Instructions for Entertainment Law Exam
Thursday, July 13, 2000
8:30-11:00

This exam consists of two questions. Question 1 covers Martin Silfen's section of the course and Question 2 covers Sue Bodine's section. Both questions are "open book" and you may use any materials you wish. The exam must be finished in the allotted two-hour and 30 minute period. (One hour and 30 minutes for Professor Silfen's question; one hour for Professor Bodine's question.) You may use as many Blue Books as necessary but **please do not use the same blue book for Questions 1 and 2.**

QUESTION 1
Professor Martin Silfen

How could you forget them! You will recall the negotiation of the Recording Agreement in class on July 6, 2000. After their success with "Look at Stormin' Norman. He's Performin' - The Brain Dead Bikers are With Him, Too," and their follow-u success, "Let the World Know the Sad Sorrow of Kosovo," Ding Bat Management ("DBM"), a personal management company, approached the Brain Dead Bikers ("BDB") and expressed an interest in managing them. DBM represents Pebble and the Rocks, Curtis Whichway, and Zelma Hightower, three artists signed to Down in the Mouth and Over the Hill Music. DBM presented BDB with its "standard" personal management agreement, ("Agreement") a copy of which is attached to this examination.

As a distinguished graduate of Professor Silfen's "I've Got the Juice, Turn Me Loose" Entertainment Law Class BDB has asked you to act on their behalf.

You are encouraged to draft your changes, if any, on the Agreement. This is not an absolute. If you draft your changes on the Agreement, please make them easy to read.

I extend to you my best wishes for a long and rewarding career in the law. It was a great pleasure teaching you. I sincerely hope that you will stay in touch. I can be reached at (757) 496-0360 or mesilfen@aol.com.

DING BAT MANAGEMENT
1616 Fallovercliff Slide
Williamsburg, Virginia

As of May 7, 1999

Slash Stuart; Arme Pitts
Cindy Smith; Exx Ray
Precious Kyss; Dr. Demented
Less Than Grandmaster Faster

Dear Slash, Arme, Cindy, Exx, Precious, Dr. Demented, and Less Than Grandmaster Faster:

The following, when signed by you and us ("Manager"), will constitute a complete and binding agreement between you and Manager with respect to your engagement of Manager as your exclusive personal manager.

1. Territory:

The World.

2. Score of Manager's Activities:

(a) Manager shall be your exclusive personal manager and shall be available at all reasonable times to confer with, counsel and advise you in all matters pertaining to your entertainment career including, without limitation, in connection with phonograph records, music publishing, television, motion pictures, personal appearances and use of your name and likeness for merchandising and other commercial purposes. In this connection, Manager shall have the right during the Term to advertise itself as your exclusive personal manager.

(b) Manager's services shall include, without limitation, counsel and advice on the selection and direction of efforts of such other persons as talent agents and publicists, and on relations and negotiations with employers of your services and users of your products to the extent permitted by law. Although Manager's services hereunder are not exclusive, Manager will make available sufficient reasonable time of its personnel for the professional and diligent provision of its services hereunder as determined by Manager in the exercise of its reasonable good faith business discretion. Manager agrees that shall

be reasonably available to personally render services in connection with your day-to-day affairs with regard to Manager's responsi-bilities hereunder.

3. Term:

(a) The term of this Agreement (the "Term") shall consist of an initial period of three (3) years commencing as of the date hereof.

(b) It is of the essence of this Agreement that, during the first _____ (___) months of the Term hereof (the "Shopping Period"), Manager presents you to record companies for purposes of obtaining an exclusive recording artist agreement (a "Record Agreement"). Accordingly, if by the end of the Shopping Period, you have not entered into a Record Agreement (other than as a result of your acts or omissions), you shall have the right to terminate the Term of this Agreement, provided that the Shopping Period shall be automatically extended an additional three (3) months if the material terms of a prospective Record Agreement have been agreed to prior to the otherwise applicable date of expiration of the Shopping Period.

(c) If pursuant to subparagraph 3(b) hereof, you enter into a Record Agreement within the Shopping Period, and such Record Agreement remains in effect for the balance of the Term, then, Manager shall have the irrevocable option to extend the Term hereof for a period of two (2) years by sending you written notice prior to the time the Term would otherwise expire.

4. Manager's Commission:

(a) In consideration of the services rendered by Manager to you hereunder, you shall pay to Manager and Manager shall be entitled to receive from you the following commission (the "Fee"): _____ percent (___%) of your Gross Income.

