

LAWS 3202 Intellectual Property

COURSE:	LAWS 3202B – Intellectual Property
TERM:	Winter 2024
PREREQUISITES:	1.0 Credit from LAWS 2201, 2202, 2501, 2502
CLASS:	Day & Time: Mondays, 11:35 am – 2:25 pm Room: Please check Carleton Central for location Modality: in person
INSTRUCTOR:	Dr. Sheryl N. Hamilton
CONTACT:	Office Hrs: Wednesdays 2:00 – 4:00 pm, or by appointment (Zoom or in person) Telephone: 613-520-2600 X1975 or X1178 (if I don't pick up, please use email rather than leave a message) Email: Sheryl.hamilton@carleton.ca

CALENDAR COURSE DESCRIPTION

Critical assessment of copyright, patents, trademarks, trade secrets and other forms of intellectual property; regulation and governance of information technology including self-regulation, standard setting, licensing, competition policy and international dimensions.

COURSE DESCRIPTION

- How did Ed Sheeran's 2023 musical performance in a courtroom help him defend himself against allegations that he had plagiarized Marvin Gaye's "Let's Get it On" with his song "Thinking Out Loud"?
- Will the Canadian government's recently developed "agile licensing" system designed to fast track market approval on life saving drugs successfully address Big Pharma's manipulation of the patent system?
- Why did Adidas withdraw its opposition to the Black Lives Matter Global Network Foundation trademark application in March of 2023 and more importantly, what does their initial oppositional stance tell us about trademark law?

Issues of intellectual property are all around us, every day. The recent issues of intellectual property above are but a few examples of how intellectual property shapes how we access creative works, express ourselves, obtain new and useful products, and navigate the contemporary consumer mediascape. The stakes are high as intellectual property law intersects with human rights law, colonialism and structures of whiteness, capitalism, personal privacy, our identities, and matters of life and death.

As Edwin Hettinger notes in your first reading for this class, “[p]roperty institutions fundamentally shape a society” (2001: 31). Studying intellectual property law, therefore, is the study of what kind of society we have, what kind of society we are becoming, and what kind of society we want.

LEARNING OBJECTIVES AND OUTCOMES

In this course, students will learn about:

- the dominant philosophical and economic rationales for protecting IP;
- a number of critiques of Western intellectual property thinking, logics, and laws;
- the legal fundamentals of the major areas of IP in Canada;
- the ways in which Canadian law is impacted by other national and international IP regimes; and
- the ways in which intellectual property law is implicated in a series of broader issues with legal, social, political, economic and cultural dimensions.

If students complete the course as designed, they will gain or improve their skills in, and capacities for:

- critical reading of both scholarly and media texts;
- engaged, critical observation of their everyday environment;
- application of critical concepts to contemporary social issues to deepen knowledge and critique;
- analytic writing skills;
- deploying a sophisticated vocabulary to articulate their knowledge, views and analysis; and
- independent and intentional practices of workload and time management, working to deadlines (and meeting them), and successfully executing tasks of the sort that will be required in professional employment.

Instructor and Student Expectations and Responsibilities to Achieve Learning Objectives and Outcomes

Both you, as a student, and I, as the professor of this course, have an important role to play in helping you achieve the learning objectives and outcomes detailed above. On the Brightspace

page for this class, I have prepared a list of expectations and responsibilities for each of us (see Course Tools module). I am committing to those expectations and responsibilities to the best of my ability, and ask you to do the same.

COURSE DELIVERY

LAWS 3202 Intellectual Property will take place in person. Lectures will not be recorded. If you miss a class, please arrange with a classmate to borrow notes. PowerPoint decks will be posted to the Brightspace portal. The decks are prepared as a support, not a substitution, for preparation for, attendance at, discussion in, and notetaking during, the lecture.

REQUIRED TEXTS

Weekly readings are available on the course Brightspace page. Students should complete the readings prior to attending the lecture.

EVALUATION

Standing in a course is determined by the course instructor, subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

Please note that I have posted a video reviewing all of the elements of evaluation in this course in detail on the course Brightspace page under the Course Tools module. If, at any point in the term, you have questions pertaining to evaluation, please contact me as quickly as possible for clarification.

