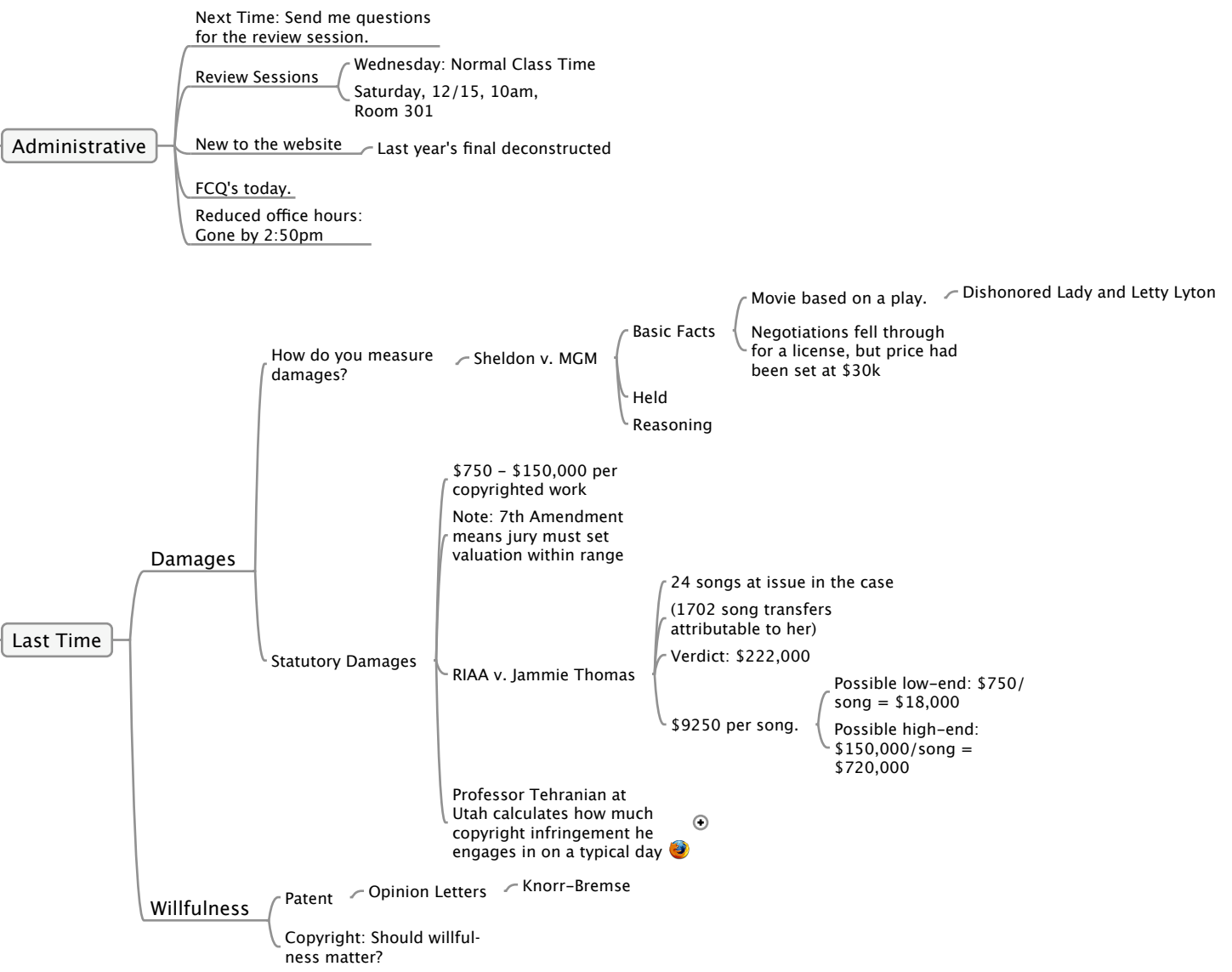


# Class 26: Contract



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## Shrinkwrap Contracts

### ProCD

#### Basic Facts

- Feist in the 21st Century  
CD-ROM with information  
(Feist + zip codes and census codes)
- Price Discrimination
  - \$150 for consumers
  - Much more for commercial users.
- Term of the Contract
  - Use only for non-commercial purposes (850)

#### Mechanics of the Contract

- Outside of box: See enclosed license for additional restrictions.
- License printed in manual.
- License contained on CD-ROM.
- License displayed to user on every use.
- "Click yes if you accept the terms"
  - If they clicked no, program halted.
- Express right to return software if unhappy with terms.

- Review: Was this protected under copyright?
- District Court
- Held
- Reasoning ⊕

## Clickwrap Contracts

### Specht

#### Basic Facts

- Two software programs made by AOL/Netscape ⊕
- Contract Terms
  - Mandatory, binding arbitration.
- Agreement Facts
  - Button labeled "Download" at the bottom of the "screen facing plaintiffs" ⊕
  - But, if user scrolled down ⊕

- Held
- Reasoning

- Should they be enforceable?
- Versus Shrinkwrap (Note 1)