

Law 661 - Intellectual Property

Fall 2021

Instructor Information

Instructor: Professor Christine Davik
Email: christine.davik@maine.edu
Office: Room 214
Office Phone: (207)780-4912
Office Hours: I am generally available after each class session to answer questions. Additionally, I am also available by appointment either in-person or via Zoom. Please feel free to reach out to me via e-mail to set up a meeting.

Course Information

Meetings: Monday and Wednesdays, 1:20 P.M. – 2:50 P.M.
Location: Room 131 (Middle Classroom)
Credit Hours: 3 Hours

Textbook

Nard, Madison, and McKenna, The Law of Intellectual Property - Fifth Edition

Supplemental Materials

Whenever the casebook references a statutory provision, you should study the cited section(s) as part of your reading assignment. You need not purchase a separate statutory supplement text, however, if you decide to do so I would recommend the following: Selected Statutes and International Agreements on Unfair Competition, Trademark, Copyright and Patent - 2021.

Course Management System

I will post all supplemental classroom materials, such as Power Point slides, and any course announcements on the Brightspace site dedicated to this class. Please let me know if at any point you experience any difficulties accessing these resources.

Course Description

This course provides a broad survey of the three main branches of intellectual property law, namely trademark, copyright, and patent law. We will explore the similarities and differences among these varied systems of intellectual property protection, as well as examine the challenges brought about by new technologies. This course provides a foundation for advanced intellectual property courses but is also appropriate for students who seek only a general understanding of intellectual property law. A science or technical background is not necessary.

Course Goals & Learning Objectives

Upon completion of the course, students should:

A. Analytical Skills

1. Be able to identify the types of material protected by copyright law, trademark law, and patent law, as well as the limitations to such protections.

2. Appreciate the public policy implications and effects of intellectual property law.
3. Understand the relationship between the various forms of intellectual property.
4. Be cognizant of the ways in which intellectual property law may impact the way in which information, technology, and other works may be created, distributed, or experienced.

B. Public Policy and Diversity-Related Skills

1. Appreciate the public policy implications and effects of the copyright, trademark and patent laws plus related doctrines and international obligations.
2. Recognize that class, disability, gender identity, race, ethnicity, as well as cultural, religious, and sexual orientation related issues are an integral part of our society, including the legal profession.
3. Become more aware of how the law affects individuals with different backgrounds dissimilarly and recognize how this is often true regardless of whether the person is a plaintiff, defendant, judge, lawyer, juror, or law student.
4. Explore how class, disability, gender identity, race, ethnicity, as well as cultural, religious, and sexual orientation are related to and impacted by the structure of law.
5. Illuminate the connection between racial/gender issues and the values, interests, rules and theories that may appear to be facially neutral may nonetheless be a representation of the values of the dominant culture.
6. Frame classroom discussions so that we can step outside the doctrinal bounds of the law to also critique the rules and legal practice.
7. Discuss problems, interests, and values that reflect a broad range of perspectives.

(Note: The above subsection was adapted with permission from Professor Vernellia Randall – Professor Emeritus, University of Dayton School of Law, and founder of the website “Race, Racism, and the Law” (www.racism.org))

Exams/Grading/Evaluation

Your grade for the course will be based on a three-hour, open-book essay exam. Additionally, I reserve the ability to take into account class participation and class attendance in assigning final grades for the course. Extra credit may be awarded for consistent and relevant contributions to class discussions.

Course Expectations & Requirements

Class preparation is extremely important. The American Bar Association (“ABA”) standards require that students spend a very significant amount of time in out-of-class academic activities, per credit that is awarded. Maine Law has adopted a policy, consistent with the ABA’s policy, that students are required to complete approximately 30 hours 20 minutes of out-of-class work per credit per semester. Therefore, you should spend approximately 2 hours 20 minutes on academic work out of class per credit per week.

Academic Integrity Policy

Each student should know the standards of conduct and expectations of academic integrity. Violations of academic integrity include any actions that attempt to promote or enhance the academic standing of any student by dishonest means. Cheating on an examination, plagiarism, making statements known to be false or misleading, falsifying the results of one's research, improperly using library materials or computer files, or altering or forging academic records are examples of violations of this policy. Acts that violate academic integrity disrupt the educational process and are not acceptable.

