



**Intellectual Property (Law 388)**  
Professor Eric Goldman  
Spring 2014

**1. SESSIONS.** The course meets in Bannan 241 on Mondays and Wednesdays 10:30-11:45 am from January 13 to April 28, except we will not meet on January 20 (MLK Day) or March 3 (Spring Break), and we will meet on February 18 rather than February 17.

**2. BOOKS.** Merges, Menell & Lemley, *Intellectual Property in the New Technological Age*, Sixth Edition (ISBN 978-1454820093), plus a PDF supplement available in Camino. I don't assign a statutory supplement, but you can find free versions from CALI's eLangdell:

- Patent: <http://elangdell.cali.org/content/intellectual-property-supplement-volume-ii-patent>
- Copyright: <http://elangdell.cali.org/content/intellectual-property-supplement-volume-i-copyright>
- Trademark: <http://elangdell.cali.org/content/intellectual-property-supplement-volume-iii-trademark>

Pay close attention to the statutes reprinted in the casebook.

**3. READINGS** (subject to change).

Introduction and Overview (approx. 1 week): 1-31 [CPP #1] and pages 2-8 of the supplement

Trade Secrets (approx. 2 weeks): 33-57 [CPP #2], 60-63, 66-75, 83-87, 89-112 + page 9 of the supplement, 117-122 [CPP #3 and #4]

Patents (approx. 3 weeks): pages 10-20 of the supplement, 123-139, 156-182, 185-201, 205-211, 224-232, 234-278 [CPP #5], 284-328 [CPP #6], 370-389, 399-409, 415-427

Copyright (approx. 3½ weeks): 429-466 [CPP #7], 480-522 [CPP #8], 526-555 [CPP #9], 572-651 + page 21 of the supplement [CPP #10 and #11], 682-684, 751-761 [CPP #12]

Trademarks (approx. 3 weeks): 763-845 [CPP #13], 876-904, Pillsbury v. Milky Way (page 22 of the supplement), 953-982

Publicity Rights (approx. 1 week): 1064-1096

We will discuss only a few of the casebook problems (see the list below), so feel free to skim the other ones.

#### 4. GRADING.

**Attendance.** In-class material and discussions are crucial to this course, so I expect you to attend every class session. However, because our lives are unpredictable, you have five “free passes” for unexcused absences. Let me know about an upcoming absence only if you are requesting that I excuse it. I excuse absences rarely; and job interviews don’t get an excuse (although they are good news!). Your sixth unexcused absence may trigger a significant penalty to your final course grade. At my option, I may drop you from the course or give you an F upon a seventh unexcused absence. I don’t penalize being tardy, but late arrivals can disrupt the class, so please try to arrive on time. I have a small “perfect attendance” prize if you attend every class session.

I will circulate a sign-in sheet during each class session. It is your responsibility to sign the sheet before I leave the room that day. **IF YOU COME TO CLASS BUT FAIL TO SIGN IN, IT WILL COUNT AS AN ABSENCE.** Make sure to sign in!

**Short Papers.** I’m trying a new writing assignment this semester. I have several objectives for this requirement:

- I want you to actively engage with the material during the semester.
- I hope you’ll speak up more in class if you’ve thought more about the material.
- I want you to practice your writing.

Each short paper should not exceed 500 words. I will grade each short paper on a 0-3 point scale. Most papers will get a 2 (roughly, “met expectations”). Occasionally I will award 3s for papers that exceed my expectations and 1s for papers that didn’t meet my expectations because I feel (in my sole and arbitrary judgment) that the paper was rotely or perfunctorily executed. 0s are for process violations. I expect it will be harder to get 3s as the semester goes on, so procrastination may reduce your grading upside.

*Category A: Reflection Papers.* Write two papers reflecting on your first-hand interactions with intellectual property. Examples of possible topics:

- If you have tried to protect IP (copyright, trademark, patent) by making a government filing, reflect on the process.
- Reflect on a time when you signed an agreement about IP (for example, an NDA or a license to publish your work).
- If you’ve signed a non-compete agreement, reflect on that experience.
- If you’ve ever bought a counterfeit good, how did that happen and what should the law do about it?
- We encounter IP issues on an hour-by-hour basis. Have you ever downloaded music without a license? Written fan fiction? Borrowed a friend’s software or video game disk so you could copy it to your hard drive? Rented a video or did pay-per-view and invited all of your friends to watch? Shared Netflix passwords? Parodied a brand or a celebrity? Discuss how the legal mechanisms worked, or didn’t, in your particular situation to accomplish the goals of IP.

- You have bought many items protected by IP: books, movies, music, branded goods, patented items. Discuss a time when the IP protection interfered with your enjoyment of the item you purchased. For example, maybe you wanted to move your iTunes downloads to a new device; or you bought a device (say, a laser printer) where only the manufacturer offered replacement or complementary parts. What happened and how did it affect your views as a consumer?

