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ELECTRONIC COMMERCE

Fall 2007

I. Seminar Summary

In this seminar, we will study how developments in information technology affect commercial transactions. The course will consider issues related to information (including rules for protecting information and intellectual property) and various types of transactions in the electronic contexts (sales between businesses and/or consumers and website issues). Particular emphasis will be placed on the social, political, and economic issues underlying those legal doctrines. Because of the international nature of electronic commerce – and to obtain a different perspective on some of the issues we cover – we will also spend a considerable amount of time studying European laws relating to these issues.

The seminar will meet each Thursday at 6:05 p.m. Because participation is so important, you are responsible for attending at least 75% of our class sessions – a sign up sheet will be handed out at the beginning of each class and anyone missing more than 25% of our class sessions will be administratively withdrawn from the class.

II. Seminar Objectives

This seminar is designed to enable you to look holistically at the development of commercial transactions in the electronic age; to examine existing and proposed laws in the context of policy debates; and perhaps most importantly, to improve your analytical skills through regular classroom participation as well as formal exercises.

III. Evaluation and Grades

Your grade will be based upon a combination of participation (25%), which includes daily participation, and your performance in formal classroom exercises including the paper presentation, and a research paper that meets the requirements stated below (75%).

IV. Office Hours and Appointments

My office hours are on Tuesdays from 2:30 to 4:00. I will also be happy to meet with you outside of office hours. If you would like to schedule an appointment with me, please e-mail me.

V. Readings

The primary text for the class is MANN & WINN, ELECTRONIC COMMERCE (2d ed., Aspen 2005) [hereinafter M & W]. In addition, there is a course packet that I will distribute, which includes other materials for the class. Finally, there is a website, on which you can find the statutory and regulatory materials for the class: <http://www.utexas.edu/law/faculty/ecommerce>. During student paper presentations, those presenting papers will assign readings to the class.

For this seminar to be successful, it is essential that you do the readings and participate actively in class discussions. I will make every effort to assign a reasonable amount of reading each week; in exchange, I expect that you will complete all of the assigned readings prior to each class.

VI. Papers and Presentations

All students are required to write a seminar paper, which may be used to fulfill the advanced writing requirement for graduation. The paper requirements are the same for all students in the class, regardless of whether the paper is being used to fulfill the advanced writing requirement.

The last three sessions of the seminar will be devoted to student presentations of works in progress. In your presentation, you should explain the issue you are investigating, outline your research findings, and articulate and defend your thesis and conclusions. You will each have 10 minutes for your presentation, and 10 minutes for questions and answers. Students who are not presenting are expected to participate actively in the question-and-answer sessions.

Paper and presentation deadlines:

September 20 Paper topic due

At the time you submit your paper topic, you must provide (1) a one-page description of your paper topic, the areas you have already researched, what additional research you plan to do, and what you think your thesis might be; and (2) a description of all written projects on which you have previously worked, in higher education or during the course of employment, that are related to the proposed topic.

October 4 Outline/abstract due

The outline/abstract may be written in either outline or narrative format. It should be approximately 3-5 pages and should clearly describe your topic, your research findings, your argument, and your conclusions.

October 25 Paper due (first version)

The “first version” of your paper refers to the first version you submit to me, not your own “first draft.” It must be at least 20 pages. You should attempt to make this version of your paper as complete and polished as possible.

After I have read your first version, I will schedule a meeting with you to discuss your paper and your upcoming work-in-progress presentation. Depending on how your paper is progressing, I may ask you to submit additional drafts and/or meet with me again before the final version is due.

November 8, 15 & 29 Work-in-progress presentations

December 11 Paper due (final version)

The above deadlines are minimum requirements for the seminar. You are welcome to submit multiple drafts or to provide your outline and draft earlier than required. I strongly encourage you to meet with me during my office hours, or to schedule an appointment to meet with me at another time, as you proceed with the various stages of your topic development, research, outlining, and writing.

Your paper grade will be reduced by ½ of a letter grade for every three days (or portion thereof) that the paper topic, outline, first version, or final version. In my sole discretion, I may grant exceptions to this policy for extreme circumstances, such as a family death.

Please be mindful that the Honor Code applies to paper preparation.

Papers must be of student publishable quality (i.e., to similar quality to a law review Note or Comment), between 25 and 40 pages long (text double spaced; footnotes single spaced), and conform to the latest edition of the Bluebook. It is essential that your paper be structured around an argument (i.e., you must articulate and defend a thesis). Although it is important to demonstrate your familiarity with existing law and commentary, papers that do no more than summarize the law or views expressed by others are unacceptable.

