

McGILL UNIVERSITY – FACULTY OF LAW
EXAMINATION INSTRUCTION FORM

COURSE: LAWG 536 Specialized Topics in Law 17 **SECTION:** 001/009

EXAMINER: Prof. Allen Mendelsohn

DATE: Question sheet available on myCourses starting on: Wednesday, 12/11/2024 **TIME:** 9:30 AM

DURATION: 3 hrs

DEADLINE: Upload exam response file to myCourses no later than - 12:30 PM on Wednesday, 12/11/2024

WEIGHT: 50% of the final grade

NATURE: FINAL EXAM - Open Book and Internet Access **TERM:** Fall 2024

TYPE: **MYCOURSES TAKE-HOME**

CAUTION:

McGill University values academic integrity. Therefore, all students must understand the meaning and consequences of cheating, plagiarism and other academic offences under the Code of Student Conduct and Disciplinary Procedures.

You are not allowed to consult or communicate with any other person during your examination, to edit overtime on your examination, to obtain unauthorized information concerning your examination, to take an examination for another student, to divulge the contents of the examination questions to anyone after the examination, to incorporate in your responses material written by other persons, to copy word for word or in substance the work of another without properly crediting the original author and work, to submit work prepared in collaboration with another examinee, and/or to reveal to a professor your identity in connection with an examination which is graded anonymously.

Examinations, unless explicitly stated, are individual exercises and the confidentiality of questions and answers must be maintained. While writing the exam, students are not allowed to have any type of verbal or written communications with other examinees or any other persons, virtually or otherwise.

The work submitted for this assessment is expected to be your own. Unless otherwise indicated in the exam questionnaire, the use of AI-powered chatbots and writers such as ChatGPT are prohibited and will be considered a violation of the Code of Student Conduct.

GENERAL INSTRUCTIONS:

You should submit your responses as a file (Word or PDF ONLY). Answers should be typed, double-spaced, using a standard readable 11- or 12-point font type and one inch page margins.

In order to protect your anonymity your exam response, including cover page, must be identified by your term specific final exam code. Do not include your name or student ID number in either the file name or body of the document, unless questions are posted directly on myCourses. **When you save the file, include your Exam Code, the Course Title and the Term (example “ABCD_Internet Law_Fall_2024.doc”)** *Do not include any accents, céditions, or any special characters like à, é, ç, etc., in the title of your exam-responses file. You will be unable to upload your answers file if you do.*

***Once you have accessed the exam questionnaire from myCourses, you must complete it according to the duration indicated above.**

Take-home examinations are to be individual exercises and confidentiality of questions and answers must be maintained unless specific instructions are provided on the exam regarding student collaboration (which is not the case in this exam). Students found in violation of the above will be subject to disciplinary measures.

RIGHT TO SUBMIT IN ENGLISH OR FRENCH / LE DROIT DE SOUMETTRE EN FRANÇAIS OU EN ANGLAIS

In accord with McGill University’s Charter of Students’ Rights, students in this course have the right to submit in English or in French any written work that is to be graded.

Conformément à la Charte des droits de l’étudiant de l’Université McGill, chaque étudiant a le droit de soumettre en français ou en anglais tout travail écrit devant être noté (sauf dans le cas des cours dont l’un des objets est la maîtrise d’une langue).

EXAM INSTRUCTIONS:

1. This exam contains 2 questions. Answer BOTH questions, in English or French. The value of the questions is indicated next to the question number. In the first question there is an “alternative” method to answer the question, but the question is the same. That sounds confusing but it will be clear when you read it, I promise. In the second question you have a choice as to which parts to answer (A or B), and within B there is an additional choice of i) ii) or iii).
2. You may take it for granted that all of the facts that you are given in the questions can be proved in court. If you do not have sufficient factual information for a question, you may make factual assumptions. Any assumptions you make must be stated. Do NOT make assumptions that are inconsistent with the facts as given.
3. As you have internet access, you are free to use the internet to discover additional facts or information which you think may be relevant to your answer or analysis, but please be clear as to what those are.

