

INTRODUCTION TO LAW AND THE LEGAL PROCESS
LEGAL STUDIES 101-04, SPRING 2016
GARY ROSEN

Classroom: 211 Steinberg Hall-Dietrich Hall
Office: 619 Huntsman Hall
Class Times: Tuesdays-Thursdays, 10:30-11:50 am
Office Hours: Thursdays, 12:00-1:15 pm; other times by appointment
Contact: Email — roseng@wharton.upenn.edu Phone — (610)658-8790

COURSE OVERVIEW

This course will begin with an introduction to legal reasoning and to the U.S. legal system, with particular attention to the respective roles of courts and legislatures, and the division of authority between the states and the federal government.

The remainder of the course will focus on two areas of law of particular importance to nearly all creative and entrepreneurial pursuits: contract law and intellectual property law (copyrights, patents, and trademarks). The patent law unit will not require a technical background.

The primary goal of the course will be to equip you with the skills necessary to recognize and analyze legal issues that will change dramatically, in ways we cannot even imagine now, over the course of your lifetime. Secondary emphasis will be on learning “black letter” rules and principles of law.

CLASS SESSIONS

Class sessions will be a combination of Socratic dialogue and group discussion in an informal atmosphere. Depending on enrollment, each student will be assigned responsibility for being fully prepared to discuss the day’s readings 3-5 times over the course of the semester. An unexcused absence or lack of preparation on one of your assigned days will result in a course grade reduction of one level (e.g., from B- to C+).

Although class attendance and participation will not otherwise be graded directly, the correlation between the classroom discussions and the skills and material the exams test, and therefore the correlation between class attendance and exam performance, has consistently been very strong. Because this is more a thinking skills course than an information absorption course, regular practice and repetition will be far more productive than cramming.

A note on the “Socratic Method”: “Professors could lecture students about legal reasoning, but those who use the Socratic Method prefer to rely as much as possible on active learning. Just as a professor who immediately answers her students’ questions loses an

opportunity to help them discover the answers on their own, the professor who dispenses legal principles in classroom soliloquies will reduce students' opportunities to engage in independent critical thinking that could lead them to a deeper understanding of the material." (E. Garrett, "Becoming Lawyers")

ASSIGNED READINGS

There is no textbook or course-pak for this class. Assigned readings—mostly primary legal materials (court cases, legislative statutes, etc.) along with a few secondary sources—will be available through the class Canvas site (Modules>Date>Readings). It is strongly recommended that you print out all assigned readings, annotate them manually, and keep them in loose-leaf binders. All readings are mandatory, and class discussions will assume that all have been read carefully and critically beforehand.

A note on the "Case Method": "A lawyer needs to understand exactly how an abstract rule of law will apply to the very specific situations a client might encounter. This is more difficult than you might think, in part because a legal rule that sounds definite and clear in the abstract may prove murky in application. . . . As a result, lawyers need a vivid imagination; they need to imagine how rules might apply, where they might be unclear, and where they might lead to unexpected outcomes. The case method and the frequent use of hypotheticals will help train your brain to think this way." (O. Kerr, "How to Read a Case")

GRADING

The final grade will be based on the following:

Midterm Examination – 30%
Legal Writing Exercise – 30%
Non-Cumulative Final Examination – 40%

The exams will be approximately 1/3 short answer and 2/3 "essay" questions designed to test your ability to spot multiple legal issues raised by a hypothetical factual scenario and to analyze them rigorously where the rules and principles that you have learned from the readings and class discussions do not dictate the result. (Past exam questions, sample answers, and grading rubrics, along with specific advice on exam preparation, will be available on the Canvas site well in advance of the exams.) Exam dates are firm—a make-up exam, or other accommodation, will be provided solely at the instructor's discretion. Plan accordingly.

The legal writing exercise will require you to prepare a written legal argument of approximately 5-6 pages in the form of a judicial opinion, based on a hypothetical set of facts and legal sources that will be provided at least three weeks ahead of the firm deadline for completion.

