



Internet Law (Law 793) Final Exam
Eric Goldman • Fall 2014

This exam has 1 question. Your answer may use up to 2,750 words.

This is an “open book” exam. You may use 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 Dec. 3, 2014, 10 am Pacific. The latest time you may upload your answer (provided it’s less than 73 hours after your exam download timestamp) is Dec. 17, 2014, noon Pacific. ExamSoft’s timestamps are irrefutable evidence of your download and upload times. **IF YOUR EXAM DOWNLOAD AND YOUR 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. Make sure to confirm that your answer was successfully uploaded to Examsoft.

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 answer, tell me how many words your 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 relevant parties are, and all relevant actions take place, in the United States. If we discussed a California statute in class, you may use it as an exemplar of state laws even if you don’t know if any parties are in California. Don’t discuss any statutes of limitation.
- Read the 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 and efficiently 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 WINTER BREAK!

Twitter lets registered users publish posts, called “tweets,” of up to 140 characters. Other registered users can “follow” a user, in which case the followed user’s tweets appear in the follower’s Twitter newsfeed. In addition, Twitter causes registered users to automatically “follow” other accounts that Twitter thinks might be interesting (users can subsequently unfollow those accounts). Unregistered users can read a user’s tweets by visiting the user’s profile page (for example, you can see my tweets at <https://twitter.com/ericgoldman>).

[Note: most of the facts about Twitter recounted in this exam reflect current Twitter practices. However, to the extent these facts vary from reality, please use this exam’s facts instead.]

Christine Jacko was Chief Public Relations Officer for Poodle, one of the 50 largest companies in the United States. In addition, she regularly gave motivational talks as a side business, so her name has achieved secondary meaning for her speaking services.

Christine maintained a personal Twitter account @christinejacko9. Moments before boarding a long (and Internet-less) flight to Cape Town, South Africa, she posted the following tweet to Twitter:

Going to Africa. Hope I don’t get AIDS. Just kidding. I’m white!

This tweet implies that visitors to Africa face a heightened risk of contracting AIDS; it also implies that “white” people have some advantage over people of color in avoiding AIDS; and it could further imply that people of color are more likely to engage in practices that contribute to the spread of AIDS. Although Christine intended the tweet as an edgy joke, the racial and possible socio-economic implications of her tweet nevertheless made it ill-advised, especially for a high-level executive of a major company—and especially for someone who should understand public relations.

The negative reaction to Christine’s tweet was immediate and severe. Instantly, some Twitter users started speculating how quickly Poodle would fire Christine for the tweet. Twitter users also pointed out that Christine, who wouldn’t have Internet access during her long flight, was probably unaware that her career was being destroyed as she was relaxing on the plane. As a result, Twitter users started adding the hashtag #HasChristineLandedYet to their tweets, speculating what would happen when Christine arrived at her destination and realized that she’d ignited a controversy across the globe. (A “hashtag” makes it easy to search in Twitter for other tweets containing the identical phrase).

#HasChristineLandedYet quickly became one of the most popular hashtags on Twitter (what Twitter calls a “trending” hashtag).

GoGeaux provides Wi-Fi services on airplanes. It purchased a “promoted tweet” from Twitter, which allowed GoGeaux to prominently display the following tweet (as an ad) in conjunction with other tweets shown for a Twitter search for the keywords #HasChristineLandedYet and #ChristineJacko:

Next time you tweet something stupid before you take off, make sure your flight has @GoGeaux! #ChristineJacko #HasChristineLandedYet

Beth is a Twitter user with no connection to Christine. Beth registered the domain name christinejacko.com, where she displayed a button that would direct donations to AID(S)Africa, a charity fighting AIDS in Africa (a non-profit organization that Beth has no other connection with). Beth posted a tweet:

You can help fight AIDS in Africa by visiting christinejacko.com #HasChristineLandedYet

While Christine was still in the air, Beth received an email from a marketing company asking her if she would be willing to sell the christinejacko.com domain name. Beth replied: “Not right now but maybe later if the price is right.”