You must Spell-Check and Auto-Cite before submitting written product to me. I will return (without reading) papers that upon first glance do not appear to satisfy these requirements. You will then have 24 hours to return the written product to me.

The determination of your grade and the certification that the paper fulfills the advanced writing requirement are separate decisions. Thus, hypothetically, you could receive a passing grade for the seminar but not receive certification for having fulfilled the advanced writing requirement.

For more information about writing a seminar paper, please go to the following web site:

http://law.shu.edu/administration/registrar_bursar/AWR/index.htm

In addition, I recommend that students writing a law school paper for the first time read Eugene Volokh, *Academic Legal Writing: Law Review Articles, Student Notes and Seminar Papers* (3d ed. 2007).

SYLLABUS

The following are the anticipated reading assignments for the seminar – of course, as with any law school course, plans can change. If they do, I will provide you with plenty of notice. The materials not found in Mann & Winn should all be in the course packet.

I. INTRODUCTION (AUGUST 23RD)

Please read pages 1-2, 741-745 and 53-66

This unit is designed to give you an introduction to the basics of how the internet works and some of the basic issues facing doing business on the internet.

II. JURISDICTION (AUGUST 30TH)

Please read pages 6-49

One of our major themes in this class will be a comparison of the laws of the United States and the European Union in regulating electronic commerce. Obviously, one of the fundamental issues is deciding whose law governs any particular transaction, and the extent to which the parties to a transaction may themselves select the governing law. The point of this class is to obtain an overview of these problems.

III & IV. ELECTRONIC CONTRACTING (SEPTEMBER 6TH AND 13TH)

For the first class, please read pages 261-89. For the second class, please read pages 290-317.

The material for the first class includes things that you may have spent some time on in your Contracts course. The focus of this class will be on talking about remote contracting and electronic contracting, under both the common law and Article 2. In particular, I'll focus on Shrinkwrap and Clickwrap, and UETA and E-Sign. In addition, we will talk a bit about the law in Europe on these issues. The second class will focus on two more advanced issues. First, how are the formal rules of contract law – such as the Mailbox Rule and the Statute of Frauds – altered by electronic transactions, and second, how do we regulate novel electronic contracting environments such as eBay.

V. INTERNET TAXATION (SEPTEMBER 20TH)

Please read pages 318-30 and the supplementary materials:

Borders Online

Gilreath v. General Electric

Handout on Current Status of Internet Taxation

The rise of the internet has greatly complicated the traditional methods for taxation. The most obvious example of this is how to handle sales tax. But just as important, as entities can now situate themselves anywhere in the world and provide many online services, all forms of taxation become more difficult.

VI & VII. LICENSING (SEPTEMBER 27TH)

Please read pages 380-423, but delete *British Horseracing Bd. v. William Hill Org. Ltd.* on pages 387-94 and replace them with the handout of the later opinion from the European Court of Justice. Also, delete the *Grokster* case on pages 413-22, and read instead the Supreme Court's decision in *Grokster*, which I will distribute

The internet makes it far easier to transmit data and information – ranging from things like sports scores to music and movies. The creators of these things – sports leagues and recording studios – have sought to control and charge for access to these. The attempts have met with varying success.

VII. SOFTWARE LICENSING (OCTOBER 4TH)

Please read pages 424-67.

The goal in this class will be to give you a basic background in how software licenses operate, and the major issues they raise. Although I am not assigning reading about it, I will also give you a brief overview of some of the antitrust issues that are often raised by these licenses.

VIII. WEB SITE DEVELOPMENT AND PROTECTION (OCTOBER 11TH)

Please read pages 67-95 & 117-40

This class will build on some of the trademark issues we addressed in the very first class of the semester, including the issue of cybersquatting. In addition, we will look at the ability of entities to control access to their websites and to their computer systems.

IX. LIABILITY FOR (OCTOBER 18TH)

Please read pages 141-191.

The goal of this class will be to look at the liability a website or internet service provider can have for the actions of its users: in particular, liability for libel or intellectual property misappropriation.

X. & XI. PROTECTION OF INFORMATION (OCTOBER 25TH & NOVEMBER 1ST)

Please read pages 193-257

In addition, delete 242-53 and read instead the *en banc* opinion of the First Circuit in *U.S. v. Councilman*

The focus of these two weeks will be on the legal protection of information, and in particular sensitive personal information. The first class will set the overall framework for the protection of private information in both the United States and Europe. The second class will focus more specifically on the enforcement of privacy policies and on the protections provided by the Electronic Communications Privacy Act and the Stored Communications Act.

XII.-XIV. PAPER PRESENTATION (NOVEMBER 8TH, 15TH & 29TH)