

Block Seminar (Fall Semester 2023, KSL 483 988, 5 ECTS)

Faculty of Law

Overview of Key Dates

May 22, 2023:	Application Period Begins
September 22, 2023:	Application Period Ends (applications will be considered on a rolling basis; the seminar may be fully booked by this date; see details below)
September 25, 2023:	First Seminar Meeting (Substantive Introduction and Assignment of Topics)
November 17, 2023:	Deadline to Submit Written Seminar Papers
November 24, 2023:	Seminar Presentations and Discussions

Visiting Professor Dr. Dev S. Gangjee

(University of Oxford, Faculty of Law)

will offer the following Block Seminar at the University of Bern this fall:

The International Protection of Geographical Indications

September 25 and November 24, 2023

Geographical Indications (GIs) signal the provenance of reputed products such as Champagne, Darjeeling and Prosciutto di Parma. They also constitute valuable collective brands. This course

1. Outlines the relevant international treaties mandating how they should be protected,
2. Describes and compares the three competing models of protection envisaged by these treaties (trademark law; unfair competition law; and sui generis protection),
3. Drawing on EU law, explains the distinctive features of the sui generis model, and
4. Explores contemporary challenges, including the effects of climate change on terroir and the accommodation of handicrafts and textiles in a regime designed around agricultural products such as grapes or olives.

Geographical Indications are a form of brand protection for traditional regional products. They have features in common with trademark law but also distinct priorities, registration requirements and infringement rules. As their inclusion in various Free Trade Agreements indicate, this area is growing in importance but remains obscure to non-specialists.

The topic of this seminar will be of interest to participating students for the following reasons:

- (a) This topic sits at the intersection of both international trade and cultural heritage priorities.
- (b) Its origins can be traced to early experiments with French wine regulation in the 19th century, which showcases a historical approach to help understand current controversies.
- (c) Through the lenses of law and geography as well as legal history, it offers a valuable vantage point on international IP harmonization and resistance to it.

It will therefore complement existing intellectual property options without covering any of the same territory.

Learning Outcomes

Students taking this course will obtain the following skills and knowledge. They will be able to:

1. Describe and explain the core features of geographical indications as a distinct category of protected signs in intellectual property law;
2. Demonstrate awareness of why geographical indications are different from trademarks;
3. Be familiar with the international treaties in this area;
4. Develop an understanding of protection options, including trademark options, the relevant EU regimes and selected domestic legislation on geographical indications;
5. Describe and explain how to register geographical indications under special sui generis protection;
6. Develop an awareness of and apply the conflict management rules between geographical indications and trademarks.

More general skills include further developing their independent research skills and improving their academic writing, reasoning, critical analysis, and presentation abilities in English.

Further information and procedures

This block seminar will be held in English and is targeted towards law students at the Master's level or above who have already taken an intellectual property course (or who will be taking one simultaneously). Participation is limited to a maximum of 6 students. Participants will be selected on a first registered, first considered basis. The application period begins on **Monday, May 22, 2023**, and **ends on Friday, September 22, 2023** (or until the seminar is fully booked)¹. If admitted to the seminar, you will receive an email to confirm your participation.

¹ This will be announced on https://www.iwr.unibe.ch/studium/lehrveranstaltungen/seminare/index_ger.html.

Please note that your attendance is binding at that point, and withdrawals are no longer possible without receiving a grade of 1.

To apply for the seminar, please email Laurianne Junod at laurianne.junod@iwr.unibe.ch providing the following information: first and last names, postal address, official university email address (@students.unibe.ch or @unibe.ch), phone number, registration number (“Matrikelnummer”), level of study (e.g. Master’s or LL.M.), number of semesters studied, two choices of paper topics with priority/ranking (see list below), any prior knowledge of and/or coursework in intellectual property,² and a brief statement of why you are interested in this seminar. All materials must be submitted in English.

