

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: 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, 6 blue books, 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.
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 15 multiple choice questions (worth 15% of your grade), one conceptual essay question (worth 15% of your grade), and one longer essay question based on a fact pattern (worth 70% of your grade), so use your time accordingly. Please make sure you have all eleven (11) pages at this time.

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 (15% of your grade)

In an effort to reduce judicial discretion and create more predictable laws, a powerful Senator would like to propose legislation mandating that all judges fill gaps in incomplete contracts by using a single type of default rule, and there is a very good chance that such legislation will pass. You are the Senator's assistant, and she has charged you with the task of drafting a brief memorandum, not to exceed four or five pages, which (1) discusses the various ways judges currently choose default rules, (2) recommends a single type of default rule that should be implied in every case where there is an incomplete contract, and (3) suggests what likely consequences would result by mandating this default rule. The Senator was formerly a Contracts professor, so you may, if you like, discuss specific cases or rules that would likely change, and how they would change.

The Senator understands that such a project would ordinarily take months to complete, but explains to you that she has a speech in less than four hours that will be broadcast live, during which she would like to announce her proposal, and so asks you to "do the best you can in the time that you have."

FACT-PATTERN ESSAY QUESTION (70% 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.

In was January 1, 1902. Mike, a 17-year-old boy from Florida, returned from school one day and saw two gentlemen (one holding a briefcase) waiting outside his home. The gentlemen (named Edward I and Edward II) identified themselves as agents from a life insurance company, and told Mike that his father, who was the only family that Mike had, tragically died in an automobile accident earlier that day. The agents then waited and monitored Mike's reaction. At first, Mike was in disbelief, but when he saw the agents' stoic faces, he started to cry, quietly sobbing at first, trying to fight back the tears, and then he began to weep, and then, finally, he broke out into a full wail. The agents remained silent and cold, continuing to carefully monitor Mike's emotions. After Mike's cry reached a feverish and hysteric panic, the first agent nodded to his colleague, who nodded back acquiescently, reached into his pocket, pulled out an envelope, and presented it to Mike. Mike wiped away the tears, opened the envelope, pulled out a twenty-page contract, and looked back at the agents quizzically. The second agent flipped to the signature line on the last page and said: "Your father, a wealthy man, took out a life insurance policy providing that you shall be paid the sum of \$1 million every year for the rest of your life upon reaching your 21st birthday. Now, being that he was the only family you had, it doesn't look like you will be able to wait that long for the money, does it? Who will take care of you? How will you live?" At this, the other agent jumped in "We want to help you. We are prepared to settle this claim today for \$10 million if you'll sign that form, and we will even give you \$1 million in cash today, and the rest will be brought to you by the end of the week." The agent opened up his briefcase, showed Mike what appeared to Mike to be \$1 million in cash, and presented him with a pen. Mike told the agents that he needed some time to consider the form, but one of the agents said: "I'm sorry, Mike, but that won't be possible. We must report back to headquarters with a decision immediately, so your choices are, accept this offer and be rich, or scrape by in abject poverty until you turn 21." Mike didn't know what to do and, feeling weak, alone, and confused, he signed the form and handed it back to the agents. The agents left Mike with the briefcase full of money and a carbon copy of the contract. Mike put the contract into the briefcase with the money and forgot about it. Had he read it, he might have noticed two clauses buried in the fine print on page 14, one of which recited that the agents agreed to leave Mike with a briefcase containing \$500,000 in cash (not \$1 million), and the second of which stated that Mike needed to read, initial, and return his copy of the contract to headquarters within three (3) business days or forfeit his right to the balance of the money due.

Two days later, Mike decided that he needed to get away. He opened up the newspaper and saw an advertisement for all-inclusive trip to England on a cruise liner, which included a stay in a second-story flat in London along Pall Mall through the end of June 1902, for \$1,000. The cruise was scheduled to depart in three days, so Mike immediately called his travel agent and made a reservation. The travel agent told him he could "pay for the ticket when he returned from England" and immediately sent Mike the ticket, which arrived in the mail on the next day. A clause on the back of the ticket (which Mike never read) stated that, if the ticket was not paid for within (30) days, Mike agreed to pay an additional \$10,000 to the agent.

The day the cruise was scheduled to depart, Mike, still having not received the balance due from the insurance company, walked over to headquarters to demand payment. When he arrived, he saw the agents he had previously spoken with, who pointed out to him the fine print on page 14, which, they told Mike, "clearly indicates that you waived your right to the balance due by not returning the form in the agreed upon time." Mike was upset, but he had to hurry off to catch his cruise. "You'll hear from my lawyers!", Mike exclaimed, as he left the office, slamming the door behind him. He caught his cruise only moments before departure.

