Internet Law (Law 793) Final Exam
Prof. Eric Goldman • Fall 2023

This exam has 1 question. The file containing your answer may not contain a total of more than 3,000 words, including your word count, AGID, and any footnotes (but no footnotes please). Please use a font size that is kind to my aging eyes.

This is an "open book" exam. You may consult any materials you choose, but during the exam period, you may not communicate about the exam or your answer with anyone (orally, electronically, or otherwise), other than law school staff or ExamSoft regarding exam administration. You don't need to do outside research, and such research is unlikely to help your grade. However, if you aren't sure exactly what a statute says, don't rely on summaries from class—read the statute!

I will email you the exam question on November 29, 2023 by 10 am Pacific. You must upload your answer to your ExamSoft profile at https://ei.examsoft.com/GKWeb/login/sculaw no later than December 13, 2023, 1 pm Pacific. ExamSoft's timestamp is irrebuttable evidence of your upload time. IF YOUR ANSWER IS UPLOADED AFTER THE DEADLINE, EVEN BY ONE MINUTE, YOU WILL FAIL THE COURSE. **THERE IS NO EXTRA GRACE PERIOD.** NO EXCUSES! Don't wait until the last minute to upload your answer, and confirm you successfully uploaded your answer (the Assessment Office has provided instructions on how to do so). The Assessment Office indicates that you may upload your answer to ExamSoft only once.

Submit your answer as a Microsoft Word or PDF file in accordance with the Assessment Office's instructions. Name the file "Your6-DigitAGID_InternetLaw_Goldman_Fall2023." In the file itself, include page numbers and your AGID in the document footer, but don't include any other identifying information. At the top of your answer, tell me how many words the 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.

If you have a technology emergency, call Law Technology at (408) 554-5762. If you cannot reach Law Technology, call ExamSoft at (866) 429-8889 to timestamp the issue. You may also contact Janelle Atangan at (408) 554-5137 or jatangan@scu.edu with any exam issues. If you have a personal emergency, contact Nicole Maxwell at (408) 554-4677 or nmaxwell@scu.edu. Do not contact me directly.

Some additional thoughts for you:

- Unless otherwise specified, all parties are, and all actions take place, in California. Don't discuss any statutes of limitation. Unless otherwise specified, all parties are adults.
- Only analyze legal doctrines we discussed in class (along with the associated statutes and casebook materials). I change my topical coverage each time I teach the course, so doctrines discussed on old sample answers may not be in-scope for this exam.

- Read the questions very carefully. Answer the questions I actually ask. Don't answer questions I didn't ask.
- Allocate your word count wisely. You score most points from issue-spotting and applying the 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. You may use IRAC/CREAC or any other method that effectively and efficiently communicates your points.
- If additional information would help your analysis, explain what information you'd like and why it would help.
- While generally your answer should be based on legal principles, you are welcome to address other perspectives and concerns.

I HOPE YOU TREASURE EVERY MOMENT OF YOUR WINTER BREAK AND HOLIDAY SEASON!
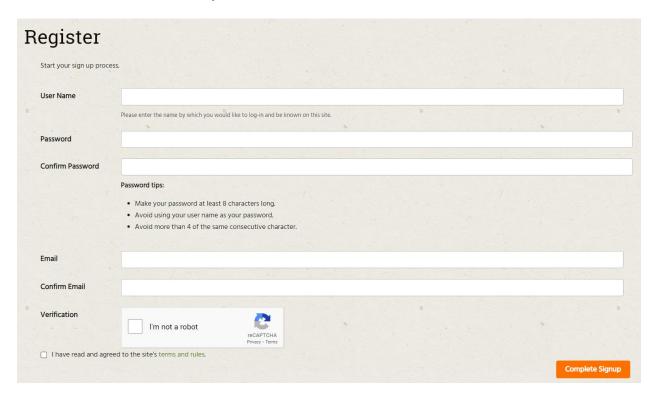
This exam relates to Forrest Fenn's 2010 memoir book, *The Thrill of the Chase*. (You don't need to read the book or the poem to answer this question). The book includes a 24-line poem that provides clues to find a valuable treasure box (shown on the second page) that Fenn hid somewhere in the Rocky Mountains. Fenn's poem spurred a frenzy among treasure-seekers. An estimated 350,000 people actively chased the treasure box, in some cases becoming so invested in the search that they lost their jobs, their life savings, their personal relationships, their mental health, and their physical health (five people died trying to get the box). An active online community of searchers debated the poem's interpretation, commiserated with each other, traded tips-and-tricks, trash-talked rivals, and advanced conspiracy theories about Fenn, the treasure hunt, and the world.

