



Intellectual Property (Law 388) Final Exam
Eric Goldman • Fall 2011

This exam consists of one question worth 100% of the final score. You may use up to 2,500 words for your answer. This exam consists of two pages plus a one page exhibit.

This is an “open book” exam. You may use any written material you want, but during the exam, you may not communicate about the exam or your answer with anyone (orally, electronically or otherwise). You don’t need to do outside research, and such research is unlikely to affect your grade.

Type your answer. Include page numbers and your 4 digit blind grade ID number (not your Access card number) on every page of your answer, but do not otherwise include any information that would identify yourself in the answer. At the beginning of your answer, tell me the number of words in your answer. **I DO NOT INTEND TO GRADE AN ANSWER THAT EXCEEDS THE WORD LIMIT BY EVEN ONE WORD. OMITTING OR INACCURATELY REPORTING YOUR WORD COUNT MAY LEAD TO SIGNIFICANT PENALTIES.** I’ll ignore any material you submit other than your word-counted answers.

This is a take-home exam. You have a maximum of 24 hours from the time you check-out the exam to return your exam to the Faculty Support Office (FSO) in Bergin 214. The FSO time-stamp is the dispositive record of your check-out and check-in times. **IF THE TIME STAMPS ARE MORE THAN 24 HOURS APART, YOU WILL FAIL THE COURSE. THERE IS NO EXTRA GRACE PERIOD. NO EXCUSES!** You can check-out and check-in the exam any time the FSO is open (normally 8:30-5) between Nov. 30-Dec. 2 and Dec. 5-9. However, if you check-out the exam on Dec. 2 or Dec. 9, your exam must be checked-in to the FSO that same day before the FSO closes. If the FSO is unexpectedly closed during its normal hours, follow the instructions on the FSO door. Consider the law of diminishing marginal returns in allocating your time.

Some additional thoughts for you:

- All relevant parties are, and all relevant actions take place, in California. Do not discuss any statutes of limitation.
- Prioritize your discussion!
- Read the question very carefully. Answer the questions actually asked. Do not answer questions I didn’t ask.
- It’s fine to use bullet points, short citation forms and unambiguous abbreviations. Please quote statutes or cases only as necessary to make your point. It’s fine to use IRAC/CRAC, but it’s also fine to use any methodology that effectively communicates your points.
- If any additional information would help your analysis, indicate what information you’d like and why it would help, and then state your assumptions and proceed with your analysis.
- While generally your answer should be based on legal principles, you are welcome to address other perspectives and concerns.
- The word count cap is a maximum, not a target!

Foodlogs publishes restaurant logbooks, which are pre-printed books that help restaurant managers track and record information about day-to-day operations. Exhibit A shows a sample Foodlogs logbook page, which elicits information about needed equipment maintenance and repair, items that need to be reordered, incoming phone calls, injuries/accidents, lost & found and other topics. Foodlogs' logbooks are known in the industry for including additional helpful tidbits, such as calendars, practice tips and historical trivia.

Among other benefits, restaurant logbooks help managers share information with each other. For example, the morning manager can use the logbook to alert the afternoon manager about item shortages or malfunctioning equipment. The logbook's form and questions also can encourage managers to leave more useful notes than if they used blank paper.

Restaurants typically use different logbooks for different areas in the restaurant, such as the kitchen or the bar. The logbook covers are color-coded to help managers quickly distinguish them. Foodlogs' reception desk logbook has a dark green cover, the kitchen logbook a fuchsia cover, and the bar logbook a bright yellow cover.

Sweet Soybeans (SS), a California vegan restaurant, initially purchased off-the-shelf restaurant logbooks from Foodlogs. Sweet Soybeans soon realized that customized logbooks would be more helpful. Therefore, it asked Foodlogs to develop and print logbooks specific to Sweet Soybeans' business.

At Sweet Soybeans' request, for a few days, Foodlogs employees watched Sweet Soybeans' managers doing their daily job in the manager's office, the front reception area, the kitchen, the stockroom and elsewhere. Based on these observations, Foodlogs created custom logbooks for Sweet Soybeans. The changes included reordering the logbooks' categories, adding some new data fields (like menu items that diners believe contain dairy or eggs), and integrating short reminders about Sweet Soybeans' corporate policies into the forms.

