

Copyright Literary/Artistic
Professor Lape

Thursday, May 15, 1997
1:30 p.m.
Three (3) hours

SPECIAL INSTRUCTIONS

Answer all questions. Explain your conclusions and discuss fully the arguments on each side of every issue.

You may bring to this examination your casebook, statutory supplement, handouts, class notes, outline, and any other written or printed material.

WRITE ONLY ON THE RIGHT HAND SIDE OF THE BLUEBOOKS. WRITE ONLY ON EVERY OTHER LINE.

Suggested time allocations for each of the questions are as follows:

- Question I: 60 minutes
- Question II: 40 minutes
- Question III: 55 minutes
- Question IV: 25 minutes
180 minutes

EXAMINATION CONTINUES

I

In 1985 Little Tikes designed a stepstool (an example is available for your inspection) to be used by small children to enable them to reach sinks and toilets. The stepstool was marketed beginning in 1985 (in form identical to the sample provided) and became very popular. Little Tikes registered a claim of copyright in the stepstool with the Copyright Office in 1985.

In 1995 Dunster Corp. began marketing a stepstool that was identical in all respects other than copyright notice, trademark and overall color. Dunster's stepstool is pale green all over. Dunster's stepstool bears a red oblong on the lower right-hand corner of one side, with the word "Dunster" printed within the oblong.

Little Tikes brought an action against Dunster for copyright infringement in a district court within the Second Circuit seeking statutory damages and an injunction. Dunster has not raised the defense of fair use. What are Little Tikes' chances of success?

EXAMINATION CONTINUES

II

1. Discuss briefly the trade-offs involved for the various interested parties in the Audio Home Recording Act of 1992. Should "phonorecords" have been removed from §109(b) in light of the adoption of §1008?
2. What did Justice Souter mean in Acuff-Rose Music, Inc. v. Campbell by the statement that there is no protectable derivative market for criticism? Is this rule consistent with the facts in Campbell?
3. In your opinion how should the Sixth Circuit en banc have decided Princeton University Press v. Michigan Document Services? Explain why.
4. Discuss briefly the development of one (1) of the following fair use doctrines: commerciality of the use, transformative nature of the use. Be sure to cite two (2) significant cases in your discussion (no page numbers or exact quotations necessary).

EXAMINATION CONTINUES

III

In 1995 Porter wrote a science fiction novel about a swashbuckling space explorer named Hank who chuckles when in danger, swaggers when he walks, chews gum constantly, calls everyone "partner", and captures his enemies with a boomerang. In the novel Hank rescues the crew of a space station from aliens. Porter registered a claim of copyright in the novel with the Copyright Office in 1995. The novel was marketed beginning in 1995 with appropriate copyright notice and became the top selling science fiction novel of the year.

In 1996 Davis marketed a comic book about a space explorer named Hank who swaggers, often chews gum, calls people "partner", wears a cowboy-style space suit and uses a lasso. Davis' comic book concerns Hank's adventures founding a colony on a newly-discovered planet.

Porter wants to bring suit for copyright infringement against Davis. What are Porter's chances for success within the Second and Ninth Circuits? Where do you recommend that Porter bring suit? (Davis will not raise the defense of fair use.)

EXAMINATION CONTINUES

IV

Famous stained glass artist Stan created in 1960 a stained glass work, which was sold by Stan at a crafts fair. There was no agreement by Stan with respect to the stained glass work other than the sale of the stained glass.

Building Owner installed the stained glass into a building in 1962 without Stan's knowledge.

Now Building Owner plans to destroy the entire building in order to rebuild on the same site. Stan and Building Owner have stipulated that removal of the stained glass from the building would destroy the stained glass. Stan seeks an injunction to prevent destruction of the building.

Can Building Owner destroy the building?

EXAMINATION ENDS