

Final Examination

Entertainment Law

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1. You have **three (3) hours** to complete this exam. You are not required to spend the entire time working on the exam - the average time for completion is between two and three hours. You should outline your response to each question, before writing the response. **I strongly recommend that you spend one third of the time on each question creating your outline, and the remainder of your time writing your answer.** For example, if you spend 1.5 hours per question, devote .5 hours to the outline for each question, and 1 hour writing the answer to each question.
2. **THIS IS AN OPEN BOOK, OPEN MATERIALS EXAM.** You may use any notes, books, or other materials to assist you in responding to the questions.
3. There are two (2) essay questions on this exam. Each question is worth fifty (50) points. Answer each question as fully as you can, citing any appropriate cases, industry standards, and statutes that are relevant.
4. Write your exam number on your exam envelope. Put your correct class section and student exam # at the top of this page, each page of questions, and each blue book. **Do not** use your name, student ID number or Social Security Number on any exam materials.
5. **DO NOT WRITE ON BOTH SIDES OF THE PAGE. WRITE LEGIBLY OR PRINT IF YOUR HANDWRITING IS DIFFICULT TO READ.** If I cannot read your response to a question, your grade will be adversely affected.
6. At the conclusion of the exam, return all test materials, including blue books, scratch paper, and this exam packet to the envelope and submit it to the proctor. **DO NOT** seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

QUESTION NO. 1(50 Points)

After graduating law school and passing the bar, you begin a career as an entertainment attorney. You've been approached to represent a five-person rock band named Witchblade. The band has been working together for seven years, and has self-produced and distributed four (4) CD's of original music. Witchblade has been offered an exclusive recording services contract by San Francisco-based Irons Records, a well known independent label. As part of the contract, Irons requires that Witchblade also sign a separate publishing agreement with Nottingham Publishing, an Irons Records wholly-owned subsidiary, for the publishing rights to all songs Witchblade will write during the term of the recording contract. Witchblade has also received indications of interest from Warner Brothers Records, a major label, and from Enigma Records, another well known independent label. The band asks you to review some of the proposed terms Irons and Nottingham are offering, and asks you whether these terms are industry standard terms, and if not, what is the industry standard, and how would you suggest that they respond to the offer they have received as to each of those terms. What is your advice to Witchblade? Here are the proposed terms:

- a. The length of each contract is 10 years;
- b. The recording contract offers a 6% all-in royalty, with 2% of that amount going to the producer;
- c. The publishing contract provides for an outright transfer of the copyright to all songs written during the term from Witchblade to Nottingham as works for hire;
- d. As to both contracts, all income from all of Witchblade's activities in the entertainment business is cross-collateralized with all expenses incurred in the production, marketing and distribution of records under the recording agreement (the band is obligated to deliver one record of original music per year);
- e. Record royalties are paid based on 85% of all records sold, to allow for breakage;
- f. As to the recording contract, there will be a 40% reserve against returns;
- g. As to the publishing contract, foreign income is calculated on a receipts deal basis.

QUESTION NO. 2(50 Points)

Thirteen (13) year-old superstar teen actress and writer Kara has, with her parents' consent, entered into a ten-year personal management contract with Mr. Bane and his management company. Bane is not a licensed talent agent. Kara and Bane both live and work in San Francisco. Bane promised, and delivered, a new car to Kara's parents as a thank you gift for their help in consenting to Kara's contract, which was signed without benefit of counsel or any other independent review.

The contract provides that in exchange for his personal management services, Bane will receive 60% of Kara's entertainment related income. Six months ago, Bane negotiated and Kara signed a five-year development deal with the ABC Television Network for her to write and star in a television series featuring her adventures as a young investigative journalist in high school. Kara received a \$1,000,000 advance on an annual salary of 11 million dollars per year, based on a salary of \$500,000 dollars per show, a salary she is paid in installments after each show. Bane has also arranged for Kara to do weekly live personal appearances across the U.S.A., for a \$25,000 per show fee. After writing and acting in 6 of the first seasons 22 shows, Kara has a nervous breakdown and cannot complete the work. The television production company has filed suit to recover the remainder of the advance paid, and damages for the breach of contract. Bane, who has collected his fee on all payments to date, refuses to contribute any of the fees he has received, and instead is also suing Kara for breach of contract and lost income. What defenses does Kara have to these claims? Who is likely to prevail, and why?

END OF EXAM