

International Intellectual Property

Fall Semester 2016

Law 680-1001

Monday and Wednesday
10:35 am - noon
Room 117
3 credits
Open enrollment

Office hours: Wednesday 9:15 – 10:15 am
and by appointment
*(see special policy below concerning the
period between the final review session and
the final exam)*

GENERAL INFORMATION

Course Description

Modern international trade and communication technologies make it imperative for intellectual property (“IP”) lawyers to be prepared to face a variety of problems that transcend national borders. This course provides a survey of cross-border problems in IP law (particularly copyright, patent, and trademark law) and reviews the principles, treaties and institutions that regulate IP rights at the international level, including the political economy that has shaped the international solutions to IP cross-border problems.

Learning Outcomes

The course will provide students with a transnational and international perspective on IP law – a perspective that is indispensable not only for the current practice of IP law but also for shaping national trade and other policies. Students will learn to detect transnational issues in IP cases and analyze complex conflict-of-laws issues while recognizing major differences among the IP laws of various countries, and also to advise clients on legal, business, and other aspects of transnational transactions involving IP. Students will acquire a thorough knowledge of international treaties on IP law, appreciate the impact of international law on national law, understand the various forces involved in and policies influencing international negotiations on IP, and be able to counsel clients on the current course of international IP law.

Enrollment

Enrollment is open; there are no prerequisites for this course. This course is one of the courses that qualifies as a prerequisite for the Advanced Intellectual Property Seminar.

Texts

Paul Goldstein, Marketa Trimble, *International Intellectual Property Law*, 4th edition, Foundation Press, 2016 (“casebook”)*

Paul Goldstein, Marketa Trimble, *International Legal Materials On Intellectual Property*, 2014 Statutory Supplement, Foundation Press, 2014 (“supplement”)*

Additional materials will be posted on TWEN.

Grading

Class participation will be 30% of the final grade. While class attendance is expected, attendance alone is not sufficient; students should also be prepared to participate actively in class discussions and react to questions posed during class. Insufficient attendance will be reflected in the participation portion of the Final Grade (see the Attendance Policy below).

The final exam will be 70% of the Final Grade and will be a three-hour open-book exam that will consist of two essay questions. The exam will include topics discussed during class, whether or not the topics are covered in the casebook; therefore, class attendance will be imperative for success on the final exam.

Note to LLM Students: Your grade will be pass/fail. To receive a passing grade you must perform at least at a C+ level.

Attendance Policy

A regular attendance and on-time arrival to classes are expected. For absences for religious reasons see the Religious Holidays Policy below.

Note on the Use of Computers and Any Other Electronic Devices in the Classroom

* Professor Trimble donates to the Boyd School of Law Student Scholarship fund the royalties that she receives from the publisher for sales of her publications to students in this class.

Computers and any other electronic devices may be used only for taking notes and using online materials necessary for class, but not for other purposes. I reserve the right to disallow computers and any other electronic devices if other uses become a problem.

Policy on Student-Professor Contact between the Final Review Session and the Final Exam

The last class of the semester will be the final review session. Students must email me (marketa.trimble@unlv.edu) by 9 am the day before the session the questions that they want covered in the final review session.

I will not be available to meet with students between the final review session and the final exam on Tuesday, December 13, 2016. However, students may email questions to me (marketa.trimble@unlv.edu) by 9 am on Monday, December 12, 2016, and I will answer the questions and make the answers, without disclosing the name of the questioner, available to all students in the course.

UNLV-required Disclosures:

Academic Misconduct—Acceptance to the William S. Boyd School of Law (the Law School) represents much more than admission to the study of an intellectual discipline. The privilege of admission comes with a unique set of responsibilities, not only to fellow students, but to the Law School, to the legal profession, and to the public. The legal profession demands the highest degree of trustworthiness, honesty and public integrity. As future members of that profession, students of the Law School are bound to observe principles that reflect the same high standards that govern the practice of law. This Student Honor Code (the Honor Code) sets forth conduct that is prohibited, and it establishes minimum standards for student professional responsibility. The standards of conduct in the Honor Code are in addition to the standards set forth in the UNLV Student Conduct Code and the Law School Student Policy Handbook. Violations of the Honor Code will be subject to the procedures and sanctions of the Honor Code, as set forth below. <https://portal.law.unlv.edu/files/portal/Student%20Handbook.12-13.Honor%20Code.pdf>

Academic integrity is a legitimate concern for every member of the campus community; all share in upholding the fundamental values of honesty, trust, respect, fairness, responsibility and professionalism. By choosing to join the UNLV community, students accept the expectations of the Student Academic Misconduct Policy and are encouraged when faced with choices to always take the ethical path. Students enrolling in UNLV assume the obligation to conduct themselves in a manner compatible with UNLV's function as an educational institution.

