

Intellectual Property Survey

University of Oklahoma College of Law
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http://ericejohnson.com/courses/ip_22/

Course/section no.: 6213-600
Thursdays & Fridays, 1:30 - 2:45 p.m.

SYLLABUS

1. GOALS AND GENERAL REMARKS: 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.

2. LEARNING OUTCOMES: 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 U.S. copyright, patent, trade secret, trademark, and right of publicity law.
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. Be able to speak intelligently and knowledgeably about current trends in the development of IP law.
3. **CLASS WEBSITE:** The central repository for class materials and information is the class website. It is not password protected. You can go to [ericejohnson.com](http://www.ericejohnson.com) and find the link on the upper left. The direct URL is: http://www.ericejohnson.com/courses/ip_22/

4. **MATERIALS:**

4-1. **Main Required Title – Rantanen Book:**

The main casebook for the course is an open-source/open-access (also known as “OER”) casebook. You are required to have a paper-based/printed copy – but there are some nuances to this, so read on:

Introduction to Intellectual Property: Cases and Questions (Fall 2021 Edition)
by Jason Rantanen. (This edition is also called the “Second Edition.”)

This book is available for free download in PDF format here:
<http://ssrn.com/abstract=3883500>. Make sure it’s the Fall 2021 edition or “Second Edition.” (There’s also another, earlier edition from 2021. So that’s why you should look for “Fall” or “Second Edition.”)

Because of the book’s Creative Commons Attribution-Noncommercial 4.0 International License (<https://creativecommons.org/licenses/by-nc/4.0/>), you have lots of options in terms of how you might access the Rantanen book:

- You could read it on your computer or tablet.
- You could print it yourself.
- You could have someone print it for you.
- You could purchase a printed copy from Amazon (<https://amazon.com/gp/product/B099C47NQM/>). Again, make sure it’s the Fall 2021 edition or “Second Edition.”

Something important you should keep in mind: Assuming we have a normal exam (i.e., putting aside potential covid pandemic contingencies), then **you will want to have a printed copy by the end of the semester to use on the exam.** That's because, with a normal format, for the essay portion of the exam you will be allowed to have with you any printed materials you'd like to reference, so long as you are not sharing them with anyone else.

Given these circumstances, I've specified the paper-based/printed copy of the Rantanen book as required. (I've been told that some students may need a book to be required before a particular scholarship or stipend will cover it as an expense.)

There is no requirement that the above book be in any particular kind of condition (new, used, etc.). It just has to be a physical, paper copy.

4-2. Other Materials:

Beyond the Rantanen book, students will be required to access certain other online open-access materials. For text materials, students may choose to download and print these. Consider that you might want them available to you for referencing on the essay portion of the exam.

It is possible that other materials made part of the required reading could be made available via links from the course website (such as on the Chart of Assignments), distributed via Canvas, or placed on reserve in the library. I don't anticipate using Canvas to distribute materials, but if I end up doing that for some reason, I'll let you know by email and/or by notation on the class website.

4-3. Technology Expectation:

Please bring an internet-connected/web-browsing-capable laptop, tablet, phone, or other portable general computing device to class for use in interactive polling. It is my hope is that all students will be able to do so without incurring any additional expense or buying anything new; if you don't already have such a device you can bring to class, please let me know and we can discuss it. (Note that an iClicker or other such proprietary clicker will not work for this course.)

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. There are lots for sale. And the OU Law Library may be able to point you to many resources in the library's collection, or for which the library has subscription access for students. I am aware that some professors discourage the use of commercial outlines or various study aids. I don't. The more you learn about intellectual property law, I figure, the better. But a word of caution is in order.

In my experience, 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. But 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. Reading such a book along the way might be helpful as well, as it may explain the material in a different voice.

On the other hand, I recommend extreme caution in reading an unassigned treatise or commercial outline *as exam preparation* for this class. I suspect it may be a waste of your time and mental energy, because all such study aids will go into much more detail than we will about some things and will gloss over other things we will dig into deeply. But it's up to you, of course, to judge for yourself.

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

5. ASSIGNMENTS:

5-1. Posting: Readings will be posted to the Chart of Assignments: http://www.ericejohnson.com/courses/ip_22/IP_Chart_of_Assignments.html. You'll find a link on the class webpage. **Keep in mind that you may need to hit refresh or reload the page to see the most recent updates.**

Ordinarily, readings for any given week will be posted by the day after the last class of the preceding week. Thus, readings for Thursday will generally be posted by the preceding Saturday.

5-2. Minimum Out-of-Class Workload Expectation: The vast majority of your law-school education is meant to take place outside of class. For this class, you should be doing out-of-class work that averages at least six hours per week – roughly twice the amount of time you spend in class. This is in line with the ABA's law school accreditation requirements. I have put together the assignments with this minimum expectation in mind.

5-3. Approach: My aim is to avoid making the raw amount of reading unduly burdensome. Given this, I ask that you do the reading conscientiously. You should do whatever works for you in terms of using a highlighter, making margin notes, or what have 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?!?"

More to the point, **don't waste the case merely looking for a rule to put in your outline or to commit to memory.** If a rule were the only thing to get out of a case, I would just assign the rule. The point of reading cases and other assigned materials is to help you develop a lawyerly perspective on and intuition about the law. The ideal is to be able say things like, "I'm not aware of a case exactly on point, but my sense is that in a situation like this, a court would ... "

One way to approach reading cases, 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 precedent and statute. Using this kind of viewpoint, you are bound to get something extra out of every case you read.

See §8-2(c), *infra*, for a list of specific questions about a given day’s reading that you should be to be prepared to answer in class, if called on.

6. GRADING:

6-1. Overview: I care a great deal about fairness in grading, and I believe you will see the product of that thinking throughout the course. Here are the basics: Your grade for the course will be based on your exam performance, with class participation potentially raising or lowering this grade to form the final grade for the course. In addition, attendance (including tardiness) and academic misconduct/dishonesty can result in grading penalties, failing grades, and/or involuntary withdrawal.

