



Internet Law (Law 793)
Final Exam Sample Answer
Prof. Eric Goldman • Fall 2025

The exam question was inspired by *Jones v. Mann*, 18-CI-01777 (Ky. Cir. Ct. complaint filed Nov. 12, 2018), <http://juryverdicts.net/Bagofdicks.PDF>. I don't know how that case turned out.

Because the exam questions were so structured, your issue-spotting had fewer opportunities to go astray. I didn't even give you the chance to disappoint Gandalf by omitting Section 230!

I disagreed with many of the analyses I read, but this didn't affect my scoring so long as your answer made a colorable argument. However, please use this sample answer to reflect if you would actually advise clients differently.

If you used Generative AI to help with your answer, please let me know (1) how you used it, and (2) if you think it helped your efforts.

I am deemphasizing gendered language, so I intentionally chose gender-neutral names.

Peyton v. Drew

Defamation

Statements Categorization

Drew's statements "Stay away from Peyton Fine Motors" and "If you're a prospective customer of Peyton Fine Motors, keep looking." These statements imply that Drew doesn't recommend Peyton Fine Motors, but neither statement provides any details about Drew's objections. As a result, these statements can't be characterized as fact statements.

Drew's statement "You don't like feeling like you are being overcharged...?" If the reader knew about Drew's beefs, this statement might imply that Drew feels like Peyton overcharged Drew. However, the statement could just as easily suggest that people don't like feeling overcharged. I don't believe this qualifies as a statement of fact.

Drew's statement "The Glitter Bomb sent its recipient TO THE HOSPITAL." This is a fact statement, but the exam facts indicate that it's true.

Fact vs. Opinion

I'll evaluate two statements using *Bauer v. Brinkman*: "[1] Peyton recommended work on my car that it didn't need—and [2] tried to overcharge me for it."

- Definite/unambiguous meaning. Each statement is ambiguous. For complex problems, experts may not agree about what car repair work is needed. “Overcharging” could mean that Peyton charged Drew more than the quoted price, that Drew felt the prices were unfairly high compared to the market, or that Peyton charged market prices but those prices felt too high.
- Objectively capable of proof. If statement [1] means that Peyton recommended repairs that objectively weren’t needed, then it would be capable of proof. Similarly, statement [2] is provable if Peyton charged more than the quoted price. Otherwise, both statements are more like opinions.
- Context. Auto mechanics routinely get criticized, so consumers may be less inclined to believe individual complaints about any mechanic. Also, (i) consumers generally treat product reviews as hyperbolic; (ii) Ruin Days encourages griping and venting; and (iii) Drew critiqued Peyton in a review nominally about an unrelated item (the glitter bomb). The schoolyard taunting and emoji increase the odds that Drew’s post was trolling.

On balance, I believe Drew’s statement is non-actionable opinion.

Of and Concerning the Plaintiff

Drew’s statements refer either to Peyton or Peyton Fine Motors. Because the business is a sole proprietorship and all references to Peyton involve Peyton’s business dealings, the individual and the business have a common identity.

Published

The statements were disseminated to third parties on PeytonNot-So-FineMotors or Ruin Days.

Injurious to Reputation

Drew’s statement suggests that Peyton isn’t a trustworthy businessperson. This should be defamatory per se. Also, the statement injures Peyton’s reputation by making consumers less willing to transact with them.

First Amendment Defense

- Matter of public concern. I think disclosures about dishonest business dealings—such as systematically overcharging consumers or recommending unnecessary work—should be matters of public concern because they educate consumers and improve the marketplace’s invisible hand, which benefits everyone. However, Drew’s statement relates to a private disagreement between two actors about economic dealings. Courts would probably treat this as a matter of private concern and not apply the First Amendment defense.
- Public figure. Peyton might be a limited public figure in the local community, due to their status as a well-known businessperson. Otherwise, Peyton would be a private business owner.

- **Scienter.** We don't have enough information to resolve if Drew advanced their claims with the requisite disregard for the statements' veracity. Drew's lack of expertise in auto repair and failure to get a second opinion suggests that Drew was negligent about the accuracy of their claims, which would be sufficient scienter to overcome the First Amendment defense if Peyton was a private figure. I don't think Drew's indifference would constitute actual malice if Peyton is a public figure.

Overall, I think Drew would defeat Peyton's defamation claims, most likely because Drew's statements were opinions.

Trademark Infringement

Valid Trademark

Peyton has a registered trademark for "Peyton Fine Motors."

Priority

Peyton established the trademark before Drew referred to it.

