

**Internet Law
Spring 2022
Midterm**

I graded your essays as follows:

- Correct and complete legal analysis: 70%
- Strategic advice: 15%
- Clarity and organization: 15%

The bullet points in the following outline do not directly correspond to my grading rubric, but they do reflect the overall weight I put on different parts of the analysis. I awarded full credit for identifying an issue and analyzing it carefully even if you reached a different conclusion than I did. Indeed, in several cases I awarded bonus points for spotting an issue I missed, or for surprising me with an argument I had not thought of.

I will of course be happy to discuss your essays and your grades with you if you have any questions.

The Secret of Success in Mathematics

Jurisdiction

A New York state court may not have personal jurisdiction over Stewart, but even if it doesn't, Cardano can refile in Louisiana.

- The state court has subject matter jurisdiction over torts against New York residents.
- Stewart works in Louisiana and presumably lives there as well. He is not subject to general personal jurisdiction in New York, and he has not been served while present in New York.
- Under *Burdick*, Stewart has not intentionally directed his blog posts at New York, even though they involve a New York resident and conduct in New York. His audience is a worldwide group of mathematicians and has no particular connection to New York.
- That said, *Calder v. Jones* might imply that if The Eternal Triangle has substantial readership in New York, Stewart should have expected his posts to have substantial impact there.
- A dismissal for lack of personal jurisdiction could be a short-lived victory, because Cardano could always refile her suit in against Stewart in a Louisiana court.
- Stewart might prefer to litigate in a New York court because of New York's strong anti-SLAPP statute. (Louisiana also has an anti-SLAPP statute, but New York's is particularly strong.)
- The court likely has personal jurisdiction over Tartaglia, who has much more extensive contacts with New York. The cause of action for defamation, in particular, arises in substantial out of conduct in New York (at a Newton departmental event).
- Personal jurisdiction over "Bolyai" is harder to evaluate. The strongest argument in favor is that "Bolyai" may have obtained private information about Cardano through means targeting New York (e.g. hacking her Newton university email).

Defamation

Cardano has a weak claim for defamation against Stewart.

- Tartaglia's accusations of plagiarism, as published on The Eternal Triangle, are statements concerning Cardano.
- A reputation for integrity is very important to academics, so the accusation of plagiarism is sufficient to "lower [Cardano] in the estimation of the community." Restatement (Second) of Torts § 588.
- In addition, if the Gardner Institute is withholding the \$1 million prize from Cardano due to the accusations, the loss of money is also an actionable harm.
- If Cardano "stole" the proof from Tartaglia, then Tartaglia's statement is substantially true and is not actionable. But if Cardano came up with the proof on her own, Tartaglia's claims of plagiarism are false.
- Cardano's emails, if authentic, partially undercut her claims of falsity, because they show that she did receive some ideas from Tartaglia. That said, there is not currently enough information available to resolve the truth of the matter, certainly not on a motion to dismiss.
- The emails in which Cardano discusses the case with Tartaglia and Hart could be potentially defamatory if they were forged, because they portray Cardano's character in a negative light, talking about a colleague behind her back. Again, there is not enough information available to tell whether the emails were authentic or not.
- Stewart's "shots fired" was figurative speech, not a literal claim that anyone fired shots.
- The authorship of the proof of the Klarreich conjecture is a matter of public concern because it was a major unsolved problem in mathematics.
- Tartaglia has actual malice toward Cardano if the conversation did not take place, because she knows that it did not.
- Similarly, "Bolyai" has actual malice toward Cardano if the emails are forged.

- But Stewart may not have actual malice. He reported accurately on the accusations and counter-accusations, and hedged his conclusions with language like “if true.”

Intentional Infliction of Emotional Distress

Cardano’s claim for intentional infliction of emotional distress against Stewart is blocked by the First Amendment.

- The same public-concern and actual-malice points apply to IIED.
- Stewart’s conduct was not “extreme and outrageous.” Although he reported on upsetting allegations, he did so evenhandedly.
- Stewart’s comment about “thugs and immature children” was far less incendiary or hurtful than the speech that was held to be protected in *Snyder*.
- The 🙄 emoji is an expression of curiosity and a comment on interpersonal drama. It does not have any particularly harassing or hurtful overtones.

Intrusion on Seclusion

Cardano’s claim for intrusion on seclusion against Stewart will fail.