William, Christine’s ex-boyfriend, posted two tweets. The first tweet said:

Christine Jacko has been a racist for years #HasChristineLandedYet

and included a link to a publicly available blog post that Christine wrote in college expressing support for more stringent immigration restrictions. The second tweet said:

Stolen images of Christine Jacko nude!!! #HasChristineLandedYet

and included a link to a photo William uploaded to Twitter of a nude selfie that Christine texted him while they were dating. Twitter has an automated filter to screen out pornographic images, but the filter failed to detect this photo. 416 other Twitter users “retweeted” William’s second tweet, meaning that those individuals reposted the tweet on their profile page and shared it with their followers. In addition, Twitter’s internal search function automatically sorts tweets based, in part, on their popularity. As a result, searchers for the keyword #HasChristineLandedYet saw William’s “stolen images” tweet listed as the first search result.

While Christine was on the plane, her friend Rebecca noticed William’s posting of the selfie photo. Rebecca emailed Twitter’s customer support email address and informed Twitter that the selfie should not be published on Twitter. Twitter Support sent an auto-reply to Rebecca saying that it got her inquiry and would investigate the matter, but Twitter had not done anything about Rebecca’s inquiry before Christine deleted her account.

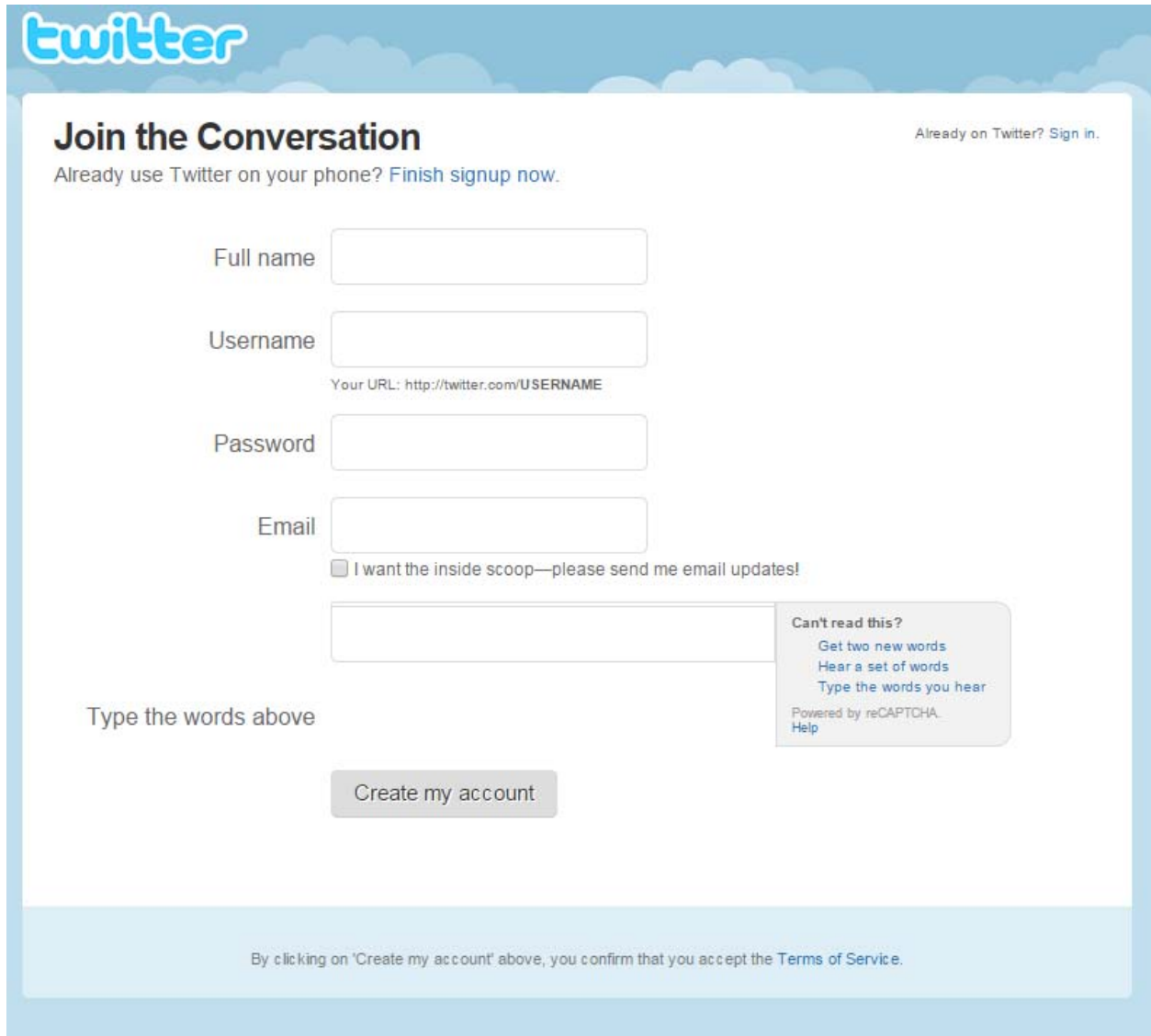
Sarah, a public relations professional at another company, sent a “direct message” to the Twitter account for Poodle’s human resource executive, saying:

Dump Christine and hire someone who actually understands public relations...like me!

Sarah’s direct message included a link to Sarah’s publicly posted resume. (A Twitter “direct message” is a tweet that can be seen only by a specified recipient. It shows up in the recipient’s “messages” tab).

Upon landing in Cape Town, Christine immediately deleted her Twitter account and returned to her home in the United States. Nevertheless, the next day, Poodle fired her (it did not hire Sarah). In addition, clients stopped hiring Christine to give motivational speeches.

All registered Twitter users must navigate through the following page:



The screenshot shows the Twitter registration page titled "Join the Conversation". At the top right, it says "Already on Twitter? Sign in." Below the title, it asks "Already use Twitter on your phone? Finish signup now." The form includes fields for "Full name", "Username", "Password", and "Email". Below the "Email" field is a checkbox labeled "I want the inside scoop—please send me email updates!". To the right of the form is a reCAPTCHA widget with the text "Can't read this?" and three options: "Get two new words", "Hear a set of words", and "Type the words you hear". Below the widget, it says "Powered by reCAPTCHA" and "Help". At the bottom of the form is a "Create my account" button. At the very bottom of the page, a footer states: "By clicking on 'Create my account' above, you confirm that you accept the Terms of Service."

[Note: “type the words above” refers to a captcha that didn’t appear in this screenshot].

Twitter’s Terms of Service say that users may not engage in “illegal” behavior or “spamming” or otherwise “abuse, harass, threaten, impersonate or intimidate other Twitter users.” The Terms of Service also say that repeat infringers will be terminated. The Terms of Service also say:

We reserve the right to alter these Terms of Service at any time. If the alterations constitute a material change to the Terms of Service, we will notify you via internet mail according to the preference expressed on your account. What constitutes a “material change” will be determined at our sole discretion, in good faith and using common sense and reasonable judgment.

Twitter has never attempted to amend its Terms of Service.

Discuss Christine’s potential legal claims, if any, against GoGeaux, Beth, William and Twitter. If you think Christine should pursue additional defendants, feel free to discuss those claims as well. Also, discuss Twitter’s potential legal claims, if any, against William and Sarah.

Don’t discuss jurisdiction, 17 USC 1201 (anti-circumvention) or 1202 (copyright management information), trademark dilution, anti-SLAPP or defamation retraction statutes, or any criminal laws (except to the extent Christine or Twitter can bring civil claims under them).