Intellectual Property

Law 5260

Fall 2019 Course Syllabus; version 1.1
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Course description and rationale: The purpose of this course is to provide students a general introduction to and survey of intellectual property law. Intellectual property is designed to encourage the production of certain forms of information by granting property rights to the producers, enabling them to appropriate the value of the information they produce. This course surveys state intellectual property law (i.e., rights in undeveloped ideas, unfair competition, trade secrets, and right of publicity) and federal intellectual property law, including trademark, patent, and copyright law.) We examine some of the ramifications of recent technological developments on intellectual property.

This course is appropriate both for students who may not plan to take other courses in intellectual property in law school as well as students who do. It is a foundational course for the Intellectual Property & Innovation Law Area of Concentration.

Credit hours and meeting times: Three credits. Mon., Wed. 12:30 PM – 1:45 PM; Room G12, Law Building

TWEN Course Website: There is a TWEN website for this course, Intellectual Property 5260, at lawschool.westlaw.com. In order to access the site, you will need to use your Westlaw password. Beside the syllabus, the website will contain materials for distribution.

Required texts:

- The course text is *Copyright, Patent, Trademark and Related State Doctrines: Cases and Materials on the Law of Intellectual Property*, Paul Goldstein and R. Anthony Reese, 2017, Eighth Edition, University Casebook Series, Foundation Press.

- Students will also need a late edition of a statutory supplement like *Unfair Competition, Trademark, Copyright and Patent: Selected Statutes and International Agreements*, Foundation Press. Links are provided below to the Cornell University Law School Legal Information Institute versions of the relevant federal statutes, but it is also useful to have a booklet covering the relevant state and federal laws.

- Professor Ashley will distribute a Problem Set via the Materials link of the TWEN course website and other materials through a Course Materials link.

Email distribution list: Your email address will be added to the distribution list on the TWEN page. There will be a test of the email distribution list during the first week in class. If the TWEN email system does not work, an alternative will be used. Students are responsible for double-checking that they are receiving class emails.

Office hours: Prof. Ashley will usually be available in his office, Room 525, every class-day before and after class. Students may also set up appointments via email to meet with him at other times.

Course objectives: Upon successfully completing this course, students will understand:

(1) the differences between protecting property interests in ideas and information as opposed to in goods or real estate.

(2) the state intellectual property law that serves as a backdrop for federal intellectual property protection.

(3) the differences between federal copyright, patent, and trademark protection.

(4) the constitutional and statutory sources of federal intellectual property law.

(5) the relationship between state and federal intellectual property law, and the extent to which federal IP law preempts state IP law.

(6) basic information about how to obtain, license, and enforce copyright, patent, and trademark protection.

(7) how to *apply* legal knowledge about intellectual property law to analyze concrete problem situations.

(8) how to analyze problems that may involve more than one kind of (state and federal) intellectual property law and to determine which law best protects what interests.

(9) the public policies at stake in the federal and state systems of intellectual property law, how well these policies are being served and the tradeoffs among them, and how these policies might be better served.

Problem scenarios: Two major goals of this course are to help students to *apply* the legal knowledge they learn about intellectual property law to analyze concrete problem situations, and to become accustomed to explaining their analyses *orally*. To that end,

throughout the semester, the class will focus on a series of problem scenarios. The texts of the problems will be available on the TWEN course website (subject to a password that will be provided in class). The problems are designed to explore legal issues raised by a particular area of IP law under discussion in concrete fact situations. Often, a problem also illustrates how different areas of IP law apply to different aspects of the same fact situation, or illustrate how these different areas of IP law conflict (e.g., as a matter of federal preemption of state law.)

All students should carefully read and think through the problems before the date on which they are to be discussed in class. Prof. Ashley will lead the discussion of the first few problems until panels have been assigned. Student panels will lead the discussions of all of the subsequent problems. After the seating chart is constructed, the class will be broken down into panels, and a list of panel participants and their email addresses will be posted on the TWEN course website. As the semester progresses, a few days before each problem is scheduled to be discussed, Prof. Ashley will assign the problem to a panel for discussion. He will appoint two panel leaders to organize and lead the discussion. In consultation with the panel (either after class, via email, or via the Discussion board on the TWEN course website), the leaders should assign issues to panel members for discussion, and panel members should consider and coordinate what they will say.

