

TABLE OF CONTENTS

PREFACE.....	v
TABLE OF CASES	xv
I. Principles and Institutions	1
A. Legal Principles	1
1. Territoriality.....	1
<i>Curtis Bradley, Territorial Intellectual Property Rights in an</i>	
<i>Age of Globalism</i>	1
<i>Notes</i>	7
<i>Problem 1</i>	11
2. National Treatment	12
<i>Phil Collins v. Imtrat Handelsgesellschaft mbH</i>	14
<i>Notes</i>	19
3. Choice of Forum and Choice of Law	22
a. Choice of Forum	22
<i>Mecklermedia Corp. v. DC Congress GmbH</i>	22
<i>Notes</i>	31
<i>London Film Productions Ltd. v. Intercontinental Commu-</i>	
<i>nications, Inc.</i>	34
<i>Notes</i>	37
b. Choice of Law	41
<i>Itar-Tass Russian News Agency v. Russian Kurier Inc.</i>	41
<i>Notes</i>	50
c. Res Judicata and Collateral Estoppel	55
<i>Cuno Inc. v. Pall Corporation</i>	55
4. Recognition and Enforcement of Foreign Judgments	61
<i>Sarl Louis Feraud International, S.A. v. Viewfinder, Inc.</i>	61
<i>Notes</i>	67
<i>Problem 2</i>	71
B. Economics, Technology and Development	71
1. Intellectual Property: Who Benefits? Who Pays?	71
<i>Carlos Primo Braga, The Developing Country Case for and</i>	
<i>Against Intellectual Property Protection</i>	71
<i>Questions</i>	87
2. Traditional Knowledge, Folklore and Genetic Resources.....	88
<i>Nancy Kremers, Speaking With a Forked Tongue in the Global</i>	
<i>Debate on Traditional Knowledge and Genetic Resources: Are</i>	
<i>U.S. Intellectual Property Law and Policy Really Aimed at</i>	
<i>Meaningful Protection for Native American Cultures?</i>	88
<i>Paul Kuruk, Protecting Folklore Under Modern Intellectual</i>	
<i>Property Regimes: A Reappraisal of the Tensions Between</i>	
<i>Individual and Communal Rights in Africa and the United</i>	
<i>States</i>	95
<i>Questions</i>	108

C. Trade Principles and Processes	109
1. Multilateral Arrangements: The TRIPs Agreement	109
<i>Charles McManis, Intellectual Property and International Mergers and Acquisitions</i>	109
<i>Adrian Otten, Implementation of the Trips Agreement and Prospects for its Further Development</i>	117
<i>WTO TRIPs Disputes, August 2007</i>	121
<i>Notes</i>	123
2. Regional Arrangements	127
<i>Jan Corbet, The Law of the EEC and Intellectual Property</i>	130
<i>Notes</i>	140
3. Bilateral Arrangements (and Unilateral Initiatives)	142
<i>Memorandum of Understanding Between the People's Republic of China and the United States on the Protection of Intellectual Property</i>	142
<i>China-United States: Agreement Regarding Intellectual Property Rights</i>	149
<i>Notes</i>	153
<i>Problem 3</i>	155
II. Protection of Foreigners Under National Law	157
A. Copyright and Neighboring Rights	157
1. Territorial Reach of Copyright Law	161
<i>Subafilms, Ltd. v. MGM-Pathe Communications Co.</i>	161
<i>Notes</i>	170
2. Entitlement to Protection	172
<i>Paul Goldstein, International Copyright: Principles, Law, and Practice §§ 4, 4.1 (2001)</i>	172
<i>Notes</i>	173
3. Protected Subject Matter	176
a. Classes of Subject Matter	176
<i>Berne Convention for the Protection of Literary and Artistic Works, Paris, 1971</i>	176
<i>International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention)</i>	177
<i>Notes</i>	178
b. The Originality Requirement	181
<i>CCH Canadian Ltd. v. Law Society of Upper Canada</i>	181
<i>Gerhard Schricker, Farewell to the "Level of Creativity" (Schöpfungshöhe) in German Copyright Law?</i>	189
<i>Questions</i>	194
4. Ownership and Term	195
<i>Paul Geller, Worldwide "Chain of Title" to Copyright</i>	195
a. Who is an Author?	202
<i>Adolf Dietz, The Concept of Author Under the Berne Convention</i>	202
<i>France, Intellectual Property Code</i>	205
<i>Germany, Copyright Act</i>	207
<i>United Kingdom, Copyright, Designs and Patents Act</i>	208
<i>United States of America, Copyright Act</i>	209

