Fall 2018

STS 300-101: Legal Reasoning, Writing and Technology

Rolanne Henry

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STS 300-101 LEGAL REASONING, WRITING, TECHNOLOGY

COURSE SCHEDULE

STS 300-101 Fall 2017 begins on Thursday, September 7, 2017 and ends on Thursday, December 7, 2017. The course meets on Thursdays from 6:00-9:00 pm in KUPF 207 except for Tuesday, November 21 (a Thursday NJIT schedule and no class meeting on Thanksgiving Thursday, November 23). The last day to withdraw from a class in Fall 2017 is Monday, November 6. There is no final exam. The course culminates in the writing of an office memorandum in preparation for building a case for a client. The course concludes with research and discussion about contemporary legal issues facilitated by group leaders.

INSTRUCTOR: Rolanne Henry, Senior Lecturer, NJIT Humanities Department
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Office: 417 Cullimore
Office Hours: Tuesday, 10:00-11:15 am; Thursday, 4:00-5:30 pm
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COURSE OBJECTIVES

By the conclusion of the course, participants should be able to:

- Focus an issue in its proper legal context within the legal system of the United States
- Find the appropriate rule of law from constitutional, statutory, and regulatory authority or case law by using deductive and inductive reasoning
- Apply the rule of law to a specific fact pattern by using analogical reasoning, distinguishing negative authority, and finding support in policy-based arguments
- Communicate legal analysis clearly in audience-based written formats
- Use appropriate legal citations, oral and written conventions, and precise vocabulary

COURSE REQUIREMENTS AND GRADING

<table>
<thead>
<tr>
<th>Grade Points</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Quiz (legal system, reasoning and writing)</td>
<td>10%</td>
</tr>
<tr>
<td>Short writing exercises</td>
<td>25%</td>
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<tr>
<td>Case briefs</td>
<td>35%</td>
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<tr>
<td>Office Memorandum</td>
<td>30%</td>
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Course Grade

A = 90-100%; B+ = 86-89%; B = 80-85%
C+ = 76-79%; C = 70-75%; D = 60-69%

TEXTBOOK—no required textbook; Moodle site supplies “Legal Bits and Bytes” and a Vocabulary List of terms defined in the suggested online legal dictionaries. Each assignment includes the required material in PDFs or supplies URLs to sources.

ASSIGNMENTS—All assignments are posted in Moodle with due dates highlighted. Completed assignments are to be submitted in Moodle. Permission to submit a late assignment requires an
acceptable reason that is explained in advance by e-mail. The assignment is to be submitted in Moodle immediately upon completion.

COURSE OUTLINE

WEEK OF SEPTEMBER 11-15

**Assignment: LEGAL SYSTEM OF THE UNITED STATES—due Thursday, September 14

Reading and Exercises: State and Federal Court Systems, and Jurisdiction

In the United States there is a federal Constitution, and each state has its own constitution. Any conflict between a state constitution and the federal Constitution is resolved in favor of the federal Constitution unless the state constitution is even more protective of the rights of its citizens. Federal statutes (laws) are created to implement provisions of the Constitution; state statutes implement the state constitution. The federal Constitution has given certain powers exclusively to the federal government, such as interstate commerce, which make any state laws in that area unconstitutional. The federal government has exclusive jurisdiction over copyright and patent.

Read:

1) For additional helpful information see Murray and DeSanctis, CH 3: The Life of a Case, State and Federal Court Systems, and Jurisdiction, pp. 31-60.

2) https://www.judiciary.state.nj.us. Read "About NJ Courts".

3) See www.uscourts.gov to locate information about the federal trial courts (each state has its own) and federal appellate courts that serve within 12 geographically determined areas and the one established based on subject matter jurisdiction (patent primarily)—the "Federal Court of Appeals," which is located in Washington, D.C. Hence, there is not a U.S. court of appeals situated in each state. The U.S. Supreme Court, located in Washington, D.C., has the jurisdiction to accept appeals from all the federal courts. However, the Court grants very few of the Writs of Certiorari that are the applications for a case to be heard on appeal. Most of the Writs that are granted are from similar cases decided differently in at least two of the Circuit Courts of Appeals because the primary mandate of the Supreme Court is to maintain uniform equal justice throughout the entire federal legal system.

4) Read about the U.S. Court of Appeals for the Federal Circuit (the 13th federal circuit):

www.cafc.uscourts.gov.

