

WHITTIER LAW SCHOOL
Entertainment Law
Summer 2005

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Monday, July 18, 2005
6:30 p.m. to 9:30 p.m.

FINAL EXAMINATION

NOTES AND INSTRUCTIONS

1. Use your exam answer to show your mastery of the material presented in the course and your skills in analyzing legal problems.
2. Note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
3. This exam is "open book." You may use any written material drafted before the exam's start by you or anyone else, but you may not consult in any way with anyone else during the test.
4. You may use this exam document as scratch paper, and you can take it home with you after the test. Only what you type up or put into a bluebook will be graded.
5. Do not write your name on any part of the exam or identify yourself in anyway, other than to put your student I.D. number on the cover of your bluebook, or, if typing, on each page of your answer.
6. It is recommended that you divide your time among the sections on the exam roughly in accordance with their corresponding point value. The following may guide you:
 - 5 of 100 points → 9 minutes
 - 65 of 100 points → 117 minutes
 - 10 of 100 points → 18 minutes
 - 20 of 100 points → 36 minutes
7. Consider law from outside jurisdictions to be persuasive authority. All cases we read, including those from California Superior Court, are citable on this exam. If you learned it in this course and it's relevant, then it is worth discussing, regardless of jurisdiction.
8. Organization counts.
9. Read all the exam questions for Part One before answering any of them – that way you can be sure to put all of your material in the right place.
10. Start your response to each section on a new page.
11. Feel free to use abbreviations, but only if the meaning is entirely clear.
12. If you are typing: Double space your response.
13. Bluebook users (not using a computer): Make sure your handwriting is legible. I cannot grade what I cannot read. Skip lines and write on only on one side of the page. Put Part One and Part Two in separate bluebooks, if possible.

**DO NOT TURN THE PAGE UNTIL YOUR
PROCTOR TELLS YOU TO BEGIN**

PART ONE

“The Harassers”

“How is algebra gonna help my band, Mr. Mencelli?” was Al Arvin’s only response to the problem on the blackboard. The class erupted in laughter.

“How is being a smart-aleck going to help your band, Al?” asked Mr. Mencelli.

Al thought about that. Hmm. That was an idea, alright. Being smart-alecks. That was an angle! As Mr. Mencelli droned on about quadratic formulas, Al dreamed up a whole new name, image, and promotional campaign for his band.

At Al’s house after school, Al met up with his two bandmates Bobby Bintz and Caleb Carlson. Just past their 18th birthdays and a couple weeks from graduating from Harbor Mesa High School, they had done nothing more than practice together in Al’s garage a few times. Al knew that was about to change.

Al told Bobby and Caleb his plan. They would call themselves “The Harassers.” In addition to their punk/pop musical stylings, they would play pranks on people and engage in other mischief — all to be recorded on videotape. Maybe they could generate a buzz that would enable them to get a recording contract, which was their ultimate dream. While Bobby and Caleb had no expectations of becoming stars, they were game.

After Bobby and Caleb left, Al came up with a tune for a theme song, called “Meet the Harassers.” He was inspired by looking at a tube of that famous brand of high-strength adhesive, “Krazy Glue.” He hummed the tune into a digital voice recorder, and he also vocally recorded a bass line to be used and described the arrangement of the tune. Then he came up with the lyrics, which included:

*The Harassers are looking for you
They’re removing nose hair with Krazy Glue
The Harassers are just out to harass ... harass!
The Harassers are up to no good
Lock the door when they’re in your neighborhood!
The Harassers are just out to harass ... your ass!*

The next day was a Saturday, and Al, Bobby, and Caleb practiced the song for hours. Bobby suggested changing some of the lyrics in a later verse, and Caleb wanted to do a guitar solo in the middle. Al agreed to make both changes. By the end of the day, they had managed to record it all on to their computer using an audio recording program.

On Sunday, Al told Bobby and Caleb all the thoughts he had in his head about making a Harassers promotional video. For an outrageous stunt, Al explained that he wanted to simulate putting Krazy Glue on the end of a piece of string, sticking it into his nostril so that it appeared to adhere to the hairs, and then tying the other end to a cinder block and dropping the block off of a porch. Al would then writhe around as if it had been unbelievably painful. But then there would be a close up in which Al gives a thumbs up and says, “My nose has never looked better!”

Then, to make sure they would get the “harassment” part in, they would spy on Mr. Mencelli.

Bobby and Caleb weren’t sure they wanted to waste a bunch of time doing the video, so Al told them he would pay them \$50 each and make it a “work for hire” —

meaning that he would own the copyright. Happy to pocket some cash, Bobby and Caleb said “okay,” and they went to work. They shot the cinder block stunt, each of them taking turns holding the camera and figuring out how to create the shot. Then, at night, the three of them climbed a tree in front of Mr. Mencelli’s house and used a telescopic lens on their video camera to see through a window into his bedroom. They had a perfect view of Mr. Mencelli using “shyhearts.net” – an internet dating service made especially for people who are chronically shy. They videotaped him typing messages to women in which he overstated his height and understated his age.