On the first day of the seven day voyage across the Atlantic, Mike turned 18 years old, and pulled out his copy of the contract and began to read it. He was surprised to come across the clause stating that he agreed to accept \$500,000, rather than \$1 million, and immediately opened up his briefcase, dumped the money on the floor, and started to count it. When Mike counted only \$500,000, he was livid and starting to scream. At that very moment, an urgent announcement came over the loudspeaker from the captain: "This is your captain, Edward III. I'm afraid that several members of our crew have abandoned ship, and the rest, citing the dangers of sailing with a reduced crew, are threatening to do the same unless I double their salaries immediately. I don't

**FINAL EXAMINATION
CONTRACTS II, SECTION 2**

**PROFESSOR JIMENEZ
SPRING SEMESTER, 2007**

have enough money to meet their demands, so I'm afraid if you want to continue to England, each passenger will have to pay an additional \$1,000. Otherwise, I'm afraid we'll have to turn back." All of the passengers, including Mike, paid the additional \$1,000.

A day before they were scheduled to arrive in England, the captain made another urgent announcement over the loudspeaker: "This is your captain. I'm afraid we've just hit an iceberg and everyone must evacuate immediately. Also, there aren't enough lifeboats for everyone. Good day." In a frantic panic, Mike immediately ran to the side of the ship where the lifeboats were kept, and asked a crewmember to lower him into a lifeboat. The crewman, named Edward IV, told him: "I understand you are rich. You can have a lifeboat in exchange for \$100,000 cash." Mike gave him the money, was lowered into a lifeboat by himself, and began to row out to sea when suddenly, a big storm hit and, before he knew it, Mike was lost at sea. After several days without food or water, Mike began to hallucinate and became delirious. At that moment, a large ocean liner floated by, and its captain, named Edward V, spotted him and offered to bring him aboard in exchange for \$10,000. Mike initially agreed, but, after considering the matter further in his delirious state, suddenly and inexplicably told the captain that he would not come aboard unless the captain agreed to accept \$25,000 for himself and another \$25,000 for his favorite charity. The captain was puzzled by this strange behavior, but agreed nonetheless. He brought Mike aboard and asked him to make out two \$25,000 checks, one for himself, and the other for his Alma mater, the College of Sailing Arts ("College"), to establish a scholarship fund in the captain's name. Thinking for a moment, Mike told the captain: "I've reconsidered our deal. I should have been in London days ago, so I will only write out those checks if you get me there by tomorrow, and if you promise that you'll get me there by tomorrow." The captain thought for a moment, then extended his hand, which Mike shook. The captain then returned to his cabin and, fully expecting to get Mike to London on time, wrote the following letter to the College in reliance on Mike's promise:

College of Sailing Arts,

In consideration of my interest in advancing the sailing arts, and in consideration of increasing applications to the College, I promise to pay to the trustees of said College \$25,000 to be used exclusively for setting up a scholarship fund known as the "Captain Edward V (Master of the Sea) Memorial Fund" if the College is able to increase enrollment by 100 students within the next year, unless the College should lose its accreditation within the said period, unless said accreditation is taken away without good cause. Furthermore, should this donation ever be used for any other purpose than herein specified, the trustees of said University shall be held bound to refund said sum of money to myself, the magnificent Captain Edward V, aka "Master of the Sea".

/s/ Edward V

The next day, the ship arrived in England, Mike wrote out both checks, the captain sent his letter (along with one of the checks) to the College, and Mike arrived in London, where he made his way to the second-story flat he rented on Pall Mall. When Mike arrived, he walked up the stairs and knocked on the door, which was answered by the owner, Edward VI, a 100-year old man of diminished mental capacities. The old man told Mike that, after Mike didn't show up at the scheduled time, he rented the flat to someone else, but, upon learning that Mike was rich, said that he would consider re-renting the flat to Mike for an additional \$10 per week. Mike agreed, and the old man gave him the keys. Later that evening, alone with his thoughts, Mike started to think about all of the bad things that happened to him, and realized that all of them involved someone named "Edward". He decided then and there that everyone named Edward was evil, and jotted down in his journal: "The Edwards of the world must be dealt with, and I will do it."

