

# Table of Contents

---

	Page
PREFACE .....	V
TABLE OF CASES .....	XV
<b>Chapter 1. Introduction .....</b>	<b>1</b>
A. History of Copyright.....	1
1. Early English Copyright .....	1
2. Modern U.S. Copyright .....	4
3. Copyright Today .....	5
B. Thinking About Modern U.S. Copyright.....	6
1. Copyright as Economic Incentive .....	7
2. Copyright as Fairness and Justice .....	9
3. Copyright as Legislation .....	11
C. Studying Copyright .....	12
<b>Chapter 2. Copyrightable Subject Matter .....</b>	<b>13</b>
A. Originality.....	14
<i>Burrow-Giles Lithographic Co. v. Sarony</i> .....	14
Notes and Questions .....	19
<i>Bleistein v. Donaldson Lithographing Co.</i> .....	19
Notes and Questions .....	23
Problem .....	23
<i>Meshwerks v. Toyota Motor Sales U.S.A.</i> .....	24
Notes and Questions .....	32
<i>Gracen v. Bradford Exchange</i> .....	34
Notes and Questions .....	37
B. Originality and Facts .....	38
<i>Feist Publications v. Rural Telephone Service Co.</i> .....	39
Notes and Questions .....	49
<i>CDN v. Kapes</i> .....	51
Notes and Questions .....	53
<i>Nash v. CBS</i> .....	54
Notes and Questions .....	57
C. Ideas .....	57
<i>Baker v. Selden</i> .....	57
Notes and Questions .....	60
Problem .....	61
<i>Nichols v. Universal Pictures Corp.</i> .....	61
Notes and Questions .....	66
Problem .....	67
<i>Kregos v. Associated Press</i> .....	67
Notes and Questions .....	74
Problem .....	75
<i>Apple Computer v. Franklin Computer Corp.</i> .....	77
Notes and Questions .....	85
<i>Lotus Development Corp. v. Borland Int'l.</i> .....	86
Notes and Questions .....	96

---

**TABLE OF CONTENTS**


---

D. Useful Article Doctrine .....	98
<i>Mazer v. Stein</i> .....	99
Notes and Questions.....	100
Case Law After <i>Mazer v. Stein</i> .....	101
<i>Star Athletica v. Varsity Brands</i> .....	104
Notes and Questions.....	112
Problems.....	113
E. Fixation .....	114
<i>Williams Electronics v. Artic Int'l</i> .....	114
Notes and Questions.....	117
F. Government Works .....	118
<i>Georgia v. Public.Resource.Org</i> .....	119
Notes and Questions .....	125
<b>Chapter 3. Initial Ownership And Transfer.....</b>	<b>126</b>
A. Works Made For Hire .....	127
<i>Community For Creative Non-Violence v. Reid</i> .....	127
Notes and Questions.....	137
<i>Hi-Tech Video Productions v. Capital Cities/ABC</i> .....	138
Notes and Questions.....	144
<i>Miller v. CP Chemicals</i> .....	146
Notes and Questions.....	149
<i>Roeslin v. District of Columbia</i> .....	150
Notes and Questions.....	154
B. Joint Authorship .....	155
<i>Erickson v. Trinity Theatre</i> .....	155
<i>Gaiman v. McFarlane</i> .....	163
Notes and Questions.....	167
<i>Aalmuhammed v. Lee</i> .....	168
Notes and Questions.....	173
Problem .....	174
C. Transfer of Copyright.....	175
1. Writing Requirement .....	176
<i>Effects Associates v. Cohen</i> .....	176
Notes and Questions.....	180
2. Interpretation and Drafting .....	181
Problem .....	182
<b>Chapter 4. Formalities, Duration, Renewal.....</b>	<b>184</b>
A. Formalities.....	184
1. Publication .....	186
<i>Estate of Martin Luther King, Jr. v. CBS</i> .....	187
Notes and Questions.....	190
2. Notice .....	191
Notes and Questions.....	193
3. Deposit .....	193
4. Registration .....	194
B. Duration and Renewal .....	195
1. Duration Policy .....	196
<i>Eldred v. Ashcroft</i> .....	197
Notes and Questions .....	205
2. Duration Basics .....	206
Problems.....	210
3. Renewal.....	211
<i>Fred Fisher Music Co. v. M. Witmark &amp; Sons</i> .....	212
Notes and Questions .....	216

