

Entertainment Law
University of North Dakota School of Law
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Eric E. Johnson
Assistant Professor of Law

SYLLABUS

GOALS: I intend for this class to provide meaningful training for the practice of law in the context of the entertainment and media industries, including both transactional and litigation practice. By the end of the course, you should have a meaningful grasp of industry vocabulary, a command of the principal legal doctrines that shape the industry, and some understanding of the practice of negotiating deals and conducting litigation for and against clients in the entertainment industry. Moreover, what you learn about transactional and litigation practice will be applicable to legal practice in any substantive area.

CLASS WEBSITE: Various materials and links are on the class website at:
http://www.eejlaw.com/courses/entertainment_law_spring_08/

MATERIALS: The two required texts for this course are:

Entertainment Law (Third Edition). Melvin Simensky, Thomas D. Selz, Robert C. Lund, Barbara Burnett, Charles A. Palmer, and F. Jay Dougherty. Published by LexisNexis, 2003.
ISBN: 0-8205-5725-0

Dealmaking in the Film & Television Industry (2nd Edition). Mark Litwak. Published by Silman-James Press, 2002.
ISBN: 1-879505-66-5

Please note: The “Document Supplement” for the Simensky text is not required or recommended.

Compendium (internet): Additional materials that are part of the required reading will be available through the course website for free download, titled “Johnson’s Entertainment Law Compendium for 2008.” Materials may be added to the Compendium during the course.

Audio Supplement: Certain music will be required listening. An audio compendium of required and optional audio tracks will be issued on CD will be on reserve in the library.

Required Viewing: You will be required to watch the movie, “Coming to America” (Paramount Pictures, 1988). We will reserve a classroom at night for viewing the movie outside of class hours, but, alternatively, you are free to watch the movie on your own.

Westlaw / Lexis: In addition, you may be required to retrieve an occasional article from a proprietary online legal research service, such as Westlaw or LexisNexis.

Study Aids: Beyond the required materials, you are encouraged to use any other materials you find helpful or interesting, including, for instance, commercial outlines.

The more you learn about entertainment law, the better. Commercial outlines are a great way of gaining a basic understanding of the blackletter law in a subject. Unfortunately, I do not know of any commercial outlines for entertainment law, *per se*. There is, however, a “nutshell” published by West, which one student said was helpful. In addition, entertainment law comprises other areas of substantive law for which there are good outlines, and you may wish to consult the relevant portions of commercial outlines in intellectual property, torts, contracts, and any other subject areas we go through. If you do use study aids, I would appreciate your letting me know your experience with them—whether good or bad.

ASSIGNED READING: I take care to craft reading assignments so that they are not unduly burdensome – I have even specified which of the casebook notes I actually want you to read. Because of this, I expect all students to actually do the reading, as doing so will ensure healthy classroom discussion.

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. If you do not have time to engage in your usual ritual of making the most of reading material, at least make sure that you read it 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 of Harvard Law School, is to be aware of “the literary drama of the law,” that is, “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.

Moreover, put yourself in the position of the judge and force yourself to confront the challenge of trying to interpret the law in a way that is fair, unbiased, and beneficial for society. Using this kind of viewpoint, you are bound to get something extra out of every case you read.

GRADING: Your grades will primarily be based on your exam performance. The exam is discussed below. Each exam will be “blind graded,” so that I will not know the identity of the student as I am grading his or her exam.

Class participation will also count in calculating your grade. I may do this in one of a couple of ways. I may add or subtract from students’ exam grades on a non-blind, discretionary basis, with the result forming your grade for the course. Alternatively, I may create a class-participation grading component on a non-blind discretionary basis, and then have that grade form a small portion, not exceeding 10 percent, of the total grade for the course. Regardless of the method I use for factoring in class participation, I anticipate that some students’ grades will be increased upward, some students’ grades will remain unchanged, and others’ may end up being adjusted downward.

Reasons for a negative effect of class participation on the overall course grade will include exhibiting poor performance in the classroom, excessive absence, tardiness, and being unprepared for class. Quizzes will figure into class-participation grading as well. I am planning to have three in-class quizzes, one each on copyright law, trademark law, and labor law. The point of these quizzes is to get the class as a whole up to speed on some doctrinal basics of the respective substantive areas. The amount of studying required will be minimal. But prior students in Entertainment Law have nonetheless found the exercise useful and worthwhile. I will discuss these quizzes more in class.

COMMUNICATIONS: My e-mail address is ejohnson@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 or even day-by-day basis. I may not respond at all to an e-mailed question which is clearly answered in this syllabus. 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.

IN THE CLASSROOM: Do not eat in class. Do not chew gum audibly or with your mouth open. Do nothing that might disrupt class or distract your fellow students.

Come to class each time, on time, prepared. You will be periodically asked to answer questions based on the assignments or the ongoing classroom dialogue. Be prepared to participate.

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. Your classroom participation should be appropriate – not too little, not too much. Everybody knows there are students who raise their hand too often and take up too much of the class's time. All of us also know that there are people who sit passively and rarely, if ever, contribute to classroom discussion. Take care that you do not fall into either extreme.

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 will not adversely affect your grade.

If you will be late or absent, please make sure that you e-mail me at ejohnson@law.und.edu before class. An occasional absence or late arrival will not adversely affect your grade – but I do appreciate it if you e-mail me beforehand. If you are concerned about your attendance record, please talk to me. If you are late and you did not e-mail me, make sure you come up to me after class so that I can note your attendance. Otherwise, you may be marked absent. Of course, none of the foregoing supercedes the School of Law's or the University's policies.