6-2. Assigning of Exam Grades and Grade Distributions: In assigning grades, I will not use a pre-determined grade distribution or pre-determined grade-point average. So you should not view yourself as being in competition with your fellow students for a limited pool of grades, and you should favor cooperation and generosity with your classmates in terms of sharing notes and studying together. I will assign grades as follows: When I have the raw point totals from the exam, I will use my discretion to draw grade cut-offs based on natural breaks and clumps that occur in the point totals, a developed sense of how a given letter grade corresponds to levels of performance and achievement, and precedent set by grade distributions and grade-point averages in prior semesters in this and other courses. But I treat precedent lightly. If the whole class does well, then the grade-point average should skew toward the higher side. Of course, it’s possible that the reverse could be true. Bottom line, I aim for grading that is fair, so the class should neither be harsh nor an “easy A,” and so that everyone is incentivized to work cooperatively.

6-3. Alternative Minimum Grading:

(a) In addition to the method of the initial assignment of grades discussed in §6-2, I will also calculate an alternative minimum grade in terms of a percentage of possible points for the exam, according to this schedule:

A+	97% to 100%
A	93% to 96.99%
A-	90%to 92.99%
B+	87%to 89.99%
B	83%to 86.99%

B-	80%to 82.99%
C+	77%to 79.99%
C	73%to 76.99%
C-	70%to 72.99%
D+	67%to 69.99%
D	63%to 66.99%
D-	60%to 62.99%

If the alternative minimum grade according to this schedule is higher for any student than the assignment of grade under the method disclosed in §6-2, that student's initial assignment of grade will be the alternative minimum grade.

(b) Note that through the alternative minimum grading approach described here, it is possible that one or more students' grades might end up higher than they would have been otherwise. But nothing in this §6-3 can work to make a student's grade lower than it would be otherwise.

(c) For clarity, note that this alternative minimum grade applies prior to any discretionary adjustments made upward or downward, including for class participation, attendance, misconduct, etc.

6-4. Class Participation and Grading:

(a) In talking about class participation, I mean to refer to that part of the class that is not the exam. Thus class participation for grading purposes is mostly in-class discussion. But to the extent we have anything along the lines of in-class exercises or minor bring-to-class or turn-in-by-email assignments, those are embraced within class participation as well.

(b) Class participation will potentially count in calculating your final grade. I may 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-. (For instance, a student who was one of the best ever in class but who did extremely poorly on the exam might get a two-steps-up adjustment.)

(c) Class-participation evaluation is, of course, subjective. I make adjustments at the end of the semester with a view to the context of other students in the same class and my experience with other classes over time. Thus, assessing an upward or downward adjustment is largely a matter of determining whether a given student is a stand-out in a positive or negative sense. It also matters where a student's grade falls. I'm usually more likely to bump up a student's grade if that student is at the top of her or his grading band. For instance, a student with strong in-class performance is more likely to be bumped up from a B+ to an A- if that student has the highest score among the B+ grades.

(d) I cannot say in advance what effect class participation might have on grades in this class. I can say that in the past, how many adjustments I have made has varied greatly with the class. I have found that the smaller a class is, the more adjustments I have tended to make. And I can say that in past classes, I have made upward adjustments far, far more often than downward adjustments. There have been some classes where I made quite a few downward adjustments, but it's common that I make no downward adjustments at all.

(e) Reasons for a positive effect of class participation on the course grade may include habitual preparedness and engagement, volunteering in discussions, excellence in contributions to discussions, and various conduct that contributes positively to the educational process.

(f) Reasons for a negative effect of class participation on the overall course grade may include exhibiting distinctively poor performance or repeated 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 In-Class Conduct Rules (listed below), conduct contrary to other admonitions communicated in the syllabus or otherwise, and any conduct that detracts from the educational process.

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

(h) 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. The participation component of grading is not about giving the "right" answers. Law school, like all other educational environments, is a place to learn, and as far as I am concerned, 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.

6-5. Attendance and Grading: Attendance issues—including tardiness and absences—if substantial, can affect your grade. See §9 on attendance, *infra*.

6-6. Academic Misconduct/Dishonesty and Grading: Cheating, dishonesty, or serious academic misconduct of any kind in this class will presumptively result in a failing grade (typically an "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 and even if inadvertent—constitutes, in my judgment, serious academic misconduct, and it will presumptively result in a failing grade and a referral for discipline. 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 request involuntary withdrawal or award a lower grade other than a failing grade 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 lower grade or a failing grade for misconduct is not to the exclusion of other sanctions, and I intend, in virtually all instances, to refer cheating and other serious academic misconduct to the College of Law and/or the administration of the University of Oklahoma for being dealt with under applicable policies, including the Code of Academic Responsibility.

7. COMMUNICATIONS AND OFFICE HOURS:

7-1. Invitation to Chat: At least once during the semester, I hope you will take advantage of 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. Ideally, I would like to spend some informal time with everyone.

7-2. Questions About the Exam: 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. Office and Office Hours: My office is on the third floor, room number 3034. My phone is 405-325-2273. I will post open office hours on my website at ericejohnson.com. If office hours are not convenient, please do not hesitate to make an appointment. Grab me after class with your calendar, or email me with some suggested times that work for you. I am also happy to meet with students after the completion of the course, either by appointment or during open office hours, for review and consultation, including reviewing exam results.

7-4. Email: My email address is eric.e.johnson@ou.edu. Please note that I do not answer or discuss substantive questions through email. Why not? The answer to a substantive question is almost always, “It depends ...”, and thus it becomes very difficult to draft satisfying written responses to substantive questions. If we talk, I can ask clarifying questions and we can go back and forth until there’s an answer you find satisfactory. So please bring substantive questions to class or to office hours.

Please do not ask questions easily answered by looking at the syllabus. And if you miss class, please ask other students what you may have missed.

Any email communications you do have with me should be prepared in a professional manner, including the use of a meaningful subject line. Also please note that, perhaps unlike many students, I do not read email on a constant basis. So please be patient for a reply.

7-5. Lack of Confidentiality; Faculty Reporting Obligations; No Legal Advice:

(a) **Tell me nothing that is confidential.** It is important for students to understand that faculty are subject to various mandatory reporting obligations stemming from federal law, state law, and university policies. Information a student shares with me that I may be obligated to report, may include, but is not necessarily limited to, that which relates to sexual harassment; gender-based discrimination; sexual-orientation discrimination; other forms of discrimination;

sexual assault; stalking, dating or domestic violence; child abuse or neglect; and various crimes. This might include third-hand accounts of claims or allegations of these things. Mandatory reporting obligations can cover things that happened in the past, on or off campus, involving university-affiliated persons or not. The requirements can be complex. More information can be found here:

<http://www.ou.edu/eoo/reporting-responsibilities>. Moreover, I do not wish to take on any confidences from students, even to the extent I might be able to do so. Bottom line: **Assume that nothing you tell me will be kept in confidence.**

(b) Please do not ask me for legal advice. I am not licensed to practice law in Oklahoma, and I cannot be your attorney. It is my job to prepare you eventually to give legal advice to others, and I am obviously happy to talk through hypotheticals with you, as that is a key way of exploring and learning the law. But giving legal advice upon which someone should be able to rely generally takes working up an in-depth understanding of the facts and taking a careful appraisal of the client's interests – all of which calls for working in the context of a confidential relationship. It also often requires doing legal research. I'm not in a position to do any of that for you.

