

Revised Reading Dates for October 2017 as of Sept. 26, 2017

**Oct. 2 - The Distribution Right I [106]**

Capitol Records, Inc v. Thomas (D. Minn. 2008), pp. 345-353  
Fonovisa, Inc. v. Cherry Auction, Inc. (9th Cir. 1996), pp. 492-497  
Perfect 10 v. Amazon.com, Inc. (9th Cir. 2007), pp. 398-400, 497-502  
MGM Studios, Inc. v. Grokster (2004), pp. 542-554

**Oct. 3 - The Performance Right [106, 110, 114]**

National Football League v. PrimeTime 24 Joint Venture (2d Cir. 2000) (Handout 13)  
WNET Thirteen v. Aereo (2014), pp. 385-398  
Performing Rights Org. and Digital Audio Transmission materials, pp. 429-436, 444-445  
WPPT and audiovisual performances materials, pp. 473-478, 479-480  
“Future of Audio” Hearing, pre-1972 sound recordings, and Pandora materials (Handout 14)  
SKIM Section 114-115 materials, pp. 409-419

**Oct. 9 - The Display Right [106]**

Ringgold v. Black Entertainment Television, Inc. (2d Cir. 1997) (Handout 15)  
Gottlieb Dev., LLC v. Paramount Pictures Corp. (S.D.N.Y. 2008), pp. 253-257  
Greenberg v. National Geographic Soc. (11th Cir. 2001) (Handout 16)  
Horgan v. Macmillan, Inc. (2d Cir. 1986) (Handout 17)

**Oct. 10 - The Derivative Work Right [106]**

Warner Bros. Entmt. v. RDR Books, pp. 308-320  
Micro Star v. Formgen (9th Cir. 1998), pp. 329-334  
Warner Bros. Entmt. v. X One X Productions (8th Cir. 2011), pp. 334-343  
Huntsman v. Soderbergh (D. Colo. 2006) (Handout 18)

**Oct. 16 - Fair Use I - Texts and Music [107]**

Time, Inc. v. Bernard Geis Associates (S.D.N.Y. 1968) (Handout 19)  
Campbell v. Acuff-Rose Music., Inc. (1994), pp. 573-582  
Authors Guild v. HathiTrust (2d Cir. 2014), pp. 613-622  
Cambridge University Press v. Patton (11th Cir. 2014), pp. 631-643 (through note 3)

**Oct. 17 - Fair Use II - Photos and Videos [107]**

Bill Graham Archives v. Dorling Kindersley (2d Cir. 2006), pp. 586-591  
Cariou v. Prince (2d Cir. 2013), pp. 591-599  
Seltzer v. Green Day (9th Cir. 2013) (Handout 20)  
Bouchat v. NFL Enterprises LLC (4th Cir. 2013) (Handout 21)

**Oct. 23 - Quiz #1 and First Sale Doctrine II/Copyright Misuse [109] (*all caught up*)**

Capitol Records, LLV v. ReDigi, Inc., pp. 356-360  
Section 108 and orphan works reform materials (Handout 22)  
Rental restrictions materials, pp. 360-362  
A&M Records v. Napster, Inc. (9th Cir. 2001), pp. 752-759

**Makeup class online #1 – watch prior to Oct. 23**

**Sept. 26 - Distribution Right II [106, 108, 110, 114, 115, 301, 1008]**

Section 108 and 110 materials, pp. 362-364, 407-408  
NBA v. Motorola, Inc. (2d Cir. 1997), pp. 944-949  
Barclays Capital v. Flyonthewall.com (S.D.N.Y. 2010), rev'd (2d Cir. 2013) (Handout 12)

**Makeup class online #2 – watch prior to Nov. 13**

**Oct. 17 - First Sale Doctrine I [109]**

Bobbs-Merrill Co. v. Strauss (1908), pp. 354-356

Vernor v. Autodesk (9th Cir. 2010), pp. 732-741

Jacobsen v. Katzer (Fed. Cir. 2008), pp. 742-746

Kirtsaeng v. John Wiley & Sons, (2013), pp. 364-377

# Copyright Law

Law 6572

3 credits

# COPYRIGHT LAW – FALL 2017

Law 6572

**Professor Hannibal Travis**

Tel: (305) 348-8371

email: hannibal.travis@fiu.edu

Classroom: 285C

Class Hours: Mon. & Tues. 2:30-3:45 p.m.

