**9.17 Copyright – Infringement – Introduction to Elements**

If you’re persuaded that [name of plaintiff] owns a valid copyright, you can consider whether [name of defendant] improperly copied [name of plaintiff]’s copyrighted material. It is the burden of [name of plaintiff] to show that [name of defendant] infringed on [his/her/its] valid copyright. This is called “infringement” of a copyright. [Name of plaintiff] must show that [name of defendant] infringed on [his/her/its] valid copyright.

In this case, [name of plaintiff] claims that [name of defendant] infringed [his/her/its] copyright in [name of plaintiff’s copyrighted work] by copying part[s] of it and including the copied material in [name of defendant]’s work, [name of defendant’s copyrighted work]. To succeed on this claim, [name of plaintiff] must prove that [name of defendant] copied the part[s] of [name of plaintiff]’s copyrighted work that the law protects.

There are two ways in which [name of plaintiff] can prove a claim of copyright infringement.

First, [name of plaintiff] can show direct evidence that [name of defendant] actually copied the copyrighted material. For example, [name of plaintiff] could introduce believable eyewitness testimony or an admission by [name of defendant]. Such direct evidence is rare.

Or second, [name of plaintiff] can show indirect or circumstantial evidence that [name of defendant] copied [his/her/its] work. For example, indirect evidence of infringement may be proof that [name of defendant] tried to get a copy of [name of plaintiff]’s work and then published a [book, song, etc.] that is substantially similar to [name of plaintiff]’s [book, song, etc.]. In general, the two elements of infringement are access and substantial similarity.