

## Media & Entertainment Law

University of North Dakota School of Law  
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### SYLLABUS

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**GOALS:** I intend for this class to provide meaningful training for the practice of law in the context of the entertainment and media industries, including both transactional and litigation practice. By the end of the course, you should have a command of the principal legal doctrines that shape media and entertainment, a knowledge of basic industry vocabulary, an understanding of the litigation and dealmaking environments in media and entertainment, and a rudimentary understanding of contract drafting. The relevance of what we will learn goes beyond the media and entertainment realms. What you learn about transactional and litigation practice and the skills you develop will be applicable to legal practice in nearly any substantive area.

**SUBJECT MATTER AND COURSE DESIGN:** This course will comprise subject matter often labeled under two different headings: “media law” and “entertainment law.” When people say “media law,” they are usually referring to the law relevant to newspapers, magazines, book publishing, and broadcast journalism. The term “entertainment law” usually refers to the substance and practice of law in the context of television, film, music, live theatre, and radio. There is a lot of overlap between the two fields – especially these days. Consider reality television, which constantly blurs the line between reporting fact and writing fiction.

Unlike torts, antitrust, family law, and other subjects, note that neither media law nor entertainment law is a body of law, per se. Both media law and entertainment law are professor- or lawyer-crafted grab bags that draw together law from across a range of disciplines, including torts, contracts, intellectual property, labor and employment law, constitutional law, and federal communications regulation.

Because of its artificiality and lack of intellectual coherence, the subject matter of this course does not lend itself to systematic study. We cannot, for instance, begin with prima facie elements, work through defenses, and then finish up with remedies. There is no overriding organizational principle for either media or entertainment law that suggests an order in which to tackle its various facets. Thus, the course will be organized without a hierarchy of concepts as you might find in a structured subject-matter outline. Instead, the class will comprise a series of vignettes that will variously involve learning doctrine, practicing skills, working through problems, and exploring certain factual contexts. I am ordering the course so that what you do later in the course will be aided by what you did earlier. In fact, you will learn in this class in much the same way you will learn as a working lawyer. Each matter you deal with will leave you better prepared to deal with the next matter. In the end, your accumulated skills, experience, doctrinal mastery, and problem-solving ability will give you a strong foundation for tackling the work of a lawyer in the media and entertainment worlds.

**CLASS WEBSITE:** Various materials and links can be found on the class website at: [http://eejlaw.com/courses/media\\_and\\_entertainment\\_law\\_spring\\_09/index.html](http://eejlaw.com/courses/media_and_entertainment_law_spring_09/index.html). Admittedly, that's a lot of typing. So just go to the eejlaw.com homepage and find the link in the upper left.

**MATERIALS:** The two required texts for this course are:

Law of Mass Communications: Freedom and Control of Print and Broadcast Media (12th ed.) by Dwight L. Teeter, Jr. and Bill Loving  
Published: June 2008, Foundation Press (West Group)  
ISBN-13: 97815994140

Hollywood Dealmaking: Negotiating Talent Agreements  
by Dina Appleton and Daniel Yankelevits  
Published: June 2002, Allworth Press  
ISBN: 1581152280

**Compendium and other materials:** In addition to the above-identified books, additional materials will be required reading, viewing, or listening. Some additional materials will be made available for free download from the course website in a section titled "Johnson's Media & Entertainment Law Compendium for 2008-2009." Certain other required materials may be handed out in class or placed on reserve in the library. In particular, audio tracks will be put on CD and left on reserve. Also, you may be required to retrieve an occasional document from a proprietary online legal research service, such as Westlaw or LexisNexis. Links to and information about obtaining certain other assigned materials may be found under the website section called "Johnson's Media & Entertainment Law Referenced Works for 2008-2009."

**Study aids:** Beyond the required materials, you are encouraged to use any other materials you find helpful or interesting, including, for instance, commercial outlines. The more you learn about media and entertainment law, the better. I personally have found that commercial outlines are a great way of gaining a basic understanding of the blackletter law in a subject. Unfortunately, I do not know of any commercial outlines for entertainment law or for media law, as such. There is a "nutshell" on Entertainment Law, published by West, which one student said was helpful. In addition, since the subject matter of the course comprises other areas of substantive law for which there are good outlines, and you may wish to consult the relevant portions of commercial outlines in constitutional law, intellectual property, torts, contracts, and any other subject areas we go through. If you do use study aids, I would appreciate your letting me know your experience with them – whether good or bad.

**COURSEWORK:** The work we do in this class will be much more varied than you are probably used to in law school. I will not be conducting class in any one mode, and you can expect considerable variety in your assigned work. We will, of course, have assigned readings that we then discuss in class. But we will proceed in other ways as well. This course will involve homework assignments – especially for the purpose of learning practical skills and techniques in contracts drafting. You may be required to present your results sometimes in writing, sometimes orally. You may be asked to work in groups, or by yourself. We may also have some quizzes. In the past, I've found that quizzes are a good way to encourage students to master fundamentals before working on more advanced concepts – and students have reacted positively to using them in this manner.