Defendant's Use in Commerce

Drew referred to Peyton Fine Motors in three places: (1) the PeytonNot-So-FineMotors domain name, (2) the associated web page, and (3) the Ruin Days product review. (Note: I disregard references to Peyton without "fine motors" as the trademark registration wasn't just "Peyton").

- **Commerce Clause.** Congress likely can regulate all of these references per its Commerce Clause authority.
- **Ad copy/product packaging.** The domain name and associated web page might qualify because the website advertises Drew's ad services (and the not-serious offer of the domain name sale). In contrast, the product review doesn't advertise anything.
- **Abitron:** It should lead to the same outcome as the ad copy/product packaging. Arguably, Drew used the trademark in the ordinary course of trade to advertise his ad services.

I think the domain name and associated website likely constitute a "use in commerce" of Peyton Fine Motors' trademark.

Likelihood of Consumer Confusion About Product Source

Per Lamparello, we consider the domain name and website together. Consumers are not likely to confuse Drew's website with Peyton's offerings. In the domain name, the "not so" qualifier unambiguously indicates that Drew's site isn't Peyton's. The web text makes Drew's griping even more obvious. Drew's advertising services appeal to Peyton's competitors, who will fully understand they aren't advertising with Peyton."

Peyton could argue that the domain name and web text create initial interest confusion, especially if they draw consumers to Drew's site instead of Peyton's. However, per Lamparello, initial interest confusion requires looking at both the domain name and associated website together. Per Network Automation, the IIC considerations merge into the standard consumer confusion test.

Drew could invoke the nominative use defense. Drew refers to Peyton Fine Motors, and there isn't a better synonym. Drew didn't use more of the trademark than was necessary; for example, Drew didn't use Peyton's logo. Drew's gripes negate any implied sponsorship or endorsement.

Trademark Dilution

The facts specify that "Peyton Fine Motors" is "not widely known outside its local market," so it lacks the national fame required for trademark dilution.

Drew's use also didn't blur the trademark; Drew used the term without adding a new definition, and the "not so fine" reference ensures Drew's use doesn't change the definition. Drew possibly harmed the mark's reputation through critical commentary, but gripes aren't the type of harm tarnishment redresses. The nominative use defense would also apply to the dilution claim.

Domain Name—ACPA

- Drew's domain name is similar to Peyton's trademark, but not confusingly so. Semantically, it means the opposite.
- Drew may have intended to profit from (1) the offer to sell the domain name, and (2) the offer to accept advertising. But was it a *bad faith* intent to profit?
 - The domain name offer isn't serious because of the ridiculous pricetag and mocking of Peyton. The emoji reinforces the offer isn't serious.
 - The caselaw is split about whether a domain name registrant has a bad faith intent to profit by selling ads that relate to the trademark owner-plaintiff.

Domain Name—UDRP

- Domain name similarity. Same as ACPA
- Legitimate interests. A gripe site should qualify as a legitimate use, especially when it involves nominative uses.
- Bad faith. I felt Drew didn't have an ACPA bad faith intent to profit, and griping motivations shouldn't count as bad faith. See Lamparello.

I don't think Peyton can do anything about Drew's domain name.

Trespass to Chattels

Chattel

The chattel is Peyton's email server, not Peyton's inbox.

Chattel Use

Drew used Peyton's email server to deliver Drew's emails.

Authorization to Use Chattel

Email servers connected to the Internet impliedly authorize incoming emails, including any emails from Drew requesting Peyton's service work.

However, Drew's usage—700 emails an hour—exceeded an ordinary email sender (like Bright Data's "abnormal usage"). For a local business like Peyton Fine Motors, this email volume may exceed any implicit authorization to accept emails.

Also, Peyton verbally instructed Drew never to contact Peyton again. Is that a cease-and-desist demand? The Van Buren court would note that Peyton didn't use a gates-down measure (portcullis metaphor), but Power Ventures court recognized C&D letters as an effective authorization delimiter. So...who knows?

[A few of you suggested *Ruin Days*' TOS restrictions limited Drew's authorization to access *Peyton*'s email servers, despite the obvious identity mismatch.]

Legally Cognizable Harm

Peyton suffered two harms: (1) clogged inbox, and (2) overloaded email servers that caused emails and customers to be lost.

A clogged inbox is a nuisance and wastes time, but I think it won't count as a chattel harm just like Hamidi disregarded lost employee productivity.

In contrast, assuming Drew is the cause (Drew might blame the outage on other incoming emails, not Drew's), the lost emails should qualify as harm:

- Per California's common law trespass to chattels, the lost emails are a measurable loss to computer system resources because the system didn't function properly.
- The lost emails count towards the CFAA, subject to the \$5k/year threshold. If the CFAA only counts technological harms, then the harm from the lost emails may be de minimis because Peyton didn't need to investigate or remediate. If the CFAA counts the lost revenues from prospective customers who took their business elsewhere, these losses might clear the \$5k threshold. We need more facts to answer that.
- With respect to California Penal Code 502, the lost emails and possibly the lost revenue would count as harms.

