

INTELLECTUAL PROPERTY SEMINAR

Fall 2024 Syllabus

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SYLLABUS

Meetings **Location** Undergraduate Library, 201
 Class Times T 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>

Suggested
Lydia Loren & Joseph Miller, *Intellectual Property Law: Cases & Materials* (8th Ed. Semaphore Press). If this is your first course in intellectual property or if you need a refresher on foundational concepts, you should read corresponding materials. This casebook has a suggested price of \$30.00. https://semaphorepress.com/IntellectualPropertyLaw_overview.html

Scope This advanced seminar explores the complex and rapidly evolving field of intellectual property law, examining its foundations, current challenges, and future trajectories. The course explores how IP law shapes and is shaped by technological innovation, creative expression, and economic forces in our rapidly changing global economy.

With a strong emphasis on economic theory and industrial policy, students will engage with cutting-edge issues across the spectrum of IP, including patents, copyrights, trademarks, and trade secrets. The seminar will address emerging topics such as artificial intelligence and IP, gene patenting, digital rights management, and the intersection of IP with antitrust law. We will also

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examine international IP regimes and the challenges of harmonizing protection across diverse legal and cultural contexts. A major focus of the course will be on critical analysis of IP law's role in fostering innovation, protecting creators, and balancing public and private interests. Students will be challenged to question established paradigms and explore potential reforms to the IP system.

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.

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- 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

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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.

ASSIGNMENTS

Date

Topic

Aug 27

Week 1

The Foundations of Intellectual Property

Readings

- John Locke, *Two Treatises on Government* (Excerpt)
<https://www.nathenson.org/courses/ils/assignments/locke/>
- U.S. Const., art. 1, §, ¶13 (the Commerce Clause)
- U.S. Const., art. 1, §8, ¶18 (the Progress Clause)
- Richard Posner, *Intellectual Property: The Law and Economics Approach*, 19 J. of Econ. Perspectives 57–73 (2005).
<https://www.aeaweb.org/articles?id=10.1257/0895330054048704>

Video

- Introduction to Intellectual Property, Crash Course No. 1 (2015)
<https://www.youtube.com/watch?v=RQOJgEA5e1k>
- David P. Miranda, *How Intellectual Property Powers Economic Growth*, TEDxAlbany (2011) <https://www.youtube.com/watch?v=1e5HKDJnkW8>

Sept 3

Week 2

3DP/IoT is Not a Star Wars™ Character

Readings

- Fajans and Falk's ("F&F") 1–26
- Deven Desai & Gerard Magliocca, *Patents, Meet Napster: 3D Printing and the Digitization of Things*, 102 Geo. L.J. 1691 (2014)
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2338067
- Timothy Holbrook, *Printing the Future: The Implications of 3D Printing*, 4 Tex. A&M J. Prop. L. 15 (2017) <https://scholarship.law.tamu.edu/journal-of-property-law/vol4/iss1/2/>
- Lidiya Mishchenko, *The Internet of Things: Where Privacy and Copyright Collide*, 33 Santa Clara Comp. and High Tech. L.J. (2016)
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4092019

Discussion Panel

- Group 1

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Sept 10

Week 3

Parody on the Rocks: Why the Supreme Court has No Sense of Humor

Readings

- F&F 27–63
- *Jack Daniel's Properties, Inc. v. VIP Products LLC*, 599 U.S. 140 (2023)
https://www.supremecourt.gov/opinions/22pdf/22-148_3e04.pdf
- *Andy Warhol Foundation for the Visual Arts, Inc. v. Goldsmith*, (2022),
https://www.supremecourt.gov/opinions/22pdf/21-869_87ad.pdf
- Mark Lemley & Rebecca Tushnet, *First Amendment Neglect in Supreme Court Intellectual Property Cases*,
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4691950

Discussion Panel

- Group 2

Sept 17

Week 4

To Token or Not to Token: That is the Non-Fungible Question

Readings

- F&F 63–73
- James Grimmelman, et al., *Copyright Vulnerabilities in NFTs* (2022),
<https://medium.com/initc3org/copyright-vulnerabilities-in-nfts-317e02d8ae26>
- Zachary L. Catanzaro, *NFT-Tethered Sound Recordings and Digital Resale*, 14 Harv. J. of Sports and Ent. L. 1 (2022)
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4182902
- Brian Frye, *Are CryptoPunks Copyrightable?*, 2021 Pepp. L. Rev. 105 (2022)
<https://digitalcommons.pepperdine.edu/plr/vol2021/iss1/4/>
- **Group Discussion of Topics.** Come prepared to discuss your topic.

Video

- *What is an NFT?*, YouTube <https://www.youtube.com/watch?v=NNQLJcJEzv0>

Discussion Panel

- Group 3

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Topic Proposals Due at 5:00 PM

Sept 24

Week 5

My AI Ate My Homework: Intangible Property Rights in Synthetic Creations

Readings

- F&F 75–92

Copyrights

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- 1 U.S.C. §§ 8(a) ("individual"), 102, 106
- U.S. Const., art. I, §8, ¶18 (the Progress Clause)
- 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, 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 1

Week 6

You Can Check Out, But You Can Never Leave

Readings

- F&F 93–118
- FTC Proposes Rule to Ban Noncompete Clauses, Which Hurt Workers and Harm Competition, FTC (Jan. 5, 2023) <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-proposes-rule-ban-noncompete-clauses-which-hurt-workers-harm-competition>
- Non-Compete Clause Rule, 16 C.F.R. Part 910 & 912, 1–6 (2023) <https://www.regulations.gov/document/FTC-2023-0007-21266>
- Student Selected Law Review Article

Discussion Panel

- Group 1

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Abstract Thesis & Outline Due by 5:00 PM

Oct 8

Week 7

Revenge of the Nerds: Fandom and IP Law

Readings

- F&F 119–141

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- Madhavi Sunder, *When Fandom Clashes with IP Law*, Harvard Business Review, <https://hbr.org/2019/07/when-fandom-clashes-with-ip-law>

- Student Selected Law Review Article

Discussion Panel

- Group 2

Oct 15

Week 8

Reality is Often Disappointing: Deepfakes and the Metaverse

Readings

- F&F 143–163
- Warren & Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 5 (1890) (skim) https://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html
- 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/>
- *Deepfake explicit images of Taylor Swift spread on social media. Her fans are fighting back*, AP News, <https://apnews.com/article/taylor-swift-ai-images-protecttaylorswift-nonconsensual-d5eb3f98084bcbb670a185f7aeec78b1>
- Student Selected Law Review Article

Discussion Panel

- Group 3

Oct 22

Week 9

Video (Games) Killed the Radio Star

Readings

- F&F 165–185
- *The Legal Status of Video Games*, WIPO, 7–11, 89–96 (2013) https://www.wipo.int/export/sites/www/copyright/en/docs/creative-industries/video_games.pdf
- Student Selected Law Review Article

Discussion Panel

- Group 4

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Ten Page Draft Due by 5:00 PM

Oct 29 **Week 10:** Oral Defenses, Group 1

Nov 5 **Week 11:** Oral Defenses, Group 2

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

Nov 19 **Week 13:** Oral Defenses, Group 4

29 Final Draft Due by 5:00 PM