

CYBERLAW SEMINAR

Fall 2024 Syllabus

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SYLLABUS

Meetings **Location** 218
 Class Times Th 9:45 AM – 11:45 AM
 Office Hours Signups available on Canvas
 Calendar <https://www.stu.edu/law/students/academic-calendars/>

Evaluation This is a senior writing seminar. **There is no final exam.** Rather, your evaluation will be based on your preparation of a work of novel scholarship, oral defense and participation in class discussions:

| | |
|----------------------------|-----|
| Topic Selection | 5% |
| Abstract | 5% |
| Outline | 5% |
| Class Participation | 5% |
| Ten Page Draft | 10% |
| Oral Defense | 20% |
| Final Draft | 50% |

Materials **Required**
Fajans and Falk's *Scholarly Writing for Law Students: Seminar Papers, Law Review Notes and Law Review Competition Papers* (5th Ed. West), ISBN 9781683286363 <https://www.westacademic.com/Scholarly-Writing-for-Law-Students-Seminar-Papers-Law-Review-Notes-Law-Review-Comp-Papers-5>
The Bluebook: A Uniform System of Citation (21st Edition), ISBN 9780578666150 <https://www.legalbluebook.com/buy>
Recommended
Grimmelmann, *Internet Law: Cases & Problems* (14th Ed. Semaphore Press), https://www.semaphorepress.com/InternetLaw_overview.html ISBN 9781943689200. While I will not assign any materials out of this casebook, it is a good reference material for topics covered in this course.

Scope This seminar explores the dynamic intersection of law and computers, focusing on their reciprocal influences. Through in-depth discussions and research, students will examine how cyberspace serves as a unique laboratory for studying the evolution of legal principles in response to rapid technological change. Cyberlaw shows how intermediated network technologies can disrupt existing forms of power—laws, markets, and social norms—in unexpected ways, creating new centers of norms and power.

With a strong emphasis on the philosophy of technology, this seminar encourages critical thinking about the nature of technological change and its legal implications. Students will engage in rigorous reading, lead thought-provoking discussions, and produce original research papers on selected

topics. The seminar format facilitates in-depth analysis of complex issues, challenging participants to develop and articulate their own viewpoints on the dynamic interplay between technology and law.

Professionalism

The Florida Bar has stated that:

Professionalism is the pursuit and practice of the highest ideals and tenets of the legal profession. It embraces far more than simply complying with the minimal standards of professional conduct. The essential ingredients of professionalism are character, competence, commitment, and civility.

Your reputation earned now follows you into practice; build a good one.

Inclusion

There are no “stupid questions” in my class. Do not be afraid to ask questions, express opinions, or challenge my representations, however, please contribute only after reflection and deliberation. All perspectives and opinions are welcome.

If anything in or out of class makes you uncomfortable or interferes with your ability to succeed, please raise it with me. While not all discomfort is avoidable, I will do everything I can to help consistent with the educational goals of the course. I will also respect any requests for confidentiality as my legal and professional duties allow. I will do my best to make this course interesting, supportive, and enlightening regardless of your personal identity, beliefs, prior life experiences, degree program, or future plans. If there's anything I can do to help, please let me know.

Plagiarism

Outside assistance from others, human, AI, or otherwise, without my express authorization, will not be tolerated. Any violation of this policy constitutes a violation of the *St. Thomas University College of Law Honor Code*.

Attendance

There are no excused absences in this class. Students who are more than fifteen minutes late, or who miss more than fifteen minutes of class time are absent. I reserve the right to lock the door at the start of class or otherwise refuse late entry.

You should not miss class. You are, however, permitted to miss 20% of this course's class sessions under STU College of Law Policy. If you have a personal, family, or other emergency problem that will cause you to miss 20% or more of class sessions, you need to contact Student Affairs as soon as possible.

It is your responsibility to sign the attendance sheet before I leave the classroom as I do not retroactively change the attendance sheet. No exceptions.

Tardiness

A professional arrives early and never makes excuses. Late students are not admitted as I lock the door at the start of lecture starting the second week of classes. Habitual tardiness or unpreparedness will not be tolerated.

