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Intellectual Property Law

Dates and times: Thursdays • 15/07/2021 – 02/09/2021 • 14:00 – 17:45

Instructor: Professor Dotan Oliar, [dotan.oliar@gmail.com](mailto:dotan.oliar@gmail.com)

Office Hours: Thursdays after class and by appointment

TA's: None

Prerequisites: None

Co-requisites: None

Courses Without Credit: None

Credits: [##]

Study hours per week: Lecture – [##]

**Course Goals and Description**

Intellectual property is probably the major asset of companies in creative industries, including the software, publishing, music, TV, film, media and advertising sectors, and in technology-driven industries, including the high-tech and semiconductors, health and life sciences, automotive, aerospace, agricultural and food Tech, cyber security, watertech, cleantech, fintech and pharma and biomedical devices sectors. Such companies use intellectual property protections to both shield the fruits of their creativity and innovation efforts from copying and theft by others, and as means to raise capital. This course will provide a survey of copyright, design, patent, trademark and trade secret laws in a comparative Israeli and U.S. perspective, geared toward a non-lawyer audience. Applications to the life sciences will be emphasized.

**Course Content/Topics & Syllabus**

Below is a preliminary syllabus. It will be updated, and particular reading assignments will be given ahead of each meeting.

CB (Casebook) refers to Jason Rantanen, [Introduction to Intellectual Property](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3764808) (2021)

# Copyright law

## Copyright Act of 1976, 17 U.S.C. §§ [102](https://www.law.cornell.edu/uscode/text/17/102), [103](https://www.law.cornell.edu/uscode/text/17/103), [106](https://www.law.cornell.edu/uscode/text/17/106), [106A](https://www.law.cornell.edu/uscode/text/17/106A), [107](https://www.law.cornell.edu/uscode/text/17/107), [201](https://www.law.cornell.edu/uscode/text/17/201)(a)-(b), [202](https://www.law.cornell.edu/uscode/text/17/202), [302](https://www.law.cornell.edu/uscode/text/17/302)(a), [501](https://www.law.cornell.edu/uscode/text/17/501)(a), [512](https://www.law.cornell.edu/uscode/text/17/512)(c)(1), [1201](https://www.law.cornell.edu/uscode/text/17/1201)(a)-(b)

## Feist. v. Rural, 499 U.S. 340 (1991) (CB pp. 30-42) (originality)

## Baker v. Selden, 101 U.S. 99 (1879) (CB pp. 45-49) (idea/expression dichotomy)

## CCNV v. Reid, 490 U.S. 730 (1989) (CB pp. 51-55, 62-63) (authorship)

## Nichols v. Universal, 45 F.2d 119 (2d Cir. 1930) (CB pp. 102-106) (infringement)

## Picket v. Prince, 207 F.3d 402 (7th Cir. 2000) (CB pp. 109-114) (derivative works)

## Campbell v. Acuff-Rose, 510 U.S. 569 (1994) (CB pp. 117-130) (fair use)

## חוק זכויות יוצרים, התשס״ח-2007

## פקודת זכויות יוצרים, 1924

## חוק זכויות מבצעים ומשדרים, התשמ״ד-1984

## ע״א 513/89 Interlego נ׳ Exin-Lines, פ״ד מח(4) 133

## ע״א 8485/08 Premier League נ׳ המועצה להסדר ההימורים בספורט (2010)

## ע״א 2173/94 Tele Event Ltd. נ׳ ערוצי זהב ושות׳, פ״ד נה(5) 529

## ע״א 8393/96 מפעל הפיס ואח׳ נ׳ The Roy Establishment Company ואח׳, פ״ד נד(1) 577

## ע״א 139/89 הרפז נ׳ אחיטוב, פ״ד מד(4)

## רע״א 2687/92 גבע נ׳ חברת וולט דיסני, פ״ד מח(1) 251

## ע״א 15/81 גולדנברג נ׳ בנט, פ״ד לו(2) 813

## ע״א 9183/09 Premier League נ׳ פלוני (2012)

## ת״א (מחוזי מרכז) 567-08-09 א.ל.י.ס נ׳ רוטר.נט (2011)

## ע״א 5097/11 טלראן נ׳ צ׳רלטון (2013)

## ע״א 5977/07 האוניברסיטה העברית נ׳ בית שוקן (2011)

## רע״א 6141/02 אקו״ם נ׳ גלי צה״ל, פ״ד נז(1) 625

# Perspective #1: Theories of IP

## [U.S. Const., art. I, § 8](http://people.virginia.edu/~do2n/IP/IP_Clause.htm), cl. 8 (“Congress shall have power […] [t]o promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries”)

## CB pp. 13-26

# Patent and Trade Secret Law

## Bowman v. Monsanto, 569 U.S. 278 (2013) (CB pp. 179-184) (exhaustion)

## Subsequent Developments in Patent Eligible Subject Matter, CB p. 195 (patentable subject-matter)

## Manning v. Cape Ann Isinglass & Glue, 2 S. Ct. 860 (1883) (CB pp. 200-201) (novelty)

## In *re* Lister, 583 F.3d 1307 (Fed. Cir. 2009) (CB pp. 202-211) (statutory bar)

## Apple v. Samsung, 839 F.3d 1034 (Fed. Cir. 2016) (CB pp. 215-221) (non-obviousness)

## The Incandescent Lamp Patent, 159 U.S. 465 (1895) (CB 252-256) (disclosure)

## Defend Trade Secrets Act of 2016, 18 U.S.C. §§ [1836](https://www.law.cornell.edu/uscode/text/18/1836)(b)(1), [1839](https://www.law.cornell.edu/uscode/text/18/1839) (definitions of trade secret, owner, misappropriation, improper means) (CB pp. 136-137)

