

	18" Goosneck Microphone with Desk-top base
4	Cardioid Condenser Low Profile Boundary Microphone w/ Integrated Wireless Transmitter
4	Shure SLX Standard Receiver
6	MicVIEW - Teleconference Mic Switcher/Mixer
2	Ashly SRA-4150 4 channel Amplifier
	6.5" COAXIAL IN-CEILING SPEAKER
1	Fostex RM-2 Compact Monitor Speaker
	Control and Lighting
1	Professional Dual Bus Control System
1	Dual Port 10/100BaseT Ethernet Card with e-Control®2 for Z-Bus Expansion Slot
2	3 Port RS-232/422/485 Card for Y-Bus Expansion Slot
1	Room Media Controller
1	Isys 10.4" Tilt Touchpanel
1	Isys® 10.4" Lectern/Wall Mount Touchpanel
1	Cresnet Power Supply, 300 watt
1	iLux Integrated Lighting System, white
6	iLux™ Universal Dimmer Expansion Module
2	8-Button Decorator Keypad, Fits Standard Electrical Gang Boxes and Decora® Style Faceplates, White
2	(1) Button Cap for Decorator Series C2N-DB8W 8-button keypads, white. Includes custom engraving
6	iLux™ Universal Dimmer Expansion Module
3	3 Port RS-232/422/485 Card for Y-Bus Expansion Slot
1	Infrared (IR) Emitter Probe with 2-pin Mini Connector
1	
	Law School Conf. Rm. 229 90098
1	LG 52" LCD *OFE from Room 101
1	iMedia FlipTop Computer & Video Center, black
1	iMedia Receiver with Video, single IM input
1	Elmo TT-02S Document Camera
1	
	Law School Lecture Hall 247 90098
	Video
1	Optima System (15x15 RGBHV, D-15, 8x8 S-Video, 8x4 Stereo Audio, CP-15 Front Control Panel / RS-232)

7	CatPro Transmitter RGBhv and Stereo
7	CatPro Receiver RGBhv and Stereo
3	Transmitter S-Video/RCA to CAT5
3	Receiver CAT5 to S-Video/RCA
2	Sharp 65" LCD
1	Sharp 65" LCD (move to room 101)
1	Sharp 65" LCD (move to room 101)
1	Sharp 32" LCD
1	Elmo HV-5100XG Document Camera
1	Sony DVD/VCR Combo
1	NTSC Composite Video to S-Video Decoder
1	High Resolution Computer-to-Video Scan Converter
1	S-Video to Composite Video Encoder
1	Four Input, One Output VGA Switcher
1	Eight Output VGA Distribution Amplifier
1	Four Input USB Switcher
2	9-input Scaler / Switcher
1	Symposium ID350 interactive pen display
1	Mediasite RL Recorder s/n 340340
1	TrackVIEW HD1 System - Camera Tracking System with Reference and High Definition Tracking Camera
1	StepVIEW Mat – Large Concealed
2	WallVIEW CCU HD1 - High Definition Pan/Tilt/Zoom Camera Control Unit System
1	Quick-Connect CCU for EVI-HD1
2	TFT-MegaPixel Budget Dual Screen 8.4-Inch Monitor Set
1	TFT-MegaPixel Budget Dual Screen 8.4-Inch Monitor Set (for 1st floor lecture hall rack)
1	Codec 3000 MXP (Maintenance Contract Required) s/n 33A27935
	<u>Audio</u>
1	**Special Project Pricing***Converge Pro 880T - 8-Channel AEC Microphone Mixer / Amplifier / Hybrid
4	MicVIEW - Teleconference Mic Switcher/Mixer
15	6.5" COAXIAL IN-CEILING SPEAKER
1	NE Series 8250 Eight-channel amplifier
48	AudioTechnica Tabletop Condenser Boundary Microphone
1	Shure ULX Standard Bodypack System
1	Rack Hardware for Single ULX Receiver
1	I-series Omnidirectional Condenser Earset Microphone, Tan

1	18" Goosneck Microphone with Desk-top base
2	Cardioid Condenser Low Profile Boundary Microphone w/ Integrated Wireless Transmitter
2	Shure SLX Standard Receiver
1	Fostex RM-2 Compact Monitor Speaker
	<u>Control</u>
1	Professional Dual Bus Control System
1	Dual Port 10/100BaseT Ethernet Card with e-Control®2 for Z-Bus Expansion Slot
3	3 Port RS-232/422/485 Card for Y-Bus Expansion Slot
2	Room Media Controller
1	Isys 10.4" Tilt Touchpanel
2	2 RS-232/422/485 COM Port Module, Cresnet
1	
	Law School Lounge 124 90098
1	Sharp 52" LCD *OFE from Room 101
	Law School Standard Rm 327 90098
	<u>Video</u>
2	Sharp 52" LCD
1	Elmo HV-5100XG Document Camera
1	4x4 VGA and Stereo Audio Matrix Switcher
1	SW USB - Two Input USB Switcher
1	Symposium ID350 interactive pen display
1	Mediasite RL Recorder s/n 340358
1	WallVIEW 100 PTZ - Pan/Tilt/Zoom Camera System
	<u>Audio</u>
6	6.5" COAXIAL IN-CEILING SPEAKER
1	Ashly SRA-2150 2 channel Amplifier
1	STD-10K - Divider/Combiner
1	Four-Channel Transformer Balanced Microphone Mixer with Phantom Power
2	AudioScience Ceiling Microphone
1	Instructor Ceiling Mounted Mic
	<u>Control</u>
1	Compact Control System with Ethernet, Audio/Video Switcher and Digital Audio Processor
1	Isys 10.4" Tilt Touchpanel
1	Cresnet Power Supply, 75 watt
1	4 Wire to RJ11 Cresnet Distribution Block

3	2 RS-232/422/485 COM Port Module, Cresnet
1	
	Law School Study Rms 90098
3	Sharp 42" LCD
4	iMedia FlipTop Computer & Video Center, black
4	iMedia Receiver with Video, single IM input
8	Network PTZ Camera, Built-In Microhpone, 2.6x Zoom
1	1:2 Computer Graphics Video & Stereo Audio Distribution Amplifier
1	1:2 Video and Stereo Audio Distribution Amplifier
2	Sharp 32" LCD
4	4" Ceiling Speaker
4	Amplifier
1	
	Moblie Mediasite Recorder 90155
1	MediaSite ML Recorder s/n 340460
	Law School Standard Rm. 308 90156 (10 Mths)
	<u>Video</u>
1	Sharp 52" LCD
1	Elmo HV-5100XG Document Camera
1	4x4 VGA and Stereo Audio Matrix Switcher
1	SW USB - Two Input USB Switcher
1	Symposium ID350 interactive pen display
1	Mediasite RL Recorder
1	WallVIEW 100 PTZ - Pan/Tilt/Zoom Camera System
	<u>Audio</u>
4	6.5" COAXIAL IN-CEILING SPEAKER
1	Ashly SRA-2150 2 channel Amplifier
1	STD-10K - Divider/Combiner
1	Four-Channel Transformer Balanced Microphone Mixer with Phantom Power
1	AudioScience Ceiling Microphone
1	Instructor Ceiling Mounted Mic
	<u>Control</u>
1	Compact Control System with Ethernet, Audio/Video Switcher and Digital Audio Processor
1	Isys 10.4" Tilt Touchpanel
1	Cresnet Power Supply, 75 watt
1	4 Wire to RJ11 Cresnet Distribution Block

2	2 RS-232/422/485 COM Port Module, Cresnet
	Extra Displays
2	Sharp 42" LCD
1	
	Avery Hall 122 90187 (10 Mths)
	Video
1	XGA Portable Multimedia Projector (4500 lumens, 500:1 contrast)
1	120" Diag. Cosmopolitan Electrol Screen w/ built in LVC
1	Eight Input Scaling Presentation Switcher
1	Two Input VGA and Stereo Audio Switcher
1	Symposium ID350 interactive pen display
1	P10S XGA Visual Presenter
1	DVD/VCR Combo
1	52" LCD
	Audio
6	6.5" COAXIAL IN-CEILING SPEAKER
1	TRA Series Amplifier (2x75w @70v)
1	STD-10K - Divider/Combiner
	Control
1	Compact Control System with Ethernet. Separate Power Supply Required
1	Power Pack, Desktop, 24VDC, 2A (50 Watts)
1	FlipTop Control Center with 3.6" Isys Touchpanel and Cable Storage Compartment (cables not included), Black Anodized
1	2 RS-232/422/485 COM Port Module, Cresnet
1	
	Farr Hall 101 90188 (10 Mths)
	Video
1	XGA Portable Multimedia Projector (4500 lumens, 500:1 contrast)
1	120" Diag. Cosmopolitan Electrol Screen w/ built in LVC
1	Eight Input Scaling Presentation Switcher
1	Two Input VGA and Stereo Audio Switcher
1	Symposium ID350 interactive pen display
1	P10S XGA Visual Presenter
1	DVD/VCR Combo
	Audio
4	6.5" COAXIAL IN-CEILING SPEAKER
1	TRA Series Amplifier (2x75w @70v)
1	STD-10K - Divider/Combiner

	<u>Control</u>
1	Compact Control System with Ethernet. Separate Power Supply Required
1	Power Pack, Desktop, 24VDC, 2A (50 Watts)
1	FlipTop Control Center with 3.6" Isys Touchpanel and Cable Storage Compartment (cables not included), Black Anodized
1	
Farr Hall 106 90189 (10 Mths)	
	<u>Video</u>
2	52" LCD
1	High Resolution XGA Distribution Amplifier (1:3)
1	Eight Input Scaling Presentation Switcher
1	Two Input VGA and Stereo Audio Switcher
1	Symposium ID350 interactive pen display
1	P10S XGA Visual Presenter
1	DVD/VCR Combo
	<u>Audio</u>
4	6.5" COAXIAL IN-CEILING SPEAKER
1	TRA Series Amplifier (2x75w @70v)
1	STD-10K - Divider/Combiner
	<u>Control</u>
1	Compact Control System with Ethernet. Separate Power Supply Required
1	Power Pack, Desktop, 24VDC, 2A (50 Watts)
1	FlipTop Control Center with 3.6" Isys Touchpanel and Cable Storage Compartment (cables not included), Black Anodized
1	2 RS-232/422/485 COM Port Module, Cresnet (only needed for Rooms 106 & 204)
1	
Avery Hall 216 90190 (10 Mths)	
	<u>Video</u>
1	XGA Portable Multimedia Projector (4500 lumens, 500:1 contrast)
1	120" Diag. Cosmopolitan Electrol Screen w/ built in LVC
1	Eight Input Scaling Presentation Switcher
1	Two Input VGA and Stereo Audio Switcher
1	Symposium ID350 interactive pen display
1	P10S XGA Visual Presenter
1	DVD/VCR Combo
1	52" LCD

1	CMA-370™ Unistrut® Adapter
	Audio
6	6.5" COAXIAL IN-CEILING SPEAKER
1	TRA Series Amplifier (2x75w @70v)
1	STD-10K - Divider/Combiner
	Control
1	Compact Control System with Ethernet. Separate Power Supply Required
1	Power Pack, Desktop, 24VDC, 2A (50 Watts)
1	FlipTop Control Center with 3.6" Isys Touchpanel and Cable Storage Compartment (cables not included), Black Anodized
1	2 RS-232/422/485 COM Port Module, Cresnet
1	
	Farr 106 MAC 90221 (10 Mths)
1	XGA Portable Multimedia Projector (4500 lumens, 500:1 contrast)
1	120" Diag. Cosmopolitan Electrol Screen w/ built in LVC
1	
	BUS ED SmartBoard Additions 90370 (6 Mths)
	Room 210
1	SMART Board 680 with UF55 projector
	Room 244
1	SMART Board 680 with UF55 projector
1	Response System with Receiver, 24 Remotes and software CD
1	Response System Receiver and Software CD
1	
	Corbin Smart Class Rm - Duel LCD 90375 (6 Mths)
	VIDEO
2	52" LCD
1	High Resolution XGA Distribution Amplifier (1:3)
1	Eight Input Scaling Presentation Switcher
1	Two Input VGA and Stereo Audio Switcher
1	Symposium ID350 interactive pen display
1	P10S XGA Visual Presenter
1	DVD/VCR Combo
	AUDIO
4	6.5" COAXIAL IN-CEILING SPEAKER

1	TRA Series Amplifier (2x75w @70v)
1	STD-10K - Divider/Combiner
	CONTROL
1	Compact Control System with Ethernet. Separate Power Supply Required
1	Power Pack, Desktop, 24VDC, 2A (50 Watts)
1	FlipTop Control Center with 3.6" Isys Touchpanel and Cable Storage Compartment (cables not included), Black Anodized
1	2 RS-232/422/485 COM Port Module, Cresnet. Includes PW-1205 Power Supply.
1	
	Corbin Smart Classroom - PROJECTOR/SCREEN 90376 (6 Mths)
	VIDEO
1	XGA Portable Multimedia Projector (4500 lumens, 500:1 contrast)
1	120" Diag. Cosmopolitan Electrol Screen w/ built in LVC
1	Eight Input Scaling Presentation Switcher
1	Two Input VGA and Stereo Audio Switcher
1	Symposium ID350 interactive pen display
1	P10S XGA Visual Presenter
1	DVD/VCR Combo
	AUDIO
4	6.5" COAXIAL IN-CEILING SPEAKER
1	TRA Series Amplifier (2x75w @70v)
1	STD-10K - Divider/Combiner
	CONTROL
1	Compact Control System with Ethernet. Separate Power Supply Required
1	Power Pack, Desktop, 24VDC, 2A (50 Watts)
1	FlipTop Control Center with 3.6" Isys Touchpanel and Cable Storage Compartment (cables not included), Black Anodized
1	
	BUS ED Conf. Rm. 203 Upgrade 90377 (6 Mths)
	VIDEO/AUDIO
1	52" LCD
1	Flat Panel Power Conditioner

	CONTROL
1	iMedia FlipTop Computer & Video Center w/Mic Control, black
1	IM-RXV1-M iMedia Receiver, Single IM Input plus Microphone
1	
	DCOM 2nd Floor Atrium Sound System 100010 (4 Mths)
	Audio and Control
1	Matrix processor (4x4 base unit)
1	4-output expansion module
1	8-channel Amplifier
16	6.5" COAXIAL IN-CEILING SPEAKER
1	ULX Professional Handheld System (Includes ULX2/58 Handheld Transmitter with SM58 Microphone)
1	Wall Mount Interface for Apple iPod®, white
1	Post-Construction Mounting Kit for CEN-IDOCV-DSW
1	Adagio® Balanced Audio Receiver
1	Compact Control System with Ethernet. Includes PW-2410RU Power Supply
1	Wall Mount LCD Controller, White
1	
	Law School DSOL Study Rms (3 Existing) 100038 (4 Mths)
6	Axis 211M IP Camera
3	AudioTechnica Tabletop Condenser Boundary Microphone
1	IP+ SURVEILLANCE SOFTWARE, 25 LICENSES
1	
	West Knox Conf Rms. 100072 (1st Year)
	Equipment for both Conference Rooms
1	Sharp 52" LCD
1	iMedia FlipTop Computer & Video Center, black
1	iMedia Receiver with Video, single IM input
	Equipment for VTC Addition
1	TANDBERG Quick Set C20 (Maintenance Contract Required) s/n F1AN06C00279
1	Omnidirectional Condenser Boundary Microphone
1	1:2 Computer Graphics Video & Stereo Audio Distribution Amplifier
	West Knox DL Rm. 137 100072 (1st Year)

	Video
1	Custom Optima Switcher: 15X15 RGBhv (HD-15), 16x16 S-Video , 8X4 Stereo Audio w/DVC, CP-15 Front Control Panel / RS-232
1	DVD/VCR Combo
1	Elmo HV-5100XG Document Camera
1	Symposium ID350 interactive pen display
1	Codec 6000 MXP (Maintenance Contract Required) s/n 25A15335
3	Video Switcher/Scaler
1	Cross Converter
1	High Resolution Computer-to-Video Scan Converter
1	NTSC Composite Video to S-Video Decoder
1	S-Video to Composite Video Encoder
1	4 Input VGA and Stereo Audio Switcher
2	Universal Computer-Video Interface
1	Four Input USB Switcher
2	WallVIEW PRO 300 - Standard Definition Pan/Tilt/Zoom Camera System
2	Multimedia Projector (DLP, XGA, 5200 lumens, 2100:1 contrast)
2	Standard Power Zoom Lens
2	120" Diag. Cosmopolitan Electrol Screen w/ built in LVC
1	Sharp 52" LCD
	Audio
6	6.5" COAXIAL IN-CEILING SPEAKER
1	SRA Series Amplifier (2 x 75W @4Ω)
1	18" Goosneck Microphone with Desk-top base
1	ULX Standard Bodypack System Includes WL185 Microflex Cardioid Lavalier Microphone
1	Converge Pro 880T - 8-Channel AEC Microphone Mixer / Hybrid
6	Ball microphone: Omni - ¾" diameter stainless steel
	Control
1	Professional Dual Bus Control System
1	Dual Port 10/100BaseT Ethernet Card with e-Control®2 for Z-Bus Expansion Slot
2	3 Port RS-232/422/485 Card for Y-Bus Expansion Slot
2	2 RS-232/422/485 COM Port Module, Cresnet
1	Isys 10.4" Tilt Touchpanel

West Knox Standard Rms. 104 100072 (1st Year)	
	Video
2	XGA Ultra-Portable Multimedia Projector (4500 lumens, 1000:1 contrast)
2	120" Diag. Cosmopolitan Electrol Screen w/ built in LVC
1	Symposium ID350 interactive pen display
1	P10S XGA Visual Presenter
1	DVD/VCR Combo
	Audio
8	6.5" COAXIAL IN-CEILING SPEAKER (Due to Size of Room)
	Control
1	Multimedia Presentation System 100 - 70V Amplifier
1	FlipTop Control Center with 3.6" Isys Touchpanel and Cable Storage Compartment (cables not included), Black Anodized
1	1 to 2 QuickMedia® Distribution Amplifier
2	QuickMedia® Receiver
West Knox Standard Rooms (115, 130, 132, 133, 154, 165, 188) 100072 (1st Year)	
	Video
7	XGA Ultra-Portable Multimedia Projector (4500 lumens, 1000:1 contrast)
7	120" Diag. Cosmopolitan Electrol Screen w/ built in LVC
7	Two Output VGA Distribution Amplifier
7	OFE Podium Laptop
7	Symposium ID350 interactive pen display
7	P10S XGA Visual Presenter
7	DVD/VCR Combo
	Audio
42	6.5" COAXIAL IN-CEILING SPEAKER
	Control
7	Multimedia Presentation System 100 - 70V Amplifier
7	FlipTop Control Center with 3.6" Isys Touchpanel and Cable Storage Compartment (cables not included), Black Anodized

	West Knox SmartBoard Addition 100072 (1st Year)
	Smart Classroom 1
1	SMART Board 680 with UF55 projector
	Smart Classroom 2
1	SMART Board 680 with UF55 projector
	DSOL Seminar Rm. 227 100135 (1st Year)
	<u>Video</u>
2	52" HDTV LCD
1	Elmo TT-02RX Portable Document Camera
1	4x4 VGA and Stereo Audio Matrix Switcher
1	Mediasite RL Recorder s/n 09240131
1	WallVIEW 100 PTZ - Pan/Tilt/Zoom Camera System
	<u>Audio</u>
1	STD-10K - Divider/Combiner
1	Four-Channel Transformer Balanced Microphone Mixer with Phantom Power
1	Ball microphone: Omni - 3/4" diameter stainless steel
	<u>Control</u>
1	Compact Control System with Ethernet, Audio/Video Switcher and Digital Audio Processor
1	Isys® 10.4" Lectern/Wall Mount Touchpanel
1	Cresnet Power Supply, 75 watt
3	2 RS-232/422/485 COM Port Module, Cresnet
	DSOL Dean's Conf. Rm. 100136 (1st Year)
1	TANDBERG Quick Set C20 (Maintenance Contract Required) s/n F1AN10C00315
1	Omnidirectional Condenser Boundary Microphone
1	1:2 Computer Graphics Video & Stereo Audio Distribution Amplifier
	West Knox Schenck 104 100150 (1st Year)
	VIDEO
1	XGA Ultra-Portable Multimedia Projector (4500 lumens, 1000:1 contrast)
1	120" Diag. Cosmopolitan Electrol Screen w/ built in LVC

1	Two Output VGA Distribution Amplifier
1	Symposium ID350 interactive pen display
1	P10S XGA Visual Presenter
1	DVD/VCR Combo
	AUDIO
6	6.5" Coaxial In-Ceiling Speaker
	CONTROL
1	Multimedia Presentation System 100 - 70V Amplifier
1	FlipTop Control Center with 3.6" Isys Touchpanel and Cable Storage Compartment (cables not included), Black Anodized
	West Knox Library Smart Class Rm. 100151 (1st Year)
	VIDEO
1	XGA Ultra-Portable Multimedia Projector (4500 lumens, 1000:1 contrast)
1	120" Diag. Cosmopolitan Electrol Screen w/ built in LVC
1	Two Output VGA Distribution Amplifier
1	Symposium ID350 interactive pen display
1	P10S XGA Visual Presenter
1	DVD/VCR Combo
	AUDIO
6	6.5" Coaxial In-Ceiling Speaker
	CONTROL
1	Multimedia Presentation System 100 - 70V Amplifier
1	FlipTop Control Center with 3.6" Isys Touchpanel and Cable Storage Compartment (cables not included), Black Anodized
	DCOM Clinic Sound Masking 100089 (2 Mths)
6	EM-K Emitters (Box of 4; 16' Cat3 Cable included with each Emitter)
2	SPS30 Control Modules (1 for Hallway and 1 for Patient Rooms)

NOTE: All items highlighted in yellow will not be covered under this agreement per customer's request. All costs associated with the coverage of these items have been removed from the final cost.

*Completed
8-28-09*

BYRGE SECURITY SERVICES SERVICES CONTRACT

THIS SERVICE CONTRACT is entered into as of 8-24-2009 (the "Commencement Date") between Byrge Security Services, a Tennessee Corporation, with an office located at 908 Rose Hill Drive, La Follete, TN 37766 ("Contractor") and located at Lincoln Memorial University ("Client") (hereinafter Contractor and Client may be referred to as the "Party" or "Parties").

