or other similar benefits, except those prohibited by federal law and those expressly excluded by law as collateral sources.

2. Any health, sickness, or income disability insurance; automobile accident insurance that provides health benefits or income disability coverage; and any other similar insurance benefits, except life insurance benefits available to the claimant, whether purchased by her or him or provided by others.
3. Any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services.
4. Any contractual or voluntary wage continuation plan provided by employers or by any other system intended to provide wages during a period of disability.

**Stetson Statute #4:**

**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, or in situations in which the defendant was intoxicated while engaging in the conduct at issue (or has been held legally responsible for a person in such condition) there shall be no cap on punitive damages.

(d) In the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets the criteria specified in subsection (2) and:

(1) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;

(2) The officers, directors, or managers of the employer, principal, corporation, or other legal entity knowingly condoned, ratified, or consented to such conduct; or

(3) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

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