

**08-532, 08-632, 08-732 Law of Computer Technology. Prof. Shamos
Homework 1. Due Wednesday, September 27, 2017, 11:59 p.m.**

Do both problems 1 and 2.

Homework policy: You may (and are encouraged to) work with other students on homework assignments provided that (1) each person's written submission is his or hers alone; and (2) you identify on the homework each person with whom you worked in connection with the assignment. For example, you may work in pairs or groups to research, discuss and debate the homework, but then each person must go off and write their own paper. BUT: you may NEVER hand in work of another person even if you state that you have worked with that person. If you quote or paraphrase from external sources, such as web pages or another person, you must use quotation marks to identify the quotation and must cite the source of such material. Violations of these rules will be dealt with harshly to the fullest extent of University policy.

It is very useful to work in groups. Experience has shown that students produce better work when they can share ideas with colleagues. The objective of the course homework is to promote learning, not merely to serve as a grading mechanism.

Homework must be submitted through CMU Canvas as a Microsoft Word file (.doc or .docx) having a filename containing your surname. PDF files are not acceptable because it is very difficult to add comments to them.

You must ALWAYS explain your answers. Failure to explain will result in a ZERO for the question even if your answer is correct. You should realize that there are no "right" or "wrong" answers to these questions. The fact patterns given below are realistic but artificial and have never been decided by any court, even though they may be similar to those of actual cases. You will not find these scenarios on the Internet. They were constructed for the purposes of this homework. However, the legal citations and statutes are real. The fact that a court may have decided a similar case in a particular way does not make that decision the "right" answer. Your grade will depend on the degree to which you follow the methods taught in the course for analyzing cases of this type.

These problems require thought. You will need to decide which facts are relevant and which are not. DO NOT USE YOUR PERSONAL SENSE OF JUSTICE TO DECIDE WHICH WAY THE CASES SHOULD TURN OUT. How you feel things should be resolved is COMPLETELY IRRELEVANT. You MUST apply the principles of legal reasoning discussed in the course. You will find it impossible to write effective answers to these questions if you wait until the last night before the homework is due. Your answers do not need to be long but they should be thorough.

If you find that there is some factual information you need that is not stated in the question, then make a reasonable assumption about that information and state and justify your assumption.

1. Interpreting Statutes [60 points].

Lou Leerer is a resident of Georgia, which is just north of the State of Florida. He is interested in having sex with 14-year-old girls, which is illegal in Florida. To meet such girls, he deposits flash drives in bins that he places near Georgia high schools with a sign saying: "Free. Take One." The drives contain a computer program which, when inserted into a laptop, shows beautiful clothing being modeled by 14-year-old girls. However, some of the girls also have no clothes on. At the end of the presentation, the following message appears: "You too can model these clothes and get naked with me. Just call 912-555-5337." The area code 912 is in Georgia. Assume that "getting naked" with a 14-year-old is a violation of Chapter 800 of the Florida Statutes and is also illegal in Georgia.

A Georgia girl picks up one of the flash drives at her high school and is interested. She mails it to her friend in Florida. The friend is scared by it and contacts the Florida State Police. The police have a female officer call Lou and pretend to be a 14-year-old. Lou is fooled into believing she is really a teenager and arranges a meeting. Lou is then arrested in Georgia on the request of the Florida State Police and is charged in Florida with a felony violation of Florida Statutes 847.0135. The fact that the police officer was an adult does not matter if Lou believed she was 14. This is not entrapment and it is well decided in Florida that use of a police officer in this way is not a defense. THAT IS NOT AN ISSUE IN THIS PROBLEM. DO NOT CONSIDER IT AND DO NOT WRITE ABOUT IT.

Florida Statutes 847.0135 – Computer pornography; prohibited computer usage; traveling to meet minor; penalties

(1) SHORT TITLE.–This section shall be known and may be cited as the "Computer Pornography and Child Exploitation Prevention Act." ...

(3) CERTAIN USES OF COMPUTER SERVICES OR DEVICES

PROHIBITED.–Any person who knowingly uses a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to: (a) Seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child ... commits a felony of the third degree ... Each separate use of a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission wherein an offense described in this section is committed may be charged as a separate offense.

Florida Statutes 847.001 – Definitions

computer: means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with such device.

Lou asks the Florida court to dismiss the case against him. His argument is that the statute contains the phrase “a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission.” He used a flash drive. Clearly, a flash drive is not a computer online service. It is not an Internet service and is not a bulletin board service. Therefore, it must fit, if at all, under “any other device capable of electronic data storage or transmission.” However, under the ejusdem generis principle of statutory interpretation, the phrase “any other device capable of electronic data storage or transmission” can only include things that are similar to the ones specifically listed, namely a computer online service, Internet service, or local bulletin board service. Since a flash drive is not like any of those items, he cannot be charged under the statute.