The Parties hereby agree as follows:

1. **SCOPE OF SERVICES.**
 - (a) Contractor shall furnish and/or perform the security services described in Schedule A, attached hereto and incorporated by reference, (the "Services") at Client's premises located at 601 W. Summit Hill Dr. Knoxville, TN 37902 (the "Premises") in accordance with this Services Contract and all post orders or other written guidelines agreed upon by Client and Contractor (the "Contract"). The Client has specified the nature, type and degree of, and hours for, the services to be provided by Contractor for the purpose of carrying out the terms and conditions of the Contract.
 - (b) Contractor is generally available to perform Emergency Services, subject to the Parties entering a separate Emergency Services Agreement that contains mutually agreeable terms and conditions. Emergency Services include, but are not limited to: (i) acts of government in its sovereign capacity (ii) fires, (iii) floods, (iv) strikes, (v) acts of terrorism, (vi) unusually severe weather, (vii) riots, (viii) earthquakes, or (ix) other acts of God.
2. **BILLING: PAYMENTS**
 - (a) Client shall pay Contractor for the Services as specified in ~~Schedule of Fees~~ \$13⁰⁰ per hour. The rates contained in ~~Schedule of Fees~~ shall become effective as of the Commencement Date, and shall remain in force for one (1) year. Notwithstanding, following the receipt of written notice from the Contractor, the rates shall be automatically adjusted for any change in costs mandated by law, including but not limited to State licensing fees, Federal Insurance Contribution Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Insurance (SUI), Worker's Compensation, and/or Federal or State minimum wage laws. In addition, the rates may be adjusted each October 1 for any increased cost for medical insurance premiums. Fees for the Services are exclusive of any local, State or Federal sales or service taxes applicable to Services. To the extent State laws taxes the Services, Contractor shall invoice Client for taxes as required by law. The client is solely responsible for the payment of all such taxes and shall remit to Contractor all such taxes along with payment of each Invoice for Services Issued hereunder.
 - (b) The client agrees to pay Holiday rates for the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
 - (c) The client agrees to pay overtime rates based on contract billing rates, for any additional hours of Service requested by Client that are performed for less than thirty (30) days.
 - (d) The client agrees to pay overtime rates based on contract billing rates for any additional hours of Service provided due to unforeseen circumstances which requires the Contractor to remain on premises beyond agreed time that occurs for less than thirty (30) days.
 - (e) Contractor will invoice Client weekly for the Services performed. All invoices are due and payable by the Client upon receipt. Payments not received by Contractor within thirty (30) days from the date of the invoice shall accrue interest at the rate of one and one-half percent (1.5%) per month or the maximum allowed by law, if lower.

*initial
B. G. ...
[Signature]*

3. **TERM; TERMINATION; RENEWAL.** The initial term of this Contract shall be for one (1) year beginning on the Commencement Date. The Contract will automatically renew for successive one (1) year periods with a minimum percent increase in the labor and non-labor bill rates each renewal year as outlined under Miscellaneous Conditions. The Contract may be terminated: (a) effective thirty (30) days from the date of receipt of a written termination notice by either Party; (b) by Contractor for non-payment by Client following twenty-four (24) hours written notice; (c) immediately upon written notice to the Client in the event a Bankruptcy petition is filed or a receiver is appointed by or for the Client, and; (d) by either Party effective thirty (30) days from the receipt of written notice to the other regarding the failure of such other Party to perform its duties or obligations hereunder, provided such failure is not cured within thirty (30) day notice period. In the event Client terminates this contract for any reason other than Contractor's failure to perform as set forth in 3. (d) above, Client shall reimburse Contractor for any unamortized or unrecovered costs for vehicles or other special equipment procured for and used exclusively in the performance of this Contract.
4. **DUTIES OF SECURITY OFFICERS.** Contractor's security officers assigned to the Premises will perform the Services set forth in the Contract. The security officers will perform the duties assigned to them in accordance with applicable written post orders or guidelines, but shall be under the sole control and direction of Contractor. The Client assumes the risk and responsibility in the event that Client takes over direct control or supervision of a Contractor employee by requiring the employee to perform contrary to the Contract or not perform duties as contemplated by the Contract. The security officers, while on duty, shall wear uniforms, present a neat and orderly appearance, and shall perform their duties in a courteous and respectful manner.
5. **INSURANCE AND LIMITATION OF LIABILITY.** Contractor shall provide visible presence and shall deter, observe, and report. Contractor is not an insurer of the premises and makes no representation, express or implied, that its services will prevent injury, loss, or damage. Contractor shall maintain the following insurance coverage: (i) workers' compensation insurance with statutory limits and guidelines, (ii) automobile liability, for company owned vehicles; and (iii) commercial general liability, including contractual liability, with coverage of \$1,000,000.00 Personal and ADV BURY with \$1,000,000.00 general aggregate. Client shall give notice to Contractor of any loss, damage, expense, claim, lawsuit, liability, fine, or penalty (together referred to as "Claim") within thirty (30) days of the occurrence giving rise to the Claim. No claim, demand, or lawsuit regarding any such Claim shall be brought against Contractor by Client unless such notice is given. Contractor's liability under this Contract shall be limited to the limits of Contractor's insurance coverage as set forth above. Contractor is not responsible for third party Claims and the Client shall not hold them liable for any Claim from a third party on or off Client's premises.
6. **INDEMNITY.** Contractor and Client shall defend, indemnify, and hold each other, and each other's respective parent company, subsidiaries, insurers, agents, and employees, harmless against all liability, loss, damage and expenses (including reasonable attorneys' fees) resulting from or caused by negligent or willful act(s) or omission(s) by the party from whom indemnity is sought, including such party's agents, employees, or subcontractors. It is the intention of the parties hereto that the obligations of Contractor under this Paragraph shall be for the acts of omissions of its employees and agents, and any indemnification of Client by Contractor will only be to the extent of the Contractor's negligent or willful act(s) or omission(s), including that of its employees or agents. Under no circumstances shall Contractor be obligated to assume liability for the acts or omissions of any person or entity that is not an employee or agent of Contractor. The provisions of this Paragraph shall survive the expiration or termination of this Contract.
7. **INABILITY TO PERFORM PROTECTIVE SERVICES.** Contractor will not be liable for any failure or delay in performing the Services, in whole or in part, where such failure or

delay is caused by circumstances beyond Contractor's control, including acts of God, severe weather, fire, terrorism, vandallism, or civil riots, war, civil disturbance, court order or any other cause over which the Contractor does not have direct control

- 8. **RECRUITMENT AND TRAINING EXPENSES.** Each security officer assigned to the premises has been recruited and trained at Contractor's expense using methods and training programs developed by Contractor. Client would receive the benefits and Contractor would suffer the loss of such recruiting or training expense if Client hired any such security officer. It is impractical or impossible to quantify with certainty the precise cost to Contractor of recruiting and training each security officer, but the sum of Two Thousand Five Hundred and 00/00 Dollars (\$2, 500.00) constitutes a reasonable approximation of such recruiting and training expense (the "Reimbursement Fee"). Client shall pay to Contractor the Reimbursement Fee for each security officer who is hired or retained by Client, or by any agent or contractor of Client, as a security officer or as one who supervises security officers or security services at any client location, if such security officer performed any of the Services at the Premises during the twelve (12) months preceding his/her engagement by Client. The provisions of this Paragraph shall survive the expiration or termination of this Contract for a period of twelve (12) months.
- 9. **COMPLIANCE.** Contractor and Client shall comply with all applicable Federal, State, and local laws, rules and regulations. Contractor will not discriminate against any employee due to race, religion, color, sex, or national origin. Contractor will employ qualified veterans, disabled or otherwise, and other protected veterans.
- 10. **GOVERNING LAW.** This Contract and all amendments, modifications, alterations or supplements hereto shall be deemed to have been executed in, and shall be governed by and construed in accordance with the laws of the State where the service is performed.
- 11. **LICENSES.** Contractor, its officers and employees, shall be duly licensed and will obtain all permits necessary and required to perform Services by the State, County, and/or Municipality where Services are to be performed.
- 12. **NO THIRD PARTY BENEFICIARIES.** The Services are being provided only to Client or its agents. No other person or entity is, nor is intended to be, a third-party beneficiary under this Contract. Contractor is assuming no duty to protect any other persons or entities or their property. Contractor shall not be liable to any persons or entities not a party to this Contract for any bodily injuries, including death, or property damage, unless caused by Contractor, nor shall it be liable for indemnity and/or contribution in favor of any person or entity against whom such a claim is brought, including Client.
- 13. **HAZARDOUS CONDITIONS.** Client warrants and represents that there are no chemical or other hazards that require disclosure to employees of Byrge Security Services that have not been disclosed to Byrge Security Services under OSHA Chemical Hazard Communication Standard 1910.2000. Client agrees that, to the extent it is required by law to provide such training to its own employees, it will allow Byrge Security Services to attend any Hazard Communication Training Program and will provide all training materials to employees of Byrge Security Services.
- 14. **EMPLOYMENT REPRESENTATION.** The relationship of Contractor and Client under this Contract shall be that of an independent contractor. Contractor is not employed by the Client and the Client is not responsible for payroll, payroll taxes, or any other expenses of the Contractor in conjunction with the performance of this Contract.
- 15. **MISCELLANEOUS CONDITIONS.**
 - (A) This Contract can not be modified, altered, or changed, except in writing properly executed by both parties.
 - (B) All persons signing this Contract are acting on behalf of their respective companies and have the right to do so before said company. By signing the contract, all persons are attesting to that fact.

initial
 [Signature]
 [Signature]
 [Signature]

(C) The Client will not give direct orders or supervision of the security officers, but will direct all requests thru the main office.

(D) This contract (All pages are considered page 1) includes the "Schedule of Fees"(Page 3), and will include "Schedule of Post Orders"(Page 2) once the Schedule of Post Orders has been completed.

(E) Client will immediately notify the Contractor by oral and written statement of any changes in the environment/site that poses a credible threat to the safety of the security officer if the officer is not present when it occurs. This includes but is not limited to: fires, utility issues (power lines down, water main breaks, etc.), any situation that involves law enforcement officers or federal agencies, etc.

(F) All contracts auto renew for a period of twelve (12) months if the Contractor is not notified in writing thirty (30) days prior to the expiration of the contract and all fees can increase by a minimum of two (2) percent, up to a maximum of ten (10) percent or the maximum permitted by Law (Federal and State) based on the increase of applicable necessary requirements for insurance, taxes, and any other expenses in executing this Contract.

(G) The Client acknowledges and accepts this Contract in its entirety except where exceptions have been agreed upon by both parties in writing.

(F) Client acknowledges and agrees to the following statement by signing the contract below:

That they entered this contract of their free will fully understanding it with no reservations and will abide by said Contract.

Client's Information

Doing Business as Name: Lincoln Memorial University
print)
Address: 6965 Cumberland Gap Pkwy., Box 2003
Harrogate, TN 37752-2003

Randy Eldridge
Randy Eldridge
Representative: Vice President Finance/Operations (Please
print)
Title/Position: (Please
print)

Client's Signature _____ Date: _____

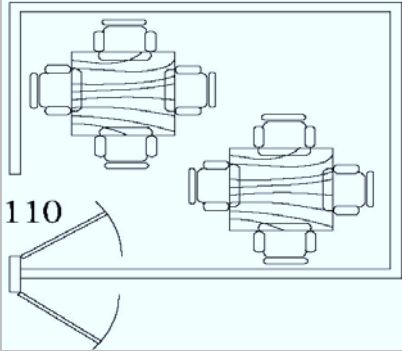
Byrge Security Services :
908 Rose Hill Drive, La Follette, TN 37766 423-494-5376

Representative: Donnio R. Byrge
Title: Owner/President

Signature: *Donnio R. Byrge* Date: 8-28-09

\$13.00 per hour

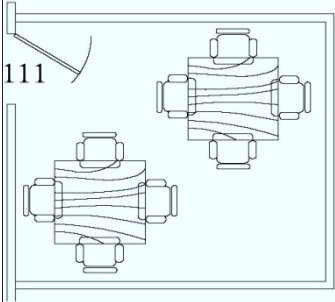
Technological Resources at LMU School of Law

Flr.	Rm #	Description	Infrastructure	Multimedia	Considerations
1 st	110	<p>Group Study Room: Faculty, students, and staff have access to the group study/conference room/testing room which is equipped with wireless access.</p> 	<ul style="list-style-type: none"> • Wireless n access for students, faculty, and staff. 		<ul style="list-style-type: none"> • Conveniently located on 1st floor • Seats 8 participants for small group training, group study, and learning sessions • Ability to connect to online resources such as the course management system, recorded class lectures, and library databases to complete small group assignments

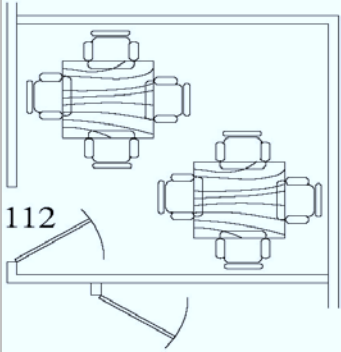
Notes: Classroom diagrams are not to scale.

For rooms not yet completed, technological resources listed for are anticipated. Changes based curricular programming, actual needs, student and faculty feedback and other causes as well as changes in technology itself may alter the actual technology deployed in individual rooms.

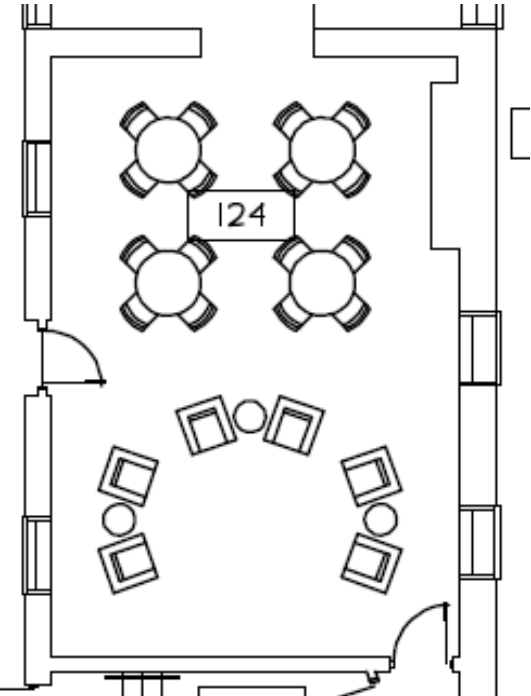
Technological Resources at LMU School of Law

Flr.	Rm #	Description	Infrastructure	Multimedia	Considerations
1 st	111	<p>Group Study Room: Faculty, students, and staff have access to the group study/conference room/testing room which is equipped with wireless access.</p> 	<ul style="list-style-type: none"> • Wireless n access for students, faculty, and staff. 		<ul style="list-style-type: none"> • Conveniently located on the 1st floor • Seats 8 participants for small group training, group study, and learning sessions • Ability to connect to online resources such as the course management system, recorded class lectures, and library databases to complete small group assignments

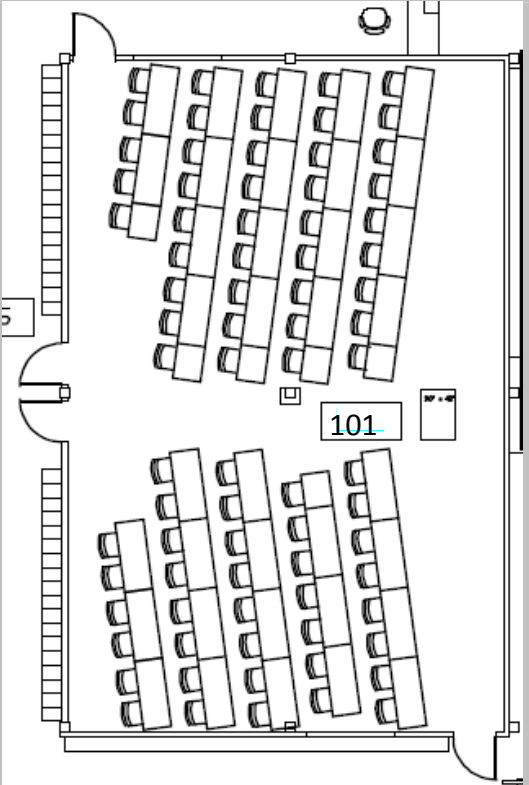
Technological Resources at LMU School of Law

Flr.	Rm #	Description	Infrastructure	Multimedia	Considerations
1 st	112	<p>Group Study Room: Faculty, students, and staff have access to the group study/conference room/testing room which is equipped with wireless access.</p> 	<ul style="list-style-type: none"> • Wireless n access for students, faculty, and staff. 		<ul style="list-style-type: none"> • Conveniently located on the 1st floor • Seats 8 participants for small group training, group study, and learning sessions • Ability to connect to online resources such as the course management system, recorded class lectures, and library databases to complete small group assignments

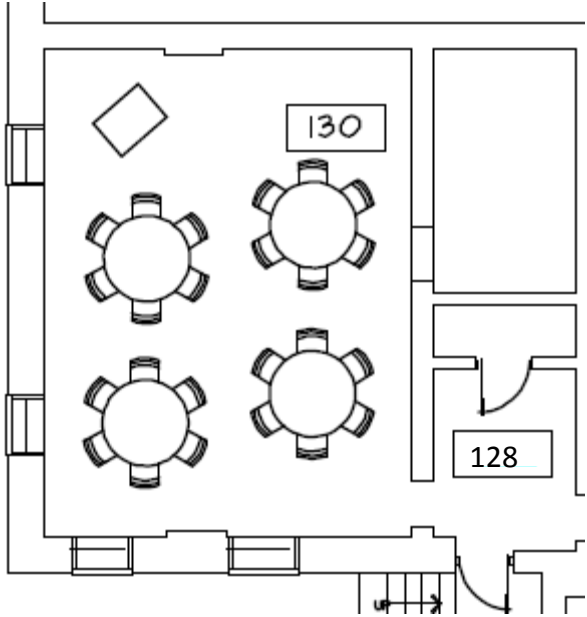
Technological Resources at LMU School of Law

Flr.	Rm #	Description	Infrastructure	Multimedia	Considerations
1 st	124	<p>Student/Faculty/Guest lounge area: this area is used for relaxation between classes and studying. An LCD is mounted on the back wall so that students can catch up on the news or play games on the attached Wii.</p> 	<ul style="list-style-type: none"> • Wall mounted LCD for room cable TV viewing • Network jack near TV for network access • Wireless n access for students, faculty, and staff. 	<ul style="list-style-type: none"> • 52" LCD • Cable TV setup 	<ul style="list-style-type: none"> • Provide general cable access for faculty and student relaxation • Capability to add laptop to LCD for general projection

Technological Resources at LMU School of Law

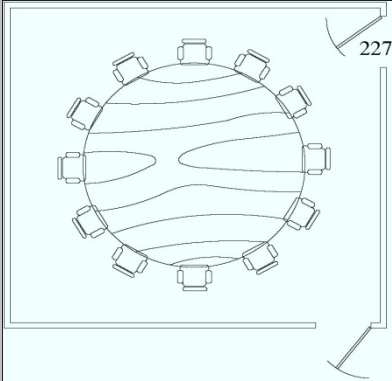
Flr.	Rm #	Description	Infrastructure	Multimedia	Considerations
1 st	101	<p>Classroom 101 - this classroom provides a lecture hall for 78 students. This area incorporates audiovisual content delivery to the display monitors throughout the room. This classroom has the capability to be recorded and can be reviewed with proper credentials over the Internet.</p> 	<ul style="list-style-type: none"> • Multimedia connectivity supporting audio, video, networking, and controls for Podium • Network cabling to podium • Power to tables to support student laptop charging • Wireless n access for students, faculty, and staff. • Capability to capture class lectures for streaming out via the Internet 	<ul style="list-style-type: none"> • Two 65" LCDs and two 42" LCDs for student viewing • 32" LCD for instructor viewing • Podium in room with PC, document camera, Symposium, DVD/VCR, microphone, and primary control • Symposium interactive pen display with SMART Notebook software • Primary Crestron touch panel control system for multimedia presentations • Digital archiving, retrieval and storage system of all audiovisual content • Wired voice reinforcement system for the presenter • Audio reinforcement system for students 	<ul style="list-style-type: none"> • Control all aspects of presentation from one area with minimal support; enabling faculty to be self-sufficient • Deliver lectures using multimedia presentation techniques to enrich the learning environment • Record lectures for later review • Provide an interactive learning environment • Internet access to download content and access resources from the podium – students will access via Wireless n access at their seats • Participate in interactive feedback system

Technological Resources at LMU School of Law

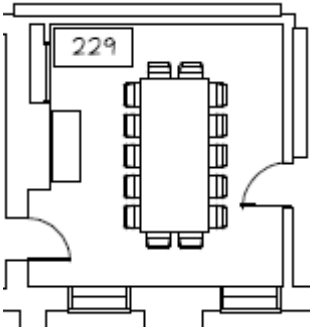
Flr.	Rm #	Description	Infrastructure	Multimedia	Considerations
1 st	130	<p>Study Room 130 – this Study Room will support 24 students with integrated infrastructure for presentation by faculty, staff, and students. It will contain basic technology which allows instruction to be presented to a wall mounted LCD.</p> 	<ul style="list-style-type: none"> Wireless n access for students, faculty, and staff. 	<p><u>Planned</u></p> <ul style="list-style-type: none"> 52" LCD 	

Multimedia not yet installed.

