

Digital Property Spring 2025 Midterm Exam

This assignment consists of **one questions** and **six pages**, including this cover page. Your answer has a limit of **1,500 words**, which will be strictly enforced. It is due by **11:59 PM on Monday, March 17**.

Submit your answer by uploading a PDF to the Midterm 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, March 14.

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. **You can limit your answer to the material from the first two units: Physical Property and Intangibles. You do not need to discuss anything covered in class on or after March 10, or any of the copyright material on March 5.**

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.**

Our Property is in Another Castle

Your client, Mario Miyamoto, runs a plumbing-supply company, SMB Pipe (“SMB”), with his brother Luigi. SMB was recently the victim of a severe hacking attack. The following timeline was reconstructed based on a forensic investigation following the events described.



Luigi and Mario Miyamoto

SMB’s offices are in the Gowanus neighborhood of Brooklyn, New York. SMB has a website at <https://smbpipe.com>. Its domain-name registrar is Daisy Domains (“Daisy”), and the site is hosted on a server leased from Mushroom Kingdom Internet Services, Inc. (“MKIS”), in MKIS’s offices in the Long Island City neighborhood of Queens, New York. The website was designed and maintained by Yoshi Yamauchi, who also made any necessary updates to the server configuration. Yamauchi held the passwords and other security tokens for the website and server; he also held

passwords and logins to SMB's social media accounts so that he could help with account configuration.

SMB has a business account with CoinBox Bank, N..A. ("CoinBox"). Mario and Luigi are authorized signatories for checks drawn on the account, and Mario and Luigi each have two-factor-authentication security enabled to log into SMB's CoinBox account. They must enter a username and password and then type in a six-digit code provided by an authenticator app on their phone. CoinBox sent a letter to SMB offering to turn on required authentication for each individual transaction from the account, but Luigi threw it out unread, assuming that it was junk mail.

Sometime between October 7 and October 10, an unknown party obtained physical access to a computer in SMB's warehouse. Mario suspects Douglas Bowser, a long-time customer with whom they have recently had a series of arguments about allegedly warped pipes they sold him. Bowser visited the warehouse on March 4, and he was alone in the office with the computer for several minutes while Mario went to retrieve a pipe sample. But Mario freely admits that this is just a guess; several other people routinely have access to the office, including Kinopio Toadsworth, SMB's warehouse manager.

At any rate, the unknown party inserted a USB drive into the computer and was able to install a piece of malware known as KaMeK. It recorded all keystrokes typed into the computer, took periodic screenshots, and could also be remotely activated to take control of the computer.

On Tuesday, October 15, at 9:37 AM, Luigi used the computer to log into SMB's CoinBox account. He entered the authentication code, but was called away to speak with a customer before he could complete his business. The unknown party immediately took remote control of the computer and instructed SMB to initiate a series of wire transfers. In seven transfers from 9:42 AM to 10:03 AM, a total of \$523,103 was sent to four accounts at the Koopa International Bank in Kyoto, Japan. The unknown party then changed the CoinBox password to random digits, and logged out of the account. Apparently to cover their tracks, they then initiated a complete wipe of the computer's hard drive, erasing all of the files on it, including customer and inventory information.

When Luigi returned to the computer at about 10:30 AM, he discovered that the computer was inoperable. He and Toadsworth attempted to get it to work over the next hour, without success. Finally, at about 11:30, they concluded that the computer had failed, and started attempting to reinstall Windows. About about 1:00 PM they were able to use the computer again, but quickly discovered that the files were missing. Toadsworth spent the next two days laboriously trying to recover what he could from off-site backups. Most of the customer data was recovered, but the backup of the inventory database was hopelessly out of date, so SMB had to close for a week to conduct a full manual inventory.

It was only on Friday October 18 that Luigi attempted to log in to CoinBox again; following a length password-reset and identification procedure, he discovered the wire transfers. By that time, the funds had been withdrawn from the Koopa accounts. The resulting cash-flow crisis led SMB to stop paying its bills for several weeks. Among the invoices that it attempted to delay payment on was one from Yamauchi for six months of work. In order to pressure SMB into paying, Yamauchi modified the SMB website to add a pop-up banner reading, "Super Deadbeat Brothers don't pay their bills." He changed the password to SMB's Facebook page, but has left the contents alone.

Yamauchi also deleted the domain-name renewal notices from Daisy rather than acting on them. As a result, the `smbpipe.com` domain name expired on November 10. Although Daisy's terms of service stated that there is a 60-day grace period following the expiration of a domain name during which the previous registrant can renew it, for unknown reasons Daisy failed to follow its usual procedures and released the domain name for registration by the general public. Rosalina Luma, an artist who works with construction materials, promptly registered it through another registrar, PrincessNet, and put up a placeholder homepage reading "See My Beautiful Pipes!" along with a picture of one of her sculptures.

Yesterday, you received a phone call. "It's me, Mario," said the caller, "and I need your help."

Advise Mario on SMB's rights and legal options. Your memo to him should discuss the following issues, but you are free to organize it however you think best.

(1) Who owns:

- The server?*
- The **smbpipe.com** domain name?*
- The Facebook page?*

(2) Can SMB recover control of any of the items listed in (1), and if so, how?

(3) Can SMB recover the \$523,103 sent via wire transfer, and if so, how?

(4) Is SMB entitled to monetary damages from any of the other parties?