

FOUNDATIONS OF IP LAW SEMINAR

Fall 2007

University of Pittsburgh School of Law
Prof. Madison

Course homepage:

<http://madisonian.net/homepage/ipseminar/fall07/home.htm>

Prof. Madison's homepage:

<http://madisonian.net/homepage/index.htm>

COURSE INFORMATION

Class Meeting Time and Place

Tuesdays, from 1:25 p.m. to 3:05 p.m.
in Room 120

Contacting Prof. Madison

I have learned that few students ever appear during scheduled office hours, so I don't schedule them. I am happy to meet with you at your convenience.

My office is Room 303. Make an appointment via e-mail at madison@pitt.edu or michael.j.madison@gmail.com.

Required Course Materials and How to Get the Readings

The required materials for the seminar consist of the law review articles identified on the Syllabus. In addition, I urge you to buy or borrow and read Volokh, *Academic Legal Writing*.

You may access the readings however you like: by using hard copies of the law review articles, which are available on the shelves of the law library, or by using your password to access electronic versions via LEXIS or Westlaw. A version of this syllabus on Westlaw's TWEN service includes hyperlinks to each of the assigned readings.

This seminar explores the core policies, theories, and methodologies of intellectual property law.

Each student in the seminar will complete a substantial writing project, either in the form of a long research paper to be chosen by the student, or in the form of several shorter papers on topics specified by me. The seminar as a whole will decide which approach to take. In either case, a significant amount of class time will be dedicated to discussing papers and to resolving challenges associated with research and writing. If the seminar produces long research papers, each student will be expected to present his or her work to the seminar and to lead a seminar discussion of that work.

READING ASSIGNMENTS

The readings for the seminar will consist of the following law review articles, in their full, unedited glory.

There is no reading assignment for the first meeting of the seminar. Come to class with a proposed topic for a seminar paper, and be prepared to discuss the topic and how it relates to a seminar on the theoretical foundations of intellectual property law. At the first meeting, among other things we will discuss whether the work of the seminar will consist of traditional seminar papers, or the series of shorter research memos described below.

Each week's seminar meeting will focus on one of the following articles. We will read and discuss them in the order listed here.

Each pair of articles is followed by short paper topic. If the seminar elects to write short papers rather than long seminar papers, then the short paper described by that topic is due not later than the following class meeting, that is, one week after the meeting that discusses the second article. For example, the paper discussing the first two articles is due not later than the meeting where the third article is discussed.

One: Justin Hughes, *The Personality Interests of Authors and Inventors in Intellectual Property*, 16 *Cardozo Arts & Ent. L.J.* 81 (1998)

Discussion topics: Not all authors or creators are alike; if the law should recognize personality interests, whose interests should be recognized? Is a creative work in any way infused with an author's "personality"?

Two: Wendy J. Gordon, *A Property Right in Self-Expression: Equality and Individualism in the Natural Law of Intellectual Property*. 102 *Yale L.J.* 1533 (1993)

Discussion topics: Should the First Amendment operate as an independent limit on the scope or enforcement of intellectual property rights? If so, why? Or can and should free speech interests be adequately accommodated within existing doctrines of IP?

FOUNDATIONS OF IP LAW SEMINAR

Fall 2007

University of Pittsburgh School of Law
Prof. Madison

Course homepage:

<http://madisonian.net/homepage/ipseminar/fall07/home.htm>

Prof. Madison's homepage:

<http://madisonian.net/homepage/index.htm>

Seminar Papers and Grading

The seminar will be graded **either** on the basis of a single long seminar paper, together with a presentation, **or** on the basis of five shorter papers, as specified on the Syllabus. The entire seminar will take one approach or the other; this is not a choice for each student. At the first meeting of the seminar, we will decide collectively which approach to take.

If long seminar papers are chosen, you will develop a paper topic on your own, in consultation with me. Topics must be related to the theoretical orientation of the seminar. Students will prepare a presentation of their paper for the entire seminar.

Students should review the information at http://madisonian.net/homepage/writing_instructions.htm which applies to this seminar.

For seminar papers, grading guidelines for the paper are included in that page. Due dates for outlines and paper drafts will be discussed in class. For a final grade, the paper grade may be adjusted upward or downward by half a grade based on superior (or inferior) participation in seminar discussions, and upward or downward by another half grade based on the superior (or inferior) character of the student's presentation.

If shorter papers are chosen, no presentations will be required. Due dates for the papers will be discussed in class. The final paper grade will consist of the average of the grades on each of the five papers. For a final grade, the paper grade may be adjusted upward or downward by half a grade based on superior (or inferior) participation in seminar discussions.

