



Internet Law (Law 793) Final Exam
Eric Goldman • Fall 2019

This exam has 2 questions. Each question is subject to a word count cap that includes 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 and upload your answer there as a Word document. The earliest you may download the exam is December 4, 2019, 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. 16, 2019, noon Pacific. ExamSoft's timestamps are irrebuttable 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 ExamSoft.

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 to each question, tell me how many words that 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!

* * *

Additional Instructions from the Faculty Support Office

Accessing your Exam

A. Use ExamSoft, not Examplify. You access your exam by downloading it from the Examsoft website: www.examssoft.com/sculaw

B. Exam Clock. Your exam clock starts the moment you download your exam. It will not auto upload. You are responsible for managing your time within your professor's allocated window.

Submitting

A. Use Examsoft. Submission is done through the ExamSoft website, not your software on your computer.

B. Insurance against Technical Problems. Students, I would like to offer a friendly piece of advice. I recommend, as an insurance policy, emailing yourself a copy of your completed final prior to your submission. This way, if there is any technical difficulty, you have a copy of a pre-deadline time-stamped final copy. You certainly do not have to do this, but it does help to know you have this in the event of a technical difficulty.

C. Only Last Upload Counts. SCU Law only captures the LAST UPLOAD attempt and will only be able to verify that document to your professor. Make sure you submit before the deadline! Also note that it is possible for you to manually upload and overwrite your on-time submission with another version after the imposed deadline, causing your final submission to be registered as late.

D. Confirming Upload. Also keep in mind that your confirmation does not auto-populate any email or message (another glorious quirk of ExamSoft). The only way to confirm your upload is to follow the steps in our handout.

Question 1 (2000 words maximum)

Boris founded and operates a website called “Infraud” (the site’s motto: “In Fraud We Trust”). Similar to eBay, Infraud is a user-to-user marketplace for buying and selling items. However, 90%+ of the marketplace items are illegal, such as stolen credit card numbers. Buyers may rate and review the quality of a seller’s items (for example, if a seller’s package of stolen credit cards contains too many unusable numbers). Infraud takes a 5% commission on each transaction. Infraud also runs third-party ads.

Boris designed and wrote the software code for Infraud and maintains the site’s hardware and software. However, Boris does not handle day-to-day user issues. Instead, Boris coded the site’s software so that the top 5% most-highly-rated sellers and buyers automatically become “4DMini57r470rz” (administrators). Administrators have the power to: approve new users for accounts on the site, remove other users’ content, and remove other users’ accounts. In addition, posts made by administrators automatically appear above other users’ content.

In Infraud’s product category of “Stolen Movies,” Jane offers for sale film footage from commercial “Hollywood” movies that have not yet been theatrically released, such as *Star Wars: The Rise of Skywalker*. In addition to any other applicable IP protection, some film footage offered by Jane may qualify as trade secrets.

Karen is an administrator. Karen and Victor both sell stolen credit card numbers on Infraud. Karen sought to discredit Victor as competition, so she posted a negative Infraud review that called Victor a “Phr4Ud573r” (fraudster) and claimed Victor had sold unusable credit card numbers.

Lois operates an e-commerce site called “fakegoop.com,” which offers “knockoff” versions of the products sold at Goop.com, the e-commerce site founded by Gwyneth Paltrow (Goop is a federally registered trademark, but the name “Gwyneth” hasn’t achieved secondary meaning). Lois ran advertisements for fakegoop.com on Infraud. The ad copy prominently featured the domain name “fakegoop.com,” the slogan “Stick It to Gwyneth,” and a photo of Gwyneth’s face with devil horns drawn using a Sharpie pen (the photo is in the public domain, so it does not create any copyright issues).

Discuss Boris’ potential legal liability for the activities of Jane, Karen, and Lois on Infraud. Make sure to establish the liability of Jane, Karen, or Lois when such liability is a prerequisite for Boris’ liability. Do not discuss 17 USC 1201 or 1202 or UDRP/ACPA. Assume that Infraud properly designated an agent for notice at the Copyright Office and disclosed the agent’s contact information and its repeat infringer policy on its site. Also assume that it is a state and federal crime to intentionally sell stolen credit card numbers.

Question 2 (1000 words maximum)

Oilpro and Rigged are competing professional social networking services, similar to LinkedIn, that focus exclusively on oil and gas professionals. Oilpro and Rigged are the only two competitors in that niche. Oilpro users create profiles detailing their professional experience, and employers can search the profiles looking for prospective candidates to recruit. All Oilpro user profiles display the user's email addresses to registered Oilpro members.

A Rigged employee created an Oilpro account, logged into Oilpro, and ran an automated script to collect other users' email addresses. In total, the script accessed 600,000 Oilpro profiles. Rigged then sent emails to the 600,000 email addresses it collected and invited the recipients to create Rigged profiles. Rigged is unlikely to collect email addresses from Oilpro again for a few years, i.e., until Oilpro has enough new registered users to justify the collection effort.

Oilpro has a robots.txt file on every page of its website. The robots.txt file bans all automated site access except for search engine bots. Oilpro also uses "rate-limiting" software that automatically blocks IP addresses that make too many page requests per hour. Rigged's IP address didn't trigger the rate-limiting software because it made fewer page requests per hour than the software's threshold.

All Oilpro users registered for their Oilpro accounts from this screen:

The screenshot shows the Oilpro website's registration page. At the top, there is a navigation bar with the Oilpro logo and links for Profile, Network, Posts, Q&A, Jobs, and More. A search bar is located below the navigation bar with the text "Search People". The main content area features a large background image of an oil rig and the text "THE OIL & GAS NETWORK". Below this, there are two sections: "OILPRO OVERVIEW" with a video player and "JOIN OILPRO" with a registration form. The form includes fields for Email, Password, First Name, and Last Name, and a "Create Your Account" button. A small note at the bottom of the form states "By joining, you agree to our terms & conditions & privacy policy".

The words "terms & conditions" linked to the full text of Oilpro's T&Cs.

Oilpro's T&Cs expressly prohibit script usage and collection of users' email addresses. The T&Cs also say:

The T&C sets out the legal terms by which Oilpro makes its web site and services available. When you visit Oilpro, you will automatically be bound by the T&C. By using the Site, you accept our then current T&C, as revised and updated.

Analyze Rigged's potential liability to Oilpro for collecting email addresses from the Oilpro site and sending emails to Oilpro's users. Do not discuss trade secrets, trademarks, copyrights, GDPR, CCPA, or ECPA.