

Intellectual Property
University of North Dakota School of Law
Spring 2017

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SYLLABUS

1. LEARNING OUTCOMES: I intend for this class to provide meaningful training for the practice of law relating to intellectual property, including litigation, transactional practice, and advising and counseling clients. By the end of the course, you should have a broad grasp of the principal doctrines, be keenly alert to the law's many pitfalls for the unwary, be conversant in the theoretical underpinnings and policy aims of IP law, and be aware of how a real-world panoply of expectations and value judgments filters IP law's effects on people and industries.

Compared to many other areas of law you have studied, IP is a relatively new body of law – much of it extremely new – and it is in a great state of flux. Its current relevance is compounded by the fact that it is at the center of the two great transformations of our age: globalization and cyberization. Therefore, it is particularly important that you be able to think about IP in its constantly evolving historical, societal, cultural, and political context. The work-a-day world of IP is a blizzard of first-impression and not-yet-brought cases. Policy arguments and theoretical perspectives are not mere academic curiosities – they're standard tools of the trade.

The following is a non-exclusive list of specific learning outcomes for this course:

1. Broadly know and be able to apply the principal doctrines of United States copyright, patent, trade secret, trademark, and right of publicity law, as well as some ancillary regimes.
2. Be able to avoid pitfalls of U.S. intellectual property law – especially where entitlements can be unwittingly surrendered or foregone.
3. Know and be able to apply U.S. law such that you can counsel a client confidently as to the legal consequences of making use of a particular creative work, design, invention, putative trademark, indication of personal identity, or other potential subject of intellectual property – such as concluding that the use is safe, somewhat risky, very risky, or highly likely to incur liability.

4. Know and be able to apply U.S. law such that you can advise a client on how to use intellectual property law in the context of an incipient business strategy.
5. Be able to fashion persuasive appellate-level or scholarly arguments, grounded in theoretical and policy perspectives, for and against propositions involving intellectual-property doctrine.
6. Recognize how the real-world effect of IP law can fail to correspond with blackletter doctrine because of strategic behavior, tactical maneuvering, ignorance of the law, and unpredictable outcomes in court.
7. Have a cursory knowledge of international and foreign intellectual property law such that you would know when to refer a client to alternative counsel, including foreign counsel, in order to take advantage of possible IP entitlements abroad or to receive advice on foreign liability.
8. Be able to speak intelligently and knowledgeably about current trends in the development of IP law.

COVERAGE: The primary focus of this class is on United States law. Foreign and international law will be only cursorily surveyed. In terms of doctrine, our primary focus will be on copyright, patent, trademark, trade secret, and the right of publicity. There is a course outline at the end of this syllabus.

3. CLASS WEBSITE: The central repository for class materials and information is the class website. It is not password protected. Go to ericejohnson.com and find the link on the upper left. The direct URL is:
http://www.ericejohnson.com/courses/ip_16_spring/.

4. MATERIALS:

4- 1. Books:

There are two required books: the Field book and the McJohn book.

The Field book may be procured in the form of a pdf file (free, which you can print if you like) or a printed paperback (about \$36):

Fundamentals of Intellectual Property: Cases & Materials,
 by Thomas G. Field Jr.
 Published by Field (24th rev., June 24, 2012).

Download file:

<http://ssrn.com/abstract=1172142>

Purchase printed book:

The pre-printed paper version of the book may be available through amazon.com or other online retailers.

Paperback: 472 pages

Publisher: CreateSpace Independent Publishing Platform (July 23, 2012)

ISBN-10: 1478188316

ISBN-13: 978-1478188315

The McJohn book may purchased from an online retailer or from the bookstore:

Intellectual Property: Examples & Explanations, *Fifth Edition*
by Stephen M. McJohn
Published by Aspen Publishers, 2015
ISBN-10: 1454850159
ISBN-13: 978-1454850151

4-2. Technology Expectation:

Please bring an internet-connected laptop, tablet, phone, or other portable general computing device to class for use in interactive polling.

