

UNIVERSITY OF NORTH DAKOTA SCHOOL OF LAW  
Media & Entertainment Law  
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FINAL EXAMINATION

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**Limited open-book. Three hours.**

**Write your exam number here: \_\_\_\_\_**

**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 number written above. Do not turn the page until instructed to begin.**

**Notes and Instructions**

1. Assume that today's date is December 6, 2011.
2. 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.
3. 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.
4. 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.
5. 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.
6. Unless expressly stated otherwise, assume that the facts recited herein occur within one or more hypothetical states within the United States. 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. 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.
7. Note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
8. Organization counts.
9. Read all exam question subparts before answering any of them — that way you can be sure to put all of your material in the right place.
10. Feel free to use abbreviations, but only if the meaning is entirely clear.
11. **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 subpart.
12. **Computers:** Please clearly label each subpart of your answer.
13. This exam is “limited open book.” The only materials to which you may refer during the exam, other than this exam booklet, scratch paper provided as part of the exam administration, and any special references specifically authorized by the Dean of Students office, are: (a) the authorized copy of the Media & Entertainment Law Wypadki, which will be distributed to you in the exam session, and (b) a “reference sheet,” consisting of a single 8.5-inch-by-11-inch sheet of paper, upon which anything may be written and/or printed, including on both sides, front and back, (c) sticky tabs labeled with subject headings to insert into the wypadki, if you so choose. You may not consult or access any other piece of paper, including, but not limited to, a copy of the wypadki that you have printed out yourself. No materials may be shared during the exam.
14. 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 I.D. number appropriately. Self-identification on the exam or afterward will, at a minimum, result in a lower grade, and may result in disciplinary action.
15. Good luck!

# Show Choir!

IN THE KUDZU-COVERED COUNTRYSIDE of Quinston, Floribama, independent television station WXP-TV was near bankruptcy. Ashley Arnseth got the newspaper clipping with the story in a letter from her mom. Written in the margins was a note: “Remember when you went down to the studio and danced on that local show – Dance TV?”

Ashley sure did. Those were some of her best memories. But as great as things were growing up, she had yearned to get away. She found Quinston to be too culturally conservative for her taste. After a year at Coolwater Community College, during which she won a national award for original literary criticism, she jumped at the chance to transfer to an elite northeastern liberal-arts school on a full-ride scholarship, where she graduated *summa cum laude*. That earned her a ticket to a top-five business school and subsequent plum offers from top management consulting firms. But when she received the newspaper clipping about WXP, she got a crazy idea.

She picked up the phone, and, within five minutes, she had landed a job as the new general manager for WXP. She missed her mom, missed her hometown, and she somehow believed, if done right, locally produced television could actually thrive.

Reality was harsh when she arrived and looked at the books. Things were dire. It was particularly hard to keep WXP-TV in the black because, on top of paying about \$64,000 a year for electricity to power the transmitter, the station had to pay the State-Levied Electricity Expenditure Tax (known as the “SLEET”), which, at 1.9 cents per kilowatt-hour, required about an extra \$18,000 annually.

When Governor Ozzy Verne came through town to attend Coolwater Community College’s show choir performance, Ashley bought a ticket, took a seat near-ish the governor, and planned to use the opportunity to ambush him to complain about the burden of the



FIG 1. The transmitter tower for WXP-TV.

SLEET. Ashley had rehearsed her argument. The SLEET had to be paid by any business using more than 500,000 kilowatt-hours per month of electricity, but a long list of businesses were exempted, including agricultural, manufacturing, warehousing, retail, food service, and computer-data services. The effect was to exempt virtually every business in the state other than broadcast radio and television stations. That was plainly unfair, in Ashley's view. And she planned to make her case as soon as the show was over.

During the curtain call, Ashley made a beeline for the governor. She got right up to him – but she stopped cold. The governor was there with his sister, cattle-ranching tycoon Holly Hostenval, and Holly was plainly in the throes of emotion. She was standing on her toes, applauding wildly, and losing her voice making loud whoops. This gal really liked show choir.

