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FINAL EXAMINATION – PART TWO

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**Open-book. Two-and-a-half hours.**

**All exam materials (including all scratch paper, this booklet, and your response) must be turned in at the end of the exam period.**

**Do not turn the page until instructed to do so.**

*Exam-Taking Tips*

- ▶ I suggest that you read Question 2 first, even if you answer it last. Ideas may come to you while you are working on Question 1.
- ▶ You probably want to divide your time between the two questions roughly in accordance with their corresponding overall worth. The following may guide you:
  - 3/4 of the overall grade → 2 hours, 15 minutes
  - 1/12 of the overall grade → 15 minutes

*Notes and Instructions*

**General Notes and Instructions**

1. Assume all facts take place in California unless otherwise specified.
2. Today's date is July 17, 2006.
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. 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. 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 student examinations or materials other than your own.

**Specific Notes and Instructions For PART TWO :**

- a. **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 Question 2.

- b. **Computers:** Start a new page for each section.
- c. This portion of the exam is "open book." You may use any written material drafted before the exam's start by you or anyone else. Materials cannot be shared in any way with any other student once the exam begins.
- d. Note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
- e. Organization counts.
- f. 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.
- g. Feel free to use abbreviations, but only if the meaning is entirely clear.
- h. Do not write your name on any part of the exam response or identify yourself in anyway, other than to use your examination I.D. number appropriately. Self-identification on the exam will, at a minimum, result in a lower grade, and may result in disciplinary action.

## PART TWO

### “Working for the Devil”

Paul Palfrey, a well-known Hollywood film producer, invited 24-year-old Ellen Ellison to have lunch with him at the Ivy in Beverly Hills. Ellen told Paul about her life since college. Ellen had gone to work as an intern for Catherine Crandall – the famously high-strung advice guru of the homemaker arts, based in Napa County, California. Crandall had built a media empire consisting of magazines, books, cable television shows, websites, and more, focusing on her tips for cooking, decorating, gardening, and craft projects. One of Crandall’s trademark bits was to throw whatever she was working on into the air and shout “Do over!” Ellen’s job was to be Crandall’s assistant, doing her bidding 24 hours a day. Ellen told Paul it was like “working for the devil.” Among the incidents Ellen relayed to Paul were these: Once, when Crandall was dissatisfied with the coffee Ellen brought her, Crandall poured it all over Ellen’s shoes. Another time, Crandall went into a rage when she found a goldfish in a small bowl decorating Ellen’s desk. Crandall screamed “You are decorating with FISH????!?!?” She then poured the fish out of a fifth-story window. On another occasion, when Crandall started screaming at Ellen for wearing a blazer that didn’t go with her skirt, Crandall fixed the problem to her satisfaction by standing Ellen in the middle of the hallway and hosing her down with a can of black spray paint. Most mortifying of all was when Ellen brought her girlfriend of five years to the company holiday party. Crandall ranted to Ellen’s girlfriend non-stop for almost 15 minutes about how physically, intellectually, and emotionally flawed Ellen was. Crandall then capped off her rant by giving Ellen’s girlfriend \$400 in cash, saying it was a “charitable grant” for Ellen’s girlfriend to keep dating Ellen.

Paul listened to everything with rapt attention, and he told Ellen right there that he wanted to make a movie about her life. Within hours, Ellen had signed the following deal, drafted by Paul’s attorney:

#### **LIFE STORY RIGHTS AGREEMENT**

The following agreement is entered into this EIGHTH day of APRIL in the year 2004 by and between Paul Palfrey and Ellen Ellison.

Ellison hereby relinquishes all life-story rights to Palfrey, and hereby gives her permission for Palfrey, and his assigns, licensees, employees, contractors, etc. (the “Related Parties”), to use any facts from Ellison’s life for a theatrical motion picture and to use them however Palfrey and the Related Parties wish, including by changing, modifying, altering, or leaving out any such facts, and by combining them with fictional details. Ellison surrenders all rights to sue for Palfrey for defamation. Ellison also surrenders all rights to sue for copyright infringement. Ellison will make herself available on a first-priority basis to render creative consultant services in the development of the script and motion picture. Ellison agrees to ensure that Palfrey has all legal right and ability to make the contemplated theatrical motion picture, including by obtaining all necessary releases such that Palfrey and the Related Parties may use the material Ellison provides. In exchange for the above-granted rights, Ellison shall receive an upfront fee of Five Thousand Dollars (\$5,000) plus five percent (5%) of the profits, based on the standard definition, on a favored-nations basis.

IN WITNESS WHEREOF, the parties executed this agreement as of the date hereof.

*Paul Palfrey*

Paul Palfrey

*Ellen Ellison*

Ellen Ellison

Paul immediately wrote a check out to Ellen for the \$5,000, and he proceeded to arrange pitch meetings around town with his agent, Abby Agincourt.

Abby and Paul's first stop was Willy Walder, the studio head at Enormo Entertainment, one of the biggest studios and distributors in Hollywood. Willy invited Abby and Paul to join him in his private workout with yoga-instructor-to-the-stars Yan Yterby. It was a strange pitch meeting, but while contorting themselves this way and that, Abby and Paul managed to relay the whole set up, as well as the incidents about the coffee, the goldfish, the spray paint, and the holiday party. Abby and Paul ended up extremely sore, but they made the sale. Here's the deal they got, which included a unique kind of contingent compensation that neither Abby nor Paul had ever heard of.