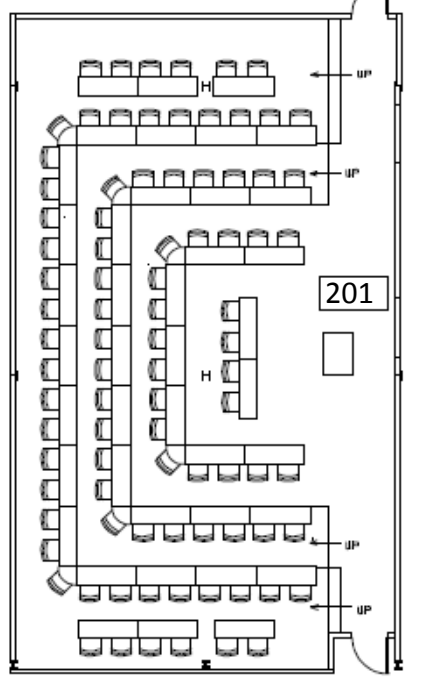
Technological Resources at LMU School of Law

Flr.	Rm #	Description	Infrastructure	Multimedia	Considerations
2 nd	227	<p>Classroom 227 – this multi-purpose classroom supports 12 participants with integrated infrastructure for presentation by faculty, staff, and students. It contains basic technology which allows instruction to be presented to two wall mounted LCDs.</p> 	<ul style="list-style-type: none"> • Multimedia connectivity supporting audio, video, networking, and controls for Podium • Network cabling • Power to tables to support student laptop charging • Wireless n access for students, faculty, and staff. 	<ul style="list-style-type: none"> • Two 42" LCD monitors • Tablet PC • Symposium interactive pen display with SMART Notebook software • Document camera • Primary Crestron touch panel control system for multimedia presentations 	<ul style="list-style-type: none"> • Control all aspects of presentation from one area with minimal support; enabling faculty to be self-sufficient • Deliver lectures using multimedia presentation techniques to enrich the learning environment • Provide an interactive learning environment • Internet access to download content and access resources from the podium – students will access via Wireless n access at their seats • Participate in interactive feedback system

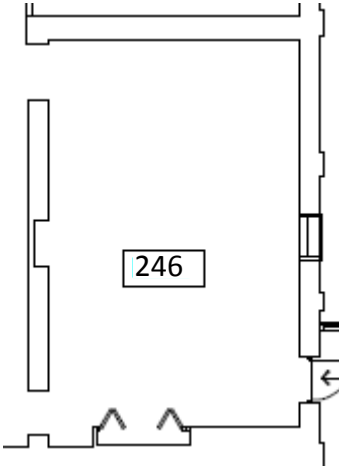
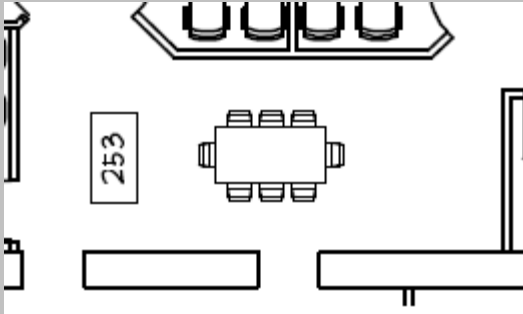
Technological Resources at LMU School of Law

Flr.	Rm #	Description	Infrastructure	Multimedia	Considerations
2 nd	229	<p>Conference Room 229 – this multi-purpose room supports 12 participants with integrated infrastructure for presentation by faculty, staff, and students. It contains enhanced technology which allows presentation to a wall mounted LCD. It also supports videoconferencing to facilitate easy face to face meetings and/or remote instruction.</p> 	<ul style="list-style-type: none"> • Multimedia connectivity supporting audio, video, networking, and controls for Podium • Network cabling • Power to tables to support student laptop charging • Wireless n access for students, faculty, and staff. • Tandberg videoconferencing system 	<ul style="list-style-type: none"> • 52" LCD television with picture in picture • iMedia tabletop connection for laptop. • Per receptacles in conference table • Video teleconference capabilities 	<ul style="list-style-type: none"> • Receive lectures and video teleconferences from distant locations • Deliver lectures and video teleconferences to distant sites

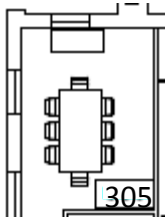
Technological Resources at LMU School of Law

Flr.	Rm #	Description	Infrastructure	Multimedia	Considerations
2 nd	201	<p>Classroom 201 - this classroom provides a lecture hall for 90 students. This area incorporates audiovisual content delivery to the display monitors throughout the room. This classroom has the capability to be recorded and can be reviewed with proper credentials over the Internet. This classroom also has videoconferencing capabilities so that it can send or receive instruction from another site with videoconferencing capabilities.</p> 	<ul style="list-style-type: none"> • Multimedia connectivity supporting audio, video, networking, and controls for Podium • Network cabling • Power to tables to support student laptop charging • Wireless n access for students, faculty, and staff. • Capability to capture class lectures for streaming out via the Internet • Videoconferencing infrastructure 	<ul style="list-style-type: none"> • Two 65" LCDs for student viewing • 32" LCD for instructor viewing • Podium in room with PC, document camera, Symposium, DVD/VCR, microphone, and primary control • Symposium interactive pen display with SMART Notebook software • Primary Crestron touch panel control system for multimedia presentations • Video teleconference, with presenter and audience tracking capability • Wired voice reinforcement system for presenter and audience 	<ul style="list-style-type: none"> • Elevated areas in Audience • Control all aspects of presentation from one area with minimal support; enabling faculty to be self-sufficient • Deliver lectures using multimedia presentation techniques to enrich the learning environment • Record lectures for later review • Provide an interactive learning environment • Internet access to download content and access resources from the podium – students will access via Wireless n access at their seats • Participate in interactive feedback system • Receive lectures and video teleconferences from distant locations • Deliver lectures and video teleconferences to distant sites • Push to talk mics for participants

Technological Resources at LMU School of Law

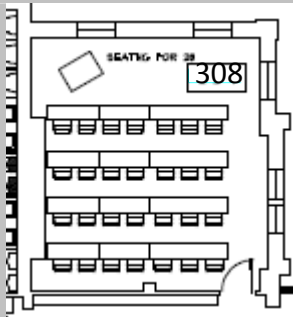
Flr.	Rm #	Description	Infrastructure	Multimedia	Considerations
2 nd	246	<p>Study Room 246: this room is being configured as a study room.</p> 	<ul style="list-style-type: none"> Wireless n access for students, faculty, and staff. 		
2 nd	253	<p>Conference Area 253: This multi-purpose room will support 8.</p> 	<p>Currently there is no plan to deploy technology in this area. In the event technology is needed, it will be deployed</p> <p>The room has Wireless n access for students, faculty, and staff.</p>		<ul style="list-style-type: none"> Conveniently located on the second floor Seats 8 participants

Technological Resources at LMU School of Law


Flr.	Rm #	Description	Infrastructure	Multimedia	Considerations
3 rd	305	<p>Small Seminar Room: This multi-purpose room is anticipated to support 12 participants with integrated infrastructure for presentation by faculty, staff, and students. It contains basic technology which allows presentation to a wall mounted LCD.</p> <div style="text-align: center;">  </div>	<p style="text-align: center;"><u>Planned</u></p> <ul style="list-style-type: none"> • Wall mounted LCD for multimedia display of room • Table access for multimedia connectivity for conference table • Table access to data network drop • Table access to power for laptop use • Wireless n access for students, faculty, and staff. 	<p style="text-align: center;"><u>Planned</u></p> <ul style="list-style-type: none"> • 42" LCD • iMedia tabletop connection for laptop 	<p style="text-align: center;"><u>Planned</u></p> <ul style="list-style-type: none"> • Conveniently located on the third floor • Anticipated to seat 12 participants for small seminars, group training, group study, and learning sessions • Internet access from the tables will enable participants to connect to online resources such as the course management system, recorded class lectures, and library databases to complete small group assignments

Technology not yet installed.

Technological Resources at LMU School of Law

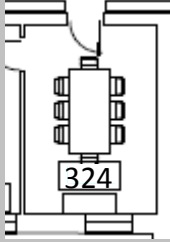
Flr.	Rm #	Description	Infrastructure	Multimedia	Considerations
3 rd	308	<p>Classroom 308 – this classroom supports 30 participants with integrated infrastructure for presentation by faculty, staff, and students. It contains basic technology which allows instruction to be presented to a wall mounted LCD.</p> 	<ul style="list-style-type: none"> • Multimedia connectivity supporting audio, video, networking, and controls for Podium • Network cabling • Power to tables to support student laptop charging • Wireless n access for students, faculty, and staff. 	<ul style="list-style-type: none"> • 52" LCD • Podium in room with PC, document camera, Sympodium, and primary control • Sympodium interactive pen display with SMART Notebook software • Document camera • Primary Crestron touch panel control system for multimedia presentations • Wired voice reinforcement system for the presenter 	<ul style="list-style-type: none"> • Control all aspects of presentation from one area with minimal support; enabling faculty to be self-sufficient • Deliver lectures using multimedia presentation techniques to enrich the learning environment • Provide an interactive learning environment • Internet access to download content and access resources from the podium – students will access via Wireless n access at their seats • Participate in interactive feedback system

Technological Resources at LMU School of Law

Flr.	Rm #	Description	Infrastructure	Multimedia	Considerations
3 rd	322	<p>Classroom 322 – this classroom will support an estimated 14 participants with integrated infrastructure for presentation by faculty, staff, and students. This classroom will have the capability to be recorded and can be reviewed with proper credentials over the internet. It contains basic technology which allows instruction to be presented to a wall mounted LCD.</p> 	<p style="text-align: center;"><u>Planned</u></p> <ul style="list-style-type: none"> • Multimedia connectivity supporting audio, video, networking, and controls for Podium • Network cabling • Power to tables to support student laptop charging • Wireless n access for students, faculty, and staff. 	<p style="text-align: center;"><u>Planned</u></p> <ul style="list-style-type: none"> • 42" LCD • Podium in room with PC, Symposium, and primary control • Symposium interactive pen display with SMART Notebook software • Document camera • Primary Crestron touch panel control system for multimedia presentations • Wired voice reinforcement system for the presenter 	<p style="text-align: center;"><u>Planned</u></p> <ul style="list-style-type: none"> • Control all aspects of presentation from one area with minimal support; enabling faculty to be self-sufficient • Deliver lectures using multimedia presentation techniques to enrich the learning environment • Provide an interactive learning environment • Internet access to download content and access resources from the podium – students will access via Wireless n access at their seats • Participate in interactive feedback system

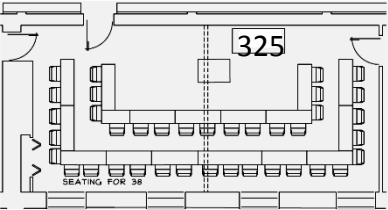
Room is planned.
Not yet installed.

Technological Resources at LMU School of Law

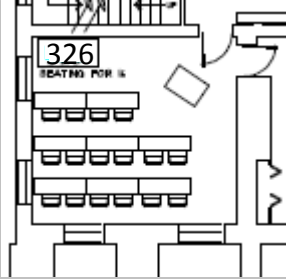
Flr.	Rm #	Description	Infrastructure	Multimedia	Considerations
3 rd	324	<p>Classroom 324 – this classroom will support 8 participants with integrated infrastructure for presentation by faculty, staff, and students. It contains basic technology which allows instruction to be presented to a wall mounted LCD.</p> <div style="text-align: center;">  </div>	<p style="text-align: center;"><u>Planned</u></p> <ul style="list-style-type: none"> • Wall mounted LCD for multimedia display of room • Table access for multimedia connectivity for conference table • Table access to data network drop • Table access to power for laptop use • Wireless n access for students, faculty, and staff. 	<p style="text-align: center;"><u>Planned</u></p> <ul style="list-style-type: none"> • 42" LCD • iMedia tabletop connection for laptop 	<p style="text-align: center;"><u>Planned</u></p> <ul style="list-style-type: none"> • Conveniently located on the third floor • Seats 8 participants for small seminars, group training, group study, and learning sessions • Internet access from the tables will enable participants to connect to online resources such as the course management system, recorded class lectures, and library databases to complete small group assignments

Room is planned.
Not yet installed.

Technological Resources at LMU School of Law

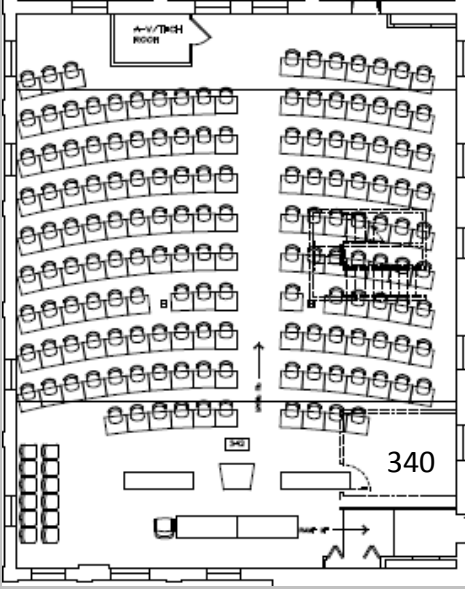
Flr.	Rm #	Description	Infrastructure	Multimedia	Considerations
3 rd	325	<p>Classroom 325 – this multi-purpose classroom will support 30 participants with integrated infrastructure for presentation by faculty, staff, students, and the community. This classroom has the capability to be recorded and can be reviewed with proper credentials over the internet. It contains basic technology which allows instruction to be presented to a wall mounted LCD.</p> <div style="text-align: center;">  <p>SEATING FOR 38</p> </div>	<ul style="list-style-type: none"> • Multimedia connectivity supporting audio, video, networking, and controls for Podium • Network cabling • Power to tables to support student laptop charging • Wireless n access for students, faculty, and staff. 	<ul style="list-style-type: none"> • Two 52" LCD • Podium in room with PC, document camera, Sympodium, and primary control • Sympodium interactive pen display with SMART Notebook software • Document camera • Primary Crestron touch panel control system for multimedia presentations 	<ul style="list-style-type: none"> • Seats 30 participants for classroom instruction • Control all aspects of presentation from one area with minimal support; enabling faculty to be self-sufficient • Deliver lectures using multimedia presentation techniques to enrich the learning environment • Provide an interactive learning environment • Internet access to download content and access resources from the podium – students will access via Wireless n access at their seats • Participate in interactive feedback system

Technological Resources at LMU School of Law

Flr.	Rm #	Description	Infrastructure	Multimedia	Considerations
3 rd	326	<p>Classroom 326 – this multi-purpose classroom will support 16 participants with integrated infrastructure for presentation by faculty, staff, and students. This classroom has the capability to be recorded and can be reviewed with proper credentials over the internet. It contains basic technology which allows instruction to be presented to a wall mounted LCD.</p> 	<p style="text-align: center;"><u>Planned</u></p> <ul style="list-style-type: none"> • Multimedia connectivity supporting audio, video, networking, and controls for Podium • Network cabling • Power to tables to support student laptop charging • Wireless n access for students, faculty, and staff. 	<p style="text-align: center;"><u>Planned</u></p> <ul style="list-style-type: none"> • 52" LCD • Podium in room with PC, document camera, Symposium, and primary control • Symposium interactive pen display with SMART Notebook software • Document camera • Primary Crestron touch panel control system for multimedia presentations 	<p style="text-align: center;"><u>Planned</u></p> <ul style="list-style-type: none"> • Control all aspects of presentation from one area with minimal support; enabling faculty to be self-sufficient • Deliver lectures using multimedia presentation techniques to enrich the learning environment • Provide an interactive learning environment • Internet access to download content and access resources from the podium – students will access via Wireless n access at their seats • Participate in interactive feedback system

Room is planned.
Not yet installed.

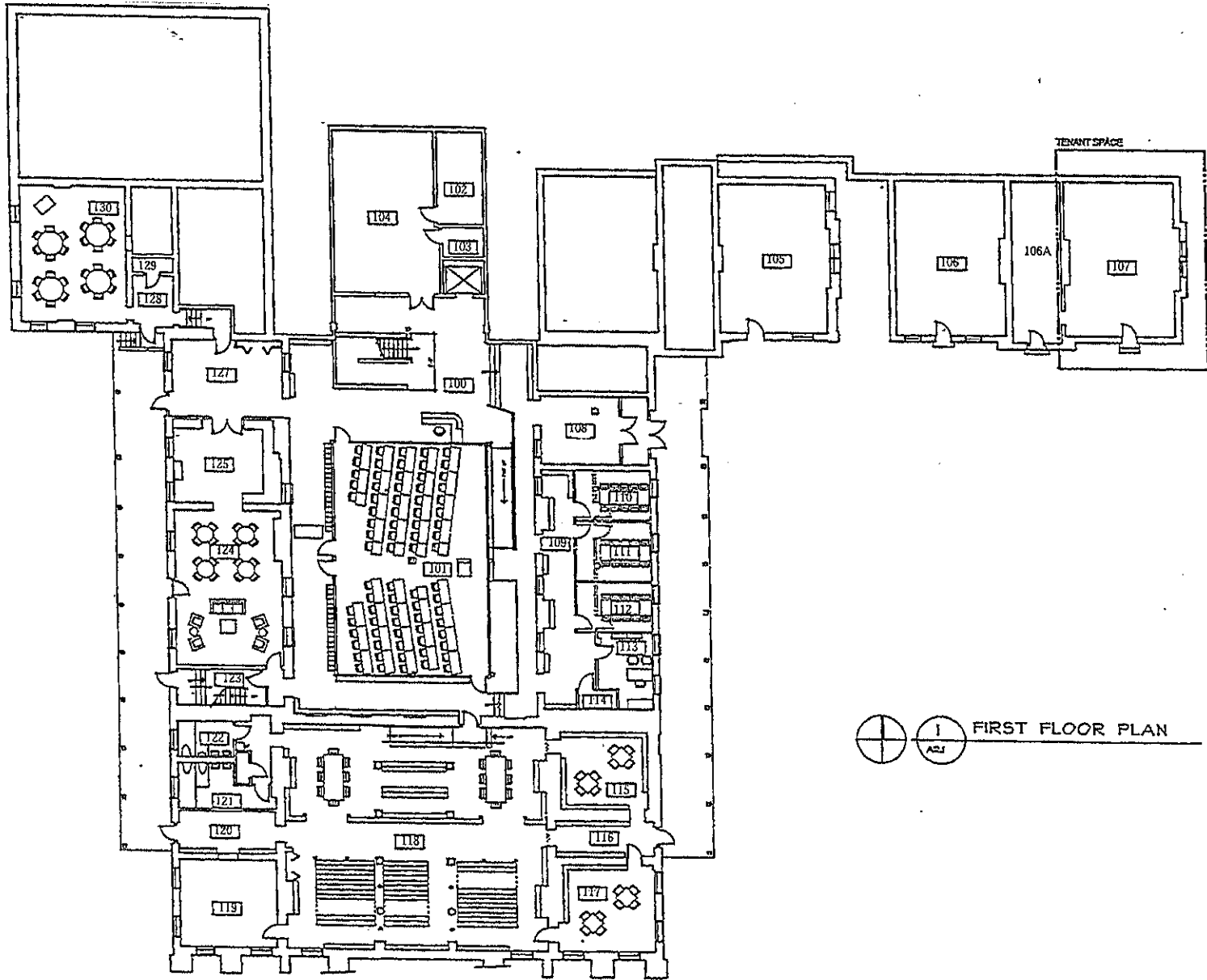
Technological Resources at LMU School of Law

Flr.	Rm #	Description	Infrastructure	Multimedia	Considerations
3 rd	340	<p>Courtroom/Large Class Room 340: this multipurpose room (serves as court room and large lecture hall) provides seating for approximately 117 student participants. Additional seating accommodates judges, a jury, counsel, court officers, parties and a witness. This area incorporates audiovisual content delivery to the display monitors throughout the room. This classroom has the capability to be recorded and can be reviewed with proper credentials over the Internet. This classroom also has videoconferencing capabilities so that it can send or receive instruction from another site with videoconferencing capabilities.</p>  <p>The floor plan shows a large rectangular room with rows of desks and chairs facing a front area. The front area includes a podium, a jury box, and a witness stand. There are also several monitors and a control panel. The room is labeled '340' in the bottom right corner.</p>	<ul style="list-style-type: none"> • Multimedia connectivity supporting audio, video, networking, and controls for Podium • Network cabling • Capability to capture class lectures for streaming out via the Internet • Power to tables to support student laptop charging • Wireless n access for students, faculty, and staff • White noise for jury box (not yet installed) • Black out shades for windows (not yet installed). 	<ul style="list-style-type: none"> • Multiple cameras with camera controller • Two large screens and projectors • Two 65" monitors and two 55" monitors • Podium in room with PC, document camera, Sympodium, DVD/VCR, microphone, and primary control • Sympodium interactive pen display with SMART Notebook software • Primary Crestron touch panel control system for multimedia presentations • Video teleconference, with presenter and audience tracking capability • Wired voice reinforcement system for presenter and audience 	<ul style="list-style-type: none"> • Seats 117 in a classroom environment • Serves as a court for instruction • Podium will rotate for classroom mode and 180 degrees for Courtroom mode • Control all aspects of presentation from one area with minimal support; enabling faculty to be self-sufficient • Deliver lectures using multimedia presentation techniques to enrich the learning environment • Receive lectures and video teleconferences from distant locations • Record lectures and court interactions for later review • Push to talk mics for: <ul style="list-style-type: none"> ○ Students & participants ○ Judges ○ Jury • Podium and witness mics • Provide an interactive learning environment • Internet access to download content and access resources from the podium – students will access via Wireless n

Technological Resources at LMU School of Law

Flr.	Rm #	Description	Infrastructure	Multimedia	Considerations
					access at their seats <ul style="list-style-type: none"> • Participate in interactive feedback system • Viewing for: <ul style="list-style-type: none"> ○ Judges ○ Lawyers & participants ○ Witness stand ○ Jury Box ○ Students

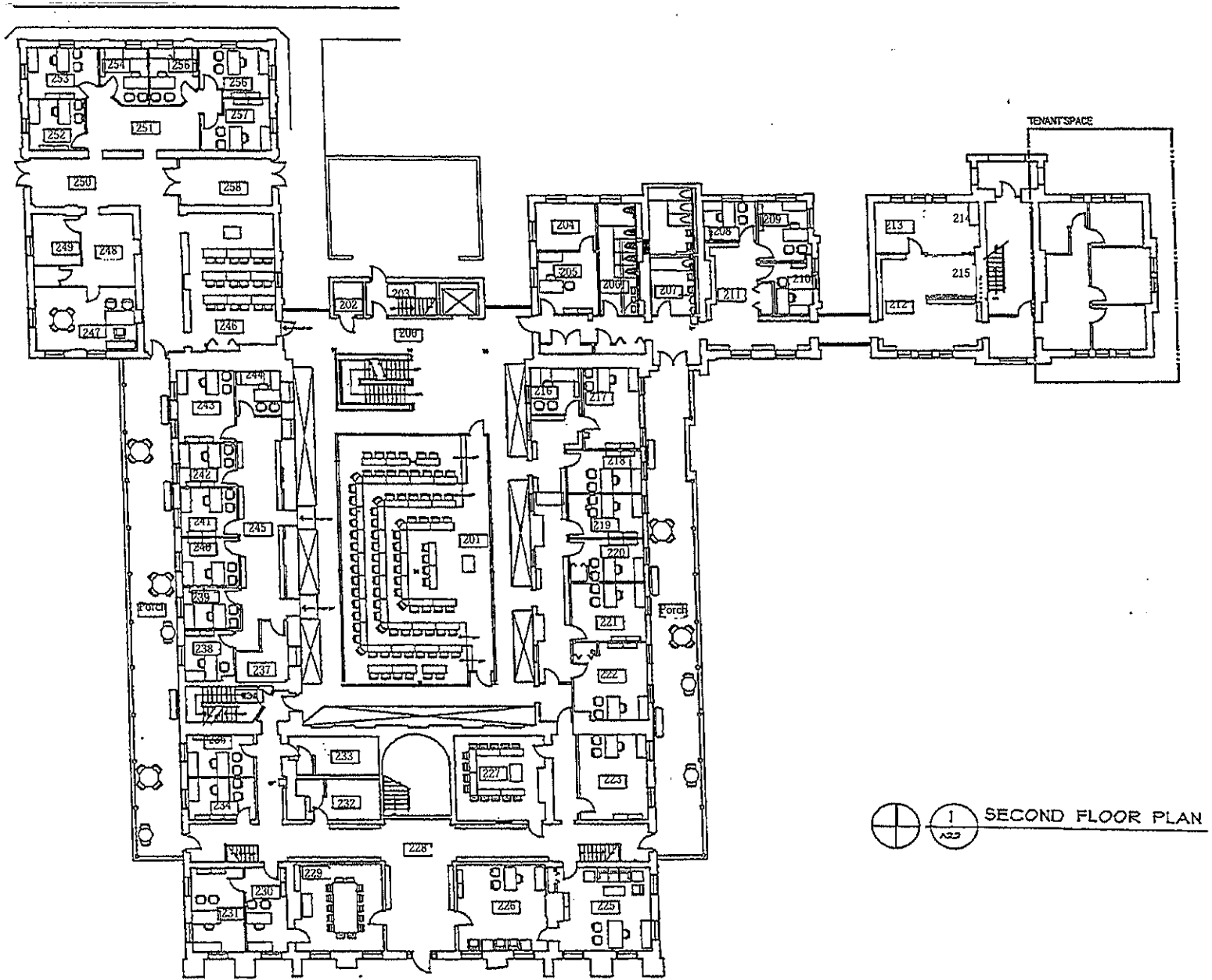
Technological Resources at LMU School of Law



