

PROPERTY CRIME IN THE INFORMATION AGE
SPRING 2014
PROFESSOR MOOHR

Introduction. Welcome to the class and best wishes for a successful semester. This course examines the intersection of two fields, criminal law and the law of information and intellectual property. This new area of the law has evolved to protect information products from unauthorized use that is facilitated by the internet and digitization. Technological developments challenge traditional criminal law concepts, and Congress responds with new criminal laws. Thus, our main focus is on federal criminal laws, such as trade secret theft, criminal copyright infringement, and business information fraud. Policy issues, such as the relation between civil and criminal law, are examined throughout. Former students interested in either white collar criminal law or intellectual property and information have enjoyed the class and found it useful. There is no prerequisite.

Course materials. The material for this course is Moohr, *Criminal Law of Information and Intellectual Property* (2008) and its new *Supplement* (2014), which will be distributed to you. The book's table of contents outlines the course, and a detailed assignment schedule aids in your preparation for class. You are responsible for all of the assigned reading, including material that we do not discuss in class.

First day assignment. Read the introductory chapter, pages 1-16 in the casebook. Be prepared to discuss the cases and the problem. You should also review the basic principles of criminal law, especially larceny, from your first-year criminal law class. On this first day and throughout the course you are expected to discuss the holdings, their rationale, and issues raised in the assigned material and the problems.

Assignments. The subject matter in this course is developing even as this syllabus is being written. Thus, the attached reading assignment schedule may change in response to new developments. I will advise you of such changes through announcements in class and by email. Please be sure your account is active, because I can use only University of Houston email addresses.

Classroom standards. One characteristic of the case method is that classroom discussion often introduces concepts and information that are not included in assigned readings and may be covered in the final examination. Thus, I strongly advise regular class attendance. According to Law Center and ABA standards, in order to take the final examination, you must have attended 80% of the classes. Do not forget to sign the attendance roll *before* you leave the classroom.

Professional conduct is expected during class. Please be on time, do not leave early, and generally try not to disturb your colleagues or me. Professional conduct precludes any use of your laptops not related to class discussion.

Evaluation. Although final grades can reflect contributions to class discussion, your grade is largely determined by performance on a closed-book examination. The final will be given on May 5, 2014, from 7 to 10 p.m.

Should you have questions, want to discuss larger issues, or just visit, I am available during office hours, by appointment, or by just knocking at my office door. I am glad to see you anytime; my official office hours are on Monday and Wednesdays, from 2:30 to 4 p.m.

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ANCILLARY READING

Criminal Law Treatises (in case you need a refresher)

American Law Institute, *Model Penal Code and Commentaries*

Joshua Dressler, *Understanding Criminal Law*

Joshua Dressler, ed., *Encyclopedia of Crime and Justice* (2nd ed.)

J. Kelly Strader, *Understanding White Collar Crime*

Selected Books on Issues of Intangible Property

Yochai Benkler, *The Wealth of Networks: How Social Production Transforms Markets and Freedom* (2007)

Melise Blakeslee, *Internet Crimes, Torts and Scams: Investigation and Remedies* (2010)

Sisela Bok, *Secrets: On the Ethics of Concealment and Revelation* (1989)

James T. Boyle, *The Public Domain: Enclosing the Commons of the Mind* (2008)

James T. Boyle, *Shamans, Software, and Spleens: Law and the Construction of the Information Society* (1997)

Jonathan Curci, *The Protection of Biodiversity and Traditional Knowledge in International Law of Intellectual Property* (2010)

James Gleick, *The Information* (2011)

Debora J. Halbert, *Intellectual Property in the Information Age* (1999)

Henry Jenkins, *Confronting the Challenges of Participatory Culture: Media Education for the 21st Century* (John D. and Catherine T. MacArthur Foundation Reports on Digital Media and Learning) (2009)

Lewis Hyde, *Common as Air: Revolution, Art, and Ownership* (2010)

Leo Katz, *Ill-Gotten Gains: Evasion, Blackmail, Fraud, and Kindred Puzzles of the Law* (1998)

Lawrence Lessig, *Code and Other Laws Of Cyberspace, Version 2.0* (2006)

Lawrence Lessig, *The Future of Ideas* (2002)

Lawrence Lessig, *Remix: Making Art and Commerce Thrive in the Hybrid Economy* (2008)

Michael Lewis, *Next: The Future Just Happened* (2002)

Kembrew McLeod, *Freedom of Expression (R): Overzealous Copyright Bozos and Other Enemies of Creativity* (2005)

Eduardo M. Penalver and Sonia Katyal, *Property Outlaws: How Squatters, Pirates, and Protesters Improve the Law of Ownership* (2010)

Richard A. Posner, *The Little Book of Plagiarism* (2007)

Betsy Rosenblatt, *Intellectual Property in the Information Age: The Politics of Expanding Ownership Rights* (2005)

Kim Lane Scheppele, *Legal Secrets* (1990)

