



4-DIGIT BLIND GRADING ID: _____ COURSE: Intellectual Property PROFESSOR: Goldman

YOU MUST RETURN THESE EXAM QUESTIONS AT THE EXAM'S END.
THE STANDARD EXAM RULES GOVERN THIS EXAMINATION.

Intellectual Property
Professor Eric Goldman
Essay

December 14, 2010
3 ½ hours
Open Book/Notes/Internet

Professor's Instructions

Question 1 is worth 75% of the total grade, and Question 2 is worth 25%. You should allocate your time accordingly.

This is an "open book" exam, so 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 type your answer, at the beginning of each question's answer, tell me the number of words in your answer to each question. I DO NOT INTEND TO GRADE AN ANSWER THAT EXCEEDS THE WORD LIMIT BY EVEN ONE WORD. OMITTING OR INACCURATELY REPORTING A WORD COUNT MAY LEAD TO SIGNIFICANT PENALTIES. If you handwrite your answer, no word count is required.

Some additional thoughts for you:

- All relevant parties are, and all relevant actions take place, in California. Do not discuss any statutes of limitation.
- Spend adequate time reading the question and outlining a response.
- Prioritize your discussion. Extensive discussion of irrelevant issues may hurt your score.
- Read each question very carefully. Answer the questions actually asked. Do not answer questions that I did not ask.
- Some potential efficiency techniques:
 - Bullet points, short citation forms and unambiguous abbreviations are OK.
 - Please quote statutes or cases only as necessary to make your point.
 - If any additional information would be useful in your analysis, indicate what information would be helpful (and why it would help) and then state your assumptions in order to proceed with your analysis.
 - While generally your answer should be based on legal principles, you are also welcome to address other perspectives and concerns.
- The word count cap is a maximum, not a target!

GOOD LUCK AND HAPPY HOLIDAYS!



STOP! DO NOT TURN THIS PAGE UNTIL THE PROCTOR TELLS YOU TO DO SO.

Question #1 (maximum of 1,800 words for typed answers)

Jessie, a full-time student, works occasional shifts as a bartender at the Royal Oak Tavern. Jessie likes to experiment with innovative cocktail mixes. In November 2010, she creates a new cocktail consisting of:

1 ounce vodka	2 tablespoons maple syrup
1 strip of bacon, cut into small pieces	1/8 teaspoon cardamom
10 ice cubes	

She microwaves the bacon for 15 seconds to make it a little rubbery, combines the ingredients in a blender, runs the blender briefly, pours the coarsely blended concoction into a small trough-shaped glass, and tops it off with some bacon bits and a pink swizzle stick. The microwave and blender are located in a tiny kitchen alcove (only one person at a time can fit) out of customers' sight, and she prepares the cocktail there. Jessie calls the cocktail "Squeal My Thunder."

Due to Americans' bacon obsession, the cocktail is an instant hit, and Jessie finds she gets unusually large tips from customers who order the cocktail. As a result, Jessie tells her school peers about the cocktail; she announces the cocktail's availability on her Facebook page and puts promotional flyers in her classmates' mail folders. Soon, patrons start asking other local bars for Squeal My Thunder, but the other bars can't serve it because they don't know how to make it.

Molly, sole proprietor of the Danish Hen Bar, is frustrated that she cannot serve customer requests for Squeal My Thunder. Therefore, Molly contacts Damien, another bartender at the Royal Oak, and asks him how to make the cocktail. Jessie has not told anyone how to make the cocktail, but Damien independently deduced the cocktail's ingredients and approximate proportions. However, he cannot figure out how the cocktail gets its unusual texture. One night, Damien follows Jessie to the alcove and surreptitiously watches her prepare the cocktail. Damien then relays the details to Molly. Shortly thereafter, the Danish Hen adds "Squeal My Thunder" to its cocktail menu and starts selling the cocktail to its customers.

A few days later, Jessie seeks your legal advice regarding how she can use trade secrets, patents and trademarks against Molly. She also wants to let other bars throughout the nation offer the cocktail if they pay her a licensing fee, so she asks what steps she might take to protect her interests in Squeal My Thunder.

Assume (1) Jessie owns 100% of the intellectual property rights (if any) in Squeal My Thunder, and (2) Squeal My Thunder constitutes patentable subject matter (but it may or may not satisfy other patentability requirements). Don't discuss (a) the Danish Hen as legally separate from Molly, (b) Damien's liability, or (c) copyrights, publicity rights or franchises. If any *Sleekcraft* factors require you to make overly speculative assumptions, simply note that in your answer and consider those factors as neutral to the analysis.

END OF QUESTION 1

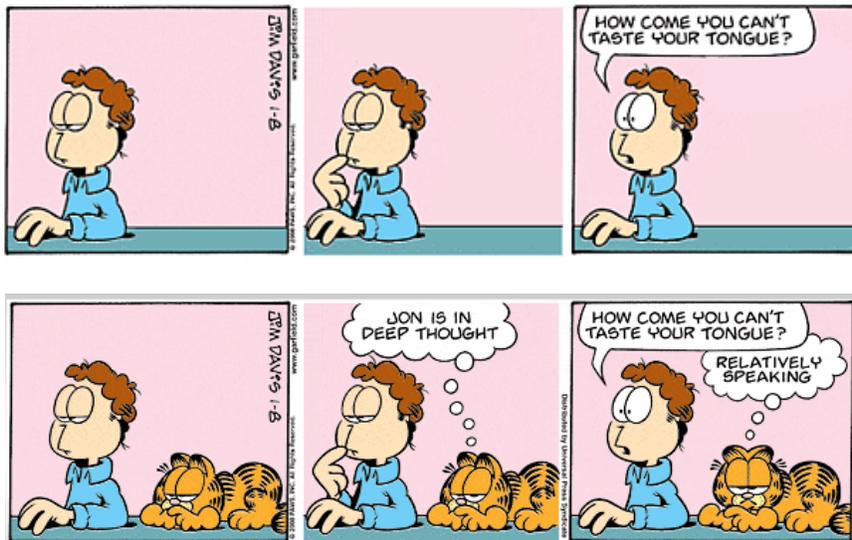
Question #2 (maximum of 600 words for typed answers)

The comic strip Garfield is a popular fictional comic strip depicting the interactions between Garfield, a sarcastic overweight orange cat, and his owner Jon Arbuckle. Assume Paws Inc. owns all copyrights associated with Garfield and registers all copyrights prior to publication.

Dan Walsh runs a website called “Garfield Minus Garfield,” which publishes over 1,000 modified versions of the comic strip where Walsh has eliminated all depictions and statements of Garfield the cat from the original strip, making it appear like Jon Arbuckle is talking to himself. Walsh describes his website as:

dedicated to removing Garfield from the Garfield comic strips in order to reveal the existential angst of a certain young Mr. Jon Arbuckle. It is a journey deep into the mind of an isolated young everyman as he fights a losing battle against loneliness and depression in a quiet American suburb.

A sample Walsh-modified strip from the website (and below it, the original):



Assume Walsh does not have any permissions from Paws Inc. and that his website displays advertising. Discuss Walsh’s potential copyright exposure to Paws Inc. for the modified comic strips he publishes on his website. Do not discuss criminal infringement, secondary infringement (or 17 USC 512), moral rights, anti-circumvention (17 USC 1201) or 17 USC 1202. Do not discuss any non-copyright claims.

Note: if you look online, you’ll see that Walsh has published a “Garfield Minus Garfield” book. Please don’t discuss it.

END OF QUESTION 2
END OF EXAM