All written assignments should be submitted in Word. Please do not submit your assignments in Pages or as .pdf files. You can obtain Word for free from the university; I have provided a link to the relevant webpage in the Toold module of the Brightspace page.

There are four formal modes of evaluation in this class, weighted as below (and one bonus):

Recorded Introduction	Bonus 3 points
Online Readings Quizzes	20%
Trademark Journal and Critical Reflection	15%
In-Class Issue Analyses (20% X 2)	40%
Final Examination	25%

The Trademark Journal and Critical Reflection, In-Class Issue Analyses, Final Examination and 70% of the Online Readings Quizzes must be successfully completed in order to get a passing grade in this course.

Introduction Recording

Please make a brief, casual video recording introducing yourself to me and upload it to the Brightspace portal by **JANUARY 15**. Recordings should be approximately three minutes and should tell me a little bit about who you are, how you're doing, why you're taking this class, and what you would like to get out of it. I would prefer a video recording, but if you are not comfortable with that for any reason, a sound-only recording is fine and will not impact your grade.

Recordings will not be evaluated for quality, production values, lighting, camera work, special effects, etc.. No need to add a soundtrack. If you complete and submit a recording that meets the requirements of the assignment, you will receive full points. If you submit after the deadline, you will have one further week to submit for 1 bonus point. If you do not submit by January 22, you will not receive the bonus points. As this is a bonus element intended to help me get to know you a bit better at the beginning of the course, there will be no extensions granted.

Online Readings Quizzes

Online quizzes each week will help motivate you to attend lectures and complete the readings in such a manner that you retain important content. They help you to monitor your comprehension of the course material. As well, they assist you in keeping on track with your course work in terms of managing your time, completing assignments by their deadlines, spreading out the work over the term, and preparing for the final exam.

Readings are relevant content to this course and a solid knowledge of them must be demonstrated on the final exam to receive a passing score. The readings are also a key component in the two In-Class Issue Analyses and the Trademark Journal and Critical Reflection. There will be quizzes on each of the weeks after the Introduction, not including the last week's course wrap-up and the weeks of the in-class assignments. Quizzes will open up after the scheduled course time on Monday and will remain open until Friday at 11:59 pm. Each quiz will be comprised of 5 multiple choice and/or true and false questions. The raw quiz scores will be calculated into a grade out of 20.

Missed quizzes cannot be made up. The quizzes are timed and once you begin a quiz, you only have one opportunity to complete it. The completion window is one hour long. Adequate time to meet PMC accommodations for extra time has been designed into the quiz structure.

Trademark Journal and Critical Reflection

One of the course themes is that intellectual property is all around us and shapes our daily lives in ways that we often don't notice. This always feels particularly true of trademarks as they are such a visible and interruptive part of contemporary consumption and lifestyle. This assignment

asks you to notice and take note of the trademarks swirling around you and using scholarly engagements with trademarks, to reflect on the issues that they signal. Please go to a busy, public consumer location (a mall, a food court, Carleton's Unicentre, a coffee shop) and conduct a one-hour observation where you record in a journal (paper or digital) every trademark that you see, where/how/when you noticed it, and any additional comments noting interesting issues. Be forewarned, there will be a LOT of trademarks in your journal.

Do not conduct your observation in a private setting or in any place where your presence will be disruptive. Do not use video to record your observations. Do not take any photographs with people in them.

A table to assist your journaling will be posted to Brightspace in the Course Tools module. Your observations should be recorded in such a way that you can turn them in as part of your assignment. In addition to turning in your Trademark Journal, you are asked to prepare a 5-7 page Critical Reflection on your experience (double-spaced, with 2.5 cm margins on all sides, page numbers (where the text begins on p. 1), a cover page, and appropriate citations and bibliography using an accepted academic style guide). Please write in the first person (i.e. using "I").

The Critical Reflection can explore any issues relevant to your observation and should discuss some of those issues in relation to relevant course material and a minimum of three additional academic, refereed sources which speak specifically to the issue(s) you are discussing.

The questions below are offered to help you think about your observations and organize your thoughts. **The Critical Reflection should not be merely your responses to these questions.**

- What types of trademark are you noticing easily? Which are harder to notice? Why?
- What does the number of trademarks you observed say about contemporary society?
- Thinking of one or two specific examples. What is interesting about them?
 - o What was your emotional response to them?
 - o What did you think of when you saw them?
- Did the trademarks you saw successfully distinguish goods in the marketplace? Was this their primary work? Were they doing other work? If so, what?
- Were the trademarks you noticed part of larger brands?
- What did you notice, if anything, because you were doing this assignment that you wouldn't otherwise have noticed?
- What was the most interesting thing you noticed and why?

