

Question I (50 points) (virtual cross-burning)

statutory interpretation-meaning of burn-can it be applied to virtual burning------(5) \_\_\_\_\_  
property of another, highway or public place-can it apply to video on Drucker's computer(5) \_\_\_\_\_  
intent to intimidate-true threat, fear of bodily harm------(5) \_\_\_\_\_  
state power to regulate-dormant commerce cl (or due process fund'l fairness analysis)----(2) \_\_\_\_\_  
extraterritorial effect-Montana resident; composed/sent from Montana; legal in Montana(6) \_\_\_\_\_  
VA contacts-mailed to VA resident on computer in VA; sent via AOL w/servers in VA; harm  
experienced in VA-activity out of state produces fear instate, evid knew D in VA------(6) \_\_\_\_\_  
insufficient contacts w/VA - Drucker engaged in no commercial out of state activities, sent a  
single e-mail, never physically in VA, legal in Montana, insuffic evid knew D in VA-----(6) \_\_\_\_\_  
benefit v. burden; risk of conflicting state regs?------(5) \_\_\_\_\_  
First Amendment issues-Sup Ct concludes can single out cross-burning (CB) because of history,  
is that also true of virtual CB w/no such history-is virtual CB intimidating in same way as actual  
CB, unconstitutional vagueness, if needed to satisfy strict scrutiny, could it?------(7) \_\_\_\_\_  
miscellaneous \_\_\_\_\_(3) \_\_\_\_\_

Question II (70 points) (Mattel v. barbiedesigndesigns.com)

personal jur-specific jur; min contacts-purposeful availment; arises out of; reasonable----(2) \_\_\_\_\_  
argue doing business in CA-commercial website which reaches CA;while no sales she does show  
designs which are available for sale; CA resident made an inquiry------(3) \_\_\_\_\_  
argue she isn't doing business-no online sales; no sales to any CA residents; informational site  
basically other than e-mail; not very interactive; only business activity is in Florida------(3) \_\_\_\_\_  
tort outside knows will effect inside-trademark infringement (TI) like tort; knew Mattel based in  
CA;effects of infringement in CA, principal place of business, but harm not focused onCA(3) \_\_\_\_\_  
arising out of and reasonableness inquiries (burden on def vs forum and Mattel's interest)(4) \_\_\_\_\_  
Lanham Act-§32-use in commerce-sale or adv'g of goods; likely to cause confusion------(2) \_\_\_\_\_  
application of statutory reqs to facts-Sleekcraft factors (2 for 1<sup>st</sup>;2 for 2<sup>nd</sup>; 8 for third)----(12) \_\_\_\_\_  
Trademark Dilution-elements-famous mark-commercial use in commerce-dilution------(2) \_\_\_\_\_  
application of statutory reqs to facts(2 for 1<sup>st</sup> element; 3 for second and 3 for third)------(8) \_\_\_\_\_  
UDRP-domain name is identical or confusingly similar; no rts or legit int;bad faith------(2) \_\_\_\_\_  
application to facts-(3 for 1<sup>st</sup>; 3 for 2<sup>nd</sup>; 4 for 3<sup>rd</sup>)------(10) \_\_\_\_\_  
UDRP-defenses-use of name-bona fide offering of gds or services; commonly known by name;  
legit fair use of name not to misleadingly divert or tarnish trademark------(4) \_\_\_\_\_  
affirmative defenses-1st A or fair use or nominative use defenses-her legal name-should have  
right to use her name, can't describe herself w/o her name------(4) \_\_\_\_\_  
use of domain name protected by 1<sup>st</sup> A-domain name is communicative, not just functional-it  
communicates info about the nature of the site which is accurate------(4) \_\_\_\_\_  
domain name vs. Barbie doll pjs-is the latter less justifiable; not nec'y to describe design, use of  
Barbie doll name vs. Barbie which is her name------(4) \_\_\_\_\_  
miscellaneous \_\_\_\_\_(3) \_\_\_\_\_