

**Digital Property
Spring 2026
Midterm Memo**

I was very pleased with your answers, which ranged from good to excellent. Most points off were due to missed issues or (comparatively) shallow analyses, rather than to mistakes of law or misunderstanding which legal principles were relevant. All of you showed solid understanding of difficult material.

The theoretical maximum score was about 40, and the class average was about 30. I've posted some comments and your individual raw score on Canvas. Your exams were too closely grouped for me to give exact letter grades, but roughly speaking, anything in the 20s is B-range and anything in the 30s is A-range.

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

The Reverse Big Store

Computer Misuse

- The initial phishing emails are not a trespass to chattels under *Hamidi*, because they did not damage the Tangiers computers or prevent them from being used.
- When Dell used Walsh's password to log into the Tangiers, William Bank, and DBL systems, he violated the Computer Fraud and Abuse Act by making an unauthorized access to computer systems protected by a login barrier.
- The denial of service attack on the Tangiers system was a trespass to chattels, since it impaired the availability of the system. Dell cannot defend by arguing that others (the criminal syndicate's botnet) actually made the requests, as he directed and controlled them. *See Universal Tube and Rollform*.
- The denial of service attack was also a violation of the Computer Fraud and Abuse Act.

The Wire Transfers

- The transfers from the Tangiers's account at William Bank were unauthorized. No actual employee of the Tangiers directed them.
- We need more facts to know whether the William Bank's use of password-only security was commercially reasonable. It may be that a stronger 2FA system might be required; it may also be that the Tangiers was offered such a system and declined.
- We also need more facts to know whether William Bank acted in good faith under the *Experi-Metal* standard in making the wire transfers. My guess is that it did, because the Tangiers moves large sums around (note all of the other business that it conducts through the bank).
- If the system was not commercially reasonable or William Bank did not act with "the observance of reasonable commercial standards of

fair dealing," then the Tangiers can recover any missing amounts from the bank.

- The transfers were all acts of conversion and wire fraud. Dell is not entitled to retain the funds and can be prosecuted criminally.
- Although Craddock Marine is innocent, it can be required to freeze Dell's account and to transfer back the contents. The Tangiers should act immediately to have William Bank request Craddock to freeze the account and undo the transfers as far as possible.
- Craddock is not required to bear the loss of the \$170,000 that Dell has already withdrawn.
- The transfer to Bloom was by mistake in two senses: it was not authorized at all by the Tangiers and it was not to the intended recipient of the unauthorized transfer.
- Bloom has not reasonably changed his position in reliance on the mistake. A million dollars that suddenly appears in your account should raise questions about where it came from. He made his purchases knowing that it appeared mysteriously and should have know that he might need to return it.
- Bloom is not entitled to retain the money, and Craddock can and must return those funds to the Tangiers account at William.
- The Tangiers can trace through its funds to the sports car, which it can take or force a sale of.
- The money spent on the fancy dinners has been dissipated, so the Tangiers holds only a personal claim against Bloom for the \$78,000.

The Chips

- Ocean's crew probably did not commit trespass to land. They were in the casino with permission initially, and they were not given notice to leave. (Of course, trespass to land is the least of their concerns.)
- Ocean's crew converted the chips that they stole from the bank employees. The players who scooped up loose chips also converted them. More precisely, Ocean's crew converted the chips, then lost

some of them, which were found or converted by other players. Either way, the players are responsible for returning the chips or their value, and Ocean's crew is responsible for returning at least the chips that they took out and likely for the other chips as well, given that their acts of theft led directly to the loss to other players.

- Everyone who left the casino with chips had void title in them, as they passed by theft.
- Roberts gave value for the chips she presented (the leather jacket). It is disputable whether she took them in good faith, but I think that she did. Her knowledge of the theft did not inform her that the chips specifically being offered to her came from the theft, as Tangiers chips regularly circulate in the local area.
- If the chips are ordinary property, Roberts has void title to the stolen chips under *nemo dat*, even as a good-faith purchaser for value.
- Roberts's best argument is that the stolen chips are the equivalent of money under the *Miller v. Race* rule. If so, she can take good title, even from a thief.
- The fact that the chips are individually traceable with RFID tags cuts against the idea that they are perfectly fungible, as "money has no earmark." *Miller*, however, rests on an argument that it benefits commerce to have money substitutes flow freely, rather than on fungibility as such.
- The chips are sometimes used as a form of currency in the area, but the policy arguments from *Miller v. Race* are weak here, as this is far from a universal practice and almost all commerce would continue just fine without treating them as money.
- The argument that the Tangiers can retain the \$180 in chips that were *not* on its list is weaker. It is possible that they were in the case, but especially since the lack of information here is due to the casino's own incomplete record-keeping, the casino has failed to meet its burden of proof to set up its superior title to Roberts's.
- The website terms of service purport to say that there are no property rights in chips. The terms may be not binding, though, as they

are browsewrap and there is no indication that Roberts or others have affirmatively had to agree to them.

- Even if the terms are binding, it might be a PR disaster for the Tangiers to refuse to honor non-counterfeit chips. It would cause gamblers to lose confidence in their ability to cash out their winnings and to take their business elsewhere.

The Fountain Lights

- Reprogramming the lighting probably counts as a trespass to chattels against the Tangiers. It interfered with the casino's ability to use the lighting system.
- Projecting light onto the Nero's Palace building and parking lot is not a trespass, as it is a purely intangible intrusion.
- The light projections against guest rooms probably count as a nuisance, as they interfere with guests' ordinary enjoyment of the property. Projections on the parking lot might be a nuisance if they interfere with driving and parking.
- The projection of Benedict's face might raise dignitary-tort issues against him, but they are beyond the scope of this course. They do not raise a property issue, except incidentally to show that the projection (by Dell) is purely spiteful.
- The Tangiers is not itself causing the nuisance (Dell is), but it should take steps immediately to shut down the lighting, for goodwill and to avoid future legal risk.

The License Transfer

- The operating license is regulatory property. *Turoff*.
- Transferring the records of the operating license looks like conversion. It might not be, to the extent that the entire transfer is legally void such that the Tangiers has been licensed the entire time. (If it is legally effective, then the DBL should implement better security to confirm transfer requests.)

- Tishkoff did not give value for the license, he has no reason to think that the transfer is legitimate (one does not suddenly receive a casino license via random chance), and he has not acted in reliance on the transfer. He has no right to retain it.
- The Tangiers should immediately contact the DBL and request that the license be transferred back in its system.

The Chip Redemptions

- The terms of service purport to give the Tangiers absolute discretion to refuse to redeem chips. They might not be enforceable (see above) and even if they are, it might be a bad idea to rely on them (see above).
- What happened looks very much like a bank run, in which panicked customers race to withdraw funds, resulting in the very shortage they are afraid of.
- The Tangiers is not a bank and it is not subject to banking regulations like one.
- Redemptions were restarted within hours and the Tangiers never stopped allowing redemptions by check. It is very unlikely that any customers suffered compensable damage by reason of the temporary inability to redeem for cash.