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.

WYPADKI: The traditional method of exam preparation for students involves making an outline of the course. Because traditional legal pedagogy eschews using a textbook in lieu of a casebook, the outline fulfills the place of a textbook – providing a written explanation of the subject matter.

With the goal of saving time by reducing duplicative labor, I am providing the class with a chance to create an outline as a community – which we'll call a "wypadki." The wypadki will be enabled with a wiki, the same web application that is behind Wikipedia, the online encyclopedia that is authored and edited by its readership. Only members of the class will be able to contribute to the wypadki, and each addition, edit, and deletion will be tagged with the name of the contributing class member. I intend to allow students broad latitude in creating the wypadki, though I will step in and provide guidance and restrictions if necessary. On or after a certain announced date at the end of the semester, before the exam, I will lock the wypadki. I will then have a chance to review and alter it before leaving it in a final version. Please note that I reserve the right to make any changes, deletions, and additions I deem appropriate, in my sole discretion,

before or after locking the wypadki. The final version will be made available for download sometime before the exam, and copies will be printed and distributed to all students during Part II of the exam, discussed below, for use as a reference in drafting an examination answer.

Your contributions to the wypadki must respect intellectual property law. Do not add copyrighted material (regardless of licensing). Limit your contributions to your own originally authored material and material in the public domain, which includes court-issued opinions. I will attempt to procure a student outline from a prior semester for you to use as a starting point in constructing the wypadki.

EXAMINATION: My challenge as your professor is to write an exam that fairly tests your knowledge and mastery of all the material presented in the course. That is, the exam should reward those students who have done the reading with interest, participated actively and appropriately in class, and truly mastered all the subject matter presented. The exam should not reward those who, by chance, happened to study the “right” material, those who guessed correctly what material the professor found most interesting, or those who have a particular aptitude for the format of the test used. With those goals in mind, I am structuring the exam as follows:

Part I of the exam, worth no more than approximately one-third of the total exam grade, and perhaps considerably less, will consist of multiple-choice questions administered on a closed-book basis. The questions may include, but may not be limited to, bar-exam-style hypotheticals testing the application of law to facts, questions that test literacy of pure law (e.g., legal doctrines and statutes), and questions that test understanding of relevant concepts of legal theory and scholarship.

Part II of the exam, worth at least approximately two-thirds of the total exam grade, and perhaps a much greater fraction, will consist of: (1) open-ended questions calling for written essay responses to one or more hypothetical fact patterns and, likely, (2) directed response or “short answer” questions. The exam may contain one or more questions asking you to do any of the following: (1) mark up a contract draft, (2) suggest litigation tactics given a certain set of circumstances, (3) answer a “theme” or “theoretical” style question, in which you will critique the law. In the case of a theoretical-style question, I will provide a fictional context for writing your answer and perhaps a stance for you to take, such as, “[A certain client] has asked you to write a letter to the editor of the *New York Times* arguing for [a certain change in the law].” Part II of the exam will be administered on a limited “open book” basis, in that students will have access to the class community’s wypadki, discussed above. No other materials, however, may be referenced during the exam.

All testing and grading methods have their own unique inequities. By using a multi-format exam, I hope to eliminate the distorting effects of differences in test-taking skills and arrive at the most accurate grade possible for each student, based on the individual’s mastery of the subject matter and ability to use that knowledge.

Be assured that I will not use any essay questions that have been used on any other prior exam or any multiple-choice questions that have been previously published or otherwise made available anywhere. Also, to avoid “teaching to” particular questions, I will likely not write questions until after the material has been presented. In fact, I probably will not begin writing Part II of the exam until late in the course, or possibly after the last class meeting.

As noted above, I will not discuss the exam on an *ex parte* basis; any questions about the exam must be asked in open class.

I may provide a more specific description of the examination at a later time. You can view copies of my old Entertainment Law exams in the exam archive at eejlaw.com.

SUBJECT MATTER TO BE COVERED: Subject I plan to cover are listed below. This list is subject to some adjustment. I will separately post a schedule of assignments.

Contracts, Part 1: The Hollywood Climate

Liability for Audience Actions

Agents, Managers, Attorneys, and Employment Regulation

Labor, Guilds, and Pitfalls for Talent

Contracts, Part 2: When the Contract Comes to Court

- Litigating entertainment contracts
- Contract torts
- Interpretation of entertainment contracts
- “Creative accounting”

Contracts, Part 3: “I’ve Changed My Mind”

- Limitations on duration
- Bankruptcy
- Distribution and acquisition agreements

Copyright, Part 1

- Subject Matter
- Ownership
- Acquisition
- Rights
- Infringement

Copyright, Part 2

- Infringement (cont’d)
- Fair use

Legitimate Theatre

Protections for Persons as Subjects, Part 1

- Privacy rights
- Defamation

Protections for Persons as Subjects, Part 2

- Right of publicity

Building and Protecting Identities and Persona, Part 2

- Trademark
- Title registration
- Moral rights

- Credit rights

Building and Protecting Identities and Persona, Part 2

Broadcast Regulation, Obscenity, Telecom Regulation, Antitrust, and
Industry Consolidation

Protections for Inchoate Entertainment

- Theft of ideas
- Breach of confidence
- Development deals
- Submissions

Litigation and Transactional Practice: Strategies and Techniques

Remedies

Music

Copyright, Part 3

- Transfers

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.

Good luck. I hope you enjoy the course.