

Intellectual Property
THREE HOURS

Day Division
Professor Grimmelmann

Tuesday, December 10
9:00 AM - 12:00 PM

Exam No. _____

Submitted Electronically? Yes ___ No ___

Signature: _____

Print Name: _____

This examination consists of two equally weighted questions. There is a word limit of 1500 words per question. It will be enforced strictly; extra words from one question may not be used on another.

This is an open-book examination. You may use any of the assigned readings for class and any of your own notes or outlines to answer the questions. You may NOT use the Internet during the examination.

Your work on this examination is subject to the Student Honor Code. You may not discuss this examination or your answers with anyone under any circumstances until after the end of the examination period, as some of your classmates may be taking the examination out of sequence. **Your work must be exclusively your own.**

Please pay attention to the specific questions you are being asked to answer and to the roles the questions place you in. Support your answers with detailed analysis, reference to specific statutes and cases as appropriate, and explanations of how you applied the law to the facts. Simple citations (e.g. "Feist.") are appreciated but not required. Basic headers to organize the different parts of your answer are also a good idea. Spelling, grammar, clarity, organization, and good advice to your client are all parts of the grading.

If anything about a question is ambiguous, say what you think it means and answer it accordingly. If you need to assume additional facts, say what those facts are and how they affected your answer. No reasonable resolution of an ambiguity will be penalized.

The problems in this examination are set in the (fictional) American state of Carrollton. You should assume for purposes of the examination that the America Invents Act has been fully in effect at all relevant times. The names in the problems are fictitious. Please disregard any resemblance to actual persons or institutions, living, dead, or nonexistent.

This examination has **FOUR pages total**, including this cover page and the page of Exam4 and handwritten-answer information that follows.

GOOD LUCK!

Exam4 Instructions

Computers *may* be used on this examination:

Option 2—Open Mode—access to Exam4 and student computer-based notes—no Internet access

If you use a computer on this examination, you must use the Exam4 examination-taking software provided by the law school. You must provide your own computer and must have downloaded a copy of the Fall 2013 version of the Exam4 software to your computer. You should have completed this download, tested the software, and made sure the computer is in working order well before the date of this exam.

At the end of the examination, choose the “Submit Electronically” function on the Exam4 software. The software will request your Exam ID (Examination Number). Put the course name on your answer as instructed in the handout, but do not put your name anywhere on your answer. Submit your answer within the time limits for the examination; no allowance for additional time will be given for equipment failure. After submitting your answer electronically, note on your exam questions that you “Submitted Electronically.” The administration will print your Exam4 answers and provide them to me for grading.

Technological Problems: If you experience a technological problem during the examination period, consider the amount of time remaining and decide whether you should continue (or restart) the examination in blue books. No additional time will be provided for technological problems. Responsibility for submitting your answers on time electronically lies entirely with you. The Information Technology (IT) Department will assist in retrieving examination files from your computer, and the Office of Registration & Enrollment will accept an IT-certified copy of an examination file retrieved from your computer as a timely submission, as long as there is no evidence of tampering with either your computer or the examination file.

Handwritten Answer Instructions

If you submit handwritten answers to the examination, both the envelope and your answers should contain your examination number, the course name, and the instructor's name. Do not put your name anywhere on the envelope or on the blue book answers.

Upon completion of the examination, put your answers in the envelope and hand in the envelope to the examination proctor. Be sure to enclose all of your answers in the envelope—you will be graded on only what is inside the envelope. Do not put the examination questions in the envelope. Hand in the questions separately to the examination proctor. You are responsible for ensuring that all of your completed answers and questions are handed in to the examination proctor.

Question 1: The Printers in the Rue Morgue

You represent E.A. Pym, the proprietor of The Pendulum Pit, a “maker space.” Members pay \$25/month for access to a workshop space with a large collection of tools they can use on high-tech projects, such as building robots.

