



Internet Law (Law 793) Final Exam
Eric Goldman • Fall 2020

This exam has 1 question. You may use no more than 3,000 words for your answer, 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. I will email you the exam PDF on November 30, 9 am Pacific. You must upload your answer to www.examsoft.com/sculaw no later than December 11, 9 pm Pacific. ExamSoft's timestamp is irrefutable evidence of your upload time. **IF YOUR ANSWER IS UPLOADED LATER THAN DECEMBER 11, 9 PM, EVEN BY ONE MINUTE, YOU WILL FAIL THE COURSE. THERE IS NO EXTRA GRACE PERIOD. NO EXCUSES!** Don't wait until the last minute to upload your answer, and confirm its successful upload.

Your answer's file name should be your anonymous four-digit exam ID number (AGID) and the course title. In the file itself, include page numbers and your AGID, but don't include any other identifying information. At the top of your answer, tell me how many words the 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:

- Assume all parties are, and all actions take place, in California. Don't discuss any statutes of limitation. Unless otherwise specified, all parties are adults.
- Only address topics we covered this semester.
- Read the questions very carefully. Answer the questions I actually ask. 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 Office of Assessment

We can only confirm the time/date of your **last** upload. If you initially upload your answer before the deadline and then upload your answer again after the deadline, your upload will be recorded as late. **Do not wait until the last minute to submit your answer. It can take several minutes to upload depending on your Internet speed.**

You will not get a confirmation email from ExamSoft. Follow the instructions in this file to confirm your upload: <https://camino.instructure.com/files/4051242/>.

If you have a technical emergency, contact Law Technology at (408) 554-5762. If you have a personal emergency, call Nicole Maxwell at (408) 554-4677.

[Note: this question contains some facts from real life. However, I added or changed many other facts, so this is not what actually happened in real life.]

Jim Cornette is a well-known figure in the pro wrestling world. He has held executive positions at major pro wrestling leagues. At his personal website, jimcornette.com, he publishes a podcast with his commentary on wrestling news and personalities. Each month, two million people listen to the podcast. His Twitter account, @TheJimCornette, has 170,000 followers. He has sold many t-shirts featuring a photo of his face and the name “Jim Cornette.” He has a protectable trademark in his name and owns all rights to the photo depicted on his t-shirt.

Graver is a professional wrestler who competes under the stage name “G-Raver.” G-Raver participates in “deathmatches,” which allow wrestlers to use deadly weapons in the matches. G-Raver’s weapon of choice is a tattoo needle, an homage to his day job as a tattoo artist.

Cornette retweeted a video of G-Raver suffering a very serious injury during a deathmatch:



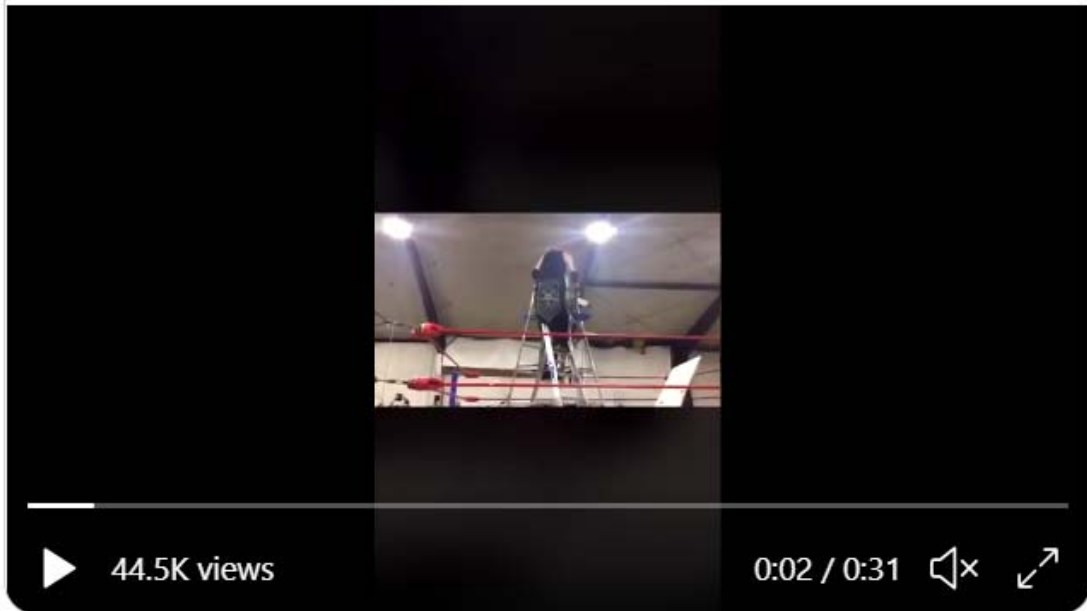
Jim Cornette  @TheJimCornette · Aug 31, 2019 ⋮

That's a nasty little nick the guy got on his arm there at the end, if the fans were lucky they probably stopped the show so everyone could watch this idiot bleed out.