In past classes, I assigned TurningPoint clickers for interactive polling. Unfortunately, the TurningPoint company has changed their business model in a way that has increased costs for students while simultaneously decreasing ease of use for instructors. As a result, I am no longer adopting TurningPoint clickers, and I will be endeavoring to do interactive polling through a web interface.

I have stopped short of requiring you to obtain an internet-connected computing device that you can bring to each class session, but my hope is that all students will be able to do so without incurring any additional expense. If you don't already have such device you can bring to class, please let me know so we can discuss how I can accommodate your participation in class.

Note that a TurningPoint clicker device will not work for this course, as the class will not have a TurningPoint receiver device in operation.

4-3. Other: Additional materials that will be part of the required reading may be made available via links from the course website, handed out in class, or placed on reserve in the library, including, possibly, audio, visual, and audiovisual works.

4-4. Study Aids and Unassigned, Additional Reading: Beyond the required materials, you are encouraged to use any other materials you find helpful or interesting, including, for instance, treatises and commercial outlines. I mention this explicitly because some professors discourage outside sources. I do not. As far as I am concerned, the more you learn about intellectual property law, the better.

I have found that commercial outlines and other study aids are a great way of gaining a basic understanding of the blackletter law in a subject. That being said, I think the best time to read such an unassigned secondary source is right at the beginning of the semester. That way, you may give yourself a better foundation of knowledge for learning the material presented in the cases and in class. On the other hand, reading a commercial outline *as exam preparation* for this class could be a waste of your time and mental energy. But it's up to you, of course, to judge for yourself.

If you do use study aids or other resources, I would be interested in hearing about your experience with them – whether good or bad. I'm always interested in knowing what is contributing to people's learning.

5. READING:

5-1. Assigned reading: Reading assignments will be posted to the chart of assignments, which may be accessed from the class webpage. I take care to craft reading

assignments so that they are not unduly burdensome. In return, I ask that you do the reading conscientiously. How should you tackle the reading? You could, of course, brief the cases, use a highlighter, make margin notes, or do any of a number of other things. And, of course, you should do what works for you. But the most important thing is to read the material with interest. "With interest" means you should be having thoughts going through your head such as, "Mmmm, interesting!" "Ah ha! That makes sense!" or "What is wrong with this judge?!?!?"

One way to approach the reading, suggested by Professor Scott Brewer, is to be aware of "the literary drama of the law," that is, to "be alert to the narratives of the hopes, aims, fears, aspirations and frustrations of the litigants ..." Behind every case there is a real story. The more you allow yourself to be absorbed into that story, the more you will get out of the case.

Also, you should attempt to put yourself in the position of the judge. Force yourself to confront the challenge of trying to interpret the law in a way that is fair, unbiased, beneficial for society, as well as true to statute and precedent. Using this kind of viewpoint, you are bound to get something extra out of every case you read.

5-2. Optional unassigned reading: In addition to the assigned reading for class, you might find it interesting to do some optional extra reading from blogs and online news sources. Doing so will allow you to engage with the material in a way that is highly relevant and topical, leveraging your imagination to solidify what you have learned and prime you for what comes next.

6. GRADING:

6-1. Your grade will primarily be based on your exam performance. The exam is discussed later in this syllabus.

6-2. Class participation will also potentially count in calculating your final grade.

(a) I plan to add or subtract from some students' exam grades on a non-anonymous, discretionary basis, with the result forming the grade for the course. Such adjustment will ordinarily be no more than one step, such as from a B to a B+ or from an A to an A-. In extraordinary cases, which I anticipate to be rare, I may make an adjustment of two steps, such as from a C to a B- or from a B+ to a B-. In making class-participation adjustments, I anticipate that some students' grades will be increased upward and others' may end up being adjusted downward, with most students' grades probably remaining unchanged. Class-participation evaluation is, of course, subjective.