4. You should answer the questions in order, though you are not required to. **HOWEVER, one question has facts that might be related to the previous question. Do not import contradictory or new facts from the subsequent question into the previous question if you believe they are related; the facts are different, or you did not know them when answering the previous question. The questions should be treated *distinctly*.**
5. For clarity, all opinions you are giving as it relates to the state of the law, etc., are as of today's date and you are writing your opinions on today's date.
6. Take time to think about and organize your answers. Support your arguments, where appropriate, with references to case law, legislation, and scholarship (including course lectures and student presentations). There is no need for proper citations, just write "In [case name] it was shown that..." or "section X of [legislation name] it says that..." or whatever.
7. Your answers will be assessed for their substantive persuasiveness, demonstrated understanding of legal rules and principles, judgment in relation to the relative importance of issues, and originality, as well as for organization, clarity and concision.

This examination paper contains 2 questions on 7 pages including the instructions pages (not including cover sheets). There are no attachments. Check to ensure that it is complete before starting.

Question 1 (2/3 of total grade)

You are an articling student at a small law firm in Ottawa (Ontario). Your boss, Mr. Mendelsohn, comes into your cubicle and tells you the following:

“I just had a local Ottawa woman, Mandy White, come into my office. Ms. White recounted the following story. This past summer she hired a cat sitter, Lucy Velan, to come to her house every day and feed her two cats and empty litter boxes, while Ms. White was away several times for vacations and business. The cats always seemed happy and there were no problems with Lucy.

In September Ms. White was surfing the internet and she was on Instagram when she saw a video advertisement for OnlyFans. In case you don't know, OnlyFans has been described as “the 18+ subscription platform empowering creators to own their full potential, monetize their content that they upload to the site, and develop authentic connections with their fans.” In the advertisement, Ms. White thought she might have recognized Lucy. She believed it was recorded in her house, because her kitchen floor is covered in a distinctly patterned tile which was in the video. Ms. White clicked on the ad, where she discovered explicit content from an account for “Lacy Vavoom”, then paid \$7.99 for a month's subscription to access Lacy Vavoom's OnlyFans content. She said she was kind of freaked out to find videos on the Lacy Vavoom account of a person who she thought was Lucy masturbating in her kitchen, and posing in various states of undress in and around her backyard pool. She noticed a picture of her and her husband on the fridge in the kitchen video, and heard the Def Leppard song "Pour Some Sugar on Me" playing in that video. The pool looks to be hers as it is kind of recognizable as she has a unique pool shape, and she thinks her friends would recognize it. Lacy Vavoom always hid her face from the camera, or her face was blurred by some technology, but Ms. White thinks it is Lucy, as they seem to have the same body type. Though she freely admits she can't be 100% sure it's Lucy without seeing her face.

Ms. White is tremendously embarrassed that this has happened and very angry at Lucy. She feels betrayed, and wants to sue Lucy and OnlyFans.”

Mr. Mendelsohn wants you to know certain additional facts:

- Lucy Velan lives in Ottawa and is 24 years old
- The cats were not in any of the videos
- OnlyFans' head office is in Los Angeles, California. (NOTE – in reality their head office is in London, England, but please presume it is in Los Angeles).

Mr. Mendelsohn is ready to go ahead and sue Lucy Velan and OnlyFans in the Superior Court of Justice in Ottawa for damages and any other possible remedies. Mr. Mendelsohn is a

litigator, but he doesn't really know much about the internet or the law in this area. He knows, however, that you took Internet Law at McGill. So he asks you to **prepare a memorandum** outlining: (i) any preliminary matters that he might have to consider bringing up to the court; (ii) any preliminary matters that may be brought up by Ms. Velan's and / or OnlyFans' lawyers; (iii) possible causes of action against Ms. Velan and OnlyFans; (iv) an analysis of the potential success or failure of any preliminary matters and causes of action you identified (which you can combine in your answers to (i) through (iii)); and you are welcome to add or discuss (v) any other legal issues you think are important or notable.