Evidence of a violation of the academic integrity policy will normally result in disciplinary action, including referral to the UMS Student Conduct Code process. A copy of the complete Academic Integrity Policy is available on the [University of Maine System website](#) or the [MyLaw Portal](#).

Attendance & Participation Policy

All students are expected to be present and prepared. Official Law School policy and the American Bar Association rules require regular class attendance. If a student is persistently absent from class without a reasonable explanation, he or she may be withdrawn from the course.

Inclement Weather Policy

For information on campus closings, please call the storm line at 207-780-4800 or sign up for USM text alerts. If the University of Southern Maine closes the campus or cancels classes, this always applies to the Law School. In rare circumstances, the Law School closes before USM. In this situation, an email about closings will be sent to students through the email listserv.

If the Law Building is (1) closed for the day, (2) open late and our class is scheduled to start before the law school opening, or (3) closed early and our class is scheduled to end after the building closes, then classes may be held remotely. If this is the case, students will be notified and sent a ZOOM link. If you are unable to attend class due to the inclement weather, you should notify me.

If class is canceled, I will let you know about scheduling a make-up.

Class Recording Policy

As a general rule, the recording of all classes is prohibited without permission. If you will be absent from class and wish to record a missed class session, you must first contact me for permission. If permission is granted, you must arrange for a classmate to facilitate the recording. (Suggested mobile apps for self-directed audio recording can be found in the MyLaw Portal.) All class recordings are for personal use only and may not be uploaded to the Internet or otherwise shared, transmitted, or published without the prior consent of the professor. If permission is denied, then you must find an alternative method for making up the missed material.

If you are requesting the recording of classes pursuant to the Americans with Disabilities Act or in the case of exceptional circumstances, such as severe illness or hospitalization, you should contact the Associate Dean for Student Affairs.

Classroom Etiquette

I encourage you to ask questions during class. Your questions are helpful to the learning process for all. However, I may defer answers to questions until after class or to the next class in the interests of time or for other reasons. Learning is a collaborative process. To increase the prospect that all of you will learn in a comfortable environment, I expect you to be in class on time, treat each other with respect, and avoid distractions from the subject matter at hand.

Accommodation Policy

The Law School is committed to providing students with disabilities equal access to all programs and services. If you think you have a disability and would like to request accommodations, please contact the Disability Services Center (DSC). Timely notification is essential. The Disability Services Center can be reached by calling 207-780-4706 or by email dsc-usm@maine.edu. If you have already received an accommodation letter from the Disability Services Center and would like to discuss your accommodations for this course, please contact Associate Dean Sherry Abbott Niang who serves as the liaison to the DSC. If you would like to discuss your accommodations with me, you can email me directly.

Wellness Resources for Maine Law Students

Maintaining your physical and mental health is essential to learning the law and succeeding in law school. Law school is a setting where mental health or substance use struggles can be exacerbated. If you ever find yourself struggling, do not hesitate to ask for help. Maine Law is committed to promoting wellness for all students. I encourage all of you to review the [Health & Wellness Resources](#) listed on the MyLaw Portal. The resources include confidential counseling through USM Counseling Services (207-780-4050) and the Maine Assistance Program for Lawyers and Law Students (207-266-5951). You can also contact the Maine Law [Office of Student Affairs](#). Please let me know if you have any questions.

If you are facing illness, injury, the birth of a child, death in the family, or other extraordinary circumstances that may impact your participation in this course, you should contact me in advance of missing classes or any assignment deadlines. Stressful situations like these may lead to diminished academic performance or may reduce your ability to participate in daily classroom activities. Law School services are available to assist students with handling these stressful events. In an emergency situation and in cases of unforeseen circumstances, you should contact the Associate Dean Sherry Abbott Niang as soon as possible. *For examination conflicts or emergency situations during the examination period, please see the Registrar.*

Statement on Religious Observance for Maine Law Students

Maine Law respects the religious beliefs of all members of the community, affirms their rights to observe significant religious holy days, and will make reasonable accommodations, upon request, for such observances. If your religious observance is in conflict with the academic experience, you should inform me of the class or other functions that will be affected. It is your responsibility to make the necessary arrangements and follow our agreed upon accommodation.

