

FINAL EXAMINATION

COPYRIGHT LAW

P.N. Davis

Tuesday, May 7, 2013

1:30 - 4:30 PM

THIS IS A THREE (3) HOUR EXAMINATION.

THIS EXAMINATION CONTAINS SIX (6) PAGES.

THIS EXAMINATION CONTAINS FIVE (5) QUESTIONS.

I = 30 45 min. II = 60 45 min. III = 30 min. IV = 30 min. V = 30 min.

FILL IN YOUR EXAMINATION NUMBER ON THE BLUEBOOK STICKER.

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YOU MAY BRING IN YOUR STATUTORY SUPPLEMENT, BUT NOTHING ELSE.

You may write/print anything in the margins and on the blank pages of the supplement. You may add tabs to the supplement. You may not cover up any printing in the supplement.

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Instructions:

1. These questions will be graded on the basis of the times indicated with each questions. The indicated time for the questions total 3 hours. You will be given 3 hours to write the examination. Budget your time carefully or you may not finish.
2. Be sure to state a result whenever a question asks for one. Merely stating the arguments on both sides of a legal issue will result in only partial credit because you will not have completed the analysis required by that type of question.
3. If you find it necessary to make factual assumptions in order to answer a question, be sure to state the assumption.
4. Do not assume additional facts for the purpose of avoiding a legal issue or making its resolution easier.
5. Comment briefly on each legal issue reasonably raised by the questions and on each reason for your answer, even when you decide that one legal issue or reason controls the result.

6. The difference between triumph and disaster may lie in a **careful** reading of the questions.

I.
(30 45 minutes)

A political party in Missouri quoted entire articles from various Missouri newspapers in an electronic newsletter e-mailed to party members and supporters. These were reformatted in newspaper-like appearance, but did not reproduce the original formats of the articles. Each reproduced article had been published only a few days before the electronic newsletter was e-mailed. Each article contained the original headline and names of news reporter who wrote the article. Each reporter is a staff writer for his/her respective newspaper. Each newspaper contained a copyright notice on its second page with the business address and contact data (the customary location of such notice and material). The copyright notice in each case was in the format: "Copyright © 2013 [name of newspaper]". There were no copyright notices affixed to any of the individual articles. The various newspapers did obtain registrations within three months of publication.

The next day, several of the newspapers demanded that the political party withdraw its electronic newsletter. The political party refused.

The political party asserted a right to reproduce the articles without consent of the newspapers and without payment of royalties or license fees.

What relief is available to the newspapers and news reporters, if any? Discuss all relevant legal issues. State a result.

END OF QUESTION I.

II.
(60 45 minutes)

On the first day of spring a few years after the 1993 and 1995 floods, six fiberglass boat hulks mysteriously appeared upright near the Missouri River at Plowboy Bend near the mouth of Little Bonne Femme Creek. It is said that the boat hulks sprouted from the ground or fell from the sky. Each hulk is a wrecked boat and is planted in the ground along an arc with a radius of about 108 feet. Each planted boat hulk is 13 feet high and about 6 feet wide. Each is planted about 3 feet into the ground, making the visible parts about the same size as the stones at the famous monolith at Stonehenge, England. It is called “BoatHenge” and is located off the Katy Trail. This is near Cooper’s Landing north of Easley, Missouri. It is close enough to the trail to be photographed. The website www.boathenge.net claims a copyright and retention of the right to commercially exploit its image. T-shirts with the BoatHenge image are available from the operators of the website.

A.

Peter Kodak photographed BoatHenge from the Katy Trail (a public place) and began selling framed photograph prints at an antique mall in Columbia, Missouri. The photographs were labeled with a small brass plate as “BoatHenge, Plowboy Bend, Missouri River, Missouri – Copyright © 2011 Peter Kodak”.

Does the owner of BoatHenge have a cause of action against Peter Kodak to stop his photograph sales? Discuss all relevant legal issues. State a result. (Assume owner of BoatHenge registered it before filing suit.)

B.

Jimmy Jones owns some land along the Missouri River near McBaine, Missouri. On it he erected eight wrecked aluminum boat hulls end on in an octogan configuration. He calls it “HullHenge”. It is located closer to a public access point on the Katy Trail than is BoatHenge. Jones sells T-shirts featuring the image of HullHenge. He sells them at flea markets. The HullHenge image looks somewhat different than the image of BoatHenge, because the HullHenge hulls are erected in a different geometric arrangement (an octogon, rather than an arc).

Does the owner of BoatHenge have a cause of action against Jimmy Jones to require removal of HullHenge and for damages? Discuss all relevant legal issues. State a result. (Assume owner of BoatHenge registered it before filing suit.)