An example of academic misconduct is plagiarism. Plagiarism is using the words or ideas of another, from the Internet or any source, without proper citation of the sources. See the *Student Academic Misconduct Policy* (approved December 9, 2005) located at: <https://www.unlv.edu/studentconduct/student-conduct>.

Academic Success Program/CASEJ—The Boyd Academic Success Program assists students in removing barriers to academic success. This includes reviewing past exams, giving sample exams or hypotheticals, evaluating study habits, and assisting with time and stress management issues.

The Academic Success Program also provides a series of pre-bar exam lectures to assist in preparing to take the bar, as well as opportunities for thoughtful feedback and individualized assistance in bar preparation through the bar prep period. More information can be found here: <https://law.unlv.edu/academics/asp/current-students>

Copyright—The University requires all members of the University Community to familiarize themselves with and to follow copyright and fair use requirements. You are individually and solely responsible for violations of copyright and fair use laws. The University will neither protect nor defend you nor assume any responsibility for employee or student violations of fair use laws. Violations of copyright laws could subject you to federal and state civil penalties and criminal liability, as well as disciplinary action under University policies. Additional information can be found at: <http://www.unlv.edu/provost/copyright>.

Disability Resource Center (DRC)—The UNLV Disability Resource Center (SSC-A 143, <http://drc.unlv.edu/>, 702-895-0866) provides resources for students with disabilities. If you feel that you have a disability, please make an appointment with a Disabilities Specialist at the DRC to discuss what options may be available to you. If you are registered with the UNLV Disability Resource Center, bring your Academic Accommodation Plan from the DRC to the law school Registrar's office to develop strategies for implementing the accommodations to meet both your needs and the requirements of the course.

Law Library—The Wiener-Rogers Law Library provides resources to support students' access to information. Reference librarians are available for consultation in person or by phone or email. For library services and resources, see <https://law.unlv.edu/law-library> and <https://law.unlv.edu/academics/law-library/student>.

Religious Holidays Policy—Any student missing class quizzes, examinations, or any other class or lab work because of observance of religious holidays shall be

given an opportunity during that semester to make up missed work. The make-up will apply to the religious holiday absence only. It shall be the responsibility of the student to notify the instructor **within the first 14 calendar days of the course for fall and spring courses (excepting intersession courses), or within the first 7 calendar days of the course for summer and modular courses**, of his or her intention to participate in religious holidays which do not fall on state holidays or periods of class recess. For additional information, please visit: <http://catalog.unlv.edu/content.php?catoid=6&navoid=531>.

Rebelmail—Rebelmail is UNLV’s official email system for students. It is one of the primary ways students receive official university communication such as information about deadlines, major campus events, and announcements. All UNLV students receive a Rebelmail account after they have been admitted to the university. Students’ email prefixes are listed on class rosters. The suffix is always @unlv.nevada.edu. The law school has two general email lists for students: INFO and ADMIN-MSGS. Some faculty will use TWEN or personal gmail groups to send specific class messages.

***** Continue to the Next Page for Class Assignments *****

SYLLABUS

- Class 1** (August 29) *Introduction, Overview of Types of Intellectual Property, Territoriality and National Treatment*
Casebook
 pp. 1-24
Supplement
 pp. 3-4 (TRIPS Art. 3 and 4), p. 123 (Berne Art. 1 and 2(1)), p. 125 (Berne Art. 4 and 5), pp. 185 (WIPO Perf Art. 3 and 4), pp. 197-198 (Rome Art. 2-4), pp. 255-256 (Paris, Art. 1-3)
- Class 2** (August 31) *Choice of Forum and Choice of Law I*
Casebook
 pp. 24-51
Supplement
 p. 333 (EPC Art. 64), skim pp. 358-359 (EPC Protocol Art. 1-8)
- Monday, September 5, 2016 – no class (Labor Day recess).**
- Class 3** (September 7) *Choice of Forum and Choice of Law II, Recognition and Enforcement*
Casebook
 pp. 51-90
- Class 4** (September 12) *Economics, Technology, and Development*
Casebook
 pp. 90-131
Supplement
 pp. 23-24 (TRIPS Art. 65-67 and 69)

