

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.

SCANTRON 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).

SPECIAL INSTRUCTIONS

1. You have been given an envelope containing a copy of the examination, one ScanTron sheet, and 5 pieces scratch paper. Blue books and extra 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 eleven (11) pages consisting of ten multiple choice questions (worth 10% of your grade), one conceptual essay question (worth 10% of your grade), and two essay questions based on fact patterns (each worth 40% of your grade). 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!

CONCEPTUAL ESSAY QUESTION (10% of your grade)

In 1897, in his famous essay, *The Path of the Law*, Oliver Wendell Holmes wrote:

“Nowhere is the confusion between legal and moral ideas more manifest than in the law of contract. Among other things, here again the so-called primary rights and duties are invested with a mystic significance beyond what can be assigned and explained. The duty to keep a contract at common law means a prediction that you must pay damages if you do not keep it — and nothing else. If you commit a tort, you are liable to pay a compensatory sum. If you commit a contract, you are liable to pay a compensatory sum unless the promised event comes to pass, and that is all the difference. But such a mode of looking at the matter stinks in the nostrils of those who think it advantageous to get as much ethics into the law as they can.”

What does this statement have to do with efficient breach theory, and do you agree or disagree with Holmes? In answering this question, please draw on the PCL readings and any cases or hypos that we have discussed in class.

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

You are an associate at Big Law Firm, and Plaintiff Plutarch has hired your firm to represent him in an action against Defendant Dante for the recovery of a balance of \$10,000 that he alleges is due to him. Plaintiff Plutarch (contractor) and Defendant Dante (owner) never met, but, through their architect, who was acting as principal for both parties, they entered into a contract pursuant to which Plaintiff Plutarch promised to construct a Turkish bath house on the land of Defendant Dante. Both parties signed duplicate contracts in writing, covering the construction of the bath house, which was to be completed within 300 days. Each duplicate contract contained the following provision: "For each calendar day beyond the scheduled date of completion for which the project has not been completed, contractor Plutarch shall pay to owner Dante as liquidated damages the sum of \$1000 per day."

When Plaintiff Plutarch signed both copies of the contract, Defendant Dante's signature was attached, and the contract price therein named was \$35,000. When Defendant Dante signed them, however, the contract price stated in each was \$25,000. Until the building was completed – 160 days beyond the scheduled completion date – Plaintiff Plutarch held a contract under which he was to receive the larger sum, while Defendant Dante held a contract for the same work, under which he was to pay the smaller sum. This resulted from the fraud of the architect who drew the contracts, and who did all the business and made all the payments for the defendant. The contracts were on typewritten sheets, and it is supposed that the architect accomplished the fraud by changing the sheets on which the price was written, before the signing by Plaintiff Plutarch, and before the delivery to Defendant Dante.

The parties did not discover the discrepancy between the two writings until after the building was substantially completed, as all of the dealings between the parties pertaining to the contract, from first to last, until the building was substantially completed, were through the architect. Each of the parties acted honestly and in good faith, trusting the statements made by the architect, and the failure of the parties to discover the difference between their copies of the contract was caused by the frequently repeated fraudulent representations of the architect to each of them. The architect was indicted, but he left the commonwealth and escaped punishment.¹

In preparation for trial, an independent auditor found that the market value of the labor and materials furnished by Plaintiff Plutarch was \$34,000, and that their total cost to the plaintiff was \$32,000. The auditor also found, however, that, in hindsight, it turned out to be bad judgment on the part of Defendant Dante to build the Turkish bath house upon the lot, because the structure only increased the market value of the real estate by \$22,000. The reason for this discrepancy was that Defendant Dante expected to make about \$500 in profits per day from the operation of the bath house (although he hoped he would make as much as \$1000 per day), but once the bath house opened, Dante soon realized that he underestimated overhead expenditures, and could only make around \$300 per day in profits.

Plaintiff Plutarch has only been paid \$25,000 thus far. Please write a memorandum to Senior Partner at Big Law Firm discussing all relevant issues (including remedies) that are likely to be raised between the parties, who you think is likely to prevail on each issue, and why. Please organize your memorandum by issue.

¹ In your memorandum, therefore, you should focus exclusively on the lawsuit between Plaintiff Plutarch and Defendant Dante, making sure to address plaintiff's arguments against defendant, and defendant's arguments against plaintiff. You need not address any lawsuits that may be brought against the architect.

FACT-PATTERN ESSAY QUESTION #2 (40% of your grade)

After negotiating to buy a mobile home from Seller Seneca (a university professor), Buyer Brutus (a merchant who was fond of telling his friends that he would “buy or sell anything to make a profit”) sent to Seller Seneca a “letter of intent” dated September 1, to purchase Seller Seneca’s mobile home. The letter, which contained various terms and conditions, provided:

“If this proposal is acceptable, please sign below and return the signed copy to me. I will then deposit \$10,000 into a trust account at the Bank of America and will prepare an agreement of purchase and sale. I hereby promise to leave this offer open for a period of thirty days.”

On September 3, Seller Seneca received this letter, crossed out the price term of “\$10,000” and wrote, in its place, “\$15,000.” Seller Seneca also wrote: “Since you were so kind as to leave your previous offer open to me for thirty days, I shall hereby return the favor, and promise not to revoke this offer for a period of thirty days.” Seller Seneca then walked to the post office and mailed the letter to Buyer Brutus. With the exception of the single change to the price term, Seller Seneca left the rest of the terms from the “letter of intent” unchanged.

