

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 1st;2 for 2nd; 8 for third)----(12) _____
Trademark Dilution-elements-famous mark-commercial use in commerce-dilution------(2) _____
application of statutory reqs to facts(2 for 1st 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 1st; 3 for 2nd; 4 for 3rd)------(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 1st 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) _____