

**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 OR TYPE YOUR NAME ON ANY BLUEBOOKS, SCANTRON SHEETS, OR ANYWHERE ON THE EXAMINATION; USE YOUR EXAMINATION NUMBER INSTEAD.
2. During the course of the examination, ABSOLUTELY NO EXAMINATION MATERIALS MAY BE REMOVED FROM THE EXAM ROOM. This includes the exam, any Scantron sheets, bluebooks, or examination answers.
3. This examination ends at the expiration of the time indicated, or when the examination is turned in, whichever comes first.
4. The professor will be permitted to grade only answers that have been submitted during the examination, in the method indicated by the professor.
5. At the conclusion of the time prescribed for the examination, students are forbidden from communicating with the professor 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 professor at any time concerning matters related to the Code of Student Professionalism and Conduct or the Academic Honor Code.

**TIME: 4 HRS.**

**SPECIAL INSTRUCTIONS**

1. You have been given an envelope containing a copy of the examination. Blue books and scratch paper are available at the front of the room. Each student must turn in everything (including scratch paper, but especially the exam) in the envelope I have provided, at the end of the examination. BEFORE YOU DO ANYTHING ELSE, PLEASE WRITE YOUR EXAMINATION NUMBER ON EVERYTHING – THE EXAMINATION, THE ENVELOPE, THE BLUE BOOKS, AND THE SCRATCH PAPER.
2. This is an open-book examination. You may use the assigned texts, your notes, any handouts distributed in class or through TWEN, and any outline(s) you prepared either alone or in conjunction with others. You may not use any commercial outlines, hornbooks, or treatises.
3. This examination consists of five (5) pages consisting of three essay questions based on fact patterns (the essays are together worth 75% of your grade), three short answer questions that should take no more than two to three paragraphs to answer (each question is worth 5% of your grade), and one conceptual essay question worth 10% of your grade. You should also check at this time to make sure you have all five (5) pages of the exam.

**INSTRUCTIONS FOR THE ESSAY QUESTIONS ONLY**

4. If you are writing the exam by hand, legibility is crucial. Skipping lines and writing on only one side of the paper will help me to read your work.
5. Please do not spend time simply re-stating the facts as an introduction to your answer. The only facts that should appear in your answer are the ones you use and apply in your analysis. 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.
6. You should address ALL of the issues presented by each essay question, even if you believe that the resolution of a particular issue is dispositive.
7. Citing code sections and case names is preferred but optional – just make sure I can understand what you are talking about.
8. Please **ORGANIZE** your answers. To this effect, I strongly recommend that you spend some time outlining your answers before you begin to write.
9. If you are about to run out of time, do your best to outline the rest of your answer so I can see where you were planning to go with the part you were unable to complete.

**END OF INSTRUCTIONS – GOOD LUCK!**

SHORT ANSWER QUESTIONS (15% of your grade)

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Each question below is worth 5% of your grade, and should be answered in two to three paragraphs at most.

1. **5% of grade:** Drawing on (1) the Peevyhouse video we watched in class, and (2) on the economic analysis of that case presented in class, if you were to try the case on behalf of the Peevyhouses today, what strategy or strategies would you use to try to win the case for your clients, and why?
2. **5% of grade:** In our class discussion of *Sherwood v. Walker* and *Wood v. Boynton*, we have seen courts struggle with how they ought to allocate the risk of a mutual mistake where the risk was not allocated by the parties themselves. In both cases, the court seems to have allocated the risk against the party who did not have possession of the disputed item at the moment the mutual mistake was discovered (i.e., the cow, in *Sherwood*, and the uncut diamond, in *Wood*). Drawing on our class discussion, what other methods could the court have employed to allocate the risk of mutual mistakes, and which of these methods do you find most convincing?
3. **5% of grade:** An Italian Purchaser sent a Florida Seller a purchase order for 100 computers at the advertised price, and this order made no mention of warranties. Seller responded with a confirmation that accepted the order and contained detailed terms, including one that stated that the company made “no warranties of any kind.” Purchaser did not closely read the confirmation and did nothing further. Soon after the purchase, twenty of the computers suffered major hard drive failures. Purchaser sought to recover damages, but Seller sought to rely on the absence of warranties. Did the parties have a contract, and if so, what are its terms?

CONCEPTUAL ESSAY QUESTION (10% of your grade)

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In his famous article, *Basis of Contract*, Cohen provided numerous substantive reasons for enforcing promises, and in *Consideration and Form*, Fuller offered several formalistic justifications for doing the same. In light of Fuller’s analysis, are the substantive justifications provided by Cohen even relevant? Stated another way, should a court always enforce a promise if the promisee can show that the evidentiary, cautionary, and channeling functions have been satisfied, or should courts continue to require that there also exist some substantive justification behind enforcement, of the sort detailed by Cohen? Please draw on at least three cases in your answer.