EXERCISES

1. In the New Jersey state court system, what is the name of the "Court of Last Resort," or, in other words, what is the name of the highest court in the New Jersey state legal system?
2. If a patent case is tried in a United States District Court in New Jersey (the trial level court in the federal system), what is the name of the court where the appeal may be taken? and where is it located?

3. If a conflict about privacy and encryption is appealed from a United States District Court in New Jersey, what is the name and number of the appellate court that has jurisdiction to hear the appeal? Where is it located?

4. When a decision is rendered in the court you have located in Question #3, in what states and federal jurisdictions will that case serve as precedent? Another way to ask the question is what states and what territory are in the same federal circuit with New Jersey?

5. What is the jurisdiction of the Federal Court of Appeals that relates to intellectual property? What are the two “Trial and Appeal Boards” from which the court takes appeals of intellectual property (in addition to cases from federal district courts)? What percentage of their cases relate to intellectual property? How many judges sit in this court? Who appoints them? What is their term of office? Where do appeals from this court go?

Week of September 18-22

**Assignment: ELEMENTS OF A RULE OF LAW—STATUTES—due Thursday, September 21

- COPYRIGHT ACT EXCERPTS 17 USCS File
  COPYRIGHT ACT EXCERPTS 17 USCS

- SUBMIT ASSIGNMENT: Statutes
  See the attached file in Moodle for some clarification of the questions, if needed.

1. Are the underlying rights accorded by the Copyright Act protected by the U.S. Constitution? Where? Provide the citation.

2. Is there exclusive federal jurisdiction over implementation of this law, joint jurisdiction of federal and state, or state jurisdiction? Provide the citation.

3. What does one need to do to become a “copyright owner”? What does this term mean? Where does the rule state the answers?[Example of citation: 17 USCS §101 copyright owner; 17 USCS §106 exclusive rights]

4. How does the author know whether her or his work has become “fixed” to satisfy the rule? Provide any relevant citations.

5. What rights does the rule give to a copyright owner? Provide the citation.

6. One of the rights includes the possibility of a “derivative work.” What does the law say is a “derivative work” (provide citation). What suggestions do you get from the rule of what might be done to the original work that would make it a “derivative work”?

7. What are all the ways in which the rule recognizes that a work is being “performed” or “displayed publicly”? Provide the citation.

8. What additional rights does the rule confer if the work is “a work of visual art”? Provide the citation.

9. To whom are these additional rights given? To the author, the author and copyright holder, or only to the copyright holder? Provide the citation. What
might the reasoning be about why the additional rights have been thus accorded?

Reasoning about the rule of law:
What seems to be the purpose of the shift from exclusive rights of the copyright holder to users of the copyrighted work? (17 USCS §107). Is there an inherent conflict between “exclusive rights” and a need to allow for “fair” uses? Why might exercise solely of exclusive rights possibly defeat the constitutional purpose for granting such rights to benefit the people of the U.S.?

Week of September 25-29

**Assignment: INTERPRETATION OF STATUTES BY COURT DECISION--ABC v. AEREO (June 25, 2014)--see attached file in Moodle

This assignment focuses upon the role a federal court, especially the U.S. Supreme Court, plays in interpreting statutes passed by the U.S. Congress under the authority of the U.S. Constitution. Specifically in the Aereo case the Court defines the meaning of “perform” in Section 101 and Section 106(4) of the Copyright Act in light of the purpose of the Act.

Questions based on the Aereo decision

1. According to J. Breyer, what was a main reason why Congress amended the Copyright Act in 1976? Why are Fortnightly and Teleprompter no longer valid precedents even though they are U.S. Supreme Court decisions not overturned by the U.S. Supreme Court? [H.R. Rep = House of Representatives Report] Explain how the Court uses a quotation from the Fortnightly case to rule against Aereo.
2. What is the purpose of the new section of the Act (Section 111) that Congress added?
3. List Aereo’s activities that the Court viewed as evidence that Aereo “performs” or “transmits.”
4. What issues involving the Transmit Clause does the Court need to resolve that were not explicitly resolved by Congress? By what REASONING were the issues resolved? What ANALOGY did the Court use to clarify “to the public”?
5. What value does the Court think that FAIR USE in the Copyright Act would have in applying the Court’s holding in Aereo as PRECEDENT for future cases?

