Critical Legal Thinking Cases

9.1 Quasi-Contract Samuel E. Powell, Jr., and Susan Thompson-Powell, husband and wife, borrowed $37,700 from Delaware Farm Credit and gave a mortgage to Delaware Farm Credit that pledged two pieces of real property as collateral for the loan. The first piece of property was 2.7 acres of land owned as marital property. Susan had inherited the other piece of property and owned it. Eight years later, Samuel Jr. and Susan defaulted on the mortgage. Samuel Jr. went to his father, Samuel E. Powell, Sr., and orally agreed that if his father would pay the mortgage and the back taxes, he would pay his father back. Samuel Sr. paid off the mortgage and the back taxes owed on the properties. Susan was not a party to this agreement.

Two years later, Samuel Jr. and Susan divorced. The divorce court ordered that the 2.7 acres of marital real property be sold and the sale proceeds to be divided 50 percent to each party. When the property was sold, Samuel Jr. paid Samuel Sr. one-half of the monies he had previously borrowed from his father. Samuel Sr. sued Susan to recover the other half of the money. Susan defended, alleging that she was not a party to the contract between Samuel Jr. and Samuel Sr. and therefore was not bound by it. Samuel Sr. argued that Susan was liable to him for one-half of the money based on the doctrine of quasi-contract. Who wins? *Powell v. Thompson-Powell*, Web 2006 Del.C.P. Lexis 10 (Court of Common Pleas of Delaware)

9.2 Agreement The movie *Flashdance* tells a story of a female construction worker who performs at night as an exotic dancer. She performs an innovative form of dancing that includes a chair dance. Her goal is to obtain formal dance training at a university. The movie is based on the life of Maureen Marder, a nightclub dancer. Paramount Pictures Corporation used information from Marder to create the screenplay for the movie. Paramount paid Marder $2,300, and Marder signed a general release contract, which provided that Marder "releases and discharges Paramount Picture Corporation of and from each and every claim, demand, debt, liability, cost and expense of any kind or character which have risen or are based in whole or in part on any matters occurring at any time prior to the date of this Release." Marder also released Paramount from claims "arising out of or in any way connected with either directly or indirectly, any and all arrangements in connection with the preparation of screenplay material and the production, filming and exploitation of *Flashdance*."

Paramount released the movie *Flashdance*, which grossed more than $150 million in domestic box office receipts and is still shown on television and distributed through DVD rentals. Subsequently, Sony Music Entertainment paid Paramount for release of copyright and produced a music video for the Jennifer Lopez song "I'm Glad." The video featured Lopez's performance as a dancer and singer. Marder believes that the video contains re-creations of many well-known scenes from *Flashdance*. Marder brought a lawsuit in U.S. District Court against Paramount, Sony, and Lopez. Marder sought a declaration that she had rights as a co-author of *Flashdance* and a co-owner with Paramount of the copyright to *Flashdance*. She sued Sony and Lopez for allegedly violating her copyright in *Flashdance*. Is the general release Marder signed an enforceable contract? *Marder v. Lopez*, 450 F.3d 445, Web 2006 U.S. App. Lexis 14330 (United States Court of Appeals for the Ninth Circuit)

9.3 Mirror Image Rule Norma English made an offer to purchase a house owned by Michael and Laurie Montgomery (Montgomery) for $272,000. In her offer, English also proposed to purchase certain personal property—paving stones and a fireplace screen worth a total of $100—from Montgomery. When Montgomery received English's offer, Montgomery made many changes to English's offer, including deleting the paving stones and fireplace screen from the personal property that English wanted. When English received the Montgomery counteroffer, English accepted and initialed all of Montgomery's changes except that English did not initial the change that deleted the paving stones and fireplace screen from the deal.