Your Trademark Journal and Critical Reflection is **due MARCH 11 by 11:59 pm.**

In-Class IP Issue Analyses

Our classes on **FEBRUARY 12** and **APRIL 1** will be devoted to conducting analyses of a contemporary intellectual property issue using relevant course materials. At the beginning of

each class, you will receive a news article and a short set of questions. In preparing your answers, you should use appropriate lecture content and course readings, properly quoted and cited. Answers will be due at the end of class. These assignments will be much easier if you review the course materials on the theme in advance.

Final Exam

There will be a final exam in the formally scheduled examination period. It will be comprised of two sections. The first focuses on comprehension and analytic use of key concepts, and the second will ask for critically analysis of a 'real life' scenario. There will be choice in both sections. Both will require students to demonstrate comprehension of, and facility with, all relevant course material. The last class will offer a wrap-up of the course, an exam review, working through some practice questions, and an opportunity to ask questions.

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

The granting of extensions is determined by the instructor, who will confirm whether an extension is granted and the length of the extension. For requests for extensions lasting less than 5 days, please complete the form at the following link and submit it to me prior to the assignment due date: <https://carleton.ca/registrar/wp-content/uploads/self-declaration.pdf>.

Extensions for longer than 5 days will normally not be granted. In those extraordinary cases where extensions lasting longer than 5 days are granted, the student will be required to provide additional information to justify the longer extension (up to a maximum of 14 days).

Please note that Carleton's *Academic Consideration for Students in Medical or Other Extenuating Circumstances* policy is in effect as of January 2024

(<https://carleton.ca/secretariat/wp-content/uploads/Academic-Consideration-Policy-for-Students.pdf>).

The policy clearly states: **Experiencing diverse challenges and stressors is considered typical within the university experience and are [sic] not considered extenuating circumstances; for example, managing workload, competing deadlines, inclement weather, among others.**

In this class, the fact of assignments being due in other classes is not grounds for an extension nor is the mismanagement of academic workload due to outside employment .

If you miss the first **In-class Issue Analysis**, there is a make-up day to complete an alternative. If you miss that, you will receive 0 on that assignment. There is no alternative date provided for the second **In-class Issue Analysis**. If you do not attend on that day and complete the assignment, you will have until the following day at 11:59 to complete it for 2/3 points. If it is not submitted by that time, it will receive a grade of 0.

The **Trademark Journal and Critical Analysis** is subject to the following late policy. For each day late, the maximum grade possible on the assignment will drop by 1/3 of a letter grade. For example, the maximum grade on the due date is A+; if the project is one day late, the maximum grade possible is an A; the next day, A-, and so on. Keep in mind that this does not mean that the student will receive the maximum possible grade on the assignment.

Sheryl's informal accommodation structure

The formal accommodations for which you may be eligible are detailed after the course schedule below. If you have any other needs as a student not addressed (or not addressed adequately) by existing policies, and you would benefit from an informal accommodation for you to maximize your learning experience (employment, child or elder care, chronic illness, etc.), please speak to me at the beginning of the term so that we can arrange a mutually satisfactory approach to meeting the course requirements, learning objectives, and learning outcomes. This includes examining the due dates for all of your assignments in all of your classes and, in the event of conflict or overload, asking for any modifications to the due dates in this class well in advance of the due date.

STATEMENT ON USE OF GENERATIVE ARTIFICIAL INTELLIGENCE TOOLS

Any use of generative AI tools (such as ChatGPT and others) to produce assessed content is considered a violation of academic integrity standards and will be referred to the Dean's Office (ODFPA). You must author your own work.

ADDITIONAL STUDENT SUPPORT

The Centre for Student Academic Support (CSAS) is a centralized collection of learning support services designed to help students achieve their goals and improve their learning both inside and outside the classroom. CSAS offers academic assistance with course content, academic writing and skills development. Visit CSAS on the 4th floor of MacOdrum Library or online at carleton.ca/csas.

