UNIVERSITY OF NORTH DAKOTA SCHOOL OF LAW Entertainment Law Spring 2008

PART

Eric E. Johnson Assistant Professor of Law

FINAL EXAMINATION - PART TWO

Limited open-book. Three-and-a-quarter 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. <u>Do not turn the page until instructed to begin.</u>

General Notes and Instructions

- 1. Assume that today's date is May 2, 2008, unless indicated otherwise.
- 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.
- 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. Unless expressly stated otherwise, assume that the facts recited herein occur within one or more hypothetical states within the United States, and 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. For the sake of clarity, please note that if the name of a real state is used, your exam response should conform accordingly.
- 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 from viewing materials other than your own.
- After the exam: You may discuss the exam with anyone, except that you may not discuss the exam, at all, with any enrolled member of the class who has not yet taken the exam.

Specific Notes and Instructions For PART TWO:

 Being mindful of instruction no. 4, above, 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.

- Note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
- c. Organization counts.
- 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.
- e. Feel free to use abbreviations, but only if the meaning is entirely clear.
- f. <u>Bluebooks:</u> 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. <u>Please use a separate bluebook when you move to a new question.</u> It is not, however, necessary to put each subpart in a separate bluebook.
- g. <u>Computers: Please clearly label each subpart of your answer.</u>
- h. This portion of the exam is "limited open book."
 The only material to which you may refer during the exam, other than this exam booklet, is the authorized copy of the Entertainment Law Wypadki, which will be distributed to you during the exam session. (Where the Dean of Students office has authorized additional materials, the direction of the Dean of Students office takes precedence over this rule.) You may not consult or access any other piece of paper, including, but not limited to, a copy of the Entertainment Law Wypadki that you have printed out yourself. No materials may be shared during the exam.
- i. 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.
- This Part Two is worth approximately 5/6 of your exam grade.

PART TWO

(worth approximately 5/6 of exam grade)

"Disaster Flick Junkies"

ONE WINTER NIGHT ...

It was 40 degrees below zero, and three feet of snow had fallen since 5 p.m. Cathy Camden was stranded at the house of her best friend, Heather Haltensson, along with Heather's eight-year-old brother, Bill Bilbray. As Heather and Cathy sat around the kitchen bar sharing a beer, Bill was jumping up and down on the couch, whipped up into a frenzy of excitement by watching the made-for-cable-television disaster flick *Atomic Avalanche*.

At every commercial break, Bill came over to Heather and Cathy and discussed what he might need to do to save them from certain death brought on by the blizzard.

"If the power goes out, we'll be in a lot of trouble," Bill explained urgently. "The heat is electric and we wouldn't be able to call anyone, since our phone service is through the internet. We could literally die. But don't worry ladies. If that happens, I'll tunnel through the snow to the shed out back. Then I can drag the generator back here so we'll have enough electricity to survive."

Cathy and Heather both expressed their gratitude to Bill, and when the movie came back on, Cathy and Heather discussed the screenwriting class that Cathy was taking at the University of Baja Manitoba. Getting creative, they soon started musing about a script called "Disaster Flick Junkies," chronicling the lives of a pack of lovable loser kids, who, through exposure to over-the-top disaster films, become obsessed with finding the opportunity to become heroes.

Soon the two of them had worked out an entire cast of characters and a plot. Cathy asked Heather if she could develop the screenplay on her own. Heather laughed and said, "The movie is all yours, Cathy. Good luck. I hope you strike it rich and become a big movie producer."

That night, as Cathy lay in her bed in the guest room, she scribbled down notes of the movie as she and Heather had talked it out, including several lines of dialog from Bill's hilarious utterances.

SEVERAL WEEKS LATER ...

"I don't need to check my ticket, because I know 13A is my seat," the man said.

"Alright, okay," Cathy said, giving in. She was on the verge of tears. If she couldn't stay on this plane, she knew, she wouldn't make her grandmother's funeral in California. Cathy walked toward the front of the plane and explained the situation to the flight attendant.

"The easiest thing is probably for you to sit here," the flight attendant said, motioning to the wide expanse of a first-class seat. "Would that be okay?"

