UNSW Course Outline

JURD7448 Intellectual Property 2: Trade Marks and Patents - 2024

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General Course Information

Course Code : JURD7448
Year : 2024
Term : Term 3
Teaching Period : T3
Is a multi-term course? : No
Faculty : Faculty of Law and Justice
Academic Unit : School of Private and Commercial Law
Delivery Mode : In Person
Delivery Format : Standard
Delivery Location : Kensington
Campus : Sydney
Study Level : Postgraduate
Units of Credit : 6

Useful Links

Handbook Class Timetable

Course Details & Outcomes

Course Description

This course and Intellectual Property 1: Copyright and Designs, collectively consider Australian intellectual property (IP) law.

IP—which encompasses the laws of copyright, designs, patents, breach of confidence, passing off and registered trade marks, as well as various related doctrines—has become one of the most important areas of commercial legal practice in recent years. It is vital to the marketing, advertising, entertainment, communications and science and technology industries. The two courses together aim to introduce students to each of the general law and statutory IP protections outlined above. For each of the heads of protection, the courses gives detailed consideration to the subject matter which is protected, the pre-conditions for protection, and the nature of infringement. Various justifications for IP are also considered, particularly in the context of new or developing forms of IP.

This course, Intellectual Property 2: Trade Marks and Patents, focuses on two key aspects of Australian IP law. The first is the legal protection of business reputation, which includes the law of registered trade marks and related doctrines such as the tort of passing off and the consumer protection scheme contained in the Australian Consumer Law. The requirements for registering marks, infringement and defences, and the elements of passing off will be canvassed, as will policy debates over the scope of legal protection. The second is the law of patents, which protects new innovations. It will cover the acquisition, ownership, exploitation and enforcement of patent rights and look at emerging issues such as the protection of biotechnology.

Intellectual Property 1 and Intellectual Property 2 can be taken in any order.

Main Topics

- Passing Off and Consumer Protection Laws
- Registered Trade Mark Law: History and Justifications
- Absolute and Relative Grounds of Refusal of Registration
- Trade Mark Infringement, Defences, and Loss of Rights
- Patent Law: History and Justifications
- Patentable Subject Matter
- Novelty, Inventive Step, Utility and Secret Use,
- Disclosure and Claiming Requirements
- Patent Infringement and Defences

Course Aims

This course aims to instill in students a detailed understanding of Australian passing off, trade mark and patent law, including an awareness of the law in practice, emerging legal questions, and major policy debates.

Course Learning Outcomes

Course Learning Outcomes
CLO1 : Demonstrate an understanding of principles of patent and trade mark law and the law of breach of confidence (PLOs1, 3, 4, 5, 8, 9)
CLO2 : Navigate and apply key patent, trade mark and breach of confidence texts, both statutory and judicial (PLOs 3, 4, 5, 8)
CLO3 : Identify patent, trade mark and breach of confidence issues and apply them to hypothetical fact scenarios (PLOs 3,5, 6, 9)
CLO4 : Engage in critical analysis of key problems in patent, trade mark and breach of confidence (PLOs 1, 3, 4, 5, 6, 7, 8, 9)
CLO5 : Demonstrate effective written communication skills by articulating legal concepts clearly, persuasively and appropriately (PLOs 3, 4, 5, 6, 7, 8, 9)
CLO6 : Demonstrate effective oral communication skills by discussing and debating course concepts in a scholarly, reflective and respectful manner (PLOs 3, 4, 5, 6, 7, 8, 9)

Course Learning Outcomes	Assessment Item
CLO1 : Demonstrate an understanding of principles of patent and trade mark law and the law of breach of confidence (PLOs1, 3, 4, 5, 8, 9)	• Class Participation • Final Exam
CLO2 : Navigate and apply key patent, trade mark and breach of confidence texts, both statutory and judicial (PLOs 3, 4, 5, 8)	• Class Participation • Final Exam
CLO3 : Identify patent, trade mark and breach of confidence issues and apply them to hypothetical fact scenarios (PLOs 3,5, 6, 9)	• Final Exam
CLO4 : Engage in critical analysis of key problems in patent, trade mark and breach of confidence (PLOs 1, 3, 4, 5, 6, 7, 8, 9)	• Reflective Note
CLO5 : Demonstrate effective written communication skills by articulating legal concepts clearly, persuasively and appropriately (PLOs 3, 4, 5, 6, 7, 8, 9)	• Reflective Note • Class Participation • Final Exam
CLO6 : Demonstrate effective oral communication skills by discussing and debating course concepts in a scholarly, reflective and respectful manner (PLOs 3, 4, 5, 6, 7, 8, 9)	• Class Participation