7-6. Letters of Recommendation, Serving as a Reference: It's important to me to do a good job as a reference for my students. So if you might wish for me to serve as a reference for you or write a letter of recommendation for you in the future, then I ask you to let me know that at the end of the semester with an email that attaches your résumé. You might take a moment to put this on your calendar now. This will allow me to file away some notes about my recollections of you, and then I can use those notes in the future as a basis for writing a letter for you or taking a telephone call on your behalf. I also refer you to a memo I've written about references and recommendations:

http://ericejohnson.com/docs/Memo_to_Students_re_References.pdf. (There's also a link on the left side of my homepage.) If you review that memo, you can help me to do the best possible job in helping you.

8. IN CLASS:

8-1. In-Class Conduct Rules:

In general:

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

Some specifics:

- (b) Over years of teaching, I've found that what one student thinks is no big deal can be a nuisance to classmates – particularly with regard to noises and smells. The nuisance value is increased by the fact that students in class to earn academic credit aren't meaningfully free to leave and are expected to keep the same seats throughout the semester. Thus:

- Do not eat in class. And, to be clear, please do not have food out or eat at your desk before the class officially begins either. (If I notice you eating, I may say something. Or I may simply make a note on the chart where I keep track of class participation.)
 - Do not chew gum audibly or with your mouth open.
 - Be courteous with tissues and the like. For instance, if there is a spate of time when you have to use a lot of tissues or blow your nose frequently, please consider temporarily relocating to another seat. (We're talking allergies or a cold. If you have or might have flu or covid, please stay home.)
 - Please refrain from strong perfumes, essential oils, and the like.
- (c) Digital devices have a huge upside when it comes to getting the most out of your time in the classroom. But they can also be nuisance, even seriously distracting to others around you. Thus:
- 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 (including GIFs and display ads with movement that are common on sites like Facebook, the New York Times, etc.).
 - If you are being distracted by a classmate's digital device usage, please let me know! If you are being distracted, it is almost certain multiple people are being distracted at the same time. Once I know about this, I can then communicate with that student about issue – which I will seek to do tactfully, without causing anyone any embarrassment.
- (d) Over many years of teaching, I have experienced multiple instances when students' use of devices to communicate with one another in the classroom led to a degradation in decorum. Thus:
- 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, email, text messaging, IM'ing, etc.
 - (2) No posting to social media. You may not engage in any digitally enabled network communications that effect a publication, uploading to, or updating of any public or group-

delimited platforms or channels, including, but not limited to, Twitter, Discord (private or public channels), Facebook (including, but not limited to, Facebook groups), Reddit, Instagram, the web, and so forth. The prohibitions of this subsection (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 subsection (d) will presumptively result in a lowered course grade and may also be referred for disciplinary action. The prohibitions of this subsection (d) do not apply if and when you are absent from class and not on campus, nor do they apply to communications with OU information-technology staff for technical-support purposes. Bottom line: Keep the discussion in class, where it is productive and beneficial for all.

Zoom contingencies—if we end up needing to move the class to Zoom or online, then I'll speak to that then.

8-2. In-Class Participation:

(a) *Appropriate levels of voluntary participation:* Your participation in in-class 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 almost never contribute to classroom discussion. Aim to avoid either extreme.

(b) *Getting called on:* Even if you don't volunteer, I'll expect you to be ready to participate meaningfully if called on.

(c) *Questions to always be prepared to answer:* Here are questions you should always be ready to answer about primary-source readings (cases, for example):

- What does this teach us? What lesson can we take away from this?
- Do you agree with the argument being made and the conclusion being drawn?
- What is a strength in the analysis or presentation?
- What is a potential weak point in the analysis or presentation?
- What jumped out at you as interesting?

I'd suggest you use these questions as a checklist to make sure you are reading deeply.

(d) *If you aren't prepared:* 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. That way I can avoid calling on you. If I missed your message and I call on you anyway, please politely remind me that you requested not to be called on.

8-3. How to Think About Class Time:

Class time should be about deepening understanding, not trying to create a verbatim transcript of what is said.

I intentionally structure the course so that the written materials are the source of the "information" or "content" of the course. I'm a strong believer in need-to-know information being made available to students in writing. To begin with, there's the assigned reading – and I've adopted the materials I have because they impressed me as being straightforward and clear. There will sometimes be slides – and I will post the slides after class (although I may omit pictures/graphics content from posted versions of slides). Thus, you'll never need to transcribe words off of the screen. I also may provide content in other written forms that I post online.

If you are skeptical of my commitment to putting need-to-know material in writing, check the length of this syllabus!

So if the need-to-know material is already written down for you, what is the use of class? Class is about making the content/information come alive, exploring it, providing context, answering questions, checking your understanding, making connections, etc. That can even involve going down some dead-end paths.

What this all means is that I urge you to avoid transcribing what is said. Instead, relax your mind and try to engage intellectually.

8-4. Audio Recordings and Video:

(a) General:

No one (other than me) is permitted to make an audio or video recording of class, nor make any transmission (e.g., livestream) of class, or any reproduction of any class recordings. Any exception – which I do not anticipate making – would require my express, written permission.

The OU College of Law has provided the following language for inclusion in syllabi. This language is applicable to this course.

Sessions of this course may be recorded or live streamed by the professor. These recordings are the intellectual property of the individual faculty member and may not be shared or reproduced without the explicit, written consent of the faculty member. Students may not share any course recordings with individuals not enrolled in the class or upload them to any other online environment.

A key part of class is letting students feel free to stumble and attempt to push past their competency – sometimes with difficult, emotional subject matter. Student recordings of class time would impede that.