[The box was found in 2020, though related litigation is ongoing. This exam proceeds in a counterfactual universe where the box has not been found and the treasure hunt remains active. As usual, this exam blends actual and made-up facts.]

The Hint of Riches (THOR) is an online message board where users post remarks and other users respond to the posts. THOR covers a range of "get rich" schemes. In particular, THOR emerged as a key venue for online discussions about the Fenn treasure hunt. It has nearly 200,000 user posts about the chase, and many posts got hundreds or thousands of replies from other users.

Only registered accounts can post content to THOR. To create a registered THOR account, most users complete the following screen, though a few long-time THOR users registered their accounts before THOR had any terms of service at all:

Users who click on the words "terms and rules" get a popup box called "Site Terms and Rules." Annex A contains the full text of the popup box. The THOR site doesn't make any other copyright-related disclosures; and THOR hasn't made any filings with the Copyright Office.

THOR staff created several "sticky" message board topics. Sticky topics are more prominently displayed to readers than user-initiated topics. The sticky topics include:

- "How far would you go?" In this topic, users posted about the most extreme measures they would take to get the treasure box. Many users posted photos or videos demonstrating their extreme efforts, such as scaling cliffs without adequate safety gear, entering abandoned mines, and wading across swift rivers. Some users posted that they would physically harm their rivals to steal their secret information or prevent the rivals from getting the box first.
- "Addicted." In this topic, users posted about their obsession with the search, how the search had taken over their lives, and how the search had taken a toll on their happiness.
- "Government property." In this topic, users discussed how to enter government-owned restricted areas, such as national parks and military bases, where the treasure box might be located. (Unauthorized entry to government properties can be a federal crime).

Several THOR users decided to work together and pool their resources as a consortium. They incorporated a new company, "Tesouro Sagrado" ("Sacred Treasure" in Spanish; this exam calls it the "TS Consortium").

Some THOR users felt threatened by the TS Consortium. Because so many users wanted to discuss the TS Consortium, THOR created a new sticky topic titled "Tesouro Sagrado" for discussions about the company and its search efforts. The sticky topic page displays the TS Consortium's logo. THOR purchased Google keyword ads triggered by a search query for "Tesouro Sagrado" that display the following ad copy:

> Still Chasing the Thrill?
> THOR will get you closer to the treasure
> https://www.hintofriches.com/TesouroSagrado

One particularly upset THOR user, Morgan, launched personal attacks against Anderson, a leading member of the TS Consortium. Morgan posted to THOR that Anderson had spied on rival searchers by surveilling them with drones. Morgan made this assertion because, in other THOR posts, searchers claimed that they been surveilled by drones as they conducted their searches outdoors. However, none of those posts alleged that Anderson operated the drones, and it's plausible that all alleged "surveillance" incidents were just other outdoor enthusiasts flying their personal drones in the vicinity of the searchers. As Morgan anticipated, other THOR users were outraged at Anderson for allegedly violating the strongly held community norm that each treasure-hunter must do their own work, not benefit from the work of others without consent. In response to Morgan's allegations, other THOR users bombarded Anderson's workplace with angry phone calls and posted YouTube videos mocking Anderson.

