

UNIVERSITY OF NORTH DAKOTA SCHOOL OF LAW
Media & Entertainment Law
Spring 2009

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FINAL EXAMINATION

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 April 29, 2009.
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, and you must take reasonable precautions to prevent disclosure of exam contents to the such individuals.
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 questions and 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 question and each subpart.
12. **Computers:** Please clearly label each question and 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 2009 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. You may not consult or access any other piece of paper, including, but not limited to, a copy of the 2009 Media & Entertainment Law Wypadki that you have printed out yourself. No materials may be shared during the exam.
14. 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 will, at a minimum, result in a lower grade, and may result in disciplinary action.
15. Good luck!

“Crafting the Message”

BROTHERS BORN LESS THAN A YEAR APART, Deke and Roger Ornsen grew up on a farm just outside of Glendanton, Minnekota. They were good boys who studied hard and had lots of friends. They both attended the University of Minnekota on hockey scholarships and afterward went to business school on the East Coast. Taking investment banking jobs on Wall Street, the Ornsen boys made so much money that, by the time they turned 30, they would never need to do an honest day’s work again.

Glendanton Metropolitan Statistical Area



City motto:

“Glued to the Past, Crafting the Future”

Metro population: 89,509 (2000 census)

Median household income: \$31,822

Time zone: Central

Major industries: agriculture, telemarketing, remote data storage

Education: Three high schools; Glendanton Community College; Career College of Glendanton

Notes: Glendanton has dubbed itself the “Crafting Capital of the Great Plains.” Brochures from the Glendanton Convention and Visitors Bureau describe Glendanton as “the only city in Minnekota with more glue guns than handguns.” Enhancing the city’s reputation for crafting, Glendanton Community College, long a leader in the yarn arts, has begun offering the nation’s only associate’s degree in scrapbooking. Pending approval by the North Central Association of Two-Year Colleges, GCC will also soon offer degrees in doll-and-bear customization and bedazzling.

FIG 1: Sidebar from *Broadcaster’s Weekly*, Jan. 2009

Sharing a \$500 bottle of scotch on Deke’s veranda overlooking Central Park, the brothers realized they could retire and do something fun with the rest of their lives. With a clink of their glasses, they agreed to do just that. And at that very moment their Blackberries buzzed with an e-mail from their mom. Rambling on about the latest gossip from Glendanton, Mom mentioned that a local television station was up for sale. Deke and Roger looked at one another and smiled. Within a week they had quit their jobs, formed Ornsen Media Group, and closed the deal to buy KGKX-TV, their hometown’s long struggling UHF station.

KGKX-TV, broadcasting on channel 43 (644-650 MHz), had never performed well in the ratings. In fact, that’s putting it mildly. The station had no network affiliation and no locally originated programming. It did not even have semi-decent second-run syndication shows such as *Matlock* or *Columbo*. KGKX-TV had rarely featured any programming other than movies that had fallen into the public domain. Common fare included black-and-white 1950s-era educational films, such as *The New Universe of Polymers*.

When the Ornsen brothers took over, they knew they would

have to do something big to kickstart the station's ratings.

After the closing, the brothers flew out to the West Coast, hired some actors and crew, and rented a beach-front house in which they set up a simulated dormitory room. The dorm room was supposedly located at a co-educational college in Australia, and all the actors hired were able to effect perfect Australian accents. The crew mounted a large broadcast-standard/three-chip camera high up in the corner of the room so that it would have a sweeping vantage point. The idea was to get a good view of the room but leave viewers with the impression that the camera had been surreptitiously placed and was hidden from the occupants. The camera's view included the bed, the doorway to a small bathroom, and the toilet and shower stall beyond. Once the scene was set up, the actors instructed, and an encrypted internet connection established, the brothers flew back to Glendanton.

At 2 a.m. on Wednesday, February 18, 2009, Roger and Deke disconnected all the existing programming racks at channel 43 and began running the bare video and audio feed from the fake college dorm room into the transmitter. The brothers then locked up, barricaded the doors from the inside, crawled out through a rooftop vent, and left town.

It took a while for anyone to notice. But by Monday, February 23, there were mass absences from Glendanton-area middle schools. Parents soon caught on. Quickly going into full-scale-panic mode, the town scrambled to try to track down the Ornsen boys, but they were nowhere to be found.