Note I may, and usually will, record class sessions myself. I do this for several reasons. (1) It has often been helpful for me in improving my teaching. (For example, if I feel I've done something particularly well, I can go back and listen to it the following year to try to replicate it.) (2) Sometimes, if I'm not careful about making a note of where I left off at the end of the class session, the recording is a back-stop allowing me to figure out where to pick up next time. (3) By recording, I am fixing the class in a tangible medium of expression, creating a copyright interest, and that will give me an additional means of preventing the distribution of recordings, which would alter the educational approach of the course emphasizing classroom discussion.

But to the extent I make recordings, please don't ask me for a copy. My distribution of recordings that capture students voices would significantly hamper students' sense of classroom discussion as being a safe space. And, at any rate, focusing on the verbatim of what was said in class is the wrong study strategy – see §8-3, *supra*.

I will tell you straight out: If there were a way to record class and have all student voices and mentions of student names automatically removed from the recording, then I would be happy to distribute those redacted recordings to everyone in the class. But that capability doesn't exist.

If it somehow comes to be that class is being recorded by a student or third party, then I will alter class so that I am not calling on students and compelling them to speak on another student's or third party's recording.

(b) *What if OU's Accessibility and Disability Resource Center (ARDC) has given me permission, clearance, or an accommodation to record?*

As set out above, I've said students can't record the class. But if ARDC tells you that you can, then I understand that from a student's perspective there's conflicting assertion of authority. Let me explain the resolution to such a potential conflict.

First, I need to explain, by way of background, that there has been persistent confusion on this issue, at least from my perspective. As far as I can tell, it appears that ARDC may have a partially automated system that generates boilerplate language that goes out to various parties. From time to time I get certain messages (largely boilerplate) from ARDC. I assume students are getting messages from ARDC, as well. But I am not copied on these messages to students, so I don't know what, precisely, students are being told by ARDC about my class. All in all, who is being told what at what time is frequently unclear to me.

ARDC has told me that "[i]t is not an automatic that the student is able to audio record" and that if audio recording is requested as an accommodation,

prior to it becoming effective, “it will require a conversation with their faculty member to determine whether audio recording is a fundamental alteration.” That would mean that student recording of class won’t be happening without me first being a party to a specific conversation about recording in a particular class by a particular student. And thus, in absence of such a conversation, I can conduct class normally. On the other hand, other indications I’ve received leave me with some residual uncertainty. This is why I am explaining what students should do if they perceive a conflict between what I am telling them and what ARDC is telling them. And, at the end of the day, I don’t want any student to be caught between conflicting assertions made by me on the one hand and by ARDC on the other.

So here’s the bottom line: **In the event that you believe you have permission, authorization, clearance, or accommodation to record this class, then before doing any recording you must give me actual advanced notice of your intent to do so, and I must confirm receipt of that notice.** Having received such notice, I can alter class to avoid calling on students and compelling them to speak when their voices are being recorded by a student.

9. ATTENDANCE:

9-0 Overall

I have to require attendance. That derives ultimately from law-school accreditation standards and college policy. Also, I happen to be of the view is that punctual, regular attendance in class is an essential component of the educational experience.

Given that I need to require students’ attendance, I need an attendance policy. If there’s going to be a policy, I believe it should be enforced. (I believe in enforcement because of the obvious sort of justice rationale: It’s unjust for most people suffer a detriment because of anticipated repercussions while a few do what they want and face no consequences.) The only meaningful way to enforce it is with grading/course-withdrawal/credit-denial consequences. And if an attendance policy is going to be enforced with these things, then I believe the policy should be clear and laid out in advance—not made up on the fly.

So, here comes my attendance policy. It’s long. It’s detailed.

But here’s the thing. My attendance policy is very generous. Grading penalties don’t kick in until there are 12 absences. Now, there are some nuances—for instance, a tardy is half an absence. But still, that’s very generous. Consider that there are 28 scheduled meetings for this course. Missing 12 classes means missing over 42% of the semester!

9-1 Communications About Attendance

There is generally no need for you to email 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 attendance is approaching a severely deficient level

(discussed below) and it becomes necessary to discuss extenuating circumstances, or if your absence is excusable under university or college policy and you wish to have it excused (in which case, you merely need to send an End-of-the-Semester Attendance Mitigation Statement (see §9-6 below).

9-2 Keep Track of Your Attendance: You must keep track of your own attendance. Do not ask me how many absences/tardies you have accumulated. I do not add up attendance on a day-by-day, week-by-week, or even month-by-month basis. **I only add up attendance once: after the semester is over, right before I submit grades.** I'm only trying to enforce the outer bounds of a policy that already has generous attendance allowances baked into it. Thus: **It is your responsibility to keep track of your own absences, including with regard to the presumptive involuntary withdrawal or failing grade.** And do not expect to get independent notice that you are approaching the threshold for grade reduction, failing, or being involuntarily withdrawn. **This syllabus provision is your notice.**

People requesting and pressuring me for an accounting of their attendance has become more and more of a problem recently. Thus, if you do ask, it will be considered a negative for class-participation purposes. (A caveat: If your question is limited to asking me to what extent I've used my discretion under §9-3(a) & (b), *infra*, then I admit there's no way you could know that just on your own, so I won't score that as a negative.)

9-3. Specifics Concerning Effects of Absence from Class:

(a) **Late Arrivals and Early Departures:** For purposes of determining the appropriateness of penalties discussed below, a late arrival or early departure will presumptively 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. (For recordation of late arrivals and early departures, see §9-4, *infra*.)

(b) **Comings and Goings; Intraclass Absences:** I understand that you may have an urgent need to leave class for a short time. But it can be disruptive. Please keep it to a minimum. If I determine intraclass absences to be substantially excessive and/or very prolonged I reserve the right to count leaving and re-entering as a whole or half absence.

(c) **Attendance's Effect on Class-Participation Grading Component:** In furtherance of encouraging safe choices with regard to the pandemic, I will not explicitly consider absences as a negative in the class participation grading component – regardless of the reasons for the absences. Since positives in class participation require being in class, I suppose it is possible that a substantial amount of absences could result in a dearth of opportunity to make positive contributions in terms of class participation. That being the case, I cannot guarantee that absences won't have some effect – at least in terms of missing out on an opportunity to earn a bump-up in grade. But I can endeavor to take that into account – in a way that is favorable to the student – if I've been apprised of valid excuses and extenuating circumstances (see §9-3(f) and §9-6).