- Class 5** (September 14) *Trade Principles and Processes*
Casebook
pp. 131-174 and notes 3-7 on pp. 187-190
Supplement
p. 2 (TRIPS Art. 1(1)), pp. 22-23 (TRIPS Art. 63 and 64), p. 131 (Berne Art. 20), p. 139 (Berne Art. 31(1)), p. 140 (Berne Art. 33(1)), pp. 202-204 (Rome Art. 22 and 30), p. 276 (Paris Art. 28(1))
- Class 6** (September 19) *Copyright 1: Territorial Reach, Entitlement to Protection, Protected Subject Matter, Databases*
Casebook
pp. 193-226 and pp. 232-233
Supplement
p. 5 (TRIPS Art. 9 and 10), pp. 123-125 (Berne Art. 1-5), p. 155 (UCC Art. III(1)), p. 174 (WIPO © Art. 2-5), pp. 560-561 (EU Software Directive Art. 1), skim pp. 669-672 (EU Database Directive Art. 1-11),
- Class 7** (September 21) *Copyright 2: Ownership, Term*
Casebook
pp. 233-241 and pp. 244-264
Supplement
pp. 126-127 (Berne Art. 7 and 7bis), pp. 130-131 (Berne Art. 15), p. 131 (Berne Art. 18), pp. 527-528 (EU Enforcement Directive Art. 5), p. 561 (EU Software Directive Art. 2)
- Class 8** (September 26) *Copyright 3: Economic Rights*
Casebook
pp. 265-306
Supplement
pp. 4-5 (TRIPS Art. 6, 9, and 11-12), pp. 127-130 (Berne Art. 8, 9, and 11-14^{ter}), pp. 174-176 (WIPO © Art. 6-9 and 11-12), p. 536 (EU Term Directive Art. 1 and 2), p. 539 (EU Term Directive Art. 8), skim pp. 548-551 (EU Rental and Lending Directive Art. 2-10), skim pp. 553-556 (EU Resale Right Directive Art. 1-9), skim pp. 567-568 and 570-571 (EU Info Soc Directive Art. 2-4, 6, and 7)

Class 9 (September 28) *Copyright 4: Limitations on Rights*
Casebook
pp. 306-354
Supplement
p. 5 (TRIPS Art. 13), pp. 127-128 (Berne Art. 9-10bis), pp. 175-176 (WIPO © Art. 10), skim pp. 244-249 (Marrakesh Art. 1-12), skim pp. 590-592 (EU Orphan Works Directive Art. 1-6)

Monday, October 3, 2016 – no class. There will be a make-up class later in the semester.

Wednesday, October 5, 2016 – no class. There will be a make-up class later in the semester.

Class 10 (October 10) *Copyright 5: Secondary Liability, Remedies*
Casebook
pp. 359-378, 383-390
Supplement
skim pp. 16-22 (TRIPS Art. 41-61), p. 131 (Berne Art. 16), skim pp. 583-584 (EU E-Commerce Directive Art. 12-15)

Class 11 (October 12) *Copyright 6: Neighboring Rights, Moral Rights*
Casebook
pp. 390-426
Supplement
p. 5 (TRIPS Art. 9(1)), p. 6 (TRIPS Art. 14), p. 126 (Berne Art. 6bis), skim pp. 184-189 (WIPO Perf Art. 2-19), skim pp. 232-236 (Beijing Art. 2-17), skim pp. 536-539 (EU Term Directive Art. 3 and 9)

Class 12 (October 17) *Patents I: Introduction, Territorial Reach, Requirements for Protection I*
Casebook
pp. 426-463
Supplement
p. 11 (TRIPS Art. 27), p. 13 (TRIPS Art. 33), p. 255 (Paris Art. 1), p. 258 (Paris Art. 4bis and 4quater), pp. 259-260 (Paris Art. 5(D)), p. 266 (Paris Art. 11), p. 317 (EPC Art. 2 and 3), pp. 330-331 (EPC Art. 52-57), pp. 332-333 (EPC Art. 63), p. 352 (EPC Art. 142), skim pp. 676-678 (EU Biotech Directive Art. 1-6), p. 685 (EU Unitary Patent Regulation Art. 3)

Wednesday, October 19, 2016 – no class (Presidential Debate at UNLV). There will be a make-up class later in the semester.