BRIGHTSPACE

Brightspace will be the primary method of electronic communication with students outside of class. It will be used to post marks, to post announcements, and to host email communications. Students should make sure that they sign-on to Brightspace in the first week of classes and should check the Brightspace page for this course on a weekly basis. Each module contains guidance for the work required for that week.

SCHEDULE

Please note some readings may be subject to change before the beginning of class.

January 8 Introduction: Thinking About Intellectual Property (IP)**January 15 What is IP and Why We (Say We) Protect It**

Hettinger, Edwin C. (2001), "Justifying Intellectual Property" in *Philosophy and Public Affairs* (J. Haldane, ed.), New York: Cambridge University Press, pp. 21-52.

Kevles, Daniel (2016), "How to Trademark a Fruit" at [Smithsonian.com](https://www.smithsonian.com)

January 22 Contesting Western IP Logics and Issues in Traditional Knowledge

Oguamanam, Chidi (2018) "Wandering Footloose: Traditional Knowledge and the 'Public Domain' Revisited" in *The Journal of World Intellectual Property* 21(5-6): 306-25.

Fisher, William (2019), "Why is Traditional Knowledge Different From All Other Intellectual Property?" in *Washburn Law Journal* 58: 365-71.

January 29 Foundations of Copyright

Hesse, Carla (2002), "The Rise of Intellectual Property, 700 BC – AD 2000: An Idea in the Balance" in *Daedalus* 131(2): 26-45.

Craig, Carys (2021), "AI and Copyright Law" in *Artificial Intelligence and the Law in Canada* (F. Martin-Bariteau and T. Scassa, eds.), LexisNexis, pp. XX.

February 5 Issues in Copyright: Music Plagiarism

Mopas, Michael and Amelia Curran (2016), "Translating the Sound of Music: Forensic Musicology and Visual Evidence in Music Copyright Infringement Cases" in *Canadian Journal of Law and Society* 31(1): 25-46.

Orosz, Jeremy (2022), "Dua Lipa's "Levitating" Plagiarism Lawsuit Could Change Music Forever" in *Slate* (March 17, 2022) at <https://slate.com/culture/2022/03/dua-lipa-levitating-copyright-infringement-plagiarism-case.html> (please watch the embedded videos as well)

February 12 In-Class Issue Analysis I: Copyright and AI

Appel, Gil, Juliana Neelbauer, and David A. Schweidel (2023), "Generative AI Has an Intellectual Property Problem" in *Harvard Business Review* (April 7).

Additional materials will be posted to Brightspace.

February 19 **Spring Break!**

February 26 **Foundations of Trademark**

Vaver, David (2018), "Towards a Distinctive Trademark Law for the 21st Century" in *Intellectual Property Journal* 30(2): 183-203.

Scassa, Teresa (2012), "Trademarks Worth a Thousand Words: Freedom of Expression and the Use of the Trademarks of Others" in *Le Cahier de Droit* 53(4): 887-907.

March 4 **Trademarks, Cultural Appropriation, and Creative Solutions**

Vowel, Chelsea (2016), "What is Cultural Appropriation: Respecting Cultural Boundaries" (pp. 80-92) and "Icewine, Roquefort Cheese, and the Navajo Nation" (pp. 100-106) in *Indigenous Writes: A Guide to First Nations, Métis, and Inuit Issues in Canada*, Winnipeg: Portage and Main Press.

Nguyen, Tracy (2023), "The (Mis)Appropriation of Indigenous Cultural Elements as Trademarks: Assessing New Zealand's Trademark Regime as Potential Model for Canada" in *Canadian Bar Review* 101(1): 181-204.

March 11 **Foundations of Patents**

Trademark Journal and Analysis due today!

Judge, Elizabeth F. and Daniel J. Gervais (2015), "The Limits of Patents" in *International Intellectual Property: A Handbook of Contemporary Research* (D.J. Gervais, ed.), Cheltenham, UK: Edward Elgar, pp. 246-271.

Hagen, Gregory (2021), "AI and Patents and Trade Secrets" in *Artificial Intelligence and the Law in Canada* (F. Martin-Bariteau and T. Scassa, eds.), LexisNexis, pp. XX.

