



Internet Law (Law 793) Final Exam

Eric Goldman • Fall 2017

This exam has 1 question. Your answer may contain up to 2,750 words (including footnotes, but I'd prefer if you didn'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, 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 <http://www.examssoft.com/sculaw> and upload your answer there (in an ExamSoft-supported format). 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 Nov. 29, 2017, 10 am Pacific. Your upload must be less than 73 hours from your download. If it's within your 73 hour window, the last possible time you may upload your answer is Dec. 15, 2017, noon Pacific. ExamSoft's timestamps are irrebuttable evidence of your download and upload times. **IF YOUR EXAM DOWNLOAD AND YOUR 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. Confirm that your answer was successfully uploaded to Examsoft.

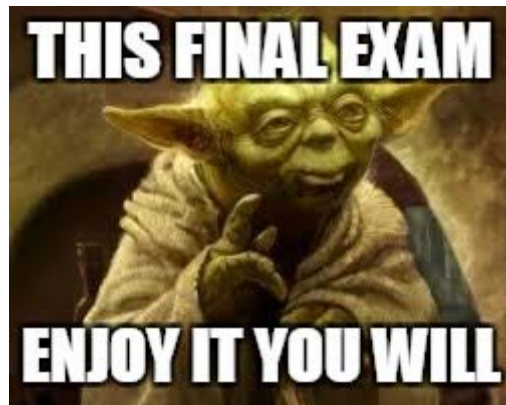
Include page numbers and your 4 digit blind grade ID number, but don't include any other information in your answer or its file name that would identify you. At the top of your answer, tell me how many words your answer contains. **I DON'T PLAN TO GRADE AN ANSWER THAT EXCEEDS THE WORD LIMIT BY EVEN ONE WORD. OMITTING OR MISSTATING YOUR WORD COUNT MAY INCUR SIGNIFICANT PENALTIES.**

Some additional thoughts for you:

- All relevant parties are, and all relevant actions take place, in the United States. If we discussed a California statute in class, you may use it as an exemplar of state laws even if you don't know if any parties are in California. Don't discuss any statutes of limitation.
- Read the questions very carefully. Answer the questions actually asked. Don't answer questions I didn't ask.
- Allocate your word count smartly. You score most points from issue-spotting and explaining how the law applies 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 and efficiently communicates your points.

