

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.**

**FINAL EXAMINATION
CONTRACTS II, SECTION 1**

**PROFESSOR JIMENEZ
FALL SEMESTER, 2007**

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 (40% of your grade)

NOTE: In answering the question below, do not discuss the CISG, Torts, Civil Procedure, Criminal Law, or issues covered in Contracts I. Please limit your discussion to issues covered in Contracts II.

A long time ago in a galaxy far, far away, there was a judge named Heracles, a trial judge was sat on the Intergalactic Court of Justice, a common law jurisdiction that applied law identical to the law you have learned in Contracts II and as reflected in the common law, the Restatement, and the UCC. A dispute has come before Heracles (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.

Darth Vader v. Starship Engineer's Construction Company

In the Intergalactic Court of Justice

Civil Action # 12-6-2007

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

FACTS

Bevel Lemelisk, CEO of Starship Engineer's Construction Company ("Starship"), entered into a contract with Lord Vader, enforcer of the Galactic Empire's strong-armed rule, to help complete the Death Star¹ for a consideration of 75,000 intergalactic credits. Pursuant to this contract, Starship agreed to install three large model E-500 lasers which could be used by the Death Star to incinerate planets, among other things, the installation of which would require the removal and reinstallation of much of the Death Star's superstructure (which had been constructed using a composite made up of carbon nanotubes, the strongest known material in the universe). Soon after Starship began its work on the Death Star, Bevel learned to his chagrin that the installation of these lasers would be much more expensive than he originally thought because he underestimated the cost of carbon nanotubes by about 50,000 intergalactic credits. Bevel immediately contacted Lord Vader to ask for an additional 50,000 intergalactic credits to complete the installation of the lasers, but, according to Bevel's deposition testimony, Lord Vader, rather than giving him a direct answer, elected instead to tell him the story about how the last person who demanded more money from him to do what he was already contracted to do "mysteriously disappeared," and was found years later at the bottom of the Great Pit of Carkoon on the desert planet of Tatooine, partially digested by the multi-tentacled Sarlacc inhabiting said Pit. Bevel also stated in his deposition that Lord Vader's "story" was enough to end his attempted renegotiation with Lord Vader, and Bevel instructed Starship to proceed with work on the Death Star as originally planned, later testifying that he reckoned a loss of money to be substantially better than a loss of limb (or worse). At trial, Bevel also introduced corroborating testimony from several of Lord Vader's former coworkers, all of whom testified that Lord Vader had a habit of becoming upset and killing people from time to time, although Lord Vader vigorously denied this, and claimed that he was just in a "story telling mood" when he told Bevel about the Sarlacc inhabiting the Great

¹ For those of you who have not yet watched Star Wars (and you know who you are!), the Death Star is a space battle station which, when fully operational, is akin to a mini-planet capable of traversing through space and destroying other planets by use of powerful onboard lasers. A completed Death Star would have a crew of approximately 250,000 individuals, in addition to 50,000 gunners, over 600,000 troops, 40,000 ship support staff, and over 180,000 pilots and support crew.

Pit of Carkoon (although he later admitted that the story was true), and he further testified that he actually intended to renegotiate the contract with Starship. In any event, while Starship was tearing out much of the Death Star's superstructure and completing installation of the E-500 lasers, the cost of carbon nanotubes unexpectedly skyrocketed due to an unforeseen embargo on the other side of the galaxy, and Bevel testified that he soon realized that the increased cost of repairing the Death Star's superstructure would cost more than 250,000 additional intergalactic credits. Further, according to Bevel, this loss would cause Starship to suffer extreme financial difficulties – perhaps even bankruptcy – and so Bevel (who testified that he was still too afraid to attempt to renegotiate the contract with Lord Vader) instructed Starship to repair the Death Star superstructure with an inferior, less-costly material instead. Expert testimony was able to show that this inferior material was almost as strong as the carbon nanotube composite, and was purchased at about the same cost that Bevel originally factored in for the carbon nanotube composite when Starship made its initial bid to install the E-500 lasers. Expert testimony was also able to show that this new material reduced the value of the Death Star by about 300 intergalactic credits, although it made the Death Star more vulnerable to a direct attack in the area where the E-500 lasers had been installed. Nevertheless, Bevel testified that when Starship completed its work on the Death Star and demanded payment from Lord Vader, Lord Vader refused to pay, even though (as it was later developed during cross examination) Lord Vader did not even know that Starship had substituted an inferior material in place of the carbon nanotubes at the time of refusing payment.

