



**Intellectual Property (Law 430)  
Final Exam**

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This exam has 3 questions worth 50%, 25% and 25% of the final score, respectively. You should allocate your efforts accordingly.

This is a “take-home” exam. You have until 9 am Wednesday, July 30 to return your answer. [www.time.gov](http://www.time.gov) provides the official time for the exam. THERE IS NO ADDITIONAL GRACE PERIOD—NOT EVEN ONE MINUTE. I DO NOT INTEND TO GRADE LATE EXAMS. NO EXCUSES! NO TIME EXTENSIONS WILL BE GIVEN DUE TO COMPUTER, EQUIPMENT OR POWER FAILURES, BECAUSE I CANNOT OPEN OR PRINT YOUR FILE, OR BECAUSE OF DIFFICULTIES TRANSMITTING THE FILE VIA THE INTERNET (although special adjustments may be made for widespread power or email failures).

You may turn in your answer to Carrie Kratochvil in Room 110. She works 8 am to 4 pm. In the event Carrie is sick, turn in your answer to Dean Thomson.

Alternatively, you may email your answer to Carrie at [carrie.kratochvil@marquette.edu](mailto:carrie.kratochvil@marquette.edu) with a copy to Dean Thomson at [bonnie.thomson@marquette.edu](mailto:bonnie.thomson@marquette.edu). Please put the words “IP Exam” in the subject line. If you email your answer, it is not deemed received until it is actually in their inboxes *and* can be successfully opened and printed. Please send the file in Microsoft Word for Windows 2000 format. Carrie will reply promptly to confirm that she has properly received your exam, in which case her reply email confirms receipt. However, if you have not promptly received a reply during Carrie’s work hours, you must take all necessary steps to turn in your answer before the deadline. Carrie can be reached at 414-288-7095.

You are required to submit a typed answer. Include page numbers and your exam number on every page of your answer, but do not otherwise include any information that would identify yourself on the answer. At the top of each answer, you must tell me how many words are in your answer. I DO NOT INTEND TO GRADE AN ANSWER THAT EXCEEDS THE APPLICABLE WORD LIMIT BY EVEN ONE WORD. FAILURE TO INCLUDE A WORD COUNT, OR INACCURATELY REPORTING A WORD COUNT, MAY LEAD TO SIGNIFICANT PENALTIES.

Please note that I will be at the Caesar’s Palace in Las Vegas during the exam period. You are welcome to call me by phone (702-731-7110) if you need emergency assistance, even if it is late/early. If I am out, leave a message and I will return your call as soon as I am back in my room. I DO NOT EXPECT TO CHECK EMAIL DURING THE EXAM PERIOD.

This is an “open book” exam, meaning that you may use any written material you want. However, during the exam, you may not communicate about the exam or your answer with anyone (orally, electronically or otherwise).

I have the following additional thoughts for you:

- Invest sufficient time outlining an organized response to each question.
- Some potential shortcuts:
  - Bullet points are OK
  - Short citation forms are OK
  - You can use abbreviations if you define them and they are not ambiguous
  - Please quote statutes and cases only as necessary to make your point
- Read each question very carefully. Make sure you answer the questions actually asked.
- While generally your answers should be based on legal principles, feel free to address other perspectives and concerns.
- If any additional information would be useful in your analysis, indicate what information would be helpful and then state your assumptions in order to proceed with your analysis.
- In all questions, assume all actions take place in the United States in 2003.

GOOD LUCK AND HAVE A GREAT REST-OF-THE-SUMMER!

Question 1 (50% of score/target time of 90 minutes/word limit of 1,800 words)

Review <http://www.internalmemos.com/memos/>, operated by RCK Group Inc. A brief description of the website: individuals (usually employees) send intra-company memos to RCK Group, who then uploads those memos to the internalmemos.com website. Some memos are available to the public without charge; others are available only to subscribers who pay \$45/month or \$180/year.