Subsequently, Montgomery notified English that because English had not completely accepted the terms of Montgomery's counteroffer, Montgomery was therefore withdrawing from the deal. That same day, Montgomery signed a contract to sell the house to another buyer for $285,000. English sued Montgomery for specific performance of the contract. Montgomery defended, arguing that the mirror image rule was not satisfied because English had not initialed the provision that deleted the paving stones and fireplace screen. Is there an enforceable contract between English and Montgomery? *Montgomery v. English*, 902 So.2d 836, Web 2005 Fla.App. Lexis 4704 (Court of Appeal of Florida)

9.4 Consideration Raymond P. Wirth signed a pledge agreement which stated that in consideration of his interest in education and "intending to be legally bound," he irrevocably pledged and promised to pay Drexel University the sum of $150,000. The pledge agreement provided that an endowed scholarship would be created in Wirth's name. The pledge agreement stated: "I acknowledge that Drexel's promise to use the amount pledged by me shall constitute full and adequate consideration for this pledge." Wirth died two months after

Albas paid a deposit, obtained a mortgage commitment, and procured a satisfactory home inspection and title insurance. A date for closing the transaction was set. Prior to closing, Cacace sent the Albas an e-mail, indicating that she and Kaufmann had "a change of heart" and no longer wished to go forward with the sale. Albas sent a reply e-mail, stating their intent to go forward with the scheduled closing. Cacace responded with another e-mail, informing the Albas that she had multiple sclerosis and alleging that the "remorse and dread" over the impending sale was making her ill. When Kaufmann refused to close, the Albas sued, seeking specific performance, and moved for summary judgment. Is order of specific performance of the real estate contract warranted in this case? *Alba v. Kaufmann*, 810 N.Y.S.2d 539, Web 2006 N.Y.App. Div. Lexis 2321 (Supreme Court of New York, Appellate Division)

10.3 *Force Majeure* Clause Leo and Elizabeth Facto contracted with Snuffy Pantagis Entertainment, Inc., doing business as Pantagis Renaissance, a banquet hall, for a wedding reception for 150 people, to be held in the evening between 6:00 P.M. and 11:00 P.M. The total contract price was $10,578, all of which was paid in advance. The contract contained a *force majeure* clause, which stated, "Snuffy's will be excused from performance under this contract if it is prevented from doing so by an act of God (e.g., flood, power failure, etc.), or other unforeseen events or circumstances."

Less than forty-five minutes after the wedding reception began, there was an area-wide power failure where the Pantagis Renaissance was located. At that time, the guests were being served alcohol and hors d'oeuvres. The power failure caused all of the lights, except emergency lights, to go out and the air conditioning system to shut off. In addition, the band that was hired to play at the reception was unable to play because electricity was required to operate their instruments. The lack of lighting impeded the wedding photographer and videographer from taking pictures and videos. On the day of the reception, the temperature was in the upper 80s and low 90s, and the humidity was high. As a result, the Factos and their guests became extremely uncomfortable. Some guests resorted to pouring water over their heads to keep cool. Evidence was introduced that showed that Pantagis Renaissance served alcoholic beverages until approximately 7:30 P.M. and served the salad portion of the meal. After the emergency lights, which were operated by battery power, went out, the only illumination was provided by candelabras on the tables. Shortly after 9:00 P.M., the police evacuated the facility.

The Factos sued Pantagis Renaissance for breach of contract, seeking recovery of the $10,578 they prepaid for the wedding reception, plus $6,000 paid to the band, $3,810 paid to the wedding photographer, and $3,242 paid to the videographer. Does the *force majeure* clause bar the plaintiff's breach of contract claim? *Facto v. Snuffy Pantagis Entertainment, Inc.*, 915 A.2d 59 (Superior Court of New Jersey)

10.4 Unilateral Mistake Wells Fargo Credit Corporation (Wells Fargo) obtained a judgment of foreclosure on a house owned by Mr. and Mrs. Clevenger. The total indebtedness stated in the judgment was $207,141. The foreclosure sale was scheduled for 11:00 A.M. on a specified day at the west front door of the Hillsborough County Courthouse. Wells Fargo was represented by a paralegal, who had attended more than 1,000 similar sales. Wells Fargo's handwritten instruction sheet informed the paralegal to make one bid at $115,000, the tax-appraised value of the property. Because the first "1" in the number was close to the "$," the paralegal misread the bid instruction as $15,000 and opened the bidding at that amount.

