

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.

BLUE BOOK INSTRUCTIONS

For those of you using blue books for exam answers, there are six (6) allotted for writing your examination answers in the front of the classroom. You may use additional blue books only as scratch paper. **Clearly mark which blue books are being used for scratch and which you are using for exam answers.** If you exceed the allotted number of blue books for a particular exam, the professor has the right to reject, and not grade, the use of any excess blue books.

TIME: 4 HRS.

SPECIAL INSTRUCTIONS

You will be taking a portion of your examination using ScanTron technology. Be certain to put your identification number on the ScanTron sheet. Each student will receive *one* ScanTron sheet. Please mark only with a #2 pencil, and erase any extra marks thoroughly and carefully. To ensure examination security, no extra ScanTron sheets are provided. If you need an additional ScanTron sheet, you must go to the Registrar's office with the sheet given to you in the examination envelope to obtain a new sheet (you will not be credited time at the end of the exam).

1. You have been given an envelope containing a copy of the examination, one Scan Tron sheet, and 5 pieces scratch paper. Extra 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.

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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 eleven (11) pages consisting of 10 multiple choice questions (worth 10% of your grade), two essay questions based on fact patterns (worth 40% and 35% of your grade, respectively), and one conceptual essay question (worth 15% of your grade). Please use your time accordingly. You should also check at this time to make sure you have all eleven (11) pages of the exam.

**INSTRUCTIONS FOR THE MULTIPLE CHOICE QUESTIONS ONLY**

4. READ THE QUESTIONS AND ANSWERS CAREFULLY. Some multiple choice questions will include partly correct answers along with better, more complete answers. Make sure you separate the good responses from the best response, and select the BEST answer on your answer sheet. Partial credit will not be given for selecting a partially correct answer. You may want to reread the question carefully when choosing between several potentially correct answers.
5. There are no penalties for guessing on the multiple choice questions.

**INSTRUCTIONS FOR THE ESSAY QUESTIONS ONLY**

6. 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.
7. 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.
8. 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.
9. Citing code sections and case names is preferred but optional – just make sure I can understand what you are talking about.
10. Please **ORGANIZE** your answers. To this effect, I strongly recommend that you spend some time outlining your answers before you begin to write.
11. 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!**

**FACT-PATTERN ESSAY QUESTION # 1 (40% of your grade)**

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Second Life ("SL"), which was developed by Linden Research, Inc ("Linden Lab") in 2003, is an Internet-based, virtual online community consisting of millions of registered members that allows its users ("Residents") to create avatars (or digital representations of themselves), which can be used to interact with other Residents. Through these avatars, Residents of SL are able to do practically anything they could do in the real world, and sometimes more, such as explore terrain, fight monsters, meet and socialize with other Residents, fall in love, and get married, choosing to spend their time in G-rated, family-friendly terrain, or unrated, anything-goes terrain. These Residents are also able to purchase (with real dollars) virtual money (called Linden Dollars, or L\$), which they can then use in a variety of ways, including buying, selling, and exchanging virtual property, virtual goods, and virtual services. It is estimated that about \$1 million worth of real dollars are exchanged each day in SL, and some Residents are able to make enough Linden Dollars to support themselves in the "real" world by converting these Linden Dollars back to their home country's currency.

To create a SL account, a user must go to the website, <http://secondlife.com/>, and click either the "Join" link, or the "Sign Up Now, Membership is Free" icon, both of which take the user to the same internal webpage where the user must then enter his or her birthdate, a valid email address, and choose a first and last name for his or her online avatar. Once the user has done this and clicks the "Continue" button, the user may next select an avatar icon (or skip this step), whereupon the user is taken to another internal webpage where he or she must enter his or her first and last name, gender, country, and password, and must also check a small box next to a "Terms of Service" link before proceeding, though he or she need not actually read (or click) this link prior to proceeding, so long as the box next to the link has been checked.