Office Hours: Tues. 4:00 p.m. – 6:00 p.m.

*Readings:* Most assigned cases and commentary are drawn from Cohen, Loren, Okediji, and O'Rourke, *Copyright in a Global Information Economy* (4th ed. 2015).

*Assignments:* This course will expose students to more in-depth knowledge of the rules governing copyright protection; the ownership and co-ownership of copyrights; the registration of copyright interests; musicians' royalty rights; the exclusive rights to copy, distribute, perform, and display works; the legal status of adaptations, translations, new editions, and other transformations of copyrighted works; the enforcement of copyrights against digital libraries and online video sites such as YouTube; theories of copyright protection; the economic analysis of copyright law; and U.S. implementation of copyright treaties such as the WIPO Copyright Treaty. Students will gain an understanding of copyright law doctrines that are not included in the Intellectual Property survey course. As learning outcomes, students should be able to brief and argue copyright cases, draft copyright applications, understand Copyright Office procedures, prepare copyright infringement complaints and answers, and brief copyright infringement and remedies issues.

*Attendance and Class Participation:* Preferably, we will have class discussions in which the views of the entire class are brought to bear on copyright precedents and principles. Students' ability to understand and contribute to classroom discussion will depend on reading and comprehending the assigned cases prior to class. Absent extraordinary circumstances, a student who is absent for more than five class sessions, other than due to religious holidays or reasonable accommodations, may not pass the course. Excellent class participation and preparation for class will result in a grade adjustment upwards of one step (e.g., from B+ to A-), acceptable participation and preparation will result in no adjustment, and below-average participation and preparation will result in a grade adjustment downwards of one step (e.g., from A- to B+). An upwards adjustment for class attendance, preparation, and participation is generally contingent upon reading all assigned cases and voicing comments or questions very frequently. All students are expected to show respect for their fellow students and the educational mission of the university, as well as for the principles stated in the student handbook.

*Religious Holidays:* If you anticipate that the number of absences due to religious holidays that you observe will place you over the limit of allowed absences, endanger your credit for class attendance and participation, or cause you to experience a reduction in your final grade, please contact me regarding alternative means to satisfy the attendance policy and accommodate said holidays.

*Reasonable accommodations and recording classes:* Students requesting reasonable classroom accommodations should register with the University of Florida Office of Disability Resources. The Office of Disability Resources will coordinate accommodation with the Law School Office of Student Affairs. The Dean of Students Office will provide documentation to the student who should be presented to me when requesting or receiving an accommodation. Outside of formally requested and authorized (by the Dean of Students) accommodations, no recording of class in any form is allowed without my prior written permission. No receipt of a recording is not allowed without prior written permission of the faculty or administration of the College of Law. These policies regarding reasonable accommodations and recordings are not applicable if amended by the faculty or the administration, or if objected to by the administration on the basis of an existing or newly amended policy or practice.

*Grading:* Most (60%) of your final grade will be based upon a closed-book exam comprised of true-false and issue-spotter questions. The remaining 40% of your grade will be based upon the following: (1) your performance on two very brief midterm quizzes [15 points each] comprised of true-false, multiple-choice, fill-in-the-blank, and/or multiple-answer-matching questions, to be administered on Sept. 26, Oct. 23, and Nov. 13, and (2) a brief in-class presentation, graded on a pass-fail basis [10 points or none] during which you and/or a representative of your team will argue and/or explain its position on an issue raised by one of the casebook's problems, practice exercises, or questions. Grade distribution information is available at <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