A comprehensive introduction to the topic of the seminar will be given by Professor Gangjee and the individual seminar topics will be assigned at the **mandatory first seminar meeting on Monday, September 25, 2023, from 2 p.m. to 6 p.m.** Although students’ preferences will be taken into consideration, please note there is no guarantee that students will be assigned one of topics they chose.

Participating students are expected to write an individual **seminar paper** (in English with at least 35,000 and up to a maximum of 40,000 characters)³ that must be submitted no later than **Friday, November 17, 2023**, as well as to present their topics (20-minute presentations) followed by a discussion on the **mandatory seminar presentation day on Friday, November 24, 2023**. Active participation in all the discussions is expected, and attendance on both seminar days is required.

List of Paper Topics / Research Questions

Geographical Indications and Climate Change

Is climate change an existential threat to GI protection regimes, which are premised on the argument that specific conditions of physical geography give rise to regional products with distinctive characteristics?

This question critically revisits the fundamental justifications for GI protection, built around the notion of terroir, and the conditions under which GIs can be adapted or modified while still satisfying the core requirement of a link to specific geographical region and traditional method of production. It explores the tension between tradition and change.

² IP background is not necessarily required but will help the professor to better design the seminar.

³ Please note that students whose papers exceed or fall below this limit will have their grades reduced.

Non-Agricultural Geographical Indications

Critically assess whether non-agricultural GIs (e.g. crafts, textiles) can be successfully incorporated into any sui generis system developed around wines and other agricultural products.

This question requires candidates to consider whether a regime designed around wines – with a specific approach to identifying the link between product and place (*terroir*), drawing the boundaries of the region based on natural factors etc. – could be successfully adapted to recognize craft products, usually with a far greater degree of human involvement. Stated differently, is *terroir*-based GI protection suited to non-agricultural products?

Students will need to explore the policy arguments for extending GI protection to crafts and textiles, such as preserving dying craft techniques or providing consumers with a more robust guarantee of origin and quality, as well as practical conditions for registration.

Reconciling Interests of Trademark Owners and Registered Users of Geographical Indications

Can the interests of trademark owners and registered users of GIs be appropriately reconciled?

This topic explores the opportunity for GI right holders to object to applications for trademarks and the rules within trademark registration systems which seek to reconcile these interests. The topic will be especially of interest for students familiar with trademark law.

The Use of GI products by Third Parties as Ingredients in Their Own Products

The use of GI products by third parties – outside the group of authorized producers – as ingredients in their own products requires a careful balancing of interests and nuanced application of the infringement tests by courts.

The use of GI products as ingredients has the potential to allow greater innovation and satisfying consumer demand but carries the risk of misleading consumers as to how much of the GI has been used, or free riding on the reputation of the GI.

What rules or principles should be developed to allow this to occur while protecting the legitimate expectations of the parties?

The Court of Justice of the European Union and the Scope of Protection of Geographical Indications

Critically evaluate the following statement: “In light of the specific policies which geographical indications (GI) protection in the EU seeks to achieve, the scope of protection against evocation – as developed by the Court of Justice – is appropriate and proportionate.”

Protection against any “evocation” is exceptionally broad in EU law. Can its breadth be justified in light of the underlying policy rationales for this degree of protection? Do the legal tests developed by the Court of Justice correspond to the justifications?

Does this form of infringement adequately accommodate other values, rationales like the freedom to imitate and to effectively compete.

Geographical Indications and Generic Terms under TRIPS

Do we have adequate guidance in TRIPS to determine when a geographical indication has become a generic term for a type of product (such as “cheddar” for cheese)?

This requires students to identify the design features and categories of evidence which are most relevant for determining when a former GI no longer indicates a product from a specific place.

Historically, this has been one of the most controversial aspects of international GI protection (consider the American approach to champagne as being generic for sparkling wine).

Should you have any questions regarding this seminar, please contact Laurianne Junod at laurianne.junod@iwr.unibe.ch.

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