Much to the delight of the town's usually v-chip-shielded youth, channel 43 was showing a raw, continuous, 24-hour feed with male and female actors walking around in various states of undress and using language blue enough to make a sailor blush. Per Roger and Deke's specific instructions, the roomies never dropped their Aussie accents, never closed the bathroom door, and never mentioned KGKX-TV or did anything else to let on that the scene was a fake. Also per instructions, the actors engaged in occasional simulated sexual intercourse under a sheet during Australia's "late evening hours" - which were between breakfast and lunch in Glendanton. The only time any of the actors went beyond what Deke and Roger had asked for was one night (local Pacific Time) when one actor, Belinda Bouthsdan, got quite drunk and lured a drunk guy - Milt Minkley, who knew nothing about the video and audio feeds - back to the room. There, Bouthsdan engaged in various actual (non-simulated) intimate acts with Minkley, without the sheet over their bodies.

When Glendanton Power & Light cut the electricity to the KGKX-TV transmitter site, the station's diesel generator dutifully kicked in, and the broadcast continued. Finally, on Wednesday, February 25, a little past noon, the Glendanton Fire Department got involved. Fire fighters broke down the transmitter building's metal door, scrambled over stacked-up furniture, and shut off the power manually.

Just hours later, Glendanton's mayor was finally able to get in touch with the Ornsen boys. True to their munificent nature, the brothers had been spending quality time with their elderly aunt in Florida, where, they claimed, they were without their Blackberry chargers. Flying back to Glendanton immediately after speaking with the

mayor, Deke and Roger held a press conference in which they expressed extreme indignation at the terrible crime that had been perpetrated on them and on the entire town of Glendanton. They announced that they would do everything in their power to track down the “cowardly miscreants who did this.”



FIG 2: KGKX-TV's new logo

KGKX-TV was certainly the talk of the town. But unfortunately for Roger and Deke, they had not planned out how to take advantage of the station's sudden publicity bonanza. Within a week, KGKX-TV's ratings sank back down to immeasurable levels.

Clearly, Deke and Roger needed to create a plan to re-program their station. Thinking carefully about demographics and cultural tastes in Glendanton, the brothers soon settled on a crafting-focused format. They quickly closed deals for a slew of craft-related syndicated programming. They also figured they needed a strong news organization. So they hired recent journalism-school graduate Jessica Jasperall as a reporter and began broadcasting local newscasts at 6 and 10 o'clock. Deke anchored, Roger did sports and weather, and both brothers produced.

Jessica was instructed to find sensational stories that would ignite public outrage. Thinking it through, Jessica realized that reporting about gang activity in Glendanton would be just the kind of think KGKX-TV needed to climb in the ratings. So Jessica began talking to area high school kids on their way home from class. By asking leading questions, Jessica hoped to cajole some young person into helping her get a story. On Wednesday, March 18, Jessica hooked up with a small group of goth¹ high schoolers carrying black crocheted bags filled with crafting supplies. Jessica bought them some energy drinks, promised never to identify them or reveal them as sources, and then peppered them with questions: “Have you ever noticed anything that might resemble, in some way, possible gang activity at your high school? ... Wouldn't you agree that some people who are into crafting get a little *too* into it? ... Don't you think crafters with pent-up frustration might be prone to violence?”

One of the girls, Candace Camden, finally volunteered that there was occasional tension between goth crafters, like her and her friends, and other crafters, whom her friends called the “pastels.” One pastel named Polly Poushedarz once yelled to Candace that her crocheted black crafting bag “sucked.” Candace yelled back that she would beat Polly up.

“Hmmm,” Jessica said raising her eyebrows. “That's horrible. Do you think you could search your memory to think of a story that is *really* outrageous with even

¹ Members of the goth youth subculture, a post-punk offshoot, are known for wearing black attire, sometimes with a neo-Victorian bent, and cultivating a morbid style, often using dark lipstick and black nail polish.

more violence?" Jessica coaxed. "And remember, I will never reveal your identities or tell anyone that you were my sources."

Narrowing her eyes conspiratorially at Jessica, Candace suddenly started to play along. "Oh, you know, now that I think about it, um, yeah. Actually, I think I do have an incident I can tell you about," she said.