Week of October 2-6

**Assignment: INTERPRETIVE DOCTRINES, LINES OF PRECEDENT & LEGAL STANDARDS-

STS 300 Legal Reasoning: Assignment questions-- In Re U.S. for Historical Cell Site Data, 724 F.3d 600 (5th Cir. 2013)--See attached file for the case

1. What is the precise citation of the portion of the Stored Communication Act (SCA) that is challenged in this case?
2. What is the difference between obtaining a warrant vs a court order?
3. What standard is required by the Fourth Amendment to the U.S. Constitution? By the SCA?

4. How does the U.S. Supreme Court decision in *Lexecon v. Milberg Weiss* (1998) affect the court’s reasoning about whether there is discretion to require a warrant instead of just a court order?

5. According to Supreme Court precedent:
   1. Does the party whose information is recorded by a business to whom a person has conveyed it have a right to challenge a court order to reveal the information to the government?
   2. Does the business to whom a person has conveyed his information have a right to challenge such an order?

6. What conclusion does this court (5th Cir *In re U.S. Historical Cell Site Data*) arrive at by comparing information on the exterior of sealed envelopes sent through the mail with E-mail? Why is this conclusion an important part of their reasoning about government surveillance relating to information acquired by a third party business?

7. What role in this court’s reasoning did the 1967 U.S. Supreme Court case of *Katz v. U.S.*, 389 U.S. 347 play? Explain what the specific pieces of analysis about privacy are that this *Site Data* Court relied upon as precedent that supports their ultimate holding/conclusion/order?

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**Week of October 9-13**

Thursday, October 12: **QUIZ I—TERMS, LEGAL SYSTEM, REASONING.**

Quiz I is closed to book and all other resources (print or online).

**Week of October 16-20**

**Assignment: ANALOGIZING, DISTINGUISHING, SYNTHESIZING—due Thursday, October 19**

ANALOGIZING and DISTINGUISHING PRECEDENT; SYNTHESIS

An ANALOGY consists in a comparison of two parallel situations that are so closely aligned that the reasoning that justified a decision about the one should also justify the same decision about the other. When a court is persuaded by an analogy to precedent, the court is said to “follow” the precedent.

**Question #1**

What are all of the cases cited in the majority opinion of *United States v. Lichtenberger* that were followed by the court and what is the precedent in each situation that resolves one of the issues in the *Lichtenberger* case?

DISTINGUISHING is the opposite of analogizing. Two situations are thought to be so fundamentally dissimilar that the same result should not occur in both. By distinguishing, the court discovers what the rule is in a case that can serve as precedent, but realizes that the same result should not occur in the case under consideration because the facts of the two cases are essentially not equivalent.
Question #2

What case or cases cited in the majority opinion of United States v. Lichtenberger were distinguished and not followed?

There are three steps in analogizing or distinguishing.

1. Make sure that the issue in the precedent is the same one you are trying to resolve.
2. Identify the precedent’s determinative, material facts. These are the facts that the precedential court treated as crucial and on which it based its reasoning.
3. Compare the precedent’s determinative facts to the facts you are trying to resolve. Your conclusion should be the most logical and plausible one that is consistent with the core of the precedential court’s reasoning.

SYNTHESIS is the binding together of several opinions into a whole that stands for a rule or an expression of policy. By focusing on the reasoning and generic facts that the cases have in common, synthesis finds and explains collective meaning that is not apparent from the individual cases. A synthesis must be logical, reasonable, constitutional, and consistent with public policy.

This skill assists in persuasion by looking beneath the surface of precedent to find underlying consistencies in reasoning and policy that, if favorable to your side, might persuade a court to rule in your favor.

When offering a synthesis:

1. State the synthesized rule in a clearly written sentence
2. Organize your explanation of the rule and show the reader how the synthesis fits together.

Question #3

Write a rule that encompasses the exceptions highlighted in the United States v. Lichtenberger 6th Circuit case to the requirement of having a warrant to fulfill the 4th Amendment constitutional imperative that we are to be free from unreasonable searches and seizures. Begin by thinking about the court’s use of the precedents as the judges reasoned about all the issues to arrive at the ultimate holding in the case. The issues are related to what the synthesized rule needs to include.

What case or cases cited in the majority opinion of United States v. Lichtenberger were distinguished and not followed?

There are three steps in analogizing or distinguishing.