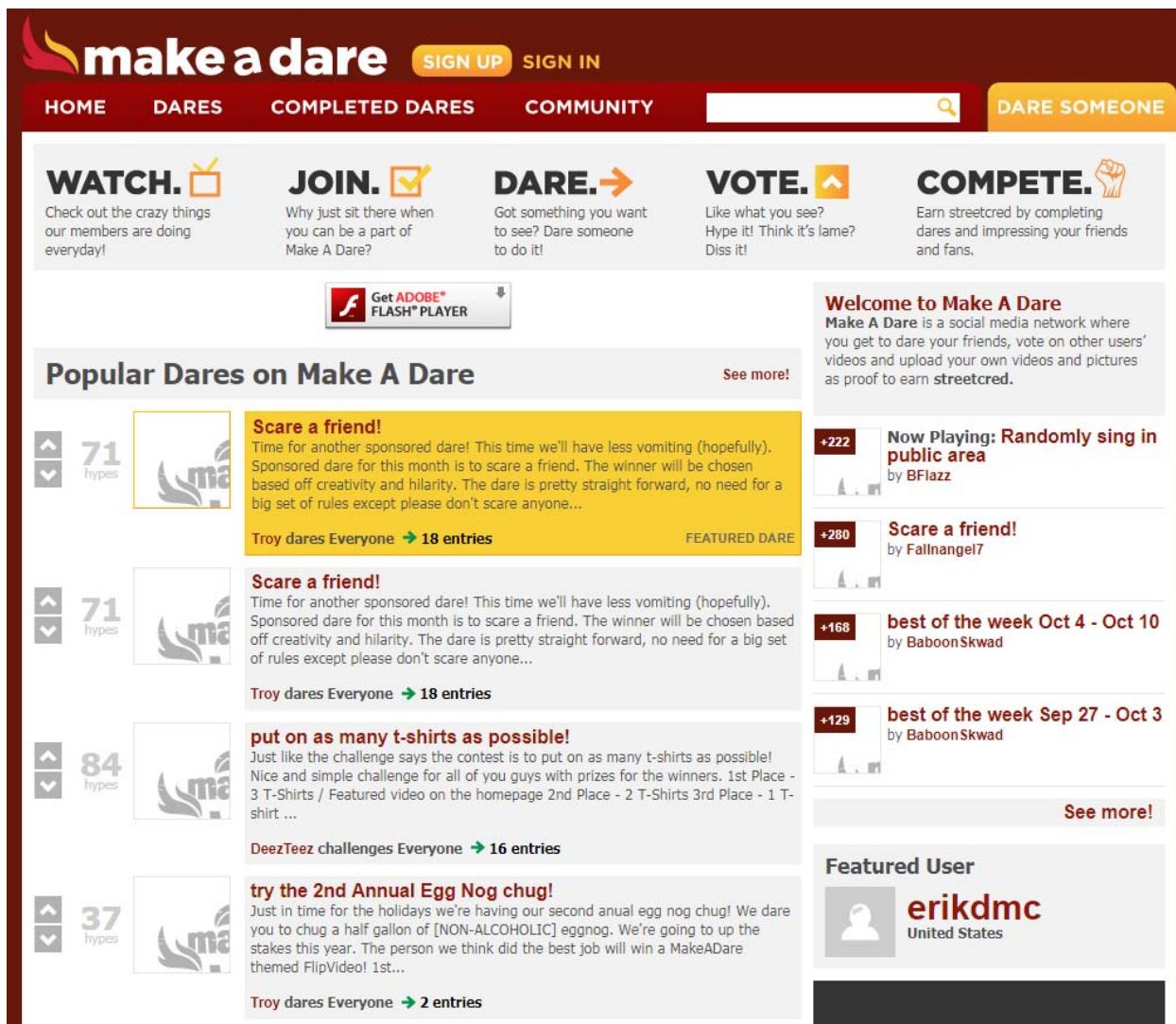
- If additional information would help your analysis, indicate what information you'd like and why it would help, and then state your assumptions and proceed with your analysis.
- While generally your answer should be based on legal principles, you are welcome to address other perspectives and concerns.

GOOD LUCK ON THE EXAM, AND HAVE A GREAT WINTER BREAK!



This question is based on the social media website “MakeADare.com.” Please use only the facts discussed here—some of which I made up—instead of any facts you find online.

MakeADare.com describes itself as “a social media network where you get to dare your friends, vote on other users’ videos and upload your own videos and pictures as proof to earn streetcred.” Here is a screenshot of its home page:



MakeADare members can issue dares to other individual members or to all members. Members must categorize their dares into one of the following categories established by MakeADare: “humiliation,” “pain,” “sexual,” “schoolyard pranks,” “places you shouldn’t be,” and “food.” Some examples of dares that members have issued:

- “On a subway or bus, kick a manspreader in the shin (or crotch)”
- “Tell a school administrator that a classmate is having sex with the French teacher”
- “Chain your bicycle to a car and sit in the bicycle seat while the car is traveling over 50 mph—while not wearing a helmet”

- “Fit the contents of an entire 16 ounce can of Pringles potato crisps (your choice of flavors) in your mouth at one time”
- “Show a dog drinking an entire pitcher of margarita”
- “Defecate on the floor in Walmart’s toy section”
- “Record your sibling holding your genitals while singing the Katy Perry song ‘Peacock’”
- “Show us something your employer wouldn’t want the world to see”
- “Pierce your own ear”

[Eric’s note: Feel free to hypothesize other crazy dares that members might issue. Your imagination is almost certainly tamer than real-life.]

Members can upload (to MakeADare’s servers) photos or videos showing they have completed dares, and doing so earns the uploading member non-monetary points called “karma.” As members accumulate karma, they are given more status on the site, including more prominence for their dares and photos/videos. To encourage higher-quality videos, MakeADare awards extra karma for videos set to music.

MakeADare asks members to submit only photos and videos they made themselves, but some members nevertheless upload photos and videos they find on the Internet. MakeADare doesn’t prescreen member posts or uploads, but MakeADare employees investigate complaints received about member content and take remedial actions when employees conclude that a member’s content violates the law or MakeADare’s member agreement.

