

Examination Identification Number: \_\_\_\_\_

FACULTY OF LAW

**LAW 518: B2 — INTELLECTUAL PROPERTY (PROF. RENKE)  
FINAL EXAMINATION - APRIL 28, 2003**

**Time Allotted:** Three hours (180 minutes) plus 15 minutes reading time.

**Code Number:** DO NOT ENTER YOUR NAME ON ANY ANSWER SHEETS OR BOOKLETS. A list shall be circulated and your name is to be entered opposite a number on that sheet. That number shall be your code number FOR THIS EXAMINATION ONLY and should be entered on THIS EXAMINATION in the space provided above. Following these procedures will ensure anonymity during marking.

- Special Instructions:**
1. This examination consists of **23** questions on **36** pages (including this page). Check to ensure that the examination is complete before starting.
  2. Answer **ALL** questions and parts of questions. **READ ALL INSTRUCTIONS IN QUESTIONS. IN YOUR RESPONSES, REFER TO ALL PERTINENT CASES AND STATUTES.**
  3. This is a **CLOSED BOOK** examination, except that you may use an unannotated *Consolidated Intellectual Property Statutes and Regulations*.
  4. The examination is graded out of **100** marks, and is worth 70% of the marks for your final grade. This examination is “fail-safe” (if the percentage scored on this examination is higher than the percentage on your mid-term examination, then only the mark for this examination will be used for the calculation of your final grade; if the mark for this examination is lower than the mark for your mid-term examination, then this examination is worth 70% of the marks for your final grade).
  5. Do not make up facts.
  6. **Write legibly.**
  7. Adhere to the time limitation imposed on this examination strictly. Failure to do so may lead to a reduction of grade or a refusal to accept the examination paper.
  8. To avoid disrupting students finishing the examination, no person shall leave the examination room during the **last 15 minutes** of the examination period.
  9. **Times for responses to questions are SUGGESTIONS ONLY.**
  10. Write your answers in the spaces provided in THIS EXAMINATION. Feel free to write on backs of pages, or in examination booklets, if you require more space.

Question	Score	Question	Score
1	/3	13	/5
2	/2	14	/3
3	/3	15	/3
4	/4	16	/2
5	/3	17	/3
6	/5	18	/4
7	/2	19	/12
8	/2	20	/4
9	/5	21	/2
10	/6	22	/3
11	/6	23	/3
12	/15		

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TOTAL/100           

midterm:  
midterm + final:

GRADE:



**(2) 2. Besides extending convention standards to an extended group of nations, what is the main advantage in bringing intellectual property rules within international trade agreements, such as NAFTA and TRIPs?**

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**(3) 3. An inventor has developed a “super dog.” The inventor modified some genetic material and injected it into a fertilized bloodhound egg. The resulting hound, and all of its offspring, have a highly heightened sense of smell. The hounds’ ability to track persons (e.g. in search and rescue or criminal pursuit contexts) has been greatly enhanced. **Assuming that the “super dog” would satisfy the other criteria for patentability, could the “super dog” (not the process of producing it) be a potentially patentable “composition of matter” under current Canadian law? Why or why not? Explain.****

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*Suggested Time for Questions 4 - 6: 25 Minutes Total*

The following facts apply to Questions 4 - 6

Dr. Yu, a full professor appointed to the Faculty of Agriculture, Forestry, and Home Economics of the University of Alberta (the “University”), has developed an edible product known as the “Thermo Bar.” It looks and tastes like a chocolate bar. Its active ingredients are chocolate, honey, and the palemino bean – all naturally occurring, common substances. Through experimentation, Dr. Yu established that if these ingredients are mixed in certain precise proportions, they have a “thermogenic” effect for persons who consume the bars – they cause consumers to metabolize (burn) stored bodily fat quickly, and not to burn carbohydrates or proteins. This metabolic effect allows consumers to stay warm in cold environments, and enhances their physical performance in high-intensity sports. Dr. Yu’s research leading to the Thermo Bar was done as part of her duties as an academic staff member at the University using University equipment and involving other University staff and students. She was not hired by the University to create thermogenics generally or a thermogenic bar in particular. It was her choice to do research respecting thermogenics. The University does not have a “research and development” department, as may be found in large private corporations.

- (4) 4. Assuming that the “Thermo Bar” is an “invention” and that the research funding arrangements contained no relevant provisions,**
- (a) does the *Patent Act* provide guidance respecting the ownership of the invention?**
  - (b) what sorts of inquiries should you make to determine the ownership of the invention?**

**Explain.**

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**Value Question**

*Suggested Time for Questions 7 - 9: 15 Minutes Total*

The following facts apply to Questions 7 - 9

The Alberta Paralegal Association (the “APA”) is a self-regulated professional body, constituted under the Alberta *Societies Act*. It requested the Registrar of Trade-marks to give public notice that the APA has adopted and used as official marks for services the words “paralegal” and “legal technician”, and the Registrar gave this public notice in the *Trade-marks Journal* on January 7, 2003. The Law Society of Alberta (the “LSA”) wishes to challenge the Registrar’s decision to give public notice.

