

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: 3 HRS.

SPECIAL INSTRUCTIONS

1. You have been given an envelope containing a copy of the examination 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 seven (7) pages consisting of two essay questions based on fact patterns: a shorter fact pattern (worth 25% of your grade), and a longer fact pattern composed of four parts (worth a total of 75% of your grade). Please use your time accordingly. You should also check at this time to make sure you have all seven (7) 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!

FACT-PATTERN ESSAY QUESTION #1 (25% 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. Is he entitled to more? Please write a memorandum to Senior Partner at Big Law Firm discussing which remedies you think your client should pursue, how likely he is to prevail on each remedy, and why. Please organize your memorandum by remedy.

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 (75% of grade)

The following fact-pattern is divided into four parts. While making your way through this fact pattern, it is strongly recommended that you answer each sub-question before moving onto the next question. This is because the information below is presented cumulatively. So, for example, while you should use information presented in a previous question (e.g., Question A) to answer subsequent questions (i.e., Questions B, C, and D), you should not use information presented in any subsequent question (e.g., Question B, C, or D) to answer Question A.

Facts:

Peter and Paula Peterson live on a farmhouse with 200 maple trees that are valuable not only for the quality of their wood, but also for the sweet sap that the couple boils into maple syrup each spring. In fact, the couple depends on the syrup sales to supplement the main source of their family income – the twice-a-day milking of their 40 dairy cows. Each maple tree produces about 40 gallons of sap, which can then be boiled into one gallon of maple syrup and sold on the wholesale market for \$50 per gallon. As there are 200 trees, Peter and Paula earn about \$10,000 in additional income each year from the sale of maple syrup. Combined with the \$40,000 they earn annually from the milk and dairy products generated from their 40 cows (each cow has a market value of \$10,000 each, and produces \$1000 in additional income per year), the Petersons are able to operate their farm (which costs \$45,000 per year to operate) at an annual profit of about \$5,000 per year.

But if you were to ask the Petersons, the trees are worth much more to them than the income they produce. Having been born on the farm, which has now been in Peter Peterson's family for five generations, the 80-year old man loves the trees the way only someone who grew up with them could. Many of the trees are nearly as old as he is, having been planted by him and his father when he was but a small boy of five. Other trees are even older, having been planted by his grandfather and, before him, his great-grandfather. If you asked him, he would also speak emotionally about the numerous picnics and family gatherings that five generations of Petersons have had under those maple trees – including his own wedding, which he recalled as the happiest day of his life, under a very special maple tree that he and his father planted in the front lawn, which he affectionately calls "the marriage tree" to this day. But more than anything else, his eyes would well with tears if you were to ever mention "the promise." As he tells the story, a few days before his father died, Peter's father made him promise not to cut those trees down, and Peter took his father's hand, looked deeply into his eyes and, with tears streaming down his face, assured him that the trees would stand longer than he himself would.

It therefore came as no surprise, then, that when the Petersons recently heard the rumbling of a chainsaw off in the distance, they both rushed to the source of the sound. There, they saw David Doolittle, a logger and operator of a nearby sawmill who owned the neighboring property, and was preparing to cut down some maple trees. When Peter asked David what he was doing, David explained that he thought the maple trees belonged to him, and even produced a recently prepared "Forest Management Plan" that he had come across, which seemed to indicate that the maple trees, indeed, were on David's side of the property line. Peter then told him: "Well you listen here, mister. I don't care what your little piece of paper says. My dad and I planted those maple trees over 70 years ago, and *my* deed clearly indicates that those trees are on *my* side of the property line, so you'd better get moving sir, and right away too."

David could tell that Peter meant business, and so he packed up his gear and left empty handed. However, as he left, Peter had a strong feeling that he would return and try to cut down those trees.

Question A (15% of grade): You are a first year associate at Big Law Firm, and your firm has been hired to represent Peter and Paula Peterson. The senior partner has asked you to write a memorandum addressing the potential remedies available to the Petersons in a suit against David Doolittle, and how a court would likely rule with respect to each potential remedy.

