LAW & CYBERSPACE

The course introduces students to the knowledge and analytical tools to perform interdisciplinary analyses of legal issues related to the "virtual geography created by interconnected computers and networks," a.k.a. Cyberspace.

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Evaluation: Your course grade will depend on a midterm and final exam.

Required Texts
ARTHUR R. MILLER, AND MICHAEL H. DAVIS, Intellectual Property: Patents, Trademarks and Copyright in a Nutshell (West, 2000.) (Referred to in syllabus as "Nutshell")
Lawrence D. Graham, Legal Battles that Shaped the Computer Industry (Quorum Books, 1999). (Referred to in syllabus as "Legal Battles").

Recommended
Lawrence Lessig, Code and Other Laws of Cyberspace (Basic Books, 1999). (Referred to as "Code").
Gregory A. Stobbs, Software Patents (Aspen, 2000); 2001 Supplement. (Referred to as "Stobbs").
Clive Gringrass, The Laws of the Internet (Butterworths, 1997).
Roger L. Miller and Gaylord A. Jentz, Law for e-Commerce West, 2002. (Referred to in syllabus as "e-Commerce").
Ferrera et al., CyberLaw Text and Cases (South-Western College Publishing, 2001).
Lee B. Burgunder, Legal Aspects of Managing Technology, 2d ed. (West Publishing Company, 2001.)
Stephen Elias and Patricia Gima, Domain Names: How to Choose & Protect a Great Name for your Website. (Referred to as "Domain Names").
SYLLABUS

0. INTRODUCTION TO CYBERSPACE.
   GRINGRASS, The Laws of the Internet, Chapter 1.

I. INTELLECTUAL PROPERTY.

1. Introduction
   Bagley, p. 348
   Legal Battles, pp. 7 - 15 ["Legal Protection for Hardware and Software: A Primer."]

2. Principles of Patent Law

2.1 Introduction
   Bagley, p. 349.

2.2 Subject matter of patents.
   Bagley, pp. 349 - 352.

2.3 Patentability
   2.3.1 Novelty and Statutory Bar
   2.3.2 Utility
      Nutshell, chapter 4, pp. 67 - 70.
   2.3.3 Nonobviousness
      Nutshell, chapter 5, pp. 71 - 96.

2.4 Patenting Process
   Bagley, pp. 352 - 353 ("Filing for Patent Protection.")

2.5 Patent Infringement
   Bagley, pp. 353 - 354.
   Nutshell, chapter 8, pp. 128 - 145.

2.6 Remedies
   Bagley, pp. 354 - 355.
   Nutshell, chapter 9, pp. 146 - 149.

2.7 International Patent Protection
   Bagley, pp. 355 - 356.
2.8 Software Patents
   Legal Battles, pp. 140-47.
   Recognition of software patent law by Supreme Court
      Stobbs, § 1.04 [B]
   Patentable subject matter
      Stobbs, § 4.01; § 4.02 [J], [K], [L], [M]; § 4.03 [A], [C](5).
   Patentable subject matter: The common thread.
      Stobbs, § 4.05 [C].
   International aspects.
      Stobbs, Chapter 10.
   Software patent examples
      Stobbs, chapter 11.
   Internet and e-commerce patents.
      Stobbs, chapter 14.

3. Principles of Copyright Law
   3.1 Foundations of copyright protection
      Bagley, p. 356 - 361.
   3.2 Subject matter of copyright
   3.3 Copyright formalities
      Bagley, pp. 362 - 363.
   3.4 Exclusive rights
      Nutshell, chapter 21, pp. 323 - 339.
   3.5 Infringement
      Bagley, pp. 363 - 366.
      Nutshell, chapter 22, pp. 340 - 353.
   3.6 Remedies
      Bagley, pp. 363 - 365.
   3.7 Digital Millennium Copyright Act
      Bagley, pp. 361 - 362.
   3.8 Fair use
      Bagley, pp. 358 - 360.
      Nutshell, chapter 23, pp. 354 - 375.
Application: The Napster Case
Overview of case and issues: Bagley, pp. 389 - 391.

Legal Issues
Wired Interview with David Boies. Discussion of the issues from Napster's perspective:
Available at www.wired.com/wired/archive/8.10/boies_pr.html.

3.9 Ownership of Programming Languages.
Legal Battles, pp. 93-101.

3.10 Ownership and Control of Data and Databases
Legal Battles, pp. 102-108.

3.11 User Interface Battles
Bagley, pp. 389-91.
Legal Battles, Chapter III, pp. 53-75 ["The Big Deal with Look and Feel," and "Keyboard Commands and Menu Arrangements."]

3.12 Reverse Engineering
Bagley, p. 366 ("Registered Mask Work.")
Legal Battles, pp. 111-118 ["Subversive Techniques: Reverse Engineering."]
Stobbs, § 2.06 [D] (Tools of reverse engineering.)

