

**Final Examination**  
**Copyright Law of the U.S.**  
**Professor Small**  
**Summer 2007**

1. You have three (3) hours to complete this exam.
2. This is a closed book exam.
3. This exam consists of two (2) essay questions. Please write your response in the blue books provided. Please write clearly. Write on every other line and every other page to permit instructor comments.
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 on the front of each blue book. **Do not** use your name, student ID number or Social Security Number on any exam materials.
5. 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.

**GOOD LUCK!**

### **Question Number 1 (50 points)**

Arnie and Betty are computer software designers employed by HAL, a corporation that designs, manufactures, sells, and distributes computer hardware and software products at its San Francisco facility located at 536 Mission Street. Charlie is a computer software designer employed by JCN, a New York corporation which, like HAL, also designs, manufactures, sells, and distributes computer hardware and software products. HAL and JCN are competitors in the computer hardware and software industry and both target the same commercial customers.

Arnie and Betty were tasked to develop a generic computer program for law schools that would schedule final exams so that no student would have two exams on the same day. They were told that “exam-crowding” was a serious problem at law schools and that the first company with a good solution to this problem could make a significant amount of money from licensing or sales.

Arnie and Betty tried to develop the exam-scheduling software but ran into numerous scheduling problems caused by JD-level students taking graduate level (LLM) courses as electives. Seeking inspiration, they attended the “Geeks Are Us” computer-industry convention in San Francisco where they met Charlie, who was also attending the convention while on vacation. Arnie and Betty told Charlie about their tasking and their scheduling problems. Charlie suggested that they design the program to use a linear process to schedule JD level exams first and then schedule graduate course exams in the resultant gaps in the exam schedule.

Arnie and Betty rushed back to their HAL office and rewrote the exam scheduling software using the linear process suggested by Charlie. To their delight, the linear process worked perfectly while completely eliminating the scheduling problems caused by JD-level students taking graduate level electives. They presented their finished product to their supervisor who tested the program and approved it for full scale production. In July 2007, HAL’s legal staff registered a copyright on the computer program in HAL’s name with the US Copyright Office (“USCO”).

On the flight back to New York, Charlie reflected on his encounter with Arnie and Betty and wrote his own exam-scheduling program that also precluded students from having two final exams on the same day. Because of the simplicity of the program and the limited number of instructions therein, Charlie’s program was almost identical to the program designed by Arnie and Betty. Upon returning to New York, Charlie tested his program on his computer at work and satisfied, registered a copyright on the program in his name with the USCO in July 2007.

Meanwhile, Charlie’s supervisor at JCN was able to access the files in Charlie’s computer and thinking that the exam-scheduling program was a JCN project, he tested the program, approved it for full scale development, and sent it to the JCN legal team which registered a copyright on the computer program in JCN’s name with the USCO in July 2007.

When Charlie began marketing and selling his computer program to U.S. law schools, he was threatened with a lawsuit by both HAL and JCN. He has retained your services at Koe, Pea, and Wright, the prestigious San Francisco IP law firm. Does HAL or JCN have a cause of action against Charlie? What remedies would they seek? What defenses would Charlie raise?

## Question Number 2 (50 Points)

Ebenezer Geezer (“Geezer”) is a well-known sculptor who, in 1998, completed a marble sculpture entitled “The Legal Scholar” which is a life-sized depiction of a young man in knickers and a vest, having three large books under each arm, and gazing skyward as if to ask: “Will this ever end?” Geezer, a great fan of the legendary painter Rockman Norwell, credits Norwell’s 1932 painting “The Legal Scholar” (which also depicts a young man with three large books under each arm and gazing skyward) as his inspiration to create his sculpture version of “The Legal Scholar” in 1998. Geezer obtained a United States copyright on this sculpture as a derivative work in 1998 and cited Norwell’s 1933 copyright on the painting and its renewal in 1961 on his application to the U.S. Copyright Office.

Geezer’s Gallery, a commercial establishment with an exclusive license to promote and sell Geezer’s works, sold two authorized copies of Geezer’s sculpture of The Legal Scholar to Archie, who is a lifelong fan of both Geezer and Norwell. Archie recently redesigned a wing of his house (the “West Wing”) to display the works of both Geezer and Norwell. Archie placed one edition of The Legal Scholar sculpture in an alcove in the West Wing which also housed Archie’s copy of Norwell’s painting “The Legal Scholar.” Archie donated the other edition of the sculpture to the Solid State University School of Law (“SSUSOL”), which added The Legal Scholar to its art collection which is displayed in the entrance lobby of the Law School.

Archie is somewhat of a party animal and regularly hosts sizable cocktail parties in the West Wing to show off his art collection. To help defray the costs of these social activities, Archie typically leaves a collection box by the entrance to the West Wing where invited guests can voluntarily deposit money. However, on several occasions, Archie has requested a specific donation (usually \$25.00) on the invitations sent out to guests invited to special parties.

Barbara has attended several of these cocktail parties in the West Wing. Inspired by what she observed, Barbara created her own bronze sculpture titled “The Woman As a Legal Scholar.” Barbara’s sculpture depicted a life-sized version of a young woman in a flowing skirt and shawl, having three large books under each arm and gazing downward as if under a tremendous burden. Barbara obtained a U.S. Copyright on her sculpture in July 2005, and has granted an exclusive license to *The Bronze Age, Inc.* (a metal-casting company) to make full-scale reproductions of her sculpture for sale to law schools around the United States. Barbara’s sculptures have become increasingly popular and have generated \$200,000 in net income over the past two years.

To solicit students and funding, the SSUSOL has routinely hosted receptions for prospective students and donors in the entrance lobby where the art collection serves as a sophisticated backdrop for the occasion. Further, the SSUSOL routinely lends works of art, including the Geezer sculpture, from its collection to other schools and museums for public display purposes.

Geezer, concerned about these activities, comes to you, an associate at the IP firm of Koe, Pea, & Wright seeking advice on copyright infringement. Advise him regarding (1) whether there is any infringing activity and by whom, (2) what defenses the alleged infringers might raise, and (3) what damages would the successful party in an infringement lawsuit be entitled to?