

## Digital Property Spring 2025 Final Exam Memo

The bullet points in the following outline do not precisely correspond to my grading rubric, but they do roughly reflect the overall weight I put on different parts of the analysis. I gave full credit for identifying an issue and analyzing it carefully even if you reached a different conclusion than I did. I gave partial credit for a wrong answer in the right ballpark; I gave extra credit for spotting an issue I missed, or for surprising me with an argument I had not thought of.

I will of course be happy to discuss your exams and your grades with you if you have any questions.

### Statistics

	Midterm	Final Q1	Final Q2	Total
Median	18.5	19.5	18.0	56.5
Mean	19.0	19.6	17.5	56.1
Std. Dev.	3.3	3.5	4.6	9.5

## Hard Drives Out

### Drafts

- Harlan owns the copyrights in his existing novels and/or the rights to receive royalties from them, depending on the details of his contracts with Blood Like Wine. These “writing” should go to Walt.
- The partial and completed drafts are also “writings” that go to Walt. The hard part is figuring out what property interests Harlan has to pass.
- The aspects of the drafts generated by ChatGPT are not copyrightable because they are not the original writings of a human author. The aspects written by Harlan, however, are copyrightable. Disentangling the two may be difficult or impossible, but it is unlikely that any of the drafts is wholly uncopyrightable. The copyrights in these drafts should go to Walt, but he should be aware that the copyright in them may be thinner than in Harlan’s published novels, which could be an issue in the event of an infringement suit.
- Walt should also receive access to copies of the drafts so that he can read, revise, and/or publish them. (This is important to specify because the computer on which they are stored passes to Wanetta under the residuary clause.)

### Go For It Account

- The account and its contents go to Marta. Again, the hard part is determining what in the account can properly pass as property.
- The account itself is property under the *Kremen* test. See *JLM Couture*. So are the stones in the account, which can be identified and are controlled by the account owner. They are distinct items of property because they can be transferred separately from the account.
- One complication is that Harlan had more stones in the account than he had purchased from Go For It in the last five years. He might have acquired them through gambling prohibited by state

law, through real-money trading prohibited by the terms of service, or through a purchase more than five years ago.

- Illegal gambling might be a legal problem for Harlan and for Go For It, but it probably isn't sufficient to void his property interest (if any) in the stones.
- Real-money trading for stones is prohibited by the terms of service and might be grounds for Go For It to close Harlan's account or to confiscate the stones. That is, Harlan may have sufficient property in them for Stevens to attempt to give them to Marta, but not sufficient rights to stop Go For It from taking them away if it chooses.
- The whirling knives cosmetic upgrade and the player rank are attributes associated with the account, and may have value, but they are probably not distinct property that can be separated from the account itself.
- Transferring the account or its contents also violates the terms of service. It is not clear whether Go For It would object to this transfer. On the one hand, death and inheritance does not involve the kind of monetization of play that Go For It objects to in its prohibition on real-money trading. And there is significant sentimental value in Harlan's account and its upgrades. On the other hand, a competitive game of skill is the kind of thing that is highly personal; Harlan earned a high rank, not Marta. Go For It might conclude that to allow this transfer would undermine the way in which the stones and rank reflect an individual players' skill. A court would be unlikely to order a transfer over Go For It's objections.

### **Ghostchat Account**

- The account is property, and it is property of the estate.
- Harlan's will did not name a recipient for the account, so the account should pass to Wanetta as the residuary taker.
- Linda wants access to the messages, but she is not Stevens's client, the estate is. Stevens's job is to distribute Harlan's property in accordance with Harlan's wishes. This is not a case like *Scandalios* where the request is being made by a beneficiary of the will entitled

to receive the account in question. Stevens is not required to (indeed, he must not) follow her wishes rather than Harlan's.

- Harlan might have wanted Linda to have access to the messages; they did use Ghostchat to communicate. On the other hand, they specifically used a disappearing-messages app, so he might not have intended to give Linda greater access than Ghostchat normally allows.
- Communications privacy laws probably do not limit Stevens' ability to turn over the messages to Linda, as he represents the estate of one of the parties to the chats and Linda was the other party. Ghostchat may or may not have any messages available to turn over (it depends on details of how Ghostchat works that are not specified in the problem), but it should be legally able to do so.
- Stevens should act immediately to download all of the messages to and from Linda that he can from Ghostchat. Because the messages will be automatically deleted soon, this is an important step to preserve them that will allow him to decide on their ultimate disposition.

### **Medical Records**

- Hugh likely violated the Computer Fraud and Abuse Act by logging into the hospital system to download Harlan's medical records.
- The medical records themselves are not a form of property in which Hugh, Harlan, or the estate had rights.

### **Notepad**

- Hugh was at least negligent in vomiting on the notepad.
- The measure of damages for the loss of the notepad includes the value of any information lost as a result. This includes the passwords, but the passwords are only valuable insofar as they provide access to the accounts.
- Stevens should be able to demonstrate to the various companies involved that he represents Harlan's estate and is entitled to access

Harlan's accounts. If he can, the measure of damages for the loss of the passwords is simply the time and effort Stevens had to expend in regaining access. Only if he is unable to regain access will the measure of damages include the information available in the accounts.

