Fall 2025 Internet Law Final Exam
Student Sample Answer

[Eric's introduction: this is an actual final exam answer submitted by a student in the Fall 2025 Internet Law course. It provides an example of what one of your peers actually accomplished within the exam's time and word count limitations. I have not attempted to correct any errors or identify any omissions in the exam. Please refer to my sample answer for a more comprehensive and possibly more accurate answer to the exam.]

Word Count: 2979

Peyton's (P) Claims Against Drew (D)

Trespass to Chattels Doctrines

P may assert three related, overlapping claims against D: Common law TTC, the CFAA, and CPC §502.

<u>The chattel:</u> P's email servers.

<u>D's use of the chattel:</u> D used the chattel by sending automated emails every 5 seconds for a day.

<u>Was D's use authorized?</u>

D's use was unauthorized. Following their initial disagreement, P verbally instructed D never to contact him again; presumably, this means any form of contact (even sending an email to P's email server). Since P's business is a sole proprietorship, contacting P's business = contacting P. While connecting to the internet, P anticipated and impliedly consented to normal Internet usage, however, getting spam emails every five seconds is not normal.

Under the CFAA unauthorized use turns on whether the "gates" were "up/down" technologically speaking (*Van Buren*) FN8 provide examples: C&D Letters, Password Protection, IP Address Blocks, Robot Exclusion Headers. None of these were used because P was not monitoring his email during the incident.

<u>Did D cause legally cognizable harm to the chattel?</u>

The required level of harm varies across the three doctrines.

> <u>Common Law TTC:</u> Per *Hamidi*, Common Law TTC requires "a measurable loss to computer system resources." Reputational or business harm is generally not cognizable. **Here**, P's email server "occasionally became overwhelmed" by 720 emails per hour over one day causing the emails of legitimate users to not be delivered. P's email server received approximately 17,280 emails. This is analogous to the harm experienced in *X*

Corp. v. Bright Data (Court recognized X sufficiently stated harm where *Bright*'s abnormal usage caused intermittent server failures or a "glitchy, lagged user experience" for legitimate users.) This likely satisfies the *Hamidi* standard.

Computer Fraud and Abuse Act (CFAA): The CFAA requires that unauthorized access causes a total "loss" of at least $5,000 per year. Loss includes lost revenues from service interruption.
Here, P lost the business of "a few prospective customers" for his automotive repair business. Mechanics are expensive. Just a few lost customers could exceed the $5,000 threshold. Since we don't know what the average customer spends, it is likely, but not certain that P's damages are at least $5,000.

Section 502: Section 502 has the lowest requirement: "any damage, including verification costs."
Here, since P likely lost a few customers who would have paid for P's services, this claim is likely to succeed.

Conclusion

P is likely to succeed on the TTC and §502 claims. However P is not likely to succeed on the CFAA claim because the gates up/down analogy is not met (lack of technological barriers) unless being told not to contact P ever again counts.

Defamation

False statement of fact:

Bauer v. Brinkman factors: 1) definite unambiguous meaning; 2) objectively capable of proof; 3) context around the statement including social context.

"If you're a prospective customer of Peyton Fine Motors, keep looking. Peyton recommended work on my car that it didn't need—and tried to overcharge me for it" – **This** is an actionable statement under *Bauer*. The meaning is unambiguous: (P overcharged D and did unnecessary work); it is objectively capable of proof (compare whether other mechanics agree the work was necessary and what other mechanics would charge D for the same work); context is an online review under a pseudonym (while courts and plaintiffs typically expect reviews to express opinion, specific allegations of fraud/overcharging are often treated as factual because they imply factual knowledge).

D's other statements: 1) on D's website: "Stay away from Peyton Fine Motors. Check out its competitors below." And "You don't like feeling like you are being overcharged…?" and 2) in the review "The Glitter Bomb sent its recipient TO THE HOSPITAL. Oops. Peyton, hope you feel better soon LOL" – are not actionable. The former is non-actionable suggestion/opinion and the latter is a true statement of fact.

Statement was "of and concerning" P

Yes. The statement explicitly names P and Peyton Fine Motors ("PFM").

Published to a third party

Yes. Drew posted the review on RD's website, making it available to third parties.

Injury to P's reputation

Yes, this is presumed. D's statement attacked P's professional character or standing in their business (defamatory *per se*.)

