

THE UNIVERSITY OF BRITISH COLUMBIA  
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2021

LAW 422.002  
Intellectual Property Law

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**PASSWORD: 8nGJns**  
RESUME CODE: B13040

**TOTAL MARKS: 100**

(8:50 AM PDT) **PREPARATION TIME ALLOWED: 10 MINUTES**

(9:00 AM PDT) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 3 HOURS**

**8:50-9:00 AM Preparation Time (Exam writing not permitted)** – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the Exam Password on this exam coversheet, to enter the Exam Password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9:00 AM. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9:00 AM!**

**9:00 AM Exam Writing Time** – At 9:00 AM, you may proceed past the **STOP SIGN** in Exemplify and begin typing your exam answers. Students are required to calculate and monitor their own time for writing exams. All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted Exam Writing Time.

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This is an open book examination, meaning that you can refer to class notes, the course casebook (Canadian Intellectual Property Law: Cases and Materials (2<sup>nd</sup> Ed.)), the course PowerPoint slides, and other class readings. Unless otherwise indicated, assume the applicable laws are the laws of British Columbia and Canada.

**If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question. Do not email your professor or anyone else about this while the exam is in progress.**

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### **ACADEMIC INTEGRITY**

Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

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As this exam is being written off-campus and is unsupervised, any communication whatsoever (including, but not limited to in person, telephone, e-mail, text, social media, etc.) concerning the contents of this examination with anyone (other than the Student Services staff of the Allard School of Law) is strictly prohibited.

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### What Do I Do If:

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You must also upload to Canvas your hand-written exam answers into the "Exam Answer File Upload (Word Processor or Hand-written ONLY)" folder. Scan or take a picture of each page (.jpg) of your exam and put them into one folder to upload.

Your answer file should be named, and the coversheet of your answers should be titled with:  
Your Exam Code, Course Number, Name of Course, and Instructor Name  
i.e., **9999 LAW 422.002 Intellectual Property Law (Festinger)**

- **I'm experiencing technical difficulties EXITING and UPLOADING the exam**

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If you have approved accommodations to type your answers using Word Processing Software, and experience difficulties uploading your exam answer file to Canvas, email your exam answer file to [studentservices@allard.ubc.ca](mailto:studentservices@allard.ubc.ca).

- **I fall ill in the middle of an exam, or am otherwise interrupted such that I'm unable to continue writing my exam**

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**Question 1 [60 marks, 108 minutes]:**

Young Petra Yue is a brilliant cross-disciplinary artist, as well as a recent graduate in computer engineering at UBC. Her cousin Jack Toob is a “Food Influencer”, having completed his PhD thesis on the chemistry of molecular gastronomy (why food tastes the way it does) at the University of Toronto.

One evening while Jack orders take-out, Petra conceives of a system that would allow subscribers access to content crafted quite literally from the unfiltered content of an individual’s brain. The first step would be to allow subscribers access to their own prior experiences. They could scroll through their (recorded) past, and at points of their choosing, actually feel they were experiencing past events through sights, sounds, touch, smell and taste.

After a few months of feverish coding by Petra, she perfected her approach and was able to create a test network. She used existing off the shelf technologies put together in a way that produced unique results. Several years later during a major interview in *Wired Magazine* Petra explained that her technological breakthroughs had been a matter of her “scientific technique”. Through a series of non-invasive sensors and stimulators on the inside of a hat, baseball cap or Tuque, an individual’s brain patterns could be recorded as they went through their day and correlated to those events as observed by cameras and microphones embedded in the device the subscriber wore. Those primary sources would be contextualized by and secondary sources (an artificial intelligence algorithm constantly searching the internet and various databases for additional information related to the subject and their actions).

In this way Petra created a device and system that could effectively reverse engineer each subscriber’s brain patterns based on their lived experiences, ***all of which data, both inputs and outputs, would be recorded and stored in digital form.*** As a result, Petra’s system would allow an individual to feel like they were reliving experiences they already have had when connected to the system of sensors and operated with a television style “remote”. By using the stimulators that individual could relive within their own brain (without the use of any screens or projection devices) any moment they had previously experienced. For example, if they had heard a song during the day, they could “fast forward” through their day and recreate the listening experience they previously enjoyed (though it would include whatever ambient noise was present during their original experience). In-brain virtual reality would be one way to describe it. Petra decides to call each of these experiences a “Memento” after one of her favourite films.

Serendipitously, just as Petra is successfully experimenting with and thinking seriously of creating a new “thought network” as a business, you became an associate specializing in intellectual property law at the Vancouver based law firm of “Ladner, Ups”. Even more serendipitously you meet Petra at a screening of the film “Inception”, get along very well, and she asks you to become her lawyer. You enlist your colleague at the firm, Pipa Pipeda, to deal with any and all privacy law issues, so those can safely be ignored in what follows unless there is direct consequence of those issue on your primary domain, intellectual property issues.

Things quickly ramp on the legal front. Over just a few short years, you will have been asked to give opinions on the following several scenarios where all of the relevant actions took place in

Canada by parties over the age of majority and would be decided pursuant to current Canadian law.

1. The first thing that happens is that Music Canada who represents Canada's major record labels and the Canadian Independent Music Association begin suggesting that if a user had heard a song (on the radio or otherwise) during the day and replayed that song or even a part of that song later during a "Memento" there should be copyright liability on the subscriber/user for the replaying of that song which the subscriber had heard in the real world earlier.

