

Examination Identification Number: _____

FACULTY OF LAW

**LAW 518: B2 — INTELLECTUAL PROPERTY (PROF. RENKE)
MIDTERM EXAMINATION - FEBRUARY 11, 2003**

Time Allotted: One hour and 15 minutes (75 minutes).

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 **11** questions on **19** 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 **60** marks, and is worth 30% of your final grade. This examination is “fail-safe” (if the percentage scored on the final examination is higher than the percentage on this examination, then only the final mark will be used for the calculation of your final grade; if the percentage scored on this examination is higher than the percentage scored on the final examination, then this examination’s weighting will remain at 30% of the total mark).
 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**

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11 _____

TOTAL/60 _____

The following facts apply to Questions 1 - 9

HVM Ltd. (“HVM”), a Canadian corporation that operates a national chain of music and video stores, received a demand letter from SOCAN (an incorporated collective society that represents, among others, music composers). In the letter, SOCAN states that

- (i) HVM plays recorded music in its stores, which is audible to persons inside the stores; and
- (ii) all of the music played is composed by SOCAN members.

ASSUME that (i) and (ii) are true, SOCAN has received valid and binding assignments of all members’ relevant interests in the musical compositions, all composers are still alive, all composers are Canadian citizens, and none of the music is in the public domain.

SOCAN goes on to claim that

- (a) HVM requires a licence from SOCAN to play the music; and
- (b) HVM must pay royalties to SOCAN, as established by a Copyright Board tariff (the “Tariff”).

Suggested Time for Question 1: 5 Minutes

(5) **1. Is SOCAN’s claim (a) true? Why or why not? Explain.**

Suggested Time for Question 11: 25 Minutes

(16) **11.** Art Baggins was a long-time employee of the Smithsonian Institute (the “Institute”), a U.S. charitable/educational corporation based in Washington, D.C. In 1966, Baggins’ job was to travel the U.S. South, interview blues artists, and make recordings, so their work could be preserved for future generations. In February, 1966, Baggins traveled to Crossroads, Mississippi, to meet Jelly Roll Johnson, a widely acclaimed composer, singer, and guitarist. When Baggins and Johnson met, Baggins informed Johnson of his reasons for interviewing and recording him, and Johnson agreed to provide personal information and to perform some of his compositions for recording. Baggins recorded three songs, including “Ramblin’ on My Mind.” Ramblin’ – for you music experts – is a 12-bar blues song. The chord progressions are the same as or very similar to many other 12-bar blues songs. The lyrics deal with the typical blues themes – intimate relationships gone bad, the temptations of liquor, and the false allure of the criminal lifestyle. Ramblin’, however, had a distinctive melody and lyrics composed by Johnson. Ramblin’ was readily identifiable by listeners as an independent piece of music. It was Johnson’s signature piece. Johnson had performed it many times throughout Mississippi and Louisiana, commencing in 1964. Johnson could not write music and so had never written the song out in musical notation. (He had never gotten around to writing down the lyrics. He remembered them well enough.)

Johnson died on February 20, 1967. He is survived by one daughter, Delia, who now lives in Edmonton, Alberta. Johnson had a valid will, the key passage of which provides as follows: “I leave all of my real and personal property to my daughter, Delia.”

In May, 2001, Flange Dextrous, the Canadian rock ‘n’ roll sensation, visited the Institute’s Washington offices, listened to some of its recordings archives, and heard Ramblin’. Flange knew a hit when he heard it.

In early 2002, Flange recorded Ramblin’. While Johnson’s version involved only a voice and guitar, Flange augmented the song with new musical elements (“hooks” and “riffs”), and added electric guitar, percussion, and synthesizer parts. Flange marketed the song in conjunction with a highly sexualized music video. Ramblin’ became a big hit.

Flange has never had any communication with the Institute or Delia respecting Ramblin’.

Delia is interested in pursuing Flange for copyright infringement.

Does Delia have any rights protected by the *Copyright Act* in relation to Ramblin’? Why or why not? Explain.

[You may tear this page out of the exam, if you wish.]

