



**Intellectual Property (Law 388) Final Exam**  
Eric Goldman • Spring 2014

This exam has 2 questions worth 80% and 20%, respectively, of your final exam grade. You may use up to 2,200 words for Q1 and 550 words for Q2. This exam consists of 4 pages total.

This is an “open book” exam. You may review any written materials you want, but during your exam, 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](http://www.examssoft.com/sculaw). You must electronically return your answer, in an ExamSoft-supported format, there. You can upload your answer only once, so don’t submit it until you are completely finished. The earliest time you may download the exam is May 5, 2014, 9 am Pacific. The latest time you may upload your answer (provided it’s less than 73 hours after your exam download timestamp) is May 20, 2014, noon Pacific. ExamSoft’s timestamps are irrefutable evidence of your download and upload times. **IF YOUR EXAM DOWNLOAD AND 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. If you run into ExamSoft problems, call Lisa Willett (6 am-12 am) at (408) 569-1109.

Include page numbers and your 4 digit blind grade ID number, but don’t otherwise include any information that would identify yourself in your answer or its file name. At the top of your answers, tell me how many words that answer has. **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:

- All parties are, and all relevant actions take place, in California. All parties are over the age of majority. Don’t discuss any statutes of limitation.
- Read each question very carefully. Answer the questions actually asked. Don’t answer questions I didn’t ask.
- Allocate your word count cap smartly. You score most points from issue-spotting and applying the correct 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 it’s also OK to use any methodology that effectively communicates your points.
- If additional information would help your analysis, indicate what information you’d like and why it would help, and then state your assumptions and proceed with your analysis.
- 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 SUMMER!**

### Question 1 (cap of 2,200 words; 80% of exam score)

Ava is a fashion design student. She took a college course called “Fashion for Safety,” where students worked in teams to develop clothing designs that improve the wearer’s safety. Ava’s team considered how clothing could help wearers hide from attackers. Their professor suggested the students create an apparel item that appears normal but, with manipulation, converts into a camouflage design. The student team designed a reversible sweater where one side had an abstract camouflage pattern using colors typically found in urban settings. At the semester’s end, the team posted the sweater’s design specifications to the Internet.

After the semester’s end, Ava continued thinking about camouflage clothing and how a person could “hide” in urban settings. This prompted Ava to develop a skirt that can convert into a fake vending machine. She calls it the “Vending Machine Skirt.”

For the vending machine depicted on the skirt, Ava initially hand-drew an image of a vending machine. However, when she tested the skirt in public, she found that her drawings undermined the camouflage effect and drew unwanted attention from passers-by. Therefore, she asked her friend Jerry, an amateur photographer, to photograph a specific Coca-Cola vending machine Ava found on a public street. To maximize its camouflage capacity, Ava gave Jerry very specific instructions about how and when to take the photo. Ava created the final skirt version using the photo taken by Jerry. Her subsequent public tests of the photo-based design indicated that the photo worked better as camouflage than her hand-drawn image.

Here is a series of four photos of the skirt being unfurled into the fake vending machine:



You can also watch an optional short video showing the skirt’s deployment at <https://www.youtube.com/watch?v=MSXlvsqsgWk>, but ignore the video’s commentary and publication date.

**Question 1A:** Discuss Ava’s possible patent, copyright and trademark protection (if any) for the Vending Machine Skirt. Note: as the book indicates (page 491), clothing design isn’t copyrightable, but fabric print designs may be.

**Question 1B:** Discuss any potential copyright or trademark risks that Ava may face commercializing the Vending Machine Skirt.

Question 1C: Describe and justify your top three recommendations for steps Ava should take to improve her copyright/trademark/patent protection for the Vending Machine Skirt.

For all subparts: don't discuss secondary liability, trade secrets or publicity rights. Apply the AIA as it is now in effect. Assume none of the parties have entered into any contracts (written or oral) regarding IP ownership or licensing; and assume there are no applicable university policies.

**Question 2 (cap of 550 words; 20% of exam score)**

From Paul Newberry, *US Speedskating Gambles on New Suit, Loses Big*, ASSOCIATED PRESS, February 15, 2014, <http://wintergames.ap.org/article/us-speedskating-gambles-new-suit-loses-big>:

Saturday was another bust for the U.S. at the speedskating oval. Brian Hansen finished seventh in the 1,500 meters — matching the team’s best showing through seven events in Russia — and two-time silver medalist Shani Davis faded to 11th in what might’ve been the final individual race of an otherwise brilliant Olympic career....

The [poor speedskating results] can be traced to a process filled with a quest for secrecy but marred by questionable decisions, all of which came back to bite the U.S. program on the sport’s biggest stage.

Kevin Haley, senior vice president of innovation for Under Armour, laid out a timeline for The Associated Press that began in 2011 with the development of a new suit that was supposed to give the Americans a decided technological edge. The company worked with Lockheed Martin to handle some of the testing, a partnership that added a bit of intrigue to the process. The aerospace and defense giant analyzed the suits using a CGI-like procedure in which sensors are attached to the body, producing what Haley called “an unbelievable amount of data.” From there, Under Armour began wind-testing variations of the new suit using six different-sized mannequins....

According to Haley, Under Armour’s deal with U.S. Speedskating called for three suits to be delivered to each Olympic skater on Jan. 1, which is where things started to go wrong.

Sure, the skaters were involved in the development all through the process: trying on the suit, using it in training, offering suggestions and feedback. But secrecy seemed to be the primary concern, the U.S. fretting that other countries would swipe their technology if the suit came out too soon. The final version was completed about six weeks before the opening ceremony, which meant no one had a chance to compete in it before they arrived in Sochi....

Question 2: You represent Under Armour. Go back in time to the beginning of this speedskating suit development process. Identify Under Armour’s possible trade secrets, discuss what Under Armour might do to maintain those trade secrets, and assess if those actions are likely to be effective. Assume no one other than Under Armour has an ownership interest in the trade secrets.