FIRST FLOOR PLAN

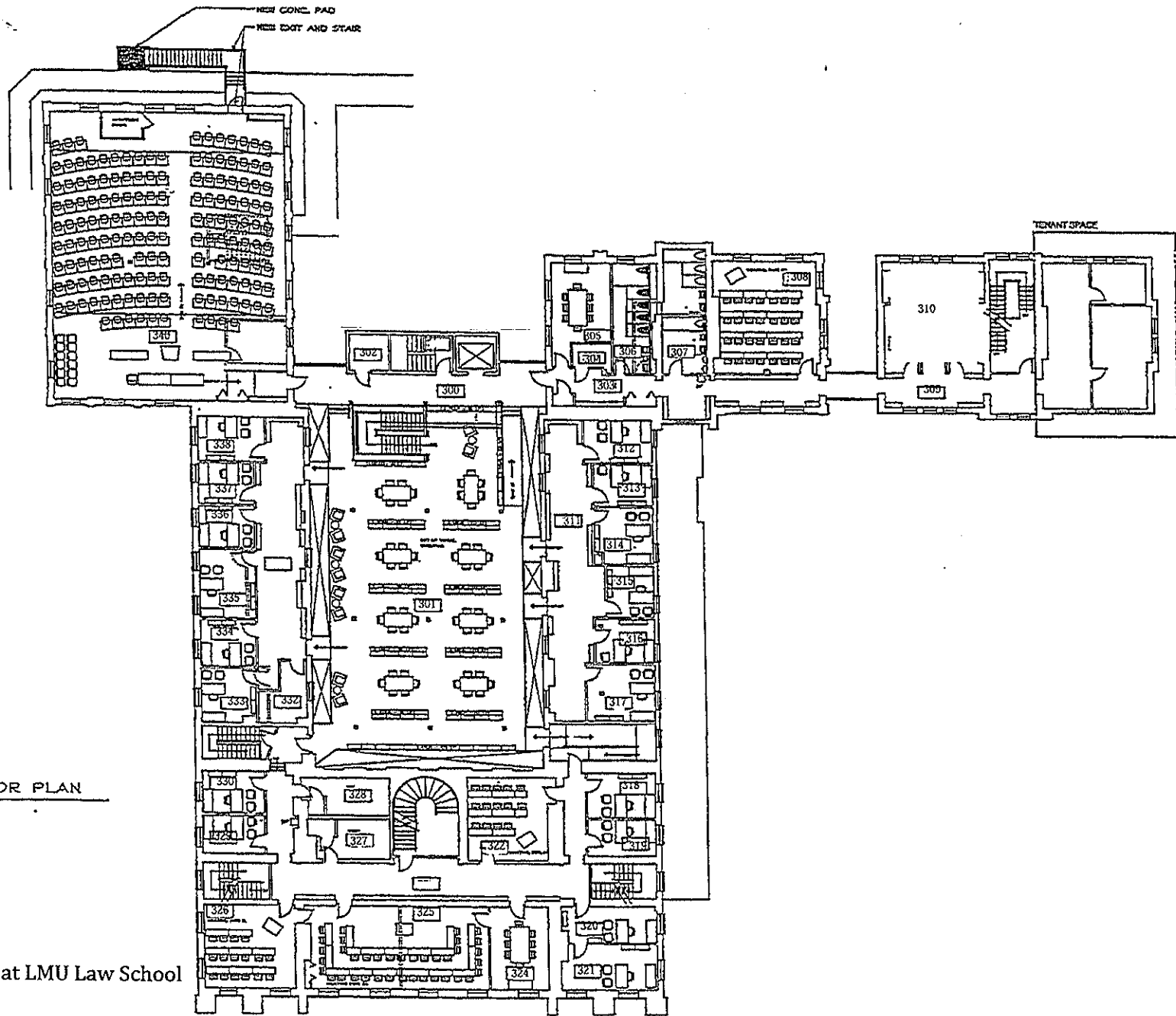
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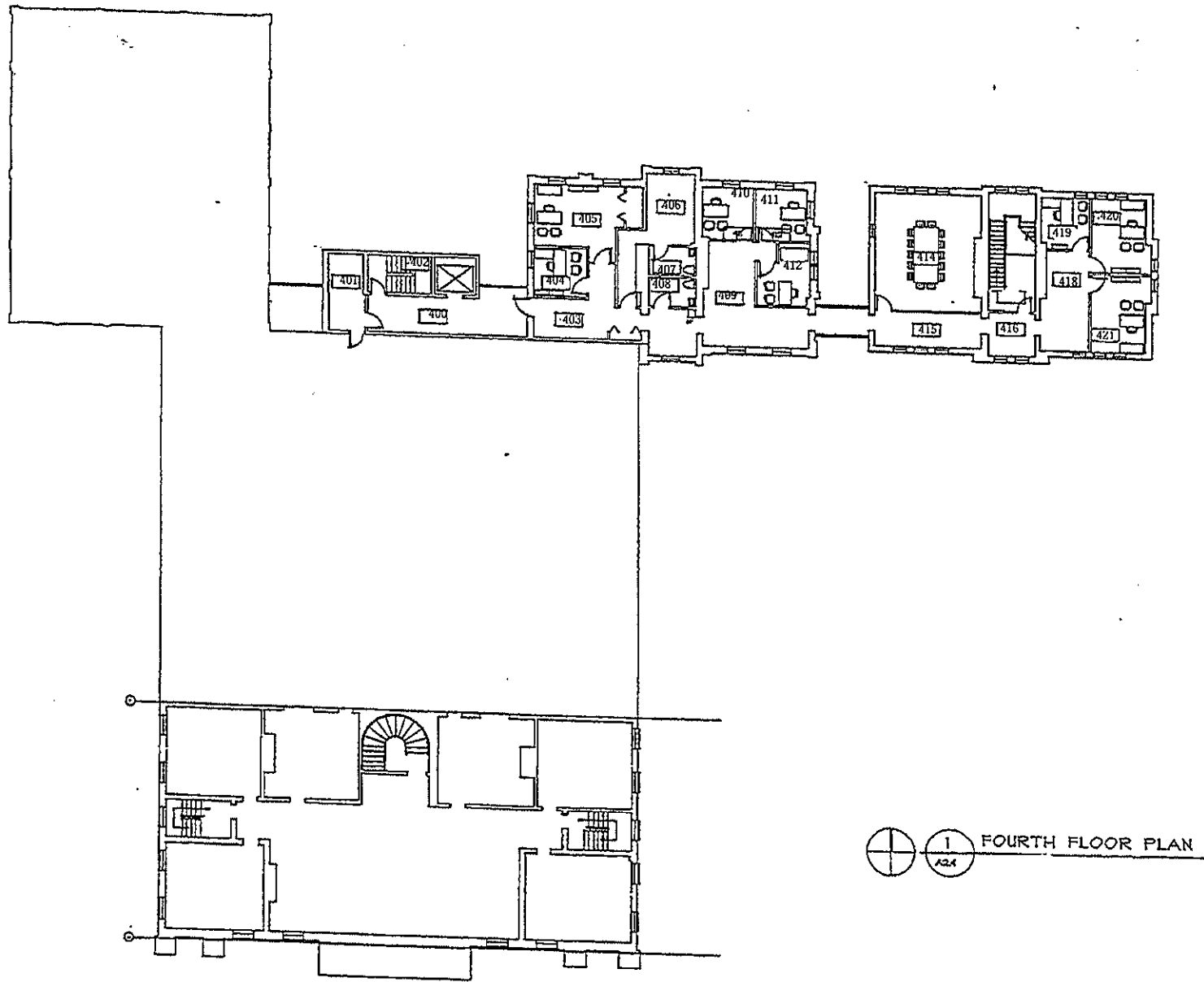
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1 THIRD FLOOR PLAN
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Externship Director School of Law

Reports to:	Dean	Department:	Law
Classification:	Full-time faculty	Division:	Law
Date:	July 1, 2011		

Job Summary: The Externship Director will hold a faculty seat and shall have the primary responsibilities of directing the externship program and will also have responsibilities of teaching, research/scholarship, and service functions.

Councils and Committees: The Externship Director shall serve on university councils and committees as elected or appointed.

Duties and Responsibilities: *promote the mission of Lincoln Memorial University to all faculty, staff, students and to the community at large; *promote effective working relationships among faculty, staff and students; *undertake the obligations of law school faculty as outlined in the Faculty Handbook for the School of Law; *provide course and classroom instruction including that required for the Externship Program and as outlined in the Faculty Handbook for the School of Law; *secure and monitor externship sites as set out in the Externship Manual; *monitor externs and field placement supervisors for compliance with externship policies and procedures; *review annually all policies and procedures for the program to ascertain whether modification is necessary; *work with Associate Dean of Assessment to assist with DSOL and University reporting requirements as they relate to the externship program; *provide orientation to externship students; *comply with the university Faculty/Staff Policy Manual and the Faculty Handbook for the School of Law; *provide academic advisement of students; *conduct office/conference hours; *submit textbook requests; *comply with announced requirements; *engage in professional development; *fulfill the University's scholarship expectation through research, publication, grant development, and creative achievement; *provide committee service; *attend department, school, and university faculty meetings; *participate in community and public service opportunities; *attend commencement activities; *participate in annual faculty evaluation; *complete required institutional and program accreditation reports and other reports necessary for the operation and advancement of the University; and *perform other duties as assigned.

Faculty Scholarship Expectation: As a doctoral level institution, LMU's faculty duties, responsibilities, and reward systems support the scholarship trilogy of teaching, research/scholarship, and service. Consequently, the University will consider faculty development, workload allocation, merit pay, and promotion processes, which offer incentives for scholarly activities and achievements and promote faculty research productivity. Based on discipline, academic expertise, and institutional mission, elements of the evidentiary scholarly outcomes list should comprise the faculty member's professional portfolio.

Knowledge, Skills, and Abilities: *effective communication skills; *demonstrated knowledge and mastery of content; *demonstrated knowledge of student advising; *research, publication, creative achievement, and grant development capability; *effective management skills.

Qualifications: Required: *Juris Doctor (or equivalent degree); and *evidence of potential for effective teaching and scholarly activity. Preferred: *Previous similar experience.

January 3, 2011

Duncan School of Law

Examination Number (AEGS#) _____

Civil Procedure I

Fall 2010
Professors Lyon and Ruffin

Final Examination
Time Limit: 3.0 hours

IN TAKING THIS EXAMINATION, YOU ARE REQUIRED TO COMPLY WITH THE SCHOOL OF LAW RULES AND PROCEDURES FOR EXAMINATIONS. YOU ARE REMINDED TO PLACE YOUR EXAMINATION NUMBER (YOUR AEGS NUMBER), YOUR PROFESSOR'S NAME AND TITLE OF COURSE ON EACH EXAMINATION BOOK. LEAVE YOUR EXAM AND ANSWER IN THE DESIGNATED BOX. YOU MAY NOT LEAVE THE CLASSROOM UNLESS IT IS AN EMERGENCY. IF YOU LEAVE THE ROOM, YOUR AEGS MUST BE RECORDED ALONG WITH THE TIME OF YOUR EXIT AND RETURN.

INSTRUCTIONS:

1. This exam is to be completed in 3 hours.
2. The value of each question, including each subpart (where appropriate), is noted on the exam. There are 100 total points available. It is recommended that you spend an amount of time on each question that corresponds to the relative point value of that question. Manage your time.
3. This exam is closed book. No extraneous materials may be consulted during the exam.
4. You may use EXAM4 or blue books to answer the essay questions. You must use EXAM4 to answer the multiple choice questions.
5. YOU MUST SELECT "CLOSED" ON EXAM4. FAILURE TO CHOOSE CLOSED ON EXAM4 WILL RESULT IN AN ADMINISTRATIVE "F" ON THE EXAM.
6. If a fact is clear, it is not to be changed. If an assumption is necessary to complete an analysis, state the assumption unequivocally and proceed with the analysis. With respect to the essay questions, an answer containing only your conclusions will receive little credit. State fully the reasoning supporting your conclusions. In addition, discuss all issues reasonably raised by each question, even though your resolution of one issue may seem to render the other moot. Organize your answer and use headings. If using blue books, write legibly.
7. This examination consists of 13 pages, including this cover page. Please make sure you are not missing any pages.

**Part I - Multiple Choice Questions (30 of 100 total points - 1.5 points each)
(recommended time - 55 minutes)**

Questions 1-9

The students, alumni and fans of War Eagle University (“WEU”), a private university and “citizen” of Alabama, were thrilled at the resurgence of their football team. WEU had recently defeated their bitter rival, Bear College, and needed only to win their conference championship game to have a shot at the national title. WEU was led by their second-year head coach, John Cheesy, who was contacted by WEU’s administration while an assistant coach at a Georgia college. At the press conference on the WEU campus when Cheesy was hired and signed his contract, he stated that he and his family could not wait to join the WEU community. Because of the poor housing market, however, Cheesy and his wife later decided the family should stay in Georgia for the time being. Cheesy lived in a hotel in Alabama during football season, and his paychecks were mailed to Georgia, where his wife handled the family finances.

WEU’s resurgence was directly tied to Cheesy’s successful recruitment of his star quarterback, Fig Newton, from a junior college in Georgia. The coaches at a rival school, Cowbell State University (“CSU”), a private university and “citizen” of Mississippi, had also recruited Fig, and were bitter that he had chosen WEU over CSU. CSU’s coaches leaked to a reporter, Danny Deadline, that Fig had only chosen WEU because Fig’s father, Isaac Newton, had demanded \$200,000 in return for Fig’s commitment to CSU, and CSU had refused. Isaac Newton lived in College Park, Georgia, Fig’s hometown, and the “pay-for-play” request allegedly took place when CSU’s coaches were visiting Georgia to recruit Fig.

Deadline, who worked out of his apartment in New York City, immediately called several of his best sources in the South. He spoke to one “insider” in Atlanta who not only confirmed Isaac’s request of \$200,000 from CSU, but also told him that Fig had committed to WEU because Cheesy had agreed to pay that sum. Deadline wrote a lengthy article outlining the events as described to him by his sources. His employer, Espin Corp., a Delaware corporation with its headquarters in Connecticut, ran his story on the main page of its website, espin.com, and Deadline made several appearances on Espin’s ubiquitous highlight show, “Sports Night.” Both the website and the highlight show have a national audience.

After the story ran, WEU declared Fig ineligible. WEU were blown out in their last two games, Fig declared his eligibility for the NFL draft, and Cheesy was fired for “performance reasons.” Unsurprisingly, litigation ensued. Two lawsuits were filed in the U.S. District Court for the Northern District of Georgia. First, Cheesy sued WEU for breach of contract, alleging that his performance as coach had been excellent (the last two games notwithstanding) and that he was actually being fired over Danny’s unsubstantiated story. He demanded \$5 million in lost wages for the remaining years on his contract. Second, Isaac Newton filed a libel suit against Danny Deadline and Espin.com. He sought compensatory damages of \$40,000 and punitive damages of \$250,000.

1. Exercise of personal jurisdiction over WEU is:
 - a. Likely, solely because it entered into a contract with a Georgia citizen.

- b. Likely, because it contacted Cheesy in Georgia and mailed his paychecks there.
 - c. Unlikely, because the contract was signed in Alabama.
 - d. Unlikely, because it entered into a contract with an Alabama citizen.
2. Exercise of personal jurisdiction over Danny and Espin Corp. is:
- a. Likely, because the harm from the alleged tort was felt primarily in Georgia and the suit concerns Isaac's alleged activities in that state.
 - b. Likely, because the "insider" who provided extensive information for Deadline's story was located in Georgia.
 - c. Unlikely, because Deadline never left his New York apartment in reporting the story.
 - d. Unlikely, because Espin Corp.'s publication and dissemination of the story was not targeted solely towards Georgia.
3. If WEU files a motion to transfer venue to the Southern District of Alabama, and the trial court proceeds under 28 U.S.C. § 1404(a), which of the following facts, if found by the trial court, would compel it to transfer venue?
- a. It is inconvenient for WEU and the potential witnesses to travel to Georgia.
 - b. The contract was signed in Alabama and Cheesy's performance on the contract took place in Alabama.
 - c. It is in the interests of justice for the suit to be heard by an Alabama court.
 - d. None of the above.
4. Assume that WEU files its answer, admits to breaching the contract with Cheesy, and provides a reason for the breach that does not excuse its conduct under the law. If Cheesy files a motion for a judgment at this stage of the litigation, it is likely to be pursuant to:
- a. Rule 12(b)(6).
 - b. Rule 12(c).
 - c. Rule 12(e).
 - d. None of the above.
5. Assume that Isaac mails a copy of the summons and complaint to Espin Corp., along with a request to waive service pursuant to Fed. R. Civ. P. 4(d)(2). Which of the following statements is true?
- a. If Espin does not respond to the request, it will be subject to a default judgment.
 - b. If Espin does not respond to the request, and is later properly served, the trial court will be required to impose the costs of service on Espin.
 - c. If Espin agrees to the request, it will not need to serve its answer to the complaint until 60 days after the complaint was filed.
 - d. If Espin agrees to the request, it will waive any future objection to personal jurisdiction or venue.
6. Assume that Deadline and Espin file a timely joint motion to dismiss for lack of personal jurisdiction and improper venue, and that their motion is unsuccessful. Deadline and Espin answer the complaint and the suit enters discovery. Deadline and Espin then file a motion to dismiss for lack of subject matter jurisdiction. Their motion is:

- a. Waived.
 - b. Not waived, and unlikely to succeed unless the court is convinced to a legal certainty that Isaac is not entitled to punitive damages of at least \$35,001.
 - c. Not waived, and unlikely to succeed unless the court is convinced to a legal certainty that Isaac is not entitled to the full amount of punitive damages pled in his complaint.
 - d. Not waived, and likely to succeed unless Isaac can prove to a legal certainty that he is entitled to punitive damages of at least \$35,001.
7. Assume that Isaac and Fig joined together as plaintiffs under Fed. R. Civ. P. 20 in filing the libel suit against Deadline and Espin, each alleging \$40,000 in compensatory damages. Deadline and Espin file a motion to dismiss for lack of subject matter jurisdiction. If the court finds that Isaac and Fig have not properly pled punitive damages, then the motion is likely to be:
- a. Granted, under Snyder v. Harris.
 - b. Granted, under Exxon Mobil Corp. v. Allapatah Services, Inc.
 - c. Denied, under Exxon Mobil Corp. v. Allapatah Services, Inc.
 - d. Denied, under Snyder v. Harris.
8. Assume that there is original federal subject matter jurisdiction over Isaac's suit against Deadline and Espin under 28 U.S.C. § 1332. Cheesy has threatened to sue Espin for damages under the tort of false light invasion of privacy. Over vigorous objection from both Cheesy and Isaac, the trial court grants Espin's motion to join Cheesy as a necessary plaintiff to Isaac's suit under Fed. R. Civ. P. 19. Cheesy files his claim against Espin and a cross-claim against Isaac for tortious interference with business relations. Isaac files a cross-claim against Cheesy for his alleged contribution to Isaac's injuries. There will likely be federal subject matter jurisdiction over:
- a. Only Cheesy's claim against Espin.
 - b. Only Isaac's claim against Cheesy.
 - c. All of these claims.
 - d. None of these claims.
9. Assume that the story regarding Fig Newton's recruitment that ran on Espin's family of networks and web site was not attributed to Danny Deadline, but rather ran under an anonymous byline. Not knowing which reporter was responsible for the story, Isaac sued Espin and "an unnamed reporter or reporters." Deadline, of course, was aware of the lawsuit as soon as it was filed, and even discussed it with Espin's corporate lawyers and outside counsel. Over a year after Espin's answer is filed, and on the eve of trial, Isaac moves for leave to amend the complaint to add Deadline as a defendant. Espin objects, observing that its answer, initial discovery responses, responses to document requests, and interrogatory responses were all served within 120 days of the filing of the complaint and all identified Deadline as the reporter responsible for the story. Isaac's motion is likely to be:
- a. Not granted, because of Isaac's undue delay and dilatory tactics in filing the motion for leave to amend.
 - b. Granted, but untimely because Isaac knew or should have known of his mistake within the Rule 4(m) period.

- c. Granted, but untimely because of Isaac's undue delay and dilatory tactics in filing the motion for leave to amend.
- d. Granted and timely.

Questions 10-19

LikiWeaks ("LW") is a Delaware corporation with its principal place of business in New York. It posts on its website government documents, including diplomatic cables and other controversial and potentially embarrassing political information, obtained through various sources. LW has an extensive global following and has garnered generous donations to its founder, Sam Assuage, a citizen of New York, from a global public anxious to keep the site available. The donations are made through PayMe, a Delaware corporation with its principal place of business in Nevada.

LW generates more hits per minute than any other private website in the United States and is the most popular website in Washington, D.C., the nation's capital. LW has been accused by certain federal government officials of breaching national security and posting illegally obtained information on its website. On May 23, 2009, after posting allegedly classified diplomatic cables on its website, LW was vehemently attacked by several U.S. Senators. Assuage was accused of "brazenly unleashing diplomatic secrets" and was called "a high-tech terrorist."

The LW website is hosted by RainForest.com ("RF"), a Delaware corporation with its principal place of business in Seattle, Washington. RF provides hosting services to clients throughout the United States with 22% of its revenue being derived from New York. On May 26, 2009, several congressional aides contacted RF to express congressional disapproval and strong concern about the legality of the LW website. On June 1, 2009, RF terminated its contract with LW and kicked it off its server claiming that LW had materially breached its agreement by posting illegally obtained material. It provided the following notice on LW's website: "This website is no longer available due to its illegal content."

On July 1, 2009, LW and Assuage filed suit against RF in the U.S. District Court for the Northern District of New York. The suit included: (1) a claim by LW for breach of contract; (2) a claim by LW for damages under 28 U.S.C. § 1983 for violation of its First Amendment right to free speech; and (3) a claim by Assuage for defamation. Note that one of the statutory requirements for a successful claim for damages under 28 U.S.C. § 1983 is state action. LW sought \$1,000,000 under Count One and \$1,000,000 under Count Two and Assuage sought \$50,000 under Count Three. On August 1, 2009, PayMe terminated its contract with Assuage and froze the Assuage donations account.

The terms of the standard agreement between RF and its clients include forum selection and choice of law clauses, which state the following:

XXXIII. Choice of Forum

All claims arising out of or related to the terms and conditions of this agreement shall be brought in the courts of the state of Washington.

XXXIV. Choice of Law

All claims arising out of the terms of or related to this agreement shall be governed by the laws of the state of Washington.

On July 10, 2009, RF filed a motion for transfer of venue.

10. Is there original subject matter jurisdiction?
 - a. Yes, because diversity jurisdiction appears to be satisfied.
 - b. Yes, because federal question jurisdiction appears to be satisfied.
 - c. No, because there appears to be no diversity or federal question subject matter jurisdiction.
 - d. Yes, because there is supplemental jurisdiction over the breach of contract claim.

11. Can the 28 U.S.C. § 1983 count withstand a 12(b)(6) motion to dismiss?
 - a. No, because it pleads no set of facts upon which relief can be granted.
 - b. Yes, because it is well-pleaded.
 - c. No, if the actions of the congressional aides do not constitute state action.
 - d. Yes, if violation of LW's free speech right is plausible.

