Intellectual Property Final Exam
(Law 431)
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This exam has 2 questions with a total time limit of 3½ hours. Each question is worth 50% of the final score. You should allocate your time accordingly. The total time limit includes 60 minutes of discretionary time to use for transportation, printing, unforeseen delays or whatever you'd like (but please, not to spew unorganized thoughts!).

This is a "take-home" exam, meaning that you can take the exam anywhere you like. For your convenience, I have reserved Room 307 for using laptops, Room 318 for handwriting exams, and the Miller computer lab for using the school's desktop computers or printing. However, you can take the exam in the library, another open classroom or outside the law school.

You must return the exam to me in my office (Room 109) or by email (see below) by 9:00 pm Central time. www.time.gov provides the official time for the exam. Because I have already given you ample discretionary time, THERE IS NO ADDITIONAL GRACE PERIOD—NOT EVEN ONE MINUTE. I DO NOT INTEND TO GRADE LATE EXAMS. NO EXCUSES!

This is an "open book" exam, so 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).

If you use a computer:

- You may return your answer by delivering a printed copy to me in Room 109 or by emailing me at eric.goldman@marquette.edu. Include page numbers and your exam number on every page of your answer, but do not otherwise include any information that would identify yourself in the answer.
- If you email me your answer, your answer is not received until your answer is in my inbox *and* I can successfully open and print the file using Microsoft Word for Windows 2000. I will promptly reply to confirm that I can print your answer, in which case my reply email confirms receipt. However, if you do not promptly receive a reply from me, I expect you to take all necessary steps to turn in your answer before the deadline. You can reach me by phone at (414) 288-5232.
- 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 I might make special adjustments for widespread power or email failures).

- At the beginning of each question's answer, tell me the number of words in your answer. I DO NOT INTEND TO GRADE AN ANSWER THAT EXCEEDS THE WORD LIMIT BY EVEN ONE WORD. FAILURE TO INCLUDE A WORD COUNT, OR INACCURATELY REPORTING A WORD COUNT, MAY LEAD TO SIGNIFICANT PENALTIES.
- If you submit multiple versions of your answer, I will randomly choose one version to grade unless you prominently and unambiguously indicate which version I should grade. In either case, I will toss all other versions of your answer without reviewing or grading them.

If you are hand-writing your answer, please write legibly! Also, include your exam number on every bluebook and tell me how many bluebooks you are submitting. Hand-written exams are not word-limited and do not require a word count.

Assume that all relevant activities take place in 2004 in the United States. Discuss how any differences in state laws would affect your answer.

I have the following additional thoughts for you:

- I recommend that you spend adequate time reading the question and outlining a response.
- Read each question very carefully. Make sure you answer the questions actually asked. Do not answer questions that I did not ask.
- Some potential efficiency techniques:
    - 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 or cases only as necessary to make your point
    - 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
- While generally your answers should be based on legal principles, you are also welcome to address other perspectives and concerns.

GOOD LUCK AND HAPPY HOLIDAYS!

Question 1 (75 minutes; maximum of 1,500 typed words)

Legoland is an amusement park containing depictions of people, places and things made entirely of Lego bricks, such as a scale replica of the Taj Mahal [see photo].

Legoland has a mechanical boat ride entitled "Fairy Tale Brook" which it describes as: "This whimsical ride can be enjoyed by the whole family. Leaf-shaped boats sail gently through different fairy tale scenes created from LEGO® brick characters. Look for comical twists on childhood stories, such as the Three Little Pigs and the Three Billy Goats Gruff. Come see your fairy tale favorites come to life through LEGO Magic."

Assume Legoland wants to add new scenes to the Fairy Tale Brook ride based on the "Jack and the Beanstalk" story.[1] The "comical twist" will be that Shrek [see photo] will be the giant and Donkey [see photo] (instead of a hen) will lay golden eggs. To implement this rendition of the story, Legoland will build some scenes that include Lego-brick depictions of Shrek and Donkey.