Al Berdeen @Alfromsleep · Aug 31, 2019

@TheJimCornette in the latest outlaw mudshow edition of “Stupid people doing stupid sh█”...



 172

 73

 411



In response to Cornette's tweet, Graver tweeted back epithets and profanity at Cornette. This sparked a Twitter feud as the two men repeatedly tweeted insults at each other.

Graver escalated the beef. Graver took the image of Cornette's face from a t-shirt Cornette sells to his fans, and Graver photoshopped that photo to create a "Clownette" image:



Graver then created an e-commerce store at a "print-on-demand" vendor named Shopify and uploaded the Clownette image to the store. Third party merchants, like Graver, can upload artwork to their Shopify store for printing on various items, like t-shirts. Shopify hosts the store, and all of its associated electronic files, on Shopify's servers. Graver sets the price of his items for sale (above a minimum specified by Shopify). Each time a buyer places an order, Shopify processes all payments, prints the artwork onto the ordered item, and ships the item directly to

the buyer. Shopify keeps the minimum price of each item for itself and remits the balance of the sales price to the merchant (in this case, Graver).

At the store, Graver offered to sell t-shirts containing the “Clownette” image. To promote his store, Graver registered the domain name “TattooJimCornette.com” (which automatically redirected any visitors to Graver’s Shopify store’s URL) and tweeted the domain name on Twitter alongside the hashtag #TattooJimCornette.

Graver named the store “Jim Cornette Clownette shirt.” Shopify automatically caused that phrase to appear in the store pages’ title tag and keyword metatags. On the store’s pages, Graver continued his feud with Cornette, including writing:

- “I encourage all of my true fans to permanently tattoo a clownface on Jim Cornette. I hope you use a rusty tattoo needle! 🤡”
- “More evidence of Clownette’s clown-foolery: Clownette steals money from his employer to fund his podcast.”

Cornette asked Shopify to remove Graver’s store. Shopify promptly complied by terminating Graver’s account (which removed the store); and it emailed Graver a warning not to set up another account or store on its service. Nevertheless, Graver immediately created a new Shopify account and reimplemented his store so it was identical to the pre-termination version.

To create his store, Graver completed the following screen (there was no other possible way for him or any other merchant to create a Shopify account):

Create an account

The ecommerce platform made for you

Email

First name

Last name

Password

Confirm new password

By proceeding, you agree to the [Terms and Conditions](#)

I'm not a robot



reCAPTCHA

[Privacy](#) - [Terms](#)

Create account

Shopify has made the appropriate 512 filings with the Copyright Office, and its TOS specifies contact information for submitting 512 notices to Shopify and Shopify's repeat infringer policy. Some other excerpts from Shopify's terms of service:

You acknowledge and agree that Shopify may amend these Terms of Service at any time by posting the relevant amended and restated Terms of Service on Shopify's website, available at <https://www.shopify.com/legal/terms> and such amendments to the Terms of Service are effective as of the date of posting. Your continued use of the Services after the amended Terms of Service are posted to Shopify's website constitutes your agreement to, and acceptance of, the amended Terms of Service. If you do not agree to any changes to the Terms of Service, do not continue to use the Service....

You may not use the Shopify Services for any illegal or unauthorized purpose nor may you, in the use of the Service, violate any laws in your jurisdiction (including but not limited to copyright laws)...

You may not create a new account if we have previously terminated an account of yours...

18 U.S.C. § 875(c) says: "Whoever transmits in interstate or foreign commerce any communication containing...any threat to injure the person of another, shall be fined under this title or imprisoned not more than five years, or both." However, only threats that are sufficiently credible and imminent to constitute a "true threat" can survive a First Amendment challenge.

After Graver restored his store on Shopify, the store went briefly viral. Over 1 million visitors came to the store in 24 hours. For 30 minutes, about 1 out of 1,000 visitors to Graver's store got a "server too busy" error. Shopify got over 500 complaints from store visitors about the contents of Graver's store. Despite the high traffic to his store, Graver's sales were modest. He sold about 1,000 t-shirts for a total gross revenue of \$25,000.

Discuss Graver's and Shopify's potential legal liability, including any claims that Graver or Shopify may have against the other. Do not discuss any claims Twitter may have as a plaintiff; personal jurisdiction; 17 U.S.C. §§ 1201 or 1202; web browsing as infringement; criminal copyright infringement; COPPA; GDPR; CCPA/CPRA; ECPA; tax; antitrust; or any personal injury or property damage that the t-shirts might cause.