This list isn't exhaustive. Feel free to develop your own topics, as long as they involve your first-hand dealings with intellectual property. PLEASE, whatever your topic, don't disclose any clear violations of the law or violate any confidentiality restrictions in your papers.

You must submit at least one reflection paper no later than February 26, 10 am. The second reflection paper is due no later than April 28, 10 am.

*Category B: Case/Problem Papers.* Also, write short papers on two of the following topics (the brackets indicate the associated class material):

- 1: [IP Theory] Do you think our current laws over- or under-protect IP?
- 2: [Rockwell v. DEV] You are DEV's counsel. Write some discovery requests that you think will elicit relevant information from Rockwell but are as onerous to Rockwell as ethically permissible. Explain the legal theories that make your requests relevant.
- 3: Do problem 2-1.
- 4: Do problem 2-2.
- 5: [City of Elizabeth v. Pavement Company] Speculate on some reasons why Nicholson didn't apply for patents when he first installed the pavement.
- 6: Do problem 3-6.
- 7: [Feist v. Rural Telephone Service] You are Rural Telephone Service's counsel. After the ruling, discuss some ways that you can continue to generate revenue from your white pages data despite the ruling.
- 8: [Aalmuhammed v. Lee] You are Spike Lee's counsel. Even though he won the ruling, suggest some things he might do differently.
- 9: Do problem 4-28.
- 10: [Harper & Row v. The Nation] Explain why you think the court got it right or wrong.
- 11: [American Geophysical v. Texaco] You're a Texaco researcher. Following this ruling, brainstorm some ways you can comply with the ruling and still keep track of new research developments in your field.
- 12: Do problem 4-24.
- 13: [Zatarain's v. Oak Grove Smokehouse] Do you think Zatarain's made a good business decision to bring the lawsuit? Why or why not?

Case/Problem papers are due before 10:00 am on the day we discuss the case or problem. In the reading schedule above, I've indicated the approximate place where each paper will be due. I will give more precise estimates as we go.

*Short Paper Submissions:* Upload all papers to the applicable assignment in Camino. I prefer PDF submissions, but Microsoft Word is OK too. If you wish to make a submission in some other format, please contact me. Make sure you put your name on your paper.

*Short Paper Grading:* Each short paper is worth 10% of the points towards the overall course grade. If you miss a short paper's deadline for any reason, I will not grade that paper, period. It can be hard to find grading time in my schedule, so my apologies if it takes me a while to return your graded paper.

**Final Exam.** The final exam will constitute 60% of the points towards the overall course grade. The final exam will be a take-home exam, probably consisting of 1-2 essay questions with a maximum word count for each. I expect you will be able to checkout and return your exam electronically through Examsoft. The earliest checkout time will be May 5 at 9:00 am and the latest check-in time will be May 20 at noon (all Pacific time). The Examsoft timestamps are irrefutable evidence of the final exam checkout and check-in times.

You will have 73 hours to complete the final exam, starting from the time you download it. Although you will have over 3 days to write your answer, the final exam will not be materially different than I would assign as an in-class exam. It's up to you to decide how much time to spend on the final exam, but I expect most work done after the sixth or seventh hour of work will not materially improve the final exam grade (or may start reducing it).

Important note: I do not accept late exams. **You will fail the course if your final exam is not returned on time—even you are late by only 1 minute.** NO EXCUSES. In particular, you will fail the course if, at the deadline as you are just uploading your masterfully written answer, your computer spontaneously shuts down, your neighbors are watching porn videos on your shared Internet connection, or you experience any other technological snafu that may seem unexpected but is actually Murphy's Law in action. As a result, only the most courageous or foolish students will actually wait to upload their final exam close to the deadline. Please don't learn the hard way how seriously I take deadlines.

I strongly encourage you to review my past exams to understand my exam style. You can find past exams and sample answers at my website (note the law may have changed in the interim). If you are new to the Santa Clara Law community, PLEASE contact me to arrange a sample test that ensures you understand my expectations.

**5. RECORDING.** I hope to audio-record all course sessions (except guest lectures) and distribute those recordings to you. I anticipate uploading the audio recordings to iTunesU, which is available to the public. If you have any concerns about being recorded, please let me know ASAP.

**6. OFFICE HOURS.** Unless I am teaching class, at a meeting or traveling, I am typically in my office between 9:30 and 6 M-F. I can schedule a time to speak with you at your convenience. Please email me to make an appointment. I'm also happy to talk by email.

## 7. CONTACT.

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When emailing me, please reference “IP” in the subject line to avoid unintentional deletion as spam.

If you want to see some of the IP issues I’m tracking, consider reading my blogs [<http://blog.ericgoldman.org> or <http://blogs.forbes.com/ericgoldman>] or following me at Twitter [username @ericgoldman]. More course-related materials, including an electronic copy of this syllabus, are available at my personal website, <http://www.ericgoldman.org/ip.html>.