CLASS SCHEDULE AND READINGS

I. INTRODUCTION TO LAW AND THE U.S. LEGAL SYSTEM

- Jan. 14: Welcome and Course Overview
- Jan. 19: Theories of Law I – Rules & Principles
 - F. Coffin, “The Constraint of Writing”
 - L. Fuller, “The Case of the Speluncean Explorers” – Part 1
 - R. Dworkin, *Taking Rights Seriously*, pp. 23-28
- Jan. 21: Theories of Law II – Politics & Pragmatism
 - L. Fuller, “The Case of the Speluncean Explorers” – Part 2
 - U.S. Const., Amend. XIV, secs. 1 & 5
 - *Obergefell v. Hodges*
- Jan. 26: Sources of Law I – State Law
 - O. Kerr, “How to Read a Legal Opinion”
 - *Cline v. Dunlora*
 - *North Dakota v. Ertelt*
 - *People v. Cassidy*
- Jan. 28: Sources of Law II - Federal Law
 - U.S. Const., Art. I, sec. 8
 - *United States v. Comstock*
 - *Katzenbach v. McClung*
 - U.S. Const., Art. IV, cl. 2; Amends. IX & X
 - *US Airways v. O'Donnell*
 - Kansas Second Amendment Protection Act
 - Correspondence between US Attorney General Holder and Kansas Gov. Brownback

- Feb. 2: Applying the Basics I – First Amendment
 - U.S. Const., Amend. I
 - *Anderson v. City of Hermosa Beach*
 - *United States v. Alvarez*
 - *Clark v. Committee for Creative Non-Violence*

- Feb. 4: Applying the Basics II – Obamacare
 - *Background: Patient Protection & Affordable Care Act*
 - *Nat'l Federation of Independent Business v. Sebelius*
 - *King v. Burwell*

II. CONTRACT LAW

- Feb. 9: Theory & Formation of Contracts I
 - *Raffles v. Wichelhaus*
 - Gilmore, *The Death of Contract*, pp. 39-44
 - *City of Everett v. Estate of Sumstad I & II*
 - *Givens v. Fowler*
 - Restatement (2d) of Contracts, §§ 152-154

- Feb. 11: Theory & Formation of Contracts II
 - *Carlill v. Carbolic Smoke Ball Co.*
 - *Tober v. CDC Realty*
 - *Trinity Homes v. Fang*
 - Restatement (2d) of Contracts, §§ 24, 30, 32, 33, 35, 36, 50, 60, 63 & 64

- Feb. 16: Consideration
 - *Hamer v. Sidway*
 - *Pennsy Supply, Inc. v. American Ash Recycling Corp.*
 - *Emberson v. Hartley*
 - *Stilk v. Myrick*

- 33 Pa. Stat. § 6
- *Harvey v. Dow*
- Restatement (2d) of Contracts, §§ 17 & 71-73 & 90

- Feb. 18: Unenforceable Contracts
 - *Jordan v. Knafel I*
 - *Colo. Plasterers' Pension v. Plasterers Unlimited*
 - *Jordan v. Knafel II*
 - *Crown Mortgage Co. v. Young*
 - Restatement (2d) of Contracts, §§ 161-164, 167, 178 & 208

- Feb. 23: Written Contracts
 - "Contracts in Writing" – Statute of Frauds
 - *Hussein-Scott v. Scott*
 - *Intersport, Inc. v. NCAA*
 - *Sessions v. The Healthcare, Ltd.*
 - *Poeppel v. Lester*
 - Restatement (2d) of Contracts, §§ 202-203 & 206

- Feb. 25: Breach of Contract
 - *Howard v. Federal Crop Ins. Corp.*
 - *Va. Beach Mechanical Serv. v. SAMCO Construction Co.*
 - *Gelley v. Park Pleasant Inc.*
 - Restatement (2d) of Contracts, §§ 224-225, 237 & 241

- Mar. 1: Excuse for Nonperformance; Review for Mid-Term
 - *Reed Foundation v. FDR Four Freedoms Park*
 - *476 Grand LLC v. Dodge of Englewood*
 - "Chrysler Plans to Shut 1 in 4 of its US Dealers"
 - Force Majeure Clause
 - Restatement (2d) of Contracts, §§ 261 & 265

