

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 thirteen (13) pages consisting of 15 multiple choice questions (worth 15% of your grade), one conceptual essay question (worth 15% of your grade), and two essay questions based on fact patterns: a longer fact pattern (worth 40% of your grade), and a shorter fact pattern (worth 30% of your grade). Please use your time accordingly. You should also check at this time to make sure you have all thirteen (13) 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 (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 #1 (40% of your grade)

James Randi of Florida, a tireless advocate for critical thinking, skepticism, and the scientific method, got tired of hearing that some people possessed “psychic powers”, and decided that he was going to do something about it. In January, he placed a mystery item in a safe and offered \$1 million via his newsletter, which, he believed, was read exclusively by psychics, “to anyone who could correctly divine the contents of the safe from a remote location”, which, he supposed, would provide convincing, testable proof of supernatural powers. Randi also published an enciphered clue to the contents of the safe in his newsletter to provide assurance to the psychics that, in case the contents of the safe were correctly ascertained, he would not switch the mystery item with something else to foil them. Here is the clue that he published:

0679
4388
66/27
5-14

Matt Blaze and Jutta Degener learned of this offer while reading Randi’s newsletter. After weeks of work on the problem, they thought that they figured out the contents of Randi’s safe, and decided to announce their findings to a small group of psychics at their annual meeting at a remote location in Alaska. During the meeting, Matt took the stage, grabbed the microphone, and announced proudly: “My colleague, Jutta, and I have ascertained the contents of Randi’s safe. As requested in his newsletter, we have accomplished this task from a remote location – over a thousand miles away, in fact – and entirely through mental concentration and the application of our unique talents, and without any physical access or inside information. Drum roll, please.” At this point, the crowd started to shake with anticipation and could barely contain their excitement over what they thought would be a watershed moment for psychics worldwide. Jutta grabbed the microphone, and continued where Matt left off: “My colleague and I now reveal to the world that the item in the box is a CD. Randi, if you’re here, you owe us a million bucks.” The crowd roared with delight.

Randi was not there, but one member of the crowd, Buck Williams, immediately ran to the phone and called Randi upon hearing Matt and Jutta’s announcement. Randi answered the phone, and Buck told Randi that he believed he had correctly determined the contents of the safe. “I’m listening”, said Randi. Buck said: “You have a CD in your safe, don’t you?” Randi was stunned. “How in the world did you know that?” asked Randi. “No time for small talk” replied Buck. “I’m in Alaska right now, but I’m jumping on the next flight to Florida, and when I show up, you better pay me.” Buck immediately hung up the telephone, left the meeting, caught a cab to the closest airport (at a cost of \$50), bought a first-class ticket to Florida (at a cost of \$10,000), and boarded a jet headed to Florida, all with the intention of collecting the \$1 million from Randi.

The next morning, Randi woke up, brewed a cup of coffee, and turned on the television, where he heard that two individuals, Matt Blaze and Jutta Degener, announced that *they* solved the mystery of the magic box the previous evening before a packed house of ten psychics at the psychic’s annual meeting in Alaska. That moment, Randi heard a knock on his door. Randi peeked through the peephole and saw Buck from Alaska, who was holding out his hand, presumably for the \$1 million. Before he opened the door, Randi screamed at the top of his lungs: “I hereby retract my offer to you and to the world”, and then opened the door. Buck then demanded the \$1 million from Randi, but Randi refused to pay him, telling Buck: “I know you’re trying to pull a fast one on me. I just watched the news and saw that two *other* fellows discovered the contents of the safe the previous evening at some psychic’s meeting, where I presume you were in attendance. Sorry fellow, this \$1 million is intended for *them*.” “Listen up”, said Buck. “I just took a long flight from Alaska to Florida, lost my luggage, hired a detective for \$5,000 just to find out where you live,

**FINAL EXAMINATION
CONTRACTS I, SECTION 1**

**PROFESSOR JIMENEZ
SPRING SEMESTER, 2007**

and rented a car for \$100 just to get over here. I'm also missing work, where I usually make \$500 an hour. My point is, I don't have time for these games. Pay me my money now, or I'll sue you". Randi said: "Well, I guess I'll see you in court then" and slammed the door in Buck's face. Furious, Buck drove back to the airport, bought a business-class ticket for \$1,000, and flew home to Alabama, where he arrived at work five hours late due to his stopover at Randi's house.