## Learning Curve Toys v. PlayWood Toys, 342 F.3d 714 (7th Cir. 2003) (CB pp. 138-154)

## DuPont v. Christopher, 431 F.2d 1012 (5th Cir. 1970) (CB pp. 156-160)

## חוק הפטנטים, התשכ״ז-1967

## חוק עוולות מסחריות, התשנ״ט-1999

## ע״א 665/84 סאנופי בע״מ נ׳ אוניפארם בע״מ, פ״ד מא(4) 729

## ע״א 345/87 Hughes Aircraft Co. נ׳ מדינת ישראל, פ״ד מד(4) 45

## ע״א 1636/98 רב בריח בע״מ נ׳ בית מסחר לאביזרי רכב חבשוש בע״מ ואח׳, פ״ד נה(5) 337

## ע״א 244/72 פלנטקס בע״מ ואח׳ נ׳ The Wellcome Foundation, פ״ד כז(2) 29

## ע״א 5293/93 Wellcome Foundation נ׳ רשם הפטנטים (1993)

## ת״א (מח׳ מרכז) 33666-07-11 אוניפארם נ׳ Sanofi (2015)

## בג״צ 8672/17 ד״ר רות לוי נ׳ הוועדה לענייני פיצויים ותמלוגים מכוח חוק הפטנטים (2019)

## eBay v. MercExchange, 547 U.S. 391

# Trademark Law

## Qualitex v. Jacobson Products, 514 U.S. 159 (1995) (CB 289-296) (subject-matter)

## Zatarain’s v. Oak Grove, 698 F.2d 786 (5th Cir. 1983) (CB pp. 298-311) (distinctiveness)

## Walmart v. Samara, 529 U.S. 205 (2000) (CB 328-332) (trade dress)

## TrafFix Devices v. Marketing Displays, 532 U.S. 23 (2001) (functionality)

## Brookfield Communications v. West Coast Entm’t, 174 F.3d 1036 (9th Cir. 1999) (priority)

## [AMF v. Sleekcraft Boats](https://cyber.harvard.edu/metaschool/fisher/domain/tmcases/amf.htm), 599 F.2d 341 (9th Cir. 1979) (infringement)

## [Louis Vuitton Malletier v. Haute Diggity Dog](https://www.law.berkeley.edu/files/louisvuitton.pdf), 507 F.3d 252 (4th Cir. 2007) (dilution)

## Mattel, Inc. v. MCA Records, Inc., 296 F.3d 894 (9th Cir. 2002) (CB pp. 393-403)

## פקודת סימני מסחר [נוסח חדש], התשל״ב-1972

## חוק עוולות מסחריות, התשנ״ט-1999

## רע״א 1400/97 פיקנטי תעשיות מזון נ׳ אסם תעשיות מזון פ״ד נא(1) 310

## ע״א 5792/99 תקשורת וחינוך דתי-יהודי נ׳ אס.בי.סי פרסום, פ״ד נה(3) 933

## ע״א 8483/02 אלוניאל נ׳ מקדונלד, פ״ד נח(4) 314

## ע״א 6181/96 קרדי נ׳ Bacardi & Company Limited, פ״ד נב(3) 276

## ע״א 9191/03 V&S Vin Spirt Aktlebolag ואח׳ נ׳ אבסולוט שוז בע״מ, פ״ד נח(6) 869

## ע״א 563/11 Adidas נ׳ יאסין

## ע״א 3425/17 Societe des Produits Nestle ואח׳ נ׳ אספרסו קלאב בע״מ (2019)

# Design Law

## [17 U.S.C. § 101](https://www.law.cornell.edu/uscode/text/17/101) (definitions of “pictorial, graphic and sculptural works”, “architectural work”)

## [17 U.S.C. § 901](https://www.law.cornell.edu/uscode/text/17/901) (definitions of “semiconductor chip product”, “mask work”)

## [17 U.S.C. § 1301](https://www.law.cornell.edu/uscode/text/17/1301)(a)(2), b(3) (definition of “vessel” )

## [35 U.S.C. § 171](https://www.law.cornell.edu/uscode/text/35/171)

## Star Athletica v. Varsity Brands, 580 U.S. \_\_\_ (2017)

## חוק העיצובים, התשע״ז-2017

## ע״א 7125/98 מיפרומאל תעשיות ירושלים נ׳ קליל תעשיות בע״מ, פ״ד נז(3) 702

## ע״א 1248/15 Fisher Price נ׳ דוורון

# Misappropriation and Unjust Enrichment

## INS v. AP, 248 U.S. 215 (1918) (CB 3-12) (misappropriation)

## רע״א 5768/94 א.ש.י.ר. נ׳ פורום אביזרים, פ״ד נ״ב (4), 289 (עשיית עושר ולא במשפט)

# Perspective #2: International IP Law

## CB pp. 64-65

**Assignments and Grading Procedures**

Class grade will be based on the final exam.

Exam will be open printed book.

Up to 5 points may be added to students whose participation contributes materially to class discussion.

**Course Schedule (Topics, assignments, Exams)**

**Course Requirements & Course Policies**

**Accommodation for Students with special needs**

**Text book(s) and/or other materials**

**Academic Integrity**

**Other useful information for students**