

COPYRIGHT LAW

Professor Alan Garfield

SAMPLE EXAM QUESTIONS

Question #1
Essay Question
(25 Points)
(Estimated Time: 50 minutes)

Amy is a journalist for the Los Angeles Times. After covering the O.J. Simpson trial for the newspaper, Amy decided (like everyone else associated with the case) to capitalize on the trial by writing a book about it. After four months of additional research, Amy came up with a book entitled: "Whatever Happened To? A Follow-Up Report on the Personalities of the O.J. Simpson Trial." Amy's book was designed as a guide for readers who were interested in the post-trial developments of the individuals involved in the Simpson trial.

Amy's book began with a short introductory chapter that briefly recounted the story of the Simpson trial. The remainder of the book was divided into the following chapters: (1) The Defendant; (2) The Judge; (3) The Prosecution Team; (4) The Defense Team; (5) The Witnesses; (6) The Jurors; (7) The Media Pundits; (8) The Brown and Goldman Families; (9) The Simpson Family; and (10) Simpson Friends. The chapters contained discussions about each of the relevant personalities from the trial. "The Prosecution Team", for instance, had sections on Marcia Clark, Christopher Darden, etc. Each discussion started with the person's name in a bold-faced title, with a picture of the person below the title, and was then followed by three brief discussions about the person under the following topic headings: "Before the Trial," which summarized the person's background before his or her involvement with the Simpson Trial; "The Trial," which discussed the person's role in the trial; and "Post-Trial Developments," which discussed what the person has been doing since the trial. Within each chapter, the personalities were listed in the order of their relative importance during the trial (Marcia Clark, for instance, is listed first in the chapter "The Prosecution Team" because she was the lead prosecuting attorney).

Amy's book reached bookstores in February 1996 and quickly became a best-seller.

Two months after Amy's book came out, another book, entitled "The O.J. Simpson Trial Cast of Characters", started appearing in bookstores. This book, which was written by Bob, a free-lance writer living in Los Angeles, was also intended to give updates on the various people associated with the O.J. Simpson Trial. Like Amy's book, Bob's book began with an introductory chapter that summarized the story of the Simpson trial. While the general chronology and vast majority of events recounted in Bob's introduction were the same as those in Amy's introduction, the literal text of the two introductions was completely different.

After the introduction, Bob's book was broken up into the following chapters: (1) The Defendant; (2) The Judge; (3) The Prosecutors; (4) The Defense Lawyers; (4) The Jury; (5) Lay Witnesses; (6) Expert Witnesses; (7) The Simpson Family; (8) The Victims' Families; and (9) The Media. As in Amy's book, within each chapter were profiles of each of the relevant individuals involved in the Simpson trial, although the individuals were listed in alphabetical

order. As in Amy's book, the discussion of each person began with the person's name in bold print, followed by a photograph of the person, and then a discussion of the person. In Bob's book, the discussions of each person were presented under the following sub-headings: (a) "Background," which discussed what the person did before the Simpson trial; (b) "Involvement with the Simpson Trial," which discussed the person's involvement in the trial; and (c) "After the Trial," which discussed what the person had been doing since the Simpson trial. Many of the facts reported in Amy's book are found in Bob's. Bob's discussions tend to be more thorough than Amy's and are, on average, twice as long as Amy's. The literal text of Bob's descriptions is completely different from the text in Amy's book. The photographs in Bob's book are also completely different from those in Amy's book.

Unlike Amy's book, Bob's book has a third section which uses public survey data to discuss the impact of the Simpson trial on the public psyche. This chapter constitutes about a quarter of Bob's book, which, as a whole, is almost twice as long as Amy's.

Amy is the copyright owner of her book. She registered her book with the Copyright Office when the book was first published.

Please discuss the following:

- (a) Amy has sued Bob for copyright infringement. What arguments can be made for and against finding Bob liable to Amy?

- (b) Cary is an abstract artist. Cary purchased one of Amy's books, and, after reading it, felt compelled to produce a work of art that would capture her feelings about the Simpson trial. To do this, Cary pulled out all of the pages of Amy's book. Cary then glued about fifty of the pages (about a third of Amy's book) onto a canvas. After gluing the pages to the canvas, Cary then painted a bright red border around the edges of the canvas. Cary called her work "Trials and Tribulations, 1995".

Cary has been exhibiting her work at a museum in Los Angeles. She is also selling reproductions of her painting. Amy has sued Cary for violations of her adaptation and reproduction rights. What arguments can be made for or against finding Cary liable to Amy?

Question #2
Short Essay

(15 Points)
(Estimated Time: 30 minutes)

In 1963, Rachel wrote a humorous play entitled "Love, Law School, and Lemonade." The play concerns a couple who meets and falls in love during law school. The couple drops out of school, moves to Bali, and opens up a wildly successful lemonade stand.

In 1964, Rachel's play was performed at the Lion Theater in Boston. Copies of the play were given to the director, the actors, the lighting staff, and the stage hands. Everyone given a copy of the play was asked to return it when the show finished its run. None of the copies bore copyright notice.

Rachel's play successfully ran for one year. Near the end of the play's run, a publisher contacted Rachel and offered to publish her work. Rachel conveyed the publication rights to the publisher which first published the book (with proper copyright notice) in 1966.

In 1980, Mogul Studios contacted Rachel and sought rights to make a movie based on her book. Rachel agreed, and Mogul and Rachel entered into a written contract that granted Mogul the right to make and perform the movie during both the original and renewal terms of the play. Mogul made a movie based on Rachel's play which was first released in 1981 to great critical acclaim. The movie had copyright notice that mentioned only the year of the movie's publication.

Please answer the following:

- (a) Assume that in 1993 (the last year of the original term), Rachel renewed the copyright in her play. In 1995, the Oregon Theater began performing "Love, Law School and Lemonade" without Rachel's permission and Rachel sued. The Theater's defense is that Rachel's work is in the public domain. What is the likely success of this argument?
- (b) Once again, assume that Rachel renewed the copyright in her work in 1993. After applying for renewal, Rachel sent a letter to the publisher of her play indicating that it must cease to publish her work after 1994 unless it enters into a new contract with her (with terms more favorable to Rachel than the original contract!). The publisher has refused to enter into a new contract with Rachel and insists upon its right to continue publishing the play. What arguments can be made for or against the publisher's right to continue publishing the play? What other information would be helpful in answering this question and why?
- (c) Assume that Rachel died in 1990, leaving only a daughter, Leah. In 1993, Leah (not Rachel) applied for renewal of the copyright of her mother's play. At the

beginning of the second term, Leah sent a letter to Mogul Studios indicating that the Studio was no longer permitted to show its movie based on Rachel's play. Mogul sent back a letter claiming it had the right to keep showing the film and has continued to do so. What arguments can be made for and against Mogul Studio's right to continue showing its film?

- (d) Would your answer to (c) be different if Leah did not renew the copyright in her mother's work?