The TS Consortium stored its proprietary information on a private server it owned and operated. Morgan received an anonymous email containing the URL for the private server. The private server didn't have any password protection. The private server was freely accessible to anyone who knew the URL, but the TS Consortium only shared the private URL among consortium members. Morgan manually downloaded every file stored on the TS Consortium's private server to Morgan's hard drive. Among the materials in the files Morgan downloaded: (1) confidential details about where the TS Consortium members thought the treasure box was located, and (2) photos Anderson took of those locations. Morgan's download of the TS Consortium's files consumed so much bandwidth that the TS Consortium owed its Internet access provider an extra fee that month for exceeding its contractually allotted bandwidth.

After downloading the materials from the TS Consortium's private server, Morgan uploaded all of the TS Consortium materials to THOR. Because of the upload size, THOR staff reviewed the materials to determine why such a large upload was being made. However, THOR took no action towards the materials, and neither Anderson nor the TS Consortium has contacted THOR about Morgan's uploads.

THOR does not run advertisements or charge subscriptions. However, THOR does conduct profitable online "treasure hunts" where participants compete with each other to solve clues prepared by THOR. Participants pay money to participate in the THOR treasure hunts, and the winning participants get cash prizes. Most paying participants in the THOR treasure hunts are active THOR community members.

In your answer, address the following 3 topics: (1) Analyze Anderson's and Tesouro Sagrado's claims against Morgan. (2) Analyze THOR's legal risks for the claims against Morgan you discussed in the first part and recommend to THOR any actions you think it should prospectively take to mitigate those legal risks. (3) To the extent not discussed in the second part, analyze THOR's legal risks associated with its sticky topics and its account registration process.

Your answer should NOT discuss: Contracts Restatements Section 69; any issues with the "THOR" or "The Hint of Riches" brands; contest/sweepstakes/gambling/lottery law; personal jurisdiction; web browsing as infringement; publicity rights; COPPA; GDPR; CCPA/CPRA; anti-spam laws; or ECPA/state law equivalents.

Annex A
THOR Site Terms and Rules

COPPA Policy
All users under the age of 13 must seek permission from their parent or guardian in order to gain membership of the Forums forums. While we welcome participation from members under 13, we require that a parent or guardian fax or mail back a signed permission form before we grant membership.

If you would like to start the registration process prior to us receiving a permission form, check the 'I agree' checkbox and press the 'Complete Signup' button below. If you would like to cancel the registration, click here to return to the forums index.

For more information about the registration process, or the Forums forums in general, please send email to hintofriches@outlook.com.

Forum Rules
Registration to this forum is free! We do insist that you abide by the rules and policies detailed below. If you agree to the terms, please check the 'I agree' checkbox and press the 'Complete Signup' button below. If you would like to cancel the registration, click here to return to the forums index.

Although the administrators and moderators of Forums will attempt to keep all objectionable messages off this site, it is impossible for us to review all messages. All messages express the views of the author, and the owners of Forums will not be held responsible for the content of any message.

By agreeing to these rules, you warrant that you will not post any messages that are obscene, vulgar, sexually-oriented, hateful, threatening, or otherwise violative of any laws.

The owners of Forums reserve the right to remove, edit, move or close any content item for any reason.

General Rules
While debating and discussion is fine, we will not tolerate rudeness, profanity (or attempts to bypass profanity filters), insulting posts, personal attacks or purposeless inflammatory posts. Our decision is final in these matters.

Please refrain from posting meaningless topics, one word (or short) non-sense posts, or the equivalent.

Multiple or repeated posting in order to increase your post count is not allowed. Advertising, spamming and trolling is not allowed. This includes using the forum, email, visitor messages, blog comments, picture comments and private message systems to spam other members.

Please wait a reasonable amount of time before bumping posts. For style changes and general 'how-to' questions this should be 24 hours. For specific troubleshooting issues, use 12 hours as a guideline.

We also do not allow posts or links to sites that are sexual in nature or violate vBulletin community standards. The moderators shall be the sole arbitrator of what does and what does not violate community standards.

Discussion of illegal activities such as software and music piracy and other intellectual property violations are not allowed.