FINAL EXAMINATION

LICENSING

PROF. VETTER

1. Essay Exam

This examination consists of three sections, each of which presents a (i) problem, (ii) issue, or (iii) opportunity to discuss policy; or presents some mixture of these three. The sections may or may not build upon each other's facts (each section will signal whether it does so). Each section has a particular unique focus, and is worth a different amount of the total points available on the examination. The point weights are given in the heading for each section in the exam problem, repeated here for clarity: Section A (50%); Section B (35%); Section C (15%).

Sections A and B share a common set of facts. Read both sections before writing an answer for either.

2. Open Book

This is an "open materials" exam. You may use paper materials such as course notes or outlines (prepared by yourself or others), commercial outlines, and other similar materials. You may not communicate or collaborate with anyone during the exam or obtain direct or indirect information or assistance from anyone. You may not use any live or electronic retrieval/computer source during the exam.

3. Single-Part, Multi-Section Exam

This is a single-part examination. If you finish the analysis for a section, go immediately to the next section.

Given the point percentages for the three sections disclosed above, one logical division of time in a three hour (3) examination is to spend 30 minutes reading the examination sections and planning one's answer. Then, the remaining time would be spent as follows: 75 minutes writing the analysis for the first section worth 50% of the points; 53 minutes writing the analysis for the second section worth 35% of the points; and 22 minutes writing the analysis for the third section worth 15% of the points.

4. Time Allotted

The final exam is three (3) hours in length.

5. Page Length

The problem and fact pattern is six (6) pages in length, pages 5 to 10 herein.

6. Release Prohibited

I have not determined whether I will make this examination available in the future. Accordingly, I am prohibiting it from release. Please return all problem pages. Copying, reproducing, or memorializing the problem in any form or fashion is prohibited.

7. Other Instructions

If using a blue book, please write on only one side of the page. Put your Exam Number on each blue book.

Please bring a copy of the assigned case book to the examination. Besides the course cases book and the three assigned supplemental documents (the Quanta case and two sample licenses), also bring the following to the examination in printed form: the course overheads.

The law applicable to this examination is the law covered in this course from: the assigned reading from the cases and any assigned supplements on the course web page, and additional law (if any) provided in the course overheads (collectively, the "Materials"). In my upper level Intellectual Property courses the Materials also include the primary statutory, regulatory, or treaty-based provisions relating to the assigned reading materials. Be sure to answer all questions on the basis of the law provided in the Materials.[a]

Write an analysis for each of the issue(s) raised by the facts or information enumerated in the examination sections. Even if the facts build from some real-world events, persons or situations, use the facts as given. At the end of each section the focus or "call" of the question is given in a short paragraph enclosed in a rectangle.

Organize your written answer logically by the three sections of the examination. Your written answer does not need a general introduction. Proceed immediately to analyzing the issues, problems or questions in each section. The sections vary in the degree to which they suggest incorporating policy analysis. One section, the third, overtly suggests policy analysis.

Organize your answer for each section in a logical, orderly way. In most cases that means you won't organize your answer explicitly using the questions/assignments in the rectangle as headings for your answer. Your answer should address the questions/assignments in the rectangle containing the "call" of the question, but typically the questions/assignments themselves do not make a good organizational vehicle.

Any section suggesting a policy-oriented answer is designed to allow one to employ any policy arguments that arose during the course. These arguments may include, without limitation: institutional considerations for the various structures and organizations underlying the law, including the intellectual property system; effects and causes of these structures and systems; efficacy, reliability, fairness and justification of the regimes that might regulate or impact the subject matter; and the impact of all this on individuals, companies, countries, society, and

[a] There may be some situations where the Materials provide alternative rules or tests for resolving a specific legal issue. In these instances, the "majority" rule is the rule or test relied on by the majority in a primary case (or the primary cases) in the cases/supplement. Any other different tests or rules, (which could be multiple) whether mentioned by the majority opinion, offered in a dissent, described in the notes to the case, or given in the overheads, are alternative or "minority" rules. This instruction does not necessarily mean that issues exist in this examination requiring the application of alternative or minority rules. And, it may or may not be necessary to analyze any or all such alternative or minority rules depending on the specific examination instructions and/or the facts provided. Finally, some areas of doctrine may not have a "majority" rule as presented in the cases.

culture. This listing, however, is not necessarily a good way to organize the analysis. A productive organization of the analysis depends on the context of the problem(s), dispute(s) or question(s) posed in the policy-oriented section. Any "policy" section, however, is not completely divorced from the doctrine studied in the course. Question(s) in a "policy" section may require familiarity with or recognition of the doctrine studied in the course in the context of specific course cases and examples.

