

Digital Property Spring 2024 Final Exam

This assignment consists of **two questions** and **eight pages**, including this cover page. Your answer has a limit of **1,500 words per question**, which will be strictly enforced. It is due by **11:59 PM on Monday, May 13**.

Submit your answer by uploading a PDF to the Final assignment on Canvas. Because the exam is blind-graded, keep your **name and other identifying information** out of the PDF you submit.

This is an **open-book** examination. You should not need to consult anything beyond the casebook, the slides, and your notes, but you can if you wish. You are free to discuss the general legal principles we have covered with anyone, including each other. You are free to post general questions about the material covered in the course or clarifying questions about the *facts* (not the law) in the problems on the exam in the designated discussion area on Canvas. I will answer all questions posted there before 11:59 PM on Friday, May 10.

Aside from that, **you may not discuss the question** with anyone else until after I have returned your grades. Your work on this examination is subject to the Cornell Code of Academic Integrity, the Law School Code of Academic Integrity, and the Campus Code of Conduct.

Please make your answer as **specific** to the facts of the question as you can. Generic statements or suggestions, such as "Make sure that all employees follow proper security practices," will receive few or no points. Your answer should assume that I am already familiar with the facts of the problem and relevant law, and dive directly into your analysis. Use **simple citations** (e.g. "*see Kremen*") where appropriate. I include **spelling, grammar, clarity, and organization** in my grading, but unless they interfere with my ability to understand the substance of your analysis, you are better off focusing your time on the substance of your answer. I appreciate the use of headings to organize your answer, but they're not required. If you find the question **ambiguous** or need to **assume additional facts**, state your assumptions and explain how they affect your answer. No reasonable resolution of an ambiguity will be penalized.

Assume for purposes of the examination that present-day law has been fully in effect at all relevant times. Unless otherwise noted, all names are fictitious. Please disregard any resemblance to actual persons, places, or institutions, unless they are specifically incorporated into a question.

You can focus on the property issues. If you need to make assumptions about other areas of law, such as tort or contract, it is fine to write “I assume that ...” rather than giving a detailed explanation.

Policy on the use of Generative AI Systems

You are **allowed** to use **generative-AI** tools in researching and writing your answer, subject to four conditions:

1. The tools must be **entirely automated**. You may not circumvent the rule against discussing the question with anyone by using a hybrid human/computer system, asking someone to help you with your prompts, or doing anything else that puts a human in the loop.
2. The tools you use must be **freely and publicly available**. You may not use any tool for which you paid a usage or subscription fee (or someone else paid it on your behalf), or use any tool that has not been released to the general public.
3. You must **disclose** which tools you used and give a brief description of how you used them in an appendix to your answer. For example, “I input the question to Claude to generate ideas. I used ChatGPT to help clean up the answer.” If you did not use any generative-AI tools, you can write “I did not use generative-AI tools in writing this answer” or words to that effect. This appendix does not count against the word limit.
4. Any use of generative-AI tools is entirely **AT YOUR OWN RISK**. You are fully responsible for anything you submit; I will not accept “the computer did it” as an excuse for mistakes of fact or law. Large language models are well known to confidently make blatantly false assertions, cite non-existent cases, and inaccurately summarize legal doctrines. In my experience, they are also bad writers; their outputs are often bland and wordy. **YOU HAVE BEEN WARNED**.

One Look

The Derek Zoolander Center for Kids Who Can't Read Good and Who Wanna Learn to Do Other Stuff Good Too (the "Center") is a private elementary school in New York City.



The campus of the Derek Zoolander Center for Kids Who Can't Read Good and Who Wanna Learn to Do Other Stuff Good Too is on the East River, across from Cornell Tech.

The Center was founded in 2001 with an initial donation from Derek Zoolander, a fashion supermodel. It recently announced a plan to conduct a fundraiser by auctioning "a series of NFTs of Derek Zoolander's iconic fashion looks." Each of these NFTs was implemented as a smart contract on the Ethereum blockchain that linked to a JPEG of a photograph of Zoolander on the Center's website at <https://zoolandercenter.com>. The page on the Center's website describing the NFT auction and showing the JPEGs of the NFTs bore a statement reading, "All photographs copyright © Derek

Zoolander. No copyright license granted.” No other legal terms were attached to the auction or the NFTs.

Maury Ballstein purchased the NFT of “Blue Steel” for \$200,000. The Center deposited the money in its account at Chase Bank. Ballstein sent the NFT to an Ethereum address he controlled, and stored the private key to that address on a vintage tangerine iMac G3 on the desk in his office. A janitor who worked in Ballstein’s office building, Hansel McDonald, overheard Ballstein talking about the NFT and devised a plan to steal it. Unfortunately, due to a misunderstanding of the technical details, McDonald damaged the iMac’s hard drive beyond repair in a failed attempt to extract the private key. The private key is now unrecoverable from the iMac, and Ballstein kept no other copies of it.

Matilda Jeffries purchased the NFT of “Magnum” for \$125,000. The Center deposited the money in its account at Chase Bank. A few months later, she resold it to J.P. Prewitt for \$500,000. Shortly after completing the purchase, Prewitt examined the NFT more carefully, and realized that the URL in it linked to the image on the Center’s website of Blue Steel. He demanded a refund from Jeffries, who refused.