Title IX Statement

The University of Maine School of Law is committed to making our campuses safer places for students. Because of this commitment, and our federal obligations, faculty and other employees are considered mandated reporters when it comes to experiences of interpersonal violence

(sexual assault, sexual harassment, dating or domestic violence, and stalking). Disclosures of interpersonal violence must be passed along to members of the University of Maine System's Title IX team who can help provide support and academic remedies for students who have been impacted. More information can be found online at <https://mainelaw.maine.edu/student-life/title-ix/>. You may contact USM's Deputy Title IX Coordinator, Sarah E. Holmes at usm.TitleIX@maine.edu or 207-780-5767 or the UMS Title IX Coordinator, Liz Lavoie at titleix@maine.edu or 207-581-5866. You can also reach out to Maine Law's Office of Student Affairs for support and referrals.

If students want to speak with someone confidentially, the following resources are available on and off campus: University Counseling Services (207-780-4050); 24 Hour Sexual Assault Hotline (1-800-871-7741); 24 Hour Domestic Violence Hotline (1-866-834-4357).

Course Schedule

Please Note: While I plan to follow the schedule detailed below, assignments in this course are subject to change if extenuating circumstances arise, such as class cancellation due to inclement weather, or to ensure better student learning.

Class #1 – August 30th - Monday

Reading Assignment:

1. Introduction to the Study of Intellectual Property Law: p. 1-18
2. Acquiring Copyrights – Introduction: p. 437-440
3. Requirements for Copyright Protection
 - a. Originality and Authorship
 1. Introduction: p. 441
 2. Bleistein v. Donaldson Lithographing Co.: p. 441-446

Class #2 – September 1st - Wednesday

Reading Assignment

1. Requirements for Copyright Protection (cont.)
 - a. Originality and Authorship (cont.)
 1. Feist Publications, Inc. v. Rural Telephone Serv. Co.: p. 446-458
 2. Comparative Perspective: Database Protection: p. 458-459
 3. Meshwerks, Inc. v. Toyota Motor Sales U.S.A., Inc.: p. 459-468
 - b. Fixation: 468-470

September 6th - Monday - NO CLASS – Labor Day

Class #3 – September 8th - Wednesday

Reading Assignment

1. Requirements for Copyright Protection (cont.)
 - a. Expression (cont.)
 1. Introduction: p. 487
 2. Baker v. Selden: p. 487-491
 3. Nash v. CBS, Inc.: p. 492-500

Class #4 – September 13th - Monday

Reading Assignment

1. Classifying Copyrightable Works
 - a. Introduction: p. 519-521
 - b. Pictorial, Graphic, and Sculptural Works
 1. Introduction: p. 521-522
 2. Star Athletica, L. L. C. v. Varsity Brands: DIGITAL HANDOUT
NOTE: The case excerpt in your book is an appellate decision. The U.S. Supreme Court ruled on this case on March 22, 2017, after your casebook had gone to print.
 3. Problem: p. 542
 - c. Derivative Works
 1. Introduction: p. 542
 2. Schrock v. Learning Curve International, Inc.: p. 543-551

Class #5 – September 15th - Wednesday

Reading Assignment

1. Ownership
 - a. Introduction: p. 570-571
 - b. Collaboration and Joint Works
 1. Aalmuhammed v. Lee: p. 571-580
 - c. Works Made for Hire
 1. Community for Creative Non-Violence v. Reid: p. 580-590

Class #6 – September 20th - Monday

Reading Assignment

1. Enforcing Copyrights: p. 595-596
2. Direct Infringement: p. 596
 - a. Copying or Independent Creation?
 1. Introduction: p. 597
 2. Three Boys Music Corp. v. Bolton: p. 597-607

Class #7 – September 22nd - Wednesday

Reading Assignment

1. Direct Infringement (cont.)
 - a. Infringing Copying - Misappropriation
 1. Introduction: p. 607
 2. Tufenkian Import/Export v. Einstein Moomjy, Inc.: p. 607-615
 3. Funky Films, Inc. v. Time Warner Entertainment Co.: 616-623