(b) Reasons for a positive effect of class participation on the overall course grade may include habitual preparedness and engagement, volunteering in discussions, excellence in contributions to discussions, strong performance on the quiz, strong performance on assignments (if any), and various conduct that contributes positively to the educational process.

(c) Reasons for a negative effect of class participation on the overall course grade may include exhibiting poor performance or visible disengagement in the classroom, being unprepared for class, disruptive behavior (including, but not limited to, a pattern of appearing distracted by a computer or phone), conduct contrary to the

Classroom Conduct Rules (listed below), conduct contrary to other admonitions communicated in the syllabus or otherwise, and any conduct that detracts from the educational process. Tardiness and deficient attendance, if substantial enough, may also have a negative effect. (For more on attendance, see §9.)

(d) Positive and negative effects may, of course, offset.

(e) Please keep in mind that, despite the fact that class participation may factor into grading, you should not worry unduly about the quality of your responses in class discussion. Law school, like all other educational environments, is a place to learn, and that necessarily implies that it is a place to fumble and make mistakes. I do not ask questions or conduct discussion as a way of judging you; I do it as a way of challenging you and helping everyone to learn. So put aside your fears and engage in the conversation. Once you are a full-fledged lawyer, having a confident voice under pressure will be indispensable. Now is the time to find that voice. So, be bold.

(f) Note that I plan to do at least one quiz, using fill-in-the-bubble scantron sheets, near the beginning of the semester, after we have done the blackletter review. Consider the quiz a productive challenge – a chance to solidify your learning of basic doctrine. But don't stress too much about it. While strong performance on the quiz is a positive in terms of class participation, poor performance on the quiz will not count as a negative.

6-3. Academic Honesty: Cheating or serious academic misconduct of any kind in this class will presumptively result in a failing grade of F for the semester. To be clear, failing to follow final exam instructions in a way that might give a student an advantage, even if done without intent to gain such an advantage, constitutes, in my judgment, serious academic misconduct, and will presumptively result in a grade of F. It is your responsibility to treat exam instructions with diligence and care. In any instance of misconduct, I reserve the right in my discretion to award a lower grade other than an F if I find there to be extraordinary mitigating circumstances; despite my reservation of rights in this regard, however, do not expect leniency. Please note that the awarding of a failing grade or lower grade for misconduct is not to the exclusion of other sanctions, and I intend, in virtually all instances, to refer cheating or serious academic misconduct to the Honor Board and/or the administration of the University and/or School of Law.

7. COMMUNICATIONS AND OFFICE HOURS:

7-1. My e-mail address is eric.e.johnson@law.und.edu. Please note that I do not answer or discuss substantive questions through e-mail. Moreover, perhaps unlike many students, I do not read e-mail on an hour-by-hour basis. I may not respond at all to certain e-mailed questions, including those which ask for information that is clearly answered in this syllabus. If you miss class, please ask other students for information you may have missed, such as reading assignments. Any e-mail communications you do have with me should be prepared in a professional manner, including the use of a meaningful subject line.

7-2. If you have any questions about the exam, please ask them in open class. In the aims of fairness, I do not discuss the exam on an *ex parte* basis.

7-3. My office is 220D in the East Wing. I post open office hours on my website at ericejohnson.com. If office hours are not convenient, please do not hesitate to e-mail me to make an appointment to talk (and when you do, it helps if you include some suggested times that work for you).

7-4. At least once during the year, I hope you will take advantage office hours, an appointment, or some other opportunity to chat – even if you have no questions or nothing specific to discuss. That’s not a requirement, just a request. But it would be nice to be able spend some informal time with everyone.

8. IN THE CLASSROOM:

8-1. Classroom Conduct Rules:

In general:

- (a) Avoid behavior that might disrupt class or distract your fellow students.