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**FACT-PATTERN ESSAY QUESTION #1 (25% of grade)**

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Professor House recently inherited a 20-acre tract of land from his grandfather in Oklahoma. Unknown to House, who had never visited Oklahoma, the land contained valuable coal deposits worth \$500,000. The Badland Coal & Mining Company, who knew about the coal deposits, and had made many unsuccessful attempts to purchase the land from House's grandfather, had one of its agents, Jones, approach House and offer to purchase his property for \$50,000. House explained to Jones that he really had no need for this land, but that he did not want to sell it until he knew the land's market value. At this point, the Jones produced documentation previously prepared by the Badland Coal & Mining Company showing that 20 acres of land in this portion of Oklahoma typically sold for about \$40,000. This information was generally accurate for tracts of land that did not contain coal or other mineral deposits. When House asked Jones why he was willing to pay \$50,000 for land only worth up to \$40,000, Jones explained that he always fancied this particular piece of land, thought it was very beautiful, and that the additional \$10,000 represented the sentimental value he attached to the land. The following conversation then took place:

House: Is there anything else about the land I should know about?

Jones: Like what?

House: Well, if the land had gold under it, for example, you'd tell me, right?

Jones: Of course I'd tell you if the land had gold under it. In fact, I promise you, if the land turns out to have gold on it, I'll sell it back to you for the amount I paid.

Convinced, House and Jones shook hands to seal the deal, and agreed to memorialize their agreement in writing within the next couple of days or so. The next day, at Jones' request, House paid \$1,000 to obtain a survey and title search on his newly-inherited property. Jones then took House to a local bar "to celebrate their deal," where Jones purchased numerous alcoholic beverages for House, getting him quite drunk at one point, and finally brought House home around 4:00 a.m. One hour later, 20 representatives from the Badland Coal & Mining Company ("Badland") showed up at House's home, at 5:00 a.m., and asked him to sign the following writing:

The Badland Coal & Mining Company hereby agrees to pay to Professor Vance House \$50,000 for his recently-inherited 20-acre tract of land in Oklahoma, and Professor Vance House hereby agrees to convey all of his land to the Badland Coal & Mining Company.

Although House was not intoxicated, he did have a bad hangover, was perplexed and confused as to the identity of the 20 representatives in his house, and had some difficulty concentrating and generally making sense of the situation. He told Badland that he already agreed to sell his house to someone named Jones, at which time Badland told him that Jones was one of its agents. Surprised by this revelation, House said he would need more time to think before signing the contract. He also thought the fact that Jones really worked for a coal and mining company was suspicious, and briefly considered the fact that Badland might be purchasing his property for natural resources, but then felt somewhat reassured when he hazily recalled his conversation with Jones about obtaining a refund if the land proved to have natural resources buried beneath its soil. Because House was taking a long time to make his decision, all of the 20 representatives for Badland began to harangue him, telling him that a deal is a deal, that he had already agreed to sell his property, that he did not want to be known in the community as someone who broke his promises, and that, should he refuse to sign the papers, he would be taken to court and sued for breach of contract.

House did not know what to do, and told the representatives that he would like to get some advice from his attorney first, and began to pick up his phone. One representative from Badland then slammed down the phone and said "I wouldn't do that if I were you." Another representative immediately said "If you know what's best for you, I'd sign that writing," and opened his blazer to grab a pen from his inside pocket, which he shoved in House's direction. When the representative opened his blazer, House thought he saw a sharp metal object tucked into the representative's belt. A bit frightened at this point, and still confused by the entire situation, House signed the contract, and the representatives from Badland handed House a check for \$50,000, and left House's home.

House went back to bed and, after catching up on his sleep and waking up around 5:00 p.m., he fully realized what had previously transpired. He immediately emailed Jones and told him to tell Badland that "our deal is off." Jones told him that this would not be acceptable.

**You are an associate at a law firm, and House comes to you to seek your advice. Please discuss all possible claims and defenses that will be raised should House bring suit against Badland Coal & Mining Company.**

**FACT-PATTERN ESSAY QUESTION #2 (25% of grade)**

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After watching the inspiring documentary, “The King of Kong,” in which Steve Weibe earned a place in the Guinness Book of World Records after breaking Billy Mitchell’s high score in the video arcade game, Donkey Kong, multi-billionaire Bill Fences offered a \$1,000,000 award to “anyone who breaks Steve Weibe’s world-record high score on a classic, coin-operated Donkey Kong machine.” Although Donkey Kong requires near-perfect timing, fast-reflexes, and tremendous hand-eye coordination, a brash young law student, James T. Hart, thought that he was up to the task, and began shopping for his very own Donkey Kong machine to take a stab at the record. He found a merchant, Sarah, selling a Donkey Kong machine on ebay.com, and contacted Sarah to explain that he had no money, but needed the machine to break Steve Weibe’s record, and that a reward was being offered by Bill Fences for \$1,000,000. Sarah was skeptical of giving away the machine for free, but after James promised to beat Steve Weibe’s record, and promised that he would pay her in full after he had done so, Sarah concocted a plan of her own. She told James that she would be willing to give him the machine for free if he promised to give her \$500,000 upon beating Steve Weibe’s record, and she further made him promise to beat Steve Weibe’s record.

