

Capital University Law School

ENTREPRENEURSHIP LAW: THEORY AND PRACTICE
Spring Semester 2002
FINAL EXAMINATION
TAKEHOME

Dean Steven C. Bahls

INSTRUCTIONS

1. **THIS EXAM IS DUE NO LATER THAN 5:00 P.M. ON Thursday, MAY 9, 2002 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. Alternatively you may e-mail your exam answer to Ms. Cook at hcook@law.capital.edu. She will confirm receipt of e-mailed answers.
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. If ethical issues arise assume that the problem arises in the hypothetical state of superior and that American Bar Association's Model Rules of Professional Conduct apply.
10. WEBSITES: Visit the websites identified. Those websites will provide you with more information about the companies and products involved. The content of these websites is incorporated herein.

GOOD LUCK!

QUESTION ONE
(40 points)

TO: Associate
FROM: Senior Partner
DATE: June 4, 2002
RE: Ping Golf

We represent Ping Golf, Inc. (www.pinggolf.com). Ping Golf manufactures high quality, high tech golf clubs. Ping invests substantial money into the design of innovative golf clubs that it markets as high performance golf clubs.

Recently it has learned that a web advertising company, GowwwSports.com (<http://gowwwsports.com/golf.html>), is marketing “golf club clones”. The site links to www.pinemeadowgolf.com. Pine Meadow Golf has knocked off the design of Ping golf clubs and other clubs. GowwwSports.com is not related to Pine Meadow Golf in any way. Pine Meadow Golf simply pays a one-cent per access fee to GowwwSports.com for those using the GowwwSports.com website to link to the Pine Meadow website.

Ping Golf has asked us to prepare an analysis of the following:

1. Do the actions of either GowwwSports or Pine Meadow Golf in “knocking-off” Ping’s products or advertising the products as “golf club clones” violate the law? What additional information would you need to make this determination?
2. Ping is about to assemble a team of experts (engineers, golf pros, marketing professionals) to design “the next generation of golf clubs.” The charge to the new design team is to use all available technology to produce a golf club that will drive a ball farther (and with less tendency to hook or slice). Further, the team is to capture the “bold design” “live-style” advertising that has made the Pontiac “Vibe” and Pontiac “Aztec” so successful with Americans in their 20’s and 30’s. See www.pontiac.com.

How, at the beginning of this new product development process, might Ping Golf develop a legal strategy to protect its anticipated “next generation golf clubs” by stopping companies like GowwwSport.com and Pine Meadow Golf from “knocking off” the new golf clubs and “stealing” the goodwill associated with the new clubs?

QUESTION TWO
(20 points)

TO: Associate Attorney
FROM: Senior Partner
DATE: June 4, 2002
RE: Columbus Medical Software Project

I just met with John Edgar, Elizabeth Borden and Allen Anderson. They intend to form the Columbus Medical Software Project. They want our firm to represent all three of them.

1. It is ethical to do so?
2. Assuming it is ethical to do so, I'd like you to propose a modification to the language ("Representation of Multiple Parties") in our standard firm engagement letter (found at page 6-29 and 6-30). I have not been happy with the language (specifically the paragraph starting "During the course of joint representation") because it does not adequately describe the disputes and conflicts that might arise and the possible approaches to resolving the conduct. Please redraft the paragraph to address my concern. I realize that I'm probably asking you to turn a paragraph into several pages.

QUESTION THREE
(40 points)

TO: Thirteenth Circuit Judicial Clerk
FROM: Presiding Judge
DATE: June 4, 2002
RE: Buzz vs. Starbucks

I'd like you to help me with a case of first impression in the United States Thirteenth Circuit Court of Appeals. The case comes to us from the U.S. District Court for the Southern District of Superior.

Starbucks Coffee has 60% of the retail coffee shop market in Utopia, the capital city of Superior. Its general manager for its Utopia coffee shops is Buzz Davis. Buzz entered into a covenant not to compete that extended to the entire state of Superior and had a three-year duration. Buzz left Starbucks and started his own Utopia-area coffee shops: "Coffee with a Buzz." Starbucks sued in state court to enforce the covenant not to compete and to enjoin Buzz from competing on the basis that he has appropriated trade secrets. Buzz ultimately won at the state trial court, state court of appeals and in a divided (5-2) decision at the Superior Supreme Court. Buzz then sued Starbucks in federal court for his damages alleging the lawsuit precluded his business from being successful, under theories of predatory litigation. The U.S. District Court granted Starbucks summary judgment on the basis that this circuit has not recognized predatory litigation claims under the federal anti-trust laws.

1. Please write a proposed section of my opinion that states this circuit recognizes predatory litigation claims. Specifically the section should state (a) why it is good public policy to recognize the predatory litigation doctrine and why doing so is consistent with the anti-trust laws; and (b) what specific standard should be adopted to determine when litigation is predatory and justify why that standard is best.
2. Apply the facts of this case to the standard you set forth in 1(b) above.