Kenneth C. Shadlen and Sebastian Haunss, *Politics of Intellectual Property: Contestation Over the Ownership, Use, and Control of Knowledge and Information* (2009)

Rebecca Skloot, *The Immortal Life of Henrietta Lacks* (2010)

Debora L. Spar, *Ruling the Waves: Cycles of Discovery, Chaos, and Wealth from the Compass to the Internet* (2001)

Jeffrey C. Sun and Benjamin Baez, *Intellectual Property in the Information Age: Knowledge as Commodity and Its Legal Implications for Higher Education: ASHE Higher Education Report*

(2009)

Peter Toren, *Intellectual Property and Computer Crimes* (2011) (treatise)

Linda Volonino and Ian Redpath, *e-Discovery for Dummies* (2009)

Peter K. Yu, *Intellectual Property and Information Wealth [Four Volumes]: Issues and Practices in the Digital Age* (2006)

READING ASSIGNMENTS

As noted earlier, reading assignments are subject to change during the semester. I provide notice of changes in the assignments during class and by email.

I. Theft, Misappropriation, and Conversion

Class 1 – Jan. 13

A. Introduction

Read: Pages 1-16

Discuss: *Turley, Stewart*, and Problem 1A

Class 2 – Jan. 15

B. Theft: Mens Rea and Property Elements

Read: Pages 17-33

Discuss: *Brown, Morissette, Kunkin, Brooks*

Class 3 – Jan. 22

C. Unauthorized Use of Property

Read: Pages 36-59

Discuss: *Ashworth, Weg, McGraw, Lund, Evans*

Class 4 – Jan. 27

D. Civil Misappropriation

Read: Pages 60-86

Discuss: *International News Service, St. Andrews Systems, Arroyo*

Class 5 – Jan. 29

E. Civil and Criminal Conversion; Plagiarism

Read: Pages 87-109

Discuss: *Moore, Girard, Collins*

II. Federal Law of Trade Secrets

A. What Are Trade Secrets? Why Protect Them?

Read: Pages 111-44

Discuss: *Schulenburg, Schalk, Masland, Christopher, Ruckelshaus, Rockwell*

B. The Economic Espionage Act

Read: Pages 144-77; Supplement

Discuss: *Hsu II, Hsu IV, Krumrei, Lange, Aleynikov*

C. Policy Implications of the EEA

Read: Pages 177-91; Supplement

Discuss: *Martin, Shiah*

III. Federal Crimes Involving Confidential Business Information

A. Mail and Wire Fraud

Read: Pages 33-36; 192-214

Discuss: *Miller, Pereira, Siegel, McNally*

B. Honest Service Fraud

Read: Pages 214-220, Supplement

Discuss: *DeVegeter, Skilling*

C. Property Fraud and Confidential Information

Read: Pages 221-38

Discuss: *Carpenter, Czubinski, Martin*

D. The TOEFL Cases

Read: Pages 238-267

Discuss: *Alkaabi, Alsugair, Hedaithy*

E. Insider Trading (two classes)

1. Basic Offenses

Read: Pages 267-289

Discuss: *Chiarella, Dirks, O'Hagan*

2. Recent Developments

Read: Pages 289, Supplement

Discuss: *Stewart, Dorozhko, Cuban*

IV. Federal Criminal Copyright Infringement

A. The Rationale of Copyright Law

Read: Pages 291-303

Discuss: *Feist, Bily*

B. The Basic Crime of Infringement

Read: Pages 304-23

Discuss: *Moran, Cross, Larracuente*

C. Infringement as Theft and Fraud

Read: Pages 324-347

Discuss: *Dowling, Brown, LaMaachia*

D. The No Electronic Theft Act

Read: Pages 348-65, Supplement

Discuss: *Slater, Grokster, Thomas, Tennenbaum, Dove*

E. Quasi-Copyright Crimes

Read: Pages 365-78

Depending on time constraints, we may not cover this material in class.

V. Identity Theft

A. What Is Identity Theft?

Read: Pages 380-98

Discuss: *Wells, TRW, Della Rose*

B. The Federal Offense

Read: Pages 398-419 (skim p. 408-418), Supplement

Discuss: *Quinteros, Harrison, (Montejo), Flores-Figueroa*

VI. The Computer Fraud and Abuse Act

A. Damaging Computers

Read: Pages 420-44, Supplement

Discuss: *Pacific Aerospace, Trotter, Mitra, Morris, Drew, Middleton*

B. Misappropriating Information from Computers

1. Criminal Actions

Read: Pages 444-453, Supplement

Discuss: *Czubinski, Ivanov, Nosal*

2. Civil Actions

Read: Pages 453-68

Discuss: *Shurgard, P.C.Yonkers*

VII. Spam

A. Read: 468-80; Supplement

Discuss: *Kilbride, Twombly, Jaynes*

Depending on time constraints, we may not cover this material in class.