ALTERNATIVE METHOD TO ANSWER – Replace every mention of “Ottawa” in the above facts with “Montreal” (and "Ontario" with "Quebec"). Replace “Superior Court of Justice” with “Superior Court”. If you are picky you can replace “articling student” with “stagiaire”. Mr. Mendelsohn is Maître Mendelsohn. Prepare the same memorandum as mentioned above, but please indicate somewhere at the top of your answer / memo if you are proceeding from this Quebec perspective.

Question 2 (1/3 of total grade). Answer (A) OR (B).

A. You are a lawyer in Ottawa, Ontario. An Ottawa woman named Lucy Velan walks into your office. She tells you the following story:

“I was having the most wonderful summer in 2024. I had just celebrated my 24th birthday. I had a small business taking care of people's pets while they were away, and the business was very successful. Now, I know this next part is bad, but I need to tell you the whole truth. Sometimes my girlfriend Francine would come with me to my client's houses. Every now and then, after I had taken care of the pets, we liked to do something I thought was fun. Francine would take out her iPhone and record videos of me in the client's house. Now, I will be honest, these were videos with sexual content. I would be masturbating in various rooms, posing naked outside, things like that. Francine liked the videos and I was happy to make them for her. We even made some money off them by uploading them to OnlyFans, but under a fake name, and hiding my face, so no one would know it was me.

In September my relationship with Francine went sour. The reasons are not important, but we had a pretty ugly breakup. A week after the breakup, a common friend of mine and Francine sent me a link to an online video site and told me to click on it. I was horrified to find out that it was one of the videos I had made with Francine. In this video my face is clearly visible and not blurred, and the video's title is “Lucy Velan Does Dirty Deeds”. I can see that the video was uploaded by someone with the username ‘FranNannyDrescher123’, which I know is the name Francine uses on the internet when she does not want to use her real name.

Because of my pet business, I have a Google Alert set up for my name to see if people have given me reviews or other mentions of me. In October 2024 those Google Alerts began to tell me there are links to the video on the internet. When I Google my name the first page of results is filled with links to the video, not just at that one site I saw first but several others. There is even a link to a story about me on an Ottawa newspaper (the Ottawa Sun) website with the headline “Poolside Porn Pet Person.” I am really upset. My business is ruined; no one will hire me. I think what Francine did by putting that video out on the internet was terrible. Can you help me?”

Can you help Lucy? Please describe what legal remedies may be available to help her situation and analyze their potential success or failure. Does your answer change at all if Lucy actually lives across the Ottawa River in Gatineau, Quebec? If so, please describe any differences.

B. Choose to answer **any one** of i), ii) or iii):

i) Pete Cashmore, CEO of Mashable (“a news website, digital media platform and entertainment company” according to Wikipedia) once said:

“Privacy is dead, and social media holds the smoking gun.”

Based on what you have learned about privacy law and the internet and social media, do you agree? Back up your argument with legislation, cases and materials you learned about in class and any other relevant information.

ii) Stewart Dalzell, an American District Court Judge known for his rulings on internet free speech [notably in *American Civil Liberties Union v. Reno*, 929 F. Supp. 824 (E.D. Pa. 1996)], once said:

“As the most participatory form of mass speech yet developed, the Internet deserves the highest protection from government intrusion.”

Based on what you have learned about government and regulatory intervention (or lack thereof) into the internet, do you think that governments and regulatory agencies have heeded this call to not intrude? Back up your argument with legislation, cases and materials you learned about in class and any other relevant information. Despite Judge Dalzell being American, you can approach your discussion from a Canadian perspective, although you are welcome to make comments from American and/or European perspectives as well.

iii) Famous author Mark Twain once said:

"Only one thing is impossible for God: To find any sense in any copyright law on the planet."

If Mark Twain was alive today, he would have said the same thing about copyright law on the internet, that it just does not make any sense. Would you agree with him? Back up your argument with legislation, cases and materials you learned about in class and any other relevant information.

END OF EXAM