The State Attorney argues that the statute uses plain language, is not ambiguous, and therefore must be applied literally. Even Lou admits that a flash drive is “capable of electronic storage.” Therefore, the case against him should proceed and not be dismissed.

QUESTION 1: Based on what you have learned in the course, determine whether the case against Lou can proceed. You must specifically address Lou’s argument and that of the State Attorney.

NOTE: IN THIS QUESTION 1, DO NOT CONSIDER SUBJECT MATTER OR PERSONAL JURISDICTION. ASSUME THAT FLORIDA HAS SUBJECT MATTER AND PERSONAL JURISDICTION OVER LOU. THAT TOPIC WILL BE TAKEN UP IN QUESTION 2.

2. Interstate Jurisdiction [60 points].

Assume all the same facts as in Question 1. However, the answer to this Question 2 does not depend on whether the criminal case against Lou was dismissed were not. The answer to Question 2 is INDEPENDENT of the answer to Question 1.

Lou asks the Florida court to dismiss his case on the grounds that Florida has no personal jurisdiction over him. He proves that he has never been to Florida in his life, has no employees there and owns no property in Florida. He had no idea one of his flash drives would be sent to Florida, and didn’t know that the police officer who called him was in Florida at the time of the call.

The State Attorney prosecuting Lou’s case argues strictly under the Florida Criminal Long-Arm Statute (Florida Statutes §910.005) and the special provision of §847.0135(7), both of which are reproduced below.

(I) She says that the offense was committed at least partly in Florida under §910.005(1)(a) because the “enticing” occurred at the place where the police officer was located, which was in Florida.

- (II) She says when Lou talked on the phone in Georgia he was attempting to commit an offense in Florida (luring, enticing) and Florida has jurisdiction under §910.005(1)(b).
- (III) She further says that Lou’s acts were illegal in both Georgia¹ and Florida, which is true, and therefore Florida has jurisdiction under §910.005(1)(d).
- (IV) Finally, she says that, under §847.0135(7), Florida can prosecute Lou even if all of his acts occurred outside Florida.

Lou responds to the State Attorney’s four arguments as follows:

- (I) He had no idea the person he was talking to was in Florida. He thought she was in Georgia because that’s where he distributed the flash drives.
- (II) He was not attempting to commit a crime in Florida because he didn’t know the caller was in Florida. He says that if any crime was committed it would have been in Georgia.
- (III) Lou’s conduct was not “within the state” of Florida. His conduct was entirely in Georgia.
- (IV) F.S. §847.0135(7) is unconstitutional because it violates the due process requirement of the U.S. Constitution under *International Shoe* to prosecute him in Florida when he has no voluntary contacts at all with Florida.

Question 2: Based on the principles you learned in the course, determine whether Florida has jurisdiction to try Lou for the crime. You must address the State Attorney’s four arguments and Lou’s four responses.

NOTE: THIS QUESTION 2 IS ALL ABOUT CRIMINAL PERSONAL JURISDICTION. DO NOT ASSUME THAT FLORIDA HAS JURISDICTION OVER LOU. THAT IS WHAT YOU ARE TO ANALYZE. ALSO, IT DOESN’T MATTER WHETHER LOU IS GUILTY OR NOT – THAT WILL BE DETERMINED BY A JURY IF A TRIAL OCCURS. IT DOES NOT MATTER IF THE STATUTE APPLIES TO HIS CRIME – THAT WAS THE SUBJECT OF QUESTION 1.

Florida Criminal Long-Arm Statute

Florida Statutes 910.005 State criminal jurisdiction.—

- (1) A person is subject to prosecution in this state for an offense that she or he commits, while either within or outside the state, by her or his own conduct . . . , if:**
 - (a) The offense is committed wholly or partly within the state;**
 - (b) The conduct outside the state constitutes an attempt to commit an offense within the state;**
 - ...
 - (d) The conduct within the state constitutes an attempt or conspiracy to commit in another jurisdiction an offense under the laws of both this state and the other jurisdiction; or**
 - ...
- (2) An offense is committed partly within this state if either the conduct that is an element of the offense or the result that is an element, occurs within the state.**

¹ Under O.C.G.A. §16-6-5 (which you need not read).

There is also a special jurisdictional provision in Florida Statutes 847.0135(7), which is part of the Sexual Offenses section:

STATE CRIMINAL JURISDICTION.—A person is subject to prosecution in this state pursuant to chapter 910 for any conduct proscribed by this section which the person engages in, while either within or outside this state, if by such conduct the person commits a violation of this section involving a child, . . . or another person believed by the person to be a child.

These questions are complex, but can be worked out logically based on what you have learned in the course. You have two weeks, which means significant work is expected.