Additional Facts:

Several days after completing your memorandum to the senior partner, Peter and Paula Peterson stormed into your office and informed you of the following additional facts:

Several days after the initial confrontation with David, Peter had a heart attack, which he attributed to all of the stress he was under because of the recent confrontation over the maple trees. Fortunately, the attack was not that serious, but Peter did spend the next three days in the hospital, and was joined by his wife each evening after she finished the chores around the farm during the day. Upon learning of Peter's condition, and of the fact that neither Peter nor Paula were home in the evenings, David Doolittle headed to the disputed property line one night with his chainsaw and cut down 50 of the 200 maple trees. Although David was aware that Peter and Paula disputed the property line, David, in good faith, honestly believed that the trees were on his side of the property line, based on the "Forest Management Plan" discussed earlier. As it turns out, however, the "Forest Management Plan" upon which David relied was erroneous, and the maple trees were, in fact, actually on Peter and Paula's property. When Peter was released from the hospital, he and he wife surveyed the property and, noticing that 50 of their maple trees were missing, the couple was devastated. Peter fell to his knees and, choked up with tears, began to cry.

The market value of each standing tree was about \$3000, although the Petersons previously informed David that they would not sell them at any price. Once the trees had been cut and transported, however, the market value of the maple tree logs were worth \$5000 each.

Peter and Paula have come to your firm (again) for help. After learning that the maple trees were, in fact, on the Peterson's side of the property line, the senior partner tells you that this case is a "slam dunk," and that the only remaining issue has to do with remedies.

Question B (30% of grade: 15% for injunction, and 15% for memorandum): The senior partner has given you two assignments. First, the senior partner has asked you to draft a permanent injunction to prevent David from chopping down any more trees, which he will then ask the judge to sign. Second, the senior partner would like you to write a short memorandum discussing any other remedies (besides the injunction) you think the Petersons should pursue, how the judge is likely to rule, and why.

Additional Facts:

The senior partner was correct. The case was a slam dunk, and the judge signed the permanent injunction that you drafted, and also awarded additional remedial relief to Peter and Paula.

However, David was now more adamant than ever before about cutting down those maple trees. After transporting the 50 maple trees to his sawmill, David learned that the logs were much more valuable than he previously thought. Although, at first glance, the logs he had cut looked like logs from any other maple tree, a peek beneath the bark revealed that some of these logs had a distinctive, wavy pattern that made them worth a lot more money in the music industry, where they could be used to make expensive guitars. Indeed, each log possessing these distinctive patterns could be used to produce as many as ten high-end guitars, and could be sold to a manufacturer of musical instruments for approximately \$25,000.

Armed with this new information, David approached Peter and Paula and offered to buy their property outright for \$500,000, even though it had recently been appraised at \$250,000. Peter and Paula refused this offer. David then told them that he recently learned that their trees could be sold for as much as \$25,000 each, and offered to buy each tree from them for \$20,000. Peter and Paula refused this offer as well, stating that the trees were worth “at least ten times that amount” to them, and that one tree – the “marriage tree” – could not be sold “at any price.” David was upset, and told Peter and Paula they were being unreasonable, at which time David was asked to leave their property. He did.

Several weeks later, however, David returned to the Peterson’s property when he learned that the two were out of town for the day, and chopped down 100 more maple trees, leaving only 50 maple trees on the farm. About 10 of these 100 trees had a distinctive pattern, which made these logs worth \$25,000 each. The other 90 logs did not possess any special or distinctive pattern and, as such, they were only worth \$5000 each.

Upon returning to their farm and noticing that 100 more maple trees had been removed, the Petersons immediately called your law firm. On a conference call, they told you and a senior partner that they had relied on those maple trees to make ends meet, and with only 50 maple trees left, they did not think their farm could be profitable. Nevertheless, they maintained that they had no intention of ever selling the farm.

