

COPYRIGHT LAW

Spring Semester 2006

Instructor: Professor Mary Wong

MIDTERM EXAMINATION

Examination Instructions:

1. PLEASE READ AND FOLLOW THESE INSTRUCTIONS CAREFULLY.
2. This examination will constitute **twenty percent (20%)** of your final grade on this course.
3. There is a maximum word limit of **fifteen hundred (1500)** words on this examination. You will be penalized if you exceed the word limit, so take the time to organize your thoughts and answer carefully. Note that you most certainly do not have to reach the word limit to do well; in fact, you are encouraged to be as concise as possible in your analysis. Your future clients will not appreciate lengthy memos, nor are longwinded lawyers the best attorneys ... ☺
4. Your answer is to be handed in to the Registrar's Office, printed and in hardcopy, **not later than 10 a.m. on Monday morning, 13 March 2005**. UNLESS YOU HAVE BEEN PREVIOUSLY EXCUSED, NO LATE SUBMISSIONS WILL BE ACCEPTED OR GRADED.
5. Please remember to include your **Examination Number** on the first page of your answer. Do not use your name!
6. Include the **total word count** on either the first or the last page of your answer. You are not expected to use footnotes/endnotes, full case/statutory/"bluebook" citations or to include a bibliography.
7. The Pierce Law School Honor Code applies to this examination. You are to work alone and may not talk to or work with anyone else. The primary purpose of this "take-home" examination is to allow you to gain a sense of how well you are doing on the course, without the additional pressure of an "in-class" test. Please do not jeopardize your future by violating the Honor Code on this examination.
8. You are to rely solely on the course materials recommended to you for this course, i.e., the readings in the Syllabus up to and including Week Six ("Duration".) You are neither expected nor required to do any additional research or reading to do this examination.

Midterm Question

Alex is a playwright who completed a new play, entitled “He Who Laughs Last”, last year. The play is being staged by The Hokey Hecklers, who have performed several of Alex’s previous plays to critical and public acclaim. Under the contract between Alex and The Hokey Hecklers, Alex is acknowledged as the author and copyright owner of “He Who Laughs Last”, and The Hokey Hecklers are granted a nonexclusive license to perform the play in public. Because The Hokey Hecklers are a small, amateur theater company, they do not have fulltime employees. Instead, they hold auditions (for actors) and interviews (for technical and other “behind the scenes” staffers) each time a play is to be staged. This time around, Alex and The Hokey Hecklers agreed to appoint Beatrice, a veteran stage director, to direct the play. Neither Alex nor The Hokey Hecklers had worked with Beatrice before, but they assumed that all would be well, as their previous productions had always gone smoothly. In any case, The Hokey Hecklers have tended generally to allow directors to take charge of as many creative aspects of the show as he/she desires, from casting the actors to designing the publicity posters. The Hokey Hecklers take care of all administrative matters, from booking the theater to ticket sales.

Beatrice set to work immediately. She soon formed the opinion that, while Alex’s play is full of interesting and clever dialogue, it is rather short on other matters, such as stage directions (e.g., where and how the actors stand, move and interact with each other) and how each scene is set up and presented to the audience. Beatrice proceeded to develop and implement her own ideas and perceptions as to these matters. Being a very thorough person, she painstakingly went through every scene with each actor, instructing him/her as to his/her postures and movements, dialogue and appearance. She also worked closely with the set and lighting designers, the sound engineer and the costume supervisor, to ensure that they all understood her “vision” of the look, sound, appearance and effect of the play as it is to be performed.

Alex only attended the final rehearsal for the play, at which point he was horrified at what Beatrice had done. Amongst other things, where Alex had envisioned that the play would be set in the countryside in bright daylight, Beatrice had the action taking place in a noisy, crowded, city, and mostly at night. She had also made the actors speak in a different accent and dress differently from what Alex had imagined. A furious Alex insisted that Beatrice be fired from the production “before she can do any further harm to my masterpiece” (said Alex).

Although Alex would have liked to have scrapped the performances entirely, the manager of The Hokey Hecklers persuaded him that such a move would be commercially infeasible. As such, the performances go ahead – in the manner conceived and as directed by Beatrice up to the point she was fired.

Several months later, The Hokey Hecklers receive a letter from Beatrice’s attorney, claiming that in going ahead with the performances, they had “infringed her copyright in the staging, conceptualization and other copyrightable material created by her in relation to “He Who Laughs Last”.” The letter also states that Beatrice has made a detailed list of

all of her contributions, and that she intends to register her work with the US Copyright Office as a copyrightable original work, or, alternatively, as a “derivative work” of “He Who Laughs Last.” Finally, the letter asserts that Beatrice’s “copyrightable contributions include: (a) detailed stage directions for each character and scene, (b) specific stage positions for each piece of scenery (including all furniture, movable items and other “props” utilized in every scene, (c) detailed instructions as to lighting and sound effects, and (d) annotations to existing scenes.”

When Alex hears about this, he comes immediately to see you, his attorney. Advise Alex on ALL of the following matters:

1. Analyze and determine if there is any merit to Beatrice’s claim of copyright. (In answering this question, you are not to address questions regarding infringement, defenses, remedies or the forms and procedures governing copyright registration.) [30%]
2. Would it make a difference to your answer to Question 1 in each of the following distinct scenarios? Give reasons for your answer.
 - (a) Assume that, instead of just transplanting Alex’s characters from the countryside to the city, Beatrice moves them back in time, from the modern-day to several centuries ago. She spends a large amount of time researching the costumes, homes, speech patterns, social etiquette and other matters of that era. As a result, she changes some of the dialogue in the play (to better reflect the language and accent of that time) and adds further dialogue and a few extra scenes. [20%]
 - (b) Assume there was a contract between Beatrice and The Hokey Hecklers relating to her directorship of the play, and the contract stated that “any and all contributions made by Beatrice to the production shall constitute a work made for hire. To the extent that any such contributions do not constitute a work made for hire, Beatrice hereby assigns all her right, title and interest in and to any and all such contributions to the Hokey Hecklers, its heirs and assigns.” [20%]
 - (c) Assume that, while writing “He Who Laughs Last”, Alex had actually asked Beatrice to help him out with some of the historical background and plot development. To this end, the two held many long meetings during which they discussed the play in great detail. Beatrice had also prepared brief outlines of possible scenes and various plotlines, and suggested several key incidents that were incorporated into the final version of the play. The actual writing was, however, done exclusively by Alex. Although Beatrice is not mentioned in Alex’s contract with The Hokey Hecklers, Alex has referred to Beatrice several times – in public – as “my valued collaborator”. [20%]

3. What difference (if any) would it make to Alex's position, as regards Beatrice's claims of copyright in her contributions to "He Who Laughs Last", in each of the following distinct scenarios?
- (a) Instead of completing the play last year, Alex had completed, published and duly registered it with the US Copyright Office in (i) June 1977, and (ii) June 1962? [5%]
 - (b) Alex's play is based entirely on an earlier, well-known short story dating from before the 19th century, and Beatrice's staging kept only Alex's dialogue but everything else (from the time and place where the action occurs, to the characters' stage entrances and exits) is exactly as described in the old story? [5%]

***** END OF MIDTERM EXAMINATION *****