Learning and Teaching Technologies

Moodle - Learning Management System

Assessments

Assessment Structure

Assessment Item	Weight	Relevant Dates
Class Participation Assessment Format: Individual	20%	Start Date: Not Applicable Due Date: Not Applicable
Reflective Note Assessment Format: Individual	20%	Start Date: Not Applicable Due Date: 17/10/2024 05:00 PM
Final Exam Assessment Format: Individual	60%	Start Date: 08/11/2024 10:00 AM Due Date: 13/11/2024 05:00 PM

Assessment Details

Class Participation

Assessment Overview

Class Participation

Content/ Skills:

- Verbal communication Advocacy
- Knowledge of statute and cases
- Problem solving

Feedback includes formative feedback, peer feedback in class, online and the use of rubric.

Course Learning Outcomes

- CLO1 : Demonstrate an understanding of principles of patent and trade mark law and the law of breach of confidence (PLOs1, 3, 4, 5, 8, 9)
- CLO2 : Navigate and apply key patent, trade mark and breach of confidence texts, both statutory and judicial (PLOs 3, 4, 5, 8)
- CLO5 : Demonstrate effective written communication skills by articulating legal concepts clearly, persuasively and appropriately (PLOs 3, 4, 5, 6, 7, 8, 9)
- CLO6 : Demonstrate effective oral communication skills by discussing and debating course concepts in a scholarly, reflective and respectful manner (PLOs 3, 4, 5, 6, 7, 8, 9)

Assignment submission Turnitin type

Not Applicable

Generative AI Permission Level

Simple Editing Assistance

In completing this assessment, you are permitted to use standard editing and referencing

functions in the software you use to complete your assessment. These functions are described below. You must not use any functions that generate or paraphrase passages of text or other media, whether based on your own work or not.

If your Convenor has concerns that your submission contains passages of AI-generated text or media, you may be asked to account for your work. If you are unable to satisfactorily demonstrate your understanding of your submission you may be referred to UNSW Conduct & Integrity Office for investigation for academic misconduct and possible penalties.

For more information on Generative AI and permitted use please see here.

Reflective Note

Assessment Overview

Content/ Skills:

- Display understanding and critical engagement with the real world application of law,
- Development of the skills of exposit ion, analysis and argumentation as they pertain to higher level thinking

Feedback includes formative feedback, peer feedback in class, online and the use of rubric.

Course Learning Outcomes

- CLO4 : Engage in critical analysis of key problems in patent, trade mark and breach of confidence (PLOs 1, 3, 4, 5, 6, 7, 8, 9)
- CLO5 : Demonstrate effective written communication skills by articulating legal concepts clearly, persuasively and appropriately (PLOs 3, 4, 5, 6, 7, 8, 9)

Detailed Assessment Description

You will select one of the given topics and write a reflective note of **1,000-1,200 words** on this topic.

A reflective note is not simply a 'mini-essay', but rather a chance for you to provide a more direct, personal, critical reflection on a particular issue – perhaps indicating how your views of the issue changed, or were confirmed, as you read more about a topic.

In your reflective note you should refer to and discuss relevant cases and secondary materials in support of your arguments. There are no geographic restrictions on these resources, but please note that all of the questions ask you to focus on the legal position in Australia.

Assessment Length

1,000-1,200 words

Assignment submission Turnitin type

This assignment is submitted through Turnitin and students can see Turnitin similarity reports.

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Final Exam

Assessment Overview

Final Exam (Fact Scenario Analysis)

Content/ Skills:

- Identify IP law issues and apply them to hypothetical fact scenarios
- Engage in critical analysis of key practical problems in IP law
- Navigate and apply key IP law legal texts, both statutory and judicial
- Written communication skills

Feedback includes formative feedback, peer feedback in class, online and the use of rubric.

Course Learning Outcomes

- CLO1 : Demonstrate an understanding of principles of patent and trade mark law and the law of breach of confidence (PLOs1, 3, 4, 5, 8, 9)
- CLO2 : Navigate and apply key patent, trade mark and breach of confidence texts, both statutory and judicial (PLOs 3, 4, 5, 8)
- CLO3 : Identify patent, trade mark and breach of confidence issues and apply them to hypothetical fact scenarios (PLOs 3,5, 6, 9)
- CLO5 : Demonstrate effective written communication skills by articulating legal concepts clearly, persuasively and appropriately (PLOs 3, 4, 5, 6, 7, 8, 9)

Assessment Length

3,300 words

Assignment submission Turnitin type

This assignment is submitted through Turnitin and students can see Turnitin similarity reports.

