

**Intellectual Property**  
**Fall 2023**  
**Midterm Assignment**

This assignment consists of **one question** and **five pages**, including this cover page. Your answer has a limit of **1,500 words**, which will be strictly enforced. It is due by **11:59 PM on Wednesday, October 18**. Instructions for submission will follow shortly and will be posted on Canvas.

This is an **open-book** examination. You should not need to consult anything beyond the casebook, the slides, and your notes, but you can if you wish. You are free to discuss the general legal principles we have covered with anyone, including each other. You are free to post general questions about the material covered in the course or clarifying questions about the *facts* (not the law) in the problems on the exam in the designated discussion area on Canvas. I will answer all questions posted there before 11:59 PM on Friday October 13.

Aside from that, **you may not discuss the question** with anyone else until after I have returned your grades. Your work on this examination is subject to the Cornell Code of Academic Integrity, the Law School Code of Academic Integrity, and the Campus Code of Conduct.

Please make your answer as **specific** to the facts of the question as you can. Generic statements or suggestions, such as "Make sure that all employees follow proper security practices," will receive few or no points. Your answer should assume that I am already familiar with the facts of the problem and relevant law, and dive directly into your analysis. Use **simple citations** (e.g. "*see KSR*") where appropriate. I include **spelling, grammar, clarity, and organization** in my grading only to the extent that they interfere with my ability to understand the substance of your analysis. I appreciate the use of headings to organize your answer, but they're not required. If you find the question **ambiguous** or need to **assume additional facts**, state your assumptions and explain how they affect your answer. No reasonable resolution of an ambiguity will be penalized.

Assume for purposes of the examination that present-day law has been fully in effect at all relevant times. Unless otherwise noted, all names are

fictional. Please disregard any resemblance to actual persons, places, or institutions, unless they are specifically incorporated into a question.

### **Policy on the use of Generative AI Systems**

You are **allowed** to use **generative-AI** tools in researching and writing your answer, subject to four conditions:

1. The tools must be **entirely automated**. You may not circumvent the rule against discussing the question with anyone by using a hybrid human/computer system, asking someone to help you with your prompts, or doing anything else that puts a human in the loop.
2. The tools you use must be **freely and publicly available**. You may not use any tool for which you paid a usage or subscription fee (or someone else paid it on your behalf), or use any tool that has not been released to the general public.
3. You must **disclose** which tools you used and give a brief description of how you used them in an appendix to your answer. For example, "I input the question to Claude to generate ideas. I used ChatGPT to help clean up the answer." If you did not use any generative-AI tools, you can write "I did not use generative-AI tools in writing this answer" or words to that effect. This appendix does not count against the word limit.
4. Any use of generative-AI tools is entirely **AT YOUR OWN RISK**. You are fully responsible for anything you submit; I will not accept "the computer did it" as an excuse for mistakes of fact or law. Large language models are well known to confidently make blatantly false assertions, cite non-existent cases, and inaccurately summarize legal doctrines. In my experience, they are also bad writers; their outputs are often bland and wordy. **YOU HAVE BEEN WARNED.**

## You Know, For Kids

Your client is the Bingo Corporation, a designer and manufacturer of children's toys. You have been asked to develop an IP strategy for the Bandit, a prototype currently in the design phase.

The Bandit is a ball that bounces back toward you when you throw it. More specifically, the Bandit is a blue rubber ball about 10 inches in diameter. It has a pull string sticking out of a hole on one side. Pulling hard on the string spins a weighted flywheel inside the ball. The user can then throw the ball (with the flywheel still spinning). When the ball lands, the impact causes a gear attached to the flywheel to engage with a gear attached to the ball, so that the ball also starts spinning. The result is that the ball bounces back towards the thrower.

In your conversations with Bingo's executives and designers, you have determined the following:

- Pull-string mechanisms are widely used. Familiar examples include the [See 'n Say children's toy](#) and [lawnmowers](#).
- There have been various toys and tools that return automatically when thrown over the years. The most famous, of course, is the [boomerang](#). More recently there have been [boomerang balls](#), which are essentially a fan inside a sphere; when thrown at the correct angle, the fan both keeps the ball aloft and also causes it to return towards the thrower. You have not found any previous toys that return by using a flywheel to bounce in the right direction.
- U.S. Patent No. 650,334,609, filed in 1989 and issued in 1991 to Robert Heeler, describes a children's toy consisting of a transparent plastic ball with a pull-string-operated flywheel inside. The intended use of the toy as described in the '609 patent's specification, is to demonstrate gyroscopic effects. When placed on a flat surface, the ball will resist being moved sideways or turned.
- The impact-operated clutch mechanism in the prototype Bandit, which is what causes the gears to engage when the ball lands, is manufactured and sold by Chilico Components at a price of \$2.50. The mechanism is described in U.S. Patent No. 783,200,455, filed in 2006 and issued in 2007 to Chili Cattle; the patent is currently owned by Chilico

Components. Another company, Stripe Solutions, sells an identical version of the mechanism for \$1. As far as you know, Chilico has not licensed the '455 patent to Stripe.

- Bingo maintains a “Play Lab” where invited children play with prototype toys. Children are recruited via ads directed to local parents on social media. Children in groups of five are given an hour in a room with several familiar toys and several new ones. Their sessions are observed by Bingo employees through a one-way mirror, and the children are individually interviewed for about ten minutes afterwards about the toys and whether they enjoyed playing with them. The parents sign releases promising that they consent to their children being observed, that they will hold Bingo harmless for any accidents, and that they and their children will not disclose anything about the toys being tested. The parents receive \$100 for their children’s time. There are anecdotal reports that some children have told their friends from school about the toys they played with.
- About two months ago, a crate of prototype Bandits went missing from the loading dock at Bingo’s research and development facility. Surveillance footage shows several unknown parties entering the loading dock through an unlocked door, putting several crates on a hand truck, and leaving through the same door.
- As currently planned, the Bandit will cost Bingo approximately \$8 to manufacture, will be sold for \$18 to wholesalers, and will retail for between \$25 and \$30 to consumers. There will be an initial cost of \$100,000 to develop a production line and another \$100,000 for the marketing campaign to launch the product. Based on market research, Bingo expects that consumer demand for balls that bounce back when thrown will be approximately 100,000 per year for ten years.

Advise Bingo on an appropriate IP strategy in relation to the Bandit. Discuss any IP-related risks of bringing it to market, and any steps Bingo should take to reduce those risks. Also discuss any IP rights that Bingo can obtain (including any necessary steps it needs to take), and whether they will be useful in maximizing Bingo’s profits from the Bandit. In view of

these IP risks and rights, should Bingo proceed with developing and selling the Bandit?

*You can limit your answer to the material we have discussed on undeveloped ideas, trade secrets, and utility patents. You do not need to discuss copyright protection or any other field of IP that we have not yet covered.*