Jacobim Mugatu purchased the NFT of “Le Tigre” for 5.25 Bitcoin (worth about \$168,000). He stored the private key to Le Tigre in a “self-custody wallet” secured by a passphrase that he memorized. The Center deposited the Bitcoin in its custodial Coinbase account. Several weeks later, the United States government indicted Mugatu and Katinka Ingabogovinanana on charges of conspiracy to murder a foreign official in violation of 18 U.S.C. § 1116. Mugatu and Ingabogovinanana were convicted and the government obtained a criminal forfeiture order against 10 Bitcoin, which Ingabogovinanana had transferred to Mugatu as payment for his role in the assassination plot. It turns out that the 5.25 Bitcoin that Mugatu used to purchase Le Tigre came from this 10 Bitcoin; the remaining 4.75 Bitcoin are also stored in Mugatu’s self-custody wallet. So far, Mugatu has refused to disclose the passphrase to the wallet.

Embarrassed by all of these events, Zoolander announced, “This whole situation is a gasoline fight. Due to the purchasers’ bad behavior, I am revoking their rights to call themselves the owners of my iconic looks.”

(1) *Who owns:*

- *The NFTs of Blue Steel, Magnum, and Le Tigre?*
- *The Bitcoin subject to the forfeiture order?*

(2) *What are the relevant property interests in Zoolander's iconic looks, and who owns them?*

(3) *Are any of the parties liable to each other for monetary damages?*

(4) *What non-monetary remedies, if any, are the parties entitled to?*

There is No Spoon

You have been asked for your advice by the game development studio Bullet Time, which makes *The Transformation*, a massively multiplayer online game. In the game world, players fight against endless armies of “agents” attempting to conquer humanity. It costs \$10 a month to play.



A sample of the advanced 3D graphics in The Transformation. Note the wide variety of costume choices and the exciting cinematic action.

In addition to the monthly subscription fee, *The Transformation* brings in revenue by selling a wide variety of in-game items. These include “skins,” clothing items that alter the appearance of a player’s in-game avatar (e.g., sunglasses and knee-length leather trench coats) but have no effect on gameplay. They also include lots of guns, with different damage rates, reload speeds, and other characteristics that help players in their fights against agents. Finally, players can purchase “tunes”: short music tracks

that kick in at high-intensity moments of combat. Skins and tunes are locked to a particular avatar and cannot be transferred in-game, but the game allows players to put down and pick up weapons, and they regularly share and trade guns. The Transformation's terms of service, which all users agree to when signing up, read in part:

All sales of skins, weapons, and tunes are final. No refunds will be issued. ...

Accounts are non-transferrable. You agree that you will not share your login credentials with other users. ...

You may terminate your account at any time by clicking the "unsubscribe" button in the Profile section of the pause menu. Bullet Time may in its sole discretion terminate any account for violation of these terms at any time. Bullet Time may modify the Game at any time.

When you buy a tune, you receive a limited license to play that tune. Said license shall last for as long as your account remains active. Under the terms of our license agreements with copyright owners, we are required to terminate access when your account is terminate If your account is terminated and you later resubscribe, you will need to repurchase any tunes.

Thomas Reeves, who had been a fan of earlier games in the same series, signed up in December 2021. He created an avatar named NeonOne, and rapidly leveled it up through extensive kung-fu training. In addition to the monthly subscription fee, he paid \$400 for in-game skins, \$200 for guns, and \$300 for tunes. He has been mostly inactive since October 2022.

In August 2023, an unknown hacker, known only by the screen name Morpheus, sent Reeves a phishing email pretending to be a security alert from The Transformation. Reeves clicked on the link and entered his login information. Morpheus used the information to access Reeves's account. To convert this access into money, he contacted several users on a form for The Transformation users. First, he sold the guns to Tiffany Moss bought the guns. She sent \$100 to Morpheus by Venmo. Their characters met up in-world, Morpheus had NeonOne drop the guns, and Moss had her character pick them up. Then Reagan Pantoliano bought everything else. He sent Morpheus \$500 by Venmo. In return, Morpheus sent him Reeves's

username and password. Pantoliano used them to log in, and then promptly changed the password.

The password change caused a notification to be sent to Reeves's email, but because he had been inactive and ignoring The Transformation emails, it went to his junk mail folder. He only noticed that he was unable to log in in March 2024. He contacted Bullet Time customer support, which reset the password for him (thus locking Pantoliano out). Reeves logged in, noticed that his guns were missing, and contacted customer support again. Suspecting that fraud or hacking had taken place, customer service terminated the account. Shortly thereafter, another user, Hugo Smith, registered a new account and created an avatar under the name NeonOne.

Morpheus has not been located; neither his login information nor Venmo has provided any useful clues to his identity or location. Both Moss and Pantoliano deny having any knowledge that the account had been hacked when they paid Morpheus.

- (1) *As between the users (Reeves, Morpheus, Moss, and Pantoliano, and Smith), who owns the relevant in-game assets (the account Reeves created, the Neon-One name, the skins, the guns, and the tunes)? Are they entitled to any monetary or non-monetary remedies against each other? Against Venmo?*
- (2) *Is Bullet Time legally required to change who has control of any of the in-game assets? Is it legally allowed to do so?*
- (3) *What should Bullet Time do? (Your answer can take into account property law, business concerns, justice and fairness, or anything else you think is relevant.)*