James agreed to this deal, and the two arranged to have the machine delivered to James’ residence the next day. Although Sarah was not a great video-gamer, she knew a lot about computers, and understood the level of skill required to play Donkey Kong successfully. Therefore, she thought that if she could manipulate the motherboard to slow down the game, even if slightly, James would have a much better chance of beating Steve Weibe’s record. After several hours, Sarah succeeded in slowing down the game just enough to improve James’ chances at beating Steve Weibe’s world record, while hiding what she had done to the naked eye. As promised, the next day, Sarah delivered the machine to James, without revealing to James what she had done to the machine, and James accepted delivery. In part due to the slowed-down motherboard, the game was easier than James had remembered it. After several months of playing, during which time James neglected his hygiene, his sleep, and his studies, James finally had the world record in sight. His finals were fast arriving, and he called Sarah to tell her that he probably would have to return the machine to her to start preparing for his finals. He explained that, if he did not start studying, he might get kicked out of law school, and would probably lose his summer job at Dewey Howe and Cheatem, where he would be making \$30,000 over the summer. Sarah encouraged him to keep playing, and told him that getting kicked out of law school is not so bad for a millionaire. With her encouragement, James continued to play Donkey Kong, sometimes for as many as 20 hours a day, and finally beat Steve Weibe’s high score. All of this came at a pretty high cost, however. He got kicked out of law school, lost his summer job, and spent 3 days in the hospital, where he was treated for dehydration and paranoia due to excessive gameplay. Once he was released from the hospital, he called Bill Fences to collect his reward, but was told that no money would be forthcoming.

**Please discuss all contracts issues raised by these facts, including who will sue whom, for what, and who will likely prevail in each claim, and why.**

**FACT-PATTERN ESSAY QUESTION #3 (25% of grade)**

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**The following story appeared in the local paper, Utopia Today. Utopia is a common law jurisdiction where case law, the Restatement (Second) of Contracts, and the UCC apply.**

UTOPIA — Tape-recorded telephone conversations between Defendant Dave, governor of Utopia, and his ex-mistress Plaintiff Paula bolstered her legal claims that the governor agreed to pay her \$4,000 per month until her teen-age daughter finishes college. Paula and her attorneys contend that Dave made a legally binding contract to financially support her and her daughter.

Their affair ended in 2006. Paula has indicated that Dave made payments to her between 2006 and December 2009 totaling more than \$100,000. Dave’s lawyers say that the total amount of the payments did not exceed \$17,000.

Paula has asked for damages totaling \$272,000. For payments missed between January 2010 and July 2010, when the suit was filed, Paula seeks damages of \$44,000. In addition, Paula asks for damages of \$4,000 per month from August 2010 until May 2015, when her daughter will graduate from college.

For the first time, transcripts of phone conversations between Dave and Paula were made part of the record in the Utopia District Court, where Paula last July filed suit against Dave. In the suit, Paula charged that Dave made a legally binding contract to provide financial support for her and her daughter. Paula alleges that Dave agreed to make payments until Paula was able to get and keep a job in her field—fundraising and public relations—or, in the event she was unable to get and keep such a job, to continue the payments until her daughter was out of school and college.

Dave’s lawyer countered with a motion to dismiss Paula’s claims. Dave’s lawyer argued that Paula claimed only a verbal contract beginning in 2006 and that Utopian law required terms of such contracts be fulfilled within one year. Dave’s lawyer claimed further there wasn’t a contract because Utopian law required that both parties give something of value to the other party. Finally, Dave’s lawyer claimed that Paula had not agreed to do anything in return for the payments Paula said Dave was obligated to make.

Paula’s lawyer countered Tuesday, contending that taped phone conversations between Dave and Paula “constituted a writing” and were evidence that a binding contract existed. Paula’s lawyer claimed also that Paula, for her part of the contract, had agreed not to file a lawsuit against Dave over his having divulged private details to news reporters about his adulterous relationship with her.

Dave’s lawyer was not available for comment, but in a document filed earlier with the court, she dismissed Paula’s assertion that Paula had a claim against Dave because their affair was made public. “There is no evidence to support Paula’s wholly unfounded claim for public disclosure of private facts,” Dave’s lawyer asserted on behalf of Dave.

In an affidavit filed in court yesterday, Paula swore excerpts from taped conversations filed to support her claims “are true and correct portrayals of the conversations between me and Dave.” Transcriptions entered in the court record were from several phone conversations between March 2006 and November 2009. In a purported phone conversation Nov. 22, 2008, Dave allegedly pledged to Paula that he would continue sending her money.

**Evaluate what rights Paula may have against Dave based upon the promises and remarks that she alleges Dave made to her. Be sure to include in your discussion any defenses that Dave might make. If Paula has rights against Dave, what remedies are available to her?**

**END OF EXAMINATION**

**Congratulations!**

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