Class #8 – September 27th - Monday

Reading Assignment

1. Direct Infringement (cont.)
 - a. Infringing Copying – Misappropriation (cont.)
 1. VMG Salsoul, LLC v. Ciccone: p. 630-642
 - b. The Right to Prepare Derivative Works
 1. Introduction: p. 642
 2. Micro Star v. FormGen, Inc.: p. 643-650

Class #9 – September 29th - Wednesday

Reading Assignment

1. Defenses to Copyright Infringement
 - a. Introduction: p. 751
 - b. Fair Use: p. 767-775
 1. Campbell v. Acuff-Rose Music, Inc.: p. 775-788
 2. Bill Graham Archives v. Dorling Kindersley Ltd.: p. 789-799
 3. Problems – p. 821-822

Class #10 – October 4th - Monday

Reading Assignment

1. Defenses to Copyright Infringement (cont.)
 - a. First Sale
 1. Introduction: p. 822-823
 2. Lee v. A.R.T. Co.: p. 823-828
 3. Kirtsaeng v. John Wiley & Sons, Inc.: p. 829-841

Class #11 – October 6th - Wednesday

Reading Assignment:

1. Acquiring Trademark Rights
 - a. Introduction: p. 951-952
 - b. The Concept of Distinctiveness
 1. Introduction: p. 952-953
 2. Abercrombie & Fitch Co. v. Hunting World, Inc.: p. 953-960
 3. Zatarain's, Inc. v. Oak Grove Smokehouse, Inc.: p. 960-971
 4. Horizon Mills Corp. v. QVC, Inc.: p. 971-983

October 11th - Monday - NO CLASS – Indigenous Peoples' Day

Class #12 – October 13th – Wednesday

Reading Assignment

1. Acquiring Trademark Rights (cont.)
 - a. Non-Word Marks and Trade Dress
 1. Introduction: p. 983
 - b. Trade Dress Distinctiveness
 1. Two Pesos, Inc. v. Taco Cabana, Inc.: p. 997-1001
 2. Qualitex Co. v. Jacobson Products Co.: 1001-1009
 3. Wal-Mart Stores, Inc. v. Samara Bros., Inc.: 1009-1015

Class #13 – October 18th - Monday

Reading Assignment

1. Acquiring Trademark Rights (cont.)
 - a. The Functionality Doctrine
 1. Introduction: p. 1015-1016
 2. Qualitex Co. v. Jacobson Products Co.: p. 1016
 3. TrafFix Devices, Inc. v. Marketing Displays, Inc.: 1017-1022

Class #14 – October 20th – Wednesday

Reading Assignment

1. Acquiring Trademark Rights (cont.)
 - a. Aesthetic Functionality
 1. Au-Tomotive Gold, Inc. v. Volkswagen of America, Inc.: p. 1036-1046
 2. Christian Louboutin S.A. v. Yves Saint Laurent America: p. 1046-1057
 - b. Acquisition, Use, and Priority
 1. Introduction: p. 1065
 2. Blue Bell, Inc. v. Farah Manufacturing Co.: p. 1065-1072

Class #15 – October 25th – Monday

Reading Assignment

1. Acquiring Trademark Rights (cont.)
 - a. Acquisition, Use, and Priority (cont.)
 1. Use-Based Registration and Priority: p. 1075-1076
 2. Allard Enterprises v. Advanced Programming Resources: p. 1076-1081
 3. Intent to Use: p. 1081-1082
 4. WarnerVision Entertainment Inc. v. Empire of Carolina: p. 1082-1086

Class #16 – October 27th - Wednesday

Reading Assignment

1. Acquiring Trademark Rights (cont.)
 - a. Geographic Scope of Rights
 1. Introduction: p. 1086-1087
 2. United Drug Co. v. Theodore Rectanus Co.: p. 1087-1093
 3. National Association for Healthcare Communications, Inc. v. Central Arkansas Area Agency on Aging, Inc.: p. 1093-1099
2. Rights of Trademark Owners
 - a. Trademark Infringement: p. 1163-1164
 - b. The Likelihood of Confusion Standard
 1. Introduction: p. 1164

Class #17 – November 1st - Monday

Reading Assignment

1. Rights of Trademark Owners (cont.)
 - a. The Likelihood of Confusion Standard (cont.)
 1. Virgin Enterprises Ltd. v. Nawab: p. 1164-1182
 - b. Confusion Away from the Point of Sale
 1. 1-800 Contacts, Inc. v. Lens.com: p. 1196-1208