Thursday, October 20, 2016 – 12:05 – 1:25 - Special Session I
Guest Speaker – James Pooley (Orrick, WIPO)

Monday, October 24, 2016 – no class. There will be a make-up class later in the semester.

Class 13 (October 26) *Patents 2: Requirements for Protection II*
Casebook
pp. 463-501
Supplement
pp. 11-12 (TRIPS Art. 29), p. 258 (Paris Art. 4ter), pp. 256-258 (Paris Art. 4)

Class 14 (October 31) *Patents 3: Prosecution, Rights and Remedies*
Casebook
pp. 501-533
Supplement
p. 11 (TRIPS Art. 28), p. 256 (Paris Art. 4(A)-(C)), p. 260 (Paris Art. 5quater), skim pp. 279-299 (PCT Art. 2-49), pp. 332 (EPC Art. 60-62), p. 333 (EPC Art. 64), skim pp. 335-352 (EPC Art. 75-139), p. 354 (EPC Art. 151)

- Class 15** (November 2) *Patents 4: Limitations on Rights*
Casebook
pp. 533-576
Supplement p. 4 (TRIPS Art. 6), pp. 12-13
(TRIPS Art. 30-31), pp. 85-88 (TRIPS Amendment),
p. 259 (Paris Art. 5(A))
- Class 16** (November 7) *Patents 5: Infringement*
Trademarks 1: Introduction, Territorial Reach, Protected
Subject Matter I
Casebook
pp. 577-611
Supplement pp. 6-7 (TRIPS Art. 15, 16, and 18), p. 256
(Paris Art. 4), p. 260-262 (Paris Art. 6 and 6ter), p.
264 (Paris Art. 6sexies, 7, and 7bis), p. 334 (EPC Art.
69), p. 595 and 596 (EU Trademark Regulation Art.
1 and 4)
- Class 17** (November 9) *Trademarks 2: Protected Subject Matter II, Geographical*
Indications
Casebook
pp. 611-642
Supplement
pp. 8-10 (TRIPS Art. 22-24)
- Class 18** (November 14) *Trademarks 3: Registration, Use and Priorities*
Casebook
pp. 642-678
Supplement
pp. 7-8 (TRIPS Art. 19-21), p. 259 (Paris Art. 5(C)),
p. 261 (Paris Art. 6bis), p. 600 (EU Trademark
Regulation Art. 15)
- Class 19** (November 16) *Trademarks 4: Internet Domain Names, Ownership*
Casebook
pp. 679-713
Supplement pp. 262-263 (Paris Art. 6quater and
6quinquies)

- Class 20** (November 21) *Trademarks 5: Rights, Remedies*
Casebook
pp. 714-743
Supplement
p. 4 (TRIPS Art. 6), p. 7 (TRIPS Art. 16-17), p. 265
(Paris Art. 9 and 10), pp. 598-600 (EU Trademark
Regulation Art. 9-13), p. 657 (EU Trademark
Directive Art. 6-7)
- Class 21** (November 23) *Unfair Competition, Trade Secrets*
Casebook
pp. 743-777
Supplement p. 15 (TRIPS Art. 39), p. 265-266
(Paris Art. 10*bis* and 10*ter*)
- Class 22** (November 28) *Industrial Design*
Casebook
pp. 777-806
Supplement p. 10 (TRIPS Art. 25 and 26), p. 15 (TRIPS
Art. 39), p. 256 (Paris Art. 4), p. 259 (Paris Art. 5(B)
and (D)), p. 260 (Paris Art. 5*quinquies*), p. 714 (EU
Design Regulation Art. 1), p. 752 (EU Design
Directive Art. 2)

Wednesday, November 30, 2016, 10:35 – noon – make-up class

Class 23 *Final Review*

Wednesday, November 30, 2016, noon – 12:20, room 117 – Special Session II

Guest Speaker – Bart Mackay (.vegas)

Class 26 (date and time TBD) *Special Session III*

Thursday, December 1, 2016, 10:35 – noon – reserved for a make-up class.