Examination Identification Number: __________

FACULTY OF LAW

LAW 518: A1 — INTELLECTUAL PROPERTY (PROF. RENKE)
MIDTERM EXAMINATION - OCTOBER 14, 2003

Time Allotted: One hour and 15 minutes reading time (75 minutes).

Code Number: DO NOT ENTER YOUR NAME ON ANY ANSWER SHEETS OR BOOKLETS. A list shall be circulated and your name is to be entered opposite a number on that sheet. That number shall be your codenumber FOR THIS EXAMINATION ONLY and should be entered on THIS EXAMINATION in the space provided above. Following these procedures will ensure anonymity during marking.

Special Instructions: 1. This examination consists of 18 questions on 24 pages (including this page). Check to ensure that the examination is complete before starting.

2. Answer ALL questions and parts of questions. READ ALL INSTRUCTIONS IN QUESTIONS. IN YOUR RESPONSES, REFER TO ALL PERTINENT CASES AND STATUTES.

3. This is a CLOSED BOOK examination, except that you may use an unannotated Consolidated Intellectual Property Statutes and Regulations.

4. The examination is graded out of 60 marks, and is worth 30% of your final grade. This examination is “fail-safe” (if the percentage scored on the final examination is higher than the percentage on this examination, then only the final mark will be used for the calculation of your final grade; if the percentage scored on this examination is higher than the percentage scored on the final examination, then this examination’s weighting will remain at 30% of the total mark).

5. Do not make up facts.

6. Write legibly.

7. Adhere to the time limitation imposed on this examination strictly. Failure to do so may lead to a reduction of grade or a refusal to accept the examination paper.

8. To avoid disrupting students finishing the examination, no person shall leave the examination room during the last 15 minutes of the examination period.

9. Times for responses to questions are SUGGESTIONS ONLY.

10. Write your answers in the spaces provided in THIS EXAMINATION. Feel free to write on backs of pages, or in examination booklets, if you require more space.
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TOTAL/60       |
Suggested Time for Questions 1 - 5: 2 minutes

For Questions 1 - 5, circle the best answer. Circle only one answer per question.

(1) 1. Which federal Cabinet Minister/Ministers is/are responsible for copyright policy?

(a) the Minister of Industry
(b) the Minister of Canadian Heritage
(c) the Minister of Industry and the Minister of Canadian Heritage
(d) none of the above.

(1) 2. Under which provision of the Constitution Act, 1867 does Parliament obtain its authority to legislate respecting copyright?

(a) s. 92(13)
(b) s. 92(14)
(c) s. 91(22)
(d) s. 91(23)
(e) none of the above.

(1) 3. Which court/courts has/have jurisdiction to hear and determine an application for judicial review respecting a decision of the Copyright Board of Canada? Assume that the decision concerned only Alberta-based persons and transactions.

(a) Federal Court (formerly, the Trial Division)
(b) Federal Court of Appeal
(c) Court of Queen’s Bench of Alberta
(d) Court of Appeal of Alberta
(e) Federal Court of Appeal or Court of Appeal of Alberta
(f) Federal Court (formerly, the Trial Division) or Court of Queen’s Bench of Alberta.
4. Your client has good causes of action for both wrongful dismissal and copyright infringement. The causes of action relate to a single set of transactions with the former employer, and should be litigated together. All of the events took place in Alberta. In which court should you commence proceedings?

(a) Federal Court (formerly, the Trial Division)

(b) Federal Court of Appeal

(c) Court of Queen’s Bench of Alberta

(d) Court of Appeal of Alberta

(e) Federal Court of Appeal or Court of Appeal of Alberta

(f) Federal Court (formerly, the Trial Division) or Court of Queen’s Bench of Alberta.

5. SOCAN is a collective society that administers

(a) mechanical reproduction rights

(b) public performance rights

(c) rights to communicate works to the public by telecommunication

(d) mechanical reproduction rights and public performance rights

(e) mechanical reproduction rights and rights to communicate works to the public by telecommunication

(f) public performance rights and rights to communicate works to the public by telecommunication.

* * * *
Suggested Time for Questions 6 - 10: 13 minutes

The following facts apply to Questions 6 - 10

Arp, the famous Canadian poet, died. On October 1, 2003, after he had died, an unpublished poem he had written was found in the sock drawer of his bedroom dresser (the “Poem”). The Poem was written on the back of an advertising flyer. The Poem was dated January 14, 1983. Assume that

(a) the Poem was written on January 14, 1983;
(b) the Poem received copyright protection as a literary work under the Copyright Act;
(c) the Poem has not been published; and
(d) at all material times, Arp was a citizen of and ordinarily resident in Canada.