- Technology** The Florida Bar wants technologically competent lawyers. You are free to use technology in whatever manner you deem, in your reasonable judgment, best to advance your professional development in my class, if you do so in a manner that does not distract your classmates from their own academic success. You are not permitted to record or photograph class discussions or materials.
- Disability** If you believe you need or are entitled to receive accommodations due to a disability, contact Student Affairs as soon as possible. See <http://www.stu.edu/law/students/disability-accommodations>.
- Copyright** All class materials constituting my authorship are subject to a [Creative Commons CC-BY-NC-ND 4.0 International License](#). These include my study guides and other practice materials. You are not permitted to record or photograph my PowerPoints or the lecture during class, as I provide you copies with proper attribution. Rights in all other materials are retained by their respective owners.
- Legal** **I am a Florida licensed attorney, but I am not your lawyer.** Please refrain from asking my legal opinion on personal cases or about cases you may be working on at your place of employment as classroom hypotheticals.
- Changes** I reserve the right to amend the syllabus as I deem necessary, for any reason, with written notice to you through Canvas and/or email.
- Submissions** All projects will be submitted through the course page on Canvas. It is your responsibility to ensure the proper uploading of any submissions.
- Schedule** The topics for the semester are listed below but may be adjusted based on student interest. Future reading assignments will be posted with a minimum of a week's notice.
- Discussions** Starting with the second week of class (Classes 2–5), a student panel will serve as the discussion leaders each class session. On your assigned week, you are to post three questions on Canvas under the assignments tab prior to class. You can find your assigned day by checking the Reading Assignments post. You can find your assigned panel there as well.
- For the following four classes (Classes 6–9), your panel will need to submit a law review article at least two weeks prior to your assigned class for the class to read. You should post the citation to the paper in the corresponding discussion for your assigned day. You also need to post three unique discussion questions, as before.
- For the final four classes (Classes 10–13), you will present your oral defense of your paper on your assigned day. In addition to submitting your first draft on Canvas to me, you will need to circulate it to the class so your co-panelists can post their questions for your paper in advance of your discussion.

Outcomes *STU Learning Outcome 1.* Demonstrate knowledge and understanding of cyberlaw and its role in shaping the intersection of law, technology, and society.

STU Learning Outcome 3. Conduct in-depth legal research on a novel cyberlaw topic, selecting and employing appropriate research tools and methods to identify relevant legal authorities and interdisciplinary sources.

STU Learning Outcome 4. Communicate effectively and with civility in both written and oral forms by: 1) producing a clear, concise, well-reasoned, and organized scholarly paper on an intellectual property topic; 2) delivering a clear, concise, well-reasoned, organized, and professional oral defense of the scholarly paper; and 3) actively listening, respectfully interacting, and collaborating with peers during class discussions and presentations.

STU Learning Outcome 5. Demonstrate competency in legal practice skills by managing the scholarly writing project from inception to conclusion, meeting all deadlines and employing current technologies in legal research and writing.

STU Learning Outcome 6. Exercise proper professional and ethical responsibility in all course activities, including appropriate citation and attribution in scholarly work.

STU Learning Outcome 7. Demonstrate awareness of moral and ethical responsibilities to society by critically evaluating the role of cyberlaw in addressing technological challenges, protecting individual rights, and balancing competing interests in the digital age.

ASSIGNMENTS

| Date | Topic |
|--------|--|
| Aug 29 | Week 1: Theories of Technology Readings <ul style="list-style-type: none">• Lessig, <i>The Law of the Horse: What Cyberlaw Might Teach</i>, 113 Harv. L. Rev. 501 (1999) https://yalelawtech.org/wp-content/uploads/2011/08/lessig-horse.pdf• Quianyu Feng, <i>Analysis of Technological Determinism and Social Constructionism</i>, Proceedings of the 2022 8th International Conference on Humanities and Social Science Research (2022) https://www.atlantis-press.com/proceedings/ichssr-22/125974800• <i>Phenomenological Approaches to Ethics and Information Technology</i>, Stanford Encyclopedia of Philosophy (2017) (skim) https://plato.stanford.edu/entries/ethics-it-phenomenology/• Adam Thierer, <i>How Science Fiction Dystopianism Shapes the Debate Over AI & Robotics</i>, DISCOURSE, https://www.discoursemagazine.com/p/how-science-fiction-dystopianism-shapes-the-debate-over-ai-robotics |