**(2) 7. What remedy, if any, is available to the LSA to challenge the Registrar’s decision? Explain.** Assume that any remedy would not be time-barred.

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**(2) 8. What is the test for determining whether the APA is a “public authority” within the meaning of s. 9 of the *Trade-marks Act*? Do not apply the test to the APA.**

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*Suggested Time for Question 12: 30 Minutes*

**(15) 12.** 1234 Alberta Ltd. (“AltaCo”) is a corporation incorporated under the Alberta *Business Corporations Act*. It has carried on the furniture moving business under the name “Metallica Movers” in Edmonton, Alberta, since June 2002. The three principals of AltaCo are fans of the musical group “Metallica”, and wanted their business to bear the name of their favourite band. AltaCo advertises its services mainly on Edmonton FM radio stations that play metal and classic rock and on the U of A’s CJSR radio station. AltaCo has sought to corner the niche market in student and younger adult moving clients. The principals of AltaCo believe that their business name will assist in attracting these customers – the name “Metallica,” they believe, has significant “drawing power” for future clients. AltaCo has applied to register the words “Metallica Movers” as a trade-mark used in association with furniture moving services. AltaCo sells no wares except cardboard boxes used for moving. No other firm uses the term “Metallica” in association with moving services.

The musical group “Metallica” (the “Band” – a “California General Partnership”), however, registered the name “Metallica” as a trade-mark under the *Trade-marks Act* in 1996 [this is true]. This mark has been used in Canada since 1982. The “Metallica” mark is registered for use in relation to a variety of goods or wares (but not cardboard boxes), and in association with entertainment services, including live musical performances. Assume that this registration is valid and unchallengeable.

AltaCo’s application was advertised, and the Band duly filed an opposition, alleging that AltaCo’s mark was “confusing” with its own trade-mark. Assume that you are the individual acting as the “Trade-marks Opposition Board”, that the application conformed with the s. 30 requirements, that all appropriate procedural steps were taken, and that the foregoing facts were established in the hearing. **Should AltaCo’s application be rejected or should the Band’s opposition be rejected? Explain.** Be sure to set out all the steps of your argument.

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**Value Question**

The following facts apply to Questions 13 - 23

*Suggested Time for Questions 13 - 18: 35 Minutes*

Spike is a Ph. D. candidate with the Faculty of Arts, University of Alberta (the “University”); he is in the Film Studies program. Spike’s Ph. D. dissertation concerns “the fabrication of the physical appearance of the American male through the movies of Howard Hawks.” Hawks, a famous director, died in 1977. Spike is particularly concerned with five Hawks’ movies (film dramas) starring John Wayne (the “Movies”). Spike wishes to reproduce “stills” (particular photographic frames) of the Movies in his dissertation (the “Stills”); he intends to comment on the Stills in the text of the dissertation, describing how the elements of the Stills contributed to the social construction of the male body image. He wishes to use about 50 Stills from the five Movies. Each still represents only a tiny fraction of the total number of film frames in a complete Movie. The Stills could be produced for Spike by Technical Services Ltd. (“Tech Services”) from DVDs of the movies. Tech Services could run the DVDs, make electronic copies of images selected by Spike, and insert these images in the dissertation text (which is in electronic, word-processed form). Spike would purchase or rent the DVDs of the Movies.

The Movies were made and shown in North America from 1948 - 1970. Assume that Hawks, a US citizen and resident, was the sole author of the Movies, and that he validly assigned all of his copyright in the Movies to Paramount, a US motion picture corporation, in 1971.

Spike’s dissertation (once complete and successfully defended) is to be published through the provision of copies to the National Library of Canada and to the University libraries, where the dissertation will be available to other researchers. Spike shall receive no financial compensation for this publication.

Hawks is survived by his wife, Marie, and his sons Biff and Brick. Hawks made no mention of intellectual property in his will, but Marie is entitled to the residue of his estate under his will.

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Value Question

(2) 21. Assume that copyright in the Stills is recognized under the *Copyright Act*, that neither Spike nor Tech Services has any copyright interest in the Stills, and that the term of copyright continues to subsist. Assume that Spike did need express permission to use the Stills. Practically, this permission would be obtained in writing. **Legally, must the permission be in writing? Explain.**

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(3) 22. Assume that copyright in the Stills is recognized under the *Copyright Act*, that the owner of copyright in the Stills is neither Spike nor Tech Services, but that Spike's use of the Stills does not infringe copyright. Floyd, a lazy graduate student, copied 100% of Spike's dissertation, and sought to pass it off as his own. Assume that no defence to infringement is available to Floyd. **Is Floyd liable for copyright infringement to the owner of copyright in the Stills? Explain.**

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