Harley Martin, who was attending his first judicial sale, bid $20,000. The county clerk gave ample time for another bid and then announced, "$20,000 going once, $20,000 going twice, sold to Harley... ." The paralegal screamed, "Stop, I'm sorry. I made a mistake!" The certificate of sale was issued to Martin. Wells Fargo filed suit to set aside the judicial sale based on its unilateral mistake. Does Wells Fargo's unilateral mistake constitute grounds for setting aside the judicial sale? *Wells Fargo Credit Corporation v. Martin*, 650 So.2d 531, Web 1992 Fla.App. Lexis 9927 (Court of Appeal of Florida)

10.5 Guaranty Contract Glenn A. Page (Glenn) had a long-term friendship with Jerry Sellers, an owner of Gulf Coast Motors. Glenn began borrowing money from Gulf Coast Motors on a recurring basis during a two-year period. The loan process was informal: Gulf Coast Motors set up a ledger account and recorded each loan made to Glenn, and Glenn would sign the ledger "I agree to pay Jerry Sellers as above." At various times, Glenn would make small payments toward his account, but he would thereafter borrow more money. At the times the loans were made, Glenn was not working and had no assets in his own name. There was no evidence as to what Glenn used the loan proceeds for, but evidence showed that he had a gambling problem.

Sellers testified that toward the end of the two-year period of making loans to Glenn, he telephoned Mary R. Page, Glenn's wife, and Mary orally guaranteed to repay Glenn's loans. Mary had significant assets of her own. Mary denied that she had promised to pay any of Glenn's debt, and she denied that Sellers had asked her to pay Glenn's debt. Gulf Coast Motors sued Glenn and Mary to recover payment for the unpaid loans. Is Mary's alleged oral promise to guarantee her husband's

Key Terms and Concepts

Anticybersquatting Consumer Protection Act (ACPA) (238)
Bad faith (238)
Communications Decency Act (231)
Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM Act) (229)
Cybersquatting (238)
Digital signature (233)
Domain name (236)
Electronic agent (233)
Electronic Communications Privacy Act (ECPA) (235)
Electronic commerce (e-commerce) (228)
Electronic license (e-license) (234)
Electronic licensee (e-licensee) (235)
Electronic licensor (e-licensor) (235)
Electronic mail (e-mail) (229)
Electronic mail contract (e-mail contract) (229)
Electronic signature (e-signature) (233)
Electronic Signatures in Global and National Commerce Act (E-SIGN Act) (232)
Exclusive license (234)
Internet (Net) (228)
Internet Corporation for Assigned Names and Numbers (ICANN) (237)
Internet service provider (ISP) (230)
License (234)
Licensee (234)
Licensing (234)
Licensing agreement (235)
Licensor (234)
Spam (229)
Top-level domain name (TLD) (237)
Uniform Computer Information Transactions Act (UCITA) (233)
Web contract (e-contract) (231)
Website (228)
World Wide Web (228)

Law Case with Answer

John Doe v. GTE Corporation

Facts Someone secretly took video cameras into the locker room and showers of the Illinois State University football team. Videotapes showing these undressed players were displayed at the website http://univ.youngstuds.com, operated by Franco Productions. The Internet name concealed the name of the person responsible. GTE Corporation, an ISP, provided a high-speed connection and storage space on its server so that the content of the website could be accessed. The nude images passed over GTE's network between Franco Productions and its customers. The football players sued Franco Productions and GTE for monetary damages. Franco Productions defaulted when it could not be located. Is GTE Corporation, the ISP, liable for damages to the plaintiff football players?

