

CML 3358 / DCL 7301
REGULATION OF INTERNET COMMERCE
FINAL EXAMINATION
January 2015
Professor Michael Geist

INSTRUCTIONS:

DURATION: SIX (6) HOUR TAKE-HOME (10:00 – 4:00)

PICKING UP THE EXAM

The exam is also available for download from the course website starting at 10:00 am ET. It must be returned by 4:00 pm ET.

RETURNING THE EXAM

The exam may be returned to Secretariat by 4:00 pm as per the standard rules for take-home exams.

Alternatively, the exam may be returned electronically by 4:00 pm. In order to ensure confidentiality, please comply with the following steps:

1. Visit <http://mail.yahoo.com>
2. Logon with:

ID – geistexamsub
password – ottawalaw

3. Send an email to mgeist@pobox.com attaching the exam
4. Include only your student number in the email. Do not include your name or other identification

ALTERNATIVELY

1. Visit <http://www.gmail.com>
2. Logon with:

ID – geistexamsubmission
Password – ottawalaw

3. Send an email to mgeist@pobox.com attaching the exam
4. Include only your student number in the email. Do not include your name or other identification

I will also post the students numbers on the course website. Please note that there are occasionally delays with email transmission. If you are sending the exam via email, I would advise leaving some time for transmission.

VALUE of exam is 100% of final grade. The value of each question is indicated on the exam.

Students are not allowed to discuss the exam or their answers with anyone during the exam period.

Questions about the exam will be accepted via email at mgeist@pobox.com until 11:00 am. If the question can be answered, the answer will be posted on the course website at that time. If your question is not answered, you should state your assumptions regarding the issue in your answer.

The exam has FIVE (5) pages (including the instructions).

It is recommended that answers be submitted in typewritten form.

SECTION ONE (all students must answer) – 60 MARKS

Suber is an online app-based car service based in Palo Alto, California with a small software development team located in Bangalore, India. Founded in 2012, the company has received over \$100 million in venture capital funding. Its major funders are located in the United States with smaller equity investors based in Switzerland, Japan, and Canada.

Billing itself as the “Super-Uber”, it functions much like its better-known competitor, Uber. The service offers a free, downloadable app that allows users to identify cars available for ride service in their immediate area. Customers can flag a car through the app and notify the driver where they want to go. The service features feedback mechanisms for both customers (who can rate drivers with posts that appear online) and drivers (who can comment on customers). To date, some of the feedback has angered drivers, who feel that customers have damaged their reputations with false posts.

Suber is able to track all cars and users at all times. Installation of the app on iPhone and Android devices (a Blackberry version is reportedly forthcoming) includes terms and conditions which advise that the company may collect, use and disclose location data. Users cannot disable the location tracking as the app ceases to function without it. Users do not provide their specific assent to this provision, but must click “I agree” to the terms and conditions as part of the installation process. Suber sells the tracking information to marketers and other third parties.

Suber currently operates in major cities in the United States, Japan, and the United Kingdom. It has announced plans to enter the Canadian market, with services in Ottawa, Toronto, Calgary, and Vancouver. Suber does not plan to establish a Canadian office or other physical presence. It has applied for a Suber trademark in Canada. It has also begun hiring drivers through its website and will offer the app through the Canadian iTunes store and Google Play store. Customers pay for the rides through the app and Suber compensates the drivers directly.

Suber has some concern about the likely response from cities and regulators once the service launches in Canada. The company’s strategy in Japan and the United Kingdom has been to argue that it does not have a physical presence in those countries and is therefore not subject to local laws.

The service currently operates at Suber.com, but would like to add Suber.ca for its Canadian launch. However, that domain name is currently registered to John Suber, a resident of Vancouver who happens to drive a bus. John Suber uses his domain name to advertise his bus service. John Suber registered the Suber.ca domain name in 2011. The company is concerned that the public will confuse its service with John Suber’s website. It is prepared to file a domain name dispute resolution complaint if John Suber refuses to transfer the domain name.

The company has developed several strategies for quickly developing a large Canadian customer base. First, it plans to run an extensive email marketing campaign based on

gathering referrals. As a condition of employment, drivers are required to provide the company with email addresses of at least 100 customers who can be added to its email list. Moreover, the company plans to offer a 20% discount off its pricing for the first year of the service to any customer who provides ten additional email addresses of potential additional customers.

Second, Suber is currently negotiating with Canada's three leading wireless companies to become their "preferred" app-based car service. As part of the proposed arrangement, the Suber app will come pre-installed on smart phones sold by each of the companies and use of the Suber app will not count against a customer's monthly data cap.

Suber has approached you to provide legal advice on its plans for entering the Canadian market. Please provide a memo identifying the legal issues and risks raised by Suber's plans, discussing any concerns or legal issues in light of Canadian law, and advising on how the company should proceed in order to comply with Canadian law. Your answer should not exceed 1200 words.

SECTION TWO – 40 MARKS - ANSWER A or B

With a federal election scheduled for the fall of 2015, the major political parties are busily preparing their policy documents and election materials. Digital policies have emerged as an important area with all parties planning to release a detailed digital policy plan.

Please answer A or B.

A. You work as the digital policy advisor for the governing Conservative party. The party has asked you to draft a memo containing two sections. First, identify the top three digital policy accomplishments from the past 10 years. This section should discuss the accomplishment, explain the legal or policy change, and justify why it ranks as one of the party's most important accomplishments. Second, discuss two policy reforms that the party should promise to undertake if it is re-elected. Explain what it should promise to do and why these reforms are important.

Your memo should be no more than 800 words.

OR

B. You work as the digital policy advisor for the opposition Liberal party. The party has asked you to draft a memo containing two sections. First, identify the top three digital policy criticisms from the past 10 years. This section should discuss the criticism, explain the legal or policy problem, and justify why it ranks as one of the Conservative government's most important failures. Second, discuss two policy reforms that the party should promise to undertake if it is elected. Explain what it should promise to do and why these reforms are important.

Your memo should be no more than 800 words.