(b) The Fee shall be paid to Manager as and when Gross Income is received by you or on your behalf, directly or indirectly, or by any person, firm or corporation on your behalf pursuant to contracts, engagements and commitments entered into during the Term (including all renewals, extensions, substitutions and modifications thereof and any resumptions discontinued during the Term resumed within one (1) year thereafter, provided the Fee shall apply only to the original financial terms of each agreement and not apply to any improved terms which are not negotiated for during the Term). In connection with the foregoing: (i) all agreements substantially negotiated during the Term and executed within six (6) months thereafter shall be deemed entered into during the Term and (ii) Manager shall be entitled to its full commission in perpetuity with respect to services performed (including without limitation the results and proceeds thereof in the form of recordings, musical compositions or otherwise) and products created by you during the Term pursuant to agreements entered into during the Term. As an accommodation to you, Manager shall set forth in writing, following the expiration of the Term, all agreements which Manager

intends to commission, and with respect to all such agreements not executed in writing, but believed by Manager to be substantially negotiated, the terms thereof as they exist at the time of the expiration of the Term, provided that no failure to either provide such list nor the omission from such list of any agreement entered into during the Term for the terms thereof) shall affect Manager's right to receive the Fee with respect thereto.

(c) As used in the Agreement, "Gross Income" shall mean all income earned by you or any other person, firm or corporation on your behalf from your activities in all phases of the entertainment industry including, without limitation, all present and future forms of recording medium (i.e., phonograph records, CD's, Digital Audio Tape, videos.... etc. hereinafter collectively referred to as "Records"), music and book publishing, personal appearances, merchandising, commercial uses of your name and likeness, television and motion pictures, whether such income is in the form of earnings, fees, royalties, residuals, repeat and/or rerun fees, gifts, bonuses, shares of profit, shares of stock, partnership interests, percentages derived from entertainment packages, payments for the termination of activities, and for the settlement or other disposition of any suit and payments made to your heirs, executors and assigns. Notwithstanding the foregoing, Gross Income shall not include: (i) music publishing royalties paid to co-writers and publishing company administration fees; (ii) actual recording costs of your master recordings and audiovisual works produced in connection with your recording services; (iii) deficit tour support payments; (iv) fees, advances, royalties and other payments paid to unaffiliated third parties including, without limitation, record producers and directors; (v) any monies actually paid by you to an opening act or for "sound and lights" in connection with live personal appearances; (vi) any non-entertainment income derived by you from any business investments, entrepreneurial activities or other non-entertainment activities; (vii) subject to paragraph 4(b) hereof, income derived from agreements entered into after the expiration or termination, of the Term; and (viii) Records recorded and released by you after the "Post-Term Period" as hereinafter defined).

(d) Notwithstanding anything to the contrary in this Agreement, Manager's Fee with respect to your Gross Income which is derived from services performed and products created by you after the Term pursuant to agreements entered into during the Term shall continue solely for an additional period equal to the duration of the Term (the "Post-Term Period");

(e) The interest and compensation set forth hereinabove which shall be paid to Manager shall be continuing and shall not be revocable at your pleasure.

5. Manager's Authority:

You hereby irrevocably authorize and appoint Manager as your true and lawful agent and attorney-in-fact during the Term (which power of attorney shall be deemed irrevocable and coupled with an interest) solely to do the following:

(a) execute in your name and on your behalf all agreements, documents and contracts for your services in connection with live personal-in-concert performances not exceeding one (1) week in duration unless scheduled as part of a regular tour, provided that Manager shall use its reasonable efforts to first obtain your prior oral consent thereto as to the compensation, venue and routing;

(b) approve and permit publicity and advertising materials relating to you; and

(c) approve and permit the use of your name, likeness, photographs, sound effects, voice and the like for (i) commercial endorsements, (ii) merchandising purposes, and (iii) the advertising and promotion of third party products and services. You hereby agree to perform all agreements, ratify all actions and indemnify Manager from claims pursuant to this power of attorney.

(d) Once approval has been granted as to any particular materials, photographs, biographies, merchandising items or the like such approval shall be continuous in nature and shall remain in effect until revoked by you.

(e) You hereby ratify all acts and agree to perform all obligations required of you in connection with Manager's exercise of the power of attorney herein granted to Manager.

6. Management Expenses:

(a) You will reimburse Manager for any and all expenses incurred by Manager on your behalf in connection with the activities referred to in paragraph 1 hereof; provided that: (i) you will not be responsible for any portion of Manager's overhead expenses; (ii) Manager shall not incur any single expense in excess of $_____ without your prior consent; (iii) Manager shall not incur aggregate monthly expenses in excess of $_____ without your prior consent; and (iv) Manager shall have the right to obtain such reimbursement solely from your Gross Income hereunder. Manager shall not be required to meet with you at any particular place or to travel on your behalf however, when Manager travels on your behalf it shall be at your sole expense.