Meanwhile, on the other side of the galaxy, Luke Skywalker, a key figure in the Rebel Alliance, which was determined to break up the Galactic Empire's strong-armed rule and restore peace to the galaxy, obtained the blue-prints to the Death Star and discovered that it could not sustain a direct attack where the inferior material had been substituted for the carbon nanotube composite. There is some debate as to whether Bevel leaked this information to Luke to increase his bargaining power vis-à-vis Lord Vader, but in any event, upon obtaining this information, Luke jumped in his Rebel fighter and raced towards the Death Star with the aim of destroying it. Upon learning of Luke's plan, and upon further discovering that he had been deceived by Bevel, Darth Vader immediately brought the instant suit before this court, asking that Starship be required to tear out the superstructure built with the inferior materials and replace it with the carbon nanotube composite originally contracted for, which would cost of approximately 10,000,000 intergalactic credits. Notably, however, shortly after Lord Vader filed this suit, but before trial, Luke Skywalker reached, attacked, and blew up the Death Star (which was worth 1 billion intergalactic credits) by registering a direct hit near the main reactor where the inferior material had been used by Starship.

ANALYSIS

The first issue to be addressed is ...

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

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.

Romeo v. Juliet

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

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

FACTS

The facts as developed at trial are as follows. During a rocky period in their relationship, Romeo, a Wall Street trader, promised Juliet, his girlfriend, that he would refrain from “using drugs, staying out late, and frequenting strippers or prostitutes.” According to Juliet’s testimony at trial, Romeo, to show his sincerity, vowed that if he ever did any of those things again, he would give her a check in the amount of \$100,000, which he made out to her in her presence and put into his safe, which was in his own possession. According to Juliet, Romeo subsequently broke his promise by frequenting a strip club, upon which Juliet called Romeo and told him that he broke his promise and demanded that he give her the \$100,000 check, which she vowed to cash. According to her testimony, Romeo refused to do so and, after she threatened to sue him for the money, he decided to “beat me to the punch” by filing the instant action, seeking a declaratory decree from this court stating that he is not obligated to hand over the check to Juliet, and, in the alternative, that she is not entitled to cash the check because, as he would later testify at trial, this “whole thing is an extortion attempt.”

According to Romeo’s version of the facts, Juliet threatened to go to his bosses at ABC Capital Markets, where he was a stock trader, and make up tales of drug use “with strippers and whores” to embarrass him if he should try to interfere with her cashing the check. He further testified that, unable to bear the thought of having such a reputation, and “feeling the pressure of her threats,” he wrote out a \$100,000 check to Juliet to protect his career and reputation, which she then demanded and threatened to cash “for no apparent reason.”

Juliet denied these allegations during the trial, and testified that Romeo’s drug use and wild ways with women entitle her to the money. She testified that she was entitled to receive and cash the check, which was made out to her *before* the “infamous guys’ night out,” because Romeo went out with fellow ABC traders to ogle the girls at a strip club, and did cocaine shortly thereafter. Juliet further claimed that Romeo failed a store-bought drug test of his urine, which was given to Romeo the morning after his debauched night out.

In an affidavit, Juliet attached what she claimed was the text of a long instant-message conversation she had with Romeo in which he appeared to admit to doing drugs and visiting strip clubs, and told her that he would give her the check. According to the text message, which was admitted into evidence, after initially writing that he was “sorry I was irresponsible last night - but I didn’t do the bad stuff,” and that he was not “stupid enough to jeopardize our future,” Romeo explained that he was only “drunk/bombed [on] Jack [Daniels],” but not “high on cocaine.” Immediately after this statement, Juliet wrote: “The \$25 Rite-Aid

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test – it’s POSITIVE.” Romeo then appears to blame one of his trading buddies, claiming that “He put it in my face.” During the trial, Romeo testified that the trading buddy that enticed him to go to the strip club was Juliet’s friend Mercutio, who Romeo suspects was put up to the task by Juliet. In any event, later in the instant-message exchange, Romeo confesses to going to strip club after a charity event with four colleagues, and several pages after that, an apparently contrite Romeo later seems to write to Juliet, “I’m sorry. A promise is a promise.” It also appears from the instant-message conversation that he wrote, “I didn’t hold up my end of the bargain,” and “If you really want the money, it’s yours to start anew.”

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.

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 on a great year!
Have a wonderful winter break and keep in touch!**

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