*Petra comes to you and asks whether **her customers** could be successfully sued for copyright infringement. She asks you to answer the following questions:*

*Isn't what the customers are doing fair dealing under copyright law?...*

*There is no real song being played in the real world. That only happens once in the real world. The user is simply experiencing a "Memento" in their brain. It is just their brain triggered to believe they heard the song again – the song never becomes fixated anywhere...Isn't that a requirement for there to be a copyright?...*

*It's quite literally "user generated content" – isn't there an exception for that?...*

*Do your best to answer Petra's questions above as clearly as you can.*

2. Petra soon figured out that those one person's moments could also be experienced by another different person with limitations including that only sights and sounds would be available. Due to the quality of the artificial intelligence algorithm created by Petra, coupled with completeness of the data gathered, although one person's moments **could not be** placed in another person's brain (as yet), the "Mementos" could be transformed into images and sounds that could be seen and heard through a computer or television. Hardly perfect, but enough to create some feelings of empathy and identification.

The possibilities of a very powerful and effective social network where users uploaded and shared their brain experiences became obvious. *When they learn of this new form of sharing which might allow people to hear music they had never hear before by downloading someone else's "Memento" through a social network, Music Canada and the Canadian Independent Music Association (who had taken no action previously) renewed their claims that music copyrights were being breached and that fair dealing did not apply, **this time focusing on Petra's company.***

*Petra comes to you again and asks whether **her company** could be successfully sued? She asks you the following questions:*

*Why would the same song that was presumably played legally in the “real” world breach copyright just because it was incidentally recreated through another technology?...*

*What if only 15 seconds of a song was played, would there still be liability in Canadian copyright law?...*

*We don’t create the thoughts. We just track them and feed them back. We never interfere with them. We are just a carrier of thoughts and digital context. Aren’t we just like a phone company or Internet Service Provider - shouldn’t we be protected from all liability just like they are?”*

3. Petra and Jack decide that the new social platform where people can share their thoughts (literally) should be known as *YueToob*, a combination of Petra and Jack’s last names. Petra knows this could be controversial, but suggests that the platform is well established and that using their last names when their network is so different and far advanced compared to Google’s YouTube that there can be no valid comparison. Petra also explains that in anticipation of trouble she acquired all rights to the logo of UTV which was a Vancouver Television station. The logo was in daily use until 1997, and though it broadcast locally it was also known nationally and even internationally. It was not however trademarked. YouTube has operated in Canada since at least August 2005 and there are several valid Canadian trademarks for YOUTUBE currently issued to Google LLC. *Petra requests your opinion on the legal aspects of her branding strategy generally, including the prospects of YueToob being successfully trademarked and what defenses they might have if YouTube opposed the trademark? Looking down the road she also wonders whether a better strategy would be for her and Jack to simply use the name YueToob and hope that Google never sues? Include in your advice the prospects of both trademark and passing off claims by Google.*

## **Question 2 [25 marks, 45 minutes]:**

Petra Yue comes to you one more time with another evolution of her technology. Petra eventually realized that her system could be tweaked to collect an individual’s every moment in a way that allowed for completely new moments to be stimulated into that person’s imagination. Literally creating a new waking dream out of states that had already occurred to the individual and proactively remixing them into something never seen heard or felt previously.

Petra realizes that her technology can create entirely new thoughts from nothing from the collected data of the millions of people now regularly uploading and downloading their thoughts through the YueToob. Then she discovers something even more shocking.

Petra always assumed that it was the brain build thoughts. In her lab, she discovered something perhaps truer, thoughts build brains. Petra found that if there is even the most basic of organic sensors available, thoughts seem to be the stimulating agent that builds brains. She discovered this quite haphazardly one day when her other cousin Percy, a Saskatchewan farmer, dropped into her lab and gave Petra a sample of genetically modified canola seeds he had developed. Somehow a few of the seeds spilled from the container they were in and became intermingled with an alpha version of next generation non-invasive sensors and stimulators that Petra was developing in her lab. Those particular sensors and stimulators were undergoing a stress test to see how long their power source could last. Meaning that they were on and carrying data as they normally would when they came into contact with the canola seeds. On Petra's return the next morning she noticed that miniscule bumps had appeared on the canola seeds that had come into contact with sensors and stimulators. Petra left things as they were to see what would happen next. Sure enough, the seeds developed tiny organic brains which slowly grew. As Petra worked with the seeds, she noticed that they started acting as if they were conscious.

*Petra comes to you as her lawyer and declares: "By putting my Memento technology together with canola seeds I believe I have accidentally made a conscious life form that will create a new industry. Will we succeed if we apply for a patent in Canada?"*

*Please provide your opinion to Petra. In your opinion, please focus on the issue of the patentability of higher life forms in the context of *Harvard College v. Canada (Commissioner of Patents)* and *Monsanto Canada Inc. v. Schmeiser* However, note that you are not restricted to only discussing those decisions in your advice to Petra. Once again, please assume all of the relevant actions took place in Canada by parties over the age of majority and would be decided pursuant to current Canadian law. It may be helpful to remind yourself of the facts in the previous prior to answering.*

**Question 3 [15 marks, 27 minutes]:**

Discuss an intellectual property case (other than *Harvard College v. Canada (Commissioner of Patents)* or *Monsanto Canada Inc. v. Schmeiser*) that you came across this semester during this course that has most influenced your thinking about intellectual property law and explain why.

**END OF EXAMINATION**

**Stay safe and take care of yourself over the summer break.**