

JOUR 430: MEDIA LAW

“From what I have seen of Americans, I think that life would not be worth living without this freedom of self-expression.”

-Albert Einstein (1944)

“Free speech is not to be regulated like diseased cattle and impure butter. The audience that hissed yesterday may applaud today, even for the same performance.”

-William O. Douglas (1957)

Course Description

This course examines legal, philosophical, and critical issues surrounding the practices and principles of the freedom of expression within the context of media. An important focus of this course is the Speech Clause of the First Amendment to the United States Constitution: “Congress shall make no law ... abridging the freedom of speech.” Through the reading and analysis of U.S. case law, assigned articles, and your required text, *Major Principles of Media Law* (Belmas & Overbeck, 2016 edition), this course will trace the interpretation and development of traditional theories of free speech, including: prior restraints, defamation, free press/fair trial, newsgatherer’s privilege, obscenity, indecency, privacy, right of publicity, corporate speech, media regulation, along with addressing several other issues affecting both traditional and new media.

Additionally, we will examine some of the philosophical principles underlying the cases and controversies implicating freedom of speech and the press. Newsworthy changes and developments involving the freedom of speech doctrine occur often and may occur during the course of the semester! How will changes in technology affect our legal privacy interests? Can individual be held accountable for defaming someone through his or her Twitter feed or Facebook timeline? To what extent does the First Amendment protect commercial advertising/marketing from government regulation? What are the implications of government regulation of the Internet? How do we balance First Amendment protections and copyright protection in the digital age? These are just some of the interesting (and unsettled) questions and issues this class will cover over the course of the semester.

Required Reading:

The reading will primarily be based on case law (actual legal cases) posted on Beachboard; articles that I will post on Blackboard; and assigned pages from the textbook: G. Belmas and W. Overbeck, *Major Principles of Media Law* (Boston, MA: Wadsworth Publishing, 2016). The 2015 edition is also “acceptable” (but remember, the syllabus reading schedule is aligned with the 2016 edition)

Learning Outcomes

This course meets the following learning outcomes:

- (1) Demonstrate the ability to analyze and critically evaluate communication practices. By the end of the semester, students should be able to:
 - Articulate the basic philosophical assumptions of traditional theories of freedom of speech.
 - Understand the historical and legal framework of the First Amendment to the U.S. Constitution.
- (2) Articulate the reciprocal relationships between communication and culture. Students should be able to:

- Articulate the relationship between freedom of speech and American culture.
- (3) Demonstrate competency for effective and ethical communication. Students should be able to:
- Identify and describe key historical events (including landmark Supreme Court decisions) in the development of freedom of speech and the press in the United States.
- (4) Understand and apply communication competencies in civic engagement for a multicultural, diverse, global society. Students should be able to:
- Identify and articulate a position on important controversies in free speech law and policy in social conflicts (e.g. online defamation, national security, obscenity, issues of international jurisdiction).

Professor's (Virtual) Office Hours: TUES/WED 12:30-2:00PM

This course will introduce you to legal vocabulary and concepts you may not be familiar with. If a definition or concept is unclear, it will be to your advantage to quickly clarify it by emailing or skyping with me. I will be available for student consultation during posted office hours (**T/We: 12:30 pm-2 pm**) and by appointment.

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~Methods of Evaluation~

Exams (30% Midterm + 30% Final)

The exams will cover the course material in the online modules and readings and will include multiple choice and possibly short answer and essay questions. The midterm exam will be worth **30%** and the final exam will be worth **35%** of your final grade. If you need accommodations for an exam or assignment, please contact the university disability support services.

Quizzes + Hypothetical Case Analysis (25%)

This class will incorporate quizzes that will test you on the class material. These quizzes will provide you with an opportunity to demonstrate your understanding of the material and keep you on track of the reading schedule. Quizzes + Hypos will be worth 25% of your total grade. There will be on average, one quiz every other week, and a few assignment-hypotheticals, at least one before the midterm and final exam. Quizzes will be available on WED 12pm, during the week of the quiz, and must be completed by Friday, 5pm.

Hypothetical case analysis: At least two hypothetical cases will be assigned; one before the midterm and final exam. The purpose of the hypotheticals is for you to apply your knowledge of media law to new facts (based on similar real-life cases) in order to sharpen your critical analysis skills, and to further prepare you for your exams. You will need to carefully follow the instructions of the hypothetical. At a minimum, hypotheticals will require you to address the underlying media law issue(s), including explaining the pertinent elements/rules of the law, application of the law to the facts and finally predicting an outcome based on your legal analysis.

NO LATE ASSIGNMENTS/CLASS WORK WILL BE ACCEPTED. Please plan accordingly to ensure you turn in assignments and complete quizzes/exams on time.

Media Law Discussion Threads (15%)

Each student will be responsible for a minimum of **THREE (3) posts within the semester** on the course Beachboard site. In addition, your posts must be posted on three separate weeks (i.e. you can only get credit for one post in the same week). However, you may post and/or respond to other posts **several times** in the same week, but I want to encourage active participation throughout the semester, and therefore, **you only get credit for ONE POST PER WEEK (but you can post several times a week, but can only get credit for one post per week)**. Posts shall begin in the second week of class.

