

1. Department: Not Applicable
2. Faculty: Legal Studies
3. Course Code: LW0
4. Course Title: Intellectual Property Rights
5. Number of Credit: 4
6. Course objectives:

While identifying this changing nature of national and international legal norms relating to IPRs, the proposed course will, *inter alia*, deal with the following:

- To examine the definition and legal basis of IPRs in its broadest sense including patents, copyrights, trademarks, geographical indications, designs and trade secrets;
- To study the evolution of IPRs as an international legal norm and its implications at the global level with specific focus on the concerns of developing countries, including South Asia.
- To study the emerging new interpretations and consequent implementation issues relating to IPRs within multilateral and regional treaty framework (SAARC) and to examine and identify the conceptual and jurisprudential aspects with specific focus on cases and case studies at the national and international level.
- To understand the implications of emerging global IPR regime on frontier research areas such as traditional knowledge, biodiversity, biotechnology (also to include environment and agriculture/plant variety), digital/computer technology, internet and domain names).

7. Minimum prerequisites for taking this course: Nil

8. Course Structure and Reading Suggestions : Structured course programme with units: 12 units, arranged into 12 weeks of teaching and two weeks of assessment

Importance of the Course

The proposed course will deal with national and international IP-related issues in the context of South Asia. The main focus of the course will be to study South Asian IPR regimes in the context of Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs). The TRIPs Agreement (within the institutional and multilateral structure of the World Trade Organization) has set certain minimum standards with regard to substantive IPR norms. It requires Member States to implement these minimum standards within their domestic legal systems. The course will examine these implementation issues in the context of South Asia, examining specifically the domestic IP regimes. The impact of TRIPs and other IP regimes on the South Asian States will form the main thrust of this course.

Significantly, in recent times the ambit of IPR protection has been expanded to include not only technological and other related resources, but also such areas as traditional knowledge, biodiversity and genetic resources. How is South Asia responding to these challenges in terms of formulation of legislations and developing an interpretative matrix within its own judicial bodies? The Course will study these issues.

At the global level, some of these areas of IPR protection have been dealt with both substantively and procedurally through varied multilateral treaty frameworks as administered by e.g., World Intellectual Property Organization (WIPO), World Health Organization (WHO), and United Nations Environment Programme (UNEP). There is a need to examine these IPR-related national and multilateral treaty regimes comprehensively and on a continuing basis within an interdisciplinary framework. This legal process at the global level, specifically for IPRs, has been raising several difficult implementation issues for developing countries, including South Asia. The course will address these issues.

Week – 1

Understanding IPRs: Nature and concept of Intellectual Property Rights; General Principles of Intellectual Property Rights; Types of IPR; Brief evolution of IPR and its importance in present context international law, globalization and IPR

Reading materials

Christopher May and Susan K. Sell (2008) *Intellectual Property Rights: A Critical History*, (Viva Books: New Delhi)

Commission on Intellectual Property Rights (CIPR) (2002), *Integrating Intellectual Property Rights and Development Policy*, (Government of United Kingdom: London)

N S Gopalakrishnan and T G Agitha, *Principles of Intellectual Property*, Eastern Book Company (2013)

Week 2 & 3 International Institutional Structure governing IP and its role in furthering IP; WIPO --Engagement of Global South with the WIPO; TRIPS- the context, genesis and basic principles; Engagement of Global South.

Reading Materials

Carlos Correa, (2020) *Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement* (Oxford University Press)

Carolyn Deere (2008) *The Implementation Game: The TRIPS Agreement and the Global Politics of Intellectual Property Reform in Developing Countries* (Oxford University Press, London)

Carolyn Deere (2009) "The Politics of Intellectual Property Reform in Developing Countries: The Relevance of the World Intellectual Property Organization", in *The Development Agenda* (Neil Weinstock Netanel, ed., Oxford University Press, 2009) 111-133

Juan He "Developing Countries and Intellectual Property Rights", (2011) 10(4) *Chinese Journal of International Law* (2011) 827-863

Keith Maskus (2009) "The WIPO Development Agenda: A Cautionary Note", in *The Development Agenda* (Neil Weinstock Netanel, ed., Oxford University Press) 163-174

Peter Drahos "Developing Countries and International Intellectual Property Standard-Setting," (2002) 5(3) *Journal of World Intellectual Property* 765-790

Wattal Jayashree (2001) *Intellectual Property Rights in the WTO and Developing Countries*, Oxford University Press, London)

Cases

Canada-Term of Patent Protection, Report of the Panel, May 5 2000, WT/DS170/R; Report of the Appellate Body, September 18, 2000, WT/DS170/AB/R

India - Patent Protection For Pharmaceutical And Agricultural Chemical Products AB-1997-5 Report of the Appellate Body, WT/DS50/AB/R

Week- 4 & 5 Patents - patentability criteria, local working, remedies for infringement, term of protection: TRIPS Agreement, Issues of Biotechnological Patents; Public Health, Access to Medicines and Human Rights; Doha Agreement and Implications for Developing Countries; Principles of patent Exhaustion

Reading Materials

Alan O. Sykes, "TRIPs, Pharmaceuticals, Developing Countries, and the Doha "Solution"" (John M. Olin Program in Law and Economics Working Paper No. 140, 2002)

Feroz Ali Khader (2011) *The Law of Patents-With a Special Focus on Pharmaceuticals in India*, (LexisNexis, 2nd Edition)

Fowler, Cydney A. "Ending Genetic Monopolies: How the TRIPS Agreement's Failure to Exclude Gene Patents Thwarts Innovation and Hurts Consumers Worldwide." (2010) 25(5) *American University International Law Review* 1073-1105

Frederick Abbott, "The Doha Declaration on the TRIPS Agreement and Public Health: Lighting A Dark Corner at the WTO," (2002) 5 *Journal of International Economic Law* 469-505

Shamnad Basheer, Mrinalini Kochupillai, *TRIPS, Patents and Parallel Imports: A Proposal for Amendment*, (2009) 2 *Indian Journal of Intellectual Property Law* 63-86.

