

**IP SURVEY
LAW 367/001
AUTUMN 2023**

PROFESSOR SEAN O’CONNOR

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Room 417 Hazel Hall

COURSE SCHEDULE/MEETING TIMES/TYPE: This is an in-person course that meets on Tuesdays and Thursdays from 16:00 – 17:25.

OFFICE HOURS: Tuesdays and Wednesdays 10:00 – 12:00 and by appointment.

REQUIRED TEXTS:

- Intellectual Property: Cases and Materials, LaFrance et al. (6th ed., West Academic 2023)
- Patent, Copyright, Trademark, and Unfair Competition Selected Statutes and International Agreements, Goldstein & Reese (2023 ed., West Academic)
- Occasional handouts distributed in hard copy, by email, or through Blackboard course site

COURSE OVERVIEW/DESCRIPTION: This survey course emphasizes federal copyright, trademark, and patent law and related state trade secret, rights of publicity, and unfair competition law. It is meant to provide students with a general working knowledge of the various intellectual property doctrines, and an understanding of how the individual intellectual property doctrines compare, contrast, and may be used to complement one another. This course is appropriate for the generalist who wants to understand and be able to analyze IP issues, which are ubiquitous in the modern practice of law.

Prerequisites: None

LEARNING OUTCOMES: By the end of the course students should be able to:

- Understand and apply the major doctrines of intellectual property and related fields covered in the course in legal practice
- Argue policy considerations across and within each area of intellectual property
- Show basic proficiency in developing intellectual property strategies for clients

BASIS OF EVALUATION & ASSESSMENTS

- Class Participation: You are expected to participate regularly in class. A mix of cold calling and assigned “on call” students will be used. You may “pass” when called upon up to two (2) times during the semester, but after that two (2) points will be deducted from your class participation grade for any time you decline to answer the instructor’s question or request for a comment.
- Grading Policy: Grading is based on a one hundred (100) point scale. For class participation, students presumptively obtain full points for completion and compliance, subject to deductions set out above and here. Quizzes and the final exam by contrast are based on earned points.
- Quizzes: thirty (30) points overall broken into ten (10) points for each short answer quiz for

patents, copyrights, and trademarks

- Class participation: ten (10) points subject to deduction set out above
- Final Exam: sixty (60) points; seven (7) hour, take home, internet-blocked open exam including a combination of short answer and essay questions.

EMAIL COMMUNICATION: Students must use their Mason email account to receive important University information, including communications related to this class. This is especially important for security and confidentiality of client information. I will not respond to messages sent from or send messages to a non-Mason email address.

ATTENDANCE: Regular and punctual attendance are required to earn academic credit. Attendance requirements for academic credit will follow the policies set forth in Academic Regulation 4-1. Should circumstances occur where you anticipate the possibility of missing a substantial number of class sessions (e.g. a serious illness), you should immediately contact the Assistant Dean, Student Academic Affairs. I will take attendance at each session by visually checking for you. **N.B.** Per Academic Regulation 4-1.1, "A student who is not present for at least seventy-five percent (75%) of a session of the course is absent from that session."

CLASS RECORDINGS PROHIBITED: Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device or camera. Any exceptions to this policy must be expressly permitted in writing by me. However, I have authorized the Law School's official recording of all sessions solely for purposes of accommodating excused absences, e.g., for COVID-19 related issues.

USE OF ANY GENERATIVE ARTIFICIAL INTELLIGENCE STRICTLY PROHIBITED: Generative artificial intelligence (GAI) is a type of artificial intelligence that uses algorithms to generate new content, such as text or images, based on the data it has been trained on. For purposes of this regulation, GAI is not intended to encompass legal research databases and word processing applications that, while incorporating AI-based elements or enhancements, do not generate novel text. The use of GAI in drafting or writing coursework, including in writing *or preparing to write* midterms and exams, is strictly prohibited. *Any violation of the foregoing will be considered academic dishonesty involving cheating in violation of Section 1.01.1 and/or 1.01.5 of the Honor Code, and violators may be subject to the disciplinary sanctions set forth in Section 3.01 of the Honor Code.* Law School instructors and administrators reserve the right to use AI detection software to find instances of GAI in student submissions.

COVID-19 INSTRUCTIONAL CONTINGENCY PLAN: This course is currently scheduled to be taught in person. It would only move to a virtual online format at the mandatory direction of the University or Law School. If I become incapacitated, the Dean's Office will determine a suitable replacement instructor.

COVID-19 HEALTH & SAFETY REQUIREMENTS: Please note that under current University health and safety protocols, face coverings and social distancing are required for all persons on campus. Please refer to the most up-to-date University policies [here](#).

ACADEMIC INTEGRITY: It is expected that students adhere to the Antonin Scalia Law School Honor Code. The Honor Code prohibits lying, cheating, or stealing. This includes a student obligation to never represent the work of another as their own, and to never provide or accept unauthorized assistance on any school related assignment. The Honor Code is available here: <https://sls.gmu.edu/honor/>.