DEAL MEMO: UNTITLED ELLISON/CRANDALL PROJECT

Dated as of: April 21, 2004

Paul Palfrey ("Palfrey") will render for Enormo Entertainment Corp. ("Enormo") services, on a pay-or-play basis, as executive producer, director, and creative consultant on the Untitled Ellison/Crandall Project. Palfrey hereby assigns all rights of whatever kind or nature, including copyright, to the Untitled Ellison/Crandall Project to Enormo. Palfrey shall receive a \$100,000 up-front rights fee upon signing this agreement and a salary of \$750,000 for executive producer services, \$750,000 for director services, and \$10,000 for creative consultant services. In addition, Palfrey shall receive two percent (2%) of "Special Participation Profits," which are defined as gross revenues, less the following, in order: production fees, production costs, and distribution expenses. The production fees shall be assessed on the basis of what services Palfrey actually renders. Palfrey shall be entitled to the most favorable production fee assessment he qualifies for among the following: 90% of gross if he actually renders services as a creative consultant (but not director or executive producer), 25% of gross if he actually renders services as director (but not executive producer), and 10% of gross if he actually renders services as executive producer. Palfrey warrants and represents that he possesses and is hereby assigning all rights, including, without limitation, copyright, to the Untitled Ellison/Crandall Project as necessary for Enormo to make a motion picture based thereon and exploit such picture in all forms of media in perpetuity. Palfrey will indemnify and hold Enormo, its licensees, employees, officers, contractors, affiliates, and assigns harmless from and against any and all claims, damages, liabilities, costs, and expenses, including reasonable attorneys' fees arising out of a breach of the foregoing warranty.

*Paul Palfrey*

Paul Palfrey

*W Walder*

Willy Walder  
Enormo Entertainment

Right away, Enormo began intense development of the picture, which Walder titled "Working for the Devil." As expected, Palfrey rendered services as executive producer, director, and creative consultant. They started production within months. To protect themselves against a lawsuit from Catherine Crandall, from whom they had not obtained a release, they changed the name of Ellen's boss to "Kathryn Krendal." The Ellen Ellison character, however, was just called "Ellen Ellison." The movie made use of the incidents about the coffee, goldfish, spray paint, and holiday party, and the Krendal character closely tracked the real-life Crandall, with virtually identical clothes and mannerisms. Krendal even used the "Do over!" line several times in the movie. Walder wanted to add hunky actor Hugh Huell to the cast, so Ellen's character was changed so that she was not a lesbian, and a

romantic subplot was added between Ellen and Hugh's character. Walder also added a scene where Ellen undermines her boss by committing perjury in a deposition so that Krendal will have to pay a judgment in a personal injury suit brought by her gardener.

Enormo previewed "Working for the Devil" at the Napa County Film Festival last week. General theatrical release of the film is scheduled for around Christmas 2006.

Today, everyone at Enormo Entertainment was shocked to read the following article in the Hollywood Tribune ...

## **Hollywood Tribune**

July 17, 2006

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### **Folkstone Running with "Devil" in August**

Folkstone Films has set August 24, 2006 as the release date for "Working for the Devil," a biopic following Ellen Ellison through her travails as assistant to Catherine Crandall. The film recounts several horrific incidents: Crandall pours hot tea all over Ellison's shoes. Crandall hurls Ellison's goldfish out the office window while screaming, "You are decorating with fish?!?" Crandall spray paints Ellison's outfit—with Ellison still in it—to fix a fashion faux pas. And at a holiday party, Crandall offers Ellison's girlfriend a check for \$10,000 to keep dating Ellison.

Folkstone obtained the cooperation and releases of both Crandall and Ellison in making the picture—for which Folkstone paid an unspecified sum. The project was brought to Folkstone by yoga-instructor-turned-executive-producer Yan Yterby.

### QUESTION 1 (approximately 3/4 of the overall exam grade)

Please clearly label the subparts of your response. Do not assume that all subparts will be given equal weight. You should divide your time proportionately among the subparts according to which ones require the most discussion and analysis. Read them all right now, and plan ahead to put information where it belongs.

- Subpart A: If you had been Ellen's lawyer on April 8, 2004, and she had brought the "Life Story Rights Agreement" to you for your review before she signed it, what would you have counseled her to be wary of with regard to the agreement as written?
- Subpart B: On April 8, 2004, if Paul had hired you as extra legal counsel and had brought the "Life Story Rights Agreement" to you for your review before he gave it to Ellen, what would you have counseled him to be wary of with regard to the agreement as written?
- Subpart C: Discuss Paul's potential liabilities and obligations to Ellen from today's frame of reference. What does he or will he owe her? Can she sue him for anything?
- Subpart D: Again, from today's frame of reference, discuss Enormo Entertainment's liabilities, if any, and any other liabilities Paul may have that were not covered in your response to any subparts above.
- Subpart E: Can Paul, Willy, and Enormo Entertainment do anything about Folkstone Films' "Working for the Devil"? Do they have any claims? What can they do, if anything, to stop the release?

### QUESTION 2 (approximately 1/12 of the overall exam grade)

A reporter for *Variety* has asked you to contribute to a story he is doing on the legal problems and impediments faced by independent filmmakers. Suggest one change to the law that would create a significantly more hospitable environment for independent filmmaking. Your suggested change need not be popular or realistic, but it should be sincere and defensible. Provide a few supporting details of how independent filmmakers are negatively affected by the legal status quo, and explain how the change would be an improvement from the viewpoint of independent filmmakers.