

Legal and Economic Theory - Intellectual Property (Syllabus)

I. Economics of Information and Property Rights (January 7, 2009)

Required:

**Easterbrook, F. H. "Insider Trading, Secret Agents, Evidentiary Privileges, and the Production of Information, 1981 Sup. Ct. Rev. 309 (1982). Check course materials link (PDF file is large >2MB).

**P. Newman, JUDGE PAULINE NEWMAN LUNCHEON SPEECH TO ABA IPL SECTION, 48 PTCJ 277 (Issue No. 1188) BNA's Patent, Trademark & Copyright Journal (July 21, 1994).

Optional:

Hirshleifer, J. "The Private and Social Value of Information and the Reward to Inventive Activity", 61 Amer. Econ. Rev. 561 (1971).
Article available at <http://www.jstor.org>

II. The Economic Theory of Property and Intellectual Property (January 14, 2009)

**Landes and Posner, Chapter 1.

**Demsetz, H., "Toward a Theory of Property Rights", 57 Am. Econ. Rev. 347(1966). Article Available on JSTOR (www.jstor.org) though gmu.edu accounts or ISP accounts set up with gmu proxy server. Also check course materials link.

** Smith, Henry E. "Intellectual Property as Property: Delineating Entitlements in Information", 116 Yale L. J. 1742 (2007)

**eBay Inc v. MercExchange, L.L.C., 547 U.S. 388 (2006).

Optional:

Alchian, A.A., "Some Economics of Property Rights", reprinted in Selected Works by Armen A. Alchian, Liberty Press 1977.

III. Misappropriation and the Origin of Property Rights (January 21, 2007)

Required:

**International News Service v. Associated Press, 248 U.S. 215 (1918). (Merges, et al., pp. 836-848).

**Epstein, R. A. "International News Service v. Associated Press: Custom and Law as Sources of Property Rights in News," 78 Va. L. Rev. 85 (1992). [PDF version available at <http://www.heinonline.org>].

**Posner, R. A. "Misappropriation: A Dirge", 40 Hou. L. Rev. 621 (2003).

Optional:

Baird, D. G., "The Story of INS v. AP: Property, Natural Monopoly, and the Uneasy Legacy of a Concocted Controversy," in Ginsburg & Dreyfuss, Intellectual Property Stories (Foundation Press 2006), pp 9-35

Hayek, F. A., "The Use of Knowledge in Society", 35 Am. Econ. Rev. 521 (1945) [PDF version available at <http://www.jstor.org>].

Alchian, A. A., "Uncertainty, Evolution, and Economic Theory", 58 Journal of Political Economy 211 (1950). [PDF version available at <http://www.jstor.org>].

IV. The Private Production of Public Goods (January 28, 2009)

Required:

**Ronald Coase, The Lighthouse in Economics, 17 J. L. & Econ. 357 (1974). Not available on Lexis or WESTLAW - check course materials link).

**Feist Publications v. Rural Telephone Service, 499 U.S. 340 (1991)). Merges, et al., pp. 378-386)

**ProCD v. Zeidenberg, 86 F.3d 1447 (7th Cir 1996) (Merges, et al., pp. 848-55).

**Specht v. Netscape Comm. Corp. 306 F.3d 17 (2d Cir 2002). (Merges et al., pp. 856-864).

Optional:

Kobayashi and Ribstein, "Uniformity, Choice of Law, and Software Sales, 8 Geo. Mason. L. Rev. 261 (1999).

Ginsburg, Copyright, Common Law, And Sui Generis Protection Of Databases in the United States And Abroad, 66 U. Cin. L. Rev. 151 (1997).

V. Price Discrimination (February 4, 2009)

Required:

**Mericioid Corp. v. Mid-Continent Investment Co., 320 U.S. 661 (1944).

**Stigler, A Note on Block Booking, reprinted in The Organization of Industry, University of Chicago Press (1968). (check course materials section).