March 18 **Alternative Session for Completing Workshop I**

If you missed the In-Class Issue Analysis on February 12th, you can attend this session and complete an alternative assignment

March 25 **Pharmaceutical Patents and Access to Medicines**

McMahon, Aisling (2021) "Global Equitable Access to Vaccines, Medicines and Diagnostics for

COVID-19: The Role of Patents as Private Governance” in *Journal of Medical Ethics* 47(3): 142-8.

Kapczynski, Amy (2019), “The Right to Medicines in an Age of Neoliberalism” in *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 10(1): 79-107.

April 1 **Issue Analysis II: Patents, Health, and Human Rights**

Editorial in *Nature* (2021), “A Patent Waiver on COVID Vaccines is Right and Fair” (May 25)

Additional materials will be posted to Brightspace

April 8 **Course Wrap-Up and Exam Review**

University and Departmental Policies

DEPARTMENT POLICIES AND REGULATIONS

Please review the following webpage to ensure that your practices meet our Department's expectations, particularly regarding standard departmental protocols and academic integrity requirements: <https://carleton.ca/law/student-experience-resources/>.

PLAGIARISM

The University Academic Integrity Policy defines plagiarism as “*presenting, whether intentionally or not, the ideas, expression of ideas or work of others as one's own.*” This includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, artworks, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, material on the internet and/or conversations.

Examples of plagiarism include, but are not limited to:

- any submission prepared in whole or in part, by someone else, including the unauthorized use of generative AI tools (e.g., ChatGPT);
- using ideas or direct, verbatim quotations, paraphrased material, algorithms, formulae, scientific or mathematical concepts, or ideas without appropriate acknowledgment in any academic assignment;
- using another's data or research findings without appropriate acknowledgement;
- submitting a computer program developed in whole or in part by someone else, with or without modifications, as one's own; and
- failing to acknowledge sources through the use of proper citations when using another's work and/or failing to use quotations marks.

Plagiarism is a serious offence that cannot be resolved directly by the course's instructor. The Associate Dean of the Faculty conducts a rigorous investigation, including an interview with the

student, when an instructor suspects a piece of work has been plagiarized. Penalties are not trivial. They can include a final grade of “F” for the course.

STATEMENT ON STUDENT MENTAL HEALTH

As a University student you may experience a range of mental health challenges that significantly impact your academic success and overall well-being. If you need help, please speak to someone. There are numerous resources available both on- and off-campus to support you.

Emergency Resources (on and off campus):

- <https://carleton.ca/health/emergencies-and-crisis/emergency-numbers/>

Carleton Resources:

- Mental Health and Wellbeing: <https://carleton.ca/wellness/>
- Health & Counselling Services: <https://carleton.ca/health/>
- Paul Menton Centre: <https://carleton.ca/pmc/>
- Academic Advising Centre (AAC): <https://carleton.ca/academicadvising/>
- Centre for Student Academic Support (CSAS): <https://carleton.ca/csas/>
- Equity & Inclusivity Communities: <https://carleton.ca/equity/>

Off Campus Resources:

- Distress Centre of Ottawa and Region: (613) 238-3311 or TEXT: 343-306-5550, <https://www.dcottawa.on.ca/>
- Mental Health Crisis Service: (613) 722-6914, 1-866-996-0991, <http://www.crisisline.ca/>
- Empower Me: 1-844-741-6389, <https://students.carleton.ca/services/empower-me-counselling-services>
- Good2Talk: 1-866-925-5454, <https://good2talk.ca/>
- The Walk-In Counselling Clinic: <https://walkincounselling.com>

ACADEMIC ACCOMMODATIONS

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows.

Pregnancy Obligation

Write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details about the accommodation policy, visit the [Equity and Inclusive Communities \(EIC\)](#) website.

Religious Obligation

Write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, please go to: <https://carleton.ca/equity/focus/discrimination-harassment/religious-spiritual-observances/>

Academic Accommodations for Students with Disabilities

The Paul Menton Centre for Students with Disabilities (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or pmc@carleton.ca for a formal evaluation. You can find the Paul Menton Centre online at: <https://carleton.ca/pmc/>

If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (if applicable).

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and where survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: <https://carleton.ca/equity/sexual-assault-support-services>

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. Read more here: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>.

For more information on academic accommodation, please visit: <https://students.carleton.ca/services/accommodation/>