Answer No, GTE Corporation, the ISP, is not liable for damages to the plaintiff football players. A part of the federal Communications Decency Act of 1996 provides: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." Just as the telephone company is not liable as an aider and abettor for tapes or narcotics sold by phone, and the Postal Service is not liable for tapes sold and delivered by mail, so a web host cannot be classified as an aider and abettor of criminal activities conducted through access to the Internet. GTE is not a "publisher or speaker." Therefore, GTE cannot be liable under any state law theory to the persons harmed by Franco's material. Thus, GTE Corporation, the ISP, is not liable for the nude videos of the football players transmitted over its system by Franco Productions. *John Doe v. GTE Corporation*, 347 F.3d 655, Web 2003 U.S. App. Lexis 21345 (United States Court of Appeals for the Seventh Circuit)

Critical Legal Thinking Cases

11.1 Cybersquatting Ernest & Julio Gallo Winery (Gallo) is a famous maker of wines that is located in California. The company registered the trademark "Ernest & Julio Gallo" in 1964 with the U. S. Patent and Trademark Office. The company has spent over $500 million promoting its brand name and has sold more than four billion bottles of wine. Its name has taken on a secondary meaning as a famous trademark name. Steve, Pierce, and Fred Thumann created Spider Webs Ltd., a limited partnership, to register Internet domain names. Spider Webs registered more than two thousand Internet domain names, including http://ernestandjuliogallo.com. Spider Webs is in the business of selling domain names. Gallo filed suit against Spider Webs Ltd. and the Thumanns, alleging violation of the federal Anticybersquatting Consumer Protection Act (ACPA). The U.S. District Court held in favor of Gallo and ordered Spider Webs to transfer the domain name

http://ernestandjuliogallo.com to Gallo. Spider Webs Ltd. appealed. Who wins? *E. & J. Gallo Winery v. Spider Webs Ltd.*, 286 F.3d 270, Web 2002 U.S. App. Lexis 5928 (United States Court of Appeals for the Fifth Circuit)

11.2 Domain Name Francis Net, a freshman in college and a computer expert, browses websites for hours each day. One day, she thinks to herself, "I can make money registering domain names and selling them for a fortune." She has recently seen an advertisement for Classic Coke, a cola drink produced and marketed by Coca-Cola Company. Coca-Cola Company has a famous trademark on the term *Classic Coke* and has spent millions of dollars advertising this brand and making the term famous throughout the United States and the rest of the world. Francis goes to the website www.networksolutions.com, an Internet domain name registration service, to see if the Internet domain name classiccoke.com has been taken. She discovers that it is available, so she immediately registers the Internet domain name classiccoke.com for herself and pays the $70 registration fee with her credit card. Coca-Cola Company decides to register the Internet domain name classiccoke.com, but when it checks at Network Solutions, Inc.'s, website, it discovers that Francis Net has already registered the Internet domain name. Coca-Cola Company contacts Francis, who demands $500,000 for the name. Coca-Cola Company sues Francis to prevent Francis from using the Internet domain name classiccoke.com and to recover it from her under the federal Anticybersquatting Consumer Protection Act (ACPA). Who wins?

11.3 E-Mail Contract The Little Steel Company is a small steel fabricator that makes steel parts for various metal machine shop clients. When Little Steel Company receives an order from a client, it must locate and purchase 10 tons of a certain grade of steel to complete the order. The Little Steel Company sends an e-mail message to West Coast Steel Company, a large steel company, inquiring about the availability of 10 tons of the described grade of steel. The West Coast Steel Company replies by e-mail that it has available the required 10 tons of steel and quotes $450 per ton. The Little Steel Company's purchasing agent replies by e-mail that the Little Steel Company will purchase the 10 tons of described steel at the quoted price of $450 per ton. The e-mails are signed electronically by the Little Steel Company's purchasing agent and the selling agent of the West Coast Steel Company. When the steel arrives at the Little Steel Company's plant, the Little Steel Company rejects the shipment, claiming the defense of the Statute of Frauds. The West Coast Steel Company sues the Little Steel Company for damages. Who wins?