I want to be clear about my varying approach in this course at the outset, because students often want to know at the beginning of the semester exactly what will be required of them in a course – what kind of assignments, how many, exactly when they

will be due, etc. That won't be this class. The course will proceed more like a workshop. I see it as part of the value I add as a live teacher to tweak the course as we go long and to tailor the assignments to the evolving class dynamic. So be flexible and reasonable. In return, I'll be flexible and reasonable as well. Just as you might need to miss a class, I will understand if there is some exercise you cannot do because of some outside contingency. Just talk to me (or e-mail me) about it. It will not ruin your grade.

**GRADING:** Your grades will be based on your class participation, your performance on assigned exercises and projects, and your performance on a final examination. The final exam will count for approximately 80 percent of your course grade. Performance on assignments and class participation will account for the remainder.

The exam is discussed below. Each exam will be "blind graded" so that I will not know the identity of the student as I am grading his or her exam.

Attendance is required, and excessive absence, tardiness, or unpreparedness will be reflected in the non-exam portion of your grade. That being said, I understand that students will inevitably have obligations, illnesses, or other contingencies that will prevent perfect attendance. There is no need to present me with a physician's note or even an explanation. A rare absence or late arrival will not adversely affect your grade. If you know that you will not be able to attend a class, I would appreciate it if you would e-mail me in advance at [ejohnson@law.und.edu](mailto:ejohnson@law.und.edu). And if you cannot participate fully for a particular class, for whatever reason (and there's no need to tell me why), please tell me before class, in person, so that I can avoid calling on you. Reasonable requests of this sort will not result in a grade reduction.

If you are late coming to class, make sure you come up to me after class so that I can note your attendance. Otherwise, you may be marked absent. Of course, none of the foregoing supercedes the School of Law's or the University's policies.

**COMMUNICATIONS:** My e-mail address is [ejohnson@law.und.edu](mailto:ejohnson@law.und.edu). Please note that I do not answer or discuss substantive questions through e-mail. Moreover, perhaps unlike many students, I do not read e-mail on an hour-by-hour or even day-by-day basis. I may not respond at all to an e-mailed question which is clearly answered in this syllabus. If you have any questions about the exam, please ask them in open class. In the aims of fairness, I do not discuss the exam on an *ex parte* basis.

**STUDENTS WITH SPECIAL NEEDS AND DISABILITIES:** If you have emergency medical information to share with me, need special arrangements in case the building must be evacuated, or need disability accommodations in this course, please make an appointment with me. If you plan to request disability accommodations, please be aware that you are expected to register with Disability Support Services, 190 McCannel Hall, 1-701-777-3425 v/tty.

**IN THE CLASSROOM:** Do not eat in class. Do not chew gum audibly or with your mouth open. Do nothing that might disrupt class or distract your fellow students.

Be prepared to participate. Your participation in classroom discussion should be meaningful and appropriate. Raise your hand to have a say in discussion when you have a comment that will contribute to the experience of the class as a whole, or when you have a question, the clarification of which will benefit the entire class. Your classroom participation should be appropriate – not too little, not too much. Everybody knows there are students who raise their hand too often and take up too much of the class's time. All of us also know that there are people who sit passively and rarely, if ever, contribute to classroom discussion. Take care that you do not fall into either extreme.

Be aware that I plan to make an audio recording of each class meeting. These recordings are for my use, and, unfortunately, I will not be making them available during the semester for absent students. No one is permitted to make an audio or video recording of class without my express, written permission.

**WYPADKI:** The traditional method of exam preparation for students involves making an outline of the course. Because traditional legal pedagogy eschews using a textbook in lieu of a casebook, the outline fulfills the place of a textbook – providing a written explanation of the subject matter.

With the goal of saving time by reducing duplicative labor, I am providing the class with a chance to create an outline as a community, which we'll call a "wypadki."

The wypadki will be enabled with a wiki, the same web application that is behind Wikipedia, the online encyclopedia that is authored and edited by its readership. Only members of the class will be able to contribute to the wypadki, and each addition, edit, and deletion will be tagged with the name of the contributing class member. I intend to allow students broad latitude in creating the wypadki, though I will step in and provide guidance and restrictions if necessary. On or after a certain announced date at the end of the semester, before the exam, I will lock the wypadki. I will then have a chance to review and alter it before leaving it in a final version. Please note that I reserve the right to make any changes, deletions, and additions I deem appropriate, in my sole discretion, before or after locking the wypadki. The final version will be made available for download sometime before the exam, and copies will be printed and distributed to all students during the exam for use as a reference in drafting an examination answer.