D's First Amendment Defense

- Matter of Public Concern
  - Consumer reviews re: business practices are a matter of public concern.
- D Lacked Minimum Scienter
  - The scienter required is negligence because P is a private figure—a local business owner. At most, P is a limited public figure in his local community because his business acquired secondary meaning in its local market.
  - D was negligent because despite believing P overcharged him, he has "no expertise" in the subject and "did not get a second opinion" before publicly accusing P of fraud. A reasonable person would verify whether repairs were needed and whether the price was right. Even if the standard was actual malice (P deemed a limited public figure) D's vow of vengeance likely satisfies it.

Section 230:

- Doesn't apply. D is the ICP.

Conclusion

P has a strong Defamation claim against D.

Trademark Infringement

Ownership of a valid trademark:

- The facts indicate PFM has a federal registration and has achieved secondary meaning in its local market.

Priority:

- P established the business and mark in 2010, before D created his website.

Use in Commerce:

- 1) D made used P's trademark in the domain name of its gripe site. 2) The site explicitly solicits advertising and 3) links to P's competitors. 4) D offered to sell the domain for $100 million. Whether this constitutes use in commerce depends on which definition the Court applies:
  - Commerce Clause Definition: Likely all four uses qualify.
  - Valid goods Definition: No. No use in ad copy or product packaging.
  - *Abitron* Definition: No. gripe sites are not bona fide user of mark in ordinary course of trade; mark not used to identify/distinguish D's goods.
- Whether D used P's trademark in commerce depends on which definition the court applies.

Likelihood of consumer confusion:

- P is unlikely to establish initial interest confusion because it "requires likely confusion, not mere diversion" (*Network Automation*). The addition of "Not-So" to the domain name and the warning to "stay away" from P's business weigh against "likely confusion."
- *Sleekcraft factors:*
  - Favoring P:
    - P's mark is federally registered and has acquired secondary meaning in its local market. Consumers searching for automotive repair in P's local market would likely find D's gripe website.
    - D's use of the mark: arguably promoting similar services (D linking to P's competitors for automotive repairs.)
    - Both P and D's medium is the internet.
  - Against P:
    - Despite domain name similarity, the addition of "Not-So" is a differentiating factor. It's antithetical to P's mark.
    - The facts don't state any consumers were actually confused.
    - D used P's mark with the intent to criticize, not with the intent to confuse.
    - Consumers looking for an automotive repair service are likely very discerning because of the associated expenses.
  - N/A:
    - Market expansion is irrelevant here.
- The factors weigh against finding trademark infringement. The difference between P's and D's domain names, combined with the discerning nature of consumers for automotive repair services weigh heavily against consumer confusion.

Defenses

- Nominative use:
  - D has no good substitute for referring to P's business other than by name.

    - D's use was reasonable for criticism: D's website that incorporated P's business name and modified it to denote criticism.
    - By disparaging P's business, D strongly dispelled consumers' reasons to think P authorized D's activity.
- Descriptive fair use:
    - Not applicable. D is not using P's trademark to describe D's services.

Conclusion

- P's claim against D for trademark infringement is weak. There is very little likelihood of confusion; and the nominative use defense is available.

Trademark Dilution

P's claim for trademark dilution would likely fail because PFM is not widely known outside its local market. Further, D's conduct does not amount to blurring (impairing distinctiveness) or tarnishment (harming reputation by linking brand to unwholesome things: e.g. sex/drugs). Criticism =/= tarnishment.

Even if P could establish a prima facie case for trademark dilution, D could assert the nominative use defense.

Cybersquatting

ACPA

- D registered and used the domain name "PeytonNot-So-FineMotors.com," which contains P's trademark "Peyton Fine Motors." However, the addition of "Not-So" sufficiently distinguishes it from P's trademark. Making it not "confusingly similar."
- D might have a bad faith intent to profit from his gripe site because 1) he offered to sell the domain name to P for $100 million (though probably not serious); and 2) including "want to advertise here? Contact me" which suggests the sale of ads on the site. D goes further than *Lamparello*.

Conclusion: P has a colorable ACPA claim if the Court finds confusing similarity.

UDRP

A UDRP claim makes no sense because the domain names are not similar enough to cause confusion, so P is unlikely to succeed. For completion:

- D has a legitimate interest in the name: criticism.
- Bad faith use/registration: disruption.