Class #18 – November 3rd - Wednesday

Reading Assignment

1. Rights of Trademark Owners (cont.)
 - a. Confusion Away from the Point of Sale (cont.)
 1. Multi Time Machine, Inc. v. Amazon.com: p. 1209-1223
 2. Post-Sale Confusion: p. 1224
 - b. Trademark Dilution
 1. Introduction: p. 1243
 2. Moseley v. V Secret Catalogue, Inc.: 1244-1245
 3. Starbucks Corp. v. Wolfe’s Borough Coffee, Inc.: 1246-1253

Class #19 – November 8th - Monday

Reading Assignment

1. Rights of Trademark Owners (cont.)
 - a. Trademark Dilution (cont.)
 1. Visa International Service Assoc. v. JSL Corp.: p. 1253-1259
 2. V Secret Catalogue, Inc. v. Moseley: p. 1259-1269
2. Trademark Defenses
 - a. Introduction: p. 1303-1304
 - b. Descriptive Fair Use
 1. Introduction: p. 1333-1334
 2. KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.: p. 1334-1340
 3. Sunmark, Inc. v. Ocean Spray Cranberries, Inc.: p. 1340-1345

Class #20 - November 10th - Wednesday

Reading Assignment

1. Trademark Defenses (cont.)
 - a. Comparative Advertising and Nominative Fair Use
 1. Introduction: p. 1345
 2. August Storck K.G. v. Nabisco, Inc.: p. 1345-1348
 3. Toyota Motor Sales U.S.A., Inc. v. Tabari: p. 1366-1376
 - b. First Amendment/Speech Concerns
 1. Brown v. Electronic Arts: p. 1376-1387

Class #21 – November 15th - Monday

Reading Assignment:

1. Acquiring Patent Rights
 - a. Introduction: p. 19-28
 - b. Claiming and Disclosing the Invention
 1. Introduction: p. 28
 2. Claim Interpretation: p. 28-29
 3. Phillips v. AWH Corp.: p. 29-46
 4. Enablement: p. 46
 5. Written Description: p. 66
 6. Definiteness: p. 77

Class #22 - November 17th – Wednesday

Reading Assignment

1. Acquiring Patent Rights (cont.)
 - a. Statutory Subject Matter
 1. Introduction: p. 86-87
 2. Diamond v. Chakrabarty: p. 88-97
 - b. Utility
 1. Introduction: p. 143
 2. Brenner v. Manson: p. 143-149

Class #23 - November 22nd - Monday

Reading Assignment

1. Acquiring Patent Rights (cont.)
 - a. Novelty and Priority
 1. Novelty Introduction: p. 149-152
 2. Rosaire v. Baroid Sales Div.: p. 152-163
 3. Priority Introduction: p. 163-164
 4. Priority Text Comments: p. 176-178
 - b. Nonobviousness
 1. Introduction: p. 178-179
 2. Graham v. John Deere Co.: p. 180-190

November 24th - Wednesday - NO CLASS – Thanksgiving Break

Class #24 - November 29th - Monday

Reading Assignment

1. Acquiring Patent Rights (cont.)
 - a. Statutory Bars
 1. Introduction: p. 214-216
 2. Space Sys./Loral, Inc. v. Lockheed Martin Corp.: p. 216-223
 3. Egbert v. Lippmann: p. 223-233
 4. Lough v. Brunswick Corp.: p. 233-240
 5. In re Klopfenstein: p. 240-248

Class #25 – November 30th – Tuesday (MONDAY CLASS SCHEDULE)

Reading Assignment

1. Enforcing Patent Rights
 - a. Introduction: p. 249-253
 - b. Literal Infringement
 1. Larami Corp. v. Amron: p. 253-258
 - c. Doctrine of Equivalents
 1. Introduction: p. 258
 2. Graver Tank & Manufacturing Co. v. Linde Air Prods. Co.: p. 259-263
 3. Warner-Jenkinson Co. v. Hilton Davis Chem., Inc.: p. 263-274

Class #26 – December 1st - Wednesday

Reading Assignment - TBD

FINAL EXAM: TBD