**Dawson Chemical Co. v. Rohm & Hass Co., 448 U.S. 176 (1980).

**Brulotte v. Thys Co., 379 U.S. 29, 85 S.Ct. 176, 13 L.Ed.2d 99 (1964).

**Scheiber v. Dolby Labs, 293 F.3d 1014 (7th Cir. 2002).

Optional:

Hausman and Mackie Mason, Price Discrimination and Patent Policy, 19 RAND J. Econ. 253 (1988).

Harold Demsetz, The Private Production of Public Goods, 8 J. L. & Econ. 293 (1970). (Not available on Lexis or WESTLAW - check course materials link).

VI. Copyright I: (February 11, 2009)

Required:

Basic Copyright Doctrines

**Landes and Posner, Chapter 2, 4.

Harper and Row v. The Nation, 471 US 539 (1985) (Merges, et al. pp. 507-20).

Lotus v. Borland, 49 F.3d 807 (1995) (Merges, et al. pp. 989-1003).

Photocopying and Indirect Appropriability:

**American Geophysical Union v. Texaco, 60 F.3d 913 (2d Cir. 1994) (Merges, et al. pp. 525-39).

**Princeton University Press v. Michigan Document Services, 99 F. 3d 1381 (6th Cir 1996).

**Liebowitz, Copying and Indirect Appropriability: Photocopying of Journals, 93 JPE 945 (1985), available online at www.jstor.org.

Optional:

Performance Rights:

Twentieth Century Music Corp v. Aiken, 422 U.S. 151 (1975).

Broadcast Music, Inc. v. Claire's Boutiques, Inc., 949 F.2d 1482 (7th Cir. 1991).

Edison Bros. Stores, Inc. v. Broadcast Music, Inc., 954 F.2d 1419 (8th Cir.1992).

Springsteen v. Plaza Roller Dome, Inc., 602 F.Supp. 1113 (M.D.N.C. Jan 30, 1985).

Landes and Posner, Chapter 3.

VII. Copyright II (February 18, 2009)

Required:

Fair Use and Parody

Landes and Posner, Chapter 6

Campbell v. Acuff Rose Music, Inc. 510 U.S. 569 (1994) (Merges, et al., pp. 539-553).

Unpublished Works

Landes and Posner, Chapter 5

Salinger v. Random House, 811 F.2d 90 (1987).

New Era Publications v. Henry Holt & Co. 873 F. 2d 576 (2d Cir. 1989)

VIII. The Economics of Trademark Law (February 25, 2009)

A. Trademark

Landes and Posner, Chapter 7

Two Pesos, Inc. v. Taco Cabana, 505 U.S. 763 (1992). (Merges, et al, pp 648-660).

Qualitex Co. v. Jacobsen, 514 U.S. 159 (1995). (Merges, et al., pp 626-32.

The Murphy Door Bed Co v. Interior Sleep Systems, Inc., 874 F.2d 95 (2d Cir. 1989) (Merges, et al., pp 770-780.

TraFFix Devices Inc., v Marketing Displays, 532 U.S. 23 (2001) (Merges, et al., pp. 780-790).

B. Right of Publicity

**Midler v. Ford Motor Co., 849 F.2d 460 (9th Cir. 1988) (Merges, et al., pp. 883-890)

**White v. Samsung Electronics America, Inc., 989 F.2d 1512 (9th Cir. 1993) (Merges, et al., pp. 890-899).

**M. Grady, "A Positive Economic Theory of the Right to Publicity", 1 UCLA Ent. L. Rev. 97 (1994)

IX. Term and Term Extension (March 4, 2009).

**Merges, et al., pp. 449-453.

**Landes and Posner, Chapter 8.

**Eldred v. Ashcroft, 537 U.S. 186 (2003)

** Liebowitz, Stan J. and Margolis, Stephen E., "Seventeen Famous Economists Weigh in on Copyright: The Role of Theory, Empirics, and Network Effects" (December 2003). Available at <http://ssrn.com/abstract=488085>