Applicability of §230 to P's claims against Ruin Days (RD)

Elements of Prima Facie case for §230 defense eligibility

- (1) RD is a provider or user of an Interactive Computer Service (ICS)
- (2) P's claim treats RD as the "publisher or speaker" of the content
- (3) The information was provided by another Information Content Provider (ICP)—i.e. a third party.

Exceptions to §230 – Below. None are relevant to P's claims vs RD

- Federal IP claims
- Federal Criminal Law
- FOSTA/ECPA

<u>The Product Review – Defamation claim</u>

- RD is the ICS: provides a website/marketplace on which reviews are hosted
- P would likely sue re: D's defamatory claims (fraud/overcharging), treating RD as publisher or speaker of D's content.
- Review was posted by D (ICP) under the alias Sux2BU, not by RD or its staff. P might argue that because RD prescreens all user-uploaded evaluative reviews, RD is the ICP. However, *Zeran* (protecting editorial and self-regulatory functions) nullifies this argument.

§230 applies. Defamation is the quintessential "publisher" claim shielded by §230.

<u>The Digital Note</u>

- RD is the ICS: hosts the digital note contents uploaded by the buyer.
- P would likely sue re: D's harassing digital note contents—the GIF (hoping P's business "glitterbombs") treating RD as publisher or speaker of D's content.
- The digital note contents were uploaded (posted) by D.

§230 applies. RD merely stored and displayed the digital note at D's direction. P might argue RD materially contributed to the content's alleged unlawfulness by encouraging vendors and consumers to send the most annoying things possible to ruin the day of the recipients. But this would require RD to encourage only illegal content. Plenty of pranks are annoying yet legal.

<u>The Email Onslaught – Negligent Design</u>

Negligent design claims are not subject to §230 (*Lemmon v. Snap*). Here, P's claim is that RD designed an email notification system that allowed D to send emails "every 5 seconds," enabling D to overwhelm P's email server. P's claim is not about the content.

<u>The Physical Injury – Online Marketplace / Negligent Design / Physical Conduct</u>

Section 230 is not available to RD because P's claims are not based on speech/information: RD 1) is an online marketplace that sells a dangerous product and doesn't just host the listing; it processes payment and retains revenue (*Homeaway*); 2) encourages users to engage mail dangerous pranks for hype ("Sickest Burns") (*Lemmon*); 3) The physical injuries are a result of the tool's purpose (to mail prank paraphernalia, which often ends in injuries)

<u>WB's claims against D and RD</u>

<u>D's Direct Copyright Infringement</u>

Prima Facie Case

<u>Copyrightability, Ownership, and Registration:</u> WB owns registered copyrights (from 2010—well before the infringement) in the episode from which the GIF originated. It may seek statutory damages.

<u>Volitional Violation of 106 Rights (Derivative Work/Reproduction/Distribution)</u>: Drew volitionally 1) edited the GIF of Dr. Owen Maestro ("DOM") throwing confetti, adding text; 2) uploaded the GIF to RD's servers; and 3) transmitted it to P via the URL in the email.

A *Prima Facie* case is established.

<u>Defense: Fair Use</u>

D may assert the equitable defense of fair use. The analysis requires balancing the four statutory factors:

<u>Purpose and Character of Use:</u> Drew used the GIF in question as a meme, not for commercial purposes but as part of a prank. The use was transformative, taking a clip in which DOM throws confetti in a celebratory manner, adding text and contextually linking it to a glitter bomb, making it ironic. Non-commercial and transformative use favors D.

<u>Nature of the Copyrighted Work:</u> The work is a fictional TV show, a creative work at the core of copyright protection. This favors P.

<u>Amount and Substantiality of Portion Taken:</u> D took a 3-second GIF from an 8-minute episode; GIFs are often tolerated. Further, unlike in *Griner*, here the copyrighted work is the entire episode, not just the meme/image. This favors D.

<u>Effect on Potential Market:</u> It is unlikely D's gif serves as a market substitute for the full episode. Rather, it might generate interest in watching the full episode/show. This favors D.

Conclusion: Three of the four factors weigh in favor of fair use. Thus, P's direct copyright infringement claim against D is unlikely to succeed.