Some specifics:

- (b) Do not eat in class. Do not chew gum audibly or with your mouth open.
- (c) Refrain from any use of a digital device where such use could reasonably disrupt class or distract fellow students. All digital devices must be operated without audio volume. Screens must not display any distracting content, including, but not limited to, distracting images, indecent content, moving images (video), and animation or flashing graphics.
- (d) You may use digital devices (including, without limitation, computers, phones, and tablets) in class; however, from the time of class’s scheduled beginning until class ends: (1) You may not engage in any digitally enabled network communications with anyone else in class, including, but not limited to, e-mail and text messaging. (2) You may not engage in any web publication or any live-updating/realtime digitally enabled network communications with anyone at all, including, but not limited to, live chat, IM, Facebook (including, but not limited to, Facebook groups), Twitter, Ello, Snapchat, Instagram, Google+, and the like. The prohibitions of this subparagraph (d) are not limited by context and apply without regard to whether the activity in question can be characterized as disruptive or distracting. Any violation of the policy in this subparagraph (d) will presumptively result in a lowered course grade and may also be referred for disciplinary action. The prohibitions of this subparagraph (d) do not apply if and when you are absent from class and not on campus, nor do they apply to communications with University information-technology staff for technical-support purposes. Bottom line: Keep the discussion in class, where it is productive and beneficial for all.

8-2. Your participation in classroom discussion should be meaningful and appropriate. Raise your hand to have a say in discussion when you have a comment that will contribute to the experience of the class as a whole, or when you have a question, the clarification of which will benefit the entire class. On occasion there are students who raise their hand too often and take up too much of the class’s time. And in nearly every

class, there are people who sit passively and rarely, if ever, contribute to classroom discussion. Try to not fall into either extreme.

8-3. Even if you don't volunteer, I'll expect you to be ready to participate meaningfully if called on. If you cannot participate fully for a particular class, for whatever reason (and there's no need to tell me why), please tell me before class, in person, so that I can avoid calling on you. Reasonable requests of this sort are entirely understandable and will not adversely affect your grade.

8-4. Be aware that I plan to make an audio recording of each class meeting. These recordings are for my use, and, unfortunately, I will not be making them available during the semester for absent students. No one is permitted to make an audio or video recording of class without my express, written permission.

9. ATTENDANCE:

9-1 Communications About Attendance: There is generally no need for you to e-mail me if you are or anticipate being absent. Moreover, there is generally no need for you to explain to me why you have been absent. The only reason I imagine that I would need to know why you are absent is if your attendance is approaching a seriously deficient level (discussed below) and it becomes necessary to discuss extenuating circumstances.

9-2. In General: My view is that punctual, regular attendance in class is an essential component of the educational experience. Superior performance on an examination is not enough if you haven't shown up. Moreover, the General Rules of the School of Law's Academic Program say, "Regular and punctual class attendance is required."¹ ABA standards put an emphasis on attendance as well.

I expect that students may have occasional, isolated absences. I do not view this as a problem. An infrequent late arrival is forgivable as well. But how does one draw the distinction between the well-meaning student who doesn't make it on time to every class and the student who allows attendance to become a serious problem? It's not easy. Thus, I am providing this detailed attendance policy. I regret that it is so long. Nonetheless, seriously deficient attendance must incur serious consequences and, therefore, it seems prudent to err on the side of particularity.

9-3. Deficient Attendance:

(a) **Late Arrivals and Early Departures:** As the expression goes, better late than never. But bear in mind that tardiness is disruptive. For purposes of determining the appropriateness of penalties discussed below, a late arrival or early departure will count as half of a whole absence. In my discretion, however, a very late arrival or a very early departure may be counted as a whole absence.

(b) **Comings and Goings; Intraclass Absences:** I understand that you may have an urgent need to leave class for a short time. Bear in mind that leaving and re-entering class is disruptive, so please do so only when necessary.