Generative AI Permission Level

Simple Editing Assistance

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General Assessment Information

Please see the course Moodle page for detailed information.

For further information on generative AI use in the Faculty of Law & Justice, please review the section titled 'Academic Honesty and Plagiarism' under the 'Other Useful Information' tab.

Grading Basis

Standard

Course Schedule

Teaching Week/Module	Activity Type	Content
Week 2 : 16 September - 22 September	Seminar	Introduction to Trade Marks and the Protection of Trade Reputation
	Seminar	Passing Off and Consumer Protection Legislation I
Week 3 : 23 September - 29 September	Seminar	Passing Off and Consumer Protection Legislation II
	Seminar	Registered Trade Mark Law: Registration Procedures, the Definition of a 'Trade Mark', and Trade Mark Distinctiveness
Week 4 : 30 September - 6 October	Seminar	Registered Trade Mark Law: Distinctiveness, and 'Prohibited' Marks
	Seminar	Registered Trade Marks: Other Absolute and Relative Grounds of Refusal
Week 5 : 7 October - 13 October	Other	Monday Public Holiday - No Class
	Seminar	Registered Trade Marks: Infringement, Defences and Loss of Rights
Week 6 : 14 October - 20 October	Other	Reading week no classes
Week 7 : 21 October - 27 October	Seminar	Patents: Introduction, Procedural Matters and Patentable Subject Matter I
	Seminar	Patentable Subject Matter II
Week 8 : 28 October - 3 November	Seminar	Novelty, Inventive Step and Innovative Step
	Seminar	Utility, Secret Use, and the Disclosure and Claiming Requirements
Week 9 : 4 November - 10 November	Seminar	Patent Ownership, Exploitation, and Infringement

Attendance Requirements

Please see information about attendance requirements in **Law & Justice Assessment Procedure and Student Information** located in the Other Useful Information tab in the Academic Information field.

Please be advised there will be no classes on public holidays. If your class falls on a public holiday, alternative arrangements will be made by the course convenor to make up the missed class.

Course Resources

Prescribed Resources

K Bowrey, M Handler, D Nicol, J Nielsen and K Weatherall, *Australian Intellectual Property: Commentary, Law and Practice* (Oxford University Press, 3rd ed, 2021)

Staff Details

Position	Name	Email	Location	Phone	Availability	Equitable Learning Services Contact	Primary Contact
Convenor	Michael Handler					Yes	Yes

Other Useful Information

Academic Information

Upon your enrolment at UNSW, you share responsibility with us for maintaining a safe, harmonious and tolerant University environment.

You are required to:

- Comply with the University's conditions of enrolment.
- Act responsibly, ethically, safely and with integrity.
- Observe standards of equity and respect in dealing with every member of the UNSW community.
- Engage in lawful behaviour.
- Use and care for University resources in a responsible and appropriate manner.
- Maintain the University's reputation and good standing.

For more information, visit the UNSW Student Code of Conduct Website.

UNSW Law & Justice Assessment Policy

It is essential that all students undertaking this course read and abide by the UNSW Law & Justice Assessment Policy & Student Information. This document includes information on Class Attendance, Late Work, Word Limits, Marking, Special Consideration, Workload, and Academic Misconduct & Plagiarism. More information can also be found at Assessment & Exam Information.

Information regarding Course Outlines are subject to change and students are advised to check updates. If there is a discrepancy between the information posted here and the handbook or the UNSW Law & Justice website, please contact Student Services via The Nucleus Hub for advice. UNSW Law & Justice reserves the right to discontinue or vary such courses or staff allocations at any time. If your course is not here, please visit Handbook for information.

Academic Honesty and Plagarism

As a student at UNSW you are expected to display academic integrity in your work and interactions. Where a student breaches the UNSW Student Code with respect to academic integrity, the University may take disciplinary action under the Student Misconduct Procedure. To assure academic integrity, you may be required to demonstrate reasoning, research and the process of constructing work submitted for assessment.