CLASSROOM ACCOMMODATIONS: Disability Services at George Mason University is committed to providing equitable access to learning opportunities for all students by upholding laws that ensure equal treatment of people with disabilities. If you are seeking accommodations for this class, please visit <http://ds.gmu.edu/> for detailed information about the Disabilities Registration Process. Faculty may not receive or respond to requests for an accommodation. All requests must be handled by the office of Disability Services. You may contact Disability Services directly via email at ods@gmu.edu or phone at (703) 993-2474. If you have any questions about how in-class or testing accommodations are implemented at the law school, please contact the Assistant Dean, Student Academic Affairs for more information.

ADDITIONAL SCHOOL POLICIES AND RESOURCES:

STUDENT HONOR CODE - [Click Here](#)

ACADEMIC REGULATIONS - [Click Here](#)

UNIVERSITY LIFE: University Life provides student support resources such as **Counseling and Psychological Services (<https://caps.gmu.edu/>)**, **Student Health Services (<https://shs.gmu.edu/>)**, and the **Student Support and Advocacy Center (<https://ssac.gmu.edu/>)**. For more information about University Life on the Arlington Campus, please visit: <https://ularlington.gmu.edu/>

SCHEDULE of class meetings

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| <u>T 8/22</u> | <i>Overview of IP</i>
<u>Readings:</u> CB Ch 1 A - B |
| <u>Th 8/24</u> | <i>Trademarks – nature and function</i>
<u>Readings:</u> CB Ch 2 B-D |
| <u>T 8/29</u> | <i>Trade Dress</i>
<u>Readings:</u> CB Ch 2 E (omit Jay Franco) |
| <u>Th 8/31</u> | <i>Trademarks – establishing rights</i>
<u>Readings:</u> CB Ch 3 A, B 1-2, plus <i>Matal v Tam</i> |
| <u>T 9/5</u> | <i>Trademarks – causes of action</i>
<u>Readings:</u> CB Ch 4-A (<i>Louis Vuitton</i> only), B (<i>Dastar</i> only), C, D |
| <u>Th 9/7</u> | <i>Trademarks – defenses; limitations on rights; remedies</i>
<u>Readings:</u> CB Ch 5 A (<i>KP Permanent Makeup</i> only), B (<i>Barcamerica International</i> only), C, D, E, G; Ch 6 B |
| <u>T 9/12</u> | <i>Right of Publicity</i>
<u>Readings:</u> CB Ch 7 |
| <u>Th 9/14</u> | <i>Trade Secrets</i>
<u>Readings:</u> CB Ch 8 A, B (<i>Minuteman</i> only), C, D |
| <u>T 9/19</u> | (class to be rescheduled; prof. lecturing in Taiwan) |

- Th 9/21 (class to be rescheduled; prof. lecturing in Taiwan)
- T 9/26 *Protecting Ideas*
Readings: CB Ch 9
- Th 9/28 *Patents – overview and patent eligible subject matter*
Readings: CB Ch 10 A, B-1-a to B-1-b
- F 9/29** **Make-up session** *Patents – utility; design patents; plant patents*
Readings: CB Ch 10 B-1-c, B-2 (*Avia* only), B-3
- T 10/3 *Patents – novelty*
Readings: CB Ch 10 C-1 (omit *Bennett Regulator*) to C-5
- Th 10/5 *Patents – nonobvious, enablement, written description, definite, best mode*
Readings: CB Ch 10 D-1 to D-2, E
- T 10/10 *No class (Monday schedule)*
- Th 10/12 **Attend C-IP² Annual Conference**
- T 10/17 **Attend JIPA lecture**
- Th 10/19 *Patents – inventorship, ownership, prosecution (establishment of rights), term*
Readings: CB Ch 11 A-1 to A-4, B, C
- T 10/24 *Patents – infringement*
Readings: CB Ch 12 A-1 (*Backyard Nature Products* only), A-2-a to A-2-b
- Th 10/26 *Patents – defenses, remedies*
Readings: CB Ch 12 B, D-1 to D-2
- T 10/31 *Copyright – overview, subject matter, fixation, originality*
Readings: CB Ch 13, 14 A (*Burrow-Giles* and notes only), B (*Kelley* only), C-1 (*Feist* only) to C-2 (*Oracle America* only)
- Th 11/2 *Copyright – originality in derivative works, useful articles*
Readings: CB Ch 14 C-3 (*Schrock* only), C-4 to C-7
- F 11/3** **Make-up session** *Copyright – authorship, ownership, term*
Readings: CB Ch 15 A-1 to A-2, B-1, B-3
- T 11/7 *Copyright – assignments, licenses, terminations*
Readings: CB Ch 15 C-1 (omit *Effect Associates*), C-2 (omit *Woods*)
- Th 11/9 *Copyright – exclusive rights (reproduction, derivative works, distribution, public performance)*
Readings: CB Ch 16 A-1 (*Cartoon Network* case only), A-2 (*Lewis Galoob Toys* only), A-3 (*Religious Technology Center* case only), A-4 (*American Broadcasting Cos* only)

- T 11/14 *Copyright – limitations on exclusive rights; fair use*
Readings: CB Ch 16 B-2, B-4, B-5; Ch 17 (*Campbell, Google*); *Andy Warhol Foundation* in Supplement
- Th 11/16 *Copyright – infringement, defenses, remedies*
Readings: CB Ch 18 A (omit *Warner*), B (*Arnstein* only), C-2 (*Grokster* only), D-1 (*Viacom* only), D-2 (*MDY* only), F
- T 11/21 *Course summary and review*