(c) **Effect on Grade for Deficient Attendance:** Deficient attendance may have a negative effect on the class-participation component of your grade, and thus on

¹ See <http://law.und.edu/students/policy-manual/general-rules.cfm>.

your overall course grade. The negative effect may occur either as a drop in your final grade or a decision not to grant a bump up in your grade. The class-participation grading component is discretionary and subjective, and attendance is only one among many factors in determining class-participation grading. In keeping with that, there is no set numerical formula by which absences and partial absences (i.e., late arrivals, early departures, intraclass absences) will be deemed seriously deficient and thus deserving of negative treatment in the class-participation grading component. Factors that will be considered include the number of absences and partial absences, the student's attendance record in comparison with the attendance records of others, courteousness and professionalism in dealing with attendance issues, and extenuating circumstances. As a guideline, however, you can expect that six or more absences will constitute deficient attendance such that attendance, by itself, would warrant dropping a student's final grade by one step.

(d) **Administrative Withdrawal or Failing Grade for Profoundly Deficient Attendance:** For a student with a profoundly deficient attendance record, I will presumptively request of the Office of the Dean that the student be administratively withdrawn. Alternatively, I may award a failing grade. For these purposes, I will presumptively regard as profoundly deficient attendance **eight** or more absences. Recall that partial absences (i.e., late arrivals, early departures) will count as half an absence each and may, in my discretion, be construed to constitute a whole absence. It is your responsibility to keep track of your own absences, including with regard to the presumptive administrative withdrawal or failing grade. Thus, please do not ask me to calculate your attendance record so that you can weigh whether to miss an additional class. And do not expect to get independent notice that you are approaching the threshold for failing or being administrative withdrawn. This syllabus provision is your notice.

(e) **Special Extenuating Circumstances:** In consultation with the Dean or the Assistant Dean for Student Life, I may take account of special extenuating circumstances in deciding whether to drop a grade, award a failing grade, or request administrative withdrawal. Special extenuating circumstances can include weather emergencies, personal illness, illness of a close family member, bereavement, etc. Extracurricular activities, job interviews, court appearances, or the like can be considered in this vein as well.

Notwithstanding the foregoing, it is expected that almost all students will be able to keep absences within the numerical thresholds identified above – including absences caused by illness, floods, job interviews, etc. Giving students special dispensation on the issue of attendance will only be done if appropriate under the totality of the circumstances. As an example, suppose a student was absent from class six times because the student wanted to sleep in; then, at the end of the semester, the student is absent twice because of an out-of-town job interview. Administrative withdrawal would be appropriate. If the student had been generally conscientious about attendance from the beginning, the student would not have created any issue with the two absences for the job interview.

9-4. Attendance Record: To avoid being distracted in class by constantly noting things like late arrivals and early departures, I will be requiring students to log

their own attendance. Thus, it is of paramount importance that you deal with all attendance issues with utmost honesty, integrity, and care. Inaccuracies in marking the attendance log will presumptively be referred to administration and/or the Honor Board and result in a lowered grade.

(a) **Means of Taking Attendance:** Attendance will usually be taken by means of a paper sheet for students to fill out during class. On any given day, attendance may alternatively be taken by roll call, by reference to the seating chart, or by some other method.

(b) **Indicating Attendance:** When the attendance log comes around to you, fill it out as instructed, indicating your attendance for instant date. ("Instant date" means the current date as you are looking at the sheet.) Indicating your attendance this way is your responsibility. If the attendance sheet does not come around to you, then it is your responsibility to make sure you are marked as having attended – simply come up to me immediately after class ask to fill it in. If you omit to fill in the sheet during class or immediately afterward and before I leave the room, you will be counted as absent.

This is very important: You may only fill out the attendance sheet on behalf of yourself and for the instant date. You may not mark the sheet on behalf of another person, even if that person is in attendance, and you may not permit another person to mark the sheet on your behalf. You may not make any mark indicating your attendance for any other date other than the instant date, even if you were or will be in attendance on that date.