(d) **Automatic Reduction in Grade for Severely Deficient**

Attendance: Independent of and cumulative with any effects of attendance on the class-participation grading component, a student's grade will be automatically reduced as follows: **twelve (12)** or more absences will result in the dropping of a student's final grade by one step (e.g., from a B to a B-); **thirteen (13)** or more absences will result in the dropping of a student's final grade by one additional step (e.g., from a B- at 12 absences down to a C+); **fourteen (14)** or more absences will result in the dropping of a student's final grade by yet another additional step (e.g., from a C+ at 13 absences down to a C). So for a student that started with a B but has 14 absences, the automatic grade reduction is three steps (e.g., from B, to B-, to C+, to C). Note that if a student's grade is reduced from a D-, that results in an F.

Special pandemic/context note: Previously (e.g., in Fall 2019), my absence policy provided for automatic reductions at eight, nine, and 10 absences instead of, as provided above, 12, 13, and 14. Thus, I have already added in a large amount of forgiveness for absences on account of the coronavirus pandemic.

(e) **Involuntary Withdrawal or Failing Grade for Profoundly**

Deficient Attendance: For a student with a profoundly deficient attendance record, I will presumptively have the student involuntarily withdrawn from the course without credit and with a grade of F, have the student involuntarily withdrawn from the course without credit and with some other grade that may be appropriate under university or college policy, or award a failing grade at the end of the semester. For these purposes, I will presumptively regard as profoundly deficient attendance fifteen (15) or more absences. Recall that partial absences (i.e., late arrivals, early departures) presumptively will count as half an absence and may, in my discretion, be construed to constitute a whole absence. And, again, it is your responsibility to keep track of your own absences (see §9-2), so don't expect to get independent notice that you're near the threshold.

Special pandemic/context note: Before the pandemic (e.g., in Fall 2019), my absence policy provided for involuntary withdrawal or failing grade at 11 absences instead of, as provided above, 15. Thus, special coronavirus dispensation has already been baked in.

(f) **Special Extenuating Circumstances:**

In consultation with the dean, or an associate or assistant dean, I may take account of special extenuating circumstances in deciding whether to drop a grade, award a failing grade, and/or request involuntary 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. (For absences caused by religious observances, see §9-3(g), *infra*.)

Notwithstanding the foregoing, it is expected that under almost all circumstances students will be able to keep absences within the numerical thresholds identified above—including absences caused by illness, storms, job interviews, etc., and even the coronavirus pandemic. 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 a number of times because the student wanted to sleep in; then, at the end of the semester, the student was absent one additional time because of an out-of-town job interview. In such a case, if the job-interview absence takes the student over the threshold for an automatic reduction in grade, then the grade reduction is appropriate. If the student had been generally conscientious about attendance from the beginning, the student would not have created any issue with missing class for the job interview.

If you wish for me to consider any special extenuating circumstances with regard to your attendance, then you must file an End-of-Semester Attendance Mitigation Statement, as discussed in §9-6. (I suggest you calendar the filing of that statement now, so you'll remember to do it if you need to. See §9-6.)

Note that you should not feel compelled to discuss with me reasons for absences or extenuating circumstances if your attendance is not approaching a severely deficient level.

(g) **Absences Resulting from Religious Observances:** In accordance with University of Oklahoma policy, I will excuse absences that result from religious observances. To have an absence excused on the basis of a religious observance, I must know about it, so **you must file an End-of-Semester Attendance Mitigation Statement**, as discussed in §9-6. (Calendar the filing of that statement now if you think you might have an excusable absence this semester because of a religious observation. See §9-6.) You should also separately contact me as appropriate or useful during the course of the semester in regard to such absences.

(h) **Pandemic-related Absences**

I strongly wish to encourage students to err on the side of caution and stay away from class whenever they perceive a risk to members of the law school community by coming to class.

So, beyond the generous number of absences before grading penalties kick in, and beyond my offer to take into account extenuating circumstances, I additionally will excuse any absences resulting from covid-related reasons that are (1) consistent with guidance from OU (e.g, if you're told to self-isolate by the Healthy Together App or according to OU guidance distributed by email, etc. because of symptoms, close contact, positive test result, etc.), (2) consistent with applicable government guidance from the city, county, state, or federal government, (3) consistent with a medical note from a licensed physician, nurse, or physician's assistant that you should self-isolate or not go to work/school, or (4) based on your genuine belief that you may be infective (capable of transmitting covid) and there hasn't yet been time or availability to see a health care provider, get a test, etc.

Note that if an absence is “excused,” that means it does not count as an absence under the attendance policy. That in turn means it doesn’t count as an absence for purposes of the automatic grade reductions for severely deficient attendance (§9-3(d)) or involuntary withdrawal or failing grade for profoundly deficient attendance (§9-3(e)). So, for example, if someone has 20 excused absences and 11 other absences, then that person will not be beyond the 12-absence threshold for an automatic grade reduction as described in §9-3(d).

MOST IMPORTANT: For any absence to be excused, I must know about it. So do that with an End-of-Semester Attendance Mitigation Statement. See §9-6. Consider that if my only notice from you is a random email sent at some point during the semester, then I may not see it at the crucial moment I need to, which is when I am assigning grades. And if it’s something you said to me orally, I will most likely not remember it. In terms of documentation, ultimately, I will be reliant on your representation in writing in an End-of-Semester Attendance Mitigation Statement as to whether your absences resulted from bases discussed above. I ask you to be as specific as reasonably possible as to dates and reasons.

9-4. Attendance Record: To avoid being distracted in class by constantly noting things like late arrivals and early departures, I generally require students to log their own attendance, including filling out late slips. Thus, it is of paramount importance that you deal with all attendance issues with utmost honesty, integrity, and care. Inaccuracies in marking an attendance log or late slip will presumptively be treated as academic misconduct and will presumptively result in a lowered grade or a failing grade. If an inaccuracy is inadvertent, prompt self-disclosure is encouraged and will be considered ameliorative.

(a) **Means of Taking Attendance:** Attendance may be taken by means of a paper log (paper sheet or card) for students to fill out during class, by roll call, by reference to the seating chart, or by some other method.

(b) **Indicating Attendance:** If attendance is taken by means of a paper log, then when the attendance log comes around to you, fill it out as instructed, indicating your attendance for the instant date. (“Instant date” means the current date as you are looking at the log.) Indicating your attendance this way is your responsibility: If the attendance log does not come around to you, simply come up to me immediately after class and ask to fill it in. If you omit to fill in the log 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 log on behalf of yourself and for the instant date. You may not mark the log on behalf of another person, even if that person is in attendance, and you may not permit another person to mark the log 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 other date.

