

BUSINESS LAW 430: Marketing Law

Wednesday 7:00 pm – 9:45 pm

Professor Young

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For email messages, type "BLAW 430" in the reference portion

Office Hours: Monday and Wednesday, 6:30 p.m. – 7:00 p.m.; 9:45 p.m. – 10:15 p.m.

Text: Lynda J. Oswald, *The Law of Marketing*, 2008

Objectives of the Course

This course explores the legal aspects of marketing strategy. The course considers the legal aspects of product ownership, distribution and competition, including liability aspects of particular business practices. Students study federal and state law related to consumer protection, trade secrets and unfair competition, selected topics in antitrust law (including pricing strategy, price fixing, predatory pricing, discriminatory pricing), marketing channel strategy (including resale price maintenance, territorial and customer restrictions, exclusive dealing, refusal to deal) and limits on market dominance. Throughout the course, the contrast between U.S. and international entities is explored, with particular examination of foreign licensing, distribution, liability and enforcement issues.

You will analyze how law applies to factual settings. You will read court decisions, prepare written briefs of the decisions, orally defend your interpretations of the cases, and answer hypothetical questions in open class discussion. You will learn to distinguish the application of rules depending on changing circumstances in various cases and hypotheticals. You will learn to argue alternate sides of a dispute regardless of personal belief. You will learn to identify the functions, policies, and trends in the law, and to consider social, economic and ethical influences on the law.

Exams are composed of one or more essay questions which require you to analyze factual situations identify legal issues and apply the law in determining the outcome of hypothetical cases. Exams may contain multiple choice questions.

Course topics

- I. Overview of the Legal Environment of Marketing Activities
- II. Product Development: Protection of Intellectual Property Assets through Patent and Copyright Law
- III. Product Development: Protection of Intellectual Property Assets through Trade Secret Law, Contractual Agreements, and Business Strategies
- IV. Pricing and Distribution of Products and Services: Antitrust Law
- V. Distribution Channels: The Franchisor-Franchisee Relationship
- VI. Promotion: Trademark Law
- VII. Promotion: Commercial Speech and the Regulation of Advertising
- VIII. Promotion and Consumer Protection: Consumer Protection Law
- IX. Sale of Goods: Warranties and Products Liability

Class Preparation

The assignments are listed separately. Normally we complete one assignment each class. Always be one

full assignment ahead. If, for instance, we begin but do not finish an assignment, prepare the next full assignment for the next class. Assignments include reading from the text. In addition, there are cases, case problems and questions which must be briefed in writing. A "case" is a court case which is contained in the text. A "case problem" is an end-of-chapter question, which, again, must be briefed. These case problems are also actual court cases, but do not include the court's decisions - that will be your job to analyze. When a case problem contains questions, simply ignore them, and instead brief the case. If you have questions about the assigned material, please ask.

Written Assignments ("WA"): Periodically, you will turn in particular assignments. For assignments that are listed as "WA" you must print out a hard copy and turn it in no later than the start of class on the date due. You may turn it in early, of course. If you are absent when a written assignment is due, you may turn it in no later than the date due by the start of class. Email followed by a hard copy submission is acceptable. In addition, you will turn in your written case briefs at the end of each class.

You will be called on at random throughout the semester to read your briefs in class. If you are unprepared or absent, this will affect your grade as discussed below. It is your responsibility to be prepared for every class. If you are absent, it is still your responsibility to be prepared. Once during the term you may give me a note at the start of class stating that you are unprepared and no negative mark will be made. You must be present in class to give such a note - it is not available as an excuse for an absence. You may not tape record the class without permission.

Briefing Cases

To brief cases, case problems and questions, use the following "IRAC" format:

Issue: What question must be answered in order to reach a conclusion in the case? This should be a legal question which, when answered, gives a result in the particular case. Make it specific (e.g. "Has there been a false imprisonment if the plaintiff was asleep at the time of 'confinement'?") rather than general (e.g. "Will the plaintiff be successful?") You may make it referable to the specific case being briefed (e.g. "Did Miller owe a duty of care to Osco, Inc.?") or which can apply to all cases which present a similar question, (e.g. "Is a duty owed whenever there is an employment relationship?") Most cases present one issue. If there is more than one issue, list all, and give rules for all issues raised.

Rule: The rule is the law which applies to the issue. It should be stated as a general principal, (e.g. A duty of care is owed whenever the defendant should anticipate that her conduct could create a risk of harm to the plaintiff.) not a conclusion to the particular case being briefed, (e.g. "The plaintiff was negligent.")

Application: The application is a discussion of how the rule applies to the facts of a particular case. While the issue and rule are normally only one sentence each, the application is normally paragraphs long. It should be written debate - not simply a statement of the conclusion. Whenever possible, present both sides of any issue. Do not begin with your conclusion. The application shows how you are able to reason on paper and is the most difficult (and, on exams, the most important) skill you will learn.

Conclusion: What was the result of the case?

With cases, the text gives you a background of the facts along with the judge's reasoning and conclusion. When you brief cases, you are basically summarizing the judge's opinion. With case problems, the editors have given you a summary of the facts of an actual case, but have not given you the judge's opinion. Your job is to act as the judge in reasoning your way to a ruling, again using the IRAC format. With

questions in the Student Notebook, you have been given the facts of a case along with an outline of the issues raised. Use this as a guideline for briefing the case.

Most briefs are one page long. They must be brought to class on the day they are to be discussed. Once an assignment has been discussed, you no longer need to bring it to class. The briefs may be either handwritten or typed.