At various points in the semester, Prof. Ashley will place multiple copies of his answers to the problems discussed so far at the Reserve Desk.

Evaluation: There will be two examinations. A midterm exam will cover the first third of the course material (i.e., state intellectual property law, including trade secret misappropriation, which is now partly federal law, and part of federal trademark law). A final exam will cover all of the course material. The relative weights of the exams will be 1/3 for the midterm exam and 2/3 for the final exam.

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Mid-term exam: The mid-term exam will be a modified open-book, take-home examination. It will comprise one essay-type question, and students will be limited to writing a limited number of double-spaced or 1.5-spaced typed pages. The exam will be distributed for download on Friday, October 4, 2019 from noon to 3:00pm. By noon on Monday, October 7, 2019, students must upload their answers. Students will also need to submit an electronic copy via a peer-review website by the later deadline indicated on that website. Instructions will be provided.

The peer-review website will distribute anonymous copies of each student's answer to a small set of other students in the class for peer-reviewing. As a result, each student will receive reviews from peers, and will also review answers of some other students. For each exam to review, the peer reviewer will write a brief commentary evaluating the exam according to Review Criteria that will be available in the Course Materials link of the TWEN course website. The criteria focus on *applying* the legal knowledge learned about intellectual property law to analyzing concrete problem situations. The peer-review commentaries will be sent to the original authors and to Prof. Ashley. Meanwhile, Prof. Ashley will grade the mid-term answers independently of any student peer-reviews and preserving anonymity of authors.

The purpose of the mid-term exam and peer-review exercise is to focus students on the importance and meaning of *applying* legal knowledge to analyzing concrete problems. In addition, students will receive more exam feedback -- from the instructor and from peer-reviewers -- than is typical in a law school course.

A lack of good-faith participation in the peer-reviewing process as evidenced by a failure to provide thoughtful and constructive peer reviews may result in a lower grade on the mid-term.

Final exam: The final exam will be a modified open-book, take-home examination. The exam will be distributed for download on Monday, December 16, 2019 and Tuesday, December 17, 2019. Students must upload their answers within 24 hours. Answers must be

typewritten and must comply with specified constraints on number of pages, minimum fonts, and margins.

Classroom participation is also very important in this course. In addition to the panels for discussing problems, Prof. Ashley may assign particular students responsibility for being prepared to discuss individual readings.

Attendance: The American Bar Association and the School of Law require regular and punctual class attendance (see http://law.pitt.edu/pp/attendance). At the beginning of class, Prof. Ashley will circulate an attendance sheet. It is your responsibility to ensure that you have signed the attendance sheet before leaving class. **Under the attendance policy, if you do not sign the attendance sheet before leaving class, you will be marked absent even if you were actually present in class.** Regular attendance is defined as attendance at not less than 80% of the classes for the semester. Failure to satisfy these attendance requirements will result in your being certified out of the course with a grade of "U" (Unsatisfactory).

No recording policy: Please do NOT make audio or video recordings of the course classroom sessions or live stream them.

Disabilities requiring accommodation: If you have a disability for which you are or may be requesting accommodation, you should contact both the office of the Associate Dean of Students in the Law School (Dean Kevin Deasy; deasy@pitt.edu) and the University Office of DisabilityResources and Services (http://www.drs.pitt.edu), 140 William Pitt Union, (412) 648-7890/(412) 624-3346 (fax), as early as possible in the semester. DRS will verify your disability and determine reasonable accommodations for this course. The Associate Dean of Students will oversee the implementation of accommodations.

Due to the anonymous grading policy, students should **not** discuss exam accommodations with professors. The Associate Dean of Students and the Registrar will ensure that any testing

accommodations are provided through DRS. A comprehensive description of the services of DRS can be obtained at www.drs.pitt.edu.