C.

The State of Missouri (Department of Natural Resources – State Park Division) decided that BoatHenge was unsightly and not worthy of being located near the Katy Trail. Its lawyers determined (correctly) that Boat Henge was located on land between the Missouri River and the

former right-of-way of the Missouri-Kansas-Texas Railroad (on which the trail is located). Therefore, [*as a riparian,*] the railroad had owned the river frontage, [*the State succeeded to that title,*] and the owner of BoatHenge did not have title. In the dead of night, Missouri DNR bulldozed BoatHenge while its owner was asleep at home.

Does the owner of BoatHenge have a cause of action against the State of Missouri for damages? Discuss all relevant legal issues.

Note: There is a famous *Carhenge* in Alliance, Nebraska (1988 - still in existence), and an *Autohenge* in Ontario (1986 - lasted 5 years). Both have wrecked automobiles planted upended in a circle.

END OF QUESTION II.

III.
(30 minutes)

National Portraits, Inc., does a national business of taking individual and family portraits at various locations, such as stores in shopping malls, churches, and schools. The portrait photographs are taken by staff photographers who travel from site to site. National Portraits affixes a copyright notice on the back of every portrait it sells to customers.

National Portraits learned that many customers were duplicating portraits they bought at third-party photo shops. So, National Portraits arranged for one of its staff photographers to take several portrait photographs of some of its employees and had an investigator go to several photo shops, including Shoreline Photo. At Shoreline Photo, the investigator was asked to sign the following "Permission to Copy Agreement":

THIS IS TO STATE THAT I AM THE OWNER OF THIS PHOTOGRAPH
AND HAVE NOT GIVEN ANY ONE ELSE PERMISSION TO COPYRIGHT
THIS PHOTOGRAPH. I AM SUBMITTING IT TO SHORELINE PHOTO
FOR A COPY AT MY REQUEST. THIS COPY IS FOR MY PERSONAL
USE, AND I AGREE TO HOLD HARMLESS, SHORELINE PHOTO OR ANY
OF ITS AGENTS, FROM ANY LIABILITY ARISING FROM THE COPYING
OF THIS PHOTOGRAPH.

The investigator did sign this agreement. The portrait photograph the Shoreline Photo subsequently copied had National Portrait's copyright notice on its back.

National Portrait sued Shoreline Photo for copyright infringement. Shoreline Photo [*argued that*] its copying was lawful.

How should the court rule? Discuss all relevant legal issues. State a result.

END OF QUESTION III.

IV.
SHORT ANSWER QUESTIONS
(15 minutes each – total 30 minutes)

A.

A large commercial model railroad in the United States included in its scenery an airport scene of Air Force One, a red carpet, President George W. Bush and entourage reviewing troops along the red carpet, and protesters carrying signs which read, “Bush, Go Home!” The scene was inspired by and resembles a photograph taken by an AP news photographer in Berlin, Germany.

Other photographers took photographs of the same event, but not at the same exact moment.

Does the model railroad scene infringe on the photograph? Discuss all relevant legal issues. State a result.

B.

Greenberg publishes *The Greenberg Catalog*, a multi-volume softback catalog of values of used Lionel model trains (3-rail). Each entry is accompanied by a colored thumbnail photograph. The entries are organized by catalog number (which are stamped on each model railroad car or locomotive). The values (for standard categories: mint, excellent, good, fair, poor) are obtained by surveying prices at model railroad shows and eBay online auctions.

John Brown has started publishing *The Brown Book*, an electronic online catalog of values of used Lionel, Marx, MTH, K-Line, Atlas O, Weaver, Sunset 3rd Rail, and Golden Gate Depot model trains (both 3-rail and 2-rail). Each entry is accompanied by a colored thumbnail photograph. The entries are listed by car type, then subdivided chronologically, and finally catalog number. The values for used Lionel model trains are remarkably similar to those listed in *The Greenberg Catalog*. The values (same standard categories) are obtained, Brown asserts, by surveying prices on eBay online auctions only. The photographs in the two catalogs show the same equipment, of course, but appear to have been taken by different photographers.

Greenberg sued Brown for misappropriation, seeking an injunction. Should the court grant this relief? Discuss all legal issues. State a result.

END OF QUESTION IV.

V.
(30 minutes)

Briefly define the following terms:

- (1) first sale doctrine
- (2) “time-shifting”
- (3) parody.
- (4) originality.
- (5) work for hire.
- (6) composite work.
- (7) “take-down” notice.
- (8) copyright misuse.
- (9) derivative work.
- (10) blanket license.

END OF QUESTION V.