

WHITTIER LAW SCHOOL
Entertainment Law
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Eric E. Johnson
Adjunct Professor of Law

PRACTICE EXAMINATION

NOTES AND INSTRUCTIONS

1. Use your exam answer to show your mastery of the material presented in the course and your skills in analyzing legal problems.
2. Note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
3. This exam is “open book.” You may use any written material drafted before the exam’s start by you or anyone else, but you may not consult in any way with anyone else during the test.
4. You may use this exam document as scratch paper, and you can take it home with you after the test. Only what you type up or put into a bluebook will be graded.
5. Do not write your name on any part of the exam or identify yourself in anyway, other than to use your student I.D. number. Bluebook users write the number on the cover of each book.
6. It is recommended that you divide your time among the questions on the exam roughly in accordance with their corresponding point value. The following may guide you:
 - 5 of 100 points → 9 minutes
 - 65 of 100 points → 117 minutes
 - 10 of 100 points → 18 minutes
 - 20 of 100 points → 36 minutes
7. Consider law from outside jurisdictions to be persuasive authority. All cases we read, including those from California Superior Court, are citable on this exam. If you learned it in this course and it’s relevant, then it is worth discussing, regardless of jurisdiction.
8. Organization counts.
9. Read all the exam questions for Part One before answering any of them — that way you can be sure to put all of your material in the right place.
10. Start your response to each section on a new page.
11. Feel free to use abbreviations, but only if the meaning is entirely clear.
12. If you are typing: Double space your response.
13. Bluebook users (not using a computer): 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. Put Part One and Part Two in separate bluebooks, if possible.

**DO NOT TURN THE PAGE UNTIL YOUR
PROCTOR TELLS YOU TO BEGIN**

PART ONE

“Boxing Helga”

Heidi Hinson grew up in Orange County. Her father, Dan, ignored her; he just watched TV in the den drinking beer or two a night before going straight to bed. Heidi's mother, Mary, abandoned the family when Heidi was 5. And Heidi's older sister, Sally, was always lost in her books and chemistry experiments. Heidi grew up lonely, sad, and ignored. But she dreamed of being a big star in Hollywood someday. In her fantasy, the whole world would give her the love and attention her family never had.

As the years went by, Mary never did show up. Dan ended up killing a man in a bar fight and was sentenced to life in prison without possibility of parole. Sally, amazingly, was a stunning success, becoming a renowned cancer researcher. As for Heidi, she went to film school, but afterward could do no better than taking a job as a secretary at the world-famous MegaHolly Studios in Hollywood, California.

One morning Heidi wakes up with a fantastic idea for a movie. She immediately goes to the offices of her friend, attorney Lyle Luong, to ask him what she should legally do to protect her idea. Lyle, however, is out of the office.

Riding the bus back from Luong's office, Heidi sees Felisha Franklin, who had been her best friend growing up — at least before she lost touch with her when Felisha's family moved out of town freshman year of high school. After their excited reunion, Heidi finds out that Felisha is trying to make it as a screenwriter. Felisha is excited, because she just became a member of the WGA, which Felisha believes will really advance her career. Heidi excitedly tells Felisha about her movie idea, which she admits is inspired by her real life's story. Heidi tries to keep her voice down, but no one sitting near them on the bus seems to speak English anyway. She calls the movie “Boxing Helga.” Here's how she pitches the movie to Felisha:

Helga grows up in California's wine country with a drunk, never-sober father and an abusive and manipulative mother. Helga's older sister exhibits an obsessive interest in science, which leads her to conduct bizarre and cruel medical and psychological experiments on Helga, including one in which Helga is locked in a box and fed intravenously with liquefied Dinty Moore beef stew. One day, Helga escapes and makes it in Hollywood as a beautiful starlet. But in a tragic turn, her career is cut short at the age of 23 by advanced coronary artery disease, caused by her cholesterol-laden IV food.

Heidi asks Felisha if she would write up a first draft of the script. Heidi says that if she likes it, she will give Felisha five percent of the net profits. Felisha agrees.

When Felisha delivers the script, Heidi tells Felisha it's not what she was looking for. In fact, however, she does like several of the plot twists and new characters that Felisha has created.