It was then that Ashley had her eureka moment.

Instead of pressing her case to the governor for a respite from the SLEET, she sidled up to Holly.

"So inspiring! So moving!" Ashley exclaimed, while looking ahead.

Holly heard the compliment, and instantly she threw an arm around Ashley.

"Yes! You understand! This is what it is all about!" Holly said.

"The power of show choir is transcendent," Ashley replied. "I just wish we had the resources to make this a more valued part of our Floribama culture."

Suddenly Holly broke from her stare at the stage and looked at Ashley. "I agree. You know show choir has roots that run deep in this part of Floribama. What did you have in mind?"

Ashley quickly outlined her vision for a television show that would follow the travails of a community college show choir as it struggled for recognition and acclaim, even as its individual members faced struggles in love and life. The television show would be intentionally uplifting, demonstrating how the power of music could overcome pain and intolerance. And the show would be locally produced, featuring local talent, yet it would have a top-flight production value, so that its universal themes would appeal to a national audience.

"I love it. I'll write you a check," Holly said. "And I can help explain to you how to go through the Floribama State Film Commission to get help with producing the show locally. I believe in this project all the way."

LESS THAN TWO MONTHS LATER, WXP-TV was finishing up pre-production on *ShowChoir*. The budget was heavy with technical expenditures – hundreds of thousands of dollars worth of lighting and top-of-the-line cameras that would shoot on film stock. But since it was a thoroughly non-union affair, the talent budget would be well under control. As set forth in the story bible and pilot script, the skein was set at a Floribama community college, where an odd assortment of outcast students – a nerd, a kleptomaniac, a jock who suffered a career-ending injury, an emotionally wounded cheerleader, and an obsessive-compulsive-disorder sufferer – would band together to form a show choir under the direction of Bob Barnes, a single man with

an impressive series of strike-outs at finding real love. There would be various romantic tensions among the students and between the choir director and various recurring faculty characters, but no romantic tensions would ever fully resolve. The power of music would serve to soothe the pain experienced by the characters in each of the subplots. There would also be a nemesis, Don Dynsaid, the robotics-team coach – he would constantly attack show choir as a waste of the college’s budget for extracurricular activities.

Ashley originally planned to call the series *Show Choir* (i.e., two separate words), but when she found out that a local man, Julius Jwibiand, had written a musical called *Show Choir!* back in the 1950s, Ashley decided to squish the two words together to form *ShowChoir*.

WXP-TV soon held auditions. Ashley was able to cast everyone from the local area except for the character of the jock. Finding a handsome, strapping guy who could act and sing was out of reach of what Quinston could offer. Word of the casting problem got around to Larry Lidson, a Los Angeles, California attorney who had grown up in Floribama. He happened to have a client who was perfect for the part: Ike Inez, for whom Larry did transactional work while earning a contingency fee of five percent of all of Inez’s entertainment income. Larry called up Ashley and pitched her on Ike. He managed to get Ike an audition, and when Ashley saw Ike, she was very impressed. To help close the deal, Larry made the point that in a cast of neophytes, Ike, who was a card-carrying member of the Screen Actors Guild, could serve in a leadership role. Ashley couldn’t help but agree after meeting the guy: He exuded confidence and professionalism. Ike got the part.



FIG 2. Location shooting for ShowChoir.

The show debuted in the 8 p.m. slot on Thursday night, squaring off against a formidable network line-up of network prime-time fare. But it didn't matter: The Quinston metropolitan area tuned in for its hometown production in a big way, giving the show a perfect 100 share. That very noteworthy accomplishment was picked up in the blogosphere, and, by the end of the weekend, *ShowChoir* was a national human-interest story. There was considerable curiosity about the show outside Quinston. And after Ashley let a big-city independent TV station in Nashlanta air the pilot, the thing took off like wildfire. By the time WXP had its third episode in the can, it had syndication contracts with television stations in 157 markets. *ShowChoir* was a sensation.