A. Copyright and Neighboring Rights—Continued	
<i>Copyright Law of the People's Republic of China</i>	210
<i>Lebrun v. SA Braesheather</i>	212
<i>Notes</i>	213
<i>Problem 4</i>	216
b. Copyright Term	217
<i>Atlas Film + AV GmbH & Co. Verleih u. Vertrieb v. Janus</i>	
<i>Film u. Fernsehen Vertriebsgesellschaft mbH</i>	217
<i>Notes</i>	221
5. Economic Rights and Remedies	223
a. Copyright	223
i. DISSEMINATION IN INTANGIBLE FORM	223
<i>Columbia Pictures Industries, Inc. v. Redd Horne, Inc.</i> ...	223
<i>Sociedad General de Autores y Editores de España</i>	
<i>(SGAE) v. Rafael Hoteles SA</i>	229
<i>Notes</i>	235
ii. DISSEMINATION IN TANGIBLE FORM	236
<i>Quality King Distributors, Inc. v. L'anza Research Inter-</i>	
<i>national, Inc.</i>	236
<i>Jan Corbet, The Law of the EEC and Intellectual Prop-</i>	
<i>erty</i>	244
<i>Notes</i>	247
iii. LIMITATIONS ON RIGHTS	251
(A) The Three-Step Test	251
<i>United States—Section 110(5) of the U.S. Copyright</i>	
<i>Act</i>	251
<i>Notes</i>	270
(B) Exemptions, Fair Dealing (and Fair Use)	271
<i>CCH Canadian Ltd. v. Law Society of Upper Can-</i>	
<i>ada</i>	271
<i>Notes</i>	280
(C) Abuse of Right (or Dominant Position)	283
<i>Radio Telefis Eireann (RTE) and Independent Tele-</i>	
<i>vision Publications Ltd (ITP) v. Commission of</i>	
<i>the European Communities</i>	283
<i>Questions</i>	291
(D) Developing Countries	292
<i>Robert Hadl, Toward International Copyright Revi-</i>	
<i>sion, Report of the Meetings in Paris and Geneva,</i>	
<i>September, 1970</i>	292
iv. SECONDARY LIABILITY	296
<i>CCH Canadian Ltd. v. Law Society of Upper Canada</i>	296
<i>Notes</i>	299
v. REMEDIES	301
<i>Los Angeles News Service v. Reuters Television Interna-</i>	
<i>tional, Limited</i>	301
<i>Annette Kur, The Enforcement Directive—Rough Start,</i>	
<i>Happy Landing?</i>	307
<i>Computer Associates International, Inc. v. Altai, Inc.</i>	311
<i>Problem 5</i>	318

A. Copyright and Neighboring Rights—Continued	
b. Neighboring Rights	318
<i>Paul Goldstein, Copyright's Highway: From Gutenberg to the Celestial Jukebox</i>	318
<i>Paul Goldstein, International Copyright: Principles, Law, and Practice</i> § 2.2 (2001).....	322
6. Moral Rights	324
<i>John Henry Merryman, The Refrigerator of Bernard Buffet</i>	324
<i>Gilliam v. American Broadcasting Companies, Inc.</i>	327
<i>Adolf Dietz, The Moral Right of the Author: Moral Rights and the Civil Law Countries</i>	336
Notes	346
B. Patents	349
<i>Joseph Straus, Implications of the TRIPs Agreement in the Field of Patent Law</i>	352
1. Territorial Reach of Patent Law	355
<i>Microsoft Corporation v. AT&T Corporation</i>	355
Notes	363
2. Requirements for Protection	366
a. Statutory Subject Matter.....	366
<i>Carlos Correa, The GATT Agreement on Trade-Related Aspects of Intellectual Property Rights: New Standards for Patent Protection</i>	366
Notes	370
Note: <i>Plant Patents and Plant Variety Protection</i>	374
b. Standards	376
i. PRIORITY, NOVELTY AND STATUTORY BARS	376
<i>Advisory Commission on Patent Law Reform, A Report to the Secretary of Commerce</i>	376
Notes	386
(A) Priority (Offensive) that Secures a Patent.....	389
<i>Stein Associates, Inc. v. Heat and Control, Inc.</i>	389
<i>Boston Scientific Scimed, Inc. v. Medtronic Vascular, Inc.</i>	393
(B) Priority (Defensive) that Defeats a Patent	396
<i>Advisory Commission on Patent Law Reform, A Report to the Secretary of Commerce</i>	396
Notes	399
Problem 6.....	401
ii. INVENTIVE STEP (NONOBVIOUSNESS) AND INDUSTRIAL APPLICATION (UTILITY)	402
<i>Friedrich-Karl Beier, The Inventive Step in its Historical Development</i>	402
Notes	414
3. Prosecution.....	416
<i>Advisory Commission on Patent Law Reform, A Report to the Secretary of Commerce</i>	416
<i>Robert Benson, The Impact of the Patent Cooperation Treaty (PCT) and the European Patent Convention (EPC) on U.S. Practitioners</i>	419
Notes	424