Felisha and Heidi manage to get a meeting with Allan Atwell, an agent. Allan listens patiently to their pitch, but passes on the project. When Allan comes home that night to his wife, Belinda Breck, he tells her about Heidi and Felisha's pitch. Belinda, who is an accomplished screenwriter, works up a treatment based on the idea. Allan loves the result. Allan wants to attach Stu Starwood, a huge B.O.-generating heartthrob celebrity. Starwood is a fine actor — his fellow SAG members have voted him the winner of five Screen Actors Guild awards over his career. Allan sends Stu the treatment, and

Stu loves it. Stu says he “will definitely do the picture if the deal is right.” Of course, they have to change the “Helga” character to “Henry” for Stu.

With Stu attached, Allan is able to close a deal with MegaHolly Studios to finance and distribute the picture. MegaHolly and Allan exchange a few drafts of a deal memo for Stu, but nothing is ever signed. After MegaHolly sinks \$4 million into the development and pre-production of the picture, Stu backs out. Hollywood has caused him to lose his soul, he says, so he is going somewhere far away on a mission of “soul replenishment.”

While Heidi continues to struggle in her Hollywood career, she does attain a stroke of insanely great luck by hitting the lottery. Now flush with cash, she escapes to Hawaii to take some time to figure out where her riches should take her in life. Vacationing at a posh resort, Heidi meets up with Stu. Heidi and Stu hit it off, and they begin a fast friendship that soon becomes romantic. Heidi ends up producing a live-theatrical monologue, starring Stu. The show is called “Boxing Henry.” It’s a very small production — just a five-day run in a 99-seat theater. The show contains the elements described above in the pitch that Heidi made to Felisha, but the show contains none of the material Felisha proposed by way of her script, except for a single line of dialogue.

On opening night, Stu is inspired to sing an impromptu song, which he makes up as he goes along, called “I Feel So Boxed In,” telling the story of his character’s tragic journey through life. He continues to use the song for the remaining four nights of the show. Heidi pays Stu a lot more than one would expect to get for such a small theatrical production, even a star like Stu — he gets \$2 million! No one but Stu and Heidi know the actual terms of their deal — nothing in writing is ever exchanged between them.

Heidi records the theater performance on film and audio tape. Using that footage, Heidi creates a computer generated character that mimics Stu’s body movements, facial expressions and voice — all without actually using any vocal recording or real photographic image in the end product. Heidi, through a production company she founds called MegaHeidi Studios, makes a movie version of the monologue, including the song “I Feel So Boxed In.”

The tabloids catch wind of the romance between the heartthrob Stu and the unknown lottery-winner who survived a horrible childhood. The glowing press coverage turns Heidi into an overnight celebrity. Within days, she is appearing on all the morning shows, late-night shows, and daytime talk shows. She also ends up on the covers of *US Weekly*, *People*, and *Entertainment Weekly*. The press goes wild when Stu, jumping on the couch on the *Oprah* show, announces that he and Heidi are engaged. They are America’s favorite couple.

Just when it seems things couldn’t get any better for Heidi, on the eve of the wedding, Stu is killed in a plane crash. Stu is survived by eight children from three previous marriages.

The grieving Heidi deals with her pain by tending to business. With her popularity at a zenith — a media darling with a real-life Cinderella story touched by heart-wrenching tragedy — there is an enormous public appetite for her film, “Boxing Henry.” And, of course, there are many studios looking to distribute the film. But Heidi is overjoyed when she gets a deal memo from industry giant Enormo Entertainment, which includes the following:

1. Compensation:
 - 1.1. Enormo Entertainment ("EE") will pay Heidi Hinson ("HH") \$50 million for the film known as "Boxing Henry" (the "Film") as follows, contingent upon the following:
 - 1.2. \$50,000 upon the signing of this deal memo,
 - 1.3. \$150,000 upon the domestic theatrical release of the Film,
 - 1.4. \$800,000 payable out of 10% of Adjusted Gross Receipts (EE's standard definition), and
 - 1.5. \$49 million payable out of 40% of Net Profits (EE's standard definition, using EE's standard accounting practices).
2. Rights
 - 2.1. In consideration for the above, EE will receive all rights in the Film, and any underlying work upon which it is based, in perpetuity. HH hereby transfers the copyright in "Boxing Henry" and all such underlying works.
 - 2.2. EE is under no obligation to exploit the Film in any manner.
3. Representations, Warranties, Indemnity
 - 3.1. HH represents and warrants that HH owns all rights to the Film and any underlying works, and that the Film and any underlying works will not defame or injure anyone and do not infringe upon any copyright, moral rights, rights of privacy, rights of publicity, or any other civil rights held by anyone.
 - 3.2. HH hereby agrees to indemnify EE and hold EE harmless from all claims and losses relating to the foregoing representations and warranties. Such indemnity shall not extend to any changes or modifications that EE may make to the Film after EE takes delivery of the same.
4. Photographs
 - 4.1. HH further agrees to furnish to EE at least 20 photographs of HH as a child, from birth to teenage years, to use in the promotion of the Film and for any other purposes reasonably related to the exploitation of the Film and any derivative properties thereof.
 - 4.2. HH will secure all necessary permissions and releases to use such photographs. HH acknowledges that these photographs are essential to exploitation of the Film, and that EE must proceed in reliance on the fact that HH has secured or will secure all necessary permissions and releases so that EE can use the photos.

Heidi is very excited by Enormo's offer — \$50 million! To think that another studio wrote out a check to her for \$10 million, and she almost took it! Heidi runs to the offices of her friend, attorney Consuela Cardenal to ask her to look over the deal memo. Consuela's not in the office, however. So Heidi signs the deal memo and returns it to Enormo that day.

The next day, Heidi appears on the Late Show with David Letterman. Although the show is usually tape delayed, because of production exigencies, the Late Show is airing live on this particular night in its regular 11:30 p.m. time slot. That's unfortunate, because Heidi's feeling a tad off. Maybe she's off her adrenaline high, maybe she's in denial, or maybe she's overwhelmed by grief, but for whatever reason, Heidi gets raging drunk in the green room. She goes out on stage and immediately starts telling a bunch of lies about Stu. Heidi tells the Late Show audience that Stu contracted at least 20 different kinds of sexually transmitted disease in the course of availing himself of the services of hundreds of Hollywood prostitutes. She describes some of his purported sexual escapades in lurid detail. None of it's true, of course, and the audience seems to know it. When the audience starts to boo, Heidi responds by taking off her clothes, making obscene hand-gestures at the audience, and spitting in David Letterman's face. The television audience cannot believe their eyes. While Heidi's appearance never airs for the Central, Mountain, or Pacific time zones, several viewers in those areas with satellite dishes saw East Coast network feed. That means that in California, of course, the satellite feed came down between 8:30 and 10:00 p.m.

Heidi's popularity instantly vanishes, and she becomes a target of ridicule for every comedian, gossip mag, and clip show in the country. Heidi boards a flight to Las Vegas where she cashes her \$50,000 check from Enormo and promptly loses it all at the blackjack tables.

Question One (5 of 100 total points)

If you were Lyle Luong, and you had been in your office when Heidi Hinson came calling, what would your advice to her have been?

Question Two (65 of 100 total points)

Analyze the parties' legal claims, rights, responsibilities, and liabilities.

Question Three (10 of 100 total points)

If you were Consuela Cardenal, and you had been in your office when Heidi came calling, what would your advice have been to her regarding the deal memo? Make sure you reference specific portions of the deal memo that are significant to your analysis.

PART TWO

Question Four (20 of 100 total points)

Provide a response for either Topic A or Topic B. Do not respond to both.

Topic A

The Film & Television School at the University of Hollywood is sponsoring a seminar and panel discussion entitled: "The Need for New Federal Legislation to Protect Hollywood." Polly Presky is president of the Motion Picture & Television Media Association, an industry trade group representing the big studios and television networks. She has been asked to make a presentation and at the seminar and to participate in the panel discussion.

You have been retained by the MP&TMA. Prepare for Polly Presky a short memo of talking points proposing some ideas for new federal legislation to benefit the industry and explaining why it is justified.

Topic B

You are a new associate at a prominent entertainment law firm. One of the partners, Tyronne Teng, has been invited to a monthly breakfast meeting of people in the entertainment industry to speak on the topic: "Law: How it Impacts Hollywood in Surprising Ways." Write a memo to prepare Mr. Teng for his speech.