(c) **Self-Reporting Partial Attendance:** If an attendance log is used, and if you will need to depart class early and not return, then you must make an appropriate notation of that on the attendance log. Alternatively, if you have a change of plans requiring you to leave early despite not having indicated that in advance on the attendance log, then you must inform me by email 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 for you, then before you take your seat you must leave on the podium (or with me if I am seated at a table, as in a seminar class) 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.

(e) **Unrecorded Absences:** At my discretion, I may announce that for a particular class meeting I will not record attendance and that absences from such a class meeting will not count for purposes of the attendance policy. Situations in which I might deem this appropriate are: (1) if it is necessary to hold a make-up class at an irregular time or (2) if there is the occurrence of a disaster that implicates issues of safety or public necessity. It is also possible that I may omit to record attendance for a class. That being said, recordation of an absence is a distinct issue from the existence of an absence. And for the purposes of self-disclosures of profoundly deficient attendance under §9-5, *infra*, a student's self-disclosure obligation is not relieved by the fact that one or more absences (including partial absences) may be unrecorded. Toward the end of encouraging candor, I will exercise discretion with unrecorded-but-disclosed absences and may choose not to count them for purposes of grade penalties and administrative withdrawal. So err on the side of disclosure.

9-5. Mandatory Immediate Self-Disclosure Statement of Accumulated Absences in Cases of Profoundly Deficient Attendance:

Upon a student's accumulation of a record of profoundly deficient attendance (see §9-3(e), *supra*), that student is required to disclose such accumulation immediately in writing to me.

Why do I require this? As mentioned above (§9-3, *supra*): I do not add up and calculate accumulated absences on an ongoing basis during the semester, and it is each student's responsibility to keep track of her or his own absences. Thus, if you have hit the threshold for profoundly deficient attendance – which requires me to give you a failing grade or administratively withdraw you – it is better that I know this sooner than later. If there are potentially extenuating circumstances, we can talk about them. And if a failing grade or administrative withdrawal is obligatory, then before the semester is over I can pursue the withdrawal instead of giving a grade of F.

How must the disclosure be made? The disclosure must be made to me by email (eric.e.johnson@ou.edu) with a paper copy handed to me in person, or, if in-person delivery is not practicable, to a faculty administrative assistant with an

explicit explanation of the nature and urgency of the communication. The subject line of the disclosure email must be “Self-Disclosure Statement of Accumulated Absences.” If the student hopes to avoid involuntary withdrawal or the awarding of a failing grade for the course, then the statement must explain the reasons for the student’s absences, or at least a portion of the absences sufficient to avoid the profoundly deficient attendance, and must provide a rationale for why the student should be allowed to continue in the course notwithstanding the accumulated absences. Any supporting backup documentation that is to be considered must be provided with the statement, or, if this is not immediately possible, then the student must provide what she or he can with the statement and explain in the statement the nature of the delay and when the remaining documentation will be forthcoming. To this end, the student is referred to §9-3(f), *supra*, regarding special extenuating circumstances.

When would an additional disclosure be necessary? If a student has already submitted a disclosure under this section and then subsequently accumulates another absence (including a partial absence in the form of a late arrival or early departure), the student must submit a supplemental disclosure, like the original disclosure in form and substance.

How should a student count absences for this purpose? For counting absences to determine the necessity of submitting a disclosure under this section, where there are any interpretive questions, a student is instructed to err on the side of inclusiveness. That is, a student who is unsure of whether a given instance will count as an absence or partial absence should err on the side of inclusion of that absence or partial absence in the quantification of deficient attendance. A student is advised to note such interpretive questions and the fact of the student’s erring on the side of inclusiveness in the statement. Further to this regard, refer to §9-4(e), *supra*.

9-6. End-of-Semester Attendance Mitigation Statement

On top of my already generous attendance policy, I will consider absence excuses and extenuating circumstances.

But in order for me to consider absence excuses and extenuating circumstances, I must be aware of them. It is crucial that this information is readily accessible to me at the moment I am putting together grades at the end of the semester, and, of course, I want to make sure that I don’t miss anything. Thus, I require that students provide this information to me in a particular way: **To the extent a student wishes to make a claim of extenuating circumstances for any reason or seek excuse based on religious observance (§9-3(g)) or pandemic-related absences (§9-3(h)), the student must file an End-of-Semester Attendance Mitigation Statement not earlier than the last day of class, nor later than the day after the last scheduled day of final exams** for the College of Law for the semester. **Take a moment now to calendar this** – so you will remember when the time comes at the end of the semester.

The statement must be sent to me by email (eric.e.johnson@ou.edu) with the subject line, "End-of-Semester Attendance Mitigation Statement." I also suggest providing a paper copy to a faculty administrative assistant with the request that it be given to me. File just one statement – that is, just one email with attachments, and if you are handing in a physical copy, just one stapled packet of papers. By your putting everything together, we can avoid any possibility of my overlooking anything relevant. If you want me to consider any previously sent emails in a claim for special extenuating circumstances, then please include copies of those emails within the one communication.

There is no prescribed format for the statement; substance is what matters. Regarding what might qualify as extenuating circumstances or excuse, see §9-3(f)-(h), *supra*.

If you have already filed a mandatory disclosure for profoundly deficient attendance under §9-5, *supra*, then you should additionally file an End-of-Semester Attendance Mitigation statement, which can include copies of any previously filed disclosures made pursuant to §9-5.

Please note! The End-of-Semester Attendance Mitigation Statement and the requirements above are not intended to be retributive or to deter students from making use of valid excuses or calling my attention to extenuating circumstances. Rather, **the point is to make sure I have the relevant information at the time I count up attendance for grading purposes and so no one is needlessly given a reduced grade! ☺**

9-7. No Waiver: No provision of this attendance policy can be waived by me orally. (See §12, *infra*.) If you think I said something that relieved you of an obligation under this attendance policy, you misunderstood me. I also note that I cannot imagine a circumstance under which I would grant a written waiver: The policy is already built to be fair and to take into account varied circumstances. It must apply to everyone equally.

10. EXAMINATION:

10-1. General Points:

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

(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. 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.

(c) **Obeying Exam Requirements and Instructions:** A failure to follow exam requirements or instructions is an academic misconduct issue, and violations will be treated as such, even if inadvertent. (See §6-6, *supra*.)

