

MEDIA LAW STUDY GUIDE: FINAL EXAM

Concepts, Cases, Tests, Torts, Tensions and Terms

NOTE: *The final is cumulative, because we can't simply forget or push aside the First Amendment, but the emphasis is on material we've covered since the midterm, beginning with libel.*

Libel

The Six Hurdles:

- Defamation
- Identification (including group ID)
- Publication (and re-publication)
- Fault (levels, plaintiff categories)
- Falsity
- Injury (damages)

The single mistake rule

Three types or categories of libel defamation (libel per se, etc.)

Times v. Sullivan, 1964 (seditious libel, plaintiff categories and fault levels)

Curtis Publishing v. Butts, 1967

AP v. Walker, 1967

Firestone v. Time, 1972

Gertz v. Welch, 1983

Milkovich v. Lorain Journal

Jesse Ventura v. Estate of Chris Kyle (author, Navy SEAL)

Richard Jewell and the Centennial Park bombing

Retraction statutes

Trade libel

Other libel defense considerations and possible defense strategies

- Motion for summary judgment
- Consent
- Statute of limitations
- Jurisdiction
- Wire service defense
- Anti-SLAPP statutes and Rule 11
- The truth as a pro-active defense (substantial truth)
- Absolute privilege
- Qualified privilege (Fair Report)
- Neutral reportage
- First Amendment opinion defense; fair comment and criticism
 - Ollman v. Evans (1984) and the Ollman Test
 - Hustler v. Falwell
 - Philadelphia Newspapers v. Hepps

ISP immunity/Section 230 of the Communications Decency Act of 1996

McIntyre v. Ohio Elections Commission (1995) and anonymous expression

Dendrite Int'l v. Doe (2001) and the Dendrite test from Dr. Carroll's article

Privacy

Four dimensions or elements of privacy (solitude, intimacy, reserve, anonymity)

Privacy as a negotiated right

Privacy as a constitutional right (Fourth Amendment, Warren & Brandeis)

Technological innovation and privacy

Other realms of privacy (solitude, intimacy, reserve, anonymity)

1890 *Harvard Law Review*, "Right to Privacy", by Brandeis and Warren and their introduction of a "reasonable expectation of privacy"

Privacy Act of 1974

Privacy Protection Act of 1980

USA PATRIOT Act

Fourth Amendment

FTC's role policing privacy as part of Internet platforms' user agreements

Privacy law as tort law:

- Appropriation and the right to publicity
- Intrusion
- Publication of private facts
- False light

Access to Information

Public's "right to know" v. other priorities, like privacy, due process, etc.

Richmond Newspapers v. Virginia

Branzburg v. Hayes

Access to prisons

Death scene photos

FOIA, 1966

Electronic Freedom of Information Act, 1996

Open Government Act, 2007

Right to record

FOIA

- What is an agency?
- What is a record?
- Who is a person?
- How do you use FOIA?
- What are its exemptions?
- Additional statutes denying disclosure of infor., such as Homeland Sec. Act

Open records and open meetings statutes (sunshine laws)

Exemptions to open records

Exemptions to open meetings

Government in Sunshine Act of 1976

Georgia Open Records Act of 1959

Exemptions to Open Records Act

Georgia Open Meetings Act of 1965

What do you do if you are denied access?

The patchwork of laws (HIPPA, Clery Act, FERPA, DPPA, etc.)

Glomar doctrine (or 'response')

Reporter's Privilege and Shield

Source confidentiality and reporter's privilege

Source hygiene

Shield law (state and federal)

What is privilege?

- Branzburg v. Hayes (again)
- Times v. U.S. (Pentagon Papers case)

Free Flow of Information Act (federal shield law that has been proposed)

Why don't reporters want to reveal their sources? (3 big reasons)

Newsroom searches:

- Zurcher v. Stanford Daily
- Privacy Protection Act of 1980

Cohen v. Cowles Media Co. and *promissory estoppel*

Tips for reporters promising sources confidentiality

Promissory estoppel and Cohen v. Cowles Media

Ride-along cases

Free Press v. Fair Courts

Free press v. fair trial, First v. Sixth (and Fifth, Fourteenth)

Richmond Newspapers v. Virginia (again) & presumptive openness of courts

Types of prejudicial press coverage

Remedies at a judge's disposal (continuance, delay, change of venue, voir dire, gag orders, judicial admonition, etc. - 9 in all)

- Sheppard v. Maxwell

Prior restraints

- Nebraska Press Assn. v. Stuart: 3 factors before prior restraint is allowed
- Dickinson v. US

Closed courts

Press-Enterprise v. Riverside Superior Court test

Exceptions to open courts/open trials (juvenile courts, military tribunals, etc.)