Short (5-6 pp.) paper topic: Use the arguments developed in the articles by Professor Hughes and Professor Gordon to argue for or against a broad attribution right in American copyright law. If such a right should be recognized, what limitations or defenses, if any, should be built into it?

Three: William M. Landes and Richard A. Posner, *An Economic Analysis of Copyright Law*, 18 J. Leg. Stud. 325 (1989) (we will focus on the sections of this article that are excerpted at <http://cyber.law.harvard.edu/IPCoop/89landl.html>; a complete copy of the article is on Course Reserve in the Law Library and can be accessed electronically in the JSTOR database, via the Law Library homepage and a University of Pittsburgh IP address)

Discussion topics: What features of modern copyright law are consistent with the Landes and Posner model? What features are not? Is the model wrong or incomplete, or should the law be changed?

Four: Mark A. Lemley, *The Economics of Improvement in Intellectual Property Law*, 75 Tex. L. Rev. 989 (1997)

Discussion topics: What features of modern copyright law are consistent with Professor Lemley's analysis? What features are not? Is the analysis wrong or incomplete, or should the law be changed?

Short (5-6 pp.) paper topic: Use the arguments developed in these two articles to evaluate whether Google should be held liable as a copyright infringer in the context of the Google Book Search program.

Five: John F. Duffy, *Rethinking the Prospect Theory of Patents*, 71 U. Chi. L. Rev. 439 (2003)

Discussion topics: When is patent law like land law? When *should* it be like land law? When is it not like land law? When should it *not* be like land law?

Six: Robert P. Merges & Richard R. Nelson, *On the Complex Economics of Patent Scope*, 90 Colum. L. Rev. 839 (1990)

Discussion topics: Assume that there is no patent system in place today, but assume also that Congress is considering adopting a patent statute. Should it do so? Why? Why not?

Short (5-6 pp.) paper topic: Should "research tools" be patentable? What is the right scope of "research tool" patents, if they exist? Use the arguments explored in these two articles.

FOUNDATIONS OF IP LAW SEMINAR

Fall 2007

University of Pittsburgh School of Law
Prof. Madison

Course homepage:

<http://madisonian.net/homepage/ipseminar/fall07/home.htm>

Prof. Madison's homepage:

<http://madisonian.net/homepage/index.htm>

COURSE INFORMATION

Class Meeting Time and Place

Tuesdays, from 1:25 p.m. to 3:05 p.m.
in Room 120

Contacting Prof. Madison

I have learned that few students ever appear during scheduled office hours, so I don't schedule them. I am happy to meet with you at your convenience.

My office is Room 303. Make an appointment via e-mail at madison@pitt.edu or michael.j.madison@gmail.com.

Required Course Materials and How to Get the Readings

The required materials for the seminar consist of the law review articles identified on the Syllabus. In addition, I urge you to buy or borrow and read Volokh, *Academic Legal Writing*.

You may access the readings however you like: by using hard copies of the law review articles, which are available on the shelves of the law library, or by using your password to access electronic versions via LEXIS or Westlaw. A version of this syllabus on Westlaw's TWEN service includes hyperlinks to each of the assigned readings.

Seven: Rebecca S. Eisenberg, *Patents and the Progress of Science: Exclusive Rights and Experimental Use*, 56 U. Chi. L. Rev. 1017 (1989)

Discussion topics: If we assume the scientists -- members of a certain "art" -- organize themselves and behave in certain disciplinary ways, why should patent law care? What is the right relationship between industry or customary practice, on the one hand, and legal rules, on the other hand? Should law adopt those practices, or should it adopt rules that encourage different behavior?

Eight: Julie E. Cohen, *Creativity and Culture in Copyright Theory*, 40 U.C. Davis L. Rev. 1151 (2007)

Discussion topics: Is cultural theory superior to economic theory as a normative framework for intellectual property analysis? Why? Why not?

Short (5-6 pp.) paper topic: To be determined

Nine: Mark P. McKenna, *The Normative Foundations of Trademark Law*, 82 Notre Dame L. Rev. 1839 (2007)

Discussion topics: Is Professor McKenna persuasive in his claim that trademark law is less consumer-oriented than modern law conventionally understands?

Ten: Barton Beebe, *Search and Persuasion in Trademark Law*, 103 Mich. L. Rev. 2020 (2005)

Discussion topics: Professor Beebe likewise reinterprets the modern trademark focus on consumer associations; among other things he appears to prescribe a stronger role for dilution theory. Do you agree? Should "likelihood of confusion" analysis be superseded by "dilution" analysis as the default mode of trademark law?

Short (5-6 pp.) paper topic: To be determined