---

**TABLE OF CONTENTS****xi**

C. Termination .....	218
Notes and Questions.....	221
<i>Classic Media v. Mewborn</i> .....	223
Notes and Questions.....	231
 <b>Chapter 5. Exclusive Rights and Infringement .....</b>	<b>232</b>
A. Basic Infringement: Copying and Improper Appropriation .....	233
<i>Arnstein v. Porter</i> .....	233
Notes and Questions.....	236
1. Copying .....	237
<i>Selle v. Gibb</i> .....	237
Notes and Questions.....	241
<i>Bright Tunes Music v. Harrisongs Music</i> .....	243
Notes and Questions.....	245
2. Improper Appropriation .....	246
a. Impression-Oriented and Detail-Oriented Analysis .....	247
<i>Roth Greeting Cards v. United Card Co.</i> .....	247
Notes and Questions.....	252
<i>Satava v. Lowry</i> .....	252
Notes and Questions.....	257
b. The Ordinary Observer Test and Alternatives.....	258
<i>Peter Pan Fabrics v. Martin Weiner Corp.</i> .....	258
Notes and Questions.....	259
<i>Dawson v. Hinshaw</i> .....	261
Notes and Questions.....	266
<i>Computer Associates Int'l v. Altai</i> .....	267
Notes and Questions.....	280
3. Sound Recordings .....	282
<i>VMG Salsoul v. Madonna</i> .....	283
Notes and Questions.....	290
B. Derivative Works.....	292
<i>Lewis Galoob Toys v. Nintendo of America</i> .....	293
<i>Micro Star v. Formgen</i> .....	297
Notes and Questions.....	301
C. Public Display .....	302
D. Public Distribution .....	303
1. First Sale Doctrine .....	304
<i>Walt Disney Productions v. Basmajian</i> .....	304
Notes and Questions.....	307
2. Importation Rights .....	309
<i>Kirtsaeng v. John Wiley &amp; Sons</i> .....	310
Notes and Questions.....	320
E. Public Performance .....	321
<i>Columbia Pictures Industries v. Aveco</i> .....	322
<i>Columbia Pictures Indus. v. Professional Real Estate Investors</i> .....	326
Notes and Questions.....	328
1. Statutory Limitations .....	329
2. Sound Recordings: Digital Public Performance.....	331
3. Musical Works: Performing Rights Organizations .....	334
F. Compulsory Licensing.....	334
Notes and Questions.....	338
Problem: The Music Industry .....	339
Notes and Questions.....	339

---

G. Digital Technology and Exclusive Rights .....	340
1. Traditional Rights .....	341
<i>Playboy Enterprises v. Frena</i> .....	341
<i>Religious Technology Center v. Netcom</i> .....	342
Notes and Questions.....	345
<i>Cartoon Network v. CSC Holdings</i> .....	346
Notes and Questions.....	356
<i>American Broadcasting Companies v. Aereo</i> .....	358
Notes and Questions.....	368
2. Anti-Circumvention and Anti-Trafficking .....	370
a. Anti-Circumvention.....	371
Notes and Questions.....	373
b. Anti-Trafficking .....	374
<i>Universal City Studios v. Reimerdes</i> .....	376
Notes and Questions .....	384
H. Moral Rights .....	386
1. Generally.....	387
<i>Gilliam v. American Broadcasting Co.</i> .....	387
Notes and Questions.....	392
2. Visual Artists Rights Act .....	394
<i>Martin v. City of Indianapolis</i> .....	395
Notes and Questions .....	401
<b>Chapter 6. Fair Use and Other Defenses .....</b>	<b>403</b>
A. Fair Use .....	403
1. Origins.....	403
<i>Folsom v. Marsh</i> .....	404
Notes and Questions.....	406
2. Criticism, Comment, News Reporting, Education .....	408
<i>Harper &amp; Row Publishers v. Nation Enterprises</i> .....	409
Notes and Questions .....	418
Problem .....	419
3. Parody and Satire.....	419
<i>Campbell v. Acuff-Rose Music</i> .....	420
Notes and Questions .....	429
<i>Blanch v. Koons</i> .....	431
Notes and Questions .....	440
Problem .....	442
<i>Andy Warhol Foundation for the Visual Arts v. Goldsmith</i> .....	443
Notes and Questions .....	454
4. Duplication of Copyrighted Works .....	455
<i>Sony v. Universal City Studios</i> .....	456
Notes and Questions .....	462
<i>American Geophysical Union v. Texaco</i> .....	464
Notes and Questions .....	475
5. “Transformative” Uses .....	477
<i>Bill Graham Archives v. Dorling Kindersley Ltd.</i> .....	478
Notes and Questions .....	483
Problem .....	484
<i>Kelly v. Arriba Soft Corp.</i> .....	484
Notes and Questions .....	488
<i>Google v. Oracle of America</i> .....	491
Notes and Questions .....	508
B. First Amendment .....	511
<i>Eldred v. Ashcroft</i> .....	512
Notes and Questions .....	513