- Mar. 3: MIDTERM EXAM (In Class)
- SPRING BREAK
- Mar. 15: Remedies for Breach I – Damages
 - *Hawkins v. McGee*
 - *Hadley v. Baxendale*
 - *Rockingham County v. Luten Bridge Co.*
 - *Columbia Park Golf Course Inc. v. City of Kennewick*
 - Restatement (2d) of Contracts, §§ 344, 347 & 349-352
- Mar. 17: Remedies for Breach II – Equitable Remedies
 - *McCallister v. Patton*
 - *Van Wagner Advertising Corp v. S&M Enterprises*
 - *Schubert Theatrical Co. v. Rath*
 - Restatement (2d) of Contracts, §§ 359 & 360

III. INTELLECTUAL PROPERTY LAW

- Mar. 22: Copyright I – Copyright Term & Originality
 - U.S. Constitution., Article I, section 8, clause 8
 - 17 U.S.C. §§ 302 & 304
 - *Eldred v. Ashcroft*
 - Carvajal, “Anne Frank’s Diary Gains ‘Co-Author’ in Copyright Move”
 - Smale, “Scholars Unveil New Edition of Hitler’s ‘Mein Kampf’
 - Lee, “If Congress Hadn’t Extended Copyright”
 - *Feist Publications v. Rural Telephone Service Co.*
 - *Home Legend LLC v. Mannington Mills*
- Mar. 24: Copyright II – Works of Authorship, Exclusive Rights & Ownership
 - 17 U.S.C. §§ 102, 106, 201 & 202
 - *Bikram’s Yoga College v. Evolation Yoga*

- *In re Application of Cellco Partnership*
- Rosen, “Chunga’s Revenge”
- *Community for Creative Non-Violence v. Reid*

- Mar. 29: Copyright III – Registration, Infringement & Remedies
 - 17 U.S.C. §§ 408, 411 & 502-504
 - Copyright Registration Samples – Harry Potter & Derivative Works
 - *Allen v. Destiny’s Child*
 - *Capitol Records, Inc. v. Thomas-Rasset*
 - *ABKCO Music v. Harrisongs Music*

- Mar. 31: Copyright IV – Fair Use; Legal Writing Exercise Handed-Out
 - 17 U.S.C. § 107
 - *Lennon v. Premise Media*
 - *Gaylord v. United States*
 - *Cariou v. Prince*
 - Georgia State University Fair Use Checklist

- Apr. 5: Patent I - Claims & Infringement
 - 35 U.S.C. §§ 112, 154, 271
 - *Autogiro Co. of America v. U.S.*
 - *Phillips v. AWH Corp.*
 - *Anatomy of a U.S. Patent Document*
 - U.S. Patent No. 5,628,338
 - *Stumbo v. Eastman Outdoors, Inc.*

- Apr. 7: Patent II – Prior Art & Patentable Subject Matter
 - 35 U.S.C. §§ 101, 102, 103
 - *In re Lister*
 - U.S. Patent No. 5,803,501
 - *Media Technologies Licensing v. Upper Deck Co.*
 - *State Street Bank v. Signature Financial Group*

- Apr. 12: Patent III – Abstract Ideas & Trolls
 - Angwin, “‘Business-Method’ Patents Create Growing Controversy”
 - *Bilski v. Kappos*
 - *Ultramercial v. Hulu, Inc.*
 - White House Report on Patent Assertion & U.S. Innovation
 - Nocera, “The Patent Troll Smokescreen”

- Apr. 14: Trademark I –Distinctiveness & Secondary Meaning
 - 15 U.S.C. § 1127
 - Rosen, “Trademark is Not a Verb”
 - *Abercrombie & Fitch Co. v. Hunting World, Inc.*
 - *Pods Enterprises v. U-Haul International*
 - *Timex Group USA v. Focarino*
 - *Jewish Sephardic Yellow Pages v. DAG Media*

- Apr. 19: Trademark II – Functionality & Registration; Legal Writing Exercise Due
 - *Qualitex Co. v. Jacobson Products Co.*
 - Rosen, “Red Shoes Don’t Make It”
 - 15 U.S.C. § 1052
 - Sample Trademark Registrations
 - *In re Fox*
 - *In re Tam*

- Apr. 21: Trademark II –Infringement & Fair Use
 - *Star Industries v. Bacardi & Co.*
 - *New Kids on the Block v. News America Publishing*
 - Rosen, “The Big Games is Upon Us”

- Apr. 26: Current Cases; Review for Final

Final Exam: Wednesday, May 4, 12-2:00 pm