

Intellectual Property Course

Syllabus

Fall 2021

Monday and Wednesday 1:30-2:45pm

Location: Room 251

Law 630-3 Section § 001

Professor Lorelei Ritchie

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Course Description and Learning Expectations: This course provides an introduction and overview of intellectual property law, which has, particularly in recent decades, grown to be a dominant force in the United States economy. After discussing the policies underlying the protection of intellectual property rights, we will cover trade secret, patent, copyright, and trademark law, and related doctrines such as the right of publicity. This course provides a foundation for advanced intellectual property courses. Alternatively, this course is also appropriate for students who seek a general understanding of how to recognize and manage intellectual property issues that are likely to arise in many other areas of legal practice, including business, family, and criminal law, among others.

It is expected that we will have some guest lecturers from government and private practice, which will help expand students' understanding, as well as give students more opportunity to ask questions about intellectual property law and practice. Students will continue to focus on being ethical and responsible attorneys-in-training, including via in-class discussions and presentations.

Casebook: The required reading for this course is a two-part casebook: Volumes I and II of Peter S. Menell, Mark A. Lemley, & Robert P. Merges, *Intellectual Property in the New Technological Age* (2021) – further information about the IPNTA casebook is available at <https://clause8publishing.com/ipnta/>. We will also refer sometimes to the relevant statutes. Although a compilation of statutes is available for purchase, you are not required to purchase that for this class, and you may instead access the statutes for free online.

If you have some trouble accessing the two volumes of the casebook from the SIU bookstore, you may obtain it from Amazon via the link above (or through a search on Amazon). Please be sure to get the 2021 version, since

intellectual property laws are constantly evolving to adapt to new technology.

Attendance Policy and Class Participation: Under the Rules of the School of Law, students may not accumulate absences in a course numbering in excess of twice the credit hours for the course during the semester. The Rules provide for three options if a student accumulates absences in excess of the allowable number. The professor may recommend that: (a) the student be given the lowest possible grade; (b) the student be given a “W”; or (c) the student be allowed to continue in the course with a grade reduction.

Class sessions will often include in-class group projects, which are intended to be fun opportunities to collaborate with “colleagues” on various intellectual property projects. There will be some in-class (not take home) writing assignments. Starting with week 2, I will assign a group of students (likely 3-5 per group) to be “thought leaders” for each class. So, while I will encourage any interested student to participate in any class discussion, the assigned “thought leaders” will be “on call,” and will be asked to play a more active role in that class discussion.

Exams & Grading: There is no midterm for this course. There will be an open-book, essay-style final exam. I may reserve up to 10% of your grade to be awarded for quality of in-class participation (or, on the negative side, your grade may be lowered by excessive absences or poor conduct in class).

Recording of Classes: The professor may record classes via audio or video. Classes may also be recorded for ADA compliance purposes. No recordings should be used or disseminated without the professor’s permission.

Emergency Procedures: The law school administration asks that you become familiar with **Emergency Preparedness @ SIU**. Emergency response information is available on posters in buildings on campus, on the Emergency Preparedness @ SIU website, and through text and email alerts. To register for alerts, visit: <http://emergency.siu.edu/>.

Disability Policy: SIU Carbondale is committed to providing an inclusive and accessible experience for all students with disabilities. Disability Support Services coordinates the implementation of accommodations. If you think you may be eligible for accommodations but have not yet obtained approval please contact DSS immediately at 618-453-5738 or disabilityservices.siu.edu. You may request accommodations at any time, but timely requests help to ensure accommodations are in place when needed. Accommodations and services are determined through an interactive process with students and may involve consideration of specific course design and learning objectives in consultation with faculty. Upon completion of a

Disability Accommodation Agreement with DSS, students should bring the agreements for each course to the School of Law Registrar's Office to ensure the School of Law provides the proper classroom and examination accommodations. Accommodation [request](#) and [renewal](#) forms can be found here: <https://law.siu.edu/academics/>.

Saluki Cares: The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-2461, or siucares@siu.edu, <http://salukicare.siu.edu/index.html>. At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is 618- 453-3135.

