

## Digital Property Spring 2025 Midterm 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

	In Another Castle
Median	18.5
Mean	19.0
Std. Dev.	3.3

## Our Property is in Another Castle

### SMB's Computer

- The computer is personal property owned by SMB.
- The initial *installation* of KaMeK might be a trespass to chattels, but the hard part would be showing that the installation by itself impaired the functioning of the computer. The *activation* of KaMeK is a clear trespass to chattels, which resulted in the computer being unavailable and substantial data loss.
- The activation of KaMeK is also a CFAA violation; it was a use of the computer without authorization, which led to substantial damage and loss, including the weeklong closure to retake inventory.
- The hacker had physical access to the computer, so they were on SMB's land. But they were probably there with SMB's permission, so this is not a trespass to land.

### The Server

- The server is tangible personal property owned by MKIS, and leased to SMB.
- Yamauchi arguably committed trespass to chattels by modifying the website's configuration and putting up the banner. This reasoning requires SMB to have a property interest in the chattel—the server—under the terms of its agreement with MKIS. It also requires finding that the banner impairs the condition of the server.
- Yamauchi arguably violated the CFAA by modifying the website's configuration. The server is a protected computer. SMB would have to show that the banner constituted damage or loss of more than \$5,000, which may be difficult to show. Yamauchi could also argue that his access to the server was authorized under his contract with SMB, but it seems unlikely that the contract would authorize him to post a derogatory banner about SMB.
- Yamauchi is probably in breach of his contract with SMB. The fact that SMB failed to pay his invoice might give him a justification to

suspend performance, but not to make these harmful changes to the server configuration. Yamauchi, however, can set off any amounts he is owed under the contract against any amounts he is required to pay SMB for his actions.

- The “website” is probably not a distinct item of property under the *Kremen* test. To the extent that it is capable of precise definition, it consists of whatever appears on the screen of a user who goes to SMB’s URL. That is information, and that information is not exclusive in the way that the server or the domain name are.
- SMB should still have control over the server; if it does not, it can ask MKIS to restore that control.

### **The Domain Name**

- The domain name is intangible property under *Kremen*.
- The domain name was owned by SMB. Yamauchi committed conversion by deliberately letting the registration lapse.
- SMB might have a conversion claim against Daisy for releasing the domain name to the general public before the end of the 60-day grace period.
- Luma probably takes the domain name free and clear of any claim that SMB might have. Because the name was released through Yamauchi’s deliberate action and because SMB made Yamauchi its contact with Daisy, it was probably abandoned property (even though Yamauchi was acting contrary to his agreement with SMB when he let it expire). It was not stolen or obtained through forgery in a way that could lead to void rather than voidable title. Luma had no notice—indeed she had no way of knowing—the circumstances under which the domain name was released.
- PrincessNet bears no liability for similar reasons.
- SMB cannot bring a UDRP claim against Luma, as she has legitimate interests in the domain name (the connection to her art made of construction materials). Further, nothing in the facts suggests any bad faith intent to profit on her part from the trademark value of “SMB” in the name.

- Similarly, if SMB brings an ACPA claim against Luma, it will fail.

### **The Facebook Page**

- The Facebook page is intangible property. *JLM Couture*.
- Under *JLM Couture*, the page was probably initially owned by SMB, and there is no indication that its ownership was ever subsequently changed. Yamauchi only ever dealt with the page as an agent of SMB.
- Yamauchi committed conversion by changing the page's password; he deprived SMB of control over the page.
- In addition to obtaining an order against Yamauchi to restore access to the page, SMB could ask Facebook to give it control directly.

### **Payments**

- The wire transfers are unrecoverable now that the funds have been withdrawn. Koopa was under no obligation to investigate the payments and is under no obligation now to return them. The payees will probably be impossible to track down, although they could be liable to return the funds if SMB were able to find them.
- The act of making the unauthorized payments was illegal many times over. It was a CFAA violation (against SMB's computer *and* against CoinBox's computers), it was wire fraud, it was criminal theft, and it was civil conversion. The hacker could be liable for the lost funds, if SMB is ever able to locate them.
- Under *Experi-Metal*, CoinBox satisfied its obligations by giving SMB a commercially reasonable security procedure. SMB is responsible for bearing the loss from any transfers made from its account using proper credentials.
- As in *Epxeri-Metal*, SMB may be able to show that CoinBox failed to act in good faith by quickly processing a large number of wire transfers from a company with minimal prior activity. If so, CoinBox would be liable to SMB for those transfers it failed to question but should have.