4. Principles of Trademark Law

4.1 Foundations
Bagley, pp. 366 - 368 ("Statutory Definition," "Other Marks.")
Nutshell, chapter 11, pp. 154 - 163.

4.2 Distinctiveness
Bagley, pp. 368 - 370.

4.3 Creating rights in a trademark
Bagley, pp. 371 - 372
Nutshell, chapter 13, pp. 188 - 200.

4.4 Loss of trademark rights
4.5 Subject matter
   Nutshell, chapter 16, § 16.1 ("Overview"); § 16.5 ("Primary Purpose"); § 16.6 ("The Functional Bar"); § 16.7 ("Color").

4.6 Infringement
   Nutshell, chapter 17, pp. 260 - 279.
   Legal Battles, pp. 126-31.
   Remedies: Nutshell, Chapter 18.

4.7 Internet Domain Names
   Bagley, pp. 403-404.
   Domain Names, chapters 1, 2, 3, 6, 7.

4.8 Trade Secrets
   Bagley, pp. 379 - 385.

4.9 Technology Licensing
   Bagley, pp. 385 - 387.
   Legal Battles, pp. 151-55 ["Computer Chip Wars."]

II. e-COMMERCE: CONTRACTS AND SALES IN CYBERSPACE

   Bagley, Chapter 8.
   e-Commerce: Chapter 7 ("e-Contracting"), Chapter 9, Section 3 ("Forming contracts on-line.")

III. PRODUCT LIABILITY

1. Theories of Recovery
   1.1 Breach of warranty (Bagley, chapter 10, pp. 318, 19)
   1.2 Negligence
      Bagley, pp. 319, 320.
      Handout: Principles of negligence.
      Grady, Untaken Precautions.
   1.3 Circumstantial Evidence of Negligence
1.3.1 Introduction to Res Ipsa Loquitur
Keeton and Prosser on the Law of Torts, Ch. 6, §39, pp. 242-257;

1.3.2 Illustrative Cases
Escola v. Coca-Cola Bottling Co. of Fresno, 150 P.2d 436 (Cal. 1944).

* 1.3.3 Probabilistic Analysis of Res Ipsa Loquitur:

* 1.3.4 Fuzzy Logic Approach to Res Ipsa Loquitur:
No prior knowledge of fuzzy logic is required. An introductory lecture will be given, drawing heavily on material in the first four chapters in: H.T. Nguyen and E.A. Walker, A First Course in Fuzzy Logic (CRC Press, 1997).

1.3.5 Application: Malevolent Software.
Introduction to computer viruses and virus detection technology.
Principles of negligence in a virus context.
Application of res ipsa loquitur in virus context.

1.4 Strict Liability
Bagley, pp. 320 - 321.

1.5 Product Defectiveness
Bagley, pp. 321-326.
Handout from "Technological Risk and Issue Preclusion," product defect and analysis of untaken precaution.

2. Application.

IV. ANTITRUST

1. Introduction.
Bagley, Chapter 18.

2. Concept of market power.
Shenefield and Stelzer, Chapter 5 (The Analytical Framework: Markets and Market Power), Appendix B (The Herfindahl-Hirschman Index).


3. Mergers and acquisitions
   Shenefield and Stelzer, Chapter 8 (Mergers and Acquisitions).
   Hovenkamp, Chapter 11

4. Tying arrangements
   Hovenkamp, Chapter 8.
   Shenefield and Stelzer, Chapter 9.

Illustrative case: United States v. Microsoft Corporation

Background of Microsoft case
   Bagley, pp. 699-702.
   N. Economides, Competition and Vertical Integration in the Computer industry. Available at: http://raven.stern.nyu.edu/networks/ms/top.html. [Click on "Competition in the Computer Industry."]
   N. Economides, Remedies in the Case of US v. MS Available at http://raven.stern.nyu.edu/networks/ms/remedies.htm.
   Liebowitz and Margolis, Winners, Losers & Microsoft. Chapters I, II and Appendix.
   Burgunder, Law for Technology Management: Section on Microsoft case

V. PRINCIPLES OF LAW AND FINANCE

1. CORPORATE LAW
   Bagley, Chapter 23, "Directors, Officers, and Controlling Shareholders."

2. Public and Private Offerings of Securities
   Bagley, Chapter 24.

3. Securities Fraud
Bagley, Chapter 25.

4. Damages

T.E. Patton and T.R. Saunders, Securities Fraud, § 11.1 (Fraud on the Market), Chapter 12 (Damages).

5. Insider Trading

Bagley, Chapter 25, pp. 885 - 892.
Jonathan R. Macey, Insider Trading, Chapter 6 (The legal landscape).

• The following two books chronicle the insider trading and other scandals on Wall Street during the late eighties: James B. Stewart, Den of Thieves (Simon & Schuster, 1991) and Daniel R. Fischel, Payback (HarperBusiness, 1995). Den of Thieves is a journalistic account, with a pro-prosecution bent. Professor Fischel, a University of Chicago Law and Economics scholar, provides a more academically oriented analysis.

6. Investment Suitability Doctrine

Lecture Notes: Suitability Doctrine and Modern Portfolio Theory.

VI. Finance and e-Commerce

1. Business Forms and e-Commerce; Limited Liability; Private Franchises.
2. Raising Financial Capital

3. On-Line Securities Offerings and Regulation.

4. Cyberbanking and e-Money
   - Electronic fund transfers
   - Smart cards and digital cash
   - Electronic signatures
   - On-line banking