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# *Massachusetts School of Law*

500 Federal Street  
Andover, Massachusetts

Intellectual Property - Spring 2006

## **Final Exam**

### **Closed Book/Closed Notes**

Follow these directions:

1. Place all answers in your bluebook.
2. Place your SSN on each bluebook.
3. Place the exam in the bluebook and return both exam and bluebooks upon completion.

Question point values:

Questions 1, 2, and 3 are worth 30 points each.  
Question four is worth 10 points.

1. The National Conference of Bar Examiners (NCBE) is a non-profit organization consisting of representatives of the Bar Examining authorities of each of the 50 states and the District of Columbia. Twice each year, NCBE prepares a 200 question objective multiple choice test. The test may be used by any American jurisdiction as part of its bar examination. NCBE calls this test the MULTISTATE BAR EXAMINATION or the MBE. Since its inception in 1972, this test has been taken by hundreds of thousands of bar applicants, and the name Multistate Bar Examination is almost universally known by both lawyers and law students.

Martini Bar Review, Inc. is one of several firms engaged in the sale of intensive bar examination preparation courses. Martini was founded by a small group of attorneys, none of which are named Martini, whom met regularly over martinis at about the same time that the MBE became prevalent. As part of its course, Martini administers a 200 question objective multiple choice test under exam conditions. It calls this the PREPARATORY MULTISTATE BAR EXAM or the PMBE. Martini's advertising makes prominent reference to its PMBE, claiming that this is the one aspect of the Martini course that makes it superior to others.

Some of the founding members of Martini frequent eBay. They have noticed auctions selling their materials. Some of the auctions use PMBE in the description of goods but others do not. The founders decided to purchase as many of the materials as possible in an effort to bolster sales of their course. Some of the materials they purchased had PMBE blacked out or otherwise obliterated.

PM Bar Review (PMBR) is a small and little known newspaper circulated in Greenwich Village, New York City, since the early sixties. Originally started as a way of notifying rock aficionados of new rock clubs and artists, it now explores and reviews the tawdry after-hours scene in the five boroughs area of NYC. The paper now focuses on providing an in-depth critique of sex clubs and other forms of adult entertainment. PMBR is distributed with a cover that uses similar color, styling, and type face as the main web page used by Martini Bar Review.

Discuss the legal issues raised in the foregoing set of circumstances.

2. The October 2004 issue of Cardiac Medicine magazine contained a research paper describing how the simultaneous administration of a 500mg dose of the well-known anti-motion drug Alphamol and a 500mg dose of the well-known antibiotic drug Betamycin served to markedly reduce high blood pressure. The combined effect of these two drugs, neither of which was previously used in treating heart patients, had never before been noted.

In June of 2005, Dr. Kildare, a medical researcher at the University of the Catskills, discovered inadvertently that when a small amount (1mg) of Betamycin was added to a large quantity of Alphamol which was heated to the temperature of 132°C, a chemical reaction took place and a new substance was formed. Dr. Kildare designated the new substance Gammadol.

After conducting a chemical analysis of the new compound, Dr. Kildare developed a suspicion that it might be useful in controlling heart palpitations. Because there were very few preparations that were effective in this regard, he spent the next several months conducting clinical tests of the drug. From a population of volunteers he created a control group and a test group. He sold the placebo and drug for the same amount to avoid disturbing the validity of his test.

To monitor the distribution and results of the clinical test, Dr. Kildare a multi-talented man, wrote a software program. Dr. Kildare modeled the program on one marketed by Microsoft for which they hold a patent but he modified his software to better suit his needs.

In September, 2005, while these experiments were still going on, an article appeared in a French medical journal, *Le Santé de la Coeur*, describing the same method of making Gammadol that Dr. Kildare had stumbled upon in June. The French article referred to the new drug as *Coeurplacide* and contained a scientific explanation of how and why the new substance would be effective in reducing heart palpitations. The author of the article is unaware of Dr. Kildare and his work. Dr. Kildare did not see the French article.

Nineteen years prior to Dr. Kildare's discovery noted German botanist Dr. Helmut ScheiBekopf working at his lab at Princeton University discovered that certain cactus plants produced a sticky substance that he analyzed. That substance has the exact same chemical composition as Gammadol. As a good academic Dr. ScheiBekopf wrote a paper about his findings but never published it. Discuss the legal issues raised in the foregoing set of circumstances.

3. Samuel Johnson had admired the works of Shakespeare ever since he was a student. As a hobby, he wrote "updated" versions of a number of Shakespeare's plays in the form of novels. One of these, written in 2005, was based on MacBeth, but set in contemporary Glasgow, Scotland. This novel followed the action of Shakespeare's original quite closely, but the dialogue was contemporary and the roles of the characters were changed to reflect modern times. Thus, in Johnson's version, MacBeth was an ambitious member of the British Parliament from Scotland, the three witches were made over into three lobbyists, the King of Scotland was the Prime Minister of the modern day United Kingdom, etc. Johnson had not published the novel, which he entitled Bloody Scotland, but he hoped it would be his big break through.

In 2006, Johnson inadvertently left a typed copy of his novel Bloody Scotland on a plane while returning from a business trip. This copy had Johnson's name and address typed plainly on the cover but did not bear any notice of copyright. It was found by Helen Smith, a high school English teacher. She had always found it difficult to interest her students in Shakespeare and was fascinated by the Johnson work. Over the next few weeks she wrote a play based on Johnson's novel. The dialogue in the play was largely but not entirely copied from the Johnson novel. To be certain the dialogue would be accepted by high school students she collaborated closely with a student, Antonio DaSilva. Antonio provided much needed guidance and examples of customary slang usage. He also gave commentary on the actions and believability of the characters, some of which Helen used in her play. Helen has recently found that Antonio refers to the play as "our play."

To provide aesthetic appeal Helen hired a local artist to decorate the pages with geometric patterns. She told the artist that all art work must fit in a one inch margin around the perimeter of an 8.5 by 11 inch page. She gave the artist two weeks to complete the work. She made a number of revisions and the work was completed after four weeks. There was no written agreement. The artist had worked for Helen on other assignments in the past.

A month later, she had her senior English class perform the play. The performance was reported in a newspaper story. Thereafter, she received inquiries from a number of teachers around the country who also wanted to put on the play. She responded by offering to sell them copies of the play for \$5 each.

Discuss the legal issues raised in the foregoing set of circumstances.

4. Molar Engineering is a specialty journal for bioengineers working in the area of orthodontics. One subscriber is Fuzzy, a researcher at a dental institute. His wife Wuzzy works for an archeological reconstruction firm. One night, kept awake by Fuzzy's incessant snoring, Wuzzy leafs through an issue of Molar Engineering. She happens to run across a description of an obscure dental reconstruction process, which she instantly realizes could be used in restoring antique ceramics. She brings the article to work, and the workers in her department begin using the process with great success. No ceramics restorer would have thought to consult such a source for guidance. The process gives the firm an advantage over competitors. One technician, envious of a big bonus given to Wuzzy, sells the information to a competitor.

Discuss the legal issues raised in the foregoing set of circumstances.