The next morning, Mike woke up early, read the newspaper, and was pleased to learn that the new king of England, Edward VII, was scheduled to have his coronation procession pass in front of Mike's flat along Pall Mall in June. Moments later, the old man who owned the flat showed up unannounced and demanded an additional \$100 from Mike to compensate him "for the increased market value of the flat due to the procession". Mike refused to pay, and the owner threatening to return with the police and forcibly repossess the property. "Wait", Mike said, "come here". The old man refused, but Mike said, with a smile: "please come here so I can give you \$100", and he pulled out a \$100 bill. The owner walked over and demanded the \$100, but when the old

man got close enough, Mike pounced on him, putting him in a headlock, and refused to give him the money. He told the old man: "Listen up, feeble minded plebian. You are standing in the way of destiny. Edward must ..." Mike's words trailed off, and suddenly, Mike felt horrible about what he had done. He let the old man out of the headlock and started to cry. He apologized to the old man, offered him some tea, and started to explain. "Listen, gentle old man, I really need this flat to effectuate my master plan on King Edward VII come coronation day. Please let me have it." Cautious, the owner asked him what "master plan" he was referring to, but when Mike pulled out \$50,000 in cash and offered to buy the flat from the old man outright, the old man forgot his question and said he would accept "so long as I can keep the furniture." Mike told him that he could, and agreed to move the furniture to a warehouse until the owner was able to pick it up. Mike then gave the old man \$50,000 in exchange for the deed. On his way out, the old man mentioned that he would probably stop by somewhere to purchase some insurance to cover his furniture while it was in storage, but Mike said: "Oh, don't worry about it. I'll do it, and you can pay me back later." Mike then picked up the phone, called a moving company, and asked them to pick up the furniture. Minutes later, the moving company arrived and took the furniture to a nearby warehouse. The old man thanked Mike and, with a tip of his hat and a fistful of cash, started to leave the building.

As the old man was leaving, Mike glanced down at the deed and realized that the old man's name was "Edward". Remembering his journal entry from the night before, Mike made up his mind to "deal with" him. Mike grabbed a heavy potted plant from inside his flat, ran over to the balcony, and waited for the old man to pass below. When Mike saw him, he picked up the plant, aimed for the old man's head, and started to throw it when, out of the corner of his eye, he saw a couple with a newborn baby walking directly into the plant's path. Mike threw himself out of the window along with the plant to avoid crushing them, and suffered serious injuries when he crashed into the pavement below. Overcome with emotion, the couple told Mike that they would send him \$10,000 every year for the rest of his life in consideration for what he had done. Mike told them that he couldn't possibly accept that much money, but the couple explained that they were wealthy architects and that the money meant little to them compared to their lives.

Upon learning that they were architects, Mike explained that he just purchased the new flat he fell from and asked them if they would be willing to remodel it instead of paying him \$10,000 per year for life. Mike told them that he wanted the interior to be completely gutted and rebuilt so that the walls were exactly 25 feet apart from each other, and explained that the work needed to be completed no later than one week before the coronation procession so that he could execute his "master plan" against Edward VII. The architect couple thought that the request, and the words used, were odd, but agreed to the request.

After several months of work, the architects completed the project days before the procession was scheduled to take place. Mike grabbed his tape measure and noticed the walls were only 23 feet apart from one another. Mike began to scream, telling the architects how disappointed he was, and demanding that they fix it immediately or else he would not let them out of paying him \$10,000 per year. The architects told him that fixing it would likely cost \$5,000, but would only increase the property value by \$500. Unyielding, Mike demanded that they fix it, but they refused, and also told Mike he could "forget about" the \$10,000.

Days before the procession, the police raided Mike's flat, seized his journal, and read about his plot to assassinate King Edward VII during the procession in June. The police put a freeze on Mike's assets, which caused both of the \$25,000 checks (to the College and to Captain Edward V) to bounce, even though the College had already set up a scholarship fund in Captain Edward V's name and increased enrollment by 100 students, although the enrollment increased long before the College established the fund or received Edward V's donation letter. After Mike was taken into custody, King Edward VII fell ill and cancelled his procession. Learning of this, Mike wrote to the old man and demanded the return of the \$50,000 he paid for the flat, and said: "My purpose has been frustrated. You know as well as I that it is now impossible to assassinate the King. Give me back my money or meet your destiny." He also demanded that the police release him, claiming that, because the procession would no longer take place in June, his assassination attempt was now "impossible" to carry out. Amazingly, the police release him. On the way back to his flat, Mike set fire to the warehouse containing the old man's furniture (which neither Mike nor the old man insured) and escaped without detection to America, where he vowed to deal with the insurance agents.

Discuss all relevant issues, including who will sue whom for what, what defenses will be asserted, who will prevail, and why. Please organize your answer by lawsuit (e.g., "A v. B") and then by issue within each lawsuit.

END OF EXAMINATION

**Congratulations on a great semester!
Have a wonderful summer and keep in touch!**

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