Members can also earn karma by gaining more followers and getting more members to upload video/photo responses to their dares. Accordingly, some members have sent private messages (using the website’s private message functionality) to members they don’t know, asking for follows or soliciting submissions to their dares. To curb this unwanted behavior, MakeADare added an admonishment to the page where members can send private messages, saying “Don’t send private messages to members you don’t know.” MakeADare also technologically prevents members from sending private messages to more than 50 other members in a day. To avoid this restriction, some members create “fake” accounts to send additional private messages promoting their “real” account.

MakeADare displays third party advertising throughout its website. It also places third party video ads at the beginning and end of each submitted video. It also sells merchandise displaying its name and logo. Its merchandise sales increase proportionately with increases in its member base and the average time members spend using the website.

MakeADare’s tagline is “Where YouTube Meets *Jackass*.” (*Jackass* was a popular television show from 2000-2002 which Wikipedia says featured “people performing various dangerous, crude, self-injuring stunts and pranks”). To promote itself, MakeADare includes the “Where YouTube Meets *Jackass*” tagline in all of its advertisements, and it has bought Google ads triggered by the keywords “YouTube” and “Jackass” to display the following ads: “Where YouTube Meets Jackass/We Dare You To Join Us/makeadare.com”

Before it's possible to post content publicly or communicate with MakeADare members (such as issuing dares, uploading photos or videos showing completion of dares, or commenting on other members' content), a person must create a MakeADare membership account. This screenshot shows the membership registration page:

make a dare SIGN UP SIGN IN

HOME DARES COMPLETED DARES COMMUNITY

SIGN UP FOR MAKE A DARE

All fields are required

USERNAME
Use only (Letters, Numbers and _)

PASSWORD
Must be at least 6 characters long

CONFIRM PASSWORD
Must match your password

EMAIL ADDRESS
Must be a valid email address

Month ▼ Day ▼ Year ▼

BIRTH DATE

Type the text

[Privacy & Terms](#)

I agree to the [Terms and Conditions](#).

SUBMIT

Site Links
Make A Dare
Dares
Videos & Pictures
Dare Community
Contact Us
Sign Up

Forums
General Discussion
Site Feedback
Announcements

Friends
Comedy and MMA
DJ Mickv2
Zug Pranks
Fork Party
Top Cultured
Bullz-Eye
Funny Tube
Viral Videos

Support Us
MAD on Facebook
MAD on Twitter

Legal
Terms and Conditions
Privacy Policy

Both instances of the phrase “terms and conditions” in this screen link to a document that starts out as follows:

PLEASE READ THIS AGREEMENT CAREFULLY. BY VIEWING AND/OR USING THIS WEB SITE YOU AGREE TO BE BOUND BY ALL OF THESE TERMS AND CONDITIONS.

This Agreement (the "Agreement") governs your use of the MakeADare Web site, accessible via www.MakeADare.com (the "Site"). The Site is owned and operated by Sparked Ventures, LLC d/b/a MakeADare ("MakeADare") reserves the right to change the terms and conditions of this Agreement at any time by posting a revised Agreement on the Site. If you do not agree to this Agreement (including any referenced policies or guidelines), please immediately discontinue your use of the Site.

IN THE EVENT OF ANY INCONSISTENCY BETWEEN THIS AGREEMENT AND ANY OTHER INFORMATION PROVIDED BY MAKEADARE, ON THE SITE OR ELSEWHERE, THE TERMS OF THIS AGREEMENT SHALL PREVAIL.

1. Introduction

On MakeADare.com, users respond to each others' dares by posting videos showing off their accomplishments. MakeADare.com is intended to be entertaining, challenging and provocative. It is not intended to encourage participation in any conduct that is harmful, dangerous, or illegal. Because we cannot and do not monitor every dare posted, we rely on our users to create a safe, fun and friendly forum. Please use your common sense in posting and responding to dares, and in general.

You have been hired as MakeADare’s first in-house lawyer. Write a memo to MakeADare’s CEO analyzing the Internet law-related issues raised by MakeADare’s service and, where appropriate, suggesting ways to mitigate any concerns you have. Do not discuss any of the following topics: jurisdiction, 17 U.S.C. §§1201 or 1202, patents, criminal copyright infringement, the ECPA, SESTA, anti-SLAPP or defamation retraction statutes, or domain name protection laws (e.g., ACPA/UDRP/URS).