12. Assume that Assuage allegedly retaliates against certain Senators by posting information on LW about their inconsistent voting records and allegedly fraudulent campaign spending. If those Senators sue LW in Washington, D.C. for defamation, will the D.C. court have personal jurisdiction over LW?
 - a. Yes, under Zippo.
 - b. Yes, because there is general jurisdiction over LW throughout the United States.
 - c. Yes, because there is specific jurisdiction over LW under Calder.
 - d. No, because LW has not purposefully availed itself of any benefits in the District of Columbia.

13. Assume that New York state law does not recognize/enforce choice of forum clauses. When considering the effect of the forum selection clause on a motion to transfer venue, the federal court will apply:
 - a. New York state law.
 - b. Federal procedural rules.
 - c. Washington state law.
 - d. Federal procedural statutes.

14. If LW's transfer motion is granted, it will be granted under:
 - a. 28 U.S.C. § 1404(a).
 - b. *Forum Non Conveniens*.
 - c. 28 U.S.C. § 1406(a).
 - d. 28 U.S.C. § 1367(d).

15. If LW's transfer motion is granted, the transferee court will apply choice of law rules of:
 - a. Washington.
 - b. New York.

- c. Washington, D.C.
 - d. Delaware.
16. Does the U.S. District Court for the Northern District of New York have personal jurisdiction over RF?
- a. No, because RF is a citizen of Washington and Delaware.
 - b. Yes, because there is general jurisdiction over RF.
 - c. Yes, because there is specific jurisdiction over RF.
 - d. No, because the claim is unrelated to RF's economic activity in New York.
17. If Assuage seeks to add claims for breach of contract and conversion against PayMe, he should file:
- a. An amendment as a matter of course.
 - b. A motion to amend under Rule 15(b).
 - c. A motion to amend under Rule 15(c).
 - d. A supplemental pleading under Rule 15(d).
18. On July 25, 2009, after RF filed its answer, LW moved to add a counterclaim for defamation and a counterclaim for fraud. Assuming that the amendment is allowed, LW's pleading burden will be:
- a. Relaxed for both counterclaims because amendments are encouraged.
 - b. Higher for the defamation claim.
 - c. Higher for the fraud claim.
 - d. Higher for both claims because amendments require heightened pleading.
19. Assume for purposes of this question only that there is diversity of citizenship between LW, RF and Assuage. Further assume that there is no federal question jurisdiction. Will the court have jurisdiction over Assuage's claim for defamation?
- a. No, because the defamation claim does not satisfy the amount in controversy.
 - b. Yes, because the amounts in controversy can be aggregated.
 - c. Yes, because there is a claim that satisfies the diversity requirements, so supplemental jurisdiction applies.
 - d. No, because neither aggregation nor supplemental jurisdiction applies.
20. Which of the following is the most accurate description of the state of the Erie/Hanna doctrine after Shady Grove?
- a. If a federal procedural rule or statute controls the issue in dispute, then it should always apply.
 - b. If a federal procedure rule or statute controls the issue in dispute, then it should apply so long as it "really regulates procedure."
 - c. Even if a federal procedural rule or statute controls the issue in dispute, it could still theoretically be held invalid if it enlarges, modifies, or abridges a substantive right conferred by the state.
 - d. Federal procedural rules and statutes should be read narrowly if possible to avoid interfering with important state interests.

Part II - Essay Questions (70 of 100 total points)

Question 1 (32 points) (recommended time – 60 minutes)

Peter Pesky, a citizen of Georgia, is owner and CEO of PestFree Produce (“PFP”), an insecticide, fungicide and rodenticide manufacturing company; PFP is a Delaware corporation with its principal place of business in Florida. Nature’s Own Produce (“NOP”), a wholly-owned subsidiary of PFP, manufactures and sells organic insecticides, fungicides and fertilizers and is a Delaware corporation with its principal place of business in Georgia. Peter is also CEO of NOP.

PFP maintains an active website and sells its products throughout the United States. NOP maintains an informational website on organic farming; its website contains no advertisements and does not provide for online ordering. All purchasers of NOP products must come into the Georgia store. Upon request and payment by purchaser, NOP will ship the order to any address provided.

Serenity Farms (“Serenity”), a Florida corporation with its principal place of business in Florida, produces organic produce for several large grocery chains located throughout the United States. Serenity purchases organic fertilizer and pesticides from NOP. Since 2003, NOP has been Serenity’s exclusive supplier of pesticides and fertilizers. Serenity’s 900 acre farm is located 1.5 miles downstream from PFP’s manufacturing plant.

On September 15, 2009, one week prior to its scheduled shipping date for late summer vegetables, Serenity was notified by the United States Department of Agriculture (“USDA”) that its summer 2009 crop failed to meet both state and federal standards for “organic” because of an unacceptable level of inorganic chemical compounds found in its produce. Serenity launched an internal investigation in order to identify the cause of this catastrophe. For years, it had been concerned about the possible contamination of its crops by the pollutants generated by its upstream neighbor, PFP.

The Clean Water Act, 33 U.S.C. § 1362, (“CWA”) establishes the National Pollutant Discharge Elimination System (“NPDES”) permitting requirement, which regulates the lawful discharge of pollutants. Discharges are allowed if they are authorized under a NPDES permit that meets CWA requirements, including protecting the receiving waters. NPDES permits specify limits on which pollutants may be discharged and in what amounts. Under the CWA, qualified states may issue and enforce NPDES permits. Federal law allows states to adopt water quality requirements that are more stringent than federal requirements.

As a qualified state, Florida regulates the discharge of pollutants into the waters of the state pursuant to a permitting program enacted and administered by the state. Every year since its establishment in 2001, PFP has been granted a permit to discharge specified pollutants in specified quantities into state waters as a result of its manufacturing processes. Invariably, discharging pollutants will result in some “runoff” (polluted surface water). The requirements of the Florida state permit are more stringent than those of the United States Environmental Protection Agency (“EPA”) under the CWA. Federal law provides for agency enforced injunctive relief only while state law provides a private cause of action for damages to person or property in addition to injunctive relief.

On October 15, 2009, Serenity learned that the EPA and the Florida state environmental agency were investigating PFP for exceeding the pollutant levels allowed under its state-issued permits for 2008 and 2009. After some preliminary investigation, on October 30, 2009, Serenity filed suit against PFP in Florida state court for simple and gross negligence in the destruction of its organic crop allegedly caused by the “runoff” from PFP’s manufacturing and discharging processes. Serenity’s complaint included an allegation that PFP violated federal environmental law, the CWA, by failing to comply with the terms of its state-issued permits and that these violations established negligence per se. Serenity sought \$1.7 million in compensatory damages and \$2.5 million in punitive damages. Peter Pesky was served on November 15, 2009. Assume that Florida’s long-arm statute is co-extensive with the Due Process Clause.

On October 12, 2010, 3 days before the running of the statute of limitations, Serenity found a notice signed by Peter Pesky in its files dated October 15, 2009 from NOP stating that certain shipments of its organic fertilizer may have been chemically contaminated. On December 15, 2010, Serenity files a motion for leave to amend its complaint to add NOP.

- (a) If PFP files a timely notice of removal, is there removal jurisdiction? (10 points)
- (b) If PFP cannot remove, can PFP seek a declaration in the federal district court that it complied with the requirements of the state-issued permit? (4 points)
- (c) Assuming PFP can remove to federal court, will Serenity’s proposed amendment be allowed? (8 points)
- (d) Can the court exercise jurisdiction over NOP? (10 points)

Question 2 (38 points) (recommended time – 65 minutes)

Sherry Shopper loves to do all of her Christmas shopping on the day after Thanksgiving, known in common parlance as “Black Friday.” This year, Sherry and her family, residents of the state of East Dakota, had plans to spend the holiday weekend with Sherry’s sister halfway across the country in the state of West Carolina. On Thanksgiving, Sherry scoured the ads in the *West Carolina Tribune* to find the best deal on the popular “Dance Star Mikey Mouse” doll that she planned to buy her daughter, Susie, for Christmas. All of the retailers in the area had run ads designed to attract customers on this most important of shopping days, but only one store advertised the “Dance Star Mikey Mouse” doll. K&K Toys, which was opening at 4:00 a.m. on Black Friday, guaranteed the right to purchase the doll to anyone who was in line by 2:00 a.m. and offered the doll for 25% off of the regular retail price “while supplies last.”

Sherry rolled into the K&K Toys parking lot at 1:50 a.m. and joined a line of about 200 eager consumers. Through the store’s front window, Sherry saw about 200 “Dance Star Mikey Mouse” dolls in a display. Sherry was awestruck, because all of the K&K Stores in East Dakota had been sold out of “Dance Star Mikey Mouse” for months. Sherry was so focused on getting her hands on the doll, in fact, that she barely noticed the line behind her was growing, and that nobody from K&K Toys was delineating which customers had arrived prior to 2:00 a.m. K&K only had one elderly security officer on duty that night.

When K&K's doors opened at 4:00 a.m., utter chaos ensued. Each of the approximately 350 shoppers surged towards the Mikey Mouse display, and Sherry was swept up in the crowd. Sherry injured her back in a fall, had her hand broken when an overzealous mother of three stomped on it, and suffered a concussion when a father of four kneed her in the head. Dazed and confused, Sherry made her way to the "Dance Star Mikey Mouse" display after the dust settled. There, she found only a sheepish K&K store employee standing by an empty shelf.

Apparently, the 200 Mikey Mouse dolls Sherry had seen through the front window were the only ones that K&K had in stock. The store employee offered Sherry a "rain check," which would entitle her to purchase one "Dance Star Mikey Mouse" at full price when they were back in stock (around Valentine's Day). As an alternative, the store offered discounts on the far less popular "Disco Donny Duck" doll and the slightly creepy "Tickle Me Melvin" doll. Sherry ambled out of the store, her Black Friday, and her daughter's Christmas, ruined. She sought medical attention for her injuries, and actually was hospitalized for two nights.

After Sherry returned to East Dakota and recovered from her injuries, she retained the services of an attorney, Eddie Esquire, who filed a complaint in federal court against three defendants. The complaint filed by Eddie Esquire on Sherry's behalf read as follows:

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF EAST DAKOTA**

SHERRY SHOPPER,
Plaintiff

v.

K&K TOYS, INC., K&K OF
THE CAROLINAS, INC., and
TOMMY TOYSELLER
Defendants

JURISDICTION

The jurisdiction of this court is based upon 28 U.S.C. § 1332.

PARTIES

- (1) Plaintiff Sherry Shopper is a citizen of East Dakota.
- (2) Defendant K&K Toys, Inc. is incorporated in Delaware and has its principal place of business in Virginia. K&K Toys is a national toy retailer with franchises in 35 states, including

East Dakota and West Carolina. K&K Toys operates its own franchises in East Dakota and runs regular advertisements in the *East Dakota Gazette* in support of those stores.

(3) Defendant K&K of the Carolinas, Inc. is a subsidiary of defendant K&K Toys, Inc. that is incorporated and has its principal place of business in West Carolina. K&K of the Carolinas operates six K&K Toys franchises in the states of West and East Carolina, including K&K Toys Store #731, at which the plaintiff was injured on November 26, 2010.

(4) Defendant Tommy Toyseller is a citizen of West Carolina. Toyseller is the president and sole shareholder of K&K of the Carolinas, Inc. Toyseller approved the K&K advertisement that ran in the *West Carolina Tribune* on November 25, 2010, and makes all final decisions regarding security at the six K&K Toys franchises in the states of West and East Carolina.

FACTS

(5) [Facts set forth as above.]

CAUSES OF ACTION

COUNT ONE: NEGLIGENCE

(6) Defendants K&K of the Carolinas and Tommy Toyseller breached their duty of care to the plaintiff by failing to maintain a safe shopping environment at K&K Store #731 on November 26, 2010.

(7) Those defendants made the decision to employ only one security guard on that day, the busiest shopping day of the year. In addition, they recklessly ran an advertisement in the newspaper that they knew was likely to draw a crowd of shoppers that would overwhelm their security guard and employees.

(8) This breach of the duty of care was the proximate and actual cause of the plaintiff's injuries, and she incurred significant pain and suffering because of it.

(9) Defendant K&K Toys, Inc., the parent company of K&K of the Carolinas, is vicariously liable to the plaintiff based upon the actions of its subsidiary.

COUNT TWO: FALSE ADVERTISING

(10) Defendants K&K of the Carolinas and Tommy Toyseller made a false and misleading statement about the "Dance Star Mikey Mouse" doll in its November 25, 2010 advertisement in the *West Carolina Tribune*. Although the defendants guaranteed the right to purchase a "Dance Star Mikey Mouse" to anyone who was in line by 2:00 a.m., they did not have a sufficient stock of the dolls available to carry out this promise.

(11) The false and misleading statement in the November 25 advertisement led the plaintiff to believe that the defendants had an unlimited, or at least sufficient, supply of "Dance Star Mikey

Mouse” dolls, and that she would be able to purchase one for 25% off the regular retail price so long as she was in line by 2:00 a.m. This influenced the plaintiff’s decision to shop at K&K Store #731 on November 26, instead of shopping for the doll at other stores in West Carolina or East Dakota.

(12) The plaintiff was injured as a result of the defendants’ false and misleading statement.

(13) Defendant K&K Toys, Inc., the parent company of K&K of the Carolinas, is vicariously liable to the plaintiff based upon the actions of its subsidiary.

PRAYER FOR RELIEF

Plaintiff hereby requests that the Defendants compensate her for the cost of her medical treatment and for pain and suffering in the amount of \$125,000. She also prays for \$250,000 in punitive damages based upon the intentional tort of false advertising.

Respectfully submitted,

Eddie Esquire
Attorney for Plaintiff Sherry Shopper

-
- (a) The lawyers for each of the three defendants decide they want to file motions to dismiss for both improper venue and the failure to state a claim upon which relief can be granted. When must these motions be filed in order to be timely and not waived? **(3 points)**
- (b) If all three defendants file separate motions to dismiss for improper venue, what is the likelihood of success of each motion? **(10 points)**
- (c) Assume that the defendants concede liability on Count One of the complaint but file a joint motion to dismiss for failure to state a claim upon which relief can be granted with regard to Count Two. As part of the motion, the defendants argue that the district court should review the sufficiency of the complaint under Federal Rule of Civil Procedure 8(a)(2), as interpreted by the U.S. Supreme Court. In her response to the motion, the plaintiff asserts that the district court should instead use East Dakota Rule of Civil Procedure 8.02 to determine whether the complaint is sufficient. The language of that state rule is identical to Federal Rule 8(a)(2); however, in June of 2010, the East Dakota Supreme Court declared that, based upon its interpretation of the state Rule 8.02, civil complaints should not be dismissed for failure to state a claim unless they plead no set of facts upon which relief can be granted.

Is there any difference between these standards? Which is the court likely to apply?
(15 points)

- (d) Assume that the law of East Dakota states as follows: “In order to recover for the tort of false advertising, a plaintiff must prove the following elements:
- 1) the defendant made a false or misleading statement in a commercial advertisement about its product;
 - 2) the statement actually deceives or has the tendency to deceive a substantial segment of its audience;
 - 3) the deception is material, meaning that it is likely to influence the purchasing decision; and
 - 4) the plaintiff has been or is likely to be injured as a result of the statement.”

If the district court chooses to apply Fed. R. Civ. P. 8(a)(2) to determine whether the complaint is sufficient with regard to Count Two, is the defendants’ motion to dismiss likely to succeed? **(10 points)**

CONTRACTS FINAL EXAM
FALL 2010
DEAN JONATHAN A. MARCANTEL

Instructions: You have three (3) hours to take this exam. You must take the exam within this room. If you leave the room for any reason, you must consider yourself within the exam until the entire exam period expires or you submit your exam, whichever occurs first. You are not to use any materials other than those provided to you while taking this exam. All multiple-choice responses must be submitted via Exam4 and **MUST** be typed into the essay section—**DO NOT USE** the multiple-choice function in Exam4; it will not work. You may either use Exam4 or bluebooks to submit your responses to the essay question. In either event, you **MUST** choose **CLOSED** on Exam4. Failure to choose **CLOSED** on Exam4 will result in an “F” on the Exam. If you have questions about this requirement, **ASK THEM NOW**. When you complete the exam, you **MUST** resubmit this document to me with your AEGS number on it. If you do not resubmit this document with your AEGS number on it, you **WILL FAIL** the exam. Good luck!

**UNLESS EXPLICITLY STATED OTHERWISE, ALL JURISDICTIONS
CONTAINED WITHIN THIS EXAM ARE MAJORITY JURISDICTIONS.**

**FOR PURPOSES OF THE ESSAY QUESTION,
PROMISSORY/EQUITABLE ESTOPPEL IS A DEFENSE—NOT A CAUSE
OF ACTION.**

**FOR PURPOSES OF THE ESSAY QUESTION, IF ACTUAL CONTRACT
FORMATION OCCURS THROUGH EXPRESS CONTRACT—WHETHER
ORAL OR WRITTEN—THEN YOU NEED NOT ADDRESS ANY OTHER
MEANS OF ENFORCEMENT.**

MULTIPLE-CHOICE QUESTIONS
(Must be taken using Exam4)
(3 points each)

1. Which is true? Choose the best answer:

- A. Unconscionability is a cause of action.
- B. One of the primary differences between a firm offer (2-205) and an option contract is that a firm offer forms as a result of consideration passing.
- C. To prove unconscionability, a party must demonstrate procedural unconscionability. Procedural unconscionability is demonstrated by showing that the terms of the contract are weighted too heavily in favor of one party.
- D. Under the UCC, a court must first determine whether an ambiguity exists before introducing course of performance evidence.
- E. The threshold determination of whether an ambiguity exists is a question of fact for a factfinder.
- F. In mixed contracts, to determine whether a transaction is mainly for goods or services, courts will apply the primary thrust test, which seeks to solely determine whether the price is mainly comprised of the goods or the services.
- G. Course of performance evidence is not extrinsic evidence.
- H. Course of dealings evidence is any practice having a regularity of observance in a place, vocation, or trade, so as to justify an expectation that it will be observed.
- I. Equitable estoppel and promissory estoppel are identical doctrines.
- J. Quasi-contracts and contracts implied-in-fact are identical doctrines.
- K. Contracts implied-in-fact and contracts implied-in-law are identical doctrines.
- L. The sale of copyrights is governed by the UCC.
- M. To prove fraud, a party must demonstrate the intent to interfere.
- N. To prove fraud, only objective reliance is required.
- O. Only A, D, F, and G.
- P. Only B and L.
- Q. Only B and M.
- R. Only C and M.
- S. Only E and M.
- T. All of the above.
- U. None of the above.

2. Which is true? Choose the best answer:

- A. Apparent authority exists when an agent engages in conduct that reasonably leads a third party to believe authority exists.
- B. Actual authority exists when an agent engages in conduct that reasonably leads a third party to believe authority exists.
- C. To assert the doctrine of adhesion as a defense to contract enforcement, a defendant need only prove the following: the existence of a standardized form and proof that the parties had unequal bargaining power.
- D. Malicious interference requires intent to induce reliance.
- E. Fraud can be a defense to enforcement of a contract.
- F. If two merchants enter into an oral agreement for the sale of goods, then the merchants have only 10 days to confirm the agreement in writing.
- G. As interpreted by the courts, promissory estoppel does not apply to Statute of Frauds defenses pursuant to UCC 2-201 (Statute of Frauds).
- H. To be enforceable under the UCC, a contract must explicitly contain at least the following: the names of the parties, the subject matter of the transaction; the quantity; the price; and the time for performance.
- I. A unilateral mistake is insufficient to abrogate mutual assent.
- J. Only A, C, D, E, and I.
- K. Only A, E, and I.
- L. Only B and C.
- M. Only A and D.
- N. Only B and D.
- O. Only C and E.
- P. Only A and I.
- Q. Only B and I.
- R. Only D, E, and I.
- S. Only A and F.
- T. Only B and F.
- U. Only E, F, and G.
- V. Only E, F, and I.
- W. Only E and I.
- X. All of the above.
- Y. None of the above.

3. Which is true? Choose the best answer:

- A. In terms of hierarchy of evidence, course of dealings controls over course of performance, and course of performance controls over usage of trade.
- B. If a UCC contract provides that a price will be fixed by the seller, then the seller has an obligation to act in good faith when fixing the price.
- C. When a price is left to be fixed otherwise than by the agreement of the parties and the price fails to be fixed through the fault of one party, the other party may at his or her option treat the contract as cancelled or may fix a reasonable price.
- D. Fraud in the execution occurs when one party misrepresents what the contract is. The common example is where one party states the contract is a contract for the sale of land, but the contract is really a durable power of attorney.
- E. An offer can only be a firm offer if the contract is between merchants.
- F. A contract will not be governed by the UCC, unless the contract is for a sale of goods over \$500.00.
- G. Only A, B, C, D, E, and F.
- H. Only B, C, D, E, and F.
- I. Only C, D, E, and F.
- J. Only D, E, and F.
- K. Only D and F.
- L. Only E and F.
- M. Only C, D, and E.
- N. Only B, C, and D.
- O. Only A, B, C, and D.
- P. Only C and D.
- Q. Only B and C.
- R. Only A and F.
- S. Only A, B, and E.
- T. Only B, D, E, and F.

4. Stephen Garcia owns a sports store called "Gear." Steve Spurrier owns a sports store called "I've got Footballs." On October 31, 2010, Garcia offers to sell Spurrier 200 footballs at \$5.00 a piece. Garcia was really excited about the idea of acquiring Spurrier as a client, and so, he offered him a good price in hopes that they would have a long-lasting relationship. Garcia states he will keep the offer open until December 6, 2011. On December 4, 2010, Spurrier enters Garcia's store. Before Spurrier says anything, Garcia says, "I revoke my offer. I am sorry man, but my vendor increased my prices beyond belief. I hope this won't damage our relationship." Spurrier then throws his visor on the ground, states several colorful expletives, and tosses the requisite amount of money at Garcia. Spurrier ultimately had to purchase the footballs from another vendor at \$6.00 a piece. Choose the best answer.
- A. Spurrier can sue for breach of contract.
 - B. Spurrier cannot sue for breach of contract.
 - C. Spurrier can sue for fraud.
 - D. Spurrier cannot sue for fraud.
 - E. Spurrier can sue for promissory restitution
 - F. Spurrier can sue for promissory estoppel.
 - G. Spurrier had an option contract.
 - H. Although a contract exists, the contract could be found unconscionable and thus unenforceable.
 - I. Although a contract exists, the contract could be found to be an adhesion contract, and thus, the contract is unenforceable.
 - J. At the time of the contract, Garcia was acting as Spurrier's apparent agent.
 - K. At the time of the contract, Garcia was acting as Spurrier's actual agent.
 - L. Only A, C, and F.
 - M. Only A, B, and G.
 - N. Only A and C.
 - O. Only A and D.
 - P. Only B and C.
 - Q. Only B and D.
 - R. Only D and E.
 - S. Only A, D, and H.
 - T. Only B, D, F, and H.
 - U. Only B, D, and J.
 - V. Only A, C, and K.
 - W. Only B, C, and K.
 - X. All of the above.
 - Y. None of the above.