### **ebooks**

- Harlan committed copyright infringement by downloading the pirated ebooks. Unless the copyright owners sue his estate, this prior infringement is not the estate's problem. (Stevens is under no obligation to inform them of it.)
- On the one hand, transferring the computer to Wanetta could arguably be an infringing public distribution of the ebooks. On the other hand, deleting the pirated ebooks before giving it to Wanetta could arguably be waste, by destroying valuable property of the estate! I gave full credit for this point whatever you recommended to Stevens, as long as you saw why there is a problem here.
- The Amazon ebooks look like they are copies subject to first sale, and thus can be freely transferred with the computer. But, following *Vernor*, these copies are only licensed and not sold, and thus are not subject to to first sale. Amazon's licensing terms prohibit transfer. In practice, Amazon is unlikely to notice or object, especially if Wanetta also takes over Harlan's Amazon account.

### **Instagram account**

- The account is property, and at least initially belonged to Harlan.
- The password-sharing seems unlikely to be a transfer of ownership under *JLM Couture*, although further facts might be helpful.
- By changing the password, Jacob converted the account.
- Stevens can sue Jacob for return of the account, but this may not be necessary. He may also be able to approach Instagram directly to regain control of the account.

## **Gorilla Glass Onion**

### **Invitation**

- The invitation did not create a property right that Helen Brand can enforce. It was intended to give Cassandra Brand a license to enter and remain on Miles's property. Whether or not that license operated in favor of Helen Brand (due to Derol's mistake), Miles's revoked it, which he was entitled to do. Helen was required to leave, and trespassed if she did not.

### **Bitcoin**

- Duke did not commit any obvious torts by streaming the opening of the safe. Even if the risk of revealing the combination made it negligent to stream it, Miles was contributorily negligent by not asking Duke not to stream, and by using the same password for his account at The Crypt.
- The unknown viewer violated the CFAA by logging into Miles's account at The Crypt, and converted the Bitcoin that they transferred out of the account.
- The viewer was a thief, and took no property interest in the Bitcoin. They passed no interest to the owner of the -Gx48 account, which passed no interest to The Crypt. It would remain Miles's property ...
- ... except that UCC § 12-105 creates a take-free rule for controllable digital records (which include cryptocurrencies) for those who take them in good faith for value. It is not clear whether the -Gx48 owner is a purchaser for value, and it is not clear whether Jackie Cody is, either. There is a strong possibility that Jackie is in some way in cahoots with her son Duke, and if so, she did not take in good faith. If this is the case, it's likely that the Gx48 owner is connected to them and did not act in good faith either. More investigation will be required.
- Note that UCC § 12-105 may operate in favor of The Crypt, which gave value (a credit to a customer account) in exchange for the deposit of the Bitcoin to its custodial wallet. This would mean that

Miles would need to pursue the account owner, Jackie, rather than being able to recover directly from The Crypt.

- Miles should move to obtain a court order requiring The Crypt to freeze Jackie's account, as in *AA v. Persons Unknown*.

### Sketches

- The napkins were Miles's property. He either abandoned them by setting them out, or made a gift of them to the guests who used them. (He intended that the guests be free to use the napkins) Thus, the napkins that Birdie drew on were her property.
- Birdie did not abandon the napkins; she intended to return for them. Miles might or might not have been reasonable in thinking that Birdie had abandoned the napkins, but once Birdie asked for the napkin back, Miles converted it by refusing to return it. She is entitled to the return of the napkin.
- Birdie also owns the copyright in her sketches. In theory, Miles may have infringed the public display right by putting the framed napkin on his wall, although the fact that it is inside his house means that it is probably a noninfringing private display. Duke's photograph on his social-media feeds is more clearly an infringing public display. (Any possible fair use defenses are beyond the scope of this course.)
- Miles may have been negligent in leaving out papers that set a fire. If so, the destruction of the napkins was a foreseeable consequence of his negligence and he is liable for the napkins' value. That includes the value of the sketches to Birdie, not just the cost of blank napkins.

### User Data

- Alpha and Klear may have legal exposure under privacy laws including GDPR and CalPRA. But we don't remotely have the facts we need to conclude whether they're complying with the privacy laws or not.

- Toussaint misappropriated trade secrets by publicly describing (a “disclosure” of a trade secret) the Alpha-Klear contract on Duke’s livestream.
- When Toussaint used Miles’s iPad to send himself confidential files, he violated the CFAA. He also committed trade secret misappropriation (an “acquisition” of a trade secret). His conduct fits within the New York criminal statute as described in *Aleynikov*, as well.

### **Mona Lisa NFT**

- The painting itself is still in the Louvre and has not been damaged, impaired, or changed in value.
- There is still no copyright on the painting.
- Miles converted the NFT by transferring it to the incorrect address. There is almost certainly no way that he or the Louvre can recover it now. He is liable under property law for the value of the NFT.
- Miles is also in breach of his rental contract with the Louvre, and is similarly liable for the value of the NFT.
- The value of the NFT is indeterminate. On the one hand, the going rates for the Louvre’s NFTs would support a valuation of at least \$3 million (the *Mona Lisa* is one of the highlights of its collection, and might command a higher price than others). On the other hand, as seen in *Free Holdings*, the Louvre might simply be able to create a new NFT and declare that this new NFT is now the official NFT of the *Mona Lisa*. This fits with expectations in the art world, and it is at least possible that the Louvre could mitigate its damages by doing so.