

Intellectual Property Course

Syllabus

Fall 2022

Tuesday and Thursday 9am-10:15am

Location: Room 164

Law 630-3 Section § 001

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Office hours: Tuesday and Thursday, 10:30-noon; or by appointment

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* (2022) – 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, including via <https://www.law.cornell.edu/>.

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 2022 version, since intellectual property laws are constantly evolving to adapt to new technology.

Class Participation, Writing, and Group Discussion: 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, for which you will receive feedback as part of the class and group discussions. 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, and while any and all other students may also be asked to engage in the class discussion, the assigned “thought leaders” will be officially “on call,” and will be asked to play a more active role in that class discussion, including discussion of the assigned cases for that day. Consistent with our role in preparing students to be responsible, ethical lawyers-in-training, please treat the classroom, and everyone in it, with the respectful demeanor and discussion that you would display in a courtroom.

Attendance Policy and Grading: 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.

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, including via the group discussions (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: We ask 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.

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, <https://salukicare.siu.edu/>. Assistant Dean Judi Ray is available at the School of Law to help students access university resources. Please email her at judiray@siu.edu, or call 618-453-3135.

COVID-19: SIUC's policy on face masks and social distancing is consistent with the guidance from the Centers for Disease Control and Prevention and the Illinois Department of Public Health. For up-to-date information, students, faculty, and staff should visit SIUC's COVID website (<https://siu.edu/coronavirus>), which includes the Saluki Safety Plan. People can also send email to pandemicinfor@siu.edu.

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 Thursday's class. I will also plan to post PowerPoint slides for your reference. 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 23, 2022). Please also make sure that have access to your casebook for reference during each class session.

Tentative Class/Reading List:

Date	Topic	Assignment
8/23	I. Introduction	pp1-39
8/25	II. Trade Secret Law A. Introduction B. Subject Matter	pp43-52; 67-81
8/30	C. Misappropriation of Trade Secrets D. Proper Means and Immunity E. Agreements to Keep Secrets F. The Case of Departing Employees G. Remedies	pp83-89; 90-93; 97; 111; 116-118; 145-146
9/1	III. Patent Law A. Introduction B. Elements of Patentability (novelty)	pp168-182; 192; 214-218
9/6	Elements of Patentability cont'd (nonobviousness)	pp220-241; 243-246
9/8	Possible Guest Speaker	TBA
9/13	Elements of Patentability cont'd (utility/disclosure)	pp246-287
9/15	Elements of Patentability cont'd (subject matter)	pp288-298
9/20	C. Administrative Patent Review Possible Guest Speaker	pp332-339
9/22	D. Claim Construction E. Infringement	pp340; 384-396; 400-407

9/27	F. Defenses G. Remedies	pp418-419; 424; 429-437; 439-441; 449-456; 458-466
9/29	H. Design Patents	pp474-500
10/4	IV. Copyright Law A. Introduction B. Requirements C. Copyrightable Subject Matter	pp519-525; 528-535; 549-550; 552-554; 556; 593-606 (Volume II)
10/6	D. Ownership and Duration E. Rights and Infringement	pp619-628; 632; 642-643; 656-657;
10/11	Rights and Infringement cont'd	pp660-670; 704-709; 716-732
10/13	Indirect Liability F. Defenses (Fair Use)	pp767-775; 796-800; 805-819
10/18	Defenses cont'd G. Remedies	pp897-908; 909-914
10/20	Possible Guest Speaker	TBA
10/25	V. Trademark Law A. Introduction B. What Can Be Protected as a Trademark? C. Establishment of Trademark Rights	pp930-933; 941-956
10/27	Priority Trademark Examination and Procedures	pp1003; 1022-1037
11/1	Infringement Cybersquatting	pp1043-1057; 1104-1106
11/3	Dilution	pp1085-1103
11/8	Election Day Holiday; No Class	
11/10	D. Trademark Liability Analysis False advertising Abandonment First Sale	pp1119-1130; 1134-1151;

11/15	Secondary Liability E. Defenses/Fair Use F. Remedies	pp1151-1168; 1173-1174
11/17	Possible Guest Speaker; Reading TBA	TBA
11/22 and 11/24	Thanksgiving Holiday; No class	
11/29	VI. State IP Protections D. Right of Publicity	pp1266-1283
12/1	In-class Semester Review	