10-2. Your Responsibility With Regard to Handling and Returning Exam Materials and Using Your Exam Identification Number: You bear the burden of properly, legibly, and correctly marking exam materials with your exam identification number. (Your examination identification number, of course, means your examination number for this semester – not one from a prior semester.) You must also obey instructions on the handling and non-mutilation of examination materials. Do not omit to do what you are asked in this regard. Any omissions, even if inadvertent, will be treated harshly, including resulting in a failing grade and a referral for discipline. Once we set a format for the exam, I may say more about this.

10-3. Decorum: *Assuming we have a live, in-person exam administration,* then during the administration of the exam you must refrain from conduct which could reasonably be distracting to the students sharing the room with you, including by generating noise and smells. (Yes, there have been problems in the past.) Here's the thing: exams are stressful. But some of the things that some students hope will be useful in lowering their own stress can, unfortunately, intensify the stress of others.

One recurrent problem in this regard has been food and beverage use during exams. Thus, you will be allowed to have food and drink with you during the exam only under the following conditions:

- Drinks must be open and drinkable before the exam starts. No popping cans or opening soda bottles during the examination period.
- Food and beverages cannot smell. Nothing creating an odor stronger than a cup of unflavored coffee is permitted. So, to be crystal clear, no sandwiches, condiments, salads, etc.
- Food cannot be noisy. No chips, carrots, nuts, granola, etc. In addition, food in wrappers must be unwrapped before the exam begins. For example, if you bring a package of M&Ms into the examination, the candy should be removed from the wrapper and poured onto a paper towel before the exam starts.
- Chew with your mouth closed.
- Do not allow examination materials to be contaminated with food. (Yes – this has happened. ☺)

Additionally, there have been problems with some students' use of scent-infused products during the exam. Thus, during the exam administration:

- Don't wear perfume or cologne.
- No essential oils. No candles, potpourri sachets, or anything that is infused with scents.

Be aware that I may issue further specific instructions in this regard at some point later on.

10-4. Some Commitments in How I Will Design the Exam and Key Advice to You in Studying:

(a) **The Correspondence Principle:** The most important thing to me when I write an exam is to work hard to ensure that the emphasis on the exam will track the emphasis in class and in the materials, and the topics covered on the exam will be at least roughly proportional to the time spent on those topics in the course. I call this the Correspondence Principle, and I will do my best to obey this when putting the exam together. So, for example, if something was mentioned in passing in the reading but not a subject of attention in class, you can expect that it would not be more than a trifling part of the exam, if even that. Thus, when studying, I advise you to be balanced in your topic approach and to concentrate on understanding the bigger issues rather than memorizing minutiae.

(b) **Comprehensiveness:** In keeping with the Correspondence Principle, I will strive to be very comprehensive in terms of the coverage of topics on the exam. I will use the syllabus and chart of assignments as a checklist. I expect to include, in some way, every topic that was substantially explored in class.

10-5. Format:

The format of the exam is in part dependent on how it is administered. At the time of writing this syllabus, I do not know how the exam will be administered. The lack of certainty about how the exam will be administered stems from the ongoing coronavirus pandemic.

(a) Here's what I can say about the exam for now:

The exam will have at least a portion that is essay-based, consisting of one or more open-ended questions calling for a written response with legal analysis for a hypothetical fact pattern. At least part of the essay portion will be administered on an open-book basis. The allowed materials may be limited to paper-based notes and books.

In addition, the exam might also include a multiple-choice portion, which may be closed-book.

(b) If we have a normal, in-person exam administration:

In case it might help your planning, here's additional detail about what rules and policies that will apply for a normal in-person exam administration, if that's what we have:

1. You may wear and reference a watch with no other functions than timekeeping. No smart watches or other watches with functions other than timekeeping. Nothing that looks like a smart watch. A digital watch that has an alarm function and a stop watch in addition to providing the time of day and date is permitted. But under no circumstances may your watch beep or emit noise.

2. No phones.
3. No accessing the internet, email, text messaging, etc.
4. You may use earplugs.
5. You may use noise-cancelling or white-noise-producing headphones (the word “headphones” includes earbuds) provided that they have no other electronic capabilities, functions, or features (including but not limited to Bluetooth, signal transmission, signal reception, playing music, etc.). What matters is the item’s capacity to do other things—not whether that capacity is being used. Expect that any headphones will be inspected.
6. There is allowance for food and drink limited to being in accordance with what was said above (§10-3) regarding decorum.
7. For the “open-book” essay portion of the exam:
 - (a) You may use any paper-based notes and books you like, including inert binders and tabs. You can also use pens, pencils, and highlighters.
 - (b) You may use a computing device (including a laptop or keyboard-equipped tablet) to write your exam, provided it is running the required exam-taking software and is used pursuant to applicable policies. But you may not reference files stored thereon during the examination session. But any touching, using, accessing, viewing, or listening to electronic devices or other materials, except as specifically provided, is prohibited. (So if you want to access a textbook or dictionary, you’ll need to have it on paper. You cannot, for instance, access an e-book using an iPad or other tablet.)

10-6. Toward the end of the semester, I anticipate releasing a document called the “Exam Prospectus,” posted to the class website, providing more detailed information about the exam and how I recommend preparing.

10-7. Regardless of what format we end up using for the exam this semester, materials set aside in my Exam Archive should be quite useful to you in studying for your exam. The Exam Archive is publicly accessible online. There is a link on ericejohnson.com, or you can use the direct URL:

http://ericejohnson.com/exam_archive/. Note that I might make some updates and additions to those materials over the semester. So you if you look at it early, you might want to check back toward the end of the semester. And if I do add things relevant to IP, I’ll try to let you know in class by email.

11. INFORMATION IN CONNECTION WITH ACCOMMODATIONS:

Disability Accommodation: Students requiring academic accommodation should contact the Accessibility and Disability Resource Center for assistance at 405-325-3852 or TDD: 405-325-4173. I encourage students to do this early in the semester. For more information please see the Accessibility and Disability

Resource Center website <http://www.ou.edu/drc/home.html>. The OU Faculty Handbook §5.4 states that the Accessibility and Disability Resource Center “is the central point of contact to receive all requests for reasonable accommodation and all documentation required to determine disability status under law. This center will then make a recommendation concerning accommodation to the appropriate administrative unit.”