To assist you in understanding what academic integrity means, and how to ensure that you do comply with the UNSW Student Code, it is strongly recommended that you complete the [Working with Academic Integrity](#) module before submitting your first assessment task. It is a free, online self-paced Moodle module that should take about one hour to complete.

Generative AI

Using generative AI to conduct research or to organise your argument is not prohibited but is not encouraged. We note that the output from generative AI tools is often incorrect and almost always more superficial than is required to achieve a passing grade. Moreover, any substantive errors in the assessment, such as inappropriate references or incorrect statements, will be regarded negatively by the marker, just as they would if not generated by AI. You should limit your use of AI to simple editorial assistance, such as standard editing and referencing functions in word processing software in the creation of your submission. You must not use any functions that generate or paraphrase passages of text, whether based on your own work or not. If your marker or Turnitin identify the wrongful use of generative AI in the text of your assessment submission, including the use of paraphrasing software, your assessment may be referred to the Student Integrity team for investigation. Please go to the link for further information about [referencing and acknowledging the use of artificial intelligence tools](#).

Prohibition on use of translation apps

With limited exceptions for language study, the course of study and assessment in Australian universities must be in English (Higher Education Standard Framework (Threshold Standards) 2021 1.5 6(c)).

In Law & Justice many classes have assessable class participation. This must be in English. **Use of a translation device to assist with contributions to class discussion is not allowed.** Marks for class participation may be reduced where use of translation devices is detected. Similar prohibitions apply to use of any other generative text app that is not specifically permitted by the class teacher. However, use of translation software to assist a student to understand material outside of class, or to assist with preparation for assessment is generally permitted.

Further considerations apply to LLB and JD students. International lawyers who seek to be admitted in NSW must satisfy an English proficiency test. That test is expressed as equivalent to IELTS scores of 7.0 -8.0 across the tests. It is assumed that UNSW graduates are at or above those levels of English proficiency. Use of translation apps can impede the attainment of that

level of proficiency. Students should avoid behaviours that put them at risk of breach of legal requirements which can have significant consequences, including potential consequences for your admission as a lawyer.

Submission of Assessment Tasks

Before submitting assessment items all students must read and abide by the UNSW Law & Justice Assessment Policy & Student Information.

Special consideration

Special consideration is primarily intended to provide you with an extra opportunity to demonstrate the level of performance of which you are capable. To apply, and for further information, see Special Consideration on the UNSW Current Students page.

Feedback

UNSW Law & Justice appreciates the need for students to have feedback on their progress prior to the last date for withdrawal without failure. All courses will therefore provide feedback to students prior to this date, as well as throughout the course. However, students should note that feedback does not take the form only of formal grades and written comments on written assessments. Rather, formative feedback, which helps students to self-assess, to identify misunderstandings, and to identify areas requiring further work, will occur during class and possibly online. For example, where a teacher asks the class a question, all students should think about how they might answer. Even though not all students will necessarily be able to respond orally, everyone can reflect on their tentative answer in light of the teacher's response and subsequent class discussion. If you are struggling to understand what is being asked in class, or if your tentative answers prove incorrect and subsequent discussion does not clear things up, then you should continue to ask questions (of yourself, your peers or your teacher). Similarly, you can get a sense of your ability in a course through peer feedback during group work, your teacher's responses to your in-class contributions, and your own response to in-class problems and examples (whether or not you are called on to relay your answer to the class) and also your online activities and responses by others to those activities. Students enrolled in this course may check their Moodle course page for details on the specific feedback used in this course.

Faculty-specific Information

Additional support for students

- Student support: https://www.student.unsw.edu.au/support
- Academic Skills and Support: https://student.unsw.edu.au/academic-skills
- Student Wellbeing, Health and Safety: https://student.unsw.edu.au/wellbeing
- Equitable Learning Services: https://student.unsw.edu.au/els
- UNSW IT Service Centre: https://www.myit.unsw.edu.au

Course improvement

Student feedback is very important to continual course improvement. This is demonstrated within the Faculty of Law & Justice by the implementation of the UNSW online student survey myExperience, which allows students to evaluate their learning experiences in an anonymous way. myExperience survey reports are produced from each survey. They are released to staff after all student assessment results are finalised and released to students. Course convenors will use the feedback to make ongoing improvements to the course. Students enrolled in this course may check their Moodle course page for details on the actions taken in response to evaluation feedback in Student Survey.

School Contact Information

Please contact Nucleus Student Hub for all enquiries. The Nucleus acts as a central communications hub for UNSW and will distribute your enquiry to the best person to respond.