**Brief of George Akerlof et al., in support of the petitioners in *Eldred v. Ashcroft*, available at: <http://cyber.law.harvard.edu/openlaw/eldredvashcroft/supct/amici/economists.pdf>

**Beyond Hatch-Waxman, article available at <http://pubs.acs.org/cen/coverstory/8038/8038biogenerics2.html>

Spring Break (March 11, 2009)

X. The Economics of Trade Secret Law (March 18, 2009)

DuPont v. Christopher, 431 F.2d 1012 (5th Cir. 1970) (*Merges, et al.*, pp. 62-66).

Kewanee Oil v. Bicron, 416 U.S. 470 (1974) (*Merges, et al.*, pp. 929-33)

W. L. Gore & Associates v. Garlock, Inc., 721 F.2d 1540 (Fed Cir 1983).

Warner-Lambert v. Reynolds, 280 F.2d. 197 (2d. Cir. 1960) (*Merges, et al.*, pp. 101-104).

**Landes and Posner, Chapter 13.

XI. The Economics of Patent Law (March 25, 2009)

**Landes and Posner, Chapter 11

***Hilton Davis v. Warner-Jenkinson*, 62 F.3d 1512 (1997) (concurring opinion by Judge Newman at 1529-36).

Festo v. Shoketsu Kinzoku Kogyo Kabushiki Co. 535 U.S. 722 (2002).

XII. Measuring Patent Damages (April 1, 2007)

**Schlicher, Measuring Patent Damages by the Market Value of Inventions - The Grain Processing, Rite Hite, and Aro Rules, 82 J. Patent & Trademark Off. Soc'y 503 (2000).

**Grain Processing Corp. v. American Maize-Products Co., 185 F.3d. 1341 (Fed Cir. 1990).

**Rite Hite v. Kelley Co., 56 F.3d 1538 (Fed Cir 1995).

**State Industries v. Mor-Flo, Inc., 883 F. 2d. 1573 (Fed. Cir. 1988).

XIII. IP and Antitrust (April 8, 2009)

Required

Landes and Posner, Chapter 14

ITW v. Independent Ink, 126 S. Ct. 1281 (2006).

Brief of the United States in Independent Ink v. Illinois Tool Works, 2005 WL1864093

Brief of Sullivan, Nalebuff and Ayres in Independent Ink v. Illinois Tool Works, 2005 WL2427646

Benjamin Klein and John Wiley, 70 ANTITR L J 599

Optional

Executive Summary and Chapter Two, FTC Report (available online at <http://www.ftc.gov/os/2003/10/innovationrpt.pdf>. The Executive Summary can be found at pages 4-21; Chapter Two can be found at pages 69-106])

Balto, D. & Wolman, A., "Intellectual Property and Antitrust: General Principles," 43 IDEA 395 (2003) (pp 395-434; remainder is optional).

In re Independent Service Organization Antitrust Litigation, 203 F.3d 1322 (Fed. Cir. 2000).

Kodak v. Image Technical Services, 125 F.3d 1195 (9th Cir 1997).

XIV. Preemption of State Law, Conflict of Federal Laws (April 15, 2009)

**John S. Wiley, "Bonito Boats: Uninformed by Mandatory Federal Innovation, 1989 Sup. Ct. Rev. 283 (1989).

**Bonito Boats, Inc., v. Thunder Craft Boats, Inc., 489 U.S. 141 (1989).

Sears, Roebuck & Co. v. Stiffel Company, 376 U.S. 225 (1964).

Goldstein v. California, 412 U.S. 546 (1973).

Aronson v. Quick Point Pencil, 440 U.S. 257 (1979).

**TraFFix Devices v. Marketing Displays, Inc., 532 U.S. 23 (2001).

**Dastar v. 20th Century Fox, 539 U.S. 23 (2003)