5. Which, if any, of the scenarios invokes the Statute of Frauds:

- A. Doc Brown purchases a DeLorean (a car) from some Libyan nationalists.
- B. Brian Annino promises to marry Jennifer Love Hewitt. In exchange, Jennifer Love Hewitt promises to marry Brian Annino.
- C. Cuber Bylever purchases a pack of gum for \$00.50.
- D. Serge Gelholy is building a house for Lance Jamtorn. Serge needs building materials to finish the job. Serge wants to create a line-of-credit at Lowes, but Lowes requires Serge to have a guarantor. Jamtorn agrees to pay the debt to Lowes if Serge defaults. Serge uses the line-of-credit solely to buy materials to build Jamtorn's house.
- E. Alder Limprum agrees to cut, color, highlight, perm, and "style" Rains Randuff's hair for \$600.00.
- F. Jon Marcantel has no class. Jon commissions a painter to paint a portrait of Jon. Jon intends to hang the portrait over his fireplace mantle.
- G. Marty McFly buys a coke at the local diner.
- H. Only A and B.
- I. Only A, B, and D.
- J. Only B and D.
- K. Only A and D.
- L. Only B, D, and E.
- M. Only A, E, and F.
- N. Only A, D, and F.
- O. All of the above.
- P. None of the above.

6. Brantley Foster lived in a small town in Kansas and had just graduated from college with a bachelor's degree in Business—a degree that simultaneously qualified him to do anything and nothing. Foster, however did not want to stay in Kansas. Rather, he had dreams of Manhattan—the glitz and the glam and the fashion and all the pandemonium and all the madness. Thus, he moved to Manhattan and started applying for jobs.

On May 1, 2010, at approximately 3:00 p.m., EST, Vera's Human Resources Manager, Markus Pemrose, called Foster and initiated the following exchange:

Pemrose: Foster, you had better get dressed for success—I am about to shape you up for the big time baby. I would like to offer you somewhere between 400-420K annually as a You-Must-Be-Doing-Something Executive. Your job will be to either do something or fake it enough that our shareholders believe you are doing something. It will be a 3-year contract. Of course, you will also get the standard benefits.

Foster: WOW! I accept. When can I start?

Pemrose: What? Kid, I don't have that kind of power. The official offer should come sometime next week. In the meantime, go buy some suits for yourself. You deserve it. Plus, there is no better way to look like you are doing something than to dress like it.

Foster: What will happen if Vera decides not to hire me?

Pemrose: Well, then you will be like several other million people who are unemployed. Stop sniveling and be happy, coward.

Foster: I don't know; I am still worried. I think I will wait to celebrate until the deal is done. Only a fool would get excited about something that isn't yet signed, sealed, and delivered.

Pemrose: Whatever, coward. If you don't get a killer instinct soon, you'll never be able to convince our shareholders that you are working.

The entire conversation lasted approximately twenty-five (25) minutes.

That evening, Foster bought a "tv dinner" and a six-pack of beer. He additionally smoked lots of cigarettes and watched Captain Kangaroo. Notwithstanding the celebration that evening, however, Foster continued to seek other employment for the next several days, "just in case."

On May 10, 2010, Foster began getting nervous, as he had not heard from Pemrose. In an attempt to alleviate his fears, Foster called Pemrose. The following exchange then took place:

Foster: Hey, man. I accept. I have been practicing doing nothing, and I am really getting good at it. I really think I could be perfect for this job.

Pemrose: Tough break kid. The upper echelon has decided not to hire you; they found someone who is an expert in doing nothing. But, you know what they say—if the bright lights don't receive you, you can turn yourself around and go on home.

Foster then made a number of colorful, unprofessional remarks.

Foster now works at TCBY as a Customer Service Representative ("CSR") making \$6.00 per hour. Although he tried to find other employment in Manhattan, as well as Connecticut, New Jersey (shudder), and upstate New York, he was unable to acquire any other position. Thus, he has lost his apartment in the City and now lives at a homeless shelter.

Foster is now in your office seeking legal advice. **Which answer is true? Choose the best answer.**

- A. Foster can sue for breach of an express contract.
- B. The implied-in-fact contract invokes the Statute of Frauds but does not satisfy it.
- C. Foster can sue for promissory estoppel.
- D. Foster can sue for fraud.
- E. Foster can sue for breach of a contract implied-in-law.
- F. Foster can sue for a breach of contract implied-in-fact.
- G. Notwithstanding Pemrose's subjective intentions, Pemrose accepted.
- H. The evidence indicates Pemrose possessed apparent authority to make Foster an offer.
- I. Foster can sue for promissory restitution.
- J. Foster can sue for malicious interference with a contract.
- K. The agreement between Pemrose and Foster was completely integrated.
- L. All of the above.
- M. Only A, C, and G.
- N. Only B, D, and H.
- O. Only B, D, G, and H.
- P. Only G and H.
- Q. Only C and G.
- R. Only C and H.
- S. None of the above.

Use the following fact pattern to respond to questions 7-10.

On January 1, 2010, Chancellor Palpatine had an “awesome” idea for a battle station; he intended to call it the “Death Star.”¹ Chancellor Palpatine contracted with Empire, Inc., a metal supply company who regularly manufactured sheets of metal. Empire promised to provide Five Hundred Million (500,000,000) sheets of metal that would be used to cover the exterior surface of the Death Star. Each sheet of metal had a contract price of \$2,000.00. Both parties agreed that delivery would be F.A.S. Port 1 in Tatooine.² Furthermore, Empire stated that the sheets of metal would be fifty feet by fifty feet (50’/50’) each and possess a uniform finish that would make the Death Star appear “seamless.” In fact, Empire had specifically chosen this type of metal as the material to use on the Death Star because it would provide a uniform finish and make the battle station “beautiful,” just like Chancellor Palpatine wanted.³ The upside was that Empire could provide Chancellor Palpatine a real deal on the metal, as the size Chancellor Palpatine needed was the common size sold in all of Empire’s retail outlets.

On March 1, 2010, Empire began sending sheets of metal to Port 1. The first shipment (“Shipment Number 1”) did not make it to Tatooine. Instead, en route to Tatooine, the shipment was destroyed when a group of “rebels” attacked the cargo ship. The remaining shipments, however, were more successful, and by April 1, 2010, Three Hundred and Fifty Million (350,000,000) of the sheets were delivered to Port 1 on Tatooine.

On April 15, 2010, Empire sent the final remaining shipment of Fifty Million (50,000,000) sheets of metal to Port 1 Tatooine (“Shipment Number 15”). While the shipment arrived safely at Port 1, two days later, an outrageous fire bent and warped the vast majority of that shipment. Only about 10,000 sheets of metal from the final shipment were of any later use.

When Chancellor Palpatine received the final shipment, Chancellor Palpatine ordered his trusty ally Darth Vader to begin building the exterior of the Death Star. Immediately, however, Darth Vader noticed that Three Hundred Million (300,000,000) of the sheets were not of the appropriate size. Rather, they were each about ten (10) feet too short.⁴

When Chancellor Palpatine learned of the discrepancy, Chancellor Palpatine immediately called Empire to complain. Empire, however, stated that the sheets of metal would never be “perfect,” and Chancellor Palpatine would need to “deal with it.” Chancellor Palpatine was “upset” and threatened to “cut” someone.

¹ Not to be confused with the DSOL Courtroom.

² Tatooine is a small planet with seventy-five (75) ports that are each numbered.

³ Any evidence introduced at trial will indicate that “everyone” in the industry “knew and believed” that this particular type of metal, if made properly, would have a “perfectly uniform finish.” No contrary evidence will exist at trial.

⁴ For those who need numbers, the sheets of metal were forty feet by fifty feet (40’/50’).

Thankfully, when Chancellor Palpatine had originally negotiated the deal with Empire, Chancellor Palpatine had the entire transaction insured and bonded⁵ with Dagobah Insurance Company. The contract with Dagobah was a standard-form contract. While most of the provisions were typed as a part of the standard form, the following was handwritten:

This is a contract of insurance for the contract between Chancellor Palpatine and Empire. We shall insure all materials and workmanship used on or for construction of the Death Star (“the Project”). We shall further insure the proper delivery, quality, installation, and fitness of the materials. Finally, we shall insure that the contract is fully performed, and we shall insure for any risk of loss of any kind or of whatever nature. In exchange, Chancellor Palpatine shall pay one premium for Twenty-Seven Million Dollars (\$27,000,000) on or before February 1, 2010.

[provisions of contract redacted for brevity]

The contract then provided the following typed exclusion in a section entitled “Coverage Provided” on page 37 of the insurance contract: “We shall not cover any claim arising from or related to delivery of the materials used for the Project.”

On May 1, 2010, Chancellor Palpatine sent the following letter to Dabobah: “I am hereby placing you on notice that I intend to invoke the terms of the insurance policy, as Empire has breached. I am hereby further demanding that you pay pursuant to the terms of the Policy.” Dagobah subsequently refused to pay.⁶

7. Using the fact pattern above, which is true? Choose the best answer.

- A. Risk of loss for Shipment Number 1 lies with Chancellor Palpatine.
- B. Risk of loss for Shipment Number 15 lies with Empire.
- C. F.A.S. means “Free as Signed.”
- D. F.A.S. means “Free Actual Shipping.”
- E. F.A.S. means “For Actual Shipping.”
- F. Only A and B.
- G. Only A and C.
- H. Only A and D.
- I. Only A and E.
- J. Only B and C.
- K. Only B and D.
- L. Only B and E.
- M. None of the above.

⁵ You don’t need to know what bonded means. For your purposes, it is just another type of insurance. In any event, it is not relevant to your understanding of the fact pattern.

⁶ Just like every other insurance company.

8. Using the fact pattern above, which is true? Choose the best answer.
- A. The contract between Chancellor Palpatine and Empire is unenforceable because it is a contract of adhesion.
 - B. The contract between Chancellor Palpatine and Empire is unenforceable because it is unconscionable.
 - C. The contract between Chancellor Palpatine and Empire is unenforceable because it violates the Statute of Frauds.
 - D. The contract between Chancellor Palpatine and Empire is unenforceable.
 - E. The contract between Chancellor Palpatine and Empire is enforceable and is governed by the common law.
 - F. The contract between Chancellor Palpatine and Empire is enforceable because of the Parole Evidence Rule.
 - G. The contract between Chancellor Palpatine and Empire is enforceable because the metal was specially manufactured.
 - H. The contract between Chancellor Palpatine and Empire is enforceable because the metal was specifically manufactured.
 - I. The contract between Chancellor Palpatine and Empire is enforceable but only if Empire admits to Chancellor Palpatine, either orally or in writing, that the contract existed.
 - J. The contract between Chancellor Palpatine and Empire is enforceable.
 - K. The contract between Chancellor Palpatine and Empire is enforceable but only for Three Hundred Fifty Million and Ten Thousand (350,010,000) sheets of metal.
 - L. The contract between Chancellor Palpatine and Empire is enforceable for Five Hundred Million (500,000,000) sheets of metal.
9. Using the fact pattern above, which is true? For purposes of this question, you should assume the contract between Chancellor Palpatine and Empire is enforceable. Choose the best answer.
- A. Chancellor Palpatine can sue for breach of an express warranty.
 - B. Chancellor Palpatine can sue for breach of the implied warranty of fitness for a particular purpose.
 - C. Chancellor Palpatine can sue for breach of the implied warranty of good faith.
 - D. All of the above.
 - E. Only A and B.
 - F. Only A and C.
 - G. Only B and C.
 - H. None of the above.

10. Using the fact pattern above, which is true? For purposes of this question, you should assume the contract between Chancellor Palpatine and Empire is enforceable. Choose the best answer.
- A. It is likely that the contract between Chancellor Palpatine and Dagobah is unenforceable due to the doctrine of reasonable expectations.
 - B. It is likely that the contract between Chancellor Palpatine and Dagobah is unenforceable due to the doctrine of adhesion.
 - C. It is likely that the contract between Chancellor Palpatine and Dagobah is unenforceable due to the doctrine of unconscionability.
 - D. It is likely Chancellor Palpatine will have coverage for the loss of Shipment 15.
 - E. All of the above.
 - F. Only A and B.
 - G. Only B and C.
 - H. Only A and C.
11. The Parole Evidence Rule prohibits admission of evidence in which, if any, of the following scenarios. Please note: if the evidence is admissible by virtue of an exception to the Parole Evidence Rule, then this question presumes that the scenario DOES NOT invoke the Parole Evidence Rule, and thus, the Parole Evidence Rule does not prohibit admission.
- A. The agreement is completely integrated and governed by the common law. One party would like to introduce evidence to supplement an express term in the agreement.
 - B. The agreement is completely integrated and governed by the common law. One party would like to introduce trade usage evidence to supplement the agreement.
 - C. The agreement is partially integrated and governed by the UCC. One party would like to admit course of performance evidence to contradict an express term in the agreement.
 - D. The agreement is partially integrated and governed by the common law. One party would like to admit course of dealings evidence to explain an express term in the agreement.
 - E. The agreement is completely integrated and governed by the UCC. One party would like to admit course of performance evidence to explain an express term in the agreement.
 - F. All of the above.
 - G. A and B only.
 - H. A and C only.
 - I. B and C only.
 - J. B and D only.
 - K. B and E only.
 - L. Only A, B, C, and D.
 - M. Only B, C, D, and E.
 - N. Only C, D, and E.
 - O. Only A, D, and E.
 - P. Only A, B, and C.

12. Professor Sybil Trelawney has tenure (a lifetime appointment) at the Hogwarts School of Witchcraft & Wizardry (“Hogwarts”). Specifically, Professor Trelawney’s contract provides the following:

This contract is between Sybil Trelawney and the Hogwarts’ School of Witchcraft & Wizardry. For proper consideration, Sybil Trelawney is hereby appointed as a “Professor of Divinity” with tenure for life. Professor Trelawney may only be terminated under the following conditions:

1. Murdering s student;⁷
2. Maiming a student;⁸
3. Having sex with a student in the classroom;⁹
4. Stealing from Hogwarts; and
5. Wearing any item of clothing that is “acid wash.”

Our future is now so bright that I gotta wear shades.

/S
Professor Albus Percival Wulfric Brian Dumbledore¹⁰
Acting in my professional capacity as Headmaster

On September 7, 2009, Hogwarts hired Professor Dolores Umbridge pursuant to an oral contract.¹¹ By its terms, Umbridge’s contract provided that Umbridge would commence working on July 1, 2010, and her term of employment would last nine (9) months.

While Umbridge should not have started until July 1, 2010, much to Professor Dumbledore’s surprise, Umbridge began working at Hogwarts on June 1, 2010.¹² While her official job responsibilities were to publish scholarship and teach the Hogwarts students, the Ministry of Magic¹³ had given Umbridge “additional duties.” Specifically, Umbridge was to spy on Professor Dumbledore and “ensure that Hogwarts was teaching appropriate material.” Within Umbridge’s first week, Umbridge reported that Hogwarts was teaching inappropriate material, and on that basis, the Ministry of Magic granted Umbridge the power to expel students and terminate faculty members.¹⁴

⁷ Other forms of homicide are not prohibited.

⁸ To be a basis for termination, the “maiming” must include removal of a limb.

⁹ Sex isn’t encouraged in other locations, but only “sex in the classroom” is sufficient for termination.

¹⁰ Professor Dumbledore is Headmaster at the Hogwarts School of Witchcraft & Wizardry. In that capacity, he is charged with hiring faculty members, among other things.

¹¹ She has no business carrying the title “Professor,” as she didn’t earn it; rather, the Ministry of Magic made Professor Albus Percival Wulfric Brian Dumbledore hire Umbridge. Hereafter, I will not refer to her as “Professor.”

¹² This was not a mistake in her contract. Rather, Umbridge was so eager to begin working that she “showed up early” and began working without pay.

¹³ It is never entirely clear why the Ministry of Magic has that much power over Hogwarts. One would believe that Hogwarts was run by the Faculty—like most legitimate educational institutions. In that vein, one would believe that hiring decisions were made by the Faculty—like most legitimate educational institutions. Nevertheless, the Ministry of Magic apparently exercised an extraordinary amount of control over Hogwarts.

¹⁴ Something else that is absolutely crazy.

Once Umbridge possessed the power to terminate faculty members, Umbridge immediately took it upon herself to begin reviewing faculty members for retention. Specifically, she would evaluate the professor's scholarship, evaluate their classes, and evaluate their collegiality. When Umbridge reviewed Professor Trelawney, she found Professor Trelawney to be sorely wanting in each category—this mainly sprung from Umbridge's incredulity of divination. Based upon Umbridge's review, Umbridge terminated Professor Trelawney. Thereafter, on June 30, 2010, Hogwarts terminated Umbridge. **Which is true? Choose the best answer.**

- A. Professor Trelawney can successfully sue Hogwarts for breach of contract.
- B. Umbridge can successfully sue Hogwarts for breach of contract.
- C. Professor Dumbledore has apparent authority to enter into contracts on behalf of Hogwarts.
- D. Professor Trelawney's contract invokes the Statute of Frauds.
- E. Umbridge's contract invokes the Statute of Frauds.
- F. All of the above.
- G. Only A and B.
- H. Only B and C.
- I. Only A and C.
- J. Only B and D.
- K. Only A and D.
- L. Only A and E.
- M. Only B and E.
- N. Only A, B, and C.
- O. Only A, B, and D.
- P. Only A, C, and D.
- Q. Only A, B, and E.
- R. Only A, C, and E.
- S. None of the above.

13. Which are true? Choose the best answer:

- A. To exclude the implied warranty of merchantability, a seller must use the phrase “as is.”
- B. To demonstrate a successful basis for recovery under an implied warranty of fitness for particular purpose, a buyer must prove: the seller believed the buyer had a particular purpose for which the goods were required and that the buyer relied on the seller’s skill or judgment to select the goods.
- C. A says to B, “These are the best hiking boots money can buy.” A has created an express warranty.
- D. A shows B a 2005 Dell Laptop, Model Number P24V. A then recites the specific dimensions and weight of the laptop. Specifically, A states the laptop weighs 2 pounds. B buys a 2005 Dell Laptop Model Number P90X. It weighs 3 pounds. A has breached an express warranty.
- E. For purposes of the implied warranty of merchantability, a merchant is any person who is in business.
- F. Ordinarily, the phrase “with all faults” is sufficient to exclude the implied warranty of fitness for a particular purpose.
- G. All of the above.
- I. Only A and B.
- J. Only B and C.
- K. Only C and D.
- L. Only D and F.
- M. Only A, B, and F.
- N. Only A, B, and C.
- O. Only B, D, and E.
- P. Only B, D, and F.
- T. None of the above.

14. Which is true? Choose the best answer:

- A. A agrees to sell B “all of my inventory of the following: Sprite, Coke, Diet Pepsi, 7-Up, and other stuff.” The agreement likely includes Budweiser, assuming it is in inventory.
- B. A agrees to sell B “all of my inventory of Sam Adams Winter Ale.” The agreement likely includes Sam Adams Oktoberfest, assuming it is in inventory.
- C. A drafted a contract for the sale of Snickers candy bars. Later, A and B began negotiating the terms of the contract. The primary negotiations centered around who would pay for risk of loss. A and B ultimately negotiated a provision stating the following, “FAS Tennessee River.” A believed that meant Port Number 1 in Knoxville. B believed that meant Port Number 2 in Knoxville. Neither A nor B knew of the other’s interpretation. B’s interpretation of the provision will necessarily control.
- D. A and B enter into a contract for the sale of Trojan Condoms. The contract provides the following, “A shall sell B Trojan Condoms up to B’s requirements. This contract shall continue until terminated.” On December 1, 2010, A notifies B that A intends to terminate the contract. A terminates it, effective immediately. A is exposed to liability.
- E. The doctrine of reasonable expectations applies to all UCC contracts.
- F. Tom regularly sells Ugly Stiks (fishing poles) at discount prices. On October 31, 2010, Tom offers to sell Huck 200 Ugly Stik Big Water rods for \$40.00 a piece. Tom states he will keep the offer open until February 6, 2011. The offer was typed on Tom’s letterhead, and Tom initialed at the top of the page. On February 4, 2011, Huck enters Tom’s store. Before Huck says anything, Tom says, “I revoke my offer.” Huck then throws the requisite amount of money at Tom and says, “I accept.” Tom is liable for breach of contract.
- G. A is a housekeeping service called “Happy Cleaning.” A and B enter into the following contract: “A agrees to clean B’s house three times per week for the next six months. In exchange, B agrees to pay A a lump sum of \$6,000.00 which is due immediately.” The contract is unilateral.
- H. Ricky was a young boy; he had a heart of stone. One day, Ricky decided to purchase “a double deuce” (read: a 22 oz. can or bottle of beer) at a local store in the Skid Row section of L.A. Ricky walked up to the counter and said, “Howdy. I would like this and a pack of Camels please.” Ricky’s actions constitute an acceptance.
- I. None of the above.

15. Which is true? Choose the best answer.

- A. Exams are fun.
- B. Contracts is a fun class.
- C. I love large multiple-choice questions.
- D. I wish this question had more possible responses.
- E. Jon is awesome.¹⁵

¹⁵ Don’t freak out people—so long as you put at least one (1) of the possible responses, you will get three (3) points of credit for this question.

ESSAY
(May be taken using either Exam4 or Bluebooks)
(55 points)

Jim Halpert lives in Scranton, Pennsylvania, and is looking for a job that will pay the bills. He really isn't interested in a "career" at this point. That is, he doesn't want to do something stupid—"like be a lawyer"; he just wants to "get by." Jim decides to apply for a position at a local paper company named "Dunder Mifflin."

Dunder Mifflin is a "mom-and-pop-type paper company" that has grown to compete with office supply giants like Staples and Office Depot.¹⁶ The Scranton division is run by a general manager named Michael Scott who is charged with running all aspects of the Scranton Office and doing "all that is necessary to make the store run."¹⁷

On October 31, 2010, at approximately 10:00 a.m., Jim walked into the Scranton Branch of Dunder Mifflin and completed an application. He then waited in the lobby for an interview with Michael. Around 10:45 a.m., Michael began the interview. At the end of the interview, Michael produced a piece of his letterhead that stated the following:

I hereby offer you a position as a sales associate in the Scranton Branch of Dunder Mifflin. The position pays \$28,000.00 per year and would begin on November 24, 2010. As a sales associate, you would be expected to provide service for existing clients and to make "cold calls" and engage in other marketing activities to acquire new clients. You will receive a commission of .015 for all purchases related to clients that you attracted to the company. You will receive no commission for purchases related to clients that you did not attract. All commissions are paid once every six months. Nevertheless, if you are terminated or you leave prior to any six-month commission anniversary, you will still be paid any commissions currently due at that point.

All contracts with Dunder Mifflin are at-will—they can be terminated by Dunder Mifflin at any time with or without a reason and with or without notice.

This offer will remain open until November 15, 2010, at 12:00 p.m., EST. To accept this offer, you must sign below in the space provided. We welcome you to the family.

The letterhead was drafted solely by Michael, was not subject to negotiation, and was signed by Michael. Jim left that day thinking the job would "totally suck" but likely "pay the bills."