In general, students are not required or encouraged to disclose disabilities to instructors – which is as it should be. But if you are not getting the help you feel you need from the Accessibility and Disability Resource Center, and if you would like to talk to me about it, then I invite you to do so. As part of my pursuit of effective teaching and the best educational outcomes for my students, I consider it to be in my interest to advocate for students with disabilities to get the accommodations they need to succeed. I also am interested in making changes – whether required or not – to make my materials and my classroom more accessible for people with a variety of impairments. And I am grateful to students with disabilities in the past who have helped me make improvements in that regard.

Disability Accommodations and Making Audio Recordings of Class:
See §8-4(b), *supra*.

Language Accommodation: Students desiring language accommodations for the exam or otherwise where there is not an issue of disability should talk to me about this in person – during regular office hours or an appointment. So, for instance, if you are not a native English speaker and you feel you might need an English-to-foreign-language dictionary on a closed-book portion of the exam, you should pursue a language accommodation. Any language accommodation must be authorized by me in writing. Please get this taken care of as soon as possible. I ask you to aim to do this at least 30 days before the exam, at the very latest. I may decline requests that are otherwise reasonable on the basis of being dilatory.

Adjustments for Pregnancy/Childbirth Related Issues: Should you need modifications or adjustments to your course requirements because of pregnancy-related or childbirth-related issues, please contact the Accessibility and Disability Resource Center at 405-325-3852 as soon as possible. Also, for answers to commonly asked questions, see <http://www.ou.edu/eoo/faqs/pregnancy-faqs.html>.

12. GENERAL INFORMATION IN CONNECTION WITH VARIOUS UNIVERSITY POLICIES:

Religious Holidays/Observances: The OU Faculty Handbook §3.13.2 states: “It is the policy of the University to excuse the absences of students that result from religious observances and to provide without penalty for the rescheduling of examinations and additional required classwork that may fall on religious holidays.” Note that religion-based absence excuses, like other excuses, need to get in front of me for me to treat them appropriately. So note the relevant

portions of the attendance policy above, including §9-3 through §9-7. In particular, see §9-3(g).

Title IX Resources and Reporting Requirement: For any concerns regarding gender-based discrimination, sexual harassment, sexual assault, dating/ domestic violence, or stalking, the University offers a variety of resources. To learn more or to report an incident, please contact the Sexual Misconduct Office at 405-325-2215 (might be available only during regular office hours) or smo@ou.edu. Incidents can also be reported confidentially to OU Advocates at 405-615-0013 (phones are answered 24 hours a day, seven days a week). Note that the University of Oklahoma also has a 24-hour Reporting Hotline, which can be reached by calling 844-428-6531 or going online to www.ou.ethicspoint.com. The hotline is offered as added protection for OU students for handling reports of bias, discrimination, physical or mental harassment or misconduct by OU community members. Please be advised that professors are required to report instances of sexual harassment, sexual assault, and discrimination to the Sexual Misconduct Office. (See §7-5, *supra*, in this regard.) Inquiries regarding non-discrimination policies may be directed to the University Equal Opportunity Officer and Title IX Coordinator. For more general information, visit <http://www.ou.edu/eoo.html>.

Mental Health Support Services: If you are experiencing any mental health issues that are impacting your academic performance, counseling is available at the University Counseling Center (UCC). The Center is located on the second floor of the Goddard Health Center, at 620 Elm Avenue, room 201, Norman, Oklahoma 73019. Counselors are also available by appointment at the College of Law. To schedule an appointment call 405-325-2911. For more information please visit <http://www.ou.edu/ucc>.

University Policies and Recommendations Regarding Covid: Please be apprised of university policies and recommendations regarding the ongoing coronavirus pandemic. Adhere to the policies and take recommendations strongly into account. **I recommend that all of my students follow the university's and law school's recommendations to reduce the spread of covid, including, as applicable, wearing a mask.**

13. REVISIONS TO THIS SYLLABUS, WAIVERS OF STUDENT OBLIGATIONS: This syllabus may be amended or revised, and if it is, the most recent syllabus and any amendments or addenda thereto will be posted to the class website. No student obligation under this syllabus can be waived by me orally. If you think I said something that allows you different treatment under this syllabus, you must have misunderstood me. The syllabus needs to apply to everyone equally. (See also §9-7, *supra*, regarding attendance.)

14. COURSE ORGANIZATION: The planned organization of the course is below. Note that the structure below is subject to some adjustment. **Readings will be posted to the Chart of Assignments, which is online** (see §5-1, above). You may need to hit refresh or reload the page to see the most recent updates.

Ordinarily, readings for the any given week will be posted by the day after the last class of the preceding week.

PART I: Preliminaries

0. About the Course
1. Blackletter Overview, Basic Framework and Initial Questions
2. Justifications for Intellectual Property

PART II: Expression

3. Copyrightable Subject Matter and the Requirements of Originality and Fixation
4. The Idea/Expression Dichotomy
5. Ownership of Copyrights
6. Copyright Formalities and the Public Domain
7. Introduction to Copyright Infringement
8. Additional Rights of the Copyright Owner
9. Statutory Limits on Copyright Enforcement, Including Fair Use

PART III: Invention and Industry

Utility Patents

10. What a Patent Is; Patent Anatomy
11. Patent Eligible Subject Matter
12. Novelty and Prior Art
13. Nonobviousness
14. Utility
15. Patent Claims and Patent Process
16. Disclosure Requirements
17. Claim Construction and Infringement

Additional Rights Regimes and Contexts

18. Utility Patents and Regulatory Exclusivities in Pharmaceuticals
19. Design Patents
20. Sui Generis Rights

Trade Secrets

21. What Qualifies as a Trade Secret
22. Misappropriation of Trade Secrets

PART IV: Identity and Origin

Trademark

23. What a Trademark Is; Distinctiveness

- 24. Distinctiveness in Trade Dress
- 25. Functionality
- 26. Priority, Registration and Incontestability
- 27. Trademark Infringement

Right of Publicity

- 28. Right of Publicity

PART V: Miscellany & Marginalia

- 29. International IP[◇]
- 30. Claims Regarding Pitches and Idea Submissions[◇]
- 31. Federal Preemption[◇]
- 32. Hot News Misappropriation[◇]
- 33. Review: Applications, Problems, Analysis

[◇] *Topic may or may not be included, depending whether time permits.*

15. FEEDBACK: If you have feedback for me – suggestions, ideas, commendations, or criticisms – please do not hesitate to tell me in person or by email. 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!

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