Video

- *What is Technological Determinism?*, World Science Festival (YouTube 2015 3:59)
<https://www.youtube.com/watch?v=IKbIR2h2t-M&t=122s>

Sept 5

Week 2: Machine Causality & the Trolley Problem

Readings

- Fajans and Falk's ("F&F") 1-26
- JanBosch, *There's no such thing as artificial intelligence*, Medium (2023)
<https://janbosch.medium.com/theres-no-such-thing-as-artificial-intelligence-da2a18f67e17>
- *Blueprint for an AI Bill of Rights*, the White House <https://www.whitehouse.gov/ostp/ai-bill-of-rights/>
- *A European Approach to AI*, European Commission <https://digital-strategy.ec.europa.eu/en/policies/european-approach-artificial-intelligence>
- Solum, Lawrence B., *Legal Personhood for Artificial Intelligences*. North Carolina Law Review, Vol. 70, p. 1231, 1992, Illinois Public Law Research Paper No. 09-13,
<https://ssrn.com/abstract=1108671>

Video

- *What is Artificial Intelligence?* Crash Course AI (2020)
https://www.youtube.com/watch?v=a0_l0_GDcFw

Discussion Panel

- Group 1

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Week 3: Social Networks: Disinformation & Dark Patterns

Readings

- F&F 27-63
- 47 U.S.C. § 230
- *Zeran v. America Online, Inc.*, 129 F.3d 327, (4th Cir. 1997) (skim) <https://casetext.com/case/zeran-v-america-online>
- Mike Masnick, *Hello! You've Been Referred Here Because You're Wrong About Section 230 of the Communications Decency Act*, (June 23, 2020) <https://www.techdirt.com/2020/06/23/hello-youve-been-referred-here-because-youre-wrong-about-section-230-communications-decency-act>
- Eric Goldman, *An Overview of the United States' Section 230 Internet Immunity*, Santa Clara Univ. Legal Studies Research (December 1, 2018) <https://ssrn.com/abstract=3306737>
- Elliot Harmon, *No, Section 230 Does not Require Platforms to be "Neutral"* (April 12, 2018), <https://www.eff.org/deeplinks/2018/04/no-section-230-does-not-require-platforms-be-neutral>

- Social Networking & Ethics, Stanford Encyclopedia of Philosophy (skim) <https://plato.stanford.edu/entries/ethics-social-networking/>
- §2.2 Manipulation of Behavior (skim) <https://plato.stanford.edu/entries/ethics-ai/#ManiBeha>
- Nina Keese, M.R. Leiser, *Online Manipulation as a Potential Interference with the Right to Freedom of Thought* (2024) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4703015

Discussion Panel

- Group 2

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Week 4: Digital Panopticons and Surveillance Capitalism

Readings

- F&F 63–73
- U.S. Const. art. IV, art. V
- *Carpenter v. United States*, 585 U.S. 296 (2018) (skim) https://www.supremecourt.gov/opinions/17pdf/16-402_h315.pdf
- McMullan, *What does the panopticon mean in the age of digital surveillance?*, *The Guardian*, (2015), <https://www.theguardian.com/technology/2015/jul/23/panopticon-digital-surveillance-jeremy-bentham>
- Foucault, *Discipline and Punish*, Chapter 3: Panopticism (1977) (skim) <https://depts.washington.edu/lsearlec/510/Texts/Foucault-Panopticism.pdf>
- Zuboff, *Big Other: Surveillance Capitalism and the Prospects of an Information Civilization*, *Journal of Information Technology* 30, 75–89, (2015) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2594754
- §2.1 Privacy & Surveillance, Stanford Encyclopedia of Philosophy (skim) <https://plato.stanford.edu/entries/ethics-ai/#PrivSurv>

Video

- *Viewpoint: 'We're living in an age of surveillance capitalism'* BBC Ideas (YouTube 2019) <https://www.youtube.com/watch?v=4oOCLlrB-0c>

Discussion Panel

- Group 3

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Topic Proposals Due at 5:00 PM

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Week 5: Intangible Property Rights in Synthetic Creations