Candace then related a story that formed the sole basis for Jessica's report on that evening's 10 o'clock news:

From the transcript of the WEDNESDAY, MARCH 18, 2009 KGKX-TV NEWS-SOURCE 43 TEN O'CLOCK NEWS:

Deke: Good evening. We begin tonight with the story of big-city problems right here in Glendanton. Jessica Jasperall is standing by live at Glendanton West High School with the report.

Jessica: Thanks, Deke. It sounds like a parent's dream-come-true. Your kids have sworn off video games and even name-brand clothing. As part of their DIY – "do it yourself" – ethic, they spend all of their free time knitting, sewing, glue-gunning, and bedazzling. But there is a darker side. Sources within the law-enforcement community who declined to be identified have said that area high-school kids with extreme attitudes about DIY-crafting are behind a wave of gang violence that is sweeping over Glendanton. If you don't agree with their DIY ethic, watch out. Last month, at an area high school, craft-gangsters went after a 14-year-old girl who had been berated by her home-economics teacher in front of class for failing to turn in homework on time. Members of the Westside Needles craft gang jumped the girl on the way home from school and beat her, jabbing her repeatedly with one of these – a solid aluminum size-Q² crochet hook.

The next day at the supermarket, Glendanton West home-economics teacher Tim Tandersansky felt like he was getting strange stares from the other shoppers. Then, when he found himself on the other side of a tall, cardboard Jell-O display, he overheard local real-estate agent Ryan Ranton talking to town gossip Soledad Singer.

"Did you hear Tim Tandersansky berated and beat up a 14-year-old girl in his home-ec class?" Ryan asked.

"Ooh. No. Garsh. That's terrible. And I had thought he was such a nice man," said Singer.

² A size "Q" crochet hook is one of the biggest manufactured, measuring 16 mm in diameter and commonly about 10 inches long. It has a blunt point with a wide slot to accommodate larger yarns. It is an excellent choice for crocheting afghans or thick scarves.

Of course, the story was not true at all – Mr. Tandersansky had not beat up a 14 year-old girl, much less berated one in class. (Although, truth be told, Mr. Tandersansky had, in fact, beat up a 15-year-old boy under nearly identical circumstances about 10 years ago, before he moved to Minnekota.)

By March 20, 2009, the whole town was talking about Mr. Tandersansky. Following the story where it led, Jessica ambushed the man as he tried to run from the school building to his Ford Escort in the faculty parking lot.

“Mr. Tandersansky, what do you have to say to the community of Glendanton?” Jessica asked, pushing the mic at him.

Climbing into his car, Mr. Tandersansky hurriedly replied, “This all makes me very sad. These stories are just not true – they are made up. It all makes me sad and very upset.”

Unfortunately, the tape of the encounter was eaten by the camera. As a result, the audio and video on the crinkled tape was too garbled for the air. So on the newscast, she made do.

From the transcript of the FRIDAY, MARCH 20, 2009 KGKX-TV
NEWS-SOURCE 43 SIX O’CLOCK NEWS:

Deke: Good evening. Jessica Jasperall is standing by live in our newsroom with the latest on the story out of Glendanton West High School.

Jessica: Thanks, Deke. A lot of rumors have been circulating about Tim Tandersansky, a home-economics teacher at Glendanton West. I spoke with him today and asked what he had to say to the community. He said, and I quote, “These idiots are making up stories. I’m wounded, and I’m very, very angry.”

Viewership numbers were soaring. KGKX-TV was finally getting on track. But Roger and Deke felt there was a need to do more to connect with their core crafting demographic. Unfortunately, neither Roger nor Deke knew the first thing about crafting. Nonetheless, on Monday, they decided to try something new.

From the transcript of the MONDAY, MARCH 23, 2009 KGKX-TV
NEWS-SOURCE 43 SIX O’CLOCK NEWS:

Deke: Tonight we begin a new segment – ROGER’S CRAFT CORNER. Most of you know my brother Roger, of course. He does a fantastic job with the weather and sports reports for us. But many of you probably did not know that Roger is also an expert crafter. So each night during the six o’clock news, Roger will be answering your questions about crafting, beginning tonight.

