

ELECTRONIC COMMERCE LAW  
MASSACHUSETTS SCHOOL OF LAW  
PROFESSOR TODD CHEESMAN

FALL 2009 SYLLABUS

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**Required Texts:** Pearson, Pringle & Cheesman, Electronic Commerce. Unless stated otherwise, page numbers in this Syllabus refer to the case book.

The textbook will be available through the school bookstore.

**Web Site:** There is a class web site for this course. Students must regularly check this site for changes in the syllabus, assignments, and class schedule. The site contains handouts, supplemental materials and links to other relevant sites, etc. The website is [www.cheesmanlaw.com](http://www.cheesmanlaw.com). You will need a username and password to access these materials.

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Class 1 Introduction. Read pp. 1-2

Chapter 2: Setting Up Shop in Cyberspace

Class 2 Trademarks and Domain Names 54-62 Omit U-Haul Int'l, pp. 62-66.

Class 3 Cybersquatting. 67-95 In Problem Set 4, pp. 94-95, references to the Lanham Act are to 741-745 the ACPA, discussed beginning at p. 77.

Class 4 Web-Site Development and Hosting. Read pp 96-116 Pages 679-80. Read only the section on The Basics of Copyright. 679-680 Omit Problems 5.1 through 5.4

**Problem 5.5 (Omit problems 5.1-5.4)**

Class 5 Controlling Access. Read pp 117-140; Omit p. 132, Section B, Misappropriation.

**Problem 6.1** refers at the end to a representative sit license. Go to [www.Walmart.com](http://www.Walmart.com). At the bottom of the home page you will find a link to "Terms of Use." Click on that link and read "Use of this Site" and "Site Security."

See CFAA, sec. 1030(a)(2)(C).

Instead of the fanciful facts in the text, assume a serious First Amendment issue is posed by the Association for the Liberation of Circus Elephants (ALICE) which sent a bot to copy the email addresses of all registered members FriendsofRinglingBrothersCircus.com. It then sent the members many emails demanding the release of the circus's elephants into their natural habitat. The Friends' website contains the license terms indicated in the problem. Answer the two questions in the problem, substituting ALICE instead of MENJ. Consider the following: trespass to chattels, CFAA sec. 1030(a)(2)(C), the CANSPAM Act, & the Georgia Slam-Spam Email Act.

Omit problem 6.3

Class 6

Liability of the Site Owner. 141-157

**Problem 7.1**, omit reference to Copyright Act §512 in part (a). 169-175

Omit 7.1(c).

Omit Problems 7.2, 7.4, and 7.6.

**Problem 7.5:** Instead of dealing with the specific facts of the problem, consider more generally whether Congress should enact a law requiring Carl to obtain explicit written consent from Ricky, that is, a linking agreement. Would such a law lead to "privatization" of Web sites? Should it matter whether or not the text surrounding the link suggests Carl has a relationship or affiliation with or is sponsored by Ricky?

Class 7

ISP Liability. Read pp. 176-177; 183-189.

Chapter 3: Protecting Information

Protecting Information: The Basics. Read pp 193-206

Problem 9.1(b); Omit Problems 9.2-9.4

Class 8

Internet Privacy Policies & Related Policies. Read pp 218-230.

Class 9

Theft of Information. Read pp 233-255.

Problem 12.1: ignore the reference to ECPA sec. 2511

Chapter 4: Transactions in Electronic Commerce

Class 10

Electronic Contracting I. Read pp 261-267; 274-288. Skip the excerpt from White's article et seq., pp 267-274. On page 274, begin with last paragraph that starts on bottom of page. The text refers to various provisions of the UCC & UCITA.

Class 11

Electronic Contracting II. Read pp 290-299

See “Item not Received or Significantly Not as Described Process”

<http://pages.ebay.com/help/tp/inr-snad-process.html> See UCC § 2-314; UCC § 2-312.

<http://pages.ebay.com/help/policies/feedback-abusewithdrawal.html>

Problem 14.1 1) Which law applies, UETA or E-Sign?