Coming back from Mr. Mencelli’s house, Al, Bobby, and Caleb saw a couple making out in a car. The figures were only visible as dark shadows. They took several seconds of video of the scene.

Back in Al’s garage, Al, Bobby, and Caleb took turns editing together the video. They wove together their song and the two video segments into a 10-minute demo reel. For the Mr. Mencelli segment, they tacked on the footage of the couple in the car, and Al added this voice over: “But the happy news is that Mr. Mencelli was able to overcome his shyness long enough to hook up with a prostitute later that night!”

The next day, Al dubbed off 50 copies of the demo reel onto DVD and then announced to Bobby and Caleb that he planned to take it to XTV – the famous cable music channel. Bobby and Caleb said that Al could take it to XTV and show it to them, but Bobby and Caleb wouldn’t allow Al to do anything else with it, because they were worried about the Mr. Mencelli piece. Bobby and Caleb didn’t want to enrage the faculty on the eve of their graduation.

Managing to get a meeting with a couple of vice presidents at XTV in Los Angeles, Al skipped school and drove up the coast by himself for an afternoon meeting. Al began his meeting by asking the executives to keep what he was about to show them completely confidential. They nodded their heads. Al put the DVD in the player and pressed play. The executives seemed genuinely entertained – one laughed so hard he had tears in his eyes. Afterwards, Al was made to wait in the hallway for 15 minutes. He was then called back into the conference room and told that XTV was passing on “The Harassers.”

Al was really upset. Driving back to Orange County, he now realized he had been wasting his time with the whole endeavor. Driving by Harbor Mesa Middle School, his old junior high, Al decided he had had enough. He upended the carton of DVDs out the window as he went speeding through the middle school parking lot. He then drove home and went to bed.

Friday night, Al turned on the TV and flipped to the KOTV local news. He was in for the shock of his life. Here’s the transcript:

Victor Vogt, a 7th grader at Harbor Mesa Middle School, was hospitalized Thursday night after watching a DVD called “The Harassers.” It seems Vogt tried to imitate a bizarre stunt on the DVD, in which a person removes his nose hair using string, Krazy Glue, and a cinder block, as you see here.

As the reporter talked, they rolled the clip from the DVD. The reporter continued:

Vogt’s attempt was not as successful. Vogt suffered massive hemorrhaging from his nose and endured a head injury when he

passed out and struck the concrete floor of his family's garage. Tonight, surgeons are saying Vogt may have suffered permanent brain damage.

On the same "Harassers" DVD, there is also this footage of Harbor Mesa High School math teacher Martin Mencelli having intercourse with a prostitute in his car.

They rolled the footage of the shadows making out in the car.

By Saturday, the story had gone national. Al, Bobby, and Caleb were soon identified, and within days, the three had been hit with a lawsuit by Vogt family. Al, Bobby, and Caleb immediately retained Laura Lopez, an attorney who had always done a lot of work for Al's father. She agreed to work for 15 percent of all income received by Al, Bobby, and Caleb in connection with their entertainment endeavors, plus an hourly rate for litigation work.

With everyone talking about the Harassers, KXDL 97.9 FM afternoon disc jockey Jimmy Jimjam created a parody version of the Harassers' theme song. His version, called "Delete the Harassers" was done live over the air by playing "Meet the Harassers" through sophisticated audio processing software that removed the vocals. Then Jimmy sang these lyrics, which he wrote:

*The Harassers are getting sued
A sticky mess they've gotten into with Crazy Glue
The Harassers are gonna get sued off their ass! Their ass!
And lead singer Al Arvin, he's our hero!
His chance of passing math is 'x equals zero'!
The Harassers won't graduate with their class! No class!*

Jimmy was pleased that the Harassers were such a hot on-air topic. A T-shirt shop in Huntington Beach even paid Jimmy \$500 to mention — in a by-the-way manner — that the shop was selling special T-shirts for Al Arvin fans. The shirts were emblazoned with a pen-and-ink drawing of Al Arvin's face encircled by icons of string, glue, and a cinder block. Underneath was the inscription, "Al Arvin is my stylist!"

After Jimmy Jimjam was able to obtain a compulsory license under 17 U.S.C. § 115 for "Meet the Harassers," he recorded "Delete the Harassers" on CD and sold it through area record stores.

Meanwhile, Al, Bobby, and Caleb asked Laura if they should get an agent. Laura told them they didn't need one quite yet. She could shop their demo and try to get them a film or TV deal.

Unfortunately, before Laura was able to get anything for them, an article in the *Hollywood Reporter* announced that XTV would be starting pre-production of a show called "The Real Harassers," a fictional drama about a group of high school friends who go around playing pranks on one another. A news report in *Variety* cited unnamed sources at the network who said that the show had been in development long before the Harassers news hit the air, but they were rushing it into production now to take advantage of the publicity.

Finally, Laura was able to stir up some interest for a combo television and record deal from the Starmount group. Here's part of the deal memo they sent to Laura.

Laura – I think these are pretty good terms ... especially considering the competition with XTV's show, which makes this deal worth less than it might have been otherwise.