11.4 Electronic Signature David Abacus uses the Internet to place an order to license software for his computer from Inet.License, Inc. (Inet), through Inet's electronic website ordering system. Inet's webpage order form asks David to type in his name, mailing address, telephone number, e-mail address, credit card information, computer location information, and personal identification number. Inet's electronic agent requests that David verify the information a second time before it accepts the order, which David does. The license duration is two years, at a license fee of $300 per month. Only after receiving the verification of information does Inet's electronic agent place the order and send an electronic copy of the software program to David's computer, where he installs the new software program. David later refuses to pay the license fee due Inet because he claims his electronic signature and information were not authentic. Inet sues David to recover the license fee. Is David's electronic signature enforceable against him?

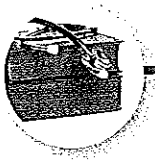
11.5 License Tiffany Pan, a consumer, intends to order three copies of a financial software program from iSoftware, Inc. Tiffany, using her computer, enters iSoftware's website, http://isoftware.com, and places an order with the electronic agent taking orders for the website. The license is for three years at $300 per month for each copy of the software program. Tiffany enters the necessary product code and description; her name, mailing address, and credit card information; and other data necessary to place the order. When the electronic order form prompts Tiffany to enter the number of copies of the software program she is ordering, Tiffany mistakenly types in "30." iSoftware's electronic agent places the order and ships thirty copies of the software program to Tiffany. When Tiffany receives the thirty copies of the software program, she ships them back to iSoftware with a note stating, "Sorry, there has been a mistake. I only meant to order 3 copies of the software, not 30." When iSoftware bills Tiffany for the license fees for the thirty copies, Tiffany refuses to pay. iSoftware sues Tiffany to recover the license fees for thirty copies. Who wins?

11.6 License Metatag, Inc., is a developer and distributor of software and electronic information rights over the Internet. Metatag produces a software program called Virtual 4-D Link. A user of the Virtual 4-D Link program merely types in the name of a city and address anywhere in the world, and the computer transports the user there and creates a four-dimensional space and a sixth sense unknown to the world before. The software license is nonexclusive, and Metatag licenses its Virtual 4-D Link to millions of users worldwide. Nolan Bates, who has lived alone with his mother for too long, licenses the Virtual 4-D Link program for five years, for a license fee of $350 per month. Bates uses the program

for two months before his mother discovers why he has had a smile on his face lately. Bates, upon his mother's urging, returns the Virtual 4-D Link software program to Metatag, stating that he is canceling the license. Metatag sues Bates to recover the unpaid license fees. Who wins?

11.7 E-Contract Einstein Financial Analysts, Inc. (EFA), has developed an electronic database that has recorded the number of plastic pails manufactured and sold in the United States since plastic was first invented. Using this data and a complicated patented software mathematical formula developed by EFA, a user can predict with 100 percent accuracy (historically) how the stock of each of the companies of the Dow Jones Industrial Average will perform on any given day of the year. William Buffet, an astute billionaire investor, wants to increase his wealth, so he enters into an agreement with EFA, whereby he is granted the sole right to use the EFA data (updated daily) and its financial model for the next five years. Buffet pays EFA $100 million for the right to the data and mathematical formula. After using the data and software formula for one week, Buffet discovers that EFA has also transferred the right to use the EFA plastic pail database and software formula to his competitor. Buffet sues EFA. What type of arrangement have EFA and Buffet entered into? Who wins?

11.8 E-License An Internet firm called Info.com, Inc., licenses computer software and electronic information over the Internet. Info.com has a website, http://info.com, where users can license Info.com software and electronic information. The website is operated by an electronic agent; a potential user enters Info.com's website and looks at available software and electronic information that is available from Info.com. Mildred Hayward pulls up the Info.com website on her computer and decides to order a certain type of Info.com software. Hayward enters the appropriate product code and description; her name, mailing address, and credit card information; and other data needed to complete the order for a three-year license at $300 per month; the electronic agent has Hayward verify all the information a second time. When Hayward has completed verifying the information, she types at the end of her order, "I accept this electronic software only if after I have used it for two months I still personally like it." Info.com's electronic agent delivers a copy of the software to Hayward, who downloads the copy of the software onto her computer. Two weeks later, Hayward sends the copy of the software back to Info.com, stating, "Read our contract: I personally don't like this software; cancel my license." Info.com sues Hayward to recover the license payments for three years. Who wins?