ASHLEY REALIZED there were all kinds of opportunities to make money beyond the fees earned from syndication. She soon concluded a \$1 million product-placement deal with Gulp of Genius energy drinks. Under the terms of the deal, characters would be seen drinking Gulp of Genius beginning with the fourth episode and continuing on through the remainder of the first season. The deal also included a requirement for Ashley to include a sentence in her personal profile on the WXP website saying, "I have to attribute part of the success of *ShowChoir* to Gulp of Genius energy drinks - they've enabled me to keep my edge and focus in producing the show." Unfortunately for Ashley, she couldn't brag about the deal - it forbade either party from acknowledging the sponsorship or disclosing any of the terms.

Here is a portion of the letter agreement that was drafted:

1 All episodes will originally be broadcast at  
2 8 o'clock on Thursdays. Each of the Episodes must  
3 depict Gulp of Genius being visibly consumed by a  
4 character on the show. Each of the parties must keep  
5 the existence of this agreement and all of its terms  
6 confidential, limiting disclosure to directors,  
7 officers, legal counsel, or administrative personnel  
8 necessary to carry out the agreement.  
9 WXP-TV represents that WXP-TV has no current  
10 contractual obligations to any direct competitors of  
11 Gulp of Genius, including AMP, Red Bull, Rockstar,  
12 Vault, Full Throttle, and/or Mountain Dew MDX.

MORE THAN JUST THE CHANCE to make a buck, Ashley realized there was also an opportunity to shake things up in her hometown. For the fourth episode, Ashley had the choir director, Bob Barnes, get drunk with his rival, Don Dynsaid, and, in a scene where one strong emotion turns into another, Bob and Don began making out. They removed their shirts, and got pretty heavy into it. In the final cut, there was some grinding. It was steamy. What's more, the episode contained strong language. In one line, making a reference to a real-life news story that came out of Nashlanta recently, one of the students said in class, "You know, Mr. Barnes, saying 'fuck' in a high school classroom can get you fired." In another line, a freshman student tried to convince a sophomore to refrain from using marijuana, and the sophomore responded, "Don't be such an asshole. Marijuana's not even a real drug." After this,

the sophomore climbed up into the rafters holding the theatrical lighting in the school auditorium, turned on the reflecting light globe and laid down, listening to music on an iPod. A dream sequence ensued in which the choir sang “Rainy Day Women # 12 & 35.”<sup>1</sup> (Ashley made sure she covered her bases by obtaining a mechanical license under the terms of 17 U.S.C. §115 to re-record the song.)

And, of course, all this aired in the 8–9 p.m. slot on Thursday. Ashley knew the gay love scene and the language would be viewed as deeply offensive by the majority of people in the community. But she wanted to stir things up. And boy did she. Early Friday morning, Ashley was taken into custody by the Quinston County Sheriff.

“I’m sorry to do this to you Ashley,” said Sheriff Stu Shermer, who had gone to high school with Ashley, “but you broke the law. And I’ve got to take you in.”

“What law? Are you kidding? Stu, don’t do this,” Ashley protested.

But Sheriff Shermer did take her in. The charge was violation of Quinston County Ordinance §345, which makes distributing obscenity a misdemeanor offense.

After Ashley was released on bail, she was very unhappy find to see the city’s newspaper, the Post Press, in the honor box in front of the courthouse. It was running a banner headline about her:

## ***ASHLEY ARNSETH HAS SECRET DEAL WITH ALCOHOLIC BEVERAGE MAKER***

**by Post Press Staff**

WXP-TV general manager Ashley Arnseth struck a secret deal to be paid more than \$1 million by the maker of an alcoholic beverage to have its product featured in upcoming episodes of the station’s locally produced television series *ShowChoir*. That’s according to a source familiar with the agreement.

The 25-year-old Arnseth has long felt that the population of Quinston is too conservative, the source said, and she’s determined to use *ShowChoir* as way of opening up the minds of Quinston youth to drugs, alcohol, and pre-marital sex.