#### **Aug. 14 - Authorship, Originality, and Writings**

Burrow-Giles Lithographic Co. v. Sarony (1884), pp. 61-67

Bleistein v. Donaldson Lithographic Co. (1903), pp. 61-67

Feist Publications v. Rural Telephone Service Co. (1991), pp. 73-79

Meshwerks, Inc. v. Toyota Motor Sales U.S.A., Inc. (10th Cir. 2008), pp. 83-89

#### **Aug. 15 - Copyright History and Prerequisites [101 and 102]**

Theoretical materials, pp. 3-8, 11-18

Historical summary materials, pp. 22-34

Subject matter of copyright materials, pp. 49-54

#### **Aug. 21 - Forms, Ideas, and Facts, and Methods of Operation [101-103]**

Baker v. Selden (1879), pp. 91-98

Star Athletica, L.L.C. v. Varsity Brands, Inc. (2017) (Handout 1)

Oracle America v. Google, Inc. (Fed. Cir. 2014), pp. 229-243

#### **Aug. 22 - Ownership [101, 201]**

Aalmuhammad v. Lee (9th Cir. 2000), pp. 141-146

Community for Creative Non-Violence v. Reid (1988), pp. 147-153

Section 101(2) materials, pp. 168-172

Mattel v. MGA Entmt., Inc. (9th Cir. 2010) (Handout 2)

Marvel Characters, Inc. v. Kirby (2d Cir. 2013) (Handout 3)

Government works materials, pp. 172-175

**Aug. 28 - Publication, Notice, Deposit, and Registration [401-412]**

Formalities materials, pp. 651-656, 660-666

Estate of Martin Luther King, Jr. v. CBS, Inc. (11th Cir. 1999), pp. 656-660

Eden Toys, Inc. v. Florelee Undergarment Co. (2d Cir. 1982), pp. 768-771

Reed Elsevier, Inc. v. Muchnick (2010), pp. 781-786

**Aug. 29 - Duration [302-305]**

Materials on 1976 and 1998 extensions, pp. 664-672

Eldred v. Ashcroft (2003), pp. 672-682

Restoration of lapsed copyrights materials, pp. 682-686

Renewal materials, pp. 686-694

Orphan works materials, pp. 700-704

**Sept. 5 - Renewals and Terminations [203, 304]**

Broadcast Music v. Roger Miller Music, Inc. (6th Cir. 2005) (Handout 4)

Classic Media, Inc. v. Mewborn (9th Cir. 2008) (Handout 5)

Lee v. Marvel Enters. (S.D.N.Y. 2011), *aff'd*, (2d Cir. 2012) (Handout 6)

Termination of transfers materials, pp. 694-700

**Sept. 11 - Visual Art and Architecture [101, 106A, 113]**

Nelson-Salabes, Inc v. Morningside Holdings (D. Md. 2001), pp. 198-205

Intervest Constr., Inc. v. Canterbury Estate Homes, Inc., (11th Cir. 2008), pp. 198-205

T-Peg, Inc. v. Vermont Timber Works, Inc. (1st Cir. 2006) (Handout 7)

Martin v. City of Indianapolis (7th Cir. 1999), pp. 468-472

Kelley v. Chicago Park District (7th Cir. 2011) (Handout 8)

**Sept. 12 - The Reproduction Right – Volition and Substantial Similarity [106]**

Cartoon Network LP v. CSC Holdings, Inc. (2d Cir. 2008), pp. 487-490

Computer Associates International, Inc. v. Altai, Inc. (2d Cir. 1992), pp. 212-220, 304-307

Swirsky v. Carey (9th Cir. 2004), pp. 298-304

Apple Computer, Inc. v. Microsoft Corp., (N.D. Cal.), *aff'd*, (9th Cir. 1994), pp. 307-308

Twentieth Century-Fox Film Corp. v. MCA Inc. (9th Cir. 1983) (Handout 9)

**Sept. 18 - The Reproduction Right II – Access [106]**

Three Boys Music, Inc. v. Bolton (9th Cir. 2000), pp. 258-252

Selle v. Gibb (7th Cir. 1984), pp. 262-264

Dimmie v. Carey (S.D.N.Y. 2000) (Handout 10)

Jorgensen v. EPIC/Sony Records (2d Cir. 2003) (Handout 11)

