



## Internet Law (Law 793) Final Exam

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This exam has 1 question. Your answer may contain up to 2,800 words (including footnotes, but please don't use footnotes). Please use a font size that is kind to my aging eyes.

This is an “open book” exam. You may use any written materials you want. However, during the exam period, 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](http://www.examssoft.com/sculaw) and upload your answer there as a Word document. The earliest you may download the exam is Nov. 28, 2018, 10 am Pacific. Your upload must be less than 73 hours from your download. If it's within your 73 hour window, the latest you may upload your answer is Dec. 14, 2018, noon Pacific. Exemplify'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. Confirm that your answer successfully uploaded to Exemplify.

Your Word file name should be your blind ID and the course title. In the file itself, include page numbers and your 4 digit blind grade ID number, but don't include any other information in your answer or its file name that would identify you. At the top of your answer, tell me how many words your answer contains. **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:

- Unless otherwise specified, all relevant parties are adults.
- 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 the parties are not in California. Don't discuss any statutes of limitation.
- Only address topics we covered this semester.
- Read the questions very carefully. Answer the questions actually asked. Don't answer questions I didn't ask.
- Allocate your word count smartly. You score most points from issue-spotting and applying the 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 I'm also OK with any method that effectively and efficiently communicates your points.

- If additional information would help your analysis, explain what information you'd like and why it would help.
- 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!

Amanda and Charlie are in a romantic relationship and live together in Nevada. Charlie also simultaneously has an ongoing romantic affair with Brittney Smith, who lives in California. Amanda initially did not know about Charlie's affair with Brittney.

Brittney took a selfie photo wearing lingerie in a sexually provocative pose featuring a peach and an eggplant (the "Emoji Selfie"). The peach/eggplant were an inside joke; Charlie and Brittney routinely sent messages to each other using those emojis for their well-known sexual connotations. The Emoji Selfie did not have any nudity and isn't obscene in any jurisdiction. However, reasonable viewers would deem the Emoji Selfie sexually suggestive.

Brittney transferred the Emoji Selfie to Charlie on a flash drive. With Brittney's consent, Charlie loaded it onto his laptop hard drive.

Eventually, Brittney feared that Amanda would discover the Emoji Selfie on Charlie's laptop. At Brittney's request, Charlie reformatted the laptop's hard drive to permanently erase all files on it. After the reformatting, Charlie let Amanda use the laptop.

Unfortunately, the reformatting didn't work properly, and Charlie didn't realize this. Amanda quickly discovered the Emoji Selfie on the laptop and deduced that Brittney and Charlie were having an affair.

SweetDads is an online service that matches sugar daddies and sugar babies. "Sugar daddies" are wealthy men who pay younger women ("sugar babies") for the opportunity to date them. A sugar relationship is not inherently illegal; a person may legally pay another person to spend time with him/her. However, many sugar daddies expect sex, and many sugar babies expect to provide sex, as part of the payment, so the line between sugar relationships and commercial sex\* is often not clear.

Using SweetDads' profile creation forms that include various pull-down menus, Amanda created a SweetDads "sugar baby" profile for Brittney. To do so, Amanda uploaded the Emoji Selfie to SweetDads' servers and published the Emoji Selfie, Brittney's full name, and Brittney's cellphone number in the profile. SweetDads also lets profile creators write a narrative. In the narrative, Amanda wrote various statements that implied that Brittney would engage in commercial sex, such as "2 hours 200 🌹🌹🌹 / Overnight 500 🌹🌹🌹" (commercial sex ads frequently use the rose emoji as a synonym for dollars) and "the more you pay, the more you get." Amanda also wrote in the narrative that Brittney was 17 years old, even though Brittney is an adult. Amanda paid SweetDads \$25 to publish the profile.

SweetDads has a half-dozen employees who review user profiles after the profiles have been published. The employees only look for profiles that might promote sex trafficking victims; those profiles are promptly removed. The employees are instructed to ignore any other profile problems they might notice while doing their reviews. No employee had gotten around to reviewing Brittney's profile within the first 72 hours after its posting. A cursory perusal of

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\* Nomenclature note: I use the term "commercial sex" as a synonym for "prostitution."

SweetDads would reveal hundreds of profiles with double-entendres and codewords commonly used to promote commercial sex.

SweetDads deploys automated filters that block all uploaded photos that are identical to (1) photos in a government-supplied database of previously confirmed child pornographic photos, and (2) photos previously posted to SweetDads as profile photos. Because the Emoji Selfie didn't meet either criterion, the filter didn't block it.

SweetDads deploys various automated tools to highlight member profiles so they receive greater attention from other members, including categories that promote "new" and "hot" profiles. The automated tools promoted the fake Brittney profile in both categories.

The fake SweetDads profile predictably caused Brittney to receive hundreds of unwanted phone calls within the first 24 hours of posting. Assume that all applicable legal doctrines would hold Amanda responsible for these phone calls as if she had made them herself. The high volume caused Brittney to overlook several calls from prospective psychiatric clients, pay extra to store so many voicemails, and suffer substantial emotional distress.