There are also questions about whether or not Governor Ozzy Verne improperly used his office to influence the Floribama State Film Commission to provide production assistance to WXP-TV. Verne’s sister, Holly Hostenval, is an investor in WXP-TV, and has helped to finance the production of *ShowChoir*.

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<sup>1</sup> “Rainy Day Women # 12 & 35” is a song written and performed by Bob Dylan. The song is known to many people as “Everybody Must Get Stoned,” and is perhaps the most famous folk-rock song about marijuana intoxication. The festive, uptempo track incorporates motifs of Dixieland jazz and includes the lyrics: *They’ll stone you when you’re riding in your car / They’ll stone you when you’re playing your guitar / Yes, but I would not feel so all alone / Everybody must get stoned*. When originally released, the record was banned by many American radio stations as well as the BBC. The composition is copyright © 1966 Dwarf Music, renewed in 1994 by Dwarf Music. The original sound recording is copyright © 1966 Sony Music Entertainment, Inc.

In fact, the source the newspaper had was Marv Minstark, Ashley's jilted ex-boyfriend from high school. Marv made up what he told the paper. He was inspired to make up the story about the secret deal with an alcoholic beverage maker when, scrutinizing the fourth episode as it aired, he noticed a lingering medium shot of Gulp of Genius energy drink.

It should be noted that Gulp of Genius is not an alcoholic drink, although it is famously and frequently combined with vodka to make a drink popularly called "Fuzzy Genius."

For the newspaper's part, editor-in-chief Frank Fenstrel had reason to believe that Marv was not a trustworthy source. (Frank attended high school with Marv and Ashley, and knew how hurt Marv had been when Ashley broke up with him during the prom.) But Frank decided to run with the story regardless. In following up on the questions about whether Verne influenced the state's film commission, the Post Press put in a request for meeting minutes under the Floribama Open Records Statute, which is modeled on the federal Freedom of Information Act.

The Post Press also has a website, on which they post all of their newspaper content. And the site allows readers to leave comments about the stories. The following was one of those comments:

#### **Anseth's crimes**

*by Anonymous Reader, 11:07 a.m.*

I support the people-positive message in *ShowChoir*, but the fact is, the show is just Ashley Arnseth's attempt to create a good image for herself before the truth comes out. This Post Press story barely scratches the surface. In reality, Ashley Arnseth is a tax-evader who is affiliated with, and does money laundering for, the mafia. She's also got a slew of sexually transmitted diseases, including genital herpes. I know this last bit because I snuck a look at her medical file when I found it left alone in a corridor at the doctor's office.

Ashley was extremely hurt when she saw this. In fact, she does have genital herpes. But she does not have any other STDs – certainly not a slew of them. And the stuff about the mafia, money laundering, and tax-evasion was and is completely and utterly false. Fuming, Ashley picked up the phone and dialed Frank.

"Frank, this is Ashley. Look, you're a good guy. I know you are. But there's a lot of false stuff in your story, and the comments section online is filled with filthy lies. I need you to delete the comment posted at 11:07 a.m. And then I need you to print a retraction and correction for your story."

"No can do, Ashley," Frank responded. "The comments are the readers'. Those are there to stay. And there's no way I'm printing any kind of retraction or correction. You're facing criminal prosecution right now, so I understand you've gotten yourself into a tough place. But I can't help you."

“Okay, Frank. I’m gonna call my lawyer,” Ashley said, “and I’m gonna sue you and get an injunction forcing you to take down the comment.”

“You can try,” said Frank. “Floribama has an anti-SLAPP statute. If you don’t know what that is, ask your lawyer.” Frank hung up the phone.