Moments after Buck left, Randi heard another knock on the door. Randi answered the door and saw Matt Blaze and Jutta Degener flanked by several large news crews. Randi looked upon Matt and Jutta in disbelief. "How'd you do it" asked Randi. "First the money" replied Jutta. With the news cameras rolling, Randi invited everyone in, walked them to his home office, and opened the safe, where he revealed its contents: a CD, as Matt and Jutta predicted, and \$1 million. Gasps of amazement were heard coming from the news crews. With the cameras still rolling, Randi took out the money, shook his head in disbelief, and handed it to Matt and Jutta. "Now tell me. How did you *know*?" asked Randi. "Well" replied Matt, "It was quite simple". "Then do tell" said Randi.

"Well, I hate to disappoint you, but my colleague Jutta and I aren't psychics at all. We're cryptographers. We suspected that the first 10 digits of the string of numbers you published probably referred to the ISBN number of a published book and, sure enough, a bit of Internet research revealed ISBN number 0-679-43886-6 referred to the 1995 edition of the Random House Webster's College Dictionary. Once we tracked down a library with a copy (it's a bit scarcer than you might think), we checked page 275 ("275"). On that page, you'll see that the 14th entry from the bottom ("-14") is the definition for compact disc, which is, as Randi has just shown to the world, what was in the box."

Randi's face turned red and, visibly upset, he demanded back the money, explaining that it was intended for those who could apply their *psychic* powers, not their cryptographical skills, to discover the contents of the safe. "Besides" said Randi, "I already retracted my offer before you arrived." "I don't know anything about that" said Jutta, "and as to your point about psychic powers, whose to say we weren't divinely inspired when we figured out that the list of numbers referred to a book?" "That wasn't the intention of this contest, and you know it" replied Randi. "Too bad" said Jutta, as she shrugged her shoulders and prepared to leave. "You'll never get away with this" exclaimed Randi. Matt, Jutta, and the news crew then left, and Randi shouted after them "You'll hear from my lawyers". The news crews were filming the entire time, and most of their material made the six o'clock news, which caused their ratings to go through the roof. In fact, the footage they shot helped boost their collective bottom lines by about \$5 million.

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

FACT-PATTERN ESSAY QUESTION #2 (30% of your grade)

Assume the following variation on the famous case of Raffles v. Wichelhaus:

Buyer and seller sign a pre-printed standardized form contract for the delivery and sale of cotton on a ship named *Peerless* that is to arrive in Liverpool from Bombay. In fact, there are *sixteen* ships named *Peerless* that meet this description: four that are to depart from Bombay in September (a galley, a sailboat, a steam engine, and a cargo ship), four in October (also a galley, a sailboat, a steam engine, and a cargo ship), four in November (also a galley, a sailboat, a steam engine, and a cargo ship), and four in December (also a galley, a sailboat, a steam engine, and a cargo ship). The buyer knows about the steam engines named *Peerless* scheduled to depart in October and December (but is unaware of any ships named *Peerless* scheduled to depart in September or November), and buyer's journal entry for that day indicates that, at the time he entered into the contract, he meant the October steam engine named *Peerless*. His journal also indicates that, even though buyer had no access to the seller's mind, he suspected that the seller might have had in mind a ship named *Peerless* scheduled to depart in December, even though the seller never shared his secret intention with the buyer.

The seller, meanwhile, knows about the steam engine named *Peerless* scheduled to depart in October, and the galley named *Peerless* scheduled to depart in December (but is unaware of any ships named *Peerless* scheduled to depart in September or November), and seller's journal entry for that day indicates that, at the time he entered into the contract, he meant the December galley named *Peerless*. His journal also indicates that, even though seller had no access to the buyer's mind, he suspected that the buyer might have had in mind a ship named *Peerless* scheduled to depart in October, even though the buyer never shared his secret intention with the seller.

Assume that an objective standard of reasonableness suggests that the term *Peerless* refers to the November sailboat named *Peerless*, but that the pre-printed standardized form contract upon which the parties' contract was written had always been interpreted in the past to refer to the September cargo ship named *Peerless*, and many shippers knew this, although the buyer and seller did not.

How would this case be resolved under (a) the subjective theory of asset, (b) the objective theory of assent, (c) the Embry test, (d) the Restatement's approach, and (e) the CISG? Which do you think is the better approach, and why?

Note: If you believe that your analysis (not just your result) would be identical under two or more of these approaches, please state the reasons for your belief, and feel free to combine your analyses under a single heading.

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.**