For the non-policy sections, write a short analysis for each of the issues raised by the facts enumerated in the examination question, ***based only on the law from the Licensing course***, calling also upon its prerequisite(s) as necessary. The analysis should communicate the following as briefly as possible based on the facts available: (i) discuss the arguments, positions and rights that the plaintiff/initiator should assert, or has asserted,[b] against the defendant(s)/respondent(s); (ii) evaluate the arguments and substantive merits from each side's perspective, articulating defenses and counter-arguments each should/might assert; (iii) assess the strength of each party's arguments; and (iv) determine for each issue who is likely to prevail and explain why. Your written answer, however, should not be organized according to these four points.

Rather, for each issue, your analysis should communicate the issue, and then state/apply the law to the issue's facts (applying counterarguments as well), and then conclude on the issue. An exception to this is that there is no need to restate a legal test that has already been stated; simply refer to the previous statement of the rule. For example, if there is a second copyright licensing issue, and you have already related the elements of a test for an earlier issue, you can abbreviate your analysis by directly applying the law to the facts and concluding. Another way to say this is that if a second issue arises where there is a need to apply a legal test already related and discussed, you may analyze the second issue by exception, i.e., discussing the differences in application and outcome.

If you believe that there are any additional critical yet unsupplied facts that would materially impact the outcome of a particular issue, you should note what such facts would be. In such situations, ***briefly*** describe how such critical facts might impact the outcome, i.e., indicate ***at most one and only one*** differing result that would ensue from different reasonable factual assumptions about such unsupplied facts.[c]

As a general matter, the course Materials did not focus on invalidity/protectability issues within the intellectual property regimes studied in relation to licensing. Thus, while intellectual property infringement doctrine and issues are clearly important, not all basis for invalidating the

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[b] The examination question may be written in such a way that certain issues are clearly "in" the case/dispute because they have been asserted by either party. You should analyze these issues, but there may be other issues to be analyzed as well because the examination question is silent about whether they have been, will, or will not be asserted by either side. In addition, the examination question may also indicate that certain other possible issues are "out" and not to be analyzed because the parties disclaim certain issues or protections.

[c] Please note that if you find yourself discussing alternative outcomes for supposedly critical yet unsupplied facts for every issue you analyze, you are probably engaging in too much analysis of such alternative outcomes.

relevant intellectual property were studied. Thus, for example, if a mark is at issue, proceed directly to any licensing/infringement issues and treat invalidity issues only in the context of a defense, and only for any invalidity bases prominent in a case in the course.

Your written answer does not need a general introduction. Proceed immediately to analyzing the issues. The location of final jurisdiction and/or venue for the expected case/dispute is not a part of the analysis except where clearly indicated in the call of a section's question(s).[d]

Apply the majority rules from the applicable law. Thus, your analysis can ignore any significant outcome-determinative differences in majority/minority rules and need not supply/apply minority rules. In some instances there may be no clear "majority" rule in licensing, so apply the rule given greatest emphasis during class discussion, recognizing that virtually all the points can be earned on an issue with such ambiguity in the doctrine by application of one of the dominant approaches. Probably the main way in which minority rules or dissents are relevant is that they sometimes provide inspiration for counterarguments.

You should analyze clearly presented (either explicitly or by the facts) issues in the case/dispute even if your analysis determines that the relevant item of intellectual property is invalid, recognizing that invalidity analysis was not an emphasis in the course. In a real court opinion concerning trademark, for example, if the court holds that the defendant/respondent wins on an invalidity issue, the court might not analyze the infringement test to determine if the accused product/use infringes the mark. On this examination, the infringement analysis is paramount.

HONOR CODE: Turning in an examination answer to this final examination is deemed to be a pledge under the Law Center honor code that the exam taker has complied with the honor code in all respects in relation to this examination.

(the examination problem starts on the next page)

[d] Analyze and discuss the probable ultimate outcomes under the substantive law studied. Do not analyze any intermediate standards, such as likelihood of success in obtaining a preliminary injunction. In addition, we did not study the details of potential remedies or damages, so do not discuss these items in detail.