For these reasons, it looks like Peyton could state a case under the common law TTC and 502 doctrines, and possibly under the CFAA if the harms clear the threshold.

Section 230's Application to Peyton v. Ruin Days

Defamation

Ruin Days can claim Section 230 for any defamatory statements in Drew's product reviews:

- Ruin Days' website (including its review functionality) provides interactive computer services.
- A defamation claim treats Ruin Days as publisher of Drew's content.
- Drew authored the allegedly defamatory review.

Trademark Claims

Section 230 will not preempt any federal trademark infringement, dilution, or ACPA claims against Ruin Days based on Drew's content and actions. However, in California, Section 230 may preempt any state trademark claims (ccBill).

TTC Claims

Section 230's applicability to Ruin Days' role in Drew's email bombardment is somewhat novel. Ruin Days functions as an email service provider to send emails at Drew's direction. An email provider qualifies as an ICS provider, and the emails are Drew's third-party content. The question is whether the TTC claims treat Ruin Days as the "publisher or speaker" of Drew's emails. Peyton objects to the volume of delivered bits, not the email contents. A TTC claim may not treat Ruin Days as the publisher/speaker of Drew's emails. (However, TTC claims against Ruin Days may fail on their prima facie elements). Alternatively, Peyton might get around Section 230 by arguing that Ruin Days negligently designed its email delivery service by not setting an appropriate volume cap.

Peyton's Physical Injury

Schady's listing is third-party content to Ruin Days, even though Ruin Days prescreened the listing and knew about other personal injuries it had caused. Section 230 presumptively applies to claims based on Schady's listing. However, HomeAway indicates that Section 230 fails when Ruin Days processed payments for Schady.

Per Roommates.com, Peyton can argue that Ruin Days encourages illegal content because the site aspires to ruin the day of its buyers' worst enemies. However, Ruin Days' offerings aren't *always* illegal. Plus, Ruin Days' T&Cs *discourage* buyers from misusing the service.

Per Lemmon v. Snap, Peyton could argue that Ruin Days' Sickest Burn incentive/rewards scheme was negligently designed to encourage harmful conduct. Similarly, Peyton's claim could be based on Drew's actions to create content, irrespective of any content Drew created. This framing bypasses Section 230. However, the exam facts don't indicate that Drew's glitter-bombing was motivated by the Sickest Burn incentives.

Peyton could argue that Ruin Days' T&Cs made promises about buyers' behaviors. Per Calise/YOLO, these claims get around Section 230. However, the T&Cs aren't promises to Peyton, a party not in privity, and the T&Cs statements don't expressly cover Peyton's physical injuries.

Warner Bros. v. Drew and Ruin Days

Direct Copyright Infringement

Copyright Ownership

Copyright protects audio-video content like the episode. WB registered the copyright in the episode from which the GIF was extracted.

Infringement

Drew reproduced and distributed the GIF by uploading it to Ruin Days' servers and displaying it to Peyton. Drew's caption might make the uploaded GIF a derivative work instead of a reproduction; that wouldn't change the analysis.

Although Ruin Days hosted the GIF, it will argue that it did not reproduce or distribute the GIF volitionally per Cablevision because Drew "pressed the button." This is especially plausible if Ruin Days has legally limited rights to review private messages such as digital notes.

Fair Use

- Nature of Drew's use. The caption added new expression to the GIF. The caption doesn't change the video clip, but it changes the GIF from entertainment into a schoolyard taunt. Also, Drew made a personal/non-commercial use of the GIF. However, because fair use is an equitable defense, courts may dislike Drew's vengeance motives. This factor could go either way.
- Nature of the work. The episode is fictional. This factor favors WB.
- Amount taken. The GIF is a tiny fraction of the episode (3 seconds of ~480 seconds). This factor favors Drew.
- Market effect. Drew's GIF doesn't compete with the episode. If WB has a licensing program for the GIF—like Griner had a licensing program for the Success Kid photo—it could argue that Drew harmed that market. Short of that, this factor favors Drew.

On balance, I think the GIF qualifies as fair use. But recall Griner v. King's warning: "the fact that everyone else is doing it' is not a particularly compelling justification."

For the rest of this section, I assume Drew directly infringes WB's copyright.

Ruin Days' Contributory Copyright Infringement

Direct infringer = Drew.

