

**Exam No.** \_\_\_\_\_

**INTERNET LAW**

Professor Crouch

Fall 2011

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**Instructions:** This is a **3 hour examination**. It will be available for pickup in Room 203 at 1:30 p.m. on December 12, 2011 and must be returned by 4:30 p.m. on that same day. The examination covers concepts derived from the assigned reading and in-class discussions. The best answers will rely upon those concepts to provide a full explanatory answer to each question presented.

**Materials allowed.** This is an open book, open note, and open computer examination. You may use class notes or outlines, commercial outlines, the Internet, or any other material. You may not rely on contemporaneous communications with any other person (either via local or remote communication). The honor code applies to this take-home examination. You must perform all work on your own and abide by the instructions on this page. <http://law.missouri.edu/students/policies/conduct.html>.

**Avoid Plagiarism.** Please take steps to avoid plagiarism or even the appearance of plagiarism.

Write your blind examination number in the space indicated above on this page. Do not put your name on anything in connection with this examination. **At the end of the exam, you must return this paper as well as your answers.**

**GOOD LUCK!**

### Question One

Soon after stepping down from an important administrative position, Dessem started a new company that relies on user input to rank the quality of law schools. Dessem collects data by posting online advertisements to lawyers and law students asking them to fill out his law school survey that was available online. The survey contains a number of general questions about law school reputations as well as a few more specific questions such as "who taught your worst class in law school." Dessem chose a business name "Ranking by Dessem." Dessem operates his company through the domain name <http://RankingByDessem.com> and his website is accessible via the internet from computers across the United States, and indeed, around the world. Dessem physically operates his business within the state of Missouri, although the servers that he uses are provided by a third party and are located in California and New York.

Dessem has a webpage labeled "terms of use" on his website. A link from the website main page directs customers who click on the link to the "terms of use" webpage. Users can access and read the site without clicking "I agree." However, survey participants are required to click a button labeled "I agree to be bound by the terms of use" prior to submitting survey results. Just under the "I agree" button was a hyperlink to the text of the terms of use. The terms of use state, in part:

In consideration for access to this website, [www.RankingByDessem.com](http://www.RankingByDessem.com), USER agrees:

- (1) not to post any defamatory material;
- (2) not to post any copyrighted material without written permission of the copyright holder;
- (3) to indemnify Dessem based on any harm caused by publication of content provided by USER; and
- (4) to waive any liability for any cause of action against Dessem, including, but not limited to, past and future liability that arise from this website.

A user signals acceptance of this contract by either

- (1) clicking the button marked "I agree to be bound by the terms of use" when presented to a user of this website or else
- (2) by accessing the website more than twice.

Dessem has not registered his site with the copyright office and has not registered his trademark. The website has been something of a success, and Dessem is receiving a healthy advertising revenue. However, there have been a few problems.

(a) Based upon the information received, University of Burbank Law School received a fairly poor ranking and, in addition, Dessem republished one of the comments about a Burbank professor stating that "Professor Hemingway arrived in class drunk and smelling of mojitos more than once." Hemingway is obviously upset. Dessem does not know the name of the individual who supplied the quote, but he did retain the IP-address of the computer used to submit the survey response. When preparing his ranking report, Dessem saw the quote and suspected that it was entirely false. However, Dessem thought that it would help drive readership and so he deliberately decided to include it within the report.

Prepare a memorandum for Professor Hemingway detailing his potential causes of action.

(b) After operating for a couple of years, Dessem noticed that his competitor, US News & World Report had registered the domain name "DessemLawRanking.Com." When someone accessed that site, they are re-directed to the USNews.com website. Does Dessem have any mechanism to stop US News from what he sees as free-riding on his trademark?

(c) US News also has cause to complain against Dessem. Apparently Dessem scraped a large amount of data from the US News website (which US News did not realize until several US News editors read through Dessem's site). In addition, one of Dessem's users submitted the following two paragraphs of text describing the University of Chicago Law School

Outside of class, there are more than 50 student organizations to get involved in, from the Winston Churchill Gaming Society, a club that reports it honors "player of at least poker and pinochle" Churchill, to Law School Musical, a group that puts on a law school parody performance each winter. Second and third year students can also get hands-on legal practice in four legal clinics, which help clients with problems as varied as start-up business issues and human rights complaints.

Students can live in the surrounding area of Hyde Park, a Chicago suburb, either in university-owned housing or in private apartment buildings. The law school's proximity to Chicago offers a wide variety of legal placement opportunities. For students looking farther afield, the Chicago Law School has an International Human Rights Internship Program that sets up law students with work in Australia, India, Korea, and South Africa.

Dessem included the two paragraphs in his report as well, although he did put quotes around them and indicated that they came from US News. Does US News have a cause of action? Can they sue in New York Federal Court?

**Question Two**

The following is an editorial recently published in several online news sources:

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Facebook has 800 million users who are required to use their real names and, as a result, are identified with and accountable for what they post. It is time to consider Facebook's real-name policy as an Internet norm because online identification demonstrably leads to accountability and promotes civility.

People who are able to post anonymously (or pseudonymously) are far more likely to say awful things, sometimes with awful consequences, such as the suicides of cyberbullied young people. The abuse extends to hate-filled and inflammatory comments appended to the online versions of newspaper articles — comments that hijack legitimate discussions of current events and discourage people from participating.

Anonymity also facilitates the posting of anti-Semitic, racist and homophobic content across the Web.

To be sure, there is value in someone being able to use the Internet without being identified. Online privacy is a major issue today. And in the United States, we have had a great tradition of anonymous political speech. Elsewhere, dissidents in oppressive regimes have felt free to speak up precisely because they believe (perhaps erroneously) that they cannot be identified.

This is not a matter for government, given the strictures of the First Amendment. But it is time for Internet intermediaries voluntarily to consider requiring either the use of real names (or registration with the online service) in circumstances, such as the comments section for news articles, where the benefits of anonymous posting are outweighed by the need for greater online civility.

There is no bright-line test, but Internet sites permitting user-generated postings can make a judgment that in some instances the use of real names benefits society.

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Please respond to this editorial, taking the position that the internet should continue to be broadly available to anonymous internet users.