Schedule of Classes, Readings and Selected General Topics: A general (and tentative) schedule of reading assignments follows. More specific assignments for upcoming classes will be announced in advance during class. You should be prepared to discuss in class all of the reading assigned, including the author's notes and the relevant statutory provisions. We will move through the material at whatever pace seems appropriate for adequate understanding. While we will cover most of the material listed below, it is highly likely that some material will be cut later in the semester; updates to the syllabus will be posted from time to time.

Date	Reading Assignment	Topic
8/26, M	Prob. 1 pp. 1 – 35	**Course Introduction** *Prob. 1 Ace Breweries* **Part 1: Intellectual Property Law in Context** **I. The Sources and Limits of Intellectual Property Law** U.S. Constitution, Article I, Section 8 Golan v. Holder, p. 1 **II. The Nature and Functions of Intellectual Property Law**
8/28, W	" " pp. 37-61	" " **Part 2: State Intellectual Property Law** **I. Rights in Undeveloped Ideas** **A. Theories of Protection** Sellers v. American Broadcasting Co., p. 37 Notes, pp. 42-44 Masline v. N.Y., N.H. & H.R., p. 59 n. 2, Nadel v. Play-By-Play Toys & Novelties, Inc. p. 50
9/2 M		**Labor Day, No class**

9/4, W	pp. 61-77 Prob. 2 Prob. 3	Lueddecke v. Chevrolet Motor Co., p. 44 Notes, pp. 58-64 **B. Limits of Protection: The Place of Ideas in the Competitive Plan** pp. 64-65 *Prob. 2 Abacus Corp.* *Prob. 3 Cutrate Corp.* **II. Unfair Competition** **B. Theories of Protection** **1. Misrepresentation** **2. Misappropriation** Board of Trade of City of Chicago v. Dow Jones, p. 68 Notes, p. 74-77
9/9, M	pp. 78 – 124 Prob. 5A	**III. Trade Secrets** **A. Theory of Protection** Metallurgical Industries Inc. v. Fourtek, Inc., p. 78 Notes, pp. 89-95 *Prob. 5A Dante Dressers* E.I. duPont deNemours v. Christopher, p. 95 Notes, pp. 100-106 Defend Trade Secrets Act of 2016 -- https://www.law.cornell.edu/uscode/text/18/1836 **B. Limits of Protection** **1. Personal Interests: Restraints on Post-Employment Competition.** Wexler v. Greenberg, p. 106 Pepsico v. Redmond, p. 106-117 Reed Roberts v. Strauman, p. 117-120; Notes, p. 120-124
9/11, W	Prob. 5B pp. 124 – 166 Prob. 6	**2. Economic Interests: The Place of Trade Secrets in the Competitive Plan** pp. 124 *Prob. 5B Dante Dressers* **IV. Right of Publicity** **A. Theory of Protection** Carson v. Here's Johnny Portable Toilets, p. 124 White v. Samsung Electronics America, p. 135 Notes, p. 143-149 **B. Limits of Protection**

		Comedy III Productions, Inc. v. Gary Saderup, Inc. p. 149 CBC Distribution, p. 161 Notes, p. 162-166 *Prob. 6 Acme Pictures*
9/16, M	pp. 167 - 194	**Part 3. Federal Law of Intellectual Property** **Note: Jurisdiction and Courts** pp. 167-170 **I. Trademark Law** http://www4.law.cornell.edu/uscode/15/ch22.html **A. Theories of Protection** William R. Warner v. Ely Lilly & Co., p. 174 **A. Requirements for Protection** **1. Use and Use in Commerce** Blue Bell v. Farah Mfg., p. 181 WarnerVision Entertainment, Inc. v. Empire of Carolina, Inc., p. 187 Notes, p. 190-194
9/18, W	pp. 194-239 Prob. 7A	**2. Distinctiveness and Related Statutory Standards: 15 USCA 1052** Security Center v. First Nat'l Security Centers, p. 195 King-Seeley Thermos v. Aladdin Industries, p. 203 Notes, p. 207-212 Note: Trademark Abandonment, p. 212-214 In re Budge Manufacturing, p. 214 Notes, p. 218-221 In re NAD, Inc. p. 221 Notes, p. 224-226 *Prob. 7A Servo Company of America* Application of Sun Oil Co., p. 226 In re California Innovations, p. 229 Notes, p. 236-239
9/23, M	pp. 239–273 Prob. 7B	**3. Statutory Subject Matter** a. Types of Marks b. Content Qualitex v. Jacobson Products, p. 242 Notes, pp. 249-253 Administrative Procedures, Incontestability, Supplemental Register, Madrid System, pp. 253-261 **D. Rights and Remedies 1. Rights**