2) Assume the seller obtained the consumers' consent to electronic disclosure pursuant to E-Sign sec. 101(c).

Problem 14.2 (b)

Problem 14.4

Problem 14.8 The reference to EFTA is to the Electronic Fund Transfers Act. The problem refers to sec. 906(a). That section requires the broker to provide consumers with the types of information and notices referred to in the problem. The problem also refers to sec. 909. Read instead Regulation E, sec. 205.6(b) which is in the Statutory Supplement under the heading "Electronic Fund Transfers." (Regulation E is the regulation issued pursuant to the EFTA.)

Read the FTC's guidance on advertising on the Internet:

<http://www.ftc.gov/bcp/online/pubs/buspubs/dotcom/index.html>

Class 12

Internet Auctions. Read pp 300-317. Visit [www.ebay.com](http://www.ebay.com), click on link to User Agreement on bottom of home page. See sections titled "Liability" & "Release." See <http://pages.ebay.com/help/policies/unpaid-item.html>

Problem 15.1 Omit

Problem 15.2(a) Visit [www.ebay.com](http://www.ebay.com); click on the link to the User Agreement on the bottom of the home page. See sections titled "Liability" & "Release."

See <http://pages.ebay.com/help/policies/unpaid-item.html>

Problem 15.2(b) See "Item not Received or Significantly Not as Described Process"

<http://pages.ebay.com/help/tp/inr-snad-process.html>

See UCC sec. 2-314

Problem 15.2(c) See UCC sec. 2-312

Problem 15.3 Omit

Problem 15.4 <http://pages.ebay.com/help/policies/feedback-abuse-withdrawal.html>

Problem 15.5 Omit

Google the problem of Paypal abuse to learn of ways merchants and purchasers abuse the Paypal system.

Class 13

Digital Signatures. Read pp 350-364. You are not responsible for an in-depth understanding of this material. Read the assigned pages just for background, to gain familiarity with the main issues. Part C, page 361 mentions the Utah legislative approach. No one else has copied Utah.

B2B on the Internet. Read pp 366-379

This assignment refers to EDI. For a brief description of EDI read p. 333, all except the first and last paragraphs. For an understanding of RFID, read p. 341, the first full paragraph.

Problem 19.3            Consider the problem from the point of view of how Textrade.com will finance its operation. It could finance itself through transaction fees or through flat subscription fees.

Problem 19.4            This problem refers to UCC sec. 2-204. Examine current sec. 2-204.

Problem 19.5            Assume Textrade.com, the exchange, has poor security safeguards. Ignore the reference to the GNX site.

Class 14

Software Licensing. Read *Softman* case, pp.436-441; omit portions on copyright 436-441 infringement, pp. 437-38.

The Basic Framework. Read pp 452-465. Lecture will focus on the Microsoft warranty, pp. 456-57, and licensor self-help, pp. 464-65.

Read Chapter 1: The Background: Regimes for Resolving Disputes pp 6-7; P. 7, omit *Neogen* case 13-25 Omit Problems on page 25.

Class 15

Thanksgiving Break. No Class.

CYBERSPACE AND THE LAW (A.K.A. CYBERLAW)  
MASSACHUSETTS SCHOOL OF LAW  
PROFESSOR TODD CHEESMAN  
FALL 2009

**SYLLABUS**

Overview

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This course addresses the wide range of legal problems related to the Internet. Course participants are expected to read the assigned materials before each lecture, participate actively in our asynchronous discussion forum, prepare and deliver a written class presentation, and write and defend a thesis paper of publishable quality. The course meets entirely online.

The website for the seminar is located at [www.cheesmanlaw.com](http://www.cheesmanlaw.com)

Instructor

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Textbook

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Boswick, Kuhl & Gill; Cyberlaw: Problems of Policy and Jurisprudence.

