

INTELLECTUAL PROPERTY FOR BUSINESS LAWYERS

Fall 2019 Syllabus

CONTACT INFORMATION

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Office hours: Friday, 2:00 pm – 5:00 pm, by appointment

COURSE OVERVIEW

This course aims to prepare students to practice in general corporate areas where the use or control of information matters. We will begin with some of the justifications for legal regimes related to the creation and distribution of information. We will then explore trade secret law; although it is unclear whether this area of law should be understood as a kind of intellectual property, firms often use trade secret as a complement to or substitute for patent and copyright protection. It therefore forms an important part of the background against which traditionally-understood areas of IP operate. After our section on trade secret law, we will examine patent, copyright, and trademark law in turn.

The course is designed to complement other IP courses. You will probably get more out of it if you have taken one or two of patent, copyright, and trademark law. If you have taken none of those, you might expect to spend some more time figuring out the basics, which we will cover, but not in great detail. If you have taken all three of those, you will find portions of the course redundant. If you would like to discuss whether taking this course fits your academic and career plans, I would be happy to do so.

CLASS MEETINGS

We will meet on Mondays and Wednesdays from 9:30 am – 10:50 pm in F108.

OFFICE HOURS

My office hours are on Friday, from 2:00 pm – 5:00 pm, by appointment. That means that if you want to meet with me, you should schedule an appointment on that day, during those times; it does not mean that I guarantee I will be in my office at those times just waiting around to see if anyone shows up.

Although, if I'm being honest, it's not like I have other terribly exciting plans for most Friday afternoons. Still, we have a beautiful campus and excellent weather (August is a fraud), so I'm often working somewhere outside. There are also lots of interesting people here, so I like to go to their offices and talk to them. In other words, even though I'll be on campus, I will not be in G474 for three consecutive hours. Simply send an email to my assistant, Alina Hernandez, to schedule an appointment in advance.

Office hours are mostly for substantive questions about the course. But I'd also like to get to know you more generally. I am usually at Legal Grounds, our weekly coffee break on Thursday mornings on the bricks. If you have time, please come say hello!

GRADING

Your grade will be based on your class participation, three assignments, and a multiple-choice final. Class participation will be worth 10% of your total grade. The first assignment will be worth 30%; the second will be worth 30%; and the third will be worth 30% of your total grade.

CLASS PARTICIPATION

I will be looking for quality and quantity of participation. If you often say insightful things, you will score highly on participation. If you occasionally say insightful things, you will score a little less well on participation. If you often say not particularly insightful things, you will score less well still. And if you don't say anything, you will not score well. The lowest scores will be for those who do not participate.

Class discussion will include a combination of people I call on and people who volunteer. You should be prepared to participate every day. If you are not prepared to participate, it will be reflected in your class participation score.

ASSIGNMENTS

The assignments will consist of short analyses of legal problems. For each assignment, you will be presented with a set of facts and a question. You will then have to answer that question in light of the facts presented and your knowledge of the law.

You will perform this work in a small group. I will assign students to groups, and you will have a different group for each assignment. Each group will turn in one response that reflects the combined efforts of the group members. There will be word limits for your answers.

The work of the assignment will consist of reading, thinking, discussing, and writing. The only reading you will need to do is the assigned reading for the class. Our class discussions should also prepare you to answer the question, and you may of course find it useful to refer to your notes on our readings and class discussions in answering the questions posed by the assignments.

You will not have to conduct original research for purposes of the assignments. Indeed, outside research (i.e., anything that's not in the casebook or class discussion) is not permitted (e.g., you should not search legal databases like Westlaw or Lexis for relevant cases, nor should you search the internet more broadly). Nor may you consult individuals not in this class (e.g., you should not speak to a lawyer or your friends or family about the

problem). If you have any doubts about whether something is permitted for the assignment, please ask me; if you resolve the doubts on your own, you assume the risk of having resolved them incorrectly. More detail on the assignments will follow once we begin our course.

ATTENDANCE

I think you should come to class. You will learn more, and it will make class more fun for me.

That said, I understand that sometimes, things happen. So here is the attendance policy: if you are regularly not in class, I will email you a warning. If you miss class after receiving the warning, I will lower your grade.

There is one exception to the policy: I will not lower your grade if you miss class because you have a serious medical or life issue that prevents you from attending. Getting stuck in traffic is not a serious life issue; having your car stolen the day we have class is a serious life issue. In order to avoid my lowering your grade, you must email me about your serious medical or life issue promptly.

You need to use your professional judgment to figure out what “a serious life issue” means and what “promptly” means. If you think you have a serious medical or life event, just tell me that you have one. You don’t need to tell me what it is. I will refer you to someone in the administrative offices so that the law school can do everything it can to help you. If you do not email me promptly, your grade will be lowered even if you have had a serious medical or life issue—for example, if your car is stolen and you don’t email me about it until three weeks later, I will still lower your grade.

ACCOMODATIONS

If you have a disability, or suspect that you may have a disability, the Law School encourages you to contact The Office of Disability Services for information about available opportunities, resources, and services. You may also visit the Office of Disability Services website at www.law.miami.edu/disability-services.

BOOKS AND READINGS

The course readings will be from *Intellectual Property in the New Technological Age: 2019*, Mark A. Lemley, Peter S. Menell, & Robert P. Merges. Below is a list of the readings for the course. I’ve organized them by subject, so you can use the list as a basis for an outline.

Please note that I have identified the key cases for each reading. I do expect us to cover material in the notes and problems sections, but I have not separately identified them. I included the key cases so that those of you who are using a different edition of the

casebook can more easily follow along. You will be responsible for all of the material (cases, notes, and problems) in the identified page ranges of the 2019 edition, regardless of which edition of the casebook you are using.

Intellectual property law moves quickly. There is a lot of recent and pending legislation, Supreme Court opinions, and other judicial opinions. Conditional on Congress and the courts, we may adjust our reading assignments.

Intellectual property law has statutory foundations. You can find most of the relevant provisions in Titles 15, 17, and 35 of the U.S. Code. I did not assign a statutory supplement because you can find these statutes for free online. You will be responsible for finding and reading statutory provisions when relevant. Here is the easiest online source to use: <http://www.law.cornell.edu/uscode/>

Course Readings

Introduction

1. Theoretical Justifications and Doctrinal Distinctions: 1-39

Trade Secrets

2. Subject Matter: 50-77
Metallurgical, Rockwell, & Data General
3. Misappropriation: 77-88
DuPont & Dravo
4. Independent Discovery, Reverse Engineering, & Public Policy: 89-101
Kadant
5. Employees: 106-132
Edwards & Redmond

Patent Law

6. Subject Matter: 276-302
Mayo
7. Claim Construction: 325-56
Phillips
8. Nonobviousness: 207-33
Graham & KSR
9. Infringement: 368-85
Larami & Graver Tank

Copyright Law

10. Subject Matter: 531-49
Baker
11. Originality & Fixation: 504-24
Feist
12. Infringement: 631-53
Arnstein & Nichols
13. Fair Use: 760-82
Campbell

Trademark Law

14. Subject Matter: 882-87, 922-28
Qualitex

15. Distinctiveness: 887-901
Zatarain's

16. Trademark Use: 989-98
Rescuecom

17. Infringement: 998-1007
Sleekcraft