		a. Geographic Boundaries United Drug v. Rectanus, p. 261 Dawn Donut v. Hart's Food Stores, p. 262 Notes, p. 270-273 *Prob. 7B Servo Co. of America*
9/25, W	pp. 273 – 340	**b. Product and Service Boundaries** Mead Data Central v. Toyota Motor Sales, p. 274 Notes, p. 281-284 Moseley v. V Secret Catalogue, Inc., p. 284 Starbucks v. Wolfe's Borough Coffee, p. 285 Notes, p. 299-301 **2. Limitations on Rights** New Kids on the Block v. News America Publishing, Inc., p. 301 Notes, p. 308-311 Louis Vuitton Malletier v. Haute Diggity Dog, p. 311 Notes, pp. 320-322 Mattel v. MCA Records, p. 322 Louis Vuitton Malletier v. Haute Diggity Dog, p. 330 Notes, pp. 335-337 Note: Domain Names, p. 337-340
9/30, M	pp. 352-405	**3. Remedies (OMIT: p. 340-352)** **4. Secondary Liability** Tiffany (NJ) Inc. v. eBay Inc., p. 352 Note, p. 364-365 **E. Infringement** Pickle-Rite v. Chicago Pickle, p. 366 Virgin Enterprises Ltd. v. Nawab, p. 372 Indianapolis Colts, Inc. v. Metropolitan Baltimore Football Club Ltd., p. 383 Multi Time Machine, Inc. v. Amazon.Com, Inc., p. 386 Notes, p. 401-405
10/2, W	pp. 405 – 434 Prob. 8	**E. Federal Unfair Competition Law: Lanham Act Sec. 1125(a)** Two Pesos v. Taco Cabana, p. 405 Notes, p. 416-417 Wal-Mart Stores v. Samara Brothers, p. 417

		Notes, p. 423-424 TrafFix Devices v. Marketing Displays, p. 424 Notes, pp. 430-434 *Prob. 8 Gasco*
10/4-10/7		**Take home mid-term exam: Download Fri. 10/4 from noon to 3:00 pm; Upload by noon Mon. 10/7**
10/7, M		**Transition from trademark to patent law**
10/9, W	pp. 435 – 481	**II. Patent Law** http://www4.law.cornell.edu/uscode/35/ **A. Requirements for Protection** **1. Statutory Subject Matter** Diamond v. Chakrabarty, p. 439 Notes, 446-448 Bilski v. Kappos, p. 448 Notes, pp. 457-460 Mayo Collaborative Services v. Prometheus Laboratories, p. 460 Notes, p. 472-474 **2. Statutory Standards** **a. Section 102: Novelty and the Statutory Bars** Application of Borst, p. 475 Notes, 478-481
10/14, M	pp. 482 – 548	Pfaff v. Wells Electronics, p. 482 TP Laboratories v. Professional Positioners, p. 488 Notes, pp. 497-501 **b. Section 102(g): Priority** Paulik v. Rizkalla, p. 501 Notes, pp. 505-508 **c. Section 103: Nonobviousness** Graham v. John Deere, p. 508 Stratoflex v. Aeroquip, p. 517 Notes, pp. 527-533 KSR Int'l v. Teleflex, p. 533 Notes, pp. 546-548
10/16, W	pp. 556-566 Prob. 9A	**d. (Omit pp. 548-556)** **e. Utility** Lowell v. Lewis, p. 556