<u>RD's Direct Infringement</u>

Under *Cablevision*, a service provider is not liable for copying initiated by users unless there is volitional conduct akin to "pushing the button." Here, RD doesn't proactively screen digital notes, thus it lacks volition. RD is not liable for direct infringement.

RD’s Contributory/Vicarious Copyright Infringement

The alleged direct infringer is D.

Contributory Infringement

- Knowledge (actual or constructive) of infringing activity: RD likely has knowledge: while the “thousands of complaints” are insufficient to show specific knowledge of D’s infringing GIF (*UMG v. Veoh*), Peyton sent a written complaint about D’s GIF.
- Material Contribution: Likely yes. RD hosted D’s digital note. The facts do not indicate it was removed following P’s notice.

Vicarious Infringement

- Direct Financial Interest: Likely none. RD profited from the sale of the Glitter Bomb; digital note is an optional (free?) feature.
- Right and Ability to Supervise: Likely none. RD does not screen contents of digital notes; lacks “substantial influence” per *UMG*.

Section 512 (“§512”) Defense

- “Service Provider”
  - Yes. ¯_(ツ)_/¯
- Store material at user’s direction
  - Yes.
- Adopt policy to terminate repeat infringers & communicate to users
  - Yes. 3 strikes policy in T&Cs.
- Reasonably implement policy to terminate repeat infringers
  - Unknown. D has 1 previous strike.
- File Copyright Office designation of agent to receive §512(c)(3) notices
  - Yes. Stipulated fact.
- Accommodate standard technical measures.
  - N/A
- Post agent’s contact info on website
  - Yes. T&Cs (on website) appropriately disclose agent’s contact info.
- No actual knowledge the uploaded item infringes or awareness of facts/circumstances that make infringement apparent
  - No proper §512(c)(3) notice from WB. P's written complaint is unlikely to make infringement apparent unless it clearly identifies the URL. The thousands of complaints referenced in the facts are not specific to D; no red flag.
- No right/ability to control infringement
  - RD does not screen the contents of each digital note users sent to their victims.
- No direct financial interest in infringement (if previous item satisfied)
  - RD has no interest in what messages users send to their victims.

    - Expeditiously respond to §512(c)(3) notices
        - Probably yes. Took down previous infringing review by D.

Conclusion: P can likely establish a prima facie case for contributory infringement but not vicarious infringement. RD might be able to assert a §512 defense if it reasonably implemented its policy to terminate repeat infringers and if P's written complaint was specific enough. Ultimately, it might not matter because D's use of the GIF is likely fair use.

Contract Formation RD – D

At the time of purchase, RD's website presents users with a link to its TOS, which is most likely a clickwrap, although some may argue it's a sign-in-wrap.

The user needs two clicks to move on to the next screen: one to check the box next to "I have read and agreed with the terms and conditions" and another one to "Check Out." Not clicking on the "I agree" checkbox before clicking "Check Out" prompts a new message directly above the action button: "Please agree to the terms and conditions before making a purchase!" Cannot proceed without two clicks.

The check-box requiring the user to click indicating agreement makes it a Clickwrap even if it doesn't squarely fit the definitions of the 9th Circuit's (*Chabolla*) lacking the "popup" required, or the 2nd Circuit's (*Meyer*) lacking the "list of T&Cs of use" required.

Formation analysis:

Courts routinely enforce Clickwraps. The mandatory checkbox acts as a "safe harbor."

When the reminder message appears, it shows up as a call to action, requiring the user to click the checkbox in order to proceed. This TOS formation requires 2 clicks and the link to the TOS is blue and underlined.

Even if it were a sign-in-wrap, (1) RD provides reasonably conspicuous notice of the terms; and (2) the consumer unambiguously manifests assent to those terms.

Reasonably Conspicuous Notice

> Visual Design: The text is black on a white background; the link blue and underlined. While there are distracting elements in bigger font and bright colors that draw attention away from it, failure to check the box prompts the text previously referenced to appear in red font.
>
> Context of the Transaction: Courts presume that consumers expect to agree to a TOS for a longer-term relationship but not for one-off transactions. Paying to ruin someone's day is probably a one-off transaction unless the user (like D) targets multiple people over time.

Unambiguous manifestation of assent: While lacking if/then language, user unambiguously agrees to the TOS by checking the box.

Conclusion:

RD's TOS formation with D is most likely proper.