Knowledge of infringing activity

There's no evidence that Ruin Days actually knew of Drew's infringement. Ruin Days didn't pre-review the digital note's content (nor would pre-review automatically confer actual knowledge). WB never sent a takedown notice. Generalized knowledge of other infringing activity shouldn't satisfy this element. Ruin Days' only hint of infringement came from Peyton's unverified infringement notice.

[Note: the Frontier case indicates that constructive knowledge may suffice but I think the court was explaining willful blindness. "Red flags" is a DMCA safe harbor concept, not part of the prima facie elements.]

Material Contribution

If Peyton's complaint constituted sufficient knowledge of Drew's infringement, then Ruin Days would then need to remove the GIF to avoid materially contributing to the infringement. [The facts said not to discuss inducement].

Ruin Days' Vicarious Copyright Infringement

Direct infringer = Drew.

Right/Ability to Supervise the Infringement

Ruin Days has the technical ability to pre-review buyers' uploads and remove/disable Drew's uploaded GIFs. Typically, neither of those facts constitute the right and ability to supervise a third-party uploads because they are true for every service, but courts sometimes reach the opposite conclusion. [Note: the ECPA may legally restrict Ruin Days from reviewing private messages.]

Direct Financial Interest in Drew's Infringement

Ruin Days made money from Drew's purchase of the Glitter Bomb, but not from Drew's dissemination of the GIF. Ruin Days' revenues are the same if the buyer uploads infringing, non-infringing, or no items. WB's vicarious copyright infringement claim against Ruin Days probably wouldn't succeed.

Ruin Days' DMCA Safe Harbor Defense

Ruin Days can assert the 512(c) safe harbor defense against WB's copyright claims:

1. "Service provider." Yes, Ruin Days is an online service.
2. Store material at user's direction. Yes, Ruin Days hosts the GIF at Drew's direction.
3. Adopt policy to terminate repeat infringers. Yes, the 3-strikes policy.

4. Reasonably implement policy to terminate repeat infringers. We don't have enough facts to evaluate. We only know Ruin Days followed its specified policy with respect to Drew (Drew has only received one strike per a 3-strike policy).
5. Communicate policy to terminate repeat infringers to users. Yes, per specified facts.
6. Accommodate STMs. N/A.
7. File Copyright Office designation of agent to receive §512(c)(3) notices. Yes, per specified facts.
8. Post agent's contact info on website. Yes, per specified facts.
9. No disqualifying scienter. Ruin Days never had actual knowledge that Drew's GIF infringed. However, per Veoh, Peyton's complaint might constitute a red flag of infringement (but shouldn't).
10. Right/ability to control infringement. Ruin Days didn't direct what Drew could upload.
11. No direct financial interest. Not required if #10 isn't met. Plus, Ruin Days' financial interests in the GIF isn't tied to the GIF infringing.
12. Expeditiously respond to 512(c)(3) notices. Ruin Days didn't receive any regarding Drew's GIF.

I think Ruin Days probably qualifies for the DMCA 512(c) safe harbor for Drew's GIF.

Ruin Days' T&C Formation

I think Ruin Days uses a clickwrap. Users must click twice: the checkbox + the action button. Ruin Days plugged possible leaks to other payment options.

However, Chabolla says clickwraps are when "the website presents its terms of use in a 'pop-up screen' and the user accepts those terms by clicking or checking a box stating she agrees." Ruin Days doesn't use a popup screen. Instead, "the words 'terms and conditions' link to Ruin Day's terms and conditions." As a result, Chabolla may not classify this as a clickwrap.

Instead, the implementation satisfies Chabolla's definition of a "sign-in-wrap," i.e., "the website provides a link to terms of use and indicates that some action may bind the user but does not require that the user actually review those terms." That's exactly what Ruin Days does, with the addition of a mandatory second click.

Reasonably Conspicuous Disclosure

- The call-to-action font size is smallest on the screen, and grey text on a white background doesn't stand out.
- Hyperlink is blue text and underlined.
- Not much defensible space, but the page is relatively uncluttered. The call-to-action is immediately above the action button.

Overall, I think the disclosure would be reasonably conspicuous to most consumers. Plus, the mandatory second click ensures consumers can't miss the call-to-action.

Nature of Transaction

This is a one-shot purchase, so consumers might not expect accompanying terms. Even if true, the mandatory second click forced them to see the terms.

Manifestation of Assent

The call-to-action lacks the “if” part of the “if/then” grammar. Per Godun, this omission negates TOS formation for a sign-in-wrap. Is that also true for clickwraps?

To me, Ruin Days’ implementation should have a 99% enforceability rate. But applying Chabolla and Godun literally, this contract formation process could fail.