



**Cyberlaw (Law 434)
Final Exam**

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This exam has 2 questions with a total time limit of 3½ hours. Question 1 (120 minutes) is worth 80% of the final score, and Question 2 (30 minutes) is worth 20% of the final score. You should allocate your time accordingly. The total time limit includes 60 minutes of discretionary time to use for transportation, printing, unforeseen delays or whatever you'd like (but please, not to spew unorganized thoughts!).

This is a "take-home" exam, meaning that you can take the exam anywhere you like. For your convenience, I have reserved Room 318 for using laptops and Room 325 for handwriting exams. I have also reserved the Miller computer lab for the class' exclusive use. However, you are free to take the exam in the library, another classroom or outside the law school.

You must return the exam to me in my office (Room 110) or by email (see below) by noon Central time. www.time.gov provides the official time for the exam. Because I have already given you ample discretionary time for unforeseen problems, THERE IS NO ADDITIONAL GRACE PERIOD—NOT EVEN ONE MINUTE. I DO NOT INTEND TO GRADE LATE EXAMS. NO EXCUSES!

This is an "open book" exam, meaning that you may use any written material you want. However, during the exam, you may not communicate about the exam or your answer with anyone (orally, electronically or otherwise).

If you use a computer:

- You may return your answer to me by delivering a printed copy to me in Room 110 or by email at eric.goldman@marquette.edu. Include page numbers and your exam number on every page of your exam, but do not otherwise include any information that would identify yourself in the exam. If you are concerned that emailing your exam does not sufficiently preserve anonymity, please send it from an account that does not use your name or through an anonymous remailer, or turn in a printed exam.
- If you email me your answer, your answer is not received until your exam is in my inbox *and* I can successfully open and print the file. I use Microsoft Word for Windows 2000. I will reply as promptly as I can to confirm that I can print, in which case my reply email confirms that I have received your exam. However, if you have not promptly received a reply from me, I expect you to take all necessary steps to get your answer to me before the deadline. You can reach me by phone at (414) 288-5232.

- NO TIME EXTENSIONS WILL BE GIVEN DUE TO COMPUTER, EQUIPMENT OR POWER FAILURES, BECAUSE I CANNOT OPEN OR PRINT YOUR FILE, OR BECAUSE OF DIFFICULTIES TRANSMITTING THE FILE VIA THE INTERNET (although I might make special adjustments for widespread power or email failures).
- At the top of each answer, you must tell me how many words are in your answer. I DO NOT INTEND TO GRADE AN ANSWER THAT EXCEEDS THE WORD LIMIT BY EVEN ONE WORD. FAILURE TO INCLUDE A WORD COUNT, OR INACCURATELY REPORTING A WORD COUNT, MAY LEAD TO SIGNIFICANT PENALTIES.

If you are hand-writing your exam, please write legibly! Also, include your exam number on every bluebook and tell me how many bluebooks you are submitting. Hand-written exams are not word-limited and do not require a word count.

I have the following additional thoughts for you:

- I recommend that you spend approximately 1/3 of your allocated time reading the question and outlining a response.
- Some potential efficiency techniques:
 - Bullet points are OK
 - Short citation forms are OK
 - You can use abbreviations if you define them and they are not ambiguous
 - Please quote statutes or cases only as necessary to make your point
- Read each question very carefully. Make sure you answer the questions actually asked.
- While generally your answers should be based on legal principles, it is often appropriate to address other perspectives and concerns.
- If any additional information would be useful in your analysis, indicate what information would be helpful and then state your assumptions in order to proceed with your analysis.

GOOD LUCK AND HAVE A GREAT SUMMER!

Question 1 (120 minutes) [Maximum word limit for computer users: 3,600 words]

Dead Trees For Sale (“DTFS”) sells books online at deadtrees.com. DTFS has learned that it can increase sales by calling consumer attention to noteworthy books using lists of most popular books, books that have won awards, books recommended by famous celebrities, etc.

To quickly and cheaply increase the presence of such content on the deadtrees.com site, DTFS will allow some individuals to become “Superusers.” Superusers will have the power to upload whatever content they want to the deadtrees.com site for all of deadtrees.com’s users to see, although Superusers will be asked to help generate lists of noteworthy books. To become a Superuser, an individual must enter into a written contract with DTFS that says, among other things, that DTFS may terminate the individual’s status as a Superuser at any time for any reason. To make sure the content can be properly integrated into the website, DTFS provides an online content submission form that requires Superusers to upload content by responding to a series of structured questions. A DTFS employee acts as a liaison to Superusers, meaning the employee selects Superusers, negotiates and administers their contracts and answers their questions directly; but no employee reviews the content Superusers submit. Superusers are paid \$10 per week for their efforts. Note that, legally, Superusers are independent contractors and not employees (so do not discuss any issues related to employee v. independent contractor determinations).

The Nyet Best-Seller List (the “Nyet List”), which the Nyet newspaper publishes every week on its website, is a well-respected list that influences many buyers in their book purchasing decisions. Each week, the Nyet List determines and ranks the 10 top-selling books in several categories (hardcover nonfiction, paperback fiction, etc.) using a proprietary methodology. Each Nyet web page contains, at the page’s bottom, a hypertext link entitled “Important Legal Terms.” If an individual clicks on that link, the resulting page includes the following language:

Materials on this site may not be reproduced, distributed, transmitted, displayed, published or broadcast without Nyet’s prior written permission. However, you may download material from the site for noncommercial uses.

DTFS does not instruct Superusers to post the Nyet List, but DTFS anticipates that some Superuser will choose to do so anyway. In fact, a Superuser, Pat Smith, visits the Nyet website every week, makes an electronic copy of the Nyet List, and uses the online submission form to upload it to deadtrees.com within hours after the Nyet List has been initially posted to Nyet’s website.

If you were Pat, what legal risks would you be worried about? If you were DTFS, what legal risks would you be worried about? As counsel to DTFS, what steps would you recommend that DTFS take to minimize those risks?

END OF QUESTION 1

Question 2 (30 minutes) [Maximum word limit for computer users: 900 words]

Your client is Epitime. Epitime's website provides product and pricing information to online shoppers, along with links to retailers who actually sell the items. So, for example, an Epitime customer interested in buying a Sony Cybershot digital camera would see a list of online retailers selling the camera and the prices charged by each retailer, and then could follow a link to a retailer's site to make a purchase.

To provide a better user experience, Epitime would like to present its users with tax and shipping costs charged by each retailer so that a user will have a more accurate estimate of the real price prior to leaving Epitime's website. Epitime will ask each user for their zip code, which Epitime will use to compute and display tax and shipping for that user. Epitime will store each zip code in a user's cookie for use in future visits. Epitime otherwise does not collect any personal information from users.

Should Epitime have any legal concerns about collecting zip codes?

END OF QUESTION TWO

END OF EXAM