On November 12, 2010, at 4:00 p.m., EST, Jim returned to Dunder Mifflin with the executed contract. He then handed the contract to Michael who smiled, shook his hand, and welcomed him aboard.

Jim immediately became a "hit" of a salesman. In fact, people began referring to his sales acumen through fictitious words that used his surname as a verb to be conjugated. For instance,

¹⁶ This is not a mistake.

¹⁷ This is the actual language from his employment contract.

people would say, “Boy, Jim really halperned¹⁸ that lady into buying some paper! I bet Jim could sell paper to an all electronic office.”¹⁹ At the end of the first six months, Jim had halperned eighteen (18) new clients into creating accounts. All in all, Jim sold 50,000 boxes of paper to new clients for Dunder Mifflin. That afternoon, Jim received a check for \$10,500.00. Jim was a little surprised and approached Michael to discuss why the check wasn’t more. The following conversation then took place:

Jim: Hi Michael. Do you have a minute to talk?

Michael: Sure Jim. Come on in. What can I do you for?

Jim: I just received my first commission check, and . . .

Michael: You have done a great job, Jim, and you have earned every penny you got there. In fact, I wish I could pay you more.

Jim: Actually, I wanted to ask you about the amount. I have run the numbers about 50 times, and my check is majorly short.

Michael: What makes you think it is short?

Jim: Well, I have sold 50,000 boxes of paper, and each box of paper was sold at \$100.00. When I multiply those two numbers together, I get \$5,000,000.00. Pursuant to my employment agreement, I am entitled to .015 commissions on my paper sales. By my math, that means I am entitled to \$75,000.00 in commissions.

Michael: Oh, that is the problem. You’re only entitled to commissions on purchases from clients that you “attracted.”

Jim: I know. I sold 50,000 boxes to clients I attracted.

Michael: I think we must misunderstand each other, Jim. When we say “attracted” in the industry, we mean you were the “procuring cause of the client’s interest in the company.” That inherently doesn’t include clients who call us looking for paper.

Jim: But I signed those clients. Without my smooth talking, those clients may have gone elsewhere.

Michael: I know, Jim. But, those clients called the company, and thus, they had already demonstrated an interest in the company. You weren’t the “procuring cause of their interest.” You just happened to answer the phone.

Jim: I hate you. You are an evil a#####. You should ###%%%%. When you’re done, you should &&%\$#@@. F\$\$\$ you!!! I quit.

Jim now wants to sue.

As though Dunder Mifflin didn’t have enough problems, Pam Beesley, another sales associate at Dunder Mifflin, was having problems with one of her clients. Approximately six months ago, Pam initiated a conversation with Ricky Bobby. Ricky was once a race-car driver, but after he retired, he opened a computer company named “Talladega Computers.” Ricky is the sole shareholder and CEO of Tallageda Computers.

¹⁸ You will recall that Jim’s surname is “Halpern.”

¹⁹ This was in fact true—Jim once “halperned” a dean at the Duncan School of Law into buying a ton of paper from him. While that wouldn’t ordinarily sound unusual, it was odd because the Duncan School of Law had recently enacted a policy of “going all electronic.” Thus, one would assume paper would be unnecessary.

Pam called Talladega Computers, a New York Company, on a “cold call” on June 7, 2010, and asked to speak to the owner of the company. The receptionist then transferred the call to Ricky’s office. The following exchange then took place:

Ricky: Hello. This is Ricky Bobby.

Pam: What is your last name?

Ricky: Bobby.

Pam: Oh.²⁰ I work for Dunder Mifflin, and I wanted to take a couple minutes of your time to discuss the amazing things our company could do for you.

Ricky: I really don’t have time. But, if you will send me a written offer, I will respond as soon as possible. Shake and bake.

Pam: Ok. I will send you an offer this afternoon.

That afternoon, Pam had the following form contract hand-delivered to Talladega Computers:

SALES CONTRACT

This contract is between Dunder Mifflin (“Seller”) and Talladega Computers (“Buyer”). Seller hereby agrees to sell Buyer 20,000 boxes of paper for a total price of 1,400,000. This offer shall remain open until September 4, 2010.

CHOICE OF LAW: The parties hereby agree that this transaction and any claims, controversies, and/or grievances arising from it, whether arising in tort or contract, shall be governed by the law of Delaware.

EXPRESS WARRANTIES: Seller hereby warrants that the paper will be decent paper that can be used for stuff that paper can be used for. Seller expressly disclaims any warranty related to the paper’s ability to be good for origami. It is specifically unsuited to making the following three-dimensional shapes: trees, comets, and early Sumerian pottery.

DELIVERY: Delivery shall be FAS San Francisco. All payments must be made at the time of pickup.

OTHER WARRANTIES: Seller hereby **DISCLAIMS ALL IMPLIED WARRANTIES.**

TIME FOR DELIVERY: Delivery shall be made in two installments. The first installment shall be made on or before November 1, 2010. The second installment shall be made on or before December 1, 2010.

VENUE: The parties agree that all claims, controversies, and/or grievances related to this transaction shall be litigated in the State of California.

ARBITRATION: All claims, controversies, and/or grievances arising directly or indirectly from this agreement shall be subject to arbitration.

²⁰ Pam was thinking: this guy has two first names.

To make this contract binding, you need only sign in the space provided below.

The SALES CONTRACT was then stamped “PB” indicating Pam’s initials.²¹

Ricky never signed Pam’s form. But, on September 1, 2010, Ricky sent Pam the following:

PURCHASE AGREEMENT²²

This contract is between Dunder Mifflin (Provider) and Talladega Computers (Company). Provider hereby agrees to sell Company 10,000 boxes of paper (the Product) for a total price of 700,000.00.

DELIVERY: Provider shall deliver the Product FAS New York. All payments shall be made at the time of pickup.

CHOICE OF LAW: The parties hereby agree that this transaction and any claims, controversies, and/or grievances arising from it, whether arising in tort or contract, shall be governed by the law of Delaware.

VENUE: The parties agree that all claims, controversies, and/or grievances related to this transaction shall be litigated in the State of California.

TIME FOR DELIVERY: Delivery shall be made in two installments. The first installment shall be made on or before November 1, 2010. The second installment shall be made on or before December 1, 2010.

AGREEMENT OF QUALITY: Provider agrees that Company may return the Product within three (3) days of any delivery if the Product is not a quality product. Ricky Bobby shall be the sole person to decide whether the Product is quality product.

MERGER: The parties agree that this contract is intended to be the final expression of their agreement.

TAKE IT OR LEAVE IT/MY WAY OR THE HIGHWAY: I never change any terms of my agreements. It is my way or the highway. If you don’t agree with my terms, then we have no deal. I will not proceed unless you agree to all of my terms without alteration, addition, abrogation, substitution, modification, deletion, or subtraction.²³

To make this contract binding, you need only sign in the space provided below. If you do not sign this agreement, we have no deal.

²¹ Pam will concede at trial that she “regularly” signs documents using a stamp with the letters “PB.”

²² Any portion of the PURCHASE AGREEMENT that is underlined is handwritten by Ricky. All other portions that are not underlined are part of a form agreement.

²³ Apparently, someone liked the suffix “-tion.” Who was it? Who did it?

Ricky then stamped the PURCHASE AGREEMENT with the phrase “Shake n’ Bake.”²⁴ Pam stamped the initials “PB” in the space provided on the form. Pam also dated the form September 5, 2010, and returned it to Ricky’s secretary on the same date.

On November 1, 2010, Pam delivered the first shipment of the Product to the Port of New York. Although the Product arrived safely, Ricky was not “satisfied” with the Product. Rather, he declined the shipment on the basis that the Product “wasn’t what I wanted. It wasn’t Shake n’ Bake quality.”

If any case herein goes to trial, the following testimony will be introduced:

TESTIMONY OF DWIGHT K. SCHRUTE III²⁵

LAWYER: Please state your name for the record.

SCHRUTE: Dwight Kurt Schrute III.

LAWYER: Thank you Mr. Schrute.

[Redacted for Purposes of Brevity]

LAWYER: Are you familiar with wholesale paper sales practices in the United States?

SCHRUTE: Yes. I have owned several paper companies, and I currently hold a senior management position at Staples. I additionally was a paper salesman for 20 years.

LAWYER: And are you familiar with how commissions are commonly handled by the paper industry?

SCHRUTE: Yes. Commissions are always governed by whether a salesman was the “procuring cause” of the sale.

LAWYER: Have you heard the term “attracted” used in reference to paper sales commissions?

SCHRUTE: Yes. It means the same thing as “procuring cause.” Everyone knows that.

LAWYER: Do you know what would happen if a client called a company and a salesman then signed the client?

SCHRUTE: Are you asking whether a salesman would receive a commission under those circumstances?

LAWYER: Yes.

SCHRUTE: And am I to assume the language of the commissions contract provided commissions when the salesman attracted the client?

LAWYER: Yes.

SCHRUTE: There would be no commissions under those circumstances.

[Remainder of Testimony Redacted]

²⁴ Ricky Bobby will readily concede at trial that he “always” uses a “Shake n’ Bake” stamp to execute agreements.

²⁵ Schrute has been qualified as an expert in the paper industry for purposes of this case.

TESTIMONY OF ANDREW BAINES BERNARD²⁶

LAWYER: Please state your name for the record.

BERNARD: Andrew Baines Bernard

LAWYER: Thank you Mr. Bernard.

[Redacted for Purposes of Brevity]

LAWYER: Are you familiar with commissions practices in Scranton, Pennsylvania?

BERNARD: Yes. I have earned commissions in the housing industry in Scranton for 19 years. Commissions in the industry are pretty standard.

LAWYER: Have you heard the term “attracted” in reference to a sales commission?

BERNARD: Absolutely. It is in every commissions contract I have ever seen.

LAWYER: What does it mean?

BERNARD: It means a sales agent will receive a commission if the agent was the “procuring cause of the sale.

LAWYER: Assuming a client called a company seeking to buy something and a salesman answered the phone, what would happen?

BERNARD: Well, assuming a sale was made and the client was a “new client,” the salesman would get a commission.

LAWYER: Wait, the salesman would get a commission even though the client called the company?

BERNARD: Absolutely. The “procuring cause” or “attracted” analysis is tied to who signed the client.

[Remainder of Testimony Redacted]

TESTIMONY OF PHYLLIS LAPIN-VANCE

LAWYER: Please state your name for the record.

BERNARD: Phyllis Lapin-Vance

LAWYER: Thank you Ms. Lapin-Vance

[Redacted for Purposes of Brevity]

LAWYER: Where do you work?

VANCE: At Dunder Mifflin

LAWYER: What is your position there?

VANCE: I am a sales associate.

LAWYER: And are you paid on a commission basis.

VANCE: Yes—in part.

LAWYER: What is your commission structure?

VANCE: I am entitled to .015 percent of all sales for which I “attracted” the client.

LAWYER: Have you ever had a situation where a person called interested in buying paper and you signed them as a new client?

²⁶ Bernard has been qualified as an expert in the housing industry for purposes of this case.

VANCE: Yes.

LAWYER: Where you paid commission on that sale?

VANCE: No. To get paid commissions on the sale, you need to be the procuring cause. If the client calls the company, you were not the procuring cause.

[Remainder of Testimony Redacted]

STATUTES

14 Del. Code Ann. § 27-19-20 (2008):

Fraud is only cognizable in tort in this jurisdiction.

38 Penn. Code Ann. § 44-19-20 (2001):

Fraud is only cognizable in tort in this jurisdiction.

90 Cal. Code Ann. § 4-19-20 (1996):

Fraud is only cognizable in tort in this jurisdiction.

19 Penn. Code Ann. § 20-16-200 (2008):

Admission of evidence of trade usage, course of performance, and course of dealings evidence at common law shall mirror the provisions of the Uniform Commercial Code.

14 Del. Code Ann. § 3-12-200 (1988):

Admission of evidence of trade usage, course of performance, and course of dealings evidence at common law shall mirror the provisions of the Uniform Commercial Code.

20 Cal. Code Ann. § 29-19-345 (2003):

Admission of evidence of trade usage, course of performance, and course of dealings evidence at common law shall mirror the provisions of the Uniform Commercial Code.

FOR EACH QUESTION, SUCCESSFUL CAUSES OF ACTION SHALL BE DEFINED AS THOSE WHERE THE PLAINTIFF CAN STATE A PRIMA FACIE CASE.

Discuss any SUCCESSFUL causes of action any person may have against any other person. Discuss any SUCCESSFUL defenses any person may have against any other person. When extrinsic evidence is provided to you and it is even potentially admissible, discuss its admissibility and what effect, if any, it will have on the trial if admitted.

PRO BONO OPPORTUNITIES

LEGAL

1. Knox County Juvenile Court

Contact Person: Justin Campbell (Case Manager)
Address: 3323 Division Street Northwest
Knoxville, Tennessee 37919

Phone: (865) 215-6400

Description: The Knox County Juvenile Court adjudicates a variety of matters involving juveniles including matters of dependency and neglect, private custody matters between parents, and delinquency/unruly matters. Volunteer assignments are provided by case managers based on their individual needs, but will likely include various administrative tasks necessary to assist judges in their efficient adjudication of cases.

2. Knox County Court Appointed Special Advocate Program (CASA)

Contact Person: Erin Wilson (Director)
Address: 3323 Division Street Northwest
Knoxville, Tennessee 37919

Phone: (865) 215-6400

Description: Volunteers are assigned to cases to be an advocate and would attend court proceedings, meeting with client, investigate allegations of harm, and make a report with recommendations for the court.

3. Anderson County Court Appointed Special Advocate Program (CASA)

Contact Person: Ashley Wentz
Address: 101 N. Main Street
Clinton, Tennessee 37716

Phone: (865) 425-0888

Description: Volunteers are assigned to cases to be an advocate and would attend court proceedings, meeting with client, investigate allegations of harm, and make a report with recommendations for the court.

4. Anderson County Juvenile Court

Contact Person: Melanie Davies (Director of Juvenile Court Services)

Address: 101 N. Main Street
Clinton, Tennessee 37716

Phone: (865) 259-2349

Email: mdavies@andersoncourts.org

Description: The Anderson County Juvenile Court adjudicates a variety of matters involving juveniles including matters of dependency and neglect, private custody matters between parents, and delinquency/unruly matters. Volunteer assignments are provided by court staff based on their individual needs, but will likely include various administrative tasks, legal research, drafting memorandums of law, and drafting orders/opinions.

5. Legal Aid Society of the Cumberland (Oak Ridge)

Contact Person: Teresa Vay-Smith

Address: 226 Broadway Jackson Square
Oak Ridge, Tennessee 37830

Phone: (865) 483-8454 X 243

Description: Legal Aid Society is a private, non-profit organization that provides free civil legal services to people with low income. Volunteers will be assigned tasks by a supervising attorney but will likely include legal research, drafting memorandums, assisting supervising counsel in preparing for court, and preparing legal documents.

6. Legal aid of East Tennessee (Knoxville)

Contact Person: Terry Woods (Pro Bono Director)

Address: 502 S. Gay St., Ste. 404
Knoxville, Tennessee 37902

Phone: (865) 637-0484

Description: Legal Aid Society is a private, non-profit organization that provides free civil legal services to people with low income. Pro bono clinics are conducted on a monthly to bi-monthly basis wherein legal services are provided to members of the community. Students work with volunteer lawyers and conduct interviews of clients and participate with attorney counter parts to resolve legal problems.

7. Family Justice Center

Contact Person: Rachel Searcy
Address: 400 Harriet Tubman, Ste. 219
Knoxville, Tennessee 37915

Phone: (865) 521-6336

Email: rsearcy@fjcknoxville.org

Description: The mission of the Family Justice Center is to provide victims of domestic abuse with a single location to access advocacy and other services necessary to build a future of choice, safety and opportunity. Volunteers at the FJC greet victims of domestic abuse, help them feel comfortable, answer phones and monitor the playroom.

COMMUNITY SERVICE ORIENTED

8. Young Williams Animal Center

Contact Person: Deonna Light
Address: 3201 Division Street
Knoxville, Tennessee 37919

Phone: (865) 215-6662

Description: Volunteers are needed to walk and socialize dogs, bathe dogs and puppies, play with cats, clean kennels and cages, answer phones, counsel potential adopters, assist with fundraising and special events, help with administrative duties, help with education and outreach programming, help update website by assisting with pet photos and compiling information, and foster animals short and long term.

9. Habitat for Humanity

Contact Person: Trinity Edgar
Address: Unknown

Phone: (865) 523-3539 X108

Description: Habitat for Humanity has been creating affordable housing in the Knoxville area since 1985 through volunteer home builds. Volunteers work in a team to construct a new home for a person in need.

10. Knoxville Area Rescue Ministry (KARM)

Contact Person: Katie Montgomery
Address: 418 N. Broadway
Knoxville, Tennessee 37917

Phone: (865) 673-6540

Email: volunteer@karm.org

Description: KARM is a shelter that provides housing and meals to the homeless. KARM has multiple programs designed to assist the homeless and indigent community members motivated to make a change. Once per month KARM has opportunities where people can come on campus to learn who they are and what they do and will detail current volunteer opportunities. There are one-time community service options like serving meals on the KARM campus (breakfast 6:15-8, lunch 11:15-1 and dinner 4:15-6). There are also many ongoing opportunities that are necessary to keep the many programs running smoothly. From 5:30-7 p.m. on the second Tuesday of every month is volunteer orientation. Students may also volunteer at KARM thrift stores. The contact for thrift store service is Becky Littlebird – beckyl@karmstores.com

11. Recording for the Blind and Dyslexic

Contact Person: CC Morris
Address: 205 Badger Rd.
Oak Ridge, Tennessee 37830

Phone: (865) 482-3496

Description: Recording for the Blind creates recordings of requested book titles (both recreational and educational) for the blind and dyslexic. Volunteers read and record specific title books for clients who have a sight impairment. Their hours of operation are Mon and Tues 8-8, Wed and Thurs 8-4:30, Fri 8-1:30

12. Amachi Knoxville

Address: 901 W. Summit Hill Dr.
Knoxville, Tennessee 37902

Phone: (865) 524-2774

Website: www.klf.org

Description: Amachi Knoxville is a mentoring program that specifically serves children residing in Knox County between the ages of 4-17 who have an incarcerated parent. Mentors are asked to commit to being a consistent and positive influence in the life of a child one hour per week for the duration of one year.

13. Lost Sheep Ministries

Contact Person: Nancy Douglas
Address: 1444 Breda Drive
Knoxville, Tennessee 37918

Phone: (865) 688-9636

Description: Lost Sheep Ministries provides multiple programs to homeless community members as well as programs to community members with addiction or emergency non-medical needs. Meals are served to the homeless every Wednesday night. Volunteers can help serve food, stock shelves, food preparation, food rotation, data entry, pick-up and delivery.

14. American Red Cross – Knoxville Area Chapter

Address: 6921 Middlebrook Pike
Knoxville, Tennessee

Phone: (865) 584-2999

Website: www.knoxarc.org

Description: The American Red Cross is dedicated to offering domestic disaster relief and other compassionate services to the needy. Volunteers of all ages are needed for both short-term and long-term opportunities. Daytime volunteers are in particular demand, but most opportunities can be designed around your busy work schedule. We especially need bilingual help in serving our diverse community. Special opportunities also exist for licensed health professionals and their unique skills.

15. Mercy Hospital of East TN

Contact Person: Mary Anne Keck (Director)
Address: Mercy Medical Center North

Phone: (865) 545-7684

Email: mkeck@mercy.com

Description: Volunteers come from every stage of life regardless of religion or ethnic background. Those willing to serve include retirees, homemakers, college students, teenagers (14 or older), and anyone looking for an opportunity to serve their community. Volunteers are important - they are a vital part of the Baptist Health System and provide many services that supplement the basic, essential functions of the professional staff. Volunteers add that extra comfort and guidance during a patients stay at Baptist.

16. Big Brothers Big Sisters of East Tennessee

Address: 119 W. Summit Hill Dr.
Knoxville, Tennessee 37902

Phone: (865) 523-2179

Website: www.bbbsetn.org

Description: The mission of Big Brothers Big Sisters of East Tennessee is to make a positive difference in the lives of children and youth in need of positive role models, primarily through professionally screened and supported One-To-One Relationships with caring volunteer adults. The intent of our mentoring service is to transform young people's lives and enrich their families, thus helping to strengthen our communities and society as a whole.

17. Books for Homebound

Address: Main Library
500 W. Church Ave.
Knoxville, Tennessee 37902

Phone: (865) 215-8721

Description: Volunteers are needed to deliver and pick up library books between Knox County Public Library and homebound adults.

18. Community Action Committee of Knoxville-Knox County

Contact Person: Barbara Kelly

Address: PO Box 51650
Knoxville, Tennessee 37950

Phone: (865) 546-0832

Email: bkelly@knxcac.org

Description: CAC is a public agency serving the citizens of Knoxville and Knox County with specific emphasis on seniors, low to moderate income families, the unemployed and underemployed, persons with disabilities, and other individuals with special need for services. CAC utilizes caring staff and volunteers to deliver efficient services to help people achieve self-sufficiency and independent living through intervention, education and empowerment.

19. East TN Historical Society

Address: 601 S. Gay Street
Post Office Box 1629
Knoxville, Tennessee 37901

Phone: (865) 215 8824

Email: eths@east-tennessee-history.org

Description: If you interested in exploring history, meeting people, learning new skills, or sharing your skills and knowledge the historical society needs you.

20. Knoxville Area Urban League

Address: 1514 East Fifth Avenue
Knoxville, Tennessee 37917

Phone: (865) 524-5511

Website: www.thekaul.org

Description: The Knoxville Area Urban League assists African Americans and other disadvantaged groups to achieve social and economic equality primarily through service delivery, with an emphasis on employment and training, education, housing, and business development. The Knoxville Area Urban League needs YOUR help to make a difference in the community. It is through your continued support as a volunteer that the Urban League can provide services for area residents. Giving of your time, skills and experience enhances the effectiveness of our programs and strengthens our ties to the community.

21. Knoxville's Race for the Cure

Address: P.O. Box 11772
Knoxville, Tennessee 37939

Phone: (865) 692-3666

Website: www.knoxvillraceforthe cure.com

Description: Hundreds of volunteer opportunities each year, from handing out water at the Komen Knoxville Race for the Cure® to becoming a community spokesperson on the importance of early detection of breast cancer. Whether you are looking for a year-round commitment or a one-time event, this Knoxville Komen Affiliate has a place for you.

22. Knoxville Zoo

Address: 3500 Knoxville Zoo Drive
P.O. Box 6040
Knoxville, Tennessee 37914

Phone: (865) 637-5331 X 305

Website: www.knoxville-zoo.org

Description: Help with Special Events and Educational Programs or be a Zoo Aide. Volunteer opportunities are extended on to the family of zoo members. If you are not already a member, you must become and remain a member throughout your career as a Knoxville Zoo volunteer.

23. Mobile Meals

Address: 2247 Western Avenue
Knoxville, Tennessee 37921

Phone: (865) 524-2786

Description: Deliver Mobile Meals/lunches to homebound seniors or help serve and spend time with clients at dining sites.

