INTELLECTUAL PROPERTY

Course Policies & Syllabus - Part I


I have attempted to assign one major topic per class. Each class will cover about 20 pages, which usually includes 1 or 2 cases. In addition to the “major” cases, the textbook has “notes.” The notes also present important nuances to the basic rules that you will get out of reading the major cases. They are to be treated as of equal importance to the “full” cases. You will be held equally responsible for both the cases and the note material.

I try to cover one assignment each class day. However, the syllabus is somewhat tentative and subject to changes announced in class and/or by email notice. This is because of the inherently fluid nature of coverage of what is often contested and complicated material.

If we depart from rigid adherence to this syllabus -- you **should stay at least one full assignment ahead of wherever we may be**. On the other hand, please **do not read too far ahead**. You will get far more out of the class discussion if the cases are fresh in your mind when we take them up in class. There is no profit in reading material a week in advance if you only have a vague memory of it when we finally get to it in class.

Please note that while we may not discuss every case or topic in class, **you are responsible for all assigned material on the examination**, unless I specifically state otherwise. I will distribute second (patents) and third (trademarks) assignment sheets later in the semester.

I will do my best to get to know you relatively quickly; however, I am not particularly good with names. So please bear with me if I don’t recall your names right away. (In order to help me learn your names quickly, I will ask you to adhere to the seating chart. See below.)

I will usually be in my office Mondays and Wednesdays. Don't hesitate to stop by my office and introduce yourself during the first few weeks of class, or anytime thereafter, not just with questions about the course, but to talk about law school, the job market, the stock market, sports, politics, travelling, horseback riding, or just to vent.

**LAPTOPS**

I do not limit laptop use in class. That said, it might surprise some of you, but (despite the fact that I cannot see your computer screens) I can tell when you are taking notes and when you are Gchatting, browsing Facebook, or playing videogames. If this becomes a problem, I reserve the
right to ban laptops, or to mark those individuals who are engaged in extraneous activities as absent.

**CLASS ATTENDANCE**

I consider regular attendance, preparation and participation part of your obligation in taking this course. Because I expect students to attend class, I do not formally excuse absences and there is no need to inform me in advance that you will be absent. I presume that students who miss class must be doing so for good reason. If, however, any kind of personal emergency arises that will cause you to miss multiple classes, please inform either me or the Dean of Students so that we can make the arrangements necessary to minimize the adverse impact on your studies.

Please also note that I reserve the right to bar students from taking the final examination if attendance, participation or preparation have been inadequate. In this regard, please also see the information on “Attendance” in the 2015-16 Law School Bulletin.

**CLASS PARTICIPATION**

Law school policy permits me to raise grades by one “step” (e.g., from “B” to “B+”) for superior class participation. I expect to make use of that policy. Conversely, the policy permits me to lower grades one “step” for poor participation. While I don’t expect to grades based on non-participation, I may (and will) lower grades for lack of preparation, or for unprofessional conduct in class (e.g., booing, hissing, or insulting your classmates). Please keep in mind that the purpose of law school is to explore ideas, even if those ideas seem outrageous at first blush. To that end, I require that you give due respect to your classmates and the thoughts they express in class. On the other hand, when speaking in class, please attempt to make your comments thoughtful and keep them on-point.

This class, like every class, works best with widespread student participation. I hope much of that participation will come voluntarily, but I will regularly call on students to ensure broad participation. I do this for two reasons.

First, many of the issues we will talk about this semester are contested ones, and they often are the subject of current debate in courts, legislatures, and academic publications. We may not be able to resolve these issues in class, but all of us will understand them much better after in-class debate. Second, the ability to think and speak on your feet is an essential skill in virtually all forms of legal practice. You are much better off learning that skill in law school than when you are in practice. You should therefore treat our classroom time as an opportunity to practice your advocacy skills.

If you have not been able to prepare for class on a particular day, please let me know before class begins and I will not call on you that day. You will, however, receive only ONE (1) such pass this semester. If you are present and have not taken a pass for the day, I will assume you are prepared to participate fully. If you are called on and are not prepared, I will mark you as absent for that day, because in my view being “present” involves more than just being physically in your seat; it also involves being mentally present.

**SEATING CHART**

Early in the semester I will circulate a seating chart. As I mentioned, it will greatly help me learn your names. To that end, you must sit in your assigned seat for EVERY SESSION.
Even if you have not done the reading assignment you must sit in your assigned seat. Even if you arrive late (and please do your best to be on time as late arrivals are highly disruptive) you must sit in your assigned seat — and that is so even if it requires you to walk in front of other students to take your seat. If you are not sitting in your assigned seat, I will interrupt the class and ask you to move.

OFFICE HOURS; COMMENTS & SUGGESTIONS

I don't have formal “office hours,” because it implies that those are the only times I am willing to see students, and because my schedule is somewhat unpredictable. Rather, I welcome students to stop by my office whenever I am there. If I am unable to talk with you on the spot we can set aside another time. If you stop by and I am not at my desk, you can send me an e-mail or leave a voicemail. If you prefer to set up an appointment time in advance (rather than just showing up) that is perfectly fine.