6. If Arp died on February 8, 2001, what would be the term of copyright protection for the Poem? Explain.
7. If Arp died on March 9, 1983, what would be the term of copyright protection for the Poem? Explain.
(3) 8. Assume that Arp died on March 9, 1983. Assume, for the purposes of this question, that Arp had not assigned copyright in the Poem to any person. In his (valid and uncontested) will (the “Will”), Arp left all of his manuscripts, papers, and other documents to Bart. The Will does not expressly mention any sort of intellectual property. The “residuary legatee” under the Will (the person who takes the residue of the estate, after specific gifts have been allocated) is Cap. Neither Bart nor Cap provided any consideration to Arp in exchange for being named as beneficiaries. **Does Bart or Cap inherit copyright in the Poem under the Will? Explain.** Assume that Bart and Cap are both still alive.
9. Same assumptions and facts as the previous question, except that Roy, the notorious Canadian poetry publisher, learned about the Poem, and has come forward today with an assignment, properly signed by Arp, and dated January 24, 1983 (the “Assignment”). Neither Bart nor Cap nor any other person connected with the estate of Arp had been aware of the Assignment. The Assignment provides that Arp assigns copyright in all of his poems written in January 1983 to Roy (remember that the Poem was written on January 14, 1983). The Assignment has not been registered under the Copyright Act. **Is the Assignment wholly invalid or void? Does the lack of registration mean that Roy cannot assert any rights against the estate of Arp? Explain.** (Note: see the next question, and don’t answer the next question in your answer to this question.) Assume that the current provisions of the Copyright Act apply.
(3) 10. Same assumptions and facts as question 9 (Roy has the Assignment). Assume that the Assignment is valid. **Does the Assignment eliminate all of the “economic” copyright interests of Arp’s estate respecting the Poem? Explain.** (Note: Do not discuss moral rights issues.)
The television program “Whose Line is it Anyway?” consists of cast members improvising skits and song lyrics (the cast members make up their lines as they go, sometimes in response to random audience suggestions; they do not use scripts or pre-rehearsed material). The cast members are all citizens and ordinary residents of the United States or Canada. The show is filmed in the United States, and broadcast by a television network (ABC) headquartered California in the United States (the “Network”). Bob, an Edmonton playwright of dubious talent, videotaped several episodes of this television program without consulting the Network, made a transcript of the cast members’ lines, then had several actors read these lines as a 2003 Fringe Festival play in Edmonton. Bob received no payment for his contribution of this “play” to the festival. Seven people (including one sleeping infant) attended the play.

11. Did Bob’s reproduction of the cast members’ lines in Bob’s “play” infringe copyright? Explain. Assume that the cast members (the “Cast”) would be joint owners of copyright, if any exists; identify any other necessary assumptions. Do not consider any defences to copyright infringement.
(3) 12. Assume that Bob sincerely believed that his activities did not constitute infringement. Would that fact be relevant in assessing whether Bob had infringed copyright? Explain.

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Page 13 of 24
13. Did Bob’s videotaping of the episodes of the television program infringe copyright? Explain. Identify any necessary assumptions. Do not consider any defences to copyright infringement.
Suggested time for Question 14: 5 minutes

14. Ena is a Canadian songwriter and performer. In 2002, she licenced one of her compositions to Nissan (Canada) Ltd. (“Nissan”) for use in a television commercial for a Nissan automobile (the “Commercial”). In the Commercial, the music plays while the car artfully drives. Cronoberg, the famous Canadian director and filmmaker, made a movie in 2003, which is now playing in theatres everywhere. In one scene in the movie, the characters watch television; the whole of the Commercial is shown on the television, and Ena’s composition is audible. Cronoberg obtained a licence from Nissan to use the Commercial in the movie, but did not obtain a licence from Ena. **Should Cronoberg have obtained a licence from Ena, too? Why or why not? Explain.** Do not consider moral rights issues, and do not consider any defences to copyright infringement.
The following facts apply to Questions 15 to 18.

In 2002, Fingal was a graduate student at the University of Alberta (the “U of A”), doing a Ph. D. with the Department of Computer Science. Fingal is a citizen and ordinary resident of Ruritania, a country that came into existence in 2001, as the result of the break-up of Pottsylvania, the (former) tyrannical European country. In 2002, in partial completion of his Ph. D. requirements, Fingal developed a new computer program that allows extremely accurate facial recognition, when coupled with video technology (the “Program”). The Program is unique, and does not rely on any computer code elements used for other types of facial recognition technology. Fingal used U of A computer equipment, office facilities, and stationery supplies when developing the Program. Fingal’s supervisor, Prof. Dweems, directed Fingal to facial recognition as a promising area of research, made some suggestions concerning the simplification of some lines of Fingal’s computer code, and pointed out that certain elements of the program had created redundancies; Fingal followed Prof. Dweems’s lead, and corrected the code as Prof. Dweems had suggested. Prof. Dweems (who is appointed to both the Department of Computer Science and the Faculty of Engineering’s Computer Engineering Department) also informed Fingal about the operations of the video technology that could work with facial recognition computer programs. With this knowledge of video technology, Fingal was able to prepare computer code that was compatible with readily-available hardware. Days after completing the Program in 2002, Fingal assigned copyright in the Program to Blix Co. (“Blix”), an Alberta corporation (the “Assignment”). Days after receiving the Assignment in 2002, Blix licensed the Program to a variety of provincial and federal governmental agencies, allowing them to make copies of the Program for specified purposes. The agencies used the Program to help secure sensitive locations.

(5) 15. **Who is the author/who are the authors of the Program? Explain.** (Note: I am not asking about ownership in this question.)
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17. Because of the success of the Program, and because it’s always on the lookout for money, the U of A decided that it might have an interest in the Program. After the Program was written, but before it was (purportedly) assigned to Blix, who was the owner/who were the owners of the copyright in the Program? Explain. Feel free to refer to your response to question 15. Assume that if Prof. Dweems is an author or co-author, the U of A would have ownership through his interest or part-interest. Do not discuss Blix’s interest in the copyright.
(6) 18. Assume that Fingal was the sole author and owner of the Program before the Assignment to Blix. In 2003, Blix licensed the Program to the Edmonton Police Service, for use with Whyte Avenue video cameras and other police surveillance programs (the “Licence”). Fingal strongly objects to the use of the Program for police surveillance purposes. The tyrant in Pottsylvania had relied heavily on extensive police surveillance. Fingal had been a revolutionary in Pottsylvania, had fought against the tyrant, and is regarded as a hero in Ruritania. For Fingal, it would be unthinkable to be associated with police surveillance. **Assume that the Assignment and the Licence were properly executed. What rights under the Copyright Act, if any, might Fingal assert? Explain.**