On September 5, Buyer Brutus received this letter and immediately telephoned Seller Seneca. After further negotiations over the telephone, Buyer Brutus sent to Seller Seneca an unsigned “commercial purchase agreement and deposit receipt” containing terms not present in the original letter of intent, but agreeing to the \$15,000 price.

On September 7, Seller Seneca received Buyer Brutus’ letter, read it over, and then signed the commercial purchase agreement and deposit receipt, after inserting several additional handwritten conditions.

On September 10, Buyer Brutus received a copy of the agreement as altered and signed by Seller Seneca. That same day, Buyer Brutus decided that Seller Seneca’s terms were fair, and composed a letter that stated: “I am ready to fully perform under the terms of the purchase agreement that you signed,” and enclosed a check in the amount of \$10,000. He put his letter on the counter and went to bed, intending to mail it the first thing next morning.

On the morning of September 11, Seller Seneca had a conversation with a colleague of his, Nefarious Nero, who found out that Seller Seneca and Buyer Brutus had been in negotiations over Seller Seneca’s mobile home. Nefarious Nero was an old rival of Buyer Brutus, and, knowing that the market value of Seller Seneca’s mobile home was about \$18,000, could not stand the thought of Buyer Brutus purchasing the mobile home, flipping it, and making a quick \$3,000 profit. Although he could not stand Seller Seneca’s mobile home, he despised Buyer Brutus more, and offered to buy Seller Seneca’s mobile home for \$20,000. Seller Seneca immediately accepted Nefarious Nero’s offer.

After this meeting, Seller Seneca walked to Buyer Brutus’ house to inform him in person that he was revoking his offer. When he arrived, however, Buyer Brutus was not home. Seller Seneca then composed a short note, which he placed in an envelope, and slid underneath Buyer Brutus’ “Welcome” door mat. The letter read:

“I am sorry that things did not work out, but I hereby revoke my offer. I am selling the mobile home to Nefarious Nero instead.”

When Buyer Brutus returned home later that evening, he did not see the envelope.

The next morning, September 12, Seller Seneca, wanting to make sure that Buyer Brutus was aware of his revocation, called up his real estate agent, Agent Agustus, and asked his agent to immediately convey to Buyer Brutus that he would pass on Buyer Brutus’ offer and terms. Agent Agustus composed a letter to this effect, and deposited it in the mail later that afternoon, informing Buyer Brutus that Seller Seneca “has indicated to me that he is unwilling to negotiate further or close this transaction.”

On September 13, Buyer Brutus found the acceptance letter he had composed to Seller Seneca on September 10. He could not believe he forgot to send it, and vowed to drop it off at the post office on his way to work that morning. As he was locking up, he saw an envelope protruding from under his door mat, but then became distracted when he got a call on his cell phone. He soon forgot about the protruding envelope and, while still on the phone, got in his car, drove to the post office, and dropped off his acceptance letter, which would ultimately be received by Seller Seneca several days later.

Upon returning from work later that evening, Buyer Brutus remembered the envelope protruding from under his door mat. He picked it up, opened it, and read it. There he saw the letter Seller Seneca had composed to him on September 11. Thinking that the deal was off, he became very depressed, and headed to a local bar. Several drinks later, he ran into a law student, Clever Claudius, who, like Buyer Brutus, was feeling a little bit tipsy, though not drunk. The two got to talking about the mobile home, and Clever Claudius told Buyer Brutus that he had just finished his first semester of law school, and, although he could not be sure, he thought that there was a chance that Buyer Brutus was contractually entitled to the mobile home after all. Buyer Brutus said that he doubted this very much, at which point Clever Claudius became very excited, and went on and on for some time about the matter, trying to convince Buyer Brutus that he was right, and discussing the facts and holdings of numerous cases he had read in law school. This not only bored, but annoyed, Buyer Brutus, who did not have a legal background and, after hearing Clever Claudius speaking legal gibberish for nearly an hour, decided that he would never get one. Finally, to get Clever Claudius to stop talking, Buyer Brutus told him “Look. If you’re right, and I do get that mobile home, and if you promise you’ll stop talking about it for the rest of the night, I’ll sell it to you for the same price I pay – \$15,000.” Clever Claudius became very serious and, more importantly from Buyer Brutus’ perspective, very quiet. In a serious tone, Clever Claudius looked Buyer Brutus in the eyes and asked him whether he was being serious or not. Buyer Brutus, seeing that he just might get Clever Claudius to be quiet after all, assured him that he was very serious indeed, although Buyer Brutus’ real motivation was to get Clever Claudius to stop talking. In reality, Buyer Brutus thought to himself that, if he could obtain the mobile home, he would not sell it to anyone for a dime less than \$18,000. Clever Claudius immediately grabbed a napkin and scribbled down: “If I prevail in my actions against Seller Seneca, I, Buyer Brutus, hereby agree to sell my mobile home to Clever Claudius for \$15,000.” Clever Claudius slid the note over to Buyer Brutus, who signed it. Clever Claudius then took the signed napkin and immediately left the bar, which pleased Buyer Brutus. Buyer Brutus then had a few more drinks and went home.

Discuss all relevant issues, including who will sue whom for what, who is likely to prevail, and why. Organize your answer by lawsuit (e.g., “A v. B”) and then by issue within each lawsuit.

END OF EXAMINATION

Congratulations!

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