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**Weeks of October 23-27**

**Assignment PATENT LAW (Therasense, Inc. v. Becton Dickinson & Co. (Fed. Cir., 2011), 649 F.3d 1276--Defense of "Inequitable Conduct"

DEFENSE OF INEQUITABLE CONDUCT TO THE CHARGE OF INFRINGEMENT OF A PATENT

I A. READ the en banc Federal Circuit Court opinion written by Chief Judge Rader (file attached)

*Therasense, Inc. v. Becton Dickinson & Co.*


B. WRITE:

1) From Part III of the above opinion explain how the judge-made doctrine of inequitable conduct as a defense to the charge of infringement of a patent evolved, according to C.J. Rader

2) What is the new standard adopted by the Federal Circuit Court for determining if Patentees have engaged in inequitable conduct?

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**Weeks of October 30-November 3 and November 6-10**

**Moore v. The Regents of the University of California--Definitions & ASSIGNMENT QUESTIONS--due Thursday, November 2 before 6:00 pm class**

*Moore v. The Regents of the University of California*, 793 P.2d 479 (Sup.Ct. of California 1990); 1990 Cal. The case is supplied in Moodle.
LEGAL TERMS--

Tort

Whether intentional or negligent, a tort involves a violation of a legal duty, imposed by statute, contract or otherwise, owed by the defendant to the person injured. Without the duty, the injury is an injury without wrong

Examples of Causes of action:

Conversion theory—The tort of depriving a person of his property wrongfully or illegally assuming ownership or illegally using or misusing it for one’s own benefit

Fiduciary duty theory—a person having a duty, created by his undertaking, to act primarily for the benefit of another in matters connected with his undertaking

Informed consent theory—In tort law the requirement that a patient be apprised of the nature and risks of a medical procedure before the physician can validly claim exemption from liability for battery or from responsibility for medical complications

Strict liability tort

Strict liability means that liability will be imposed even if the defendant can prove that reasonable care had been taken to prevent harm. The rationale of this tort is that it might discourage dangerous actions while not entirely prohibiting any social benefit they may have.

Demurrer is old terminology for a “motion to dismiss” for lack of factual evidence to support the necessary elements to prove a theory

Material facts—those facts that tend to prove or disprove any ultimate issue

ASSIGNMENT—Write answers to the following questions:

QUESTIONS

1. What causes of action did the court find that the plaintiff has stated against his physician?
2. State what needs to be shown (what the elements are) for one of those causes of action.
3. State what material facts the plaintiff Mr. Moore has provided that support each element in the cause of action that you have chosen. Did the court find that Mr. Moore has supported that cause of action and, therefore, that the trial court should proceed to trial on that cause of action?
4. What role does the case of Cobbs v. Grant play in the reasoning of the court? What are the principles obtained from the Cobbs decision that Judge Panelli relies upon?
5. Give the quotation from the Cobbs case that supports what informed consent means if the concept is to be applied to whether or not the physician had a personal interest in actions, treatments, etc. that are under consideration

Note: As a Resource the opinion of the Moore case has been supplied. The opinion begins on page 3 and extends to page 23 including most of the inserted “Footnotes” and “End Footnotes”. The bolded and numbered HEADINGS signal parts of the main body of the opinion.
BRIEF OF MOORE v THE REGENTS OF THE UNIV. OF CALIFORNIA, 793 P. 2d 479 (Calif. S. Ct., 1990)--due Thursday, November 2

Write a brief of Moore v The Regents of the Univ. of California, 793 P. 2d 479 (Calif. S.Ct., 1990), which is a key case for the Memo due on Monday, June 26. The case is supplied in Moodle.

Follow the same format and content instructions used for the Lichtenberger case that are highlighted in the Bits and Bytes section of the moodle site.

BRIEF OF GREENBERG v. Miami Children's Hospital Research Inst., Inc., 264 F. Supp 2d 1064--due Thursday, November 9 before 6:00 pm class. The case is supplied in Moodle.

BRIEF OF WASHINGTON UNIV. v. CATALONA (III), 490 F.3d 667 (8th cir., 2007)--due Thursday, November 9 before 6:00 pm class.-- The case is supplied in Moodle.

Weeks of November 13-17 and November 20-24

MEMO ASSIGNMENT: Elkin v. Disease Control Institute--due by Tuesday, November 21 (Thursday schedule)

Weeks of November 27 and December 4 (Last class, December 7)

LEGAL DISCUSSIONS

• TRANSFORMATIVE USE (COPYRIGHT)
• PRIVACY AND POLICE BODY CAMERAS