The Pendulum Pit has recently purchased a 3D printer. It works by squirting precisely positioned drops of liquid plastic, one after another, in a specified shape. It can produce plastic replicas, accurate to 1/500th of an inch, of any object less than a foot on each side. Light use of the 3D printer is free to Pendulum Pit members; those who make heavy use of it are required to pay for the cost of the raw plastic they use. Since the printer’s purchase in March, Pym estimates that between 20 and 40 different members have used it.

Pym is concerned about the following:

- One member, Lenore Lee, has been 3D printing miniature versions of the Gold Buggy, the heroine’s car from *Midas Touch*, a long-running animated children's television series. The Gold Buggy has feathered wings, a rear bumper that looks like a scorpion’s tail, and a front radiator grill that looks like a toothy grin. Pym realized what Lee was doing when he saw one of the 3D-printed versions for sale in a local toy store under the name The Old Buggy.
- Pym, an inventor himself, holds U.S. Patent No. 5,823,500, filed in 1975 and issued in 1977, which describes a strong but lightweight design for a gear, called an “inversion gear.” Pym has been using the 3D printer to produce inversion gears for a new lawnmower he is designing. He has received a cease-and-desist letter from Eldorado Industries, LLC alleging that he is infringing on its U.S. Patent No. 7,014,220, filed in 2010 and issued in 2011, which claims the process of “using a 3D printer to manufacture an inversion gear.”
- The Pendulum Pit’s promotional fliers include a photograph of objects produced using the 3D printer. One of the objects is a sculpture of the head of Lenore Lee, a famous actress who was born in Carrollton.
- Some Pendulum Pit members are using the 3D printer to design and test custom parts for their own inventions (e.g., improved water purifiers and toy helicopters).

Pym is concerned about legal risks related to the Gold Buggy, the ‘220 patent, and the flyer, and he is wondering whether to add a clause to the membership agreement dealing with ownership rights to inventions made in part using the 3D printer or other Pendulum Pit tools. ***Advise Pym on the legal risks he faces, and on the steps he should take.***

Question 2: The Purloined Questions

Since 1995, your client, the Montresor Testing Company, has written standardized tests used by many school districts in the Carrollton state public-school system. School funding and promotion decisions for teachers and principals are often based in part on test results. In addition, some schools use the tests to place students in honors or regular classes. Montresor's tests are sold to school districts under the name CarrollTest, which is written on the front cover of each test booklet, along with the Montresor logo (the outline of a raven).

The subjects covered on the tests are specified in extensive detail by state law. For example, the state curriculum for Pre-Algebra says that students should demonstrate mastery of the following skill:

Given an equation of the form $y = ax^2 + bx + c$ and a value for x , find y .

One of Montresor's questions to assess this skill is:

John is solving the equation $y = 2x^2 + 2x + 1$. He knows that $x = 1$. What should he conclude is the value of y ?

- (A) 1
- (B) 2
- (C) 5
- (D) 9

Montresor is concerned about the following potential threats to its business:

- The Pallas Corporation started selling its own tests to school districts in 2012 under the name Carrollton Testing, which is written on the front cover of each testing booklet, along with the Pallas logo (the outline of an owl) Many of the questions on the Pallas tests are suspiciously similar to Montresor's. For example, one of Pallas's Pre-Algebra tests asked:

If $x = 1$, then in $y = 2x^2 + 2x + 1$, what is the value of y ?

- (A) 1
- (B) 2
- (C) 5
- (D) 9

- Some teachers have been known to cheat by offering bribes for access to upcoming tests.
- Fortunato Tutoring sells guidebooks to the standardized tests, such as *How to Ace the CarrollTest: Pre-Algebra*. Fortunato also tutors students, and has them report back, in detail, the questions on the tests they take. Fortunato uses what it has learned about the mix of questions, the wrong answers, and so on to craft its guidebooks and its advice to students.

What forms of intellectual property protection are available to Montresor, and how effective will they be against these various threats?