Legoland has another attraction called the "Walk of Fame," which it describes as "This fun and educational, 3-dimensional art gallery is lined with classic works of art and busts of historical figures and pop icons - made entirely of LEGO bricks." See, for example, the Lego-bricks bust of Abraham Lincoln [see photo]. Assume Legoland wants to add a Lego bricks bust of California Governor Arnold Schwarzenegger[2] to its Walk of Fame.

1) If Legoland depicts Shrek/Donkey as described above, discuss Legoland's potential liability under copyright and trademark law to the owners of the IP rights of Shrek/Donkey.
2) If Legoland depicts Schwarzenegger as described above, discuss Legoland's potential liability under right of publicity law to Schwarzenegger.
3) In each case, what would you advise Legoland to do?

Eric's Tip:
- The law applicable to characters is rich and contradictory. Please focus on the principles we discussed in class and the specific statutes/cases we discussed that relate to characters.

END OF QUESTION 1

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[1] A brief retelling of the public domain story [the story dates to 1730 or earlier]. Jack's family is hungry and poor. They must sell their only valuable possession, their cow, for food. Instead, Jack foolishly trades the cow for magic beans. These beans grow into a beanstalk that Jack climbs, leading to a land where a giant lives. The giant likes to eat humans and say "Fee Fi Fo Fum." Once there, Jack discovers the giant has, among other riches, a hen that lays golden eggs. Jack steals the hen, kills the giant and (despite his poor business sense, larceny, murder and exploitation of animals) lives happily ever after.

[2] In addition to leading one of the world's largest economies, Schwarzenegger's notable activities include winning Mr. Olympia seven times, starring roles in movies like *Pumping Iron*, *Conan the Barbarian*, *The Terminator*, *Total Recall*, *True Lies*, and *Kindergarten Cop*, running a successful restaurant business and marrying into the Kennedy political dynasty.

Question 2 (75 minutes; maximum of 1,500 typed words)

Epitome is a consumer-oriented website with offices at 800 Marina St. Epitome owns the building. To generate much-needed extra cash, Epitome will lease some unused space in the building to a tenant, Viatone, who makes business-oriented telecommunications software.

Typically, building co-tenants separate their offices using walls, doors, windows, etc. Instead, due to high construction costs, Epitome plans to "share" the building with Viatone as follows:

- Viatone's offices will be divided from Epitome's offices by non-permanent floor-to-ceiling plastic partitions, which are cheaper and quicker to install (and remove) than walls. The partitions provide a visual barrier but do not effectively block noise. The fire marshal requires that an unlocked door be installed as part of the partition, but opening the door will set off an emergency alarm.
- Epitome and Viatone will have equal and unrestricted access to a common kitchen area and recreation lounge. While each company's employees principally will use the kitchen and lounge to eat and relax, each company will have occasional company-wide meetings in the lounge.
- Epitome's space has a nice conference room that Viatone can use on a reservation basis. To access the room, meeting attendees (both Viatone employees and outside guests) must walk through Epitome's space.
- Epitome has a "server room" with high-speed Internet connections, backup power, special computer racks and other amenities. Epitome has uniquely configured its computer equipment to improve website performance. Viatone will locate its computer equipment alongside Epitome's equipment in the server room but the computer networks will remain both physically and virtually separate (i.e., a person logged into Epitome's network cannot access data on Viatone's network, and vice-versa). Only a few engineers from each company can access the server room, but they probably will jointly discuss equipment configurations occasionally as each company adds equipment to the room.

1) You are Epitome's intellectual property attorney. What intellectual property issues are implicated by this transaction?
2) What contract terms (if any) should Epitome include in the transaction agreements to address your issues from #1?
3) What should Epitome do operationally (i.e., business practices, instructions to employees) to address your issues from #1 or the contract terms you proposed in #2?
4) How realistic is it to implement your recommendations in #2 and #3? Are there potential adverse consequences of #2 and #3?

Eric's Tips:
- The sharing arrangement raises many non-IP issues. IGNORE ALL OF THOSE!
- Please think carefully about the "points of interaction" between Epitome and Viatone. Be as specific/detailed as possible about the facts, your concerns, etc.

END OF QUESTION 2
END OF EXAM