(c) **Self-Reporting Partial Attendance:** The attendance sheet will have a means of indicating if you are not staying for the full duration of class. If you will need to depart class early and not return, then you must make an appropriate notation of that on the attendance sheet. Alternatively, if you have a change of plans requiring you to leave early despite not having indicated that in advance on the attendance sheet, then you must inform me by e-mail as soon as reasonably possible afterward to correct the record.

(d) **Filling Out of Late Arrival Slips:** If you arrive late to class, you must legibly and completely fill out a late arrival slip before you sit down. If a blank late arrival slip is not available, then you must leave on the podium, before you take your seat, a letter-size sheet of paper providing your name, the name of the class, the full date, the day of the week, and the time of your arrival.

10. EXAMINATION:

10-1. Communications and Anonymity:

(a) **Ex Parte Communications:** I will not discuss the exam on an *ex parte* basis. (See §7-2.)

(b) **Anonymity:** Each exam will be "blind graded," so that I will not know the identity of the student as I am grading her or his exam. You may not waive anonymity. Do not include your name in your exam response, and do not write your name on any exam materials, including the scantron answer sheet. Self-identification on the exam or otherwise compromising anonymity will presumptively result in a deduction from your exam grade and a referral for disciplinary action.

10-2. The examination will be administered in two parts.

(a) **Part I: Multiple Choice Questions**

(1) Part I of the exam, worth approximately two-thirds of the total exam grade, will consist of multiple-choice questions administered on a closed-book basis. The questions will include, but may not be limited to, bar-exam-style hypotheticals testing the application of law to facts, as well as questions that test literacy of pure law (e.g., legal doctrines and statutes) and understanding of relevant concepts of legal theory and scholarship.

(2) Part I of the exam will embrace subject matter across the entire course.

(3) Part I will be administered on a “closed-book” basis. That is, for Part I, you may not use or reference any materials at all, other than pencils, the answer sheet, and the examination booklet.

(4) Part I will be two hours and fifteen minutes (2¼ hours) in duration.

(5) Part I will consist of not more than 55 questions. A few of the questions in Part I may be “pre-test” questions, for which I will gather data, but which will not count in grading for this semester. Such pre-test questions will not be marked and you will not be able to distinguish them from the non-pre-test questions.

(6) All multiple-choice questions are written by me. None of the questions used on the exam will be questions that have been previously released.

(7) At least some of the multiple-choice questions may be questions that have been used by me in a previous semester, but which have remained unreleased.

(8) A word about the re-use of multiple-choice questions: Re-use of multiple-choice questions is standard in higher education, and the practice permits better exam quality and better calibration of the results. This is not trivial: The statistical data that results from a multiple-choice test administration is quite rich, suggesting which questions are good, which should be revised or thrown out, and which might serve as models for building new questions in the future. Using this data in a careful way helps me improve multiple-choice tests from year to year. That makes exams more fair – and fairness is my ultimate aim in designing examinations. There is, of course, a downside to reusing questions, which is the possibility that some questions may be leaked to some students. I take appropriate steps to prevent the dissemination of unreleased questions. But bear in mind that the security of multiple-choice questions is not just a matter of faculty and staff responsibility; it is a matter of student responsibility as well. If you are aware that detailed information about or copies of unreleased questions are circulating, please let me know. Informing me will allow me to (1) refrain from using the compromised questions on the exam, and (2) release those questions to the public exam archive so that everyone can study from them.

(9) Be aware that the use of unreleased exam materials – whether photocopied, roughly transcribed, or otherwise – as part of your preparation for the exam constitutes academic dishonesty. Moreover (not to put too fine a point on it) reproducing or trafficking in unreleased questions is civilly actionable. If you find, receive, or are offered unreleased questions, be responsible and act promptly to ameliorate academic unfairness by letting me know; I will pursue no action against you

in this regard if you make timely notice to me, which may be made anonymously, specifically identifying the materials, preferably by submission of a copy. The notice is timely if (i) it is near the beginning of the semester, (ii) it is reasonably soon after you come into possession of the materials and there is enough time to prevent such questions from being used on the exam and to release them to the class for their meaningful use in studying, or (iii) it is immediately upon coming into possession of the materials.