If a user clicks on the "Terms of Service" link, a new window is opened displaying the following information: "Welcome to Second Life! The following agreement (this "Agreement" or the "Terms of Service") describes the terms on which Linden Research, Inc. ("Linden Lab") offers you access to its services. This offer is conditioned on your agreement to all of the terms and conditions contained in the Terms of Service, including your compliance with the policies and terms linked to (by way of the provided URLs) from this Agreement. By using Second Life, you agree to these Terms of Service. If you do not so agree, you should decline this agreement, in which case you are prohibited from accessing or using Second Life. Linden Lab may amend this Agreement at any time in its sole discretion, effective upon posting the amended Agreement at the domain or subdomains of <http://secondlife.com> where the prior version of this Agreement was posted, or by communicating these changes through any written contact method we have established with you." Clause 3.2 of the "Terms of Service" Agreement states that "You retain copyright and other intellectual property rights with respect to Content you create in Second Life, to the extent that you have such rights under applicable law." Another clause appears on SL's website (but not under the "Terms of Service" Agreement), and reads as follows: "Linden Lab's Terms of Service agreement recognizes Residents' right to retain full intellectual property protection for the digital content they create in Second Life, including avatar characters, clothing, scripts, textures, objects and designs. This right is enforceable and applicable both in-world and offline, both for non-profit and commercial ventures. You create it, you own it – and it's yours to do with as you please."

A Resident of SL whose avatar is called "Badboy" operated two virtual sex stores (both in the unrated, anything-goes terrain) called "Badboyz Toyz" and "Badboy's Toys," both of which sold beds, sofas, and toys embedded with computer code that could facilitate sex between virtual characters. Badboy also employed several online security workers, who helped protect both of his storefronts from marauding, ill-intentioned avatars, and also had contracts with online, virtual sex workers pursuant to which Badboy paid them 1000 Linden Dollars per month to entertain the avatars of his top customers.

Cyberpunk, a young 25-year old male, obtained Badboy's email address and, on December 1, 2007, wrote to him as follows: "I like the business you are doing over at your sex shop and hereby offer to purchase your virtual store, the land it stands on, and all of its merchandise, for 10,000 Linden Dollars, payment to be transferred to you one month after said store has been transferred to my account. Sincerely, Cyberpunk." When he wrote this email, Cyberpunk was only aware of the existence of the Badboyz Toyz shop, which was significantly more established (and profitable) than the Badboy's Toys shop.

On December 3, 2006, Badboy, believing Cyberpunk to be referring to the Badboy's Toys shop because of the low price that was being offered, emailed Cyberpunk as follows: "I can't sell the store for less than \$25,000 cash, which must be transferred directly to my Citibank Account (Account Number: 123-45-6789). Let me know. Sincerely, Badboy."

On December 4, 2006, Cyberpunk emailed Badboy and said, "Agreed. Please confirm that you will also be transferring to me the contracts you currently have with the virtual sex workers. Yours Truly, Cyberpunk."

On 10:00 a.m. on December 5, 2006, Badboy transferred Badboy's Toys (but not the contracts for the virtual sex workers) to Cyberpunk's virtual account, although Cyberpunk was unaware of said transfer. On December 20, 2006, Cyberpunk's avatar converted to a new faith dedicated to the purity and wholesomeness of online communities, and joined a SL resistance movement called the "Wholesome Online Resistance Movement" ("WORM") which had as its mission statement: "The destruction of unwholesome online gaming experiences."

At 10:00 a.m. on January 5, 2007, Badboy emailed Cyberpunk as follows: "Hey Punk. I hope you didn't forget our contract. It's been a month since I've transferred Badboy's Toys to you, and it's time to pay the piper. Please transfer the \$25,000 to my Citibank Account (Account Number: 123-45-6789), or I'll be forced to take legal action. Regards, Badboy."

