
Introduction

This casebook offers a true *survey* of intellectual property law: broad rather than deep. Intellectual property law covers far more than the conventional Big Three federal areas of patents, copyrights, and trademarks. In these pages, you will find materials on undeveloped ideas, trade secrets, false advertising, rights of publicity, design patents, geographic indications, and more. To make room, I have omitted any number of esoteric topics. The only time this book mentions the reverse doctrine of equivalents is in this sentence.

The organization is unconventional. To emphasize the conceptual unity of intellectual property, I have arranged much of the book around the recurring questions that must be answered to create a species of intellectual property.

- What kinds of things, or **subject matter**, does it apply to? Some subject matter rules are *threshold conditions* that determine when information is interesting or important enough to earn protection. Others are *exclusions* that define certain information as the wrong sort of thing to be protected.
- Who is an **owner** of the relevant rights? Ownership rules have two different functions. One is to resolve *priority* disputes among competitors; the other is to allocate rights within *collaborations*.
- What **procedures** must one follow to secure protection?
- When is something so **similar** that it infringes?
- What activities constitute **prohibited conduct**? These rules typically specify which defendants infringe *directly* and which can be held *secondarily liable* for others' infringements. Sometimes these rules also must resolve important *evidentiary* questions.
- What **defenses** are available against otherwise valid infringement claims? Most defenses are specific to a field, but two broad principles cut across all of intellectual property. One is that *free expression* concerns often allow creative or critical uses that would otherwise infringe. The other is the *exhaustion* principle, which limits the scope of intellectual property rights over

a physical thing once it has been distributed to the public.

- What **remedies** can an owner obtain against an infringer? Common intellectual property remedies include monetary *damages*, which can cover the owner's losses or the defendant's profits, and be actual, hypothetical, or statutory; preliminary and permanent *injunctions*; the *seizure* and destruction of infringing articles; *attorneys fees* for prevailing parties; and sometimes *criminal* penalties for particularly egregious infringers.
- What are the distinctive procedures for intellectual property **litigation**? These often include significant *jurisdictional* rules on where an owner can sue, the related *choice of law* rules on what state's laws apply, and the allocation of various questions between *judge and jury*.
- What are the essential characteristics of intellectual property **transactions**?

The first three questions tell us when a plaintiff has intellectual property rights; the next three tell us when a defendant has infringed those rights; the final three are needed to make the whole thing workable in practice. The questions bleed into one another and the answers of course will vary, but following a standardized framework makes it far easier to recognize the variations on the basic theme.

The book is divided, more or less, into four parts. The first part surveys the major different forms of intellectual property. The chapters there almost all work through the first six questions, in order. The second part takes a comparative perspective on product designs and computer software, which do not neatly fall into a single field of intellectual property. The third part examines important complements and substitute to intellectual property, including contract law and privacy law, along with some considerations on how intellectual property law can either promote or preempt other bodies of law. And the fourth part examines the remedial, procedural, and transactional issues that cut across all of intellectual property.

Everything in these pages is meant to be read. If you spot filler, let me know and I will remove it. The cases are edited aggressively: I have stripped procedural postures, digressions, policy discussions, and redundant statements of law. If a case is famous for one paragraph, I have edited it down to that paragraph. I have also stripped citations, quotation marks, and other obstacles to readability. I have not put words in courts' mouths, but I have silently dropped words from the middle of sentences, and even reordered paragraphs. This is a textbook, not a reference work. If it matters what the original source says, consult the original.

Although I respectfully disagree with the organizational choices and emphases of all existing casebooks, I have learned a great deal

You will also find marginal notes like this one scattered throughout the book. They contain historical notes, references for further reading, asides, and other material that goes beyond the four corners of the cases.

from them. Almost every case in these materials came to my attention as a good teaching prospect because I found it in another book and admired how the authors used it.

Finally, these materials are a work in progress. Please email me your comments, suggestions, and corrections at james.grimmelman@cornell.edu.