**Sept. 19 - Sampling and Remix**

Bridgeport Music, Inc. v. Dimension Films (6th Cir. 2005), pp. 419-425

Newton v. Diamond (9th Cir. 2003), pp. 425-429

"Best practices" guidelines and First Amendment materials, pp. 599-601

**Sept. 25 - The Distribution Right I [106]**

Capitol Records, Inc v. Thomas (D. Minn. 2008), pp. 345-353

Fonovisa, Inc. v. Cherry Auction, Inc. (9th Cir. 1996), pp. 492-497

Perfect 10 v. Amazon.com, Inc. (9th Cir. 2007), pp. 398-400, 497-502

MGM Studios, Inc. v. Grokster (2004), pp. 542-554

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Section 108 and 110 materials, pp. 362-364, 407-408

Section 114-115 materials, pp. 409-419

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Barclays Capital v. Flyonthewall.com (S.D.N.Y. 2010), *rev'd* (2d Cir. 2013) (Handout 12)

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Gottlieb Dev., LLC v. Paramount Pictures Corp. (S.D.N.Y. 2008), pp. 253-257  
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Micro Star v. Formgen (9th Cir. 1998), pp. 329-334  
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**Oct. 10 - Fair Use I - Texts and Music [107]**

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Campbell v. Acuff-Rose Music., Inc. (1994), pp. 573-582  
Authors Guild v. HathiTrust (2d Cir. 2014), pp. 613-622  
Cambridge University Press v. Patton (11th Cir. 2014), pp. 631-643 (through note 3)

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Bouchat v. NFL Enterprises LLC (4th Cir. 2013) (Handout 21)

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Vernor v. Autodesk (9th Cir. 2010), pp. 732-741  
Jacobsen v. Katzer (Fed. Cir. 2008), pp. 742-746  
Kirtsaeng v. John Wiley & Sons, (2013), pp. 364-377

**Oct. 23 - Quiz #1 and First Sale Doctrine II/Copyright Misuse [109]**

Capitol Records, LLV v. ReDigi, Inc., pp. 356-360  
Section 108 and orphan works reform materials (Handout 22)  
Rental restrictions materials, pp. 360-362  
A&M Records v. Napster, Inc. (9th Cir. 2001), pp. 752-759

**Oct. 24 - Online Limitation of Liability for Internet Service Providers [DMCA 512]**

Viacom International v. YouTube, Inc., (2d Cir. 2012), pp. 513-526  
EMI Christian Music Grp., Inc. v. MP3tunes, LLC (2d Cir. 2016) (Handout 23)  
Online Policy Group v. Diebold (N.D. Cal. 2004), p. 529 note 1  
Lenz v. Universal Music Corp. (N.D. Cal. 2008), aff'd (9th Cir. 2015), pp. 527-529

**Oct. 30 - Anti-Circumvention and Copyright Management Provisions [DMCA 1201-1202]**

Chamberlain v. Skylink (Fed. Cir. 2004), pp. 893-899  
RealNetworks, Inc. v. DVD Copy Control Association, Inc. (N.D. Cal. 2009) (Handout 24)  
Kelly v. Arriba Soft (C.D. Cal. 1999), pp. 904-906 (through note 1)  
Fairey v. Associated Press (S.D.N.Y. 2009) (Handout 25)

**Oct. 31 - Injunctions and Domain Name/Internet Service Blocking [502-503]**

Christopher Phelps & Assocs. v. Galloway (4th Cir. 2007), pp. 802-806

MGM Studios, Inc. v. Grokster, Ltd. (N.D. Cal. 2007), pp. 806-811

Perfect 10 v. Google, Inc. (9th Cir. 2011), pp. 811-815

Petrella v. MGM (2014), pp. 786-791

Materials on enforcement, pp. 534-538

**Nov. 6 - Actual Damages/Profits [504]**

Dash v. Mayweather (4th Cir. 2013) (Handout 26)

Frank Music Corp. v. MGM, Inc. (9th Cir. 1989), pp. 823-827

Bouchat v. Baltimore Ravens Football Club, Inc. (4th Cir. 2003), pp. 816-823

**Nov. 7 - Statutory Damages and Attorney's Fees [504-505]**

Zomba Enterprises, Inc. v. Panorama Records, Inc. (6th Cir. 2007), pp. 831(start with note 4)-835

Sony BMG v. Tenenbaum (1st Cir. 2011) (Handout 27)

SOFA Entertainment, Inc. v. Dodger Productions (9th Cir. 2013) (Handout 28)