About 1:00 p.m. on January 5, 2007, but before he checked his email, Cyberpunk took part in a large online riot as a member of WORM, whereby he and other members looted several virtual storefronts that were previously identified by WORM as contributing to the corruption of online morality. The members of WORM then descended upon Badboyz Toyz to loot it as well, but gave up after they were unable get past the security guards employed by Badboy to guard its storefront. WORM then descended upon Badboy's Toys, which Cyberpunk was surprised to see standing unprotected and without security. Cyberpunk quickly descended upon the store and looted all of its merchandise (valued at 10,000 Linden Dollars), which he immediately sold to onlookers for a total of 1,000 Linden Dollars.

Once he finished looting Badboy's Toys, Cyberpunk and other members of WORM began dancing around the looted store in jubilant celebration of their purification of the online world. Badboy, who had been watching this event with amazement nearby, approached Cyberpunk's avatar and expressed his amazement at what he had just witnessed, and told Cyberpunk that he would still need the \$25,000 by the end of the day. Cyberpunk immediately logged off of SL and checked his email, cringing with horror as he read Badboy's email sent earlier that day. Cyberpunk immediately emailed Badboy told him that there was no deal, and that Badboy would never see a single cent, digital or otherwise, from him.

**You are an associate at the law firm of Howe, Dewey, Howe & Cheatem, which has just been retained by Badboy. Please prepare a memorandum to the senior partner analyzing all relevant issues raised by the previously-discussed facts. If you do not have the information necessary to analyze an issue completely, please state what information is needed and how that would affect the outcome of that issue.**

**FACT-PATTERN ESSAY QUESTION # 2 (35% of your grade)**

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You are Heracles, a trial judge of the state of Utopia, a common law jurisdiction in the U.S. where case law, the Restatement, and the UCC apply. A dispute has come before you, and, per your instructions, your law clerk has already drafted the facts for you as they have been developed during a bench trial (a trial before you, the judge, and not a jury). It is your task to complete the opinion below. This opinion, as completed, should discuss each position you would expect counsel for either side to argue on the facts stated, even if the point is, in relation to your ultimate holding, mere dictum.

**Stellar Student v. Professor Paula**

In the District Court of Utopia  
Civil Action # 12-5-2007

The opinion of the court was delivered by HERACLES, J.

**FACTS**

During her summer break, Professor Paula, a professor at the Utopia College of Law, received a call from her Aunt Amy, who told Professor Paula that her sick husband, Uncle Unger, would be leaving Professor Paula \$20 million in his will. Inspired by this news, and by her newly-found wealth, Professor Paula announced during the first day of her Contracts I class that she would award \$100,000 to the student who received the highest overall grade in her class at the end of the semester. To encourage her students to study hard throughout the semester, she also offered a \$25,000 award to the student who received the highest grade on the midterm exam. Stellar Student was enrolled in Professor Paula's Contracts I class, but was not in attendance when Professor Paula made her announcement. Nevertheless, upon hearing about Professor Paula's announcement from another student, Stellar Student decided that she would do everything within her power to win both awards, and immediately set upon reading her contracts textbook, and purchasing and reading all of the major treatises of contract law from cover to cover. Indeed, Stellar Student was so determined to win these awards that she stopped studying for all of her other classes so she could dedicate every single waking hour to the study of contract law, and her studying seemed to pay off. When the midterm exam rolled along, Stellar Student received a staggering 98%, which was a full 30 percentage points higher than any grade ever received by a student on one of Professor Paula's midterm exams in her over 20 years of teaching. Inspired by her performance on the midterm exam, Stellar Student set out to study harder than ever before, drinking eight to nine cups of coffee per day, hiring a tutor, buying every study aid imaginable, and sleeping just three or four hours per night so she could study contract law more than ever before. About two weeks before the final exam, Stellar Student decided to skip Professor Paula's final contracts class so that she could hop on a plane and fly to an isolated island in the Mediterranean where she could study alone and without interruption. So she would have room to spread out and study during the flight, Stellar Student purchased a round-trip business-class ticket to the Mediterranean, which cost \$5,000.