(10) Also be aware that a crucial part of exam security is the numbering of exam booklets and the marking of booklets with students' exam identification numbers. Booklets are clearly marked with a space for you to write your exam identification number. This is particularly crucial for Part I. Do not omit to do this, and do not omit to turn the exam booklet back in. An omission in this regard, even an innocent one, will be catastrophic for your grade, likely resulting in a failing grade.

(b) **Part II: Essay Response**

(1) Part II of the exam, worth approximately one-third of the total exam grade, will require a written response. This part of the exam will consist of one or more open-ended questions calling for a written essay response to a hypothetical fact pattern.

(2) Part II of the exam will be limited in subject-matter scope. That is, Part II will not be comprehensive in subject matter across the entire course.

(3) Part II will be administered on an open-book basis. You may bring with you any paper-based notes and books you like. But no electronic or interactive resources (such as a tablet computer, smart phone, etc.) may be used or referenced. You may, of course, use a laptop to write your exam, but you may not reference files stored thereon during the examination session.

(4) The total duration of Part II will be one hour and fifteen minutes (1½ hours), divided up as follows: (1) a Reading-Outlining Period ("RO Period") of 30 minutes, and (2) an Exam-Writing Period ("EW Period") of 45 minutes.

(5) You may use the RO Period to read the exam booklet (that is, the facts and the question or questions), to take notes, to reference your outlines or books, and to outline your response on scratch paper. During the RO Period you may not begin recording the response upon which you will be graded. That is, if you are taking the exam on computer, you may not type any characters at all into the exam response file on your computer during the RO Period; and if you are taking the exam by handwriting, you may not make any mark in a blue book (that is, an exam-response booklet, which has sometimes been labeled as a "green book") during the RO Period.

(6) During the EW Period you are permitted to write your response. For the avoidance of doubt, it is acknowledged that during the EW Period you may also continue to do what is allowed during the RO Period (e.g., to refer back to the exam booklet, reference your notes and books, etc.), including notes you created during the RO Period.

(7) Being able to write in a concise, focused, and organized manner is extremely important for the practice of lawyering, and it is important for the bar exam as well. Thus, a factor in grading Part II will be concision, focus, and organization in your

written response. To help you gauge an appropriate level of concision, the essay response may have a word-count target. This will not be an absolute ceiling – that is, it is not a “word-count limit.” Nonetheless, the fact of an exam-taker going beyond the word-count target and by how much an exam-taker exceeds the word-count target will be noticed and may influence the assessment of your written response.

(7) You will have the choice of typing or handwriting your response to Part II. The typing of exams will be in accordance with the School’s policy for the use of computers to write exams.

(8) I do not re-use essay questions.

10-3. My old exams should be quite useful to you in studying for and thinking about this semester’s exam. (Note, however, that this semester’s exam format differs from past exams. In recent past exams, the essay portion was comprehensive in coverage, included a much longer set of facts, and was administered with a much longer period for writing an answer.) You will find old exams in my Exam Archive, which is publicly accessible online. You will find a link on ericejohnson.com (or use the direct URL: http://ericejohnson.com/exam_archive/). Later in the semester I will have more to say about the exam and how I recommend preparing.

11. SAFE AND WELCOMING EDUCATIONAL ENVIRONMENT; ISSUES OF DISCRIMINATION, ACCOMMODATION, AND ACCESS: As members of the School of Law community, each of us has the obligation to work toward an environment where all students are given the fullest possible opportunity to flourish. You should know that UND has a number of policies and programs that are part of its commitment to providing a safe and welcoming educational environment for all. These include provisions regarding discrimination, access, and accommodation.