Not feeling quite right about taking the seat, Cathy nonetheless accepted with a lot of gratitude. With the freak spring snowstorm, she felt lucky be getting out of town.

The plane taxied to the runway. But as the snow swirled furiously out the window, the captain announced they would be holding on the ground indefinitely.

Nervous about flying, and growing more anxious by the moment, Cathy struck up a conversation with the extremely well-dressed woman in the seat next to her. The woman, Allie Archer, handed over her business card by way of introduction.

ENTERTAINMENT LAW GROUP, P.C.

9301 Wilshire Blvd., Suite 700 Beverly Hills, California 90210

ALLIE ARCHER ATTORNEY AT LAW

Direct dial: (310) 825-4321 E-mail: allie.archer@entlaw.biz

When Cathy told Allie about her screenwriting class, Allie said, "Well, we're stuck on a plane in a blizzard. I've got nothing better to do. Give me your pitch. This is your chance to make it to the big time. If your pitch is good, I'll do everything I can to help you."

Cathy described the movie. Allie listened intently. Allie especially seemed to love the character closely modeled on Bill. When Cathy was through, Allie exclaimed, "I love it! It's fabulous! Let's make a deal on this. I will shop your script around Hollywood. I have the connections to get a deal. And I'll rep you on the deal to make sure you don't get ripped off. In return, I get 25 percent. How about it? You think about it, and let me know before we get off the plane. But you're never going to get another chance like this, honey. In the meantime, I'm going to get some sleep."

As Allie put on a sleep mask, Cathy was wide-eyed with excitement. This was it! Her big chance! But should she jump into a deal so quickly? Cathy felt like she should talk to her mom and dad first. But there was no way to do so before the end of the flight.

"You know," Allie said, lifting up her sleep mask to peek at Cathy, "since you did not tell me your idea 'in confidence,' I technically have the legal right to shop this around without you. Not that I would. But you've got to be careful in this business."

Considering this was Cathy's big chance, and not to mention the fact that Cathy had already screwed things up by blurting out her story without saying it was 'in confidence,' Cathy decided to take the deal. When the plane touched down in Los Angeles, Cathy shook Allie's hand. Cathy's adventure had begun.



The front gate to the Enormo Entertainment lot.

THE NEXT MONTH ...

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Allie called Cathy with the good news. "I had the meeting with Willy Walder and his guys over at Enormo Entertainment. They loved the pitch, and they're going to do it! Enormo's in-house counsel drafted up our terms into a term sheet. I'll e-mail it to you. Just print out the e-mail, sign it, and send it back to me. You've made it to the big time, baby!"

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1 | From: Archer, Allie <allie.archer@entlaw.biz>
        Camden, Cathy  <bajafan01@yahoo.com>
2
        Harry Harlin, Esq. <hharlin@enormo.com>
3
  Cc:
        Binding term sheet for Disaster Flick Junkies
4
  Re:
5
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This binding TERM SHEET is by and between Cathy Camden ("Camden") and Mountain Island Productions, Inc. ("MIP"), a subsidiary of Enormo Entertainment Corp.

- (1) Camden irrevocably assigns and transfers all right and title to, including all copyright interests in, the screenplay "Disaster Flick Junkies," and all notes, drafts, ideas, and conceptions related thereto, (the foregoing, "Property") to MIP.
- (2) Camden warrants and represents that she owns the Property outright, free and clear, such that she can affect the transfer and assignment herein contemplated, and Camden warrants and represents that the Property shall not infringe any third person's rights or injure any third person, including by 21 infringing such person's copyright, trademark, right of