Cameras in courtrooms

- Estes v. Texas, 1965
- Chandler v. Florida, 1980

Regulation of Airwaves (broadcast spectrum)

Where we got the FCC, and why? The rationale for the FCC's regulatory authority, and how it has changed since then (spectrum scarcity).

Ownership rules

Children's programming requirements

Safe Harbor

Cable and satellite regulation

The Fairness Doctrine

The Equal Time Rule

- Radio Act of 1912 and Radio Act of 1927
- Communications Act of 1934
- Red Lion Broadcasting Co. v. FCC, 1969
- Herald Publishing v. Tornillo
- Cable Communications Policy Act of 1984
- Consumer Protection and Competition Act of 1992
- Turner v. FCC, 1994
- Telecommunications Act of 1996
- Reno v. ACLU, 1997 (again) & COPA (3 tries)
- ABC v. Aereo, 2014
- Fox TV v. FCC, 2012
- FCC v. Pacifica, 1978

Obscenity and Indecency

Comstock Act and U.S. v. One Book Called Ulysses

Miller v. California (1973) and the Miller Test

COPA (part of the CDA)

Broadcast indecency

- FCC v. Pacifica (1978)
- Fleeting expletives (news-entertainment distinction)
- Fox v. FCC
- Safe Harbor policy
- TV program ratings (voluntary)

Net Neutrality (John Oliver clip assigned for viewing)

Branded content/Native advertising/VNRs and disclosure/disclaimers

Commercial Speech

Commercial speech v. political speech (four major contrasts)

Grid of FA protections by content (type of expression) and medium

FTC Act of 1914

Consumer culture

- Valentine v. Christensen, 1942
- Times v. Sullivan, 1964
- Bigelow v. Virginia, 1975
- Virginia State Board of Pharmacy v. Virginia Citizens, 1976
- Reno v. ACLU, 1997

Right to receive information

Compelled speech

Advertising categories that CAN be banned

Compelling v. substantial interest

Central Hudson V. Public Service Commission and the four-part Central Hudson Test (Commercial Speech Doctrine)

- Nike v. Kasky, 2003
- Citizens United v. Federal Election Commission, 2010

Self-regulation

Consumer Action; Government Action (FTC)

False advertising

Lanham Act

Materiality

Puffery ('World's Best Coffee')

FTC options when acting on advertising, from guidelines to injunctions (7 options)

Defenses for an advertiser

Corporate political speech & Citizens United case (Nike's press releases)

Copyright/Intellectual Property

Trademarks and patents

Copyright and its six exclusive rights

Limitations on copyright's 'limited monopoly': duration, licensing and scope

Derivative works

Copyright infringement

- 1790 copyright law (14 years with one renewable)
- 1976 Copyright Act
- Sonny Bono Copyright Extension Act (DMCA)
- Rural Telephone Service v. Feist Publications, 1991

Parody & Satire vis-à-vis copyright infringement claims

Plagiarism

Hot News Doctrine

Work for hire

Fair Use and its four dimensions

- US Code, Title 17
- DMCA Section 512 (takedown notices)
- Sony Corp. v. Universal City Studios, 1984
- MGM v. Grokster, 2005
- Lenz v. Universal Music Corp., 2007
- Campbell v. Acuff-Rose Music, 1994
- Castle Rock Entertainment v. Carol Publishing, 1997

Social media image use hygiene

Copyleft, Creative Commons, public domain

Digital Millennium Copyright Act

Takedown notices and safe harbor protection for ISPs

Disparaging trademarks and Matal v. Case (2017), Washington Redskins

General tips for success

- Form a study group.
- Create index cards of key cases, basic facts, dates, parties and significance.
- Use the textbook as a foundation and lecture notes for special emphases and for content not in the book but that the professor believes is important.
- Use the hyperlinked Powerpoint presentations to supplement your textbook reading and the lecture notes.
- Email or ask **specific** questions, which exclude overly broad questions such as, "What's libel?" Don't wait until the night before the exam to ask.