

## **SYLLABUS CYBERLAW – FALL 2011**

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Class meets: Mon. and Wed. from 12:30-1:45 p.m.in Room 2-2.

Office hours TBA

### **GENERAL INSTRUCTIONS**

Please read this syllabus carefully so that you begin to familiarize yourself with the methodology and expectations for this course.

#### **FIRST ASSIGNMENT, MON. AUG. 15**

Be prepared for every class, including the first day. For the first day's assignment, you can find some of the casebook materials on the internet. After the first day of class, you must have the casebook.

1. Read Summary of Findings and Recommendations of William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (2007). Available at: [http://www.carnegiefoundation.org/sites/default/files/publications/elibrary\\_pdf\\_632.pdf](http://www.carnegiefoundation.org/sites/default/files/publications/elibrary_pdf_632.pdf).

Reflect on *Educating Lawyers*. What might be the benefits of integrating the learning of legal doctrine, lawyering skills, and professional values?

2. Read Ku & Lipton casebook, pp. 1-17. Alternatively, read Frank H. Easterbrook, *Cyberspace and the Law of the Horse*, 1996 U. Chi. Legal F. 207 (1996) (available via Lexis or Westlaw); Lawrence Lessig, *The Law of the Horse: What Cyberlaw Might Teach*, 113 Harv. L. Rev. 501, 501-14 (1999), <http://www.lessig.org/content/articles/works/finalhls.pdf> (pp. 501-14).

In light of *Educating Lawyers*, consider the Easterbrook-Lessig debate. Why does Easterbrook attack Cyberlaw? Does he claim that there is no such thing? Does he claim that it should not be taught? What does he mean by "courses should be limited to subjects that could illuminate the entire law?" How does Lessig respond? Does he agree or disagree? *And what do you think?*

#### **ABOUT CYBERLAW**

Topics to be covered may include: cyber-jurisdiction; speech in cyberspace; filtering; anonymity; privacy; protection of brands on the Web; domain names; copyright infringement; fair use; defamation and service provider liability; network ownership and access; and cybercrime. We'll go beyond casebook readings, also considering real-world disputes. Because part of our studies will involve "client alerts" drafted by the class, the topics you choose will in part determine some of the topics we cover.

## ABOUT THE SKILLS APPROACH

As you know, legal education is not just about reading cases and learning rules. It's also about developing a broad variety of skills that modern lawyers need, such as problem-solving, legal research, factual investigation, communication, counseling, negotiation, litigation procedures, ethics, and even how to organize your work product. Therefore, after several traditional class sessions, we will expand our inquiries into three projects, discussed briefly below. Class will often be run as a role-playing simulation, with the instructor as "senior partner" and the class as "associates" of a fictional law firm, Thomas, Thomas and Thomas PLLP (a/k/a "T-Cubed"). Our role-playing scenarios will unfold on the live internet. The goal is to provide a holistic learning and lawyering experience that is as realistic as possible in the context of the classroom.

## ASSESSMENT AND GRADING

As we'll discuss, Cyberlaw might be termed the "law of the horse." Historically, numerous legal issues arose regarding the rights and liabilities of owning and using horses. Equally so, Cyberlaw (if there is such a thing) encompasses numerous issues, e.g., intellectual property, privacy, defamation, contracting, jurisdiction, crime, network access, and much more. Thus, Cyberlaw is arguably not a discrete topic at all. Accordingly, there will be no final exam. Instead, your grading will be based on three projects and on class participation. Subject to modification and refinement, I plan the following:

1. CYBERSQUATTING. Investigate online conduct and determine whether any legal remedies exist. Consider client needs and craft appropriate responses. Communicate with opposing parties to attempt dispute resolution. Draft a complaint. Assemble materials into a case file.
2. INTERMEDIARIES, END-USERS & OTHERS. Do factual investigation of intermediaries (such as internet service providers, hosting companies, or other entities such as YouTube or Flickr), end-users (those who use internet services) and possibly third persons. Do legal research regarding topics such as hacking, Digital Millennium Copyright Act, online defamation, or other topics. Draft relevant memorandum and correspondence. Build case file.
3. ASSOCIATE'S CHOICE: CLIENT ALERT. Early in the term you will choose, subject to instructor's approval, a cutting-edge Cyberlaw topic or a recent Cyberlaw case. Find reading materials to assign to your "firm" colleagues. Write a "client alert." Do a presentation on your topic to your practice group.