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publicity, or right of privacy, or by defaming such person.
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   (3) Camden will indemnify and hold harmless MIP from any breach
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   of any of the foregoing representations and warranties, and
   Camden shall pay all costs and expenses (including, without
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   limitation, attorneys' fees) arising from any claim, litigation,
   award, judgment, and/or settlement arising in connection
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29
   therewith.
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   (4) MIP shall pay Camden $10,000 upfront, plus $100,000 if and
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   when a motion picture based on the Property premieres, plus one-
   half-of-one-percent of gross revenues deriving from box office of
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   said motion picture, plus one-quarter-of-one-percent of gross
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   revenues from any other revenue stream deriving from the
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   Property. In addition, MIP shall secure to Cathy Camden a
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   "screenplay by" credit on said motion picture. All monetary
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   amounts are to be made payable to and delivered to Allie Archer,
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   on behalf of Camden.
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41
42
                                                         Willy Walder
43
                                             authorized signature for
44
                                    Mountain Island Productions, Inc.
45
46
47
   ACKNOWLEDGED AND AGREED:
48
49
50 Cathy Camden, an individual
```

Cathy signed the term sheet and sent it back to Allie, who got it countersigned by Willy Walder.

FOUR YEARS LATER ...

The premiere of *Disaster Flick Junkies* was a star-studded affair. The paparazzi went crazy over the gorgeous Stella Strivens, the film's star, who had just been put on the cover of *People* magazine's World's Most Beautiful People issue.

Cathy watched the highlights on *Access Hollywood*. She hadn't been invited to the premiere. When Cathy paid for her own ticket and saw the film for herself, she was livid to find out she didn't even get the 'screenplay by' credit she'd been promised. At least they seemed to like Cathy's script; they had changed almost nothing.

Finding a lawyer, Larry Lombard, in the yellow pages, Cathy went in for a consultation.

"Here's the thing," Larry said, "they couldn't give you a 'screenplay by' credit, because you aren't a member of the WGA. I'm basically certain the credited writer is WGA, so the production company has to be a WGA signatory. Besides, since they decided to hire a SAG actress – Stella Strivens, they had to go WGA. If a company is a SAG signatory, you see, it has to be a WGA signatory as well."

"But they breached their contract with me," Cathy protested.

"It doesn't matter, because your breach-of-contract claim would be pre-empted by federal labor law," Larry explained. "WGA, per their collective bargaining agreement, has the last say on issues of credit. And besides, the protest period is before the movie's release. At this point, there is nothing you can do."

Larry continued. "The only way Enormo Entertainment could have gotten away with hiring Stella Strivens without doing a SAG deal would have been to do the production overseas. If they shot outside the United States, then SAG would have had no jurisdiction, and Stella could have worked with a non-SAG-signatory. Then Enormo could have given you the 'screenplay by' credit. But that's all theoretical, of course. You're not worth it to them. I'm sorry. I know that sounds harsh."

Coming home from her meeting with Larry, Cathy found a check in her mailbox for \$75,000 from Allie. The amount was sufficient to pay off the credit card debt she'd accumulated over the past four years trying to sell her subsequent screenplays. In fact, there was just barely enough left over to buy a plane ticket back home to Baja Manitoba.

MEANWHILE ...

Enormo Entertainment was promoting *Disaster Flick Junkies* with a contest.

DISASTER FLICK JUNKIES

"On the Edge!!" Video Contest

Grab your video camera and get shooting! Send us the most extreme film of you and your friends doing something ON THE EDGE while re-enacting a scene from your favorite disaster movie. If we pick your film as the most ON THE EDGE entry, we'll fly up to four people to the Enormo Entertainment Studios for a behind-the-scenes meet-and-greet with the cast of *Disaster Flick Junkies*, and we'll put your video on the movie's promotional website for everyone to see.

Mail your entry by April 19 to ON THE EDGE Video Contest, P.O. Box 33099, Los Angeles, California 90028. By submitting your entry, you assign all copyright therein to Enormo Entertainment Promotions, Ltd. Void where prohibited. 18 years of age or older. No more than one entry per household.