A post can include: (1) an **originally reported story** that appeared in the news (“news” defined as in a newspaper such as New York Times, Los Angeles Times, magazine, broadcast or on-line from any of the foregoing, but NOT from or in a news-aggregator or blog not associated with a “legacy” news source) dealing with some aspect either of media law or the First Amendment. If you want to post links, you should peruse news sites like the NY Times, LA Times, Washington Post and other new sources to find stories. NO blogs, personal tweet accounts, etc. (I don’t want someone else’s opinion about the news on free speech/media law, I want YOU to comment on media law/free speech news/issues)

A post can also include: (2) a substantive **response or commentary** to your classmate’s post; do not post a short descriptive response like “interesting case!” or a post with a string of emojis – you will get no credit for such a post. Your response or commentary to another’s post should include your analysis or opinion about a media law/First Amendment issue (e.g. why you believe a party is liable or the government is infringing on free speech rights, whether an element or several elements have not been satisfied). You can also tie-in the various free speech, freedom of the press issues we go over in class; is there an interesting pattern or trend that we are seeing with similar cases or controversies? You can even analyze the law to the facts to point out why you disagree with another poster or commentator (but let’s ensure that we have a civil exchange). **Again, you can post more than one post per week, but you only get credit for one post per week (Monday to Sunday)**; this is so you keep abreast of the news, and have the time to learn more about communication law and sharpen your critical analysis skills throughout the semester before posting.

Do not be afraid to speak out and take a position: remember, you can’t be neutral on a moving train. I welcome all comments, positions and ideas, regardless of political ideology. Let your voice and position be heard. I expect everyone to do the readings and have something to say (or at least have an opinion) about the issues or policies addressed.

GRADING:

QUIZZES + HYPOS (25%)	250 points
DISCUSSION THREAD (15%)	150 points
MIDTERM EXAM (30%)	300 points
FINAL EXAM (30%)	<u>300 points</u>
	Total: 1000 points

Preparation:

The learning process will be enhanced if you read the assigned material the week they are assigned and before any quizzes or assignments. Students’ grades are often directly correlated with whether or not the student has completed the weekly reading assignments.

A note on the readings: Legal cases (and case name), including cases in the textbook, do NOT need to be committed to memory, although the case names frequently are useful to refreshing your memory

on a particular aspect or issue of media law. When in doubt, please ask. When reading cases, pay special attention to LEGAL ISSUES and the substantive LAW/RULES AND how these laws are then APPLIED to the FACTS of the case.

The schedule does not sequentially follow the chapters in the book; we skip around!

READING SCHEDULE

- Chapter readings refer to the textbook, *Major Principles of Media Law (2016)*; 2015 edition is “acceptable” but pages may not exactly align.
- Reading material found on Beachboard, such as pdf/word attachments or online links are denoted with an asterisk (*)
- Please review the syllabus and Beachboard for specific reading instructions/guidance as to what sections/page # to read

Week	Topic	Reading Assignment
Week 1	Introduction to Course; the American Legal System	8/22 - 8/26 Chapter 1
Week 2	American Legal System Continued	8/29 - 9/2 *Online links on U.S. Legal System
Week 3	Inciteful Speech; True Threats in the Digital Age <i>Schenk v. U.S.</i> (1919) <i>Brandenburg v. Ohio</i> (1969) <i>Elonis v. U.S.</i> (2015)	9/5 – 9/9 * <i>Brandenburg v. Ohio</i> * <i>Elonis v. U.S.</i> (Skim) Chapter 2: p. 45-62
Week 4	Freedom of the Press; Prior Restraints, and First Amendment Policies and Scope of Protection; Hate Speech <i>NY Times v. U.S.</i> (1971) <i>R.A.V. v. St. Paul</i>	9/12 - 9/16 * <i>NY Times v. U.S.</i> * <i>Whistleblowers are Good for Democracy</i> * <i>R.A.V. v. St. Paul</i> Chapter 3: p. 63-93 Online (Bb) Quiz #1
Week 5	Content-based v. Content-Neutral Speech; Time/Place/Manner speech; <i>Frisby v. Shultz</i> Balancing Freedom of the Press v. Right to a Fair Trial; <i>Nebraska Press v. Stuart</i> Commercial Speech; Advertising and the Law <i>Kasky v. Nike</i> (2002)	9/19 – 9/23 * <i>Frisby v. Schultz</i> * <i>Nebraska Press v. Stuart</i> * <i>Kasky v. Nike</i> (Skim) Chapter 7: p. 327 – 339 Chapter 13: p. 571 - 588

Week 6	Symbolic Speech; <i>U.S. v. O'Brien</i> (1968) <i>Texas v. Johnson</i> (1989) Defamation (Libel v. Slander)	9/26 – 9/30 * <i>Texas v. Johnson</i> * Article links on Terry Jