



Intellectual Property (Law 388) Final Exam
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This exam has 1 question worth 100% of your final exam grade. You may use up to 2,500 words. This exam consists of 3 pages total.

This is an “open book” exam. You may review any written materials you want, but during your exam, you may not communicate about the exam or your answer with anyone (orally, electronically or otherwise), other than law school staff regarding exam administration. You don’t need to do outside research, and such research is unlikely to affect your grade. However, if you aren’t sure exactly what a statute says, don’t rely on summaries from class—read the statute!

This is a take-home exam. Download the exam from www.examssoft.com/sculaw. You must electronically return your answer, in an ExamSoft-supported format, there. You can upload your answer only once, so don’t submit it until you are completely finished. The earliest time you may download the exam is April 28, 10 am Pacific. The latest time you may upload your answer (provided it’s less than 73 hours after your exam download timestamp) is May 14, 2015, noon Pacific. ExamSoft’s timestamps are irrefutable evidence of your download and upload times. **IF YOUR EXAM DOWNLOAD AND ANSWER UPLOAD ARE MORE THAN 73 HOURS APART, EVEN BY ONE MINUTE, YOU WILL FAIL THE COURSE. THERE IS NO EXTRA GRACE PERIOD. NO EXCUSES!** Don’t gamble by waiting until the last minute to upload your answer.

Include page numbers and your 4 digit blind grade ID number, but don’t otherwise include any information that would identify yourself in your answer or its file name. At the top of your answers, tell me how many words that answer has. **I DON’T PLAN TO GRADE AN ANSWER THAT EXCEEDS THE WORD LIMIT BY EVEN ONE WORD. OMITTING OR MISSTATING YOUR WORD COUNT MAY INCUR SIGNIFICANT PENALTIES.**

Some additional thoughts for you:

- All parties are, and all relevant actions take place, in California. All parties are over the age of majority. Don’t discuss any statutes of limitation.
- Read each question very carefully. Answer the questions actually asked. Don’t answer questions I didn’t ask.
- Allocate your word count cap smartly. You score most points from issue-spotting and applying the correct law to the facts. Organize and prioritize your answer accordingly. It’s OK to use bullet points, short citation forms and unambiguous abbreviations. Please quote statutes or cases only as needed to make your point. It’s OK to use IRAC/CRAC, but it’s also OK to use any methodology that effectively communicates your points.
- If 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.

GOOD LUCK ON THE EXAM AND HAVE A GREAT SUMMER!

Karen worked as a full-time employee at Stretch, a company that manufactured custom T-shirts using designs supplied by their customers. Karen signed a written employment agreement with Stretch that included the following provisions (among others):

- Stretch owns all intellectual property rights created by Karen while she is employed by Stretch.
- Karen may not use or disclose any of Stretch’s trade secrets.
- Karen may not work for any “customized printer” businesses for 1 year following her departure from Stretch.

During her leisure time, Karen discovered the Jesus toast, where a piece of cheese toast remarkably displayed Jesus’ image. See, e.g., <http://news.bbc.co.uk/2/hi/4034787.stm>. Marveling at the massive consumer response to the Jesus toast, Karen realized that her knowledge about printing T-shirts could apply to printing images on toast. Karen also noted that people like seeing faces on their food, such as how baristas use stencils to create faces on coffee foam. Finally, drawing inspiration from our society’s “selfie” obsession, Karen imagined that people wouldn’t only want Jesus on their toast; they would also want to print images of themselves on their toast.

While still a Stretch employee, Karen worked in her garage on weekends and holidays to build a “Selfie Toaster” prototype. She bought an off-the-shelf toaster and set out to customize it. Some of the major ways she modified the conventional toaster:

- She developed a heating element that could create the desired pattern on toast.
- She developed a system for swapping heating elements so that consumers could easily change the image printed on the toast.
- She printed the original source image on the toaster’s exterior to personalize the toaster and preview what the toast would look like.

See a photo of the prototype:



Satisfied with her prototype, Karen quit Stretch and immediately commercialized the Selfie Toaster. The Selfie Toaster became a big success.

Whitney owns a restaurant. She realized the toaster could print images other than selfies, and she thought her customers might enjoy fun new menu options. Whitney downloaded two images from the Internet without obtaining any permissions. The first image depicts Louis Vuitton's "LV" logo (see image on the right); the second is a photo of The Three Stooges (the photo isn't in the public domain, and assume the Three Stooges do not have any trademarks). Whitney ordered two toasters and submitted the two images to Karen. Karen manufactured the customized heating elements depicting the images, printed each image on the side of a toaster and then delivered the two customized toasters to Whitney. Whitney then offered toast depicting the LV and Three Stooges images on the restaurant's menu under the punny names "Toasted Vuiton" and "Moe, Larry and Crusty."¹



Question 1: Discuss the principal issues raised by Karen's departure from Stretch to commercialize the Selfie Toaster.

Question 2: Based solely on the facts contained in this exam and your general knowledge (please don't do any outside research), discuss if, at the time she first starts selling it, you think Karen can obtain patent or trade dress protection for one or more aspects of the Selfie Toaster.

Question 3: Does Whitney's offering and sale of the customized toast infringe any IP rights? Don't discuss patents or trade secrets. To the extent Whitney infringes, also discuss Karen's potential liability for that activity.

For all 3 questions: Don't discuss 17 USC 512, 17 USC 1201 or 1202, moral rights, hot news, design patents or contributory/vicarious dilution. Apply the AIA as it is now in effect.

¹ The Three Stooges lineup went through various configurations, but the most famous lineup consisted of Moe, Larry and Curly.