FACULTY OF LAW, School of Law

GENL2032

Cyberspace Law 2.0

SEMESTER 1, 2012

Course Outline

(Objectives and Assessment Strategy)

**General Studies Elective course
Total contact hours: 36**

Contents

1. Course details

Course requirements - This outline and the course requirements will be discussed in the first class. This outline will provide the basis for the conduct of the subject and will be the foundation document for resolving any disputes.

This course has 6 Units of Credit value. It is an undergraduate general studies elective course. Total contact hours: 36

A copy of this Course Outline and other information is available online on the course website at < http://cyberlawcentre.org/genl2032/ >, as well as other locations.

Convener: David Vaile
               d.vaile@unsw.edu.au (best contact method)
               Ph 9385 3589
               Rm 153, Law Building F8 (appointment advisable)

Timetable (typical – check web for latest info)
        Class Time: 12-3 or 3-6   Day: Tuesdays
        Venue: Materials Science G11(E8) 12-3pm/ Law 303 (F8) 3-6pm

2. Course aims

The Cyberspace Law Course aims to assist you to:

- Appreciate how the online world is similar and different from the physical world from a regulatory perspective;
- become competent in reading and understanding court case judgments and how they are constructed and show which arguments won and why;
- be able to take a systematic approach to analysing the legal issues involved in various problems and conflicts commonly encountered online;
- develop an understanding of the implications of different countries and jurisdictions having different laws, but online services covering the world;
- understand the range of options which may be available for dealing with online disputes, and how to choose amongst them

3. Subject content

Cyberspace Law is divided into the topics below, roughly by class:

Introduction to cyberspace regulation
        Brief introduction to the Internet
        Theoretical approaches to cyberspace law and regulation
Domain Names and Internet Governance
        Governance of cyberspace, ICANN and reform
        Domain names and trademarks,
        Domain name disputes and the UDRP
Content Regulation
        Broadcasting Services Act and the Role of ACMA
        IIA Code of Conduct
        Other content laws

Censorship and filtering
Defamation
Flaming
ISP Liability
Cyber crime
Computer crimes and Online crimes
Hacking and denial of service attacks
Privacy
Identification , Privacy laws and policies
PITS and PETS
Workplace surveillance
Access
Access issues and Discrimination
Accessibility standards
Copyright
Napster to iiNet
Digital Agenda legislation, DMCA, ACTA
Anti-circumvention
Electronic Commerce
The EFT Code
Scams and swindles
Account Aggregation
Consumer Protection
Policy framework
Codes of Conduct and Dispute resolution
Internet Jursidiction
Case law
International treaties and International arbitration

4.   Teaching method and student input

Classes will be run as a mixture of lectures and discussion.

Students are expected to contribute constructively to classes on the basis of the subject materials and topical matters from current debates. Classes will cover the law, as well as addressing technology, Internet developments, social policy, commercial power and political pragmatics. The lectures will directly relate to, but expand upon, the subject materials.

One of the features of this area of the law is its rapid change. This and the fact that it deals with often controversial and sensitive issues of public policy mean that students will need to think about the context and be able to apply legal principles to practical situations. The materials are a starting point; to become up to date on any particular topic will require further investigation of recent cases, laws and policy developments. The course is intended to provide a snapshot of legal frameworks and debates at particular times, with some current issues added, rather than attempting complete currency in all topics.

The course does not assume prior knowledge of legal principles but does assume a general familiarity with the media and new technologies. Students will be expected to develop a good understanding of the legal issues and frameworks in these areas and to be able to identify what legal issues apply to different situations.

Class attendance

The Law Faculty applies the "80% Rule" which means that students who attend less than 80% of classes may be refused final assessment. Rolls will be completed throughout the course as a record of attendance.

Class attendance is also essential to understanding the course material, as each lecture covers a lot of ground in a fairly complex area.