Ethics Cases

11.9 Ethics BluePeace.org is a new environmental group that has decided that expounding its environmental causes over the Internet is the best and most efficient way to spend its time and money to advance its environmental causes. To draw attention to its websites, BluePeace.org comes up with catchy Internet domain names. One is http://macyswearus.org, another is http://exxonvaldezesseals.org, and another is http://generalmotorscrashesdummies.org. The http://macyswearus.org website first shows beautiful women dressed in mink fur coats sold by Macy's Department Stores and then goes into graphic photos of minks being slaughtered and skinned and made into the coats. The http://exxonvaldezesseals.org website first shows a beautiful, pristine bay in Alaska, with the *Exxon Valdez* oil tanker quietly sailing through the waters, and then it shows photos of the ship breaking open and spewing forth oil and then seals who are gooed with oil, suffocating and dying on the shoreline. The website http://generalmotorscrashesdummies.org shows a General Motors automobile involved in normal crash tests with dummies followed by photographs of automobile accident scenes where people and children lay bleeding and dying after an accident involving General Motors automobiles. Macy's Department Stores, the Exxon Oil Company, and the General Motors Corporation sue BluePeace.org for violating the federal Anticybersquatting Consumer Protection Act (ACPA).

1. What does the ACPA prohibit? What must be shown to find a violation of the ACPA?
2. Did BluePeace.org acted unethically in this case?
3. Who wins this case and why?

11.10 Ethics Apricot.com is a major software developer that licenses software to be used over the Internet. One of its programs, called Match, is a search engine that searches personal ads on the Internet and provides a match for users for potential dates and possible marriage partners. Nolan Bates subscribes to the Match software program from Apricot.com. The license duration is five years, with a license fee of $200 per month. For each subscriber, Apricot.com produces a separate webpage that shows photos of the subscriber and personal data. Bates places a photo of himself with his mother, with the caption, "Male, 30 years old, lives with mother, likes quiet nights at home." Bates licenses the Apricot.com Match software and uses it twelve hours each day, searching for his Internet match. Bates does not pay

Apricot.com the required monthly licensing fee for any of the three months he uses the software. After using the Match software but refusing to pay Apricot .com its licensing fee, Apricot.com activates the disabling bug in the software and disables the Match software on Bates's computer. Apricot.com does this with no warning to Bates. It then sends a letter to Bates stating, "Loser, the license is canceled!" Bates sues Apricot.com for disabling the Match software program.

1. What requirements must be met before Apricot.com can disable the Match software program?
2. Did Bates act ethically? Did Apricot.com act ethically?
3. Who wins this case and why?

Internet Exercises

1. Pick out a country. Use www.google.com or another Internet search engine and find the domain suffix is for this country.

2. Go to www.rwgusa.net/bt.htm to find out how to register a Bhutan .bt domain name. Go to www.rwgusa.net/com_bt.htm to find out how to register a Bhutan com.bt domain name.

3. The first step in registering a domain name is to determine whether any other party already owns the name. For this purpose, InterNIC maintains a "Whois" database that contains the domain names that have been registered. The InterNIC website is located at www.internic.net. Choose a domain name using the .com suffix and use www.interic.net to find out whether that name has been registered.

4. Domain names can be registered at Network Solutions, Inc.'s website, which is located at www.networksolutions.com. Choose a domain name using the .net suffix and use www.networksolutions.com to find out whether that name has been registered.

5. Use www.google.com or another Internet search engine and find an article that discusses the sale of a domain name. What was the domain name, and what price was it sold for?

6. Go to http://msdnaa.oit.umass.edu/Neula.asp and read the agreement. To what product does this license agreement apply?

Endnotes

1. 15 U.S.C. Sections 7701–7713.
2. 47 U.S.C. Section 230(c)(1).
3. 15 U.S.C. Chapter 96.
4. 18 U.S.C. Section 2510.
5. 15 U.S.C. Section 1125(d).