Your contributions to the wypadki must respect intellectual property law. Do not add copyrighted material (regardless of licensing); limit your contributions to your own originally authored material and material in the public domain, which includes court-issued opinions. In addition, you may incorporate material from other wypadkis constructed by prior classes of mine.

In making a contribution to the wypadki, you are certifying that the material you add is original and does not include the copyrighted content of others. Also, by contributing, you are agreeing that the wypadki and any of your contributions to it may be used, copied, or changed by your fellow students for this course and by others for any education- or learning-related endeavor approved by me or my designee.

**Registration:** Contributing to the wypadki is voluntary and is not a class requirement. If you do choose to contribute to the wypadki, you must register. To get to the registration page, click on the link in the far upper-right corner of your browser window. When registering, please put your name in the following format:

`Lastname.Firstname`

Use your real name. Pseudonyms will not be accepted.

Registrations need to be approved before you can edit the wypadki. If you register during the accelerated approval period, which will be announced in class, please expect a delay of a day or so between registering and receiving approval. If you register afterward, the delay might be very long, and you might need to remind me that you have a pending registration. The very last date you can register is March 30. Attempted registrations will not be approved after March.

If the wiki software demands that you provide a biography, résumé, or the like, please ignore it. You should be able to register your user ID without filling out these fields.

In the past, some users have had technical problems with getting registered and logging on. Because of this, you are well advised to attempt to register early in the semester so that you have time to work out any problems you encounter. If you wait until too late in the semester to try logging on, you may find yourself in a situation where you cannot make any contributions. For technical problems, please contact Mark Conway of the law school's information technology staff.

**EXAMINATION:** I will give a final exam requiring written answers. You will have the choice of typing or handwriting your response.

You will be allowed to bring with you, into the exam, and to reference during the exam, a "reference sheet," consisting of a single 8.5-inch-by-11-inch sheet of paper, upon which you may write or print any information you wish, including on both sides of the piece of paper. If you have concerns about receiving a disability accommodation with regard to the reference sheet, please contact the Dean of Students office.

In addition to the reference sheet, you will be given a paper printout of the course *wypadki* to reference during the exam.

Other than the copy of the *wypadki* that you are given at the exam and the reference sheet you bring, no other informational or reference materials will be permitted, except as otherwise allowed by the Dean of Students office as an accommodation.

The exam will consist of one or more open-ended questions calling for written essay responses to one or more hypothetical fact patterns. In addition, the exam may include directed response or "short answer" questions. You may also be asked to answer a "theme" or "theoretical" style question, in which you will critique the law. In the case of a theoretical-style question, I will provide a context for writing your answer and perhaps a stance for you to take, such as, "[A certain client] has asked you to write a letter to the editor of the *New York Times* arguing for [a certain change in the law]."

Be assured that I will not use any essay questions that have been used on any other prior exam. As noted above, I will not discuss the exam on an *ex parte* basis; any questions about the exam must be asked in open class.

The material covered by the exam will potentially comprise all the material covered in the course. That is, if we talked about it in class or if it was in the assigned reading or exercises, it is within the scope of the exam. This should not be a source of undue stress. Be assured that the emphases of the exam will mirror those of class. In other words, the exam's topic coverage will not be wildly disproportionate to that of the course. Put still another way, I want you to study everything, but if you fail to master a minor point, the results will not be catastrophic.

I may provide a more specific description of the examination at a later time. You can view copies of my old Entertainment Law exams in the exam archive at [eejlaw.com](http://eejlaw.com). Note that in my earlier Entertainment Law classes there was a greater emphasis on intellectual property than there will be in this class.

**TOPIC COVERAGE:** The topics I plan to cover, and the order in which I plan to cover them, is below. This list is subject to change. Note that these topics are not presented in a hierarchical outline form (please see the discussion under "Subject Matter and Course Design," above).

- Liability for Audience Actions
- Defamation - Elements and Defenses
- Defamation - First Amendment Limitations
- Privacy Torts

- Demand Letters and Threatened Litigation in Entertainment
- Torts in Newsgathering
- FCC Regulation
- Reporters' Access to the Legislative and Executive Branch
- Reporters' Access to the Courts
- Compelling Information from Reporters
- The Hollywood Dealmaking Environment
- Agent and Manager Regulation
- Protection for Inchoate Entertainment Properties
- Profit Participation
- Drafting Entertainment Contracts
- Collaboration
- Rights Acquisition Deals
- Feature Writer Deals
- Television Writer/Producer Deals
- Director Deals
- Motion Picture Producer Deals
- Actor Deals
- Reality Television Contracts
- Clearance
- Music Licensing
- Record Contracts

**FEEDBACK:** If you have feedback for me – suggestions, ideas, commendations, or criticisms, please do not hesitate to tell me in person or by e-mail. If sending something to me anonymously would make you feel more comfortable, then I invite you to do just that.

Good luck. I hope you enjoy the course.

– EEJ