In reviewing the website, please browse through several different memos. Specifically consider memos like [http://www.internalmemos.com/memos/memodetails.php?memo\\_id=1443](http://www.internalmemos.com/memos/memodetails.php?memo_id=1443), [http://www.internalmemos.com/memos/memodetails.php?memo\\_id=1195](http://www.internalmemos.com/memos/memodetails.php?memo_id=1195) (and subsequent memos from eBay—you can search for them), and [http://www.internalmemos.com/memos/memodetails.php?memo\\_id=1268](http://www.internalmemos.com/memos/memodetails.php?memo_id=1268).

Questions:

- Identify and discuss any intellectual property-related legal risks you think the RCK Group may face by operating this website.
- Identify and discuss the protectability of any potential intellectual property assets RCK Group may have associated with the website.
- If the RCK Group offered you a chance to invest in the company, based on your assessment of the IP aspects, would you be interested?

Eric's Tips:

- Answer this question solely by looking at memos available for free. DO NOT PAY TO JOIN!
- Do not discuss 17 U.S.C. §512 (note, among other things, that RCK Group has not filed an agent for service of notice with the Copyright Office).
- If you have to speculate too hard about something, do not spend too much time on it!

END OF QUESTION 1

Question 2 (25% of score/target time of 45 minutes/word limit of 900 words)

Your client is Epitime, who operates a website where writers can automatically publish articles to the world without any editorial oversight from Epitime. To provide incentives for writers to publish high-quality articles, Epitime compensates them. Epitime will allow writers to submit articles on any topic, but not every article has the same potential value to Epitime. Further, inevitably some writers will try to exploit any deficiencies in the formula to generate earnings without doing the associated work.

To ensure the best return for its compensation, Epitime has developed a unique “exploitation-resistant” formula to automatically determine how much each article should earn. Currently, to make exploitation harder, the exact formula has not been publicly disclosed, although it has been used to determine compensation for writers for a number of months. During those months, Epitime has been constantly revising the formula to make it more exploitation-proof, and future substantial changes are likely to be needed to counteract any successful exploitations.

Meanwhile, Epitime faces several competitors who also are trying to generate articles using an automated compensation mechanism. Epitime suspects none of them have reached the same solution yet, and as a result Epitime believes that its losses to exploitation are substantially lower than its competitors (resulting in a savings of millions per year).

Epitime is considering applying for a patent for its payment-determination formula. Discuss the pros and cons of doing so. What do you recommend?

Eric's Tips:

- Assume the formula was determined by its employees and that Epitime has standard invention assignment agreements with them.
- Do not discuss any issues related to employment law or liability for content.

END OF QUESTION 2

Question 3 (25% of score/target time of 45 minutes/word limit of 900 words)

Doubleshaft is an advertising sales firm. Dozens of media companies hire Doubleshaft to procure advertising for their publications. In exchange, Doubleshaft takes a commission on sales it makes.

Your client is Pine Noodles, a monthly magazine that is a Doubleshaft-represented client. Pine Noodles believes that it can make more money by ending its relationship with Doubleshaft and hiring an internal salesperson to sell advertisers directly. Specifically, Pine Noodles wants to hire Suzie, the lead Doubleshaft sales representative who has been handling the Pine Noodles account for several years. Suzie has successfully developed and worked with a group of advertisers who regularly advertise in Pine Noodles' magazine.

Suzie signed an agreement with Doubleshaft containing the same provisions as those on pages 90-91 of the Merges/Menell/Lemley book, with one additional provision:

**“Solicitation of Customers.** For a period of 12 months following the termination of my employment, I shall not directly or indirectly solicit, induce or encourage a Company customer to terminate or change their relationship with Company.”

Pine Noodles asks you if it can hire Suzie. What do you recommend?

Eric's Tips:

- To the extent that we discussed any state variations in the applicable law in class, please *briefly* distinguish how those variations might affect your conclusion.

END OF QUESTION 3

END OF EXAM