(b) Manager shall furnish you with appropriate documentation of Manager's expenses and reimbursement shall be made in connection with the monthly accounting referred to in Paragraph 7 below.

7. Accounting and Audit Rights:

(a) You irrevocably agree to use your reasonable efforts to cause each agreement entered into by you to obligate and irrevocably instruct the payor (including, but not limited to, record companies, booking agents, and promoters) of the applicable Gross Income to deduct Manager's Fee and reimbursable expenses therefrom and to pay directly

to Manager Manager's Fee and reimbursable expenses. To the extent Manager's Fee and the payment of my reimbursable expenses are not paid directly to Manager as aforesaid, you agree to pay Manager therefor in accordance with Paragraph 7(b) below.

(b) You shall cause your accountant or business manager: (i) to pay Manager's Fee and reimbursable expenses promptly after the applicable Gross Income is collected by him, and (ii) to furnish to Manager, upon Manager's reasonable request, an itemized accounting setting forth all of your Gross Income. Manager will have the right, at its expense, upon reasonable notice no more than twice during any calendar year, to examine such accountant's or business manager's books and records relating to the Gross Income collected on your behalf.

(c) In the event that at any time during the Term you elect not to utilize the services of an accountant or business manager, you authorize Manager to collect and receive on your behalf any and all Gross Income, and to endorse your name upon and cash any and all checks payable to you in connection therewith. Further, Manager shall be authorized to deduct and retain from such monies received by you on your behalf any and all sums owed to Manager hereunder; the balance of such monies will be remitted to you promptly. For as long as Manager continues to collect money payable to you, Manager will render you, within thirty (30) days after the end of each calendar quarter, an itemized accounting of all Gross Income collected by Manager on your behalf during such calendar quarter and all Fees and expenses deducted therefrom. You will have the right at your expense, upon reasonable notice, to examine Manager's books and records relating to the Gross Income collected by Manager on your behalf and the fees and expenses deducted therefrom.

8. Warranties and Representations:

(a) You warrant, represent and agree that:

(i) You are not under any disability, restriction of prohibition, either contractual or otherwise, with respect to your right to execute this Agreement or to fully perform its terms and conditions; and

(ii) You have the full right, power and authority to use the name "_____" and any other professional name(s) and to do business thereunder, and Manager's activities on your behalf under this Agreement will not infringe upon, violate or interfere with the rights, whether statutory, or otherwise, of any one or more third parties.

(b) You shall at all times engage and utilize proper talent agents to obtain employment for you. You hereby acknowledge that Manager is not licensed as a "talent agent" as that term is defined in the California Labor Code or an "employment agent" or otherwise under the Business and Professions Code of the State of California, and that

Manager has not promised to procure employment or engagements for you hereunder. You shall be solely responsible for payment of all necessary commissions to booking or similar agencies engaged by you.

(c) Manager warrants and represents and agrees that Manager is not under any disability, restriction or prohibition, either contractual or otherwise, with respect to Manager's right to execute this Agreement or to fully perform its terms and conditions. You understand that Manager has the right to render its services to anyone else either in the capacity in which engaged by you hereunder or otherwise.

9. Indemnification.

You and Manager each agree to and do hereby indemnify, save and hold harmless the other party from all loss, damage and expenses (including reasonable attorney's fees) arising out of or connected with any claim by any third party which shall be inconsistent with any agreement, warranty or representation made by Manager or you, as applicable, in this Agreement; provided same is reduced to final adverse judgment or settled with the prior written consent of the indemnifying party. The indemnifying party agrees to reimburse the other party, on demand, for any payment made at any time after the date hereof with respect to any liability to which the foregoing indemnity applies. Pending the determination of any such claim, your accountant shall be authorized to withhold from your Gross Income or the Fee, as applicable, an amount reasonably related to the potential liability at issue.

10. Cure:

In order to make specific and definite and/or to eliminate, if possible, any controversy which may arise between the parties hereunder, you and Manager agree that if at any time you or Manager, as applicable, believe that the terms of this Agreement are not being fully and faithfully performed hereunder, you or Manager, as applicable, will so advise the other in writing by registered or certified mail, return receipt requested, of the specific nature of any claim, non-performance or misfeasance, and the party receiving such notice shall have a period of thirty (30) days after receipt thereof within which to cure such claimed breach. If such claimed breach is cured, it shall not be deemed a breach of the Agreement unless it reoccurs, in which event the cure provisions of this paragraph 10 shall again apply. If the claimed breach is not capable of being cured within said thirty (30) day period, it shall be sufficient to commence to cure such breach within that period and to proceed to cure with reasonable diligence.