Exams and Grading

There will be two midterms and a final. The final exam is cumulative and will be given pursuant to the exam schedule established by the University. The grade allocation is as follows:

first midterm: 25% of course grade
second midterm: 25% of course grade
final exam: 50% of course grade

Your grade is affected by whether you have been prepared when called on for case briefs. As noted above, you may give a note once during the term stating that you are unprepared, and no negative mark will be made. However, if you are called on and have not given an "unprepared" note or are absent you will receive an "unprepared" mark. If you are absent when called on you are "unprepared." One such mark will be dropped from consideration in grading. Any unprepared marks beyond that will cause your final grade in the course to be reduced by 0.1 for each such mark.

The grade reached after averaging the assignments and exams will be the minimum grade you can receive in the course. At the professor's sole discretion, your course grade may be raised based on classroom participation and improvement. One way to increase participation is to bring news articles related to topics studied in the class.

Grading System (taken from "Regulations", CSUN catalog)

GRADE	DEFINITION	GRADE POINTS
A	Outstanding	4.0
A-		3.7
B+		3.3
B	Very Good	3.0
B-		2.7
C+		2.3
C	Average	2.0
C-		1.7
D+		1.3
D	Barely Passing	1.0
D-		0.7
F	Failure	0

General Instructions on Taking Exams

Answer each question fully, clearly, and in the order given. Mere conclusions receive no credit. You should:

- Discuss the issue.
- Define and discuss any principles of law, legal theories, etc., relevant to the question.

-Fully apply the given facts to the legal principles on which you rely. Do not ignore any facts, even if they do not support your conclusions. Do not assume that I know that you know something - tell me in your exam what you know, defining every legal term used.

-The actual conclusions you reach could be the least important part of your answer - but you must base your conclusions on complete and intelligent applications of the facts to the legal principles involved.

-If further facts could affect the outcome of the problem, state with particularity what they are, and how they could affect the outcome.

-You may either use the "IRAC" format or write in straight paragraph form. Either way, you need to cover the same information: the issues involved the applicable legal rules, and an application of the law to the facts to reach your outcome. Discuss all issues - some questions have more than one issue.

-If you need scratch paper to make notes, use your exam itself. Although you must turn it in, it will not be graded. You may also designate a page of your bluebook as "notes" and it will not be graded.

Caution:

-Use non-erasable dark blue or black ink for your essays. Do not use white-out or tear pages out of your blue book.

-Bring one large bluebook and one 882 scantron to the midterms. Bring two large bluebooks and one 882 scantron to the final. Do not write your name on the bluebook - they will be exchanged in class. When you get the bluebook in class that you will use for your exam, write your name on the inside back cover of the bluebook. Do not write your name on the front cover of the bluebook. The purpose of this requirement is to ensure blind grading. Write on every line of the blue book. Write on only one side of each page; however you may use the facing page to insert information. Write your name on the exam itself. When you complete the exam, place the exam and scantron inside your bluebook and turn in the whole as a package. Failure to follow all of these directions will cause a 0.1 reduction in your exam grade. Failure to return the exam itself will result in a grade of "F" for the exam and may be referred to the Dean's office for further proceedings.

-All exams are closed book. Make sure that all study materials are completely out of sight. Make sure that all books, notes, bookbags, and purses are placed in front of the class at the start of the exam. There is a presumption of cheating if any study materials are within view during exams. Note: all cases of cheating result in a grade of "F" for the course and are referred to the Dean's office for further action.

Assignments

	class topics	work due
1	Overview of the Legal Environment of Marketing Activities	Read 2-15
2	Sale of Goods: Contracts	Read 301-334 WA: Brief 9.1, 9.2, and 9.3
3	Sale of Goods: Warranties and Products Liability	Read 335-370 WA: Brief 10.1, 10.3
4	Sale of Goods: Warranties and Products Liability	
5	Product Development: Protection of Intellectual Property Assets through Patent and Copyright Law;	Read 17-58 WA: Brief Case 2.1, 2.2, 2.3, 2.4, & 2.5; Bring a copy of a copyright registration for a product or service with which you are familiar. Consult www.copyright.gov

6	Product Development: Protection of Intellectual Property Assets through Trade Secret Law, Contractual Agreements, and Business Strategies	Read 59-94 WA: Brief Case 3.1, 3.2, 3.3, 3.4
7	Midterm 1	
7	Pricing and Distribution of Products and Services: Antitrust Law	Read 95-117 Brief 4.1, 4.2, 4.3
8	Pricing and Distribution of Products and Services: Antitrust Law	Read 117-134 WA: Brief 4.4
9	Distribution Channels: The Franchisor-Franchisee Relationship	Read 135-165 WA: Brief 5.2, 5.3 & 5.4
10	Promotion: Trademark Law	Read 167-199 WA: Brief 6.1, 6.2
11	Promotion: Trademark Law	WA: Brief 6.3, 6.5 WA: Bring in a copy of a trademark registration for a product you use. Consult http://www.uspto.gov/
12	Midterm 2	
12	Promotion: Commercial Speech and the Regulation of Advertising	Brief 7.2, 7.4
13	Promotion: Commercial Speech and the Regulation of Advertising	WA: Brief 7.2, 7.4
14	Promotion and Consumer Protection: Consumer Protection Law	Read 267-287 WA: Brief 8.1
15	Promotion and Consumer Protection: Consumer Protection Law	WA: Brief 8.2