Readings

- F&F 75–92

Copyrights

- 1 U.S.C. § 8(a) ("individual")

- 17 U.S.C. § 102
- 17 U.S.C. § 106
- U.S. Const. Art. 1 Section 8 Cl. 8
- U.S. Copyright Office, *Re: Zarya of the Dawn* (Feb. 21, 2023) <https://www.copyright.gov/docs/zarya-of-the-dawn.pdf>
- Grimmelmann, *There's No Such Thing as a Computer-Authored Work – And It's a Good Thing, Too*, 39 *Columbia Journal of Law & the Arts* 403 (2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2699862

Patents

- 35 U.S.C. § 101
- 35 U.S.C. § 100(f)
- *Thaler v. Vidal*, No. 2021-2347 (Fed. Cir. 2022)
- Wicklund, Daniel, *The AI Quid Pro Quo Problem: Suggesting a Framework for Patents Involving Artificial Intelligence-Assisted or -Created Inventions*. 14 *Wm. & Mary Bus. L. Rev.* 729 (2023)(skim), <https://ssrn.com/abstract=4369844>

Video

- *ChatGPT and Generative AI are Hits! Can Copyright Law Stop Them?* <https://www.youtube.com/watch?v=bRqWTP2eKJY>

Discussion Panel

- Group 4

Oct 3

Week 6: Machine Consciousness

Readings

- F&F 93–118
- §1 The History of AI; §2 What Exactly is AI?; §8.1-8.2 Philosophy of Artificial Intelligence, *Artificial Intelligence*, Stanford Encyclopedia of Philosophy <https://plato.stanford.edu/entries/artificial-intelligence/>
- Student Selected Law Review Article

Video

- *Artificial Intelligence & Personhood*, Crash Course Philosophy <https://www.youtube.com/watch?v=39EdqUbj92U&t=58s>

Discussion Panel

- Group 1

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Abstract Thesis & Outline Due by 5:00 PM

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Week 7: Transhumanism: Bioethics on the Ship of Theseus

Readings

- F&F 119-141
- *Relative Identity*, §2.5 *The Ship of Theseus Paradox*, Stanford Encyl. of Philosophy (rev. 2016)(skim) <https://plato.stanford.edu/entries/identity-relative/#ShipThesPara>
- Hoejme, *Should we Fear the Future? The Philosophy of Transhumanism*, <https://www.thecollector.com/philosophy-of-transhumanism/>
- Student Selected Law Review Article

Video

- *Transhumanism: Could we live forever?*, BBC News, <https://www.youtube.com/watch?v=STsTUEOqP-g>

Discussion Panel

- Group 2

17 **Week 8: Reality is Often Disappointing: Deepfakes and the Metaverse**

Readings

- F&F 143–163
- *Deepfakes*, G.A.O. (2020) <https://www.gao.gov/assets/gao-20-379sp.pdf>
- Cristiano Lima-Strong, *Senators want to prevent the next Scarlett Johansson AI voice fiasco*, <https://www.washingtonpost.com/politics/2024/07/31/senators-want-prevent-next-scarlett-johansson-ai-voice-fiasco/>
- Student Selected Law Review Article

Discussion Panel

- Group 3

24 **Week 9: Death by Science Fiction: Is Skynet Inevitable?**

Readings

- F&F 165–185
- *How AI is Changing Warfare* (2024) <https://www.economist.com/briefing/2024/06/20/how-ai-is-changing-warfare>
- Student Selected Law Review Article

Videos

- *The Genesis of Skynet* [Terminator 2] <https://www.youtube.com/watch?v=4DQsG3TKQ0I>
- Harris, *Can we build AI without losing control over it?* TED (2016 14:27) <https://www.youtube.com/watch?v=8nt3edWLqIq&t=193s>
- *What if the Terminator Becomes a Reality?* <https://www.youtube.com/watch?v=i-CfMVTquv8>

Discussion Panel

- Group 4

25 **Ten Page Draft Due by 5:00 PM**

31 **Week 10:** Oral Defenses, Group 1

Nov 7 **Week 11:** Oral Defenses, Group 2

14 **Week 12:** Oral Defenses, Group 3

21 **Week 13:** Oral Defenses, Group 4

29 **Final Draft Due by 5:00 PM**