11-1. The office of the Provost has encouraged the inclusion of the following in course syllabi with regard to UND’s commitment to provide a safe and welcoming educational environment for all:²

Notice of Nondiscrimination

It is the policy of the University of North Dakota that no person shall be discriminated against because of race, religion, age, color, gender, disability, national origin, creed, sexual orientation, gender identity, genetic information, marital status, veteran’s status, or political belief or affiliation and the equal opportunity and access to facilities shall be available to all. Concerns regarding Title IX, Title VI, Title VII, ADA, and Section 504 may be addressed to Donna Smith, Director of Equal Employment Opportunity/ Affirmative Action and Title IX Coordinator, 401 Twamley Hall, 701.777.4171, und.affirmativeactionoffice@UND.edu or the Office for Civil Rights, U.S. Dept. of Education, 500 West Madison, Suite 1475, Chicago, IL 60611 or any other federal agency.

² See <https://und.edu/provost/course-resources.cfm>. Note that a portion of the Provost office’s language regarding disability access has been omitted, as it conflicts with School of Law policy.

Reporting Sexual Violence

If you or a friend has experienced sexual violence, such as sexual assault, domestic violence, dating violence or stalking, or sex-based harassment, please contact UND's Title IX Coordinator, Donna Smith, for assistance: 701.777.4171; donna.smith@UND.edu or go to UND.edu/affirmative-action/title-ix.

Faculty Reporting Obligations Regarding Sexual Violence

It is important for students to understand that faculty are required to share with UND's Title IX Coordinator any incidents of sexual violence they become aware of, even if those incidents occurred in the past or are disclosed as part of a class assignment. This does not mean an investigation will occur if the student does not want that, but it does allow UND to provide resources to help the student continue to be successful at UND. If you have been the victim of sexual violence, you can find information about confidential support services at UND.edu/affirmative-action/title-ix.

11-2. Additional Information Regarding Faculty Reporting Obligations: All faculty are subject to the mandatory obligation to report all incidents of sex-based discrimination, harassment, violence, or other misconduct to the University's Title IX Coordinator or a Deputy Coordinator as soon as possible, including the names of the people involved (to the extent known), and the details of incident – including what happened when and where.

11-3. Students with Special Needs and Disabilities: If you have a disability and plan to request a disability accommodation, you should schedule an appointment to discuss the issue with the School of Law's Assistant Dean for Student Life, who may then refer you, as appropriate, to UND's Disability Services for Students office. Disability accommodations are generally kept confidential from instructors. If you have medical information to share with me in advance of and in case of any prospective emergency, or if you need special arrangements in case the building must be evacuated, please e-mail me or make an appointment with me to discuss.

12. REVISIONS TO THIS SYLLABUS: This syllabus may be amended or revised, and if it is, the most recent syllabus will be posted to the class website.

13. COURSE ORGANIZATION: The planned organization of the Intellectual Property course is below. The structure is subject to minor adjustment.

I. Preliminaries

1. The Basic Framework and Initial Questions
2. Blackletter Overview

II. Expression

3. Copyright
4. Moral Rights

III. Invention and Industry

5. Utility Patents
6. Design Patents
7. Sui Generis Rights

8. Trade Secret

IV. Commercial Origin

9. Trademark

10. Right of Publicity

V. Marginalia

11. International IP³

12. Contract and Idea Submission³

13. Misappropriation³

14. Federal Preemption³

14. FEEDBACK: If you have feedback for me – suggestions, ideas, commendations, or criticisms – please do not hesitate to tell me in person or by e-mail. If sending something to me anonymously would make you feel more comfortable, then I invite you to do just that.

I hope you enjoy the course!

– EEJ

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NOTE: This version of the syllabus corrects a typo (a misspelling), that existed in the original.

³ This may or may not be included, depending whether time permits.