

ENTREPRENEURSHIP LAW: THEORY AND PRACTICE
Spring Semester 2000
FINAL EXAMINATION
TAKEHOME

Dean Steven C. Bahls
April 24, 2000

INSTRUCTIONS

1. THIS EXAM IS DUE NO LATER THAN 5:00 P.M. ON THURSDAY, MAY 11 IN THE DEAN'S OFFICE. For your convenience, the exam may be turned in earlier. Please give your exam to Helen Cook, the Dean's Secretary. Late papers are marked down by one full grade (e.g. a "B" to a "C") for each day or fraction of a day they are late. Plan to get the exam done early. Computer or printer problems are not valid excuses.
2. The exam must be TYPED and DOUBLE SPACED on 8 ½ by 11" paper. There should be ONE-INCH MARGINS, and the print should be between 10 and 12 characters per inch (10 pci –12 pci). Most students should be able to answer these questions in 15 pages. THE EXAM MUST NOT EXCEED 20 PAGES. You may only write one side of each page. Number your pages. You may allocate the pages as you see fit. However, YOU MUST BEGIN YOUR ANSWER TO EACH QUESTION AT THE TOP OF A NEW PAGE. **THE FAILURE TO FOLLOW THESE DIRECTIONS WILL RESULT IN A LOSS OF POINTS.**
3. There are 100 possible points. The questions are weighted as indicated.
4. This is an open-book exam. However, you are not permitted to consult with anyone about the questions or answers until all papers have been submitted. YOU SHOULD BE ABLE TO DO VERY WELL ON THIS EXAM WITHOUT ANY OUTSIDE RESEARCH, BUT CONSULTING OTHER WRITTEN MATERIAL IS PERMITTED.
5. **AMBIGUITIES:** If you find the facts given to be insufficient to answer a question, state any additional factual assumptions you deem necessary and answer the questions as if your assumptions were part of it. DO NOT MAKE THE MISTAKE OF CHANGING THE QUESTION BY CHANING THE FACTS.
6. **IDENTIFICATION:** Write your exam number on the first page and on every succeeding page. **Neither your name nor any other identifying mark, other than your exam number, should appear anywhere on your answer.**
7. Take time to organize your answers. **You should discuss ALL RELEVANT ISSUES even if one issue might dispose of the case.** This exam requires you to do **ISSUE-SPOTTING** and **ANALYSIS.**

8. REPETITION: When I grade these, I will look at Question One in ALL of the exams and then look at Question Two in ALL of the exams. Merely because you have said something in Question One does not mean that you will get credit for it in Question Two should the same point be relevant in both questions. DO NOT CROSS REFERENCE. (I don't want my judgment of how you are doing in Question Two to be affected by my judgement of how well you did on Question One.
9. ETHICAL ISSUES: If the questions raise ethical issues for attorneys, please identify those issues in your answer.

GOOD LUCK!

QUESTION ONE
(35 Points)

You are a U. S. Supreme Court law clerk. Assume you received this memo from Justice O'Connor on January 3, 2000, about two weeks before the Court delivered its opinion in *Wal-Mart Stores v. Samara Bros.*, 2000 U. S. LEXIS 2197.

TO: Law Clerk
FROM: Justice O'Connor
DATE: January 3, 2000
RE: Wal-Mart Stores v. Samara Bros.

As you know all members of the Court, except me, have decided to find for Wal-Mart in the above captioned case. I intend to dissent because I think the opinion as drafted by Justice Scalia is contrary to the spirit of our decision in *Two Pesos, Inc. v. Taco Cabana*. I agree, however, that Justice Scalia's correctly stated the facts in the case.

Please write a draft of a dissenting opinion in the case. Remember I like to follow these rules in drafting dissenting opinions.

- I like to keep things short, approximately 5-8 pages.
- I like to use argument headings, which are detailed (not general headings such as "trade dress" or secondary meaning").
- I like to start my opinion with a brief description of the most salient facts.
- I like to include arguments from public policy.

QUESTION TWO
(35 Points)

You represent Jane Smith. Jane is negotiating with Steak Escape Restaurants to buy a restaurant franchise for German Village. Steak Escape Restaurants feature a limited menu of specialty sandwiches, specialty salads, fresh-cut french fries, fresh squeezed lemonade and similar produces.

Ms. Smith asks you to review the attached sections of the Franchise Agreement and answer these questions:

- Are there any provisions that you believe are not enforceable? Specifically, are the provisions relating to trade secrets and non-competition enforceable?
- What changes would you suggest in any of these provisions? Ms. Smith informs you that Steak Escape does not like to make many changes, so you should identify only the most important ones.

QUESTION THREE
(30 points)

You are the General Counsel for AMERICAN DOT.COM ASSOCIATION (ADCA). ADCA is the non-profit trade association of businesses specializing in commerce on the internet. The purpose of ADCA is to advocate for the rights of emerging companies conducting commerce over the internet. You received the following memo from the president of the trade association. Please answer it.

TO: General Counsel
FROM: Terry Techoid
DATE: February 21, 2001
RE: Position Papers

ADAC Maintains a small staff in the General Counsel's office that sometimes files amicus briefs on behalf of Association members in cases that its officers determine have a national impact.

I would like you to prepare a memo to me about what the position the Association ought to take on two issues. Once we develop the positions, and the Board of Directors approves our positions, we will look for the appropriate cases in which to file amicus briefs.

Jurisdictional Issues in Advertising. Jurisdictional issues are key issues for our members in advertising. Members are frustrated that jurisdictional issues are unclear. Outline which jurisdictional rules you think we should argue that courts should adopt, as it relates to advertising and sales on the internet.

Predatory Litigation. Our members are often owned by individuals who have worked for other companies. Typical when our member's owners quit their former job, they are sued by their former employers for taking trade secrets. Our members often feel that the lawsuits are meritless and are nothing more than a legal means of harassing former employees who later compete. As such, our members often bring a counterclaim for predatory litigation. Courts are not clear as to what standards are to be used to determine whether litigation is predatory. Please suggest standards that you think courts might adopt.