

Patent Law
Whittier College of the Law
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COURSE GUIDELINES

GOALS: This course covers major concepts in U.S. patent law. Whittier offers two advanced courses in patent law – International Patent Law and Patent Prosecution. Our work in this course will be circumscribed by those separate offerings. That is, this course will concern only U.S. patent law, not the law of foreign jurisdictions. Further, the course will not get into the detail of how to represent an applicant inventor before the U.S. Patent & Trademark Office in the attempt to procure a patent.

SYLLABUS: A syllabus will be distributed separately.

MATERIALS: The one required text for this course is:

Cases and Materials on Patent Law (Second Edition). Martin J. Adelman, Randall R. Rader, John R. Thomas, Harold C. Wegner. Published by Thompson West, 2003.
ISBN: 0-314-24637-1

There are also additional materials that are part of the required reading that will be available through the course website at:

http://www.eejlaw.com/courses/patent_spring_06/

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 patent law, the better.

Commercial outlines are a great way of gaining a basic understanding of the blackletter law in a subject. That being said, the best time to read a commercial outline or other 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 casebook and in class. 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 to judge for yourself.

I would appreciate your letting me know your experience with any commercial study aids – whether good or bad. I would be happy to recommend good ones to future classes.

ASSIGNED READING: I will take care to craft reading assignments so that they are not unduly burdensome. 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, of course, will be “blind graded,” so that I will not know the identity of the student as I am grading his or her exam.

In addition, the College permits professors to add or subtract a certain number of points from a student’s grade on a non-blind, discretionary basis. I will use these discretionary points to reward students who provide insightful answers to oral questions in class and who make a meaningful and appropriate contribution to class discussion. I will subtract points for students who are absent, tardy, who come to class unprepared, or who exhibit poor performance in classroom discussion.

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, and 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 you don’t have 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 eric_e_johnson@yahoo.com before class. An occasional absence or late arrival will not adversely affect your grade—just 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.

Be aware that I will be making 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.

PUBLISHING ON WIKIPEDIA AS PARTICIPATION: Traditionally, in many higher degree programs, a requirement of graduation has been to make some contribution to the advancement of the academic discipline one has studied. This is the philosophy behind the dissertation requirement for Ph.D. candidates. On a much smaller scale, I would like to try doing the same thing in this class. Wikipedia is an internet-based encyclopedia of the world's knowledge that is available free-of-charge to anyone. Its authors are the whole of the internet community that uses it. Any internet user can edit or add to any article within the Wikipedia just by clicking on the "edit this page" link. Further, all content in Wikipedia is freely available to the world under the GNU Free Documentation License. In other words, your contributions will not be "owned" by Wikipedia or anyone else.

The article in Wikipedia, "United States patent law" is just a skeletal outline right now. As you learn U.S. patent law in this class, I encourage you to add something to the Wikipedia article. The URL is:

http://en.wikipedia.org/wiki/United_States_patent_law

Your participation will make a significant contribution to the accessible knowledge in the world about this important and complicated area of law. If and when you make a contribution to the Wikipedia article, send me an e-mail documenting your contribution. I will count a significant contribution to the Wikipedia article as one point for purposes of your class participation grade. That is, making an excellent contribution to the Wikipedia article will count as if you had made an excellent contribution to class discussion.

We cannot make the whole class about contributing to Wikipedia. Therefore, I think it is necessary and fair to cap this portion of the grade at a "single participation point." That is, regardless of how much and how brilliant your Wikipedia contribution is, it will not count more than a single instance of class participation.

Part of what is interesting in making a class project of contributing to Wikipedia is that Wikipedia itself is a strange and fascinating case study of innovation that supplies an interesting counterpoint to the proprietary nature of the patent system. Oddly enough, despite the fact that anyone in the world can inject error into Wikipedia, it is remarkably robust as a source of accurate information.

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 anticipate that the structure of the exam will be as follows:

30-35%	Multiple choice questions – administered on a closed-book basis. The questions will include, but may not be limited to, bar-style hypotheticals testing the application of law to facts, as well as questions that test literacy of pure law (statutory provisions and legal doctrines) and understanding of relevant concepts of legal theory and scholarship.
30-35%	Open-ended essay response to one hypothetical fact pattern – administered open-book. This portion of the exam will test the application of law to facts. It will not test theory.
30-35%	Directed response or “short answer” questions – administered open-book. These questions may involve any of the following: hypotheticals testing the application of law to facts, questions of pure law testing literacy of relevant doctrine or statute, questions testing knowledge of theory, questions testing the application of theory to facts. Questions in this section may require anything from a one-word answer to a response of several paragraphs.

All testing and grading methods have their own unique inequities. By using three different formats, 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.

Additionally, for the open-ended-essay response to the hypothetical, I will grade each exam answer twice, using both of the methods that are often employed by law professors. On one reading, I will use the “checkmark method,” giving points on a discretionary basis as I read. On another reading, I will employ the “checklist method,” looking for a student’s spotting and correct resolution of specific issues. My hope is that by using both of these grading methods and combining the results, I am more likely to get at the “truth” of the matter as to how well a student performed.

The exam will be fast-paced. Even though portions of the exam will be open-book, you should prepare with the expectation that you will have little time to look things up.

Be assured that I will not use any questions that have been used on any other prior exam or that have been previously published or otherwise made available anywhere. Also, to avoid “teaching to” particular questions, I will not write questions until after the material has been presented. I plan to draft a few multiple choice questions covering the material in a particular class immediately after that class meeting. I probably will not begin writing the rest of the exam until late in the course, or possibly after the last class meeting.

I may provide a more specific description of the examination at a later time.

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 with the semester. I hope you enjoy the course.