Roger, let me start off with a question I've always had. A lot of people think glue guns are dangerous – too dangerous for kids. Do you agree with that?

Roger: I tell you what, Deke, that's nonsense. Glue guns are perfectly safe. I often craft in bed at night while I'm dozing off to sleep. Glue guns don't get hot enough to burn anything. Don't worry about it, my friends.

The next day, an 11-year-old boy, Felix Fastrig, who had watched the newscast, fell asleep in bed while clutching a switched-on glue gun. His bedding caught fire, and he ended up with third-degree burns on his arms and chest. Deke and Roger felt horrible when they heard about this. But their feelings, of course, did not stop them from sending Jessica out to the Tri-County Burn Center to get an interview with the boy's mother.

QUESTION 1 (worth approximately 1/2 of the exam grade)

Analyze the parties' rights and liabilities. Organize your response as follows, clearly labeling the subparts:

Subpart A: Identify and explain violations, if any, of FCC regulations and FCC-enforced federal law.

Subpart B: Discuss issues concerning liability, if any, stemming from Belinda Bouthsdan's actions. Omit discussion that is specified for inclusion under subpart A.

Subpart C: Discuss issues concerning liability, if any, of the media defendants (Deke Ornsen, Roger Ornsen, Ornsen Media Group, and Jessica Jasperall). Omit discussion that is specified for inclusion under subparts A or B.

Subpart D: Any other issues you wish to discuss, if not specified for subparts A through C, should be placed under the heading of subpart D.

Keep in mind: The subparts will not all be given equal weight. The subpart structure is provided for organizational purposes only. Thus, it may be entirely appropriate for one subpart to be answered with considerable brevity, while another subpart might require very detailed analysis. You should divide your time proportionately among the subparts according to which ones require the most discussion and analysis. Put information under the first subpart for which it is responsive. Plan ahead to put information where it belongs. Organization counts.

→ → NOTE: THE EXAM CONTINUES OVER THE FOLLOWING PAGES → →

NOTE THE FOLLOWING ADDITIONAL FACTS FOR QUESTION 2:

In the ensuing weeks, Roger and Deke hatched a plan to create a made-for-television movie that would further KGKX-TV's strength in crafting programming. The brothers soon drafted a treatment about a gifted young crafter whose crafting skill is matched only by his bad attitude and disdain for authority. The young man's hard exterior is finally melted when he falls in love with an alluring foreigner. But he soon learns that the woman he loves is a spy, bent on co-opting our hero's crafting talents in order to damage America's overseas credibility and military readiness. Eventually our hero foils the plot – and even learns to love again.

Ever the shrewd businessmen, the brothers found a desperate, nearly starving writer, Willa Winters, to write the screenplay. Eager to play from their position of strength, Roger and Deke contrived to create a lop-sided deal that is decided in their favor. They drafted the contract based on a form they found in a book:

SCREENWRITER AGREEMENT

1 This agreement (the "Agreement"), dated May 1, 2009, is between Ornsen Media
2 Group ("OMG") and Willa Winters ("Writer"). OMG engages Writer to write a full-
3 length theatrical screenplay based upon the treatment authored by Roger and Deke
4 Ornsen concerning "THE UNTITLED CRAFTING PROJECT" (the "Treatment").
5 **ELIGIBILITY:** All of OMG's obligations under this Agreement are expressly
6 conditioned upon Writer's completion, to OMG's satisfaction, of a Form I-9
7 (Employment Eligibility Form) and Writer's submission to OMG of original
8 documents satisfactory to OMG to prove Writer's employment eligibility.
9 **DELIVERY AND STANDARDS:** Writer agrees to deliver the completed screenplay
10 (the "Deliverable") by August 1, 2009. All of Writer's services shall be rendered
11 promptly in a diligent, conscientious, artistic, and efficient manner, and Writer will
12 devote Writer's entire time, attention, best talents, and full abilities to the Project
13 during Writer's engagement under this Agreement.
14 **COMPENSATION:** Writer shall receive Three Hundred Thousand Dollars
15 (\$300,000) in up front payments, one-half of that amount to be paid upon the
16 execution of this Agreement, the other one-half to be delivered on July 15, 2009.
17 Although Writer is not a member of the WGA, Writer agrees to work under the terms
18 of the WGA agreement for all work undertaken pursuant to this Agreement. Should
19 Writer become a member of the WGA before the completion of work hereunder,
20 OMG shall become a signatory to the WGA. In addition to upfront payments, Writer
21 shall receive four percent (4%) of one-hundred percent (100%) of net profit
22 participation on the Project, defined by OMG's standard definition, on a favored-
23 nations basis.
24 **TURNAROUND RIGHT:** Should OMG not commence principal photography on the
25 Project within one (1) year following delivery of the Deliverable, Writer shall have a
26 turnaround right with regard to the screenplay. In the event the screenplay is made
27 into a film based on the turnaround right, OMG shall receive five percent (5%) net
28 profits payable by the producers.
29 **REPRESENTATIONS AND WARRANTIES:** Writer represents the following to the
30 best of Writer's knowledge and belief: The screenplay is and shall be entirely
31 original with Writer, and the screenplay does not and will not incorporate any
32 copyrighted material owned by others; the exploitation of the screenplay will not
33 violate the rights of any third party; Writer is a lawful citizen or permanent resident
34 of, or is otherwise legally entitled to work in, the United States of America.