Course commitment

The course is a 6 credit point general education subject taught in intensive mode. The overall time commitment expected of students is the same as for a 6 credit point subject taught in normal mode over a semester.

Students are expected to commit at least 92 hours to the subject, including lectures. This will involve 36 hours of lecture time and at least:

- 8 hours class preparation time;

- 12 hours completing the case study; and

- 36 hours completing the research essay.

Course evaluation and development

Your feedback on the course is always welcome, and may be requested formally in a brief evaluation form or online at the end of the course, subject to UNSW timetables. This feedback is considered in developing future versions of the course.

5.   Required and recommended reading

The course Web home page is http://cyberlawcentre.org/genl2032/

Required materials:

There is no text book for the course. Reading guides for each topic are available on line from the Cyberlaw course materials web site.

> https://consult.galexia.com/extranet/cyberlaw/

> (This is a secure site for students only: username and password is provided in class, or by email.)

Note that, as this is not available for access outside the course, these reading guides should *not* be considered a normal publication for referencing purposes. You should cite the published and accessible sources that are linked from within each paragraph or section, or another published source, *not* the notes themselves. (If you do quote from these notes, they should of course be properly referenced, but this is not preferred; the preferred approach is always to rely on published sources.)

A useful introduction to the legal system for those with no prior understanding: *Understanding the Australian Legal System*, John Carvan, LawBook Co 2005. (University bookshop or library), or similar.

Recommended texts and materials:

The source is the online guide above. For students wishing to consider additional materials, the following may be of interest, particularly the first:

- Jay Forder and Dan Svantesson, Internet and e-commerce law, Oxford UP, 2008

- Brian Fitzgerald, Anne Fitzgerald, E Clark, G Middleton, YF Lim, Internet and E-commerce Law, Business and Policy, LawbookCo. (Thomson Reuters), 2011. (1300 page reference work.)

- Yee Fen Lim, *Cyberspace Law: Commentaries and Materials*, 2nd edition or later, OUP Sydney 2007   ISBN 0-195558618 (library or University bookshop)

- Allen, M, *E-business, the Law and You*, Sydney 2002
  ISBN 1-74009-584-7 (Dymocks)

- Lessig, L, *Code and other laws of cyberspace*, New York 1999
  ISBN 0-465-03913-8 (University bookshop or library)

- Lessig, L, *Free Culture*, New York 2004
  (http://www.free-culture.cc/freecontent/)

- *Internet Law Bulletin*, Sydney 1998-2012 (library)

- Cyberspace Law and Policy Centre at UNSW Law
  http://www.cyberlawcentre.org/ (may have material for certain topical issues)

6.   Assessment

The assessment for this course consists of the two components below: a briefing note and a short problem-style research essay; there is also an online alternative to the latter. Both need a cover sheet.

10% participation – This is on the basis of attendance, preparation and well informed participation in discussions.

30% Case study – submission of a short (one page) **Briefing Note** on a relevant case decision, to be allocated from a Case studies list to be provided in class and posted here.

> Each student will be allocated a case from a list and provided with some background information. The list of possible cases is available from week 3, and the Briefing Note must be submitted by the **end of Week 9**.

> There is a page explaining how to write such a case study.

> You can choose your own case not on the list, but you must request to do this in writing, with the name and date of the case decision, the court and jurisdiction, and a working link the full text of the decision and reasons.

60% Research Essay of 3,000 words

> The essay is typically an opportunity to provide advice to someone about how to deal with a hypothetical problem they have in the cyberlaw area, as if you are their legal advisor. You will need to refer to materials on a specific course topic, including cases or laws. A selection of Essay Topics will be available, or you can

select your own topic with prior approval from the course coordinator. The essay page also has notes about how to do the assignment.

Submit the essay by the **end of Week 12** (4pm on Friday).