Each project will constitute 25% of your final grade. Class participation will constitute the remaining 25%. Regarding class participation, the culture of this course is for open, engaging, and safe discussion of ideas. As we work on our projects, we will share our experiences in the simulations to teach each other. Because Cyberlaw is a skills course, the mandatory curve does not apply.

## REQUIRED MATERIALS

- CASEBOOK: Raymond S. R. Ku and Jacqueline D. Lipton, *Cyberspace Law: Cases and Materials* (Aspen 3rd ed. 2010).
- WEBSITE: Enrollment, regular checking, and use of the Lexis Blackboard webcourse. With the exception of the first class, all assignments will be posted to the site. Sometimes students have difficulties enrolling in webcourses, and I'll be happy to help you if you timely contact me. However, not being able to login to Lexis Blackboard is not a valid excuse for being unprepared.
- EMAIL: A working email account. Part of your responsibility for this class is to check your email regularly. If there is a personal account you'd like me to use (in addition to your STU email), please send the address to inathenson@stu.edu.

## ATTENDANCE AND CLASSROOM POLICIES

PREPARATION AND PASSES: For some assignments, students will be pre-designated "discussion leaders" who will be expected to present a reading and lead the discussion, with the rest of the class participating. However, all students must be prepared for all assignments and as you will quickly see, the class culture will be oriented to wide-participating discussion. If unprepared, students may be marked absent regardless of their presence in the classroom. With the exception of discussion leaders, any student may "pass" once per term without being marked absent. To exercise a pass, the student must inform me before class that she or he does not wish to be called on.

CLASS START TIME: Our time – your classmates and mine – is precious. Class will start and end on time.

SIGN-IN SHEET & ATTENDANCE POLICY: Attendance is measured solely by the sign-in sheet. It is each student's responsibility to sign the sheet at the beginning of class. If you are late, indicate your arrival time on the sign-in sheet.

COMPUTER/TECHNOLOGY USE: Laptop use is a revocable privilege. Apply a rule of reason to computer use. Websurfing, emailing, Facebooking, IMing, etc. – unless relevant to class – is not permitted. I walk around the classroom during class and may see what you're doing.

CONSEQUENCES OF IMPROPER CONDUCT: Students who are unprepared, late, exit the classroom for improper reasons (taking a smoke, coffee, or cell phone break is not appropriate), violate the computer usage policy, or engage in other improper activities in class may be marked as absent for that session regardless of their presence in the classroom. They may also be asked to leave.

## ACCESSING THE COURSE WEBSITE

The most up-to-date resource for course information, class materials, and assignments is our Lexis Blackboard webcourse. Use your Lexis custom ID.

- 1) Go to <http://lexisnexis.com/lawschool> and log on using your custom LexisNexis ID and password.
- 2) Click on WEB COURSES (upper right).
- 3) Click on the red COURSES tab (upper left).
- 4) Click on ST. THOMAS UNIVERSITY (right-hand side).
- 5) Browse through the courses until you find CYBERLAW (Nathenson). Alternatively, use the search tool to search for INSTRUCTOR as NATHENSON. You'll find the course that way too.
- 6) Click on ENROLL.

Once you have enrolled and return to <http://webcourses.lexisnexis.com>, the course website should appear as one of your choices after you log on. (Otherwise, just log on again.) Check the course website regularly, as I will update assignments, announcements, and materials throughout the semester.