Ryan Ryland and his friend Quentin Quimby saw the ad for the video contest and decided to re-enact a scene from a film called *Contagion Level 9* (Folkstone Films, 2003). After borrowing biohazard suits with silvery reflective visors, a video camera, and a shoebox full of herbal medicines, they broke into the house of Irene Illicmen, a recently divorced pharmaceutical-company spokesperson who was on vacation. Ryan and Quentin went through the house, digging through Irene's things and shooting the scenes they needed. To cap off their video, they tried to film a scene in which they were supposedly being picked up by a helicopter off the roof of the house during gale-force winds. While pantomiming his struggle against wind in the heavy rubber biohazard suit, Quentin slipped and fell off the roof.

In the ensuing days, while Quentin lay in the intensive care unit of the local hospital, Ryan edited the film and sent it to Enormo for the contest. The film depicted the two biohazard-suited heroes searching through the house for the "anecdote" to the virus. Digging under Irene's bed, the heroes are seen pulling out several of Irene's self-help books, including *How to Get and Keep a Man* and *Dating for the Truly Desperate*, and finally finding the shoebox of herbal medicines. Irene's family photographs can be seen clearly visible in the background in several shots. The finished film culminates with Ryan's horrible fall from the roof.

Ryan and Quentin's entry was selected as the video-contest winner, and it was featured on the *Disaster Flick Junkies* website. Irene was tipped off about the film when her co-workers asked her if it was true that she used herbal cures instead of the kind of modern medicines sold by their employer. When Irene watched the video, she was horrified. As if the association with herbal remedies wasn't bad enough, the display of her self-help books from under the bed was mortifying.

When Folkstone Films, makers and owners of *Contagion Level 9*, saw the video, they immediately filed suit against Enormo Entertainment for copyright infringement. Enormo just as quickly turned around and wrote Ryan and Quentin a letter via certified mail giving them notice that they would be required pay all of Enormo's legal defense costs under the implied indemnity in the agreement.

QUESTION ONE (approximately 9/12 of your overall exam grade)

Provide your legal analysis of the above facts, organized by reference to the subparts listed below. Please clearly label the subparts of your response. The subparts will not all be given equal weight. In fact, some subparts you may wish to dismiss with a few sentences. Others will require considerable attention. 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:** Analyze Cathy Camden's legal entitlements, causes of action, bases of suit, etc., if any. And, how do you evaluate Larry Lombard's advice to Cathy? What was Larry wrong about, if anything?
- **Subpart B:** Analyze Bill Bilbray's legal entitlements, causes of action, bases of suit, etc., if any.
- **Subpart C:** Analyze Heather Haltensson's legal entitlements, causes of action, bases of suit, etc., if any.

- **Subpart D:** Analyze Quentin Quimby's legal entitlements, causes of action, bases of suit, etc., against anyone except Ryan Ryland, if any.
- **Subpart E:** Analyze Irene Illicmen's legal entitlements, causes of action, bases of suit, etc., if any.
- **Subpart F:** Analyze Folkstone Flims' legal entitlements, causes of action, bases of suit, etc., if any.
- **Subpart G:** Suppose that you are in-house counsel for Enormo Entertainment, and you have been asked to look over the term sheet between MIP and Cathy Camden and provide your revisions for lines 1 through 29. Without altering the substance, what would you do to clean up the drafting of the document? It will be helpful if you reference specific line numbers in your response. (Important: Do not provide commentary for lines 30 or afterward. Limit your response to lines 1-29.)

QUESTION TWO (approximately 1/12 of your overall exam grade)

You are a guest blogger on "Entertainment Law and Policy Blog." You've been asked to write a blog entry to serve as a counter-point to (response and argument against) the following:

The Democratization of Media is a Done Deal

Creativity has always been widespread throughout the United States and the world. But the means of turning mere talent and spark into actual movies, television shows, radio programs, recorded music, and other fully produced media has long been concentrated in Hollywood and a few other industry fortresses. Outsiders, regardless of their level of talent, have always had an enormously difficult time breaking in.

Yet two forces of technological change have recently vested in ordinary people the ability to produce complex forms of media. First is the democratization of the means of media production – the explosion of inexpensive high-quality cameras, microphones, musical instruments, and PC-based editing systems. Second is the democratization of the means of distribution through the internet. Platforms such as YouTube, MySpace Music, iTunes, Creative Commons, Google Video, and BookSurge have made it possible for "nano creators" to break through with their content and compete with the established media giants.

This will turn the industry upside down. Regular citizens will take the place of media moguls and will reign supreme as the culture makers and content creators in this new era.

Posted by Eric E. Johnson at 08:31 AM on Friday, May 2, 2008 Permalink | Comments (0) | TrackBack (0)

In your counter-point blog entry, <u>make specific arguments based upon what you have learned in class</u>, including, at your discretion, the readings, lecture, discussion, and student presentations. (As with all questions on an exam, you goal is to show mastery of the material presented in the course.) (And remember, <u>do not identify yourself or your group!</u>)