Brittney works as an independent licensed psychiatrist. She's well known among doctors across the nation, and she has run some nationally broadcast "infomercials" promoting various self-improvement resources she's offered under her name. She has a valid federally registered trademark in her name.

To promote the fake Brittney profile at SweetDads, Amanda purchased keyword ads at Google triggered by the search phrase "Brittney Smith." Amanda configured the ad buy so that the ads would display only when Google believes the searchers are in California. The ad copy read:

Dr. Brittney Smith, psychiatrist I offer a wide range of services [link to Brittney's fake SweetDads profile URL]
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In the first 72 hours after posting, about 1,000 people saw the ad, and 8 people clicked on the ad to visit the fake profile's URL.

Within 24 hours after the SweetDads profile was published, Brittney emailed SweetDads informing them that the profile was fake and asking for its removal. Upon receipt of the email, a SweetDads employee immediately called Brittney. In their phone call, the SweetDads employee told Brittney that the profile would be promptly suspended from public view. However, after 72 hours, the profile was still not suspended.

Before Brittney and the SweetDads employee spoke on the phone, SweetDads had not designated an agent at the U.S. Copyright Office for receipt of notices of claimed copyright infringement. SweetDads completed the agent designation with the Copyright Office a few hours after that phone call.

To create a SweetDads account, Amanda completed this form:

# 100% Free Signup

MEET WEALTHY & SUCCESSFUL MEN FOR FREE!

Email \*

Password \*

Username \*

Age \*

Location \*

Body Type \*

Ethnicity \*

Hair Color \*

Height \*

Join Now

By clicking 'Join Now' I certify that I'm at least 18 years old and agree to the SweetDads [Privacy Policy](#) and [Terms](#).

The phrase “Terms” hyperlinks to SweetDads’ Terms of Service page. Appendix A includes selected portions of the Terms of Service.

Analyze (1) Brittney’s potential claims against Amanda and SweetDads; (2) SweetDads’ potential contract breach claim against Amanda; and (3) whether Brittney can pursue her claims against Amanda in a California court.

Do not discuss:

- The liability of Charlie or Google, either directly or indirectly.
- Anti-circumvention (1201), copyright management information (1202), criminal copyright infringement, the ECPA (or its state law analogues), GDPR, California Consumer Privacy Act, or CAN-SPAM (or its state law analogues).

## **Appendix A**

### SweetDads' Terms of Service (selected portions)

By using SweetDads, you agree that:

- You're at least 18 years old
- You've never been convicted of a felony and you're not registered as a sex offender
- It's not illegal for you to use these services or be a member of this website in the rules and regulations of your country

We can terminate or suspend your membership or subscription to the service at any time, without notice, if we believe you've violated this agreement, in which case you won't be entitled to a refund. We're not required to disclose the reason for your termination (and it may be prohibited by law).

#### *Your Interactions with Other Members*

You're responsible for any interactions you have with other members of this site. By using this website you agree that you understand we don't conduct criminal background checks or security screening of any of our members. We are not responsible, nor do we verify the validity of, any statements made by any members of our site.

We're not responsible for the conduct of any member of this website. We're not liable for any losses and damages arising from your use (including communications through or meetings resulting from the use of this website) or the use of any member of this website, including death, bodily injury, emotional distress, or any other damages.

We can investigate and take legal action against any members of this site in response to illegal or unauthorized use of this website, including conducting criminal background checks, sex offender register searches, or other screenings, at any time, and using available public records.

We do our best to verify member photos, but we can't guarantee that members will look the same in person as they do in any photos on their profile.

#### *Content and Information Posted By You*

You're responsible for any information or content that you include on our website (either posted, linked to, or uploaded by you) or transmitted to other members of this service. We reserve the right to remove any content that violates our guidelines and terminate the membership of any member who violates them.

By using this website, you agree to not post on this website or share with any member any content that:

- is offensive, inaccurate, abusive, obscene, profane, intimidating, harassing, racially offensive, or illegal

- infringes or violates another person's rights
- is inaccurate, misleading, or false
- attempts to defraud another member
- uses someone else's copyrighted work or content without permission
- promotes illegal activity
- contains photos, videos, or audio of another person without permission
- Impersonates another person or any affiliation with another person, group, or corporation promotes or publicizes any sales or commercial activities

By using this website, you agree that:

- We're not responsible for any content you post on this website
- We can delete any content at any time if we feel it violates our terms and conditions or may harm our company in any way
- We have the right to use, copy, display, adapt, or modify any content you post

If you think any content on our website infringes your copyright, contact us by mail at:

SweetDads  
123 Main Street  
Anytown, CA 95000

#### *Modifications to Our Service and Terms of Service*

Your use of this service represents your agreement with these terms. We may periodically modify these terms, and any changes will be effective as soon as they're posted on this website.

By using this website you agree that we have the right to modify or discontinue any part of this website, service, and terms of service with or without notice. We'll use any reasonable means available to let you know of any changes (by email, postal mail, postings on our website, or other means), but you agree you may not receive these notices if you've accessed this service or website in an unauthorized manner. We're not responsible for you not receiving any of these messages.

If you don't consent to these terms of services, you agree to no longer use these services and cancel your membership.