---

**TABLE OF CONTENTS****xiii**

C. Copyright Misuse .....	514
Notes and Questions.....	515
D. Other Defenses .....	517
1. Abandonment.....	517
2. Statute of Limitations .....	517
3. Fraud on the Copyright Office.....	518
<b>Chapter 7. Third Party Liability.....</b>	<b>519</b>
A. Vicarious Liability .....	520
<i>Shapiro, Bernstein &amp; Co. v. H. L. Green Co.</i> .....	520
Notes and Questions.....	524
<i>Polygram International Publishing v. Nevada/Tig</i> .....	524
Notes and Questions.....	531
B. Contributory Liability .....	532
<i>A &amp; M Records v. Abdallah</i> .....	532
Notes and Questions.....	535
<i>UMG Recordings v. Sinnott</i> .....	536
Notes and Questions.....	540
C. Modern Technology and Third Party Copyright Liability .....	541
<i>Sony Corporation of America v. Universal City Studios</i> .....	542
Notes and Questions.....	548
<i>Metro-Goldwyn-Mayer Studios v. Grokster</i> .....	550
Notes and Questions.....	566
<i>Perfect 10 v. Visa International Service Association</i> .....	568
Notes and Questions.....	579
Problem .....	581
D. Digital Millennium Copyright Act and ISP Liability .....	582
<i>Capitol Records v. Vimeo</i> .....	586
Notes and Questions.....	593
<i>EMI Christian Music Group v. MP3Tunes</i> .....	595
Notes and Questions.....	599
<b>Chapter 8. Remedies .....</b>	<b>602</b>
A. Injunctive Relief .....	603
1. Permanent Injunctions .....	603
<i>Metro-Goldwyn-Mayer Studios v. Grokster</i> .....	603
Notes and Questions.....	610
Problem .....	612
2. Preliminary Injunctions .....	613
Notes and Questions.....	614
3. Impoundment and Destruction .....	614
B. Damages.....	615
1. Actual Damages and Profits .....	615
<i>Frank Music Corp. v. Metro-Goldwyn-Mayer</i> .....	616
Notes and Questions.....	619
Problem .....	621
2. Statutory Damages.....	621
<i>Columbia Pictures Television v. Krypton Broadcasting</i> .....	622
Notes and Questions.....	624
C. Costs and Attorneys Fees .....	626
Notes and Questions.....	627
D. Criminal Penalties .....	627
Notes and Questions.....	629

<b>Chapter 9. State Law and Preemption .....</b>	<b>630</b>
A. Preemption Overview.....	630
1. Background.....	630
2. Constitutional Preemption .....	631
3. Statutory Preemption.....	632
B. State Law Causes of Action .....	633
1. Misappropriation .....	633
<i>International News Service v. Associated Press</i> .....	633
Notes and Questions.....	639
<i>National Basketball Association v. Motorola</i> .....	640
Notes and Questions.....	647
2. Contract Law .....	648
<i>ProCD v. Zeidenberg</i> .....	649
Notes and Questions.....	655
<i>Bowers v. Baystate Technologies</i> .....	656
Notes and Questions.....	659
3. Right of Publicity.....	659
<i>Laws v. Sony Music Entertainment</i> .....	660
Notes and Questions .....	665
<b>Chapter 10. International Copyright Law.....</b>	<b>667</b>
A. Treaties .....	668
1. Berne Convention.....	668
Notes and Questions.....	670
2. GATT-TRIPS and NAFTA .....	670
Notes and Questions .....	671
B. Enforcement.....	671
1. Cross-Border Enforcement.....	672
<i>Subafilms v. MGM Pathé Communications</i> .....	672
Notes and Questions .....	677
Problem .....	678
2. Choice Of Law .....	678
<i>Itar-Tass Russian News Agency v. Russian Kurier</i> .....	679
Notes and Questions .....	682
INDEX .....	685