Srividhya Ragavan (2012), *Patent and Trade Disparities and Developing Countries* (Oxford University Press, London)

William J. Bennett, "Indian Pharmaceutical Patent Law and the Effects of *Novartis AG v. Union of India*," (2014) 13(3) *Washington University Global Studies Law Review* 535-558

Cases

Association for Molecular Pathology v. Myriad Genetics Inc. US Supreme Court, 13 June 2013

Harvard College v. Canada (2002, Canada Supreme Court)

Harvard Mouse Case, European Patent Office, 1990

Diamond v. Chakravarty, US Supreme Court, 1980

Bayer Corporation vs. Union of India and Others 2013

Novartis Ag vs Union Of India & Ors 2013 AIR SCW 2047

Mansanto Canada Inc. v. Schmeiser (2004, Canada Supreme Court)

12. *Novartis v. Union of India and Others*, Indian Supreme Court, 1 April 2013

Week -6 &7

Plant Varieties and International Legal Framework: TRIPS Provisions; Protection of plant varieties under UPOV; Issues of farmers rights; Geographical Indications (GIs); TRIPS Provisions, Engagements of Global South

Reading Materials

Sven J R Bostyn, *Plant Variety Rights Protection and Essentially Derived Varieties: A Fresh Proposal to Untie the Gordian Knot*, (2020) 69(8) *GRUR International* 785–802

Biswajit Dar (2002) Sui Generis Systems for Plant Variety Protection ,Discussion Paper (United Nations)

Srividhya Ragavan; Jamie Mayer O'Shields, "Has India Addressed Its Farmers' Woes - A Story of Plant Protection Issues," (2007) 20(1) Georgetown International Environmental Law Review 97-128

Cases

Australia – Certain Measures Concerning Trademarks, Geographical Indications And Other Plain Packaging Requirements Applicable To Tobacco Products And Packaging Ab-2018-4 Ab-2018-6 Reports Of The Appellate Body 2020 WT/DS435/AB/R - WT/DS441/AB/R

Week 8

Trademarks – Definition and scope of Trademarks; Well-known Marks; Law of passing off; TRIPS Provisions; Challenges in Non-Conventional Marks and Domain Names Disputes

Reading Material

Carlos Correa, (2020) Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement (Oxford University Press)

Eashan Ghosh, Imperfect Recollections: The Indian Supreme Court on Trade Mark Law, Thomson Reuters (2020)

Week - 9 &10

Copyrights and other related rights – Definition; Nature and scope; Originality requirements; Copyright- Fair Dealing; (digital agenda, internet); Neighbouring/Related rights

Reading Materials

Carlos Correa, (2020) Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement (Oxford University Press)

Srividya Vaidhyanathan (2001) Copyrights and Copywrongs: The Rise of Intellectual Property and How it Threatens Creativity (New York University Press)

V.K. Ahuja (2007) Law of Copyright and Neighbouring Rights: National and International Perspectives (Lexis Nexus)

Cases

14. *United States-Section 110 (5) of US Copyright Act*, Report of the Panel, June 15, 2000, WT/DS160/R

Eastern Book Company v. D.B. Modhak, 2008 (36) PTC 1 (SC)

John Wiley and Inc v. Prabhat Chander, 2010(44) PTC 675 (Del)

The Chancellor, Masters and Scholars of the University of Oxford and Others v. Rameshwari Photocopy Services and Others, (2016) 16 DRJ (SN) 678

Week –11

Biodiversity, Traditional knowledge (TK) and IPRs

Concept and Importance of Traditional Knowledge (TK) ; Positive and Defensive Protection; International Regime for Protection of TK, Traditional Cultural Expressions ; Biodiversity, access to genetic resources and IPR; TRIPS and CBD-Linkage and Gaps

Reading Materials

Carlos Correa (2020) Trade Related Aspects of Intellectual Property Rights: A Commentary on The TRIPS Agreement (Oxford University Press)

Gurdial Singh Nijar, Traditional Knowledge Systems, International Law and National Challenges: Marginalization or Emancipation?, (2013) 24 (4) *European Journal of International Law*, Volume 24, 1205–1221

Week – 12

Enforcement of IPRs –civil, criminal and administrative remedies

Reading materials

Carlos Correa, (2020) Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement (Oxford University Press)

Ananth Padmanabhan (2012) Intellectual Property Rights-Infringement And Remedies (Lexis Nexus)

9. Course Evaluation Pattern: The evaluation is based on student performance in assessments/ tasks /activities / exams/ class participation/ regular attendance.