

MEDIA LAW MIDTERM STUDY GUIDE

I. Tips for success

- Form a study group but beware of groupthink, which when is when entire study group gets the same test question wrong
- Make an index card for each of the bigger cases, summarizing their facts and significance.
- Use the textbook as a foundation (your sheet music) and lecture notes for special emphases (improvisational jazz) and for content not in the book but that the professor believes is important, such as the explanation of incorporation.
- Ask the prof **specific** questions, which exclude overly broad questions such as, “Hey, what’s incorporation?” But, you probably shouldn’t wait until the night before the exam to ask those questions.

II. Concepts and Themes

- Sources of U.S. law and *types* of U.S. law
- What the law is supposed to do (stability and security)
- How our government makes law
- Deductive and inductive law
- Brief history of the First Amendment and the Bill of Rights
- U.S. court systems and how they fit together (district, circuit, USSC, etc.)
- Time, place and manner restrictions and statutes, and content neutrality, and the tests for these, including strict scrutiny and the O’Brien Test
- The various Incitement tests over time
- Censorship, licensing, taxation and, more broadly, prior restraints
- William Blackstone, Oliver Wendell Holmes, Jr. and a common law approach to jurisprudence
- Incorporating the First Amendment through the Fourteenth Amendment to apply to state laws
- The various jurisprudential philosophies about how to interpret and apply the F.A.
- Kinds or types of legal codes or systems of law in other countries
- Speech as conduct (action), conduct as speech, symbolic speech
- Various philosophical arguments for freedom of expression protections
- Arguments for the suspension of these freedoms during times of war
- Arguments for the limiting of these freedoms in public school settings, including high schools and colleges and universities, and the limits of the First Amendment in educational settings
- The Pentagon Papers and *Times v. U.S.*
- Categories of speech, primarily political speech and commercial speech, but also anonymous speech, corporate speech, government speech, professional speech
- Compelled speech
- Hate speech as a legal concept, the riddle of speech codes, whistle-blower speech and protections

- The concepts of a “true threat” and “intent” and their application in hate speech cases

III. Identify and place into context the following terms

(note: This list is my best attempt to catalog what we’ve covered and, therefore, what might appear on the exam, but it should not be considered all-inclusive. Consider it **nearly** all-inclusive)

(another note: there is some overlap among this next list and the one above):

sedition libel, precedent and *stare decisis*, judicial review, *writ of certiorari*, jurisdiction, common law, prior restraints and post-publication punishments, summary judgment, appeals courts, statutory law, public forum/non-public forum, incorporation, plaintiff, defendant, due process, equal protection under the law, concurring opinion, dissenting opinion, *per curiam* opinion, torts (civil wrongs), forum shopping, amicus brief, to “remand” a case, ad hoc balancing, preferred position balancing, absolutism, utilitarianism, strict scrutiny, Bad Tendency Test, ‘fighting words’ doctrine, ‘true threat,’ incitement, ‘rule of law’, *voir dire*, change of venue, change of *venire*, the broadcast spectrum

Be sure to review the vocabulary words in your textbook presented in bold and in the chapter margins.

IV. Explain the significance of the following statutes and cases to the same degree or extent that we used them in class:

- *Marbury v. Madison* (1803)
- The Alien & Sedition Acts of 1798
- *Barron v. Baltimore* (1833)
- The Espionage Act of 1917 and Sedition Act of 1918
- Smith Act of 1940
- *Debs v. U.S.* (1919)
- *Schenck v. U.S.* (1919)
- *Abrams v. U.S.* (1919)
- *Gilbert v. Minn.* (1921)
- *Gitlow v. NY* (1925)
- *Whitney v. California* (1927)
- *Near v. Minn.* (1931)
- *Stromberg v. California* (1931)
- *Grosjean v. American Press* (1936)
- *Dennis v. U.S.* (1951)
- *Yates v. U.S.* (1957)
- *Brandenburg v. Ohio* (1969)
- *U.S. v. O’Brien* (1967)
- *Times v. U.S.* (and *Washington Post v. U.S.*) (1971)
- *Wooley v. Maynard* (1977)

- *Citizens United v. FEC* (2010)
- *Pleasant Grove City (UT) v. Summum* (2009)
- *Burnside v. Byars* (1965)
- *Tinker v. Des Moines* (1969)
- *Hazelwood v. Kuhlmeier* (1988)
- *Beussink v. Woodland School District* (1998)
- *Flaherty v. Keystone Oaks School* (2002)
- *J.S. v. Bethlehem Area School District* (2002)
- *Barber v. Dearborn, Mich. P.S.* (2003)
- *Lowry v. Watson Chapel School District (Ark.)* (2006)
- *Morse v. Frederick (Alaska)* (2007)
- *Doninger v. Niehoff (Conn.)* (2009)
- *Layshock v. Hermitage School District (Pa.)* (2011)
- *Mahanoy Area School District v. B.L. (Pa.)* (2021)
- *Dickey v. Alabama State Board of Education* (1967)
- *Papish v. Board of Curators of the University of Missouri* (1973)
- *Kincaid v. Gibson* (2001)
- *Lane v. Simon* (2004)
- *Hosty v. Carter* (2005)
- *Christian Legal Society v. Martinez* (2010)
- *Chaplinsky v. New Hampshire* (1942)
- *Terminiello v. Chicago* (1949)
- *Cohen v. California* (1971)
- *RAV v. St. Paul* (1992)
- *Virginia v. Black* (2003)
- *Elonis v. U.S.* (2015)
- *Regina v. Hicklin* (1868)
- *Roth v. United States* (1957)
- *New York v. Ferber* (1982)
- *United States v. One Book Called "Ulysses"* (1933)
- *Miller v. California* (1973)
- *Pope v. Illinois* (1987)
- *Stanley v. Georgia* (1969)
- *FCC v. Pacifica* (1978)
- *Reno v. ACLU* (1997)
- *FCC v. Fox* (2009)

V. Format of the exam, per a consensus of students' wishes

- Multiple choice
- Short answer
- Matching

Notes: Case names will be provided, but not their significance.

A study guide is an aid that a professor might or might not provide to facilitate learning and studying, it is not a student 'right.' This document, therefore, is not a contract but rather an honest attempt to help you prepare, to do well, and to know the law. It is possible that something absent from this guide might slip onto the

exam; if it does, it is unintentional. It is not the professor's intention to "trick" or ambush you.

In a 50-minute test format, inevitably things you studied will not appear on the exam. It's unfortunate, but not unfair. Such brevity also means that those who KNOW the answers will be rewarded for their certainty by saving them precious time. I wish you all success!

If you have accommodations approved by Berry, please speak with the professor regarding the logistics of taking advantage of those accommodations. Do not, therefore, merely show up at the regular exam period because, among other reasons, there is a class that meets in our room directly after our class session.

