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30/45 FORMAT PRACTICE FINAL ESSAY EXAM

Sentiments and Serendipity

PRACTICE EXAM NO. 1 FROM "BAD DAYS FOR GOOD CHEER"

GENERAL INSTRUCTIONS:

1. All exam materials (including this booklet and your response) must be turned in at the end of the period. **You will not receive credit unless you return this booklet with your exam ID number written in the box above.**
2. Do not turn the page until instructed to begin.
3. Assume that today's date is the regularly scheduled date for the exam administration.
4. You may write anywhere on the examination materials – e.g., for use as scratch paper. Only answers and material recorded in the proper places, however, will be graded.
5. **Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems.** It is upon these bases that you will be graded.
6. During the exam: You may not consult with anyone – necessary communications with the proctors being the exception. You may not view, attempt to view, or use information obtained from viewing materials other than your own.
7. After the exam: You may discuss the exam with anyone, except that you may not communicate regarding the exam with any enrolled member of the class who has not yet taken the exam, and you must take reasonable precautions to prevent disclosure of exam information to the same.
8. Base your exam answer on the general state of the common law and typical statutory law in the United States, including all rules, procedures, and cases as presented in class, as well as, where appropriate, the theory and history discussed in class, plus any hypothetical laws presented in the facts.

SPECIFIC INSTRUCTIONS FOR ESSAY:

9. You have a total of 1 hour 15 minutes.
10. 30-MINUTE RO PERIOD: The first 30 minutes is a reading-outlining period (RO Period). This is your time to carefully read the exam booklet (that is, the facts and the question or questions), to take notes, to reference your outlines or books, and to outline your response on scratch paper. **During the 30-minute RO Period you may not begin recording the response upon which you will be graded.** That is, if you are taking the exam on computer, **you may not type any characters at all into the exam response file on your computer during**

the RO Period; and if you are taking the exam by handwriting, you may not make any mark in a bluebook (that is, an exam-response booklet, sometimes labeled a "green book") during the RO Period.

11. 45-MINUTE EW PERIOD: **Next you will have a 45-minute exam-writing period (EW Period) during which you will write your response.** For the avoidance of doubt, it is acknowledged that during the EW Period you may also continue to do what is allowed during the RO Period (e.g., refer back to the exam booklet, reference your notes and books, etc., including notes you created during the RO Period).

12. It is appropriate, if you wish, to note differences between minority and majority approaches in your answer, as well as statutory or other differences among jurisdictions.

13. Within the confines of the questions you are asked, note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.

14. Organization counts.

15. Read all exam questions before answering any of them – that way you can be sure to put all of your material in the right place.

16. Feel free to use abbreviations, but only if the meaning is entirely clear.

17. **Bluebooks:** 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. **Please use a separate bluebook for each question.**

18. **Computers:** Please clearly label each question in **your answer.**

19. This Part II of the exam is administered on an "open-book basis." You may use any notes and books you like. No electronic or interactive resources (such as a tablet computer, smart phone, etc.) may be used or referenced. You may, of course, use a laptop to write your exam, but you may not reference files stored thereon during the examination session. No materials may be shared during the exam.

20. This exam will be graded anonymously. You may not waive anonymity. Do not write your name on any part of the exam response or identify yourself in any way, other than to use your examination ID number appropriately. Self-identification on the exam or afterward will, at a minimum, result in a lower grade, and may result in disciplinary action.

21. Good luck!

Sentiments and Serendipity

FOR DECADES, THE FOLKS AT THE GOOD CHEER GREETING CARD COMPANY have been helping well-wishers everywhere to express their heartfelt sentiments to the people they care about. The company's work has brought smiles to the faces of millions. According to research done by a leading business magazine, employees of Good Cheer are the happiest of any company in the United States. Is that because they are the best compensated? Certainly not. Maybe the sort of people who are attracted to the greeting card industry are the sort of people who are just happy to get thoughtful cards from their employer on every conceivable occasion. And they definitely get that. Good Cheer gives good cheer.

Today, unfortunately, Good Cheer faces an existential threat. Suppliers are skittish on credit terms, and cash reserves have gotten dangerously low. The root of the problem is that Good Cheer's arch rival – Sapindale Sentiments – has been gaining on Good Cheer for years, taking over key distribution channels with exclusive deals and undercutting Good Cheer with a lower cost structure. Recently, however, there was a breakthrough that has allowed Good Cheer to win back lost ground.