24. Parkwest Medical Center

Address: 9352 Park West Blvd.
Knoxville, Tennessee 37932

Phone: (865) 373-1556

Email: rboyd3@covhlth.com

Website: www.treatedwell.com

Description: The Volunteer Services program at Parkwest is an integral part of the hospital. The volunteers provide valuable services in many areas of the hospital which is greatly appreciated by patients, family members, staff, physicians and others. As the hospital continues to expand, new volunteer opportunities evolve. Parkwest Medical Center seeks community-minded people who enjoy helping others and making a difference to join its current network of more than 100 volunteers.

25. Special Olympics

Contact: Kim Hatfield-Gray

Phone: (work) 865-539-8690; (cell) 865-748-5047

Email: khspecialo@yahoo.com

Description: The Special Olympics provides year-round sports training and athletic competition in a variety of Olympic-type sports for children and adults with mental retardation, giving them continuing opportunities to develop physical fitness, demonstrate courage, experience joy, and participate in sharing of gifts, skills, and friendship with their families, other Special Olympics athletes, and the community. It is a volunteer-driven organization. It takes the effort of many individuals like yourself to make Special Olympics of Greater Knoxville successful.

26. UT Medical Center

Phone: (865) 305-9515

Website: www.utmedicalcenter.org

Description: Volunteers serve as an extension of UT Medical Center's professional staff by providing support services to our patients and families.

27. The Love Kitchen

Address: 2418 Martin Luther King Ave.
Knoxville, Tennessee 37914

Phone: (865) 546-3248

Website: www.thelovekitchen.org

Description: The Love Kitchen provides meals, clothing and emergency food packages to homebound, homeless and unemployed persons. The Love Kitchen welcomes the volunteer spirit with open arms and

SPEAKERS AND EVENTS

Speakers from 2010 to the present

Speaker/Event	Date	Topic
Tennessee Lawyer's Assistance Program	January 13, 2010	TLAP provided information to students about the purpose of the organization and the benefits provided to law students, including: consultation, assessment, referral, intervention, education & peer support services. The issues for which services are provided include: stress and burnout, depressions, worries about bar application issues, career concerns, balancing school and family and substance abuse.
Judge Jerry Scott	February 15 & 16, 2010	Ethics & Professionalism
Dr. Gerald Osborn	February 18, 2010	Stress Management & Anxiety Reduction in Test Taking
Daniel W. Stowell	February 12, 2010	Presentation of "Abraham Lincoln – Lawyer, Leader, President", a look at the leadership style, oral and written communication and professionalism of Abraham Lincoln.
Professor Sandra Ruffin	February 23, 2010	Provided students an opportunity to view <i>The Clinton Twelve</i> , a documentary that details the history of the first high school desegregation in the south and the inception of the case of <i>McSwain vs. Anderson County</i> .
Tennessee Lawyer's Assistance Program	August 9, 2010	TLAP provided information to students about the purpose of the organization and the benefits provided to law students, including: consultation, assessment,

		referral, intervention, education & peer support services. The issues for which services are provided include: stress and burnout, depressions, worries about bar application issues, career concerns, balancing school and family and substance abuse.
Professor David Walker	September 17, 2010	The Federalist Society arranged for Professor Walker to lecture on Originalism.
James H. Bell	September 27, 2010	Lectured on the issue of ethics and professionalism, discussing the rules of professional responsibility and giving advice to students about how to practice in conformance with the rules.
John Kunich and Professor Sandra Ruffin	October 10, 2010	Together both speakers lectured on environmental law issues and debated each other on those issues.
Chief Justice Frank Williams [Ret.]	November 12, 2010	Lectured on Abraham Lincoln's interpretation of the Constitution during times of war versus how the Constitution during times of peace and how those same interpretations can be seen in modern times.

The following extra-curricular events took place on the following dates and times:

Hosting Organization	Date	Type of Event
Student Bar Association	January 26, 2010	Chili Cook Off to celebrate Abraham Lincoln's Birthday.
Student Bar Association	April 9, 2010	Barrister's Ball
Family Law Society	April 13, 2010	Organization Elections
Family Law Society	April 23, 2010	Event to discuss family law pleadings.
Ski Club	April 27, 2010	Organization Elections
Student Bar Association	September 20, 2010	Candidate presentations to

				allow candidates describe for the student body why they were the best choice for the position.
Student Defense Fund	Animal	Legal	September 30, 2010	Organization Elections
Ski Club			October 8, 2010	Alpine Ski Center fundraiser event
Student Bar Association / Duncan School of Law			October 29, 2010	Halloween Party
Student Defense Fund	Animal	Legal	November 14, 2010	Beyond the Myth movie screening and Reception
Moot Court			November 21, 2010	Inaugural Moot Court Competition
Black Law Student Association			November 23, 2010	Canned food drive to benefit Second Harvest
Student Bar Association			December 15, 2010	Angel Tree event to provide Christmas presents for Anderson county foster children.

RICHARD LEE GAINES
606 W. Main Street, Suite 350
Knoxville, TN 37902
(865) 356-8831
e-mail: richard_gaines@msn.com

Member of the Bar, State of Tennessee – admitted 1992

- PRESENT:** Partner
Eldridge & Gaines, PLLC
Knoxville, Tennessee
- LEGAL:** Columbia University School of Law
Master of Laws (LL.M) Degree, May 1994
- University of Tennessee, College of Law
J.D. Degree, *summa cum laude*, May 1992
Class Rank: 4th of 156
- HONORS & ACTIVITIES:** Ford Foundation Fellow in Public International Law
Parker School Certificate in International Law (with Honors)
Associate Editor, *Columbia Journal of Transnational Law*
- Order of the Coif
Editorial Board of the *Tennessee Law Review*
Outstanding Editor Award (1991-1992)
Dean's List
John W. Green Scholarship
Vinson and Elkins Scholarship
American Jurisprudence Awards in Property, Criminal
Procedure, and Products Liability
Administrator of the College of Law Police Ride-Along Program
Submitter to *Forum*, the College of Law's Student Magazine
Member to the Tennessee Association of Public Interest Law
Member of the 1992 Student Development Council.
- CLERKSHIP:** Law Clerk for the Honorable H. Emory Widener
U.S. Court of Appeals for the Fourth Circuit
- PUBLICATIONS:** Richard Gaines, On the Road to a Pax U.N.: Using the Peace Tools at our Disposal in a Post-Cold War World, *New York University Journal of International Law and Politics* (Spring 1994)
- Frequent writer for TACDL Publication (articles available upon request)
- PROFESSIONAL:** Member of Tennessee Bar and Bars of the United States Courts of Appeals for the Fourth Circuit and Sixth Circuit, and the United States District Court for the Eastern District of Tennessee.
- ORGANIZATIONS:** Board member of Tennessee Association of Criminal Defense Lawyers (TACDL) (2002); Publishing Chair for TACDL (2001-2002); Member of Tennessee Bar Association; National Association of Criminal Defense Lawyers; Tennessee Association for Criminal Defense Lawyers; Hamilton Burnett Chapter of American Inns of Court; American Society of International Law; Knoxville Bar Association of Unmet Needs of the Child.

EMPLOYMENT AND ACTIVITIES:

- 2001 to present** **PARTNER**, Eldridge & Gaines, PLLC., Knoxville, Tennessee.
Trial lawyer in the areas of criminal defense and governmental administrative proceedings. Substantial appellate practice, including many arguments before the Tennessee Supreme Court.
- 1998- 2005** **ADJUNCT PROFESSOR**, University of Tennessee College of Law.
Teach first-year law students appellate advocacy, brief writing, and oral argument. (Fall and Spring semesters).
- 1996-2000** **ASSOCIATE**, Law firm of Ritchie, Fels & Dillard, P.C., Knoxville, Tennessee.
Criminal defense firm specializing in comprehensive federal white collar litigation. Handled own caseload of state clients charged with crimes.
- 1996-2002** **LECTURER**, for the Tennessee Association of Criminal Defense Lawyer's annual CLE seminar. Frequent lecturer on state law changes in previous years, in particular search and seizure.
- 1995** **ASSOCIATE**, Washington, D.C., Office of Shearman & Sterling.
Trade and litigation, with focus on the representation of the Government of Mexico and the Republic of Kazakhstan.
- 1994-1995** **ASSISTANT**, American Bar Association Section of International Law and Practice.
Primarily helped with legal advice and law reforms to the Kingdom of Cambodia following the 1991 United Nations Peacekeeping Mission.
- CO-CHAIR**, Working Group on the Protection of U.N. and Associated Personnel.
Helped draft an American Bar Association Report and Recommendation on the new United Nations Convention for the Protection of U.N. and Associated Personnel.
- 1992-1993** **FEDERAL JUDICIAL LAW CLERK** for the Honorable H. Emory Widener, III
United States Court of Appeals for the Fourth Circuit in Richmond, Virginia.
- 1990-1991** **DEPARTMENT OF JUSTICE**, "Chief" Law Clerk, United States Attorney's Office,
Eastern District of Tennessee. Performed most attorney functions except speaking in court.
- 1991-1992** **EXECUTIVE/RESEARCH EDITOR**. *Tennessee Law Review*.
Member of editorial board. Edited six articles in five different books.
- Spring 1991** **TEACHING ASSISTANT**, for Professor Paige Winck, University of Tennessee
College of Law. Helped teach first-year law students legal writing. Also helped create legal problems, grade papers, and teach Bluebook citation form.

Writing samples and references available upon request

Faculty Assistant School of Law

Reports to: Associate Dean for Academics **Department:** Law School
Classification: Regular Full-Time **Division:** Law
Date: July 1, 2010

Job Summary: The Faculty Assistant shall assist multiple faculty members in their day-to-day operations and communication requirements. In addition, this person works closely with Law School Staff and Students.

Duties and Responsibilities: *promote the mission of Lincoln Memorial University and the School of Law to all faculty, staff, students and to the community at large; *promote effective working relationships among faculty, staff, and students; *participate on Law School committees; *assist faculty members of the Law School in carrying out their respective duties in the law school; *assist the Executive Assistant to the Dean and the Assistant to the Associate Dean for Academics as necessary; *promote understanding of the Law School requirements for faculty, staff, and students; *schedule meetings of faculty, staff and others as necessary; *assist with establishing effective office organizational and management procedures in accordance with University and Law School policies; *maintain records, reports, and other documents that support the criteria for accreditation for the Southern Association of Colleges and Schools (SACS), the Tennessee Board of Law Examiners, and the American Bar Association and standards and guidelines for individual program approval/accreditation; *promote effective fiscal management; *assist with annual law school faculty evaluations; *maintain accurate and accountable records; *establish/maintain program, departmental, and school documents and reports; *maintain institutional calendars; *assist with course/room scheduling as needed; *organize and assist in data collection/storage for the school; *post informational notices to the Law School that will further the attainment of desired outcomes for all the areas within the Law School; *perform general office duties of answering phones and electronic mail, word processing, spreadsheet creation and maintenance, form design, filing, and scheduling appointments; *maintain adequate inventory of supplies; *assist in the completion of required institutional and program budgeting, assessment, and strategic planning reports necessary for the operation and advancement of the Law School; *check road conditions during inclement weather for morning calls to confirm cancellation of classes, communicating with appropriate individuals for reporting of the cancellation of classes; *revise and update the Law School Faculty Handbook; the Adjunct Faculty Handbook; and the Faculty Advisors' Handbook; *assist in the creation, proofing and editing of scholarship including articles and textbooks; *maintain strict confidentiality regarding Law School and University matters; and *perform other duties as assigned.

Knowledge, Skills, and Abilities: *Ability to communicate and work well with faculty, staff, students, and the community at large; *good overall verbal, non-verbal, and written communication skills; *excellent organizational skills; *effective office management skills; *effective communication skills; *high-level of computer skills including but not limited to

proficiency in WordPerfect®, Microsoft Office® including Word, Excel Outlook and PowerPoint; *demonstrated ability to complete multiple assignments, meet deadlines; *effective interpersonal skills; * the ability to administer, organize and maintain a positive working environment; *must have a willingness to work with others; *ability to self-motivate and *work independently when required; and *ability to maintain confidentiality.

Qualifications: Required: *relevant experience.

Preferred: bachelor's degree; and *previous experience as an office manager.

December 15, 2010

Heidi L. O'Donnell
102 Daniel Lane
Oak Ridge, TN 37830
(865) 604-3848

PROFILE/OBJECTIVE

A disciplined professional with the experience, enthusiasm, and skills to increase business growth and development through market research and analysis, opportunity assessment, generating leads, proposition development, and office management.

BUSINESS DEVELOPMENT

- Worked with Board members to develop strategic plans, by-laws, visions and mission statements for non-profit efforts in Colorado and Tennessee.
- Coordinated integrated marketing programs, including trade shows, seminars and conferences, direct mailings, advertising, and promotion. Sensitive to hearing the voice of the customer/client/student.
- Conducted market research for organizational development, programs and services. Tracked and analyzed data to identify need, program reach, and to increase the productivity of limited resources.
- Impressive creative and technical writing skills, including composing text for brochures, advertisements, and client proposals.
- Successfully developed, managed, and implemented highly effective community programs, the end result of one program being that Colorado enacted into law revised Health curriculum in Colorado public schools. Another result is the Colorado Child Safety Seat Initiative.
- Great success in working with contracts, proposals, and grants as evidenced with the SPECTRA Center in moving this initiative from grass roots to serving eight cities.
- Very effective as a recruiter and also in public relations efforts with the purpose of capturing business growth, promoting business, and to attract a competent work force. Developed Speakers Bureau comprised of pastors, nurses, etc. to speak in public high schools, fundraisers, etc.
- Expert at networking/prospecting skills, confident speaking at engagements, shows, community events, radio interviews, television spots in order to increase sales/client base and to improve public image.

MANAGEMENT

- Achieved revenue growth from \$10K to \$700K, in four years, with the SPECTRA Center non-profit, while expanding services, establishing a larger facility, and keeping overhead low. Developed and maintained budget.
- Supervised/managed staff paid and volunteer of 125.
- Originated all programs and services providing for the population in need, to assist them to raise healthy families.
- Directed the acquisition, installation and maintenance of computer network and designed the software that was written for the needs of a rapidly growing non-profit organization

- Analyzed, critiqued, and forecasted the impact of legislation on organizational goals.
- Developed training curricula and conducted training sessions - 30 hours for volunteer based non-profits in crisis pregnancy counseling and for child advocacy centers in multiple counties.
- Responsible for generating and developing all funding streams and revenue generation in order to meet budgetary requirements.

ADMINISTRATIVE

- Actively support the following committees for the Lincoln Memorial University Duncan School of Law: Faculty Recruitment, Academic Standards, Faculty Development, and Strategic Planning Committees.
- Performed secretarial and administrative services for 11law professors/four deans, 6 attorneys and their paralegals, as the Director of the SPECTRA Center, and in the Travel Planning Division for the President of the United State's Helicopter Squadron.
- Composed written military police reports and standard operating procedures while acting as Desk Sergeant for the Provost Marshall of Henderson Hall/USMC Headquarters Marine base.
- Designed advertising, marketing and marketing collateral, newsletters, E-newsletters, flyers, logos, and web site design for non-profits and community efforts.
- Coordinated multiple projects/events/activities in order to raise funds, celebrate events, or to provide an educational atmosphere in which to teach or to train.
- Computer/office machine proficiency: MS Word, Word Perfect, Time Matters, Excel, Power Point, copiers, scanners, postal programs, notary, etc. Learning Microsoft Project.

EDUCATION

THE UNIVERSITY OF COLORADO AT BOULDER	1991-1994
Bachelor of Science International Relations/Bachelor of Science Political Science	
THE UNITED STATES MARINE CORPS	1986-1990
Military Police Science/Naval Administration/FBI Dignitary Protection	

EXPERIENCE

LINCOLN MEMORIAL UNIVERSITY DUNCAN SCHOOL OF LAW	08/01/10 - Employed
Administrator & Recruiter/Knoxville, TN 37830	
MOSTOLLER, STULBERG, WHITFIELD, AND ALLEN	09/09 – 08/10
Administrative Assistant/Oak Ridge, TN 37830	
CASA TNH	03/08 – 07/09
Recruiter/Trainer/Super – Anderson, Roane, Morgan, and Scott Counties, TN	
OAK RIDGE PUBLIC SCHOOLS	09/05 – 03/08
Substitute Teacher/Oak Ridge, TN	
SPECTRA CENTER	11/97 – 11/04
Director/Northglenn, CO 80260	

COMMUNITY SERVICE

Community Mediator/VORP-1 year Boy Scouts/Girl Scouts of America-16yrs
 Promotion of Arts/Music/Sports among our youth-15 yrs

Victoria Kroeger
3804 Devon Dr.
Knoxville, TN 37918
(865) 591 – 8631

Skills

- Strong oral and written communication skills.
- Detail oriented; adherence to deadlines and confidentiality requirements.
- Creative problem-solving skills.
- Efficient in Microsoft Office, Student Manager, SAP/IRIS, and Datatel.

Employment

LMU, Duncan School of Law, Knoxville, TN

Administrative Assistant to the Faculty, January 2010 – Present

Responsibilities include but not limited to assisting faculty members of the Law School in carrying out their respective duties; assisting the other Assistants as necessary; assist with establishing effective office organizational and management procedures in accordance with University and Law School policies; maintaining records, reports, and other documents that support the criteria for accreditation for the Southern Association of Colleges and Schools (SACS), the Tennessee Board of Law Examiners, and the American Bar Association; maintain accurate and accountable records, establish/maintain program, departmental, and school documents and reports, assisting with course scheduling as needed; organize and assist in data collection/storage for the school, performing general office duties of answering the phone and electronic mail, word processing, spreadsheet creation and maintenance, form design, and filing; maintain adequate inventory of supplies; assisting in the completion of required institutional and program budgeting, assessment, and strategic planning reports necessary for the operation and advancement of the Law School; and other duties as assigned.

UT Professional & Personal Development, Knoxville, TN

Program Resource Specialist, April 2001 – December 2009

Responsibilities included answering phone; assisting students; processing payments; maintaining registration database and client mailing lists; preparing deposits; filing; data entry/processing; and assisting program coordinators in a variety of office duties including but not limited to faculty and student correspondence; making copies; compiling data and creating reports.

UT Distance Education & Independent Study, Knoxville, TN

Call Center Supervisor, November 2000 – April 2001

Supervised and trained employees in a variety of responsibilities including but not limited to assisting students with education requirements; maintaining client mailing lists; student data processing; preparing deposits; and correspondence.

Beth Stubbs, CPA, Knoxville, TN

Childcare Provider & Bookkeeper, 1995 – November 2000

Full-time responsibilities consisted of supervising and maintaining the everyday care of a child from infancy until school-age.

Part-time bookkeeping responsibilities for several small business clients including monthly account reconciliation, accounts payable, accounts receivable, and payroll; data processing; bank deposits; and assisting in tax return preparations.

Education

University of Tennessee Outreach & Continuing Education, Knoxville, TN
Certificate, Paralegal Studies, 2003

University of Tennessee, Knoxville, TN
Bachelor of Science, Psychology, pursuing

Business Analyst

Reports to: Director of Software Development **Department:** Information Services

Classification: Full Time Staff

Division: Finance & Operations

Date: February 27, 2007

Job Summary: The Business Analyst is responsible for a technical and functional knowledge of the Colleague and Benefactor administrative systems. This position works with IS staff and users to configure and implement software for use in the management of processes. Position provides application support including questions on functionality, application issues, and reporting requirements. Primary responsibility for the development of end user reports through various reporting methodologies.

Duties and Responsibilities: *Promote the mission of Lincoln Memorial University to all faculty, staff, students and to the community at large; *promote effective working relationships among faculty, staff and students; *Participate on University committees; *develop a working knowledge of Colleague and Benefactor application modules, including an understanding of WebAdvisor functionality; *create reports through Informer, query builder, Datatel delivered reports, Microsoft Excel, Microsoft Access, Microsoft Word, and any other reporting tools that become the university standard; *assist in communicating and testing Datatel delivered software upgrades and patches; *develop Project Plans for implementation of new features or customizations; *analyze and develop business workflows; *gather and document software requirements; *develop high level functional designs; *develop test plans including creation of test scenarios and test cases; *perform tests of software changes as a result of Datatel delivered updates, changes in functionality, or custom code; *develop software rollout plans; *create technical and end user documentation; *provide end user software training; *act as an expert for issues affecting their application area; *troubleshoot software issues; *complete required institutional, program accreditation, and other reports as necessary for the advancement of University programs, both on campus and at extended campus sites; and *perform other duties as assigned.

Knowledge, Skills, and Abilities: *Strong ability to conceptualize and analyze business solution processes and technology; *full project lifecycle development experience; *strong Customer Service ethic; *effective verbal and written communication skills; *ability to work in a project team environment or independently; *knowledge of relational databases; *ability to extract and analyze data and data reporting requirements; and *ability to independently anticipate and analyze situations.

Qualifications: Required: *Bachelors degree or equivalent work experience; *experience with process analysis methodologies; *experience in creating administrative reports; and *experience in understanding relational data. Preferred: *Bachelor's Degree plus three years of experience in a higher education institution or higher education related

industry; *knowledge of Datatel products, Entrinsik's Informer product, document imaging software, Microsoft Office product suite, and web based applications.

February 25, 2008

Debra Moyers

180 Dyke Road • Sharps Chapel, TN • (865) 278-3268 • Debbie.moyers@yahoo.com

-
- Lincoln Memorial University graduate offering excellent experience as a business analyst.
 - Consistently recognized for skills used to rapidly and cost-effectively resolve challenging software issues.
 - Quickly master new technologies; equally successful in both team and self-directed settings; and knowledgeable of a range of computer systems, languages, tools and testing methodologies.
 - Excellent written and oral communication skills with strong customer service orientation.
-

Education

LINCOLN MEMORIAL UNIVERSITY – Harrogate, TN

B.S. Management and Leadership Studies, December 2010

Experience

Lincoln Memorial University – Harrogate, TN

- **Business Analyst**, (2007 to present) Successfully develop business, functional, and user requirements for technical administrative systems. Implement software solutions to support new initiatives. Develop and implement official reports in compliance with institutional, state and federal reporting requirements. Troubleshoot software support calls and provide resolution. Create procedural documentation in support of new and changed software procedures.

Selected Contributions:

- Developed and implemented a solution to import application information into the Datatel Colleague Enterprise Resource Planning system
- Provide software support for the Datatel Colleague Enterprise Resource Planning system
- Developed interface and provide software support for ID card solution
- Lead team that designed and implemented an on-line registration solution for the University

DeRoyal Industries – Powell, TN

- **Business Analyst**, (2000 to 2007) Served on a project team that implemented multi-million dollar JD Edwards Enterprise Resource Planning system.

Selected Contributions:

- Implemented custom payroll incentive program internationally.
- Created all documentation supporting the manufacturing operation.
- Reduced work in process by one million dollars in Costa Rican operation.

DeRoyal Industries – Powell, TN

- **Administrative Assistant**, (1996 to 2000) Responsible for all aspects of office administration including filing, answering phones, processing mail and creating weekly reports.

DeRoyal Industries – Powell, TN

- **Laborer**, (1991 to 1996) Worked on medical product and supply production assembly line.
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