While Stellar Student was on the plane heading to the Mediterranean, Professor Paula received a call from her Aunt Amy informing her that Uncle Unger had passed away, but had apparently changed his will before doing so, because, upon reading it, Aunt Amy learned that Professor Paula's inheritance had been reduced from \$20 million to a measly \$50,000. About an hour after receiving this call, Professor Paula walked into her contracts class (the last of the semester) and announced to her students that due to unforeseen circumstances, she would no longer be able to award either the \$100,000 or \$25,000 awards. All of Professor Paula's students were in attendance during the announcement except for Stellar Student, and many of them looked angry. Some of them expressed their anger during class and even vowed to not try as hard on Professor Paula's exam as they otherwise would have, some refusing to even study from that point

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forward, even though Professor Paula told them that they would only be hurting themselves. One of the students in attendance, Friendly Frank, knew how hard Stellar Student had been studying for Professor Paula's exam and immediately sent a text message to Stellar Student (who was still on the plane) to inform her of Professor Paula's announcement. Although Friendly Frank's text message was immediately received by Stellar Student's cell phone, Stellar Student's phone was not with her on her flight, because she had intentionally left it behind in Utopia City, Utopia so that she could study without being distracted by any interruptions. After five solid days of studying for over 20 hours each day in the Mediterranean, Stellar Student boarded her flight and returned to Utopia City, Utopia about a week before Professor Paula's final exam. Upon arriving at her dorm, Stellar Student checked her cell phone and read the text message that was sent to her by Friendly Frank, but decided to ignore it and continue studying, determined to do everything in her power to receive the highest overall grade in Professor Paula's Contracts I class. Having already spent \$15,000 in contracts materials, treatises, tapes, and private tutors over the course of the semester, Stellar Student continued to employ her tutors and purchase additional study aids over the next week before the final exam, at the cost of \$2,500. Sure enough, Stellar Student took and received the highest grade on Professor Paula's final exam, which gave her the highest overall final grade for the Contracts I course. However, because she neglected all of her other classes, Stellar Student flunked torts, civil procedure, and property, and was kicked out of law school. When Stellar Student demanded payment of \$125,000 from Professor Paula, Professor Paula refused to pay, and Stellar Student brought the instant suit against her in this court.

**ANALYSIS**

**The first issue to be addressed is ...**

**CONCEPTUAL ESSAY QUESTION (15% of your grade). Per Section X of the syllabus, if you have elected to write the optional paper, this portion of the exam will only be factored into your grade if it is higher than the grade you receive on the optional paper.**

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Second Life ("SL"), which was developed by Linden Research, Inc ("Linden Lab") in 2003, is an Internet-based, virtual online community consisting of millions of registered members that allows its users ("Residents") to create avatars (or digital representations of themselves), which can be used to interact with other Residents. Through these avatars, Residents of SL are able to do practically anything they could do in the real world, and sometimes more, such as explore terrain, fight monsters, meet and socialize with other Residents, fall in love, and get married, choosing to spend their time in G-rated, family-friendly terrain, or unrated, anything-goes terrain. These Residents are also able to purchase (with real dollars) virtual money (called Linden Dollars, or L\$), which they can then use in a variety of ways, including buying, selling, and exchanging virtual property, virtual goods, and virtual services. It is estimated that about \$1 million worth of real dollars are exchanged each day in SL, and some Residents are able to make enough Linden Dollars to support themselves in the "real" world by converting these Linden Dollars back to their home country's currency.

- (1) What single challenge do you think this newly-emerging virtual community (and others like it) poses for contract law that judges and legislatures should at present be concerned about? Please be specific.
- (2) Related to # 1 above, do you think that contract law is currently equipped to deal with the challenge you identified in # 1 above, and if so, how? Or do you think that contract law should be reformed in some way to better deal with this challenge, and if so, how? Please be specific.
- (3) Related to # 2 above, please pick at least three cases that we have discussed this semester that, in your judgment, would have been decided similarly or differently if their fact patterns had taken place in the virtual world of Second Life, and explain how and why they would have been decided similarly or differently.

**END OF EXAMINATION**

**Congratulations!  
Have a great winter break, and see you next semester!**

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