1) Discuss how (if at all) Foodlogs could use patents, copyrights and trademarks to hinder competition from rival logbook publishers.

2) Sweet Soybeans wants to (1) preserve and enhance its competitive advantages over other restaurants, (2) retain the freedom to operate its business without restrictions from logbook providers, and (3) retain the ability to ask rival publishers to reprint its logbooks if Foodlogs becomes too expensive. What intellectual property issues should Sweet Soybeans address in its written contract with Foodlogs to develop and print the customized logbooks?

Notes for both questions: Do not address publicity rights. Apply either the existing or new rules about priority and novelty (just tell me which one you're applying).

Exhibit A

Thu **11** November
Veterans Day

OCTOBER	NOVEMBER	DECEMBER
Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30	Su Mo Tu We Th Fr Sa 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30

FOOD SAFETY TIP
Storage - Use batch preparation for protection. Work one item in small batches. When it is finished, put it away.

GUEST SERVICE TIP
If you run out of an item, offer a related selection including a detailed description of that item.

TODAY IN HISTORY
1918 Armistice Day-WW I ends (at 11 AM on Western Front)

TOMORROW'S SCHEDULE CHECKED FOR CHANGES/OPPORTUNITIES

SHIFT AT A GLANCE <i>High Level Overview Of What Happened Today</i>													
AM		PM		AM FOOD		AM SVC BAR		DAY TOTAL					
SHIFT	THAWED UP	THAWED DOWN	THAWED UP	THAWED DOWN	AM BAR FOOD	AM BAR	AM SVC BAR	WTD TOTAL					
COOK TIMES	:	:	:	:	PM FOOD	PM SVC BAR	PM BAR	WTD TOTAL					
WEATHER					PM BAR FOOD	PM BAR	BAR TOTAL	AM GUEST #	PM GUEST #				
					FOOD TOTAL								
TEMP	FREEZER 1	FREEZER 2	FREEZER 3	WALKIN 1	WALKIN 2	WALKIN 3	WALKIN 4	LINE 1	LINE 2	LINE 3	LINE 4	LINE 5	BAR 1
CHECK	AM	PM	AM	PM	AM	PM	AM	PM	AM	PM	AM	PM	AM

REPAIR & MAINTENANCE <i>Repairs, Scheduled Maintenance, Parts Ordered, etc.</i>			
ITEM	REPAIR COMPANY	PHONE #	CONTACTED? YES NO
DESCRIPTION and RESULT			COMPLETED <input type="checkbox"/>
ITEM	REPAIR COMPANY	PHONE #	CONTACTED? YES NO
DESCRIPTION and RESULT			COMPLETED <input type="checkbox"/>

MANAGER LOG COMBO FORMAT
2 PAGES PER DAY
8.5" x 14"

FOOD / BEV / SUPPLY <i>To Be Ordered, 26 Items, Vendor Issues, etc.</i>			
ITEM	SUPPLIER	PHONE #	CONTACTED? YES NO
DESCRIPTION and RESULT			COMPLETED <input type="checkbox"/>
ITEM	SUPPLIER	PHONE #	CONTACTED? YES NO
DESCRIPTION and RESULT			COMPLETED <input type="checkbox"/>

VOICEMAIL / EMAIL / MEMO <i>Take Commercials/Info, Policy Changes, etc.</i>						
FROM	DESCRIPTION	SM	PM	SVC	DRY	MO 1
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

INJURY / ACCIDENT <i>Workers Comp, Guest Incidents, Insurance Issues, etc.</i>			
NAME	TYPE	PHONE #	MEDICAL ATTENTION NEEDED? YES NO
DESCRIPTION and RESULT	EMPLOYEE CUSTOMER		INSURANCE CONTACTED? <input type="checkbox"/>
NAME	TYPE	PHONE #	MEDICAL ATTENTION NEEDED? YES NO
DESCRIPTION and RESULT	EMPLOYEE CUSTOMER		INSURANCE CONTACTED? <input type="checkbox"/>

LOST / FOUND <i>Items Lost, Items Turned In, etc.</i>			
ITEM DESCRIPTION			CLAIMED YES NO
ITEM DESCRIPTION			CLAIMED YES NO