

Intellectual Property: Examples and Explanations

By, Stephen M. McJohn

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Introduction

Every law student in the United States at one point in their academic studies has likely used the Examples & Explanations series to supplement their case books and lectures. The series' proven pedagogy has helped tens of thousands of students in subjects such as Civil Procedure, Law of Torts, Contracts, Criminal Law, Federal Tax, Corporations, Evidence and many more basic and advanced subjects. Finally, Professor Stephen M. McJohn of Suffolk University Law School has provided the same useful study guide to law students tackling the challenging course of intellectual property.

Intellectual Property: Examples and Explanations was written for law students taking the intellectual property survey class, but is very helpful for anyone seeking an introduction to intellectual property law. The main text of the study aid provides tools for learning the fundamentals of the four primary areas of intellectual property: copyright, patent, trademark and trade secret. Following the concise overview of each concept are examples, questions and explanations, which provide a more in depth understanding to the basic rules and a tool for the student in assessing their comprehension of the material.

Study Aid Format

Professor McJohn begins this study guide by using a single case to outline the differences of the four subject areas of IP law while at the same time showing how they are intimately intertwined. This introduction successfully outlines the elements of each subject area and prepares the student with a nice overview of the broad subject. The analysis of the case provides students with the tools for their own analysis as they encounter overlapping issues in each sub-topic.

The following four parts of the study aid survey the basic principles of the subject areas. Each of the four parts (copyright, patent, trademark and trade secret) is individually broken down into common sub-topics. This methodology is Professor McJohn's way of guiding the student through four distinct areas of law, using basic principles that are common among each area, providing the students with the ability to skillfully handle any IP issue.

The first sections lay out the protected and excluded **subject matter**, using the United States Code for the black letter law and then historical case law to define the specific categories. The second section describes the **steps necessary to secure protection**, including substantive standards and required measures necessary for IP protection. The substantive standards are further statutory requirements or refinements of those presented in the first sections, such as "new and useful" under patent law and distinctiveness under trademark law. The required measures portion of this section describes methods, processes and requirements for obtaining the sought after protection and also includes ownership and licensing of such rights, duration of protection and other formalities. The third section covers the **scope of protection** generally. This includes: the exclusive rights that copyright confers and the enforcement of these rights; the patentee's right to exclude others from certain activities involving the invention and available

defenses and litigation of infringement of that right; causes of action provided under the Lanham Act for infringement of trademark; and misappropriation of trade secrets. The final sections discuss **remedies** for infringement and misappropriation of these rights.

The organization of the chapters in this method is very conducive to the student preparing for exams. The author dissects each subject into outline format with examples and case illustrations to explain each element. This style allows the student to build their understanding of each of the topics and provides a nice framework enabling them to tackle IP problems in a methodical fashion.

Each of the fifteen subchapters concludes with one to four sets of examples and explanations, depending on the complexity of the issue being discussed. Professor McJohn draws the examples from sources such as judicial opinions, news reports, student questions and daily life. Students can use the examples and explanations in a variety of ways. The first and most effective use is as a simple learning tool, because they provide students with more substance to the basic rule. By posing more complex questions and providing explanations supported by specific case law, students gain a more in-depth understanding of the basic principle laid out in the preceding text. Second, they challenge and test the student's knowledge in the area by presenting new problems, in which students are able to apply the elemental analysis to the given facts. Another useful way to use the problems at the end of each section is for exam review or study group discussions. When preparing for exams students can test their knowledge of the rules and elements by redoing the examples and explanations. If they are wrong in their analysis they can go back and re-read the applicable section. The same approach can be used to facilitate study group discussion, especially if the facts were slightly changed.

This allows students to apply their knowledge and discuss how a slight variation on the facts may lead to a very different outcome.

The final chapter of Professor McJohn's book is an overview of contract law, the tort of misappropriation, and the right of publicity. The purpose of this section is to provide alternative options for protection of ideas or information where no protection is afforded by the four basic areas of intellectual property. This section also discusses the three types of Federal preemption of State law affecting intellectual property rights: explicit preemption, field preemption, and conflict preemption. Examples and explanations also follow these discussions.

Conclusion

The law of intellectual property is complex and difficult and therefore studying the topic can be daunting to the law student at first exposure. However, Professor McJohn's *Intellectual Property: Examples and Explanations* allows the student to attain a strong understanding of the intricate legal issues in a simple fashion. The guide methodically breaks down each of the four subject areas of intellectual property in an elemental format that comprehensively explains how a student should analyze and understand each of the protections. The examples provide the student with cases and fact patterns in order to apply their newly gained knowledge, and the explanations provide thorough analysis of the problems and logical reasoning in the solutions. In the end the student attains a broad understanding of intellectual property, the legal reasoning capability to attack any IP problem and the required rules of law and precedent case law to write a successful exam.