Criminal copyright infringement materials, pp. 851, 854-856

**Nov. 13 - Quiz #2 and Preemption [301]**

Toney v. L'Oreal USA, Inc. (7th Cir. 2005), pp. 926-938

Maloney v. T3Media, Inc. (9th Cir. 2017) (Handout 29)

Sam Francis Found. v. Christie's (9th Cir. 2015) (Handout 30)

**Nov. 14 - Issues (Exercises, Problems, and Questions)**

Teams should bring their position statements on the issues that they were randomly assigned, and should either nominate a representative to deliver the statement of the team to the class by majority vote of the team members, or develop some way of dividing the statement among team members for delivery, for example by sub-issue or by relevant precedent. There will be about 20 to 25 teams of three members each. Given the time constraints that we will be facing, teams should approach their position statements like the "Summary of Argument" in a brief, sometimes also called preliminary statements or persuasive issue statements. Please keep in mind that most if not all of these issues present close issues and have no clear right answer. The problems will most likely include:

Pages 22-23, exercise a.	Page 129, practice exercise.	Page 489, question 3.
Page 23, exercise b.	Page 167, practice exercise.	Page 643, question 4.
Page 23, exercise c.	Page 251, question 2.	Page 703, question 2.
Page 23, exercise d.	Page 267, question 3.	Page 741, question 5.
Page 43, question 2.	Page 308, question 3.	Page 907, exercise 1.
Page 78, problem a.	Pages 342-343, question 3.	Page 940, question 2.
Page 79, problem c.	Page 343, question 4.	Page 940, question 4.
Page 89, problem b.	Page 343, question 5.	Page 948, question 5.

**Nov. 20 - Review**



## **Optional Readings**

### **Aug. 14 - Authorship, Originality, and Writings**

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2859737](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2859737)

### **Aug. 15 - Copyright History and Prerequisites [101 and 102]**

<http://www.spiegel.de/international/zeitgeist/no-copyright-law-the-real-reason-for-germany-s-industrial-expansion-a-710976.html>

### **Aug. 21 - Forms, Ideas, and Facts, and Methods of Operation [101-103]**

<http://www.vogue.com/article/supreme-court-star-athletica-varsity-brands-ruling-fashion-industry>

<http://www.loeb.com/articles-ipentertainmentcaselawupdates-20120606-tetrisholdingllcvxiointeractiveinc>

### **Aug. 22 - Ownership [101, 201]**

<http://repository.usfca.edu/cgi/viewcontent.cgi?article=1256&context=usflawreview>

### **Aug. 28 - Publication, Notice, Deposit, and Registration [401-412]**

[http://cyberlaw.stanford.edu/attachments/Reform%28aliz%29ing\\_Copyright12.1.pdf](http://cyberlaw.stanford.edu/attachments/Reform%28aliz%29ing_Copyright12.1.pdf)

### **Aug. 29 - Duration and Theory [301-305]**

[https://en.wikipedia.org/wiki/Public\\_Domain\\_Enhancement\\_Act](https://en.wikipedia.org/wiki/Public_Domain_Enhancement_Act)

### **Sept. 5 - Renewals, Terminations, and Artists' Resale Royalties [203, 304]**

<http://www.bbc.com/news/entertainment-arts-38182418>

<https://blog.sfbay.org/2017/04/07/mccartneys-long-and-bumpy-road-to-copyright-ownership>

### **Sept. 11 - Visual Art and Architecture [101, 106A, 113]**

<http://observer.com/2016/08/the-more-art-changes-the-more-urgent-an-update-to-the-visual-rights-act-becomes/>

### **Sept. 12 - The Reproduction Right – Volition and Substantial Similarity [106]**

<https://arstechnica.com/tech-policy/2014/04/aereo-analysis-cloud-computing-at-a-crossroads/>

### **Sept. 18 - The Reproduction Right II – Access [106]**

[https://www.americanbar.org/content/dam/aba/publishing/communications\\_lawyer/forums\\_communication\\_comlawyer\\_2007\\_mo\\_commlawyer\\_co\\_brenner\\_authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publishing/communications_lawyer/forums_communication_comlawyer_2007_mo_commlawyer_co_brenner_authcheckdam.pdf)

### **Sept. 19 - Sampling and Remix**

<https://www.amazon.com/dp/B0052D9TQG> [Look Inside!]