35 **CHARACTER OF WRITER'S SERVICES:** Writer acknowledges that Writer's
36 services are of a unique, extraordinary, and intellectual character, the loss of which
37 cannot adequately be compensated in damages in an action at law, and therefore,
38 Writer acknowledges that OMG shall be entitled to injunctive and other equitable
39 relief to prevent or curtail any breach of this Agreement by Writer.

40 **ASSIGNMENT OF RIGHTS:** Upon commencement of principal photography by
41 OMG, Writer shall and hereby does assign all right and title, including without
42 limitation all copyright, to the screenplay to OMG, and Writer agrees to execute all
43 documents necessary to memorialize the same and to enable OMG to register the
44 copyright in the screenplay.

45
46 By signing in the spaces below, the parties accept and agree to all of the terms and
47 conditions of this Agreement as of the date first written above.

48

49

50

51 _____
Willa Winters

52 Writer

Deke Ornsen
for Ornsen Media Group

You have been hired as a lawyer for Deke and Roger Ornsen and the Ornsen Media Group. They have brought the Screenwriter Agreement to you for your evaluation. Neither they nor Willa Winters has signed it yet, although Winters has reviewed the agreement and has indicated she would sign it as is.

QUESTION 2 (worth approximately 3/8 of the exam grade)

What changes, additions, deletions, or revisions do you recommend to the Screenwriter Agreement and why? In your answer, please use the line numbers to refer to portions of the document you are discussing.

(Note: The relevant facts for this question potentially embrace all of the foregoing, including the facts applicable to Question 1.)

→ → NOTE: THE EXAM CONTINUES ONTO THE FOLLOWING PAGE → →

NOTE THE FOLLOWING ADDITIONAL FACTS FOR QUESTION 3:

In the aftermath of KGKX-TV's reporting on craft gangs, the Glendanton Police Department formed a Special Gang Task Force, which produced a report on Glendanton gang activity for the mayor. The following week, Glendanton police arrested Tim Tandersansky on charges in the beating of an unknown 14-year-old student. The next day, KGKX-TV and Jessica Jasperall received subpoenas from Tandersansky's lawyer seeking documents and testimony that will reveal the source of Jasperall's story of March 18, 2009.

In Minnesota, testimonial privileges are a matter of common law, but no Minnesota court has yet considered whether a journalist-source privilege exists, and if so, how far it extends. There are also no cases on the books in Minnesota regarding the sort of access to documents and information that KGKX-TV is seeking from authorities.

QUESTION 3 (worth approximately 1/8 of the exam grade)

Deke and Roger call you up and ask you what they should be able to get from the police and the courts in the way of documents and information relevant to the gang task force and the Tandersansky prosecution. They also want to know what their prospects are in terms of having to turn over Jasperall's source for the March 18 story. What do you tell them? What policy and theory arguments can the Ornsen brothers use to help make favorable law in Minnesota.

(Note: The relevant facts for this question potentially embrace all of the foregoing, including the facts applicable to Question 1 and Question 2.)