Wiki page

An alternative to the essay is:
(a) an analysis of the Wikipedia Featured Article standard <http://en.wikipedia.org/wiki/Wikipedia:Featured_article_criteria> compared to ordinary Wikipedia content (especially its unsuitability as a reference as to the truth of its contents) and,
(b) a new Wikipedia page on an aspect or case in Cyberspace law which is a viable candidate for Featured Article status.

Please discuss with the lecturer if you are interested. This is *not* an easier option!

Submission, Cover sheet: Please submit assignments in ***hard copy*** (paper) to the Law Faculty counter on Level 2 of the new Law Building (F8). Please read, sign, and attach a Law Faculty Undergraduate Assignment **Cover Sheet** to all submissions, available from the counter on level 2, or from the Law web site. <http://www.law.unsw.edu.au/sites/law.unsw.edu.au/files/docs/forms/gf_assignment coversheet.pdf>

Please retain a soft copy (digital file) of your submissions, created and last modified on or before submission date, for 2 months after due date, as a backup in case of mishap.

Attendance: Students are required to attend classes according to the normal Law Faculty 80% attendance rule. Failing to attend to this level may prevent assessment.

Grades: Cyberspace Law is graded on a fully assessed basis (ie High Distinction / Distinction/ Credit/ Pass/ Fail).

Late assignments: will not be accepted except for demonstrated good cause (including medical reasons). Students who do not complete the assignment in time are able to do the two hour exam instead. The Faculty Policy on late submission is

"Late work will not be accepted without penalty unless an extension has previously been granted. Late work may be penalised by the deduction of up to 10% of available marks for that assessment for each full day that the work is late up to a maximum of 50% penalty. Extensions should not normally exceed one week. In the absence of documented grounds, an extension for a common assignment will not be granted beyond the date of return of the work of other students. "

7.   Administrative matters

Occupational Health and Safety - see www.riskman.unsw.edu.au/ohs for details of all UNSW OHS policies.

Equity and diversity - Those students who have a disability that requires some adjustment in their teaching or learning environment are encouraged to discuss their study needs with the course convener prior to, or at the commencement of, their course, or with the Equity Officer (Disability) in the Equity and Diversity Unit (9385 4734 or www.equity.unsw.edu.au/disabil.html). Issues to be discussed may include access to materials, signers or note-takers, the provision of services and additional

exam and assessment arrangements. Early notification is essential to enable any necessary adjustments to be made.

8.   Academic standards and plagiarism

The following statement is the official UNSW statement on plagiarism. You should read it carefully.

   Plagiarism is the presentation of the thoughts or work of another as one's own.*

Examples include:

- direct duplication of the thoughts or work of another, including by copying material, ideas or concepts from a book, article, report or other written document (whether published or unpublished), composition, artwork, design, drawing, circuitry, computer program or software, web site, Internet, other electronic resource, or another person's assignment without appropriate acknowledgement;
- paraphrasing another person's work with very minor changes keeping the meaning, form and/or progression of ideas of the original;
- piecing together sections of the work of others into a new whole;
- presenting an assessment item as independent work when it has been produced in whole or part in collusion with other people, for example, another student or a tutor; and,
- claiming credit for a proportion a work contributed to a group assessment item that is greater than that actually contributed.†

Submitting an assessment item that has already been submitted for academic credit elsewhere may also be considered plagiarism. Knowingly permitting your work to be copied by another student may also be considered to be plagiarism. An assessment item produced in oral, not written form, or involving live presentation, may similarly contain plagiarised material.

The inclusion of the thoughts or work of another with attribution appropriate to the academic discipline does not amount to plagiarism.

Students are reminded of their Rights and Responsibilities in respect of plagiarism, as set out in the University Undergraduate and Postgraduate Handbooks, and are encouraged to seek advice from academic staff whenever necessary to ensure they avoid plagiarism in all its forms.