### **Sept. 25 - The Distribution Right [106]**

<https://www.eff.org/cases/capitol-v-thomas>

### **Sept. 26 - Distribution Right II [106, 108, 110, 114, 115, 301, 1008]**

<http://www.niemanlab.org/2010/09/whats-the-law-around-aggregating-news-online-a-harvard-law-report-on-the-risks-and-the-best-practices/>

### **Oct. 2 - The Performance Right [106, 110, 114]**

<https://arstechnica.com/tech-policy/2014/04/aereo-analysis-cloud-computing-at-a-crossroads>

### **Oct. 3 - The Display Right [106]**

[https://commons.wikimedia.org/wiki/Commons:De\\_minimis](https://commons.wikimedia.org/wiki/Commons:De_minimis)

### **Oct. 9 - The Derivative Work Right [106]**

[https://commons.wikimedia.org/wiki/Commons:Derivative\\_works](https://commons.wikimedia.org/wiki/Commons:Derivative_works)

### **Oct. 10 - Fair Use I - Texts and Music [107]**

[https://commons.wikimedia.org/wiki/Commons:Fair\\_use](https://commons.wikimedia.org/wiki/Commons:Fair_use)

### **Oct. 16 - Fair Use II - Photos and Videos [107]**

[https://commons.wikimedia.org/wiki/Commons:Fair\\_use](https://commons.wikimedia.org/wiki/Commons:Fair_use)

### **Oct. 17 - First Sale Doctrine I [109]**

<http://www.theendofownership.com/>

### **Oct. 23 - Quiz #1 and First Sale Doctrine II/Copyright Misuse [109]**

<http://www.theendofownership.com/>

### **Oct. 24 - Online Limitation of Liability for Internet Service Providers [DMCA 512]**

<https://cpip.gmu.edu/2016/06/30/three-years-later-dmca-still-just-as-broken/>

### **Oct. 30 - Anti-Circumvention and Copyright Management Provisions [DMCA 1201-1202]**

<http://www.transformativeworks.org/legal/vidding-press-release-dmca-exemption/>

### **Oct. 31 - Injunctions and Domain Name Seizures [502-503]**

<https://twitter.com/demandprogress/>

### **Nov. 6 - Actual Damages/Profits [504]**

<http://apps.americanbar.org/litigation/committees/intellectual/articles/fall2014-0914-summary-judgement-on-copyright-damages.html>

### **Nov. 7 - Statutory Damages and Attorney's Fees [504-505]**

<http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=4228&context=californialawreview>

**Learning Outcomes****Measurements**

Objective 1 Students understand the major copyright doctrines.	Quizzes, Final
Objective 2 Students can apply existing copyright law to new fact patterns and situations.	Final, Class Participation Assessment
Objective 3 Students can convey the public policy issues underlying copyright disputes to clients, opposing advocates, judges, and members of the public.	Class Participation Assessment, Small Group Presentations
Objective 4 Students learn about the international context of copyright law, and become familiar with international institutions active in copyright law.	Quizzes, Final, Class Participation Assessment
Objective 5 Students develop oral presentation skills useful in interviewing for positions and acting as lawyers.	Class Participation Assessment, Small Group Presentations

**Gainesville Telephone Number and E-mail Address:** 352-273-0878 and htravis@law.ufl.edu

**Statement related to class preparation:** Students should spend, on average, approximately two hours preparing for every hour of class. Given the complexity of the issues this class explores, a rough guideline is: spend one hour on every 15-20 pages of reading, 2-4 hours preparing for each quiz and for the small group presentation assignment, and 20-30 hours preparing for the final examination.

**Statement on grading scale and grading policies:** This class follows the Levin College of Law's mean and mandatory distributions, which are posted on its website at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>. The chart on the next page describes the specific letter grade/grade point equivalent in place:

<b>Letter Grade</b>	<b>Point Equivalent</b>
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

**Statement on potential academic misconduct:** Academic honesty and integrity are fundamental values of the University community. Students should study and understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.