You may also find one or both of the following supplemental (recommended) textbooks helpful, particularly if you do not have much experience with scholarly legal writing:

◇ Elizabeth Fajans & Mary R. Falk, *Scholarly Writing for Law Students: Seminar Papers, Law Review Notes and Law Review Competition Papers* (3d ed., West 2005) (ISBN 978-0-314-14631-1, list \$42)

◇ Eugene Volokh, *Academic Legal Writing: Law Review Articles, Student Notes, Seminar Papers, and Getting on Law Review* (3d ed., Foundation Press 2007) (ISBN 978-1-59941-195-8, list \$31)

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## Course Requirements and Grading

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(1) **Attendance and participation:** Regular attendance at and active participation in seminar meetings is required. Since the course is being taught in an interactive seminar format, notes and videotapes are not an adequate substitute for in-person attendance and participation. Students who miss more than three sessions will not be eligible to receive credit for the course unless alternative arrangements have been made in advance. Class participation will constitute 10% of the final course grade.

(2) **Presentation:** Each student will be assigned to prepare a presentation on a particular case or development during the course. This presentation should explain the significance of the case or development, offer additional information beyond that provided by the assigned readings, and include a critical assessment or substantive recommendations rather than merely descriptive information. The page “limit” allocated for these presentations may vary, but likely will be approximately 8-12 pages, 1.5 spaced, 1” margins.

Students may submit one or more proposed topics for these presentations on or before September 5, and will be notified of their assigned topics and presentation dates on or before September 12. (Note that the same or related topics may not be used for both the in-class presentation and the thesis paper.) The presentation will constitute 20% of the final course grade.

(3) **Thesis paper and defense:** Each student must write and defend a thesis paper of a style and quality suitable for publication. The length generally should fall in the range of 4,000 to 8,000 words, not including citations.<sup>1</sup> Again, use 1.5 spacing and 1” margins. Students may select a topic of their choice (within the scope of the course), subject to approval by the instructor. A proposed topic and thesis statement should be submitted on or before October 3. You will be notified within 48 hours if your topic is not approved. The topic for the thesis paper cannot be substantially similar to the topic of the student’s in-class presentation. Depth of analysis is much more important for the thesis paper than breadth, so you should generally choose as narrow a topic as possible. A research plan, including a review of the existing literature on the chosen topic, should be submitted by October 10. A draft of the thesis paper must be submitted to the instructor no later than October 31. Copies of each student’s draft will be circulated to the class. The draft need not be polished, but it should provide readers with a sufficient basis to understand the subject matter and the author’s thesis. It should reflect substantial research and thought; a bare outline or research plan is not adequate at this stage, nor is a paper that includes only descriptive background material and little or no analysis.

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<sup>1</sup> There is no strict minimum or maximum length for the draft or the final paper. However, if your paper is shorter than about 4,000 words (excluding footnotes), or if the substantive analysis components of the paper (excluding any background or primarily descriptive material) comprise fewer than about 2,500 words, it is very unlikely that the paper has addressed its topic in adequate depth for purposes of this seminar. If your topic is not especially narrow, it will likely require considerably more analysis than suggested by the above guidelines. An early draft that is shorter than these guidelines may serve as a useful starting point, but do not try to add padding to a short draft in order to reach a particular arbitrary length. Your paper will be much more effective if you start with a much longer draft and then revise and edit it for brevity and clarity.

Each student will prepare and present a defense of his or her thesis paper to present in our chat room. This defense is analogous to an oral defense such as would be required for a master's thesis or doctoral dissertation, although it will not be as formal or intensive. The final draft of the paper is due on November 7.

Absent exceptional circumstances, no papers will be accepted after November 14. Thesis papers will be evaluated based primarily upon three factors: depth and clarity of analysis; originality and difficulty of the problem; and persuasiveness of argument. Proper use of authority is required. Citations should be rendered in a standard form, and should appear in footnotes or endnotes.

The thesis paper will constitute 40% of the final course grade. The research plan and literature review, the draft paper, and the oral defense are each worth 10%. Assignments (including the final paper) submitted after the stated deadlines will be subject to the following late penalties:

By 12:00 noon November 9: 5% grade deduction

Up to one week late: one full letter grade deduction

Up to two weeks late: two full letter grades deduction

More than two weeks late: no credit will be given

Semester Schedule

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