B. Patents—Continued	
4. Rights and Remedies	428
<i>Carlos Correa, The GATT Agreement on Trade-Related Aspects of Intellectual Property Rights: New Standards for Patent Protection</i>	428
<i>Rotec Industries, Inc. v. Mitsubishi Corporation</i>	429
<i>Merck & Co., Inc. v. Stephar B.V.</i>	439
Notes	442
5. Limitations on Rights	446
<i>Carlos Correa, The GATT Agreement on Trade-Related Aspects of Intellectual Property Rights: New Standards for Patent Protection</i>	446
<i>Canada—Patent Protection of Pharmaceutical Products</i>	451
<i>DeFrees v. Dominion Auto Accessories Ltd.</i>	467
Notes	475
Problem 7	478
6. Infringement	478
<i>T.H.K. Co. Ltd. v. Tsubakimoto Seiko Co. Ltd.</i>	478
Notes	486
C. Trademarks and Geographical Indications	488
1. Territorial Reach of Trademark Law	490
<i>McBee v. Delica Co., Ltd.</i>	490
2. Protected Subject Matter	503
a. Trademarks	503
<i>Agreement on Trade-Related Aspects of Intellectual Property Rights</i>	503
<i>Otokoyama Co. Ltd. v. Wine of Japan Import, Inc.</i>	504
Notes	509
b. Geographical Indications	512
<i>Agreement on Trade-Related Aspects of Intellectual Property Rights</i>	512
<i>Molly Torsen, Apples and Oranges: French and American Models of Geographic Indications Policies Demonstrate an International Lack of Consensus</i>	512
<i>Federal Republic of Germany v. Commission of the European Communities</i>	515
Notes	526
3. Registration, Use and Priorities	531
<i>Baila Celedonia, Trademarks in the European Communities from an American Perspective</i>	531
a. Use and Use Priorities	534
<i>Paris Convention for the Protection of Industrial Property</i>	534
i. FAMOUS MARKS	535
<i>McDonald's Corporation v. Joburgers Drive-Inn Restaurant (Pty) Ltd.</i>	535
Notes	546
ii. GOOD FAITH ADOPTION	548
<i>Person's Co. Ltd. v. Christman</i>	548
Questions	554
b. Registration and Registration Priorities	554
<i>Imperial Tobacco Limited v. Philip Morris</i>	554
Notes	561
Problem 8	565

C. Trademarks and Geographical Indications—Continued	
c. Registration of Domain Names.....	566
<i>Uniform Domain Name Dispute Resolution Policy</i>	566
<i>Barcelona.com, Incorporated v. Excelentísimo Ayuntamiento de Barcelona</i>	571
<i>Notes</i>	580
4. Ownership.....	583
<i>IHT Internationale Heiztechnik GmbH v. Ideal Standard GmbH</i>	583
<i>Notes</i>	593
5. Rights.....	596
<i>Agreement on Trade-Related Aspects of Intellectual Property Rights</i>	596
<i>Lever Brothers Company v. United States</i>	597
<i>Silhouette International Schmied GmbH & Co. KG v. Hartlauer Handelsgesellschaft mbH</i>	603
<i>Notes</i>	609
6. Remedies.....	613
<i>United States v. Lozano</i>	613
<i>A M Moolla Group Limited v. The Gap, Inc.</i>	617
<i>Notes</i>	621
D. Unfair Competition and Trade Secrets	622
1. Unfair Competition.....	622
<i>Paris Convention for the Protection of Industrial Property</i>	622
<i>Aidan Robertson & Audrey Horton, Does the United Kingdom or the European Community Need an Unfair Competition Law?</i>	622
<i>Notes</i>	631
<i>PROBLEM 9</i>	632
2. Trade Secrets.....	632
<i>Agreement on Trade-Related Aspects of Intellectual Property Rights</i>	632
<i>Holly Emrick Svetz, Japan's New Trade Secret Law: We Asked for It—Now What Have We Got?</i>	633
<i>BP Chemicals Limited v. Jiangsu Sopo Corporation</i>	644
<i>Note</i>	653
<i>Note: Database Protection</i>	654
E. Industrial Design	655
<i>J.H. Reichman, Design Protection in Domestic and Foreign Copyright Law: From the Berne Revision of 1948 to the Copyright Act of 1976</i>	657
<i>J.H. Reichman, Design Protection After the Copyright Act of 1976: A Comparative View of the Emerging Interim Models</i>	663
<i>Annette Kur, "Freeze Plus" Melts the Ice—Observations on the European Design Directive</i>	669
<i>Notes</i>	674
<i>Problem 10</i>	678
INDEX	681