

LAW 7538, ENTERTAINMENT LAW

FINAL EXAMINATION, FALL 2003

Prof. Tom W. Bell

Monday, December 8, 2003, 9:45 a.m. to 12:45 p.m.

Please write your exam number here: _____ and turn in this exam with your answers. If you fail to turn in this exam you will fail the exam.

This exam consists of three essay questions. You have 3 hours to complete it. Because different essay questions count for different percentages of your grade, however, I advise you to allocate your time accordingly. Also, before you begin writing any essay answer you should: 1) read the question carefully; 2) think about exactly which issues you need to address; and 3) outline your answer. Good organization and good analysis almost always go hand-in-hand.

The essay section is partial open book. You may use your casebook, statutory supplement, any material that I handed out in class, and any notes that you or your study group prepared. You may not use other materials, such as nutshells or commercial outlines.

If writing your exam in a bluebook, write on only one side of each page, on every other line. If you use more than one bluebook, please number the booklets so that I can easily follow their intended sequence. Please write as clearly as possible. I cannot grade what I cannot understand.

Unless otherwise indicated, all events described below take place in California.

If you have any procedural questions about taking this exam, please contact the Registrar. If you think it necessary to assume an unstated fact in order to answer a question you may do so, but you should clearly indicate that you are making an assumption and briefly explain why you consider it reasonable to do so.

Do not turn the page until told to begin the exam.

Essay Question 1

35% of exam's total grade
(suggested time: approximately 60 minutes)

Darren Hothead hosts a live talk show on the YAK cable network. From his studio in Los Angeles, Hothead offers conservative commentary on U.S. politics, with special emphasis on California. The YAK network distributes his show, “Hot Talk,” throughout California and across the nation.

In the summer of 2003, Gray Davis, then the governor of California, planned to hold a rally in East L.A. celebrating his success in getting the legislature to pass a law liberalizing illegal immigrants’ access to California driver’s licenses. Davis’s staff had announced the event only via Spanish-language radio and television outlets—not in any English-language media. Hothead nonetheless found out about the event just before it was scheduled to take place.

Voicing anger not only at the law, but also at what he characterized as the “covert and divisive” celebration of it, Hothead urged his audience to attend the rally and object. “This is an emergency!” he cried. “Jump in your car and rush to the defense of our great state! Grey Davis is once more selling our future to the highest bidder. He must have received—whaddya’ think? Ten thousand? Twenty thousand? Thirty thousand *unmarked* bills for this *signed* bill? He . . . is . . . a . . . CROOK! And it’s time for a citizen’s arrest!” Hothead carried on in that vein for some thirty minutes, breaking only for occasional commercials.

Inspired by Hothead’s program, Cora Lackee leapt into her car and drove from her Riverside home toward the Davis rally. Unfortunately, she lost control of her vehicle en route and caused an accident that killed another driver. The police report indicated that she was driving 80 miles per hour at the time of the accident, fifteen miles per hour above the posted limit.

Likewise inspired by Hothead’s program, the brothers Karl, Evan, and Todd Rabble rushed to the Davis rally. Although they arrived without incident, they proceeded to endanger the safety of other rally participants by pushing towards the podium while swinging homemade signs (which they had taped to bats). A melee broke out and the Rabble brothers broke several noses before police subdued them.

Assess the scope of Hothead’s liability, if any, for his comments.

Essay Question 2

45% of exam's total grade
(suggested time: approximately 80 minutes)

Notwithstanding his public persona, Hothead, about whom you learned in the prior question, was a secret member of the far-left organization, Earth Liberation Komrades (ELK). In the fall of 2003, Hothead attended a small, private ELK meeting at the secluded mountain estate of one of its wealthy members. There, Hothead enjoyed campfire discussions about how best to sabotage the petrochemical industry and whether violent action would convince Americans to stop eating meat.

Unbeknownst to the ELK members, the adjoining property belonged to Baxter Jackson, an oil tycoon and cattle rancher who just happened to be camping there at the time. Debate raged around the ELK campfires, occasionally drifting on the still mountain air to Jackson's tent. A devoted bird watcher, Jackson had a sensitive microphone and video camera with a telephoto lens ready at-hand. Using these on his own property, he could clearly see who was present at the ELK meeting and hear what they were saying. Alarmed, Jackson recorded a videotape of the event.

Intent on raising public awareness of ELK's views, as well as of its membership, Jackson gave a copy of his videotape to KOCT, an Orange County television station. KOCT ran excerpts of the videotape on its nightly news program. One excerpt showed Hothead saying, "So long as I keep the conservative rubes fuming about the Democratic Party, they'll never notice that I'm making it impossible for *anyone* to govern! Umm, these EarthFriend VeggieDogs taste great! Did you get them at Trader Joe's? Anyhow, let me tell you about how I got some right-wing sheep to raid a Davis rally this summer . . ."

Unsurprisingly, the news story made Hothead a pariah among right-wing conservatives. He lost his show on the YAK network, which fired him on grounds he had violated the "immoral activities" clause of their contract.

The news story made Hothead something of a hero among radical left-wingers, however. Seizing on the opportunity to curry favor with its left-wing customers, EarthFriend copied a still from the KOCT broadcast and ran a print ad showing Hothead happily munching on a VeggieDog. The ad carried the caption, "From Running Dog Capitalist to VeggieDog Activist. Our food changes lives." EarthFriend acted without the permission of Hothead, Jackson, or KOCT.

Analyze Hothead's rights and remedies against Jackson, KOCT, YAK, and EarthFriend. Also, analyze EarthFriend's liability, if any, to Hothead, Jackson, and KOCT.

Essay Question 3

20% of exam's total grade
(suggested time: approximately 35 minutes)

Although our course did not offer much coverage of video games, your text indicates that they generate more revenues than either live entertainment events or movie admissions. We did, however, spend a fair amount of time comparing the industry structures of the movie, television, and music businesses. Drawing on what you have learned about the reasons for and effects of those various industry structures, discuss the sort of industry structure you would expect the video game industry to have and what legal ramifications you would expect to result.