COVID-19 and Public Health: We will comply with all public health and university mandates. The university -- and more specifically the law school -- will follow federal, state and county public health recommendations and mandates in all decisions relating to university operation.

Workload Expectation: The American Bar Association standards for accrediting law schools contain a formula for calculating the amount of work that constitutes one credit hour. According to ABA Standard 310(b)(1), a “credit hour” is an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time. This is a 3-credit hour class, meaning that we will spend two 75-minute blocks of time together each week (scheduled for Monday and Wednesday). The amount of assigned reading and out of class preparation should take you about 6 hours for the week. All told, applying the ABA standard to the number of credits offered for this class, you should plan on spending a total of 9 hours per week (3 in class and 6 preparing for class) on course-related work.

Tentative List of Reading Assignments: Except as otherwise noted, all references are to the assigned IPNTA Casebook. Each week, I will confirm the following week's reading assignment at the end of Wednesday's class. I will also plan to post PowerPoint slides for each week by Sunday evening, so that you have them available before class. In order to avoid assigning an excessive amount of reading, we will sometimes skip around a little bit.

Please complete assigned reading in advance of each class so that you are prepared to participate in, and benefit from, the discussion in class (So, by way

of example, please complete the reading assignment listed for Week 1/Class 1 before the first day of class, August 16, 2021). Please also make sure that have access to your casebook for reference during each class session.

Tentative Class/Reading List: [NEED TO UPDATE]

Class	Date	Topic	Assignment
1	8/16	I. Introduction	pp1-39
2	8/18	II. Trade Secret Law A. Introduction B. Subject Matter	pp44-79
3	8/23	C. Misappropriation of Trade Secrets D. Proper Means and Immunity E. Agreements to Keep Secrets F. The Case of Departing Employees G. Remedies	pp79-85; 92-93; 106-113; 140-149
4	8/25	III. Patent Law A. Introduction B. Elements of Patentability (novelty)	pp164-177; 177-190; 202-205; 210-214
5	8/30	Possible Guest Speaker; Reading TBA	TBA
6	9/1	Elements of Patentability cont'd (nonobviousness)	pp215-241
7	9/6	Labor Day – No Class (out of class assignment TBA)	TBA
8	9/8	Elements of Patentability cont'd (utility/disclosure)	pp241-280
9	9/13	Elements of Patentability cont'd (subject matter)	pp282-309
10	9/15	C. Administrative Patent Review Possible Guest Speaker	pp325-333
11	9/20	D. Claim Construction E. Infringement	pp334; 337-339 376-409
12	9/22	F. Defenses G. Remedies	pp410-432 440-465
13	9/27	H. Design Patents	pp465-494

14	9/29	IV. Copyright Law A. Introduction B. Requirements C. Copyrightable Subject Matter	pp512-541; 549; 583 (Volume II)
15	10/4	D. Ownership and Duration E. Rights and Infringement	pp 612-644
16	10/6	Rights and Infringement cont'd	pp651-661 690-691; 695-701 709-723
17	10/11	Indirect Liability F. Defenses (Fair Use)	pp759-762; 788-792; 797-835
18	10/13	Defenses cont'd G. Remedies	pp890-907
19	10/18	V. Trademark Law A. Introduction B. What Can Be Protected as a Trademark? C. Establishment of Trademark Rights	pp923-937; 957-964
20	10/20	Priority Trademark Examination and Procedures	pp998; 1018-1032
21	10/25	Infringement 1038-1051; 1066-1068 Secondary Infringement	pp1038-1066 1102-1112
22	10/27	Dilution	pp1081-1098
23	11/1	D. Trademark Liability Analysis False advertising Abandonment First Sale	pp1114-1132; 1144; 1146
24	11/3	E. Defenses/Fair Use F. Remedies Cybersquatting	pp1148-1165 1170-1177 1100-1102
25	11/8	Possible Guest Speaker; Reading TBA	TBA
26	11/10	VI. State IP Protections D. Right of Publicity	pp1261-1278
27	11/15	Possible assignment TBA	TBA
28	11/17	Semester Review	