ALL THE COMOTION about *ShowChoir* set off a red flag for Quinston resident Kevin Kartelna. It was Kevin’s grandfather, Julius Jwibiand, who wrote the musical *Show Choir!* after returning from the Korean War and while he was attending college on the G.I. Bill. Back then, Julius was unsuccessful in shopping the script and score to Broadway producers. Eventually he assigned the copyright, in whole, to Enormo Entertainment for a paltry \$25. That was in 1956. Enormo immediately obtained a copyright on the property, offering copies of the script for sale – which counted as publication under the law – and registering the copyright. But Enormo never produced a movie based on the script and score, and no live production of the musical was ever staged. In fact, neither the script, nor any of the songs, was ever publicly distributed.

When Julius died in 1998, all of his estate passed to Kevin, but there was nothing to distribute except a few hundred dollars, some household goods, and a box of *Show Choir!* materials – script drafts, sheet music, annotations, correspondence, and the like.

Kevin found the box in his attic, and went through it.

The musical *Show Choir!* takes place in the early 1900s. Other than that, it is very similar to *ShowChoir*. The plot concerns the travails of a show choir at a small college in Floribama, and the student characters include a nerd, a jock who suffered a career-ending injury, and an emotionally wounded cheerleader. Although there is no kleptomaniac, there is a tightly wound character who bears a lot of resemblance to the obsessive-compulsive-disorder sufferer. Also, the choir director is a single man who keeps striking out in the romance category. As with the television series, in the musical, the healing power of music resolves various subplots. There are even the inklings of a gay relationship between the choir director and an engineering teacher at the college.

Hmmm. No wonder it didn’t get produced in the 1950s.

Having read through the script and notes, Kevin googled “Show Choir! musical Enormo Entertainment,” and he was shocked to find that because of the success of the television show *ShowChoir*, Enormo was considering launching a motion picture version of Julius’s *Show Choir!*

MEANWHILE, ACROSS THE COUNTRY in Nevizona, a teenager named Trixie Trellian, after watching the fourth episode of



FIG 3. The logo for WXP-TV Quinston.



*ShowChoir*, was inspired to smoke marijuana and listen to her iPod while lying in the rafters of his high school's theater. Sadly, she fell, and she endured a crippling spinal injury.

### **QUESTION 1**

**(worth approximately 1/12th of your exam grade)**

Flag any drafting issues you see for Gulp of Genius with the portion of its contract with WXP-TV that is reproduced in the facts. What would you change? In answering, it's a good idea to refer to lines by number. For this question, limit your response to discussing drafting issues. Issues concerning the substance of the deal should be discussed in the context of the next question.

### **QUESTION 2**

**(worth approximately 11/12ths of your exam grade)**

Analyze the parties' legal positions. Discuss relevant rights, liabilities, and prospects of adverse action that entities would be legally entitled to pursue. Organize your response according to the following structure, clearly labeling the subparts. For each subpart, omit discussion of any subject matter called for in a previous subpart.

*Subpart A:* Discuss the legal situation revolving around Enormo Entertainment's planned production of a motion picture version of *Show Choir!*

*Subpart B:* Discuss the prospects for Ashley Arnseth and WXP-TV in legal action stemming from what was published by the Post Press, both online and on paper.

*Subpart C:* Discuss Ashley Arnseth's and WXP-TV's legal prospects in facing adverse action that stems from the production and distribution of *ShowChoir*.

*Subpart D:* Discuss all remaining issues.

A few things to keep in mind: The subparts will not all be given equal weight. The subpart structure is provided for organizational purposes only. Pace yourself appropriately, and plan ahead to put information where it belongs.

#### **Some suggested abbreviations for your answer:**

AA	Ashley Arnseth	II	Ike Inez
BB	Bob Barnes	KK	Kevin's Kartel
CCC	Coolwater Community College	JJ	Julius Jwibiand
DD	Don Dynsaid	LL	Larry Lidson
EE	Enormo Entertainment	MM	Marv Minstark
FF	Frank Fenstrel	PP	Post Press
GG	Gulp of Genius	SSS	Sheriff Stu Shermer
GOV	Governor Ozzy Verne	TT	Trixie Trellian
HH	Holly Hostenal		

Also, feel free to refer to *Show Choir!* simply as "the musical," and *ShowChoir* as "the series."