11. Independent Counsel:

Each of the parties hereto warrant and represent that in executing this Agreement, they have relied solely upon their own judgment, belief and knowledge and the advice and recommendations of their own independently selected and retained counsel, concerning

the nature, extent and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing this Agreement by any representations or statements with respect to any matters made by any party or representative of any party.

12. Notices:

All notices pursuant to this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested or telegraph (prepaid) at the respective addresses hereinabove set forth or such other address or addresses as may be designated by either party. Such notices shall be deemed given when mailed or delivered to a telegraph office, except that a notice of change of address shall be effective only from the date of its receipt. A copy of all notices sent by Manager to you shall simultaneously be sent to:

_____
_____
_____
_____
_____

A copy of all notices sent by you to Manager shall simultaneously be sent to:

_____
_____
_____
_____
_____

13. Additional Provisions:

(a) This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and cannot be changed or terminated except by an instrument signed by you and Manager. A waiver by either party of any term or condition of this Agreement in any instance shall not be deemed or construed as a waiver of each term or in condition for the future, or of any subsequent breach thereof.

(b) This Agreement has been entered into in the State of California, and the validity, interpretation and legal affect of this Agreement shall be governed by the laws of the State of California applicable to contracts entered into and performed entirely within the State of California. The California courts, only, will have jurisdiction of any controversies regarding this Agreement; and, any action or other proceeding which involves such a controversy will be brought in the courts located within the State of California, an not elsewhere. Any process in any action or proceeding commenced in the courts of the State of California arising out of any such claim, dispute or disagreement, may, among same, via

registered or certified mail, addressed to you at the address first above written or such other address as yo may designate pursuant to Paragraph 12 hereof. Any such delivery or mail service shall be deemed to have the same force and effect as personal services with the State of California.

14. Life Insurance:

Manager shall have the right during the Term to obtain life insurance on your life at Manager's sole cost and expense, with Manager being the sole beneficiary thereof and in an amount to be determined by Manager in its sole discretion. You agree to submit to a physical examination and complete any documents reasonably necessary in respect thereof.

Very truly yours,

_____

By:_____

AGREED TO AND ACCEPTED:

_____

PLEASE USE A NEW BLUE BOOK FOR THIS PART OF EXAM

QUESTION 2

Entertainment Law Exam
IPSI 2000

Please use different blue books for Parts I and II of the exam. The exam is open book. You may use any materials you wish. Your answers may be in outline or narrative form.

Part I.

Henrietta Hack is a Hollywood screenwriter. She has been asked by Colossus Studios to rewrite a screenplay the studio bought from Homer Hero, who wrote it based on his own adventures as a big cat hunter and aerielist. Henrietta works on the script, writing two new drafts. The studio then hires Will Wright who writes two more drafts. Finally satisfied that Homer's story is now well written enough to attract a major star and director, Colossus hires Tom Terrific to star and Oliver Oliphant to direct and goes into production. "A Hero's Home" goes on to win several Oscars and is a huge hit at the box office. A few years later, Colussus turned Homer into a cartoon character and created an animated television show that became a huge hit.

a. When the film is released the screen credits for "A Hero's Home" read, "Written by Homer Hero and Henrietta Hack". Will Wright is unhappy not to have been given credit. Describe the process by which Colussus would have decided on the credits shown and what claims, if any Will might have.

b. Homer's original script was written by him "on spec" and sold to the studio. Henrietta and Will were hired by Colussus. What is the difference in the contracts the studio will enter into with Homer and with Henrietta and Will?

c. When Homer was writing his script he took a break and rented a video "Siegfried and Roy's Big Cat Taming Hints". In it Siegfried described some hunting adventure stories and Homer sort of borrowed a few ideas from those stories in his script. When Siegfried sees the movie, he sues. What possible claims could he have and what factors will determine how successful will he be?

d. When the TV series becomes a huge hit, Henrietta gets concerned that even with all the success, she has never received any of her four (4%) percent of the "Net Profits" of the movie. She hires an accountant to perform an audit. After a few weeks of examining the studio's records the accountant informs her that in accordance with her contract, there have been no Net Profits from "A Hero's Home". How could this be?