- The only conduct that could rise to the level of intrusion on seclusion would be hacking Cardano’s emails. No one intruded into her private space, or observed her in an intrusive manner.
- It is not clear how “Bolyai” obtained Cardano’s emails. It is possible they were hacked. It is also possible that they were voluntarily disclosed by the recipients (Tartaglia and Hart). It is even possible — if unlikely — that they were voluntarily disclosed by Cardano herself.
- Even if the emails were obtained illegally, Stewart has a First Amendment right to publish them, because they bear on a matter of public concern and he was not a party to the illegality. *Bartnicki*.

Public Disclosure of Private Facts

Cardano’s claim for public disclosure of private facts against Stewart will probably fail.

- Cardano’s email correspondence is private.

- But the recipients of her emails, with whom she voluntarily shared them, are often allowed to make public their contents. *Cf. Ehling*. Thus, as with intrusion on seclusion, part of the analysis here depends on how “Bolyai” obtained the emails.
- The disclosure of the emails would not be “highly offensive to a reasonable person.” Restatement (Second) of Torts § 652D(a). These are fairly ordinary conversations, not intimate or deeply personal ones.
- The emails are also of “legitimate concern to the public.” *Id.* § 652D(b). They bear on the authorship of the proof of the Klarreich conjecture, and they provide important information about the facts of the dispute and the motivations of the parties. Cardano’s email to Tartaglia undercuts her public claim that the conversation “DID NOT HAPPEN.”
- There is a tension between Cardano’s claim that the emails are “PRIVATE” (and thus authentic) and her claim they are “COMPLETE FORGERIES” (and thus inauthentic). They can’t both be true.

Section 230

Section 230 probably precludes all of Cardano’s claims against Stewart.

- The Eternal Triangle is an “interactive computer service” and Stewart is its “provider.”
- Tartaglia’s email and the screenshots are all “information.”
- Tartaglia and “Bolyai” are each “another information content provider” who provided that information.
- All four of Cardano’s claims against Stewart are based on treating him as the publisher of Tartaglia’s email and the screenshots.
- Section 230 does not apply to the material Stewart himself wrote. But as discussed above, none of this material is actionable as defamatory or inflicting emotional distress.
- Tartaglia explicitly provided her email to Stewart for publication by asking him to post it on his blog. *Batzel*.
- “Bolyai” presents a closer case, because the email said simply “FYI.” In context, Stewart has a good argument that this was intended for publication, but there is also a counterargument that this language is ambiguous.

Subpoena

Cardano has probably made out enough of a case to obtain “Bolyai”’s identifying information from Stewart.

- Unless someone successfully moves to quash the subpoena, Stewart must comply and turn over any information he possesses about “Bolyai.”
- Stewart has “Bolyai”’s email address, and the email may have useful information in its headers, but Stewart does not appear to have any other identifying information
- Cardano has arguably made out a *prima facie* case against “Bolyai” for intrusion on seclusion or public disclosure of private facts. As discussed above, the source of the emails is unclear, and one plausible explanation is that they were illegally acquired. The fact that “Bolyai” had screenshots of Cardano’s emails to *both* Tartaglia and Hart tends to rebut the possibility that they were voluntarily disclosed.
- This *prima facie* case must be balanced against “Bolyai”’s privacy interests. Cardano has no other good way to discover who “Bolyai” is, and it would be somewhat hypocritical for “Bolyai” to remain private while disclosing Cardano’s private emails.
- Stewart can pass along the subpoena to “Bolyai” (using the email address that “Bolyai” emailed from), who could then move to quash if they want. But Stewart is not legally obligated to do so.
- Stewart could also move to quash himself and assert that The Eternal Triangle is a journalistic organization and that the materials from “Bolyai” were received in confidence. Some courts are receptive to this argument from bloggers; others are not.
- If “Bolyai” is Hart, then he may not care about being sued or exposed, as he is currently beyond the reach of United States courts.

Advice

Stewart should try to get out of this case; this is not a dispute that he has any substantial stake in.

- Stewart can move to have the case dismissed for lack of personal jurisdiction, for failure to state a claim, and under Section 230. He has

good arguments on all three, and is very likely to succeed on at least one, which is all he needs.

- Stewart can move to quash the subpoena if he cares strongly about receiving confidential tips in the future. It is not clear that a mathematics blogger has much of an interest in doing so; this is a question for Stewart to consider.
- Stewart can also pass along the subpoena to “Bolyai” and then get out of the way, letting “Bolyai” move to quash if they care about it.
- Stewart could also offer to settle with Cardano, whose real dispute appears to be with Tartaglia (and to a lesser extent “Bolyai”). It might be easier, and it will almost certainly be cheaper, to take the post down than to spend the time and effort litigating a full motion to dismiss Cardano’s lawsuit.