		Brenner v. Manson, p. 557 Notes, pp. 563-566 **(OMIT: p. 566-594)** *Prob. 9A John Elroy*
10/21, M	pp. 594 – 618 pp. 638 - 673	**C. Rights and Remedies** **1. Rights** Paper Converting Machine v. Magna-Graphics, p. 594 Wilbur-Ellis v. Kuther, p. 604 Notes, pp. 605-618 **2. Remedies (OMIT: pp. 618-637)** **D. Infringement** Eibel Process v. Minn. & Ont. Paper, p. 638 Graver Tank v. Linde Air Products, p. 639 Warner-Jenkinson v. Hilton Davis Chemical, p. 646 Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd. p. 658 Notes, pp. 668-673
10/23, W	Prob. 9B Prob. 10	*Prob. 9B John Elroy* *Prob. 10 Ardmore Corp.*
10/28, M		Transition from patent law to copyright law
10/30, W	pp. 713-727	**III. Copyright Law** http://www4.law.cornell.edu/uscode/17/ **A. Requirements for Protection** **1. Formalities a. Notice and Publication**
11/4, M	pp. 727-746	**2. Statutory Subject Matter** Notes, pp. 731-734 Baker v. Selden, p. 734 Notes, pp. 739-741 **3. Original Expression a. The Originality Standard** Sheldon v. Metro-Goldwyn Pictures, p. 741 Bleistein v. Donaldson Lithographing, p. 742
11/6, W	pp. 746 – 772	Feist Publications v. Rural Telephone Service, p. 746 Notes, pp. 755-760 **B. Ownership 1. Works For Hire and Joint Works** Community for Creative Non-Violence v. Reid, p. 762 Notes, pp. 771-772

11/11, M	pp. 772 – 803	Erickson v. Trinity Theatre, Inc., p. 772 Notes, pp. 780-782 **2. Transfers of Ownership** New York Times Co., Inc. v. Tasini, p. 783 Notes, pp. 792-795 **3. Term** pp. 795-799 **4. Termination of Transfers** pp. 799-803
11/13, W	pp. 803 – 854	**C. Rights and Remedies 1. Rights** **a. The Statutory Rights and Limitations** Section 106. Exclusive Rights in Copyrighted Works, p. 803 Notes, pp. 808-809 Cartoon Network LP, LLLP v. CSC Holdings, Inc., p. 810-819 Notes, pp. 819-820 Mirage Editions v. Albuquerque A.R.T., p. 820 Lee v. A.R.T. Co., p. 823 Notes, pp. 826-827 UMG Recordings, Inc. v. Augusto, p. 827 Notes, pp. 833-835 Cartoon Network LP, LLLP v. CSC Holdings, Inc., p. 835 American Broadcasting Companies, Inc. v. Aereo, Inc., p. 843 Notes, pp. 851-854
11/18 M	pp. 854 – 889	**b. Fair Use** Campbell v. Acuff-Rose Music, p. 854 Bill Graham Archives v. Dorling Kindersley Ltd., p. 867 Notes, pp. 874-882 **c. Secondary Liability** Fonovisa v. Cherry Auction, p. 872 Notes, pp. 888-889
11/20 W	pp. 889 – 923	**d. Exclusive Rights and New Technologies** Sony Corp. of America v. Universal City Studios, p. 891 Notes, pp. 904-910 Metro-Goldwyn-Mayer Studios v. Grokster, p. 910 Notes, pp. 923

		2. Remedies (OMIT: p. 924-944)
11/25 M	pp. 944 – 963 pp. 998-1007	**D. Infringement** Nichols v. Universal Pictures Corp., p. 947 Notes, pp. 952 Selle v. Gibb, p. 953 Notes, pp. 961-963 **F. Preemption of State Law, Section 301,** pp. 998-1007
11/27 W	**NO CLASS**	**Thanksgiving Holiday**
12/2 M	Problems 11a, b, 12	*Problems 11a,b Giles Naylor* *Problem 12 Cooking for Runners*
12/4, W	" "	" "
12/16 OR 12/17		**24 hour take home final exam: Download Mon. or Tue. from noon to 3:00 pm; Upload within 24 hours**