Last year, one of Good Cheer's top executives, Senior Vice President of Birthdays and Anniversaries Vic Vasarelski, went on an out-of-town trip to Nashlanta, Arkassippi, where Sapindale is based. He went there in an attempt to recruit key creative and marketing personnel. The hope was that by gaining key Sapindale executives, Good Cheer would obtain the know-how it needed to reverse the market losses it has suffered over the past few years. After a day of prowling bars and coffee shops for card-industry people, Vasarelski went back to his hotel room

and kicked back with one of the free DVD rentals from the hotel's front desk. Up in his room, when Vasarelski popped open the package for *Atomic Avalanche*, he noticed the DVD had a handwritten label that simply said "Confidential financial data, greeting card designs, distribution negotiation spreadsheets, audio chip designs." Curious, Vasarelski slipped the DVD into his laptop. What he found was no B-list disaster flick. It was a treasure trove of Sapindale Sentiments files – all unencrypted.

The folder marked "greeting card designs" was the first Vasarelski checked. That folder, however, was empty.

The "audio chip designs" folder, however, had a lot of content – huge graphics files with a series of images showing a three-dimensional pattern of etchings from the layers of a semiconductor chip, useful for a lithographic process to create cheap, low-power microprocessors for embedding in greeting cards that, when opened, play a song, sound effect, or other audio program. Good stuff, Vic thought.

The "distribution negotiation spreadsheets" folder was even better. It contained a customer list of card buyers, including drug stores, convenience stores, independent



FIG. 1: The town of Montvale, Massachusetts, built upon the success of the Good Cheer Greeting Card Company. Everything from the offices, to their printing operation, warehouse, shipping – they are the local economy.

groceries, and retail chains with which Sapindale had deals. For each buyer, there were numbers spelling out the projected squeal point (threshold fallback negotiation position) for each buyer. It showed how to get the best deal out of each of them, including how to get an exclusive deal that would cut out all the other card-industry competitors.

The folder marked “financial data” was also good. It contained a database of Sapindale Sentiments cash flows, income, losses, assets, and liabilities.

Vasarelski copied everything to a flash drive, ejected the disc, and wiped it down to erase any fingerprints. He felt kind of silly about this. But he also felt kind of guilty about copying the files. He then returned the DVD to the front desk, gingerly carrying the case by the corners to keep his prints off of it. Telling the desk clerk the movie didn’t seem to work, he got workplace rom-com *Working for the Devil* instead.

Over the next few months, by using the information obtained from the DVD, Good Cheer was able to win back scores of important buyers, gaining back double-digits worth of market penetration. Card sales soon started an upward trajectory, resulting in \$10 million in additional sales for Good Cheer.

Good Cheer also set to work on making use of the audio chip designs from the DVD, using them to create their own embedded-in-card microprocessors. Good Cheer loaded their own originally recorded sound files on the chips, and the cards were very successful.

The financial data was useful as well. When Good Cheer’s accountants evaluated it, they found that it revealed off-balance-sheet liabilities that Sapindale, a publicly traded company, had not disclosed to shareholders. Good Cheer anonymously forwarded this information to *The Wall Street Journal* and to the U.S. Securities and Exchange Commission. This garnered Sapindale a flurry of bad press and a federal securities-fraud investigation.

QUESTIONS

Provide analysis as follows. Keep your answer confined to United States law.

1. Analyze copyright issues.

As part of your response, be sure to discuss whether Vasarelski infringed copyright by copying the material from the DVD, including to what extent that material is copyrightable. Also, explain whether the hotel has run afoul of copyright law by lending DVDs to guests.

2. Analyze trade secret issues.

As part of your response, be sure to cover whether the various types of information on the disc count as a protectable trade secrets and whether there was an actionable misappropriation.

Note that the questions will not be weighted. Instead, they are cumulative and will be graded together. So divide your time among the questions according to which ones require the most discussion and analysis. Plan ahead to put information where it belongs. Also, do not repeat the exact same analysis over again in a different context (for example, by using copy and paste). If analysis of an issue is similar to but not exactly the same as what you have written previously, then I suggest you note your prior analysis and go on to discuss any differences.

Some suggested abbreviations for your answer:

ACD	audio chip designs	MM	Montvale, Massachusetts
DNS	distribution negotiation spreadsheets	SS	Sapindale Sentiments
GG	Good Cheer Greeting Card Co.	VV	Vic Vasarelski

CREDITS: (Note: These credits are not part of the hypothetical facts of the exam.) The “Good Cheer Greeting Card Co.” is an homage to the television series *Leverage*, which features a fictional company of the same name in episode no. 56, “The Office Job,” written by Jeremy Bernstein & Josh Schaer. The caption in Fig. 1 is a quotation from the screenplay. Photo in Fig. 1 by Matthew Rees. See <http://en.wikipedia.org/wiki/File:MapleMill.jpg>.