1. This contract is by and among Starmount Productions Corporation ("SPC"), Starmount Records Limited ("SRL"), and Al Arvin, Bobby Bintz, and Caleb Carlson (the "Artists").

* * *

3. Back-end Compensation — Television

Laura, these are the three alternatives we are offering your clients for back-end participation. Choose one of them ...

- 3.1. Alternative A: 10% AGR, based on SPC's standard definition, which is guaranteed to be within industry standards.

Alternative B: 12% net profits, based on SPC's standard definition, which is guaranteed to be within industry standards.

Alternative C: 4% first-dollar gross, to a ceiling of \$100,000 (based on SPC's standard definition, which is guaranteed to be within industry standards).

* * *

Laura— Here's the record deal. Because we want to promote the TV show, we are offering what I think you will agree are better-than-average terms for a one-album deal. But if you want to take the record deal somewhere else, we can still do the TV show.

6. Services — Recorded Music

- 6.1. Artists shall record one album of no less than 10 tracks, nor more than 12 for SRL. One track will be that certain song known as "Meet the Harassers."
- 6.2. The Artists' services shall be in the nature of those provided by an employee, and SRL shall own all right and title to copyright in the recordings generated hereunder as a work for hire.

7. Compensation — Recorded Music

- 7.1. Artists will receive a \$1 million advance against recording royalties.
- 7.2. Royalties shall be 14% of suggested retail price, with the following recoupable from royalties: 100% of recording costs, 50% of independent promotion costs.
- 7.3. Tour support will be non-recoupable.
8. General Representations, Warranties, Indemnity
 - 8.1. Artists represent and warrant that they own all right, title, and interest in the song titled "The Harassers."
 - 8.2. Artists represent and warrant that they own all right, title, and interest in the video program titled "The Harassers."
 - 8.3. Artists hereby agree to indemnify and hold harmless SPC and SRL from any and all final, non-appealable judgments and awards (to a ceiling of \$500,000) that result from a breach of any of the foregoing warranties or representations.

Laura, I could go either way, but I think we should make this a non-union deal. That will give your clients maximum flexibility in terms of doing non-union work in the future.

9. Non-Union Production
 - 9.1. Artists understand that SPC and SRL are not signatories with any union or guild, and Artists represent and warrant that they are not members of any entertainment industry union or guild (including without limitation SAG, WGA, DGA, PGA, AFTRA, AFM, etc.).

Laura Lopez told her young clients that she was evaluating the Starmount offer. In the meantime, she encouraged them to start thinking about how they wanted to divide up the money under the contract. Al volunteered that he should get a bigger share, since he was the "driving creative force." This caused a huge argument. Laura stayed above the fray by saying that she would not counsel them on how to divide up the money, but she would write up whatever they decided on into a legal document. At the end of the day, the only agreement Al, Bobby, and Caleb had reached was to divide up the recording revenues 40/30/30, with Al getting the bigger share. Laura wrote up that deal, and the three Harassers signed it.

Section One (5 of 100 total points)

Answer every subpart, A through E. Your answers should be very, very brief. You don't need more than a sentence fragment, or at most a single sentence for any of these.

Mencelli v. KOTV

- A. What immediate step should be undertaken by Mr. Mencelli in pursuing a claim against KOTV?
- B. What should KOTV's response be?
- C. If KOTV responds properly, what impact will this have on the worth of the claim?

Vogt v. Arvin, Bintz & Carlson

- D. What initial procedural device should be employed by Al Arvin, Bobby Bintz, and Caleb Carlson in defending against the lawsuit brought by the Vogt family?
- E. What is the likely outcome?

Section Two (65 of 100 total points)

Al Arvin has come to you looking for an independent evaluation of his legal rights, claims, responsibilities, and liabilities. What do you tell him? Also, he wants your evaluation of the job Laura Lopez is doing – has she made any significant mistakes? Finally, just as a point of curiosity, Al was wondering whether Jimmy Jimjam has violated any FCC regulations.

Section Three (10 of 100 total points)

You are an associate working for Laura Lopez. She has asked you to look at the contract from SPC and SRL and make recommendations on these three questions: For profit participation, is alternative "A," "B," or "C" preferable, and why? Should she pursue the recording deal with SRL or look elsewhere? Finally, should the deal be union or non-union?

PART TWO

Section Four (20 of 100 total points)

Provide a response for either Topic A or Topic B. Do not respond to both. Label your response so it is clear which topic you have chosen.

Topic A

As a prominent entertainment attorney, you've been asked to write an opinion piece for *Variety* called "LESS LAW FOR LA-LA LAND." Draft the article by identifying three legal doctrines (or aspects thereof) that do more harm than good. Explain how they have a negative impact, and make your case for why everyone would be better off without them.

Topic B

A group of rich retired Silicon Valley tycoons have formed a well-financed group called FRESH. (Although publicly they deny it's an acronym, it actually means, "For Real Entertainment, Screw Hollywood!") You have been hired as a lobbyist for FRESH. You are to draft a memo explaining how the law often serves the function of excluding outsiders from the industry. Use examples from various areas of law.