The Learning Centre website <www.lc.unsw.edu.au/plagiarism > is the central University online resource for staff and student information on plagiarism and academic honesty. The Learning Centre also provides substantial educational written materials, workshops, and tutorials to aid students, for example, in:

- correct referencing practices;
- paraphrasing, summarising, essay writing, and time management;
- appropriate use of, and attribution for, a range of materials including text, images, formulae and concepts.

Individual assistance is available on request from The Learning Centre.

Students are also reminded that careful time management is an important part of study and one of the identified causes of plagiarism is poor time management. Students should allow sufficient time for research, drafting, and the proper referencing of sources in preparing all assessment items.

* *Based on that proposed to the University of Newcastle by the St James Ethics Centre. Used with kind permission from the University of Newcastle.*

† *Adapted with kind permission from the University of Melbourne.*

APPENDIX: UNSW SCHOOL OF LAW GRADUATE ATTRIBUTES

While this is a General Studies course which is not intended to be the basis of professional practice in law, one of its aims is to impart an awareness of some of the professional competences and skills which lawyers and legal academics need. Therefore, although the statement below is not strictly applicable to this course, it is provided for guidance.

What attributes do we develop in our students?

The UNSW School of Law instils in students the understandings, values, skills and qualities necessary to become highly qualified professionals with a strong sense of citizenship, community and social justice. A legal education at the UNSW Law School, therefore, develops graduates who have:

1. (**Core disciplinary knowledge**) a functioning and contextual knowledge of law and legal institutions;
2. (**Transferable intellectual skills**) excellent intellectual skills of analysis, synthesis, critical judgment, reflection and evaluation;
3. (**Research skills**) the capacity to engage in practical and scholarly research;
4. (**Communication skills**) effective oral and written communication skills both generally and in specific legal settings;
5. (**Personal and professional values**) a commitment to personal and professional self-development, ethical practice and social responsibility.

These attributes build on and contextualises the 12 generic UNSW graduate attributes. Thus, *core disciplinary knowledge* incorporate generic attributes 1, 2 and 9; *transferable intellectual skills*, attributes 3, 4 and 6; *research*, attribute 5; *communication*, attribute 12; *key values*, attributes 4, 7, 8, 9, 10 and 11.

What do these attributes mean?

1 A functioning and contextual knowledge of law and legal institutions means:

- a comprehensive knowledge of the core principles of law, including a critical understanding of the policy considerations informing the law;
- an understanding of the principal institutions in the Australian and other legal systems and their purpose and functions;
- an appreciation of the contextual factors that influence the operation of the law and the impact law has on society, politics, the economy and culture;

- a general understanding of Australian law in international and comparative perspective; and
- An engagement with the scholarship of law.

2 Excellent intellectual skills of analysis, synthesis, critical judgment, reflection and evaluation incorporate the ability to

- collect and sort facts;
- identify and analyse legal issues;
- interpret legal texts;
- apply the law to real legal problems;
- invoke theory and inter-disciplinary knowledge to develop new and creative solutions to legal problems;
- critique law and policy to develop new ideas about the law and law reform;
- Participate effectively in debates about the law.

3 The capacity to engage in scholarly and empirical research involves the ability to:

- develop and plan an effective research strategy
- collect, retrieve and collate relevant information
- analyse, evaluate and interpret information
- apply and report on empirical research

4 Effective oral and written communication skills both generally and in specific legal settings includes the ability to:

- Articulate and defend arguments about what the law is and/or should be in writing and orally.
- work with a diverse range of people and communities
- demonstrate effective listening skills and an ability to discern the legal issues presented

5 A commitment to personal and professional self-development, ethical practice and social responsibility incorporates:

- a willingness to engage in life-long learning, that is, retaining and extending existing legal and other skills and knowledge;
- the capacity to work both independently and as a productive member of a team;
- an understanding of the ethical framework in which law is practised;
- acceptance of personal and professional responsibility,
- a sense of social responsibility and justice;
- A commitment to values of equity, diversity and inclusiveness.