

Class 19: Fair Use Part 1

Administrative

Next Time

Change (Sorry)

Pick up what we were supposed to have covered the last day before spring break

473-501, Supp. 419-23, Supp. 430-32, section 501(a)

Including pages that had been removed

Add Supp. 450-54

Other pages won't be read.

Be prepared!

Drafting Exercise

Details on website


Due April 14th

All Mind Maps up to date

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Fair Use

Basics

Section 107 

History / Policy

How it's applied

"equitable rule of reason"
Mixed question of law & fact
Affirmative defense

Harper & Row v. Nation Enterprises

Basic Facts

Gerald Ford wrote an autobiography after leaving office.

Lots of "newsworthy" tidbits, most importantly his telling of the events leading up to the pardon of Nixon.

Time magazine entered into contract with Ford & publishers to publish excerpts from the book one week before release date.

Two payments. Second was supposed to be for \$12,500.

Two to three weeks before release, someone stole a copy of the manuscript and gave it to the editor of The Nation

Editor of The Nation (Navasky) worked quickly to excerpt passages in his magazine to scoop Time.

Navasky "attempted no independent commentary, research or criticism, in part because of the need for speed"

Time canceled second payment (\$12.5k)

Held

Reasoning

Four Factors

- 1. Purpose of the Use
- 2. Nature of the Copyrighted work.
- 3. Amount and Substantiality of Portion Used
- 4. Effect on the market.

Dissent: 200,000 word book, D used 300 words 107
Majority: 13% of D's article is lifted
Qualitative "The Heart"

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Fair Use

Campbell v. Acuff-Rose