I also welcome any comments or suggestions that you may have regarding the class. These can be made at anytime during the semester by whatever medium you find most convenient. Feel free to send me an email, give me a call, or drop by my office. Rest assured I won’t take offense at any constructive criticism, but if you wish to remain anonymous, feel free to just slide a note under my door.

TAPING POLICY

You may not make your own tape recordings of the class, either for yourself, for a classmate, or for any other person or purpose. I will only authorize taping by the Law School Media Center in two circumstances:

(1) I will arrange taping on days when it is likely that a large number of students will likely be absent because of religious, professional, or political commitments or because of logistical difficulties. Examples falling into this category would include class sessions that fall on major Religious Holidays, those that coincide with major public or political demonstrations taking place in New York City area, or those that occur on days where weather conditions or transportation disruptions make it difficult to get to campus even though the law school remains open.

(2) I will permit taping if any given student is likely to miss 2 or more sessions because of a documented medical or family emergency. Examples falling into this category involve serious illnesses such as the flu, protracted hospitalizations after surgery or an accident, or the need to travel out of town for extended period to attend to the needs of a seriously ill loved one.

Please do not approach the Office of Academic Affairs with requests to tape my class. They have been instructed not to do so unless I authorize the tapping. Please do not request me to tape if you will need to miss only one session for reasons such as a family wedding or funeral, a business trip, a minor illness, or a job interview. In that case, you should get notes from a classmate and then (if you so desire) see me in my office if you have any questions. Please do not request me to tape a class if the reason for you missing it is insufficiently serious (e.g., day at the beach). Of course, if you have been permitted special accommodation as a result of any disability, you are exempt from this rule on the following conditions: 1) you must let me know of the
exemption; 2) you may not share the tapes with anyone else; and 3) you must destroy all tapes after the final exam. Violation of these rules will be considered to be breach of the Honor Code.

**FINAL EXAMINATION**

Your grade in the course will be based on your performance on the take-home final examination with possible upward adjustment for class participation as indicated above. The examination will be conducted according to the schedule set by the Records Office. **Please note, that information in the published exam schedule and/or promulgated by the Office of Academic Affairs supersedes any information to the contrary that I may mention in class or elsewhere, and you are responsible for keeping apprised of the date, time and location of the exam.**

I will not prohibit you from using commercially prepared outlines for the exam, but I strongly discourage you from doing so because those materials are not always correct. It should go without saying that, to the extent there is a conflict between a commercial outline and course materials, the course materials govern.

I will provide further detailed information about the format of the exam later in the semester.

**OTHER POLICIES**

All law school policies that appear in the 2015-2016 Bulletin are applicable to this class and are fully incorporated by reference. If you are in doubt about the propriety of certain action or inaction, ask first. It is always easier to receive permission than forgiveness.
COURSE OUTLINE

I. Nature and functions of intellectual property law

II. Copyright
   a. Source and theory of copyright protection
   b. Subject matter of copyright
      i. Fixation
      ii. Creativity
   c. Exclusive Rights of Copyright Owners
   d. Infringement
      i. Access
      ii. Copying
      iii. Substantial similarity
   e. The First Sale Doctrine
   f. Secondary Liability
   g. Fair Use and Other Defenses
   h. Moral rights

III. Patent
   a. Source and theory of patent protection
   b. Patentable Subject-Matter and Utility
   c. Statutory standards
      i. Novelty and Statutory Bars – Old 102
      ii. Novelty and Statutory Bars – New 102
      iii. Non-obviousness
   d. Patent infringement and Defenses
      i. Literal Infringement
      ii. Doctrine of Equivalents
   e. Defenses – Repair/ Reconstruction and Exhaustion
   f. Remedies

IV. Trademark and Unfair Competition
   a. Source and theory of trademark protection
   b. Distinctiveness
   c. Non-word marks and trade dress
      i. Trade dress distinctiveness
      ii. Functionality
   d. Acquisition, retention, and priority
   e. Likelihood of confusion
   f. Fair use and other defenses
   g. Dilution
      i. Blurring
      ii. Tarnishment
   h. Overlap with copyright
Class 1:
Introduction to the class, Intellectual Property in General & Copyright Law:
Syllabus & Policies
Casebook 1-9, 12-18, 368-371

COPYRIGHT LAW

Class 2:
Requirements for Copyright Protection -- Originality:
Casebook 371-388

Class 3:
Fixation:
Casebook 398-418

Class 4:
Classifying Copyrightable Works:
Casebook 428-449

Class 5:
Ownership & Copyright Term:
Casebook 461-485

Class 6:
Direct Infringement -- Copying:
Casebook 487-508

Class 7:
Direct Infringement -- Derivative Works, Distribution:
Casebook 518-541

Class 8:
Direct Infringement -- Public Display & Performance, First Sale:
Casebook 541-557, 657-663

Class 9:
Secondary Liability -- Vicarious Infringement, Contributory Infringement, Inducement:
Casebook 558-576

Class 10:
Fair Use:
Casebook 617-645

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Next Part of the Syllabus Will Be Distributed in Due Course