Question C (15% of grade): The senior partner has again asked you to prepare a memorandum discussing all of the remedies the Petersons should pursue in another lawsuit against David, how the judge would likely rule, and why.

Additional Facts:

Three years have passed. The Petersons have continued operate their farm, but things have not gone very well for them over the past several years. Their worst fears were realized: because they only had 50 maple trees remaining, they were not able to make enough supplemental income from their maple syrup to keep their farm profitable at their current rate of expenditures, and were forced to cut back on various costs. After the first year, to keep their farm from operating at a loss, they started to buy a lower quality feed for their cattle, which, unbeknownst to them at the time, would have the effect of reducing the quantity of milk produced by the cows, which, in turn, cut into their dairy profits. Whereas, in the past, they had made \$40,000 per year from their 40 dairy cows, they were only able to make \$30,000 during the first year from all 40 cows.

During the second year, however, things got even worse. The Petersons were told by neighbors to go back to the old feed, but they said they simply could not afford to do so, and continued feeding the cattle the lower-quality feed. Due to malnutrition, however, half of their cows died, leaving them with just 20 cows. And – even worse – these remaining 20 cows were even less productive (and thus less profitable) than they

had been before. In the second year, Peter and Paula only made a total of \$10,000 from the milk from these 20 cows. They were now operating at a huge loss, but things got even worse.

In the third year, their remaining 10 cows died, also from malnutrition. It was at this time that David, seeing that the Petersons were vulnerable and had little money to hire an attorney, decided to pounce.

David approached the Petersons and offered them \$100,000 for their farm, which was far below its market value of \$250,000. When the Petersons refused, David just laughed, told them how silly they both were, and said they would both come to regret their decision. David waited several weeks, and, in May, when the Petersons went to Maine for a summer vacation, David made his move.

David trespassed on the Petersons property and cut down 49 of the remaining 50 maple trees, loaded them into his truck, and took them back to his sawmill. 10 of these trees had the distinctive pattern (discussed earlier) that made them worth \$25,000 each, while the other 39 did not have this pattern, and were only worth \$5,000 each. Inexplicably, however, David did not sell the more expensive logs to the music industry. Rather, he processed all of the logs in his sawmill, and used all of the logs to build a wood-framed house. David spent about \$5000 in direct costs to process this wood, not including the cost of running his factory, which amounted to \$500/day to operate. It took 10 days to process the wood, but while it was being processed, about 50% of the factory was also used for other purposes unrelated to the processing of the lumber. After the 10-day period, the value of the converted boards was worth \$50,000. David then used these boards to build a home. It cost David about \$100,000 (including the \$50,000 boards) to construct the home. When the house was finally constructed some three months later, David sold it for \$200,000.

Around this time, during a cool evening in early September, the Petersons finally returned from their vacation in Maine. It was dark when they arrived, however, and they did not notice before they went to bed that evening that all but one of their maple trees had been chopped down. David *had* noticed, however, and had intentionally left the lone maple tree – the “wedding tree” – standing until the Petersons had returned. Now that they were back, David Doolittle reentered the Peterson’s property in the middle of the night and, with axe in hand, approached the special maple tree and began to chop it down. The Petersons were sound sleepers and slept through his chopping, but soon – very soon – they would awaken to a nightmare. Once David Doolittle had finished felling the wedding tree, David began to cut up the poor old tree into small blocks of wood. He then arranged these small blocks of wood into the shape of a giant happy face on the Peterson’s front lawn where the tree once stood, doused them with gasoline, and set them ablaze. To their horror, the Petersons finally woke up to the burning image of a fiery happy face in their front lawn, along with the charcoaled logs that once made up their wedding tree. Peter collapsed and had another heart attack. This time, it was fatal.

After calling the paramedics and the police, Paula called your law firm and asked for help.

Question D (15% of grade): The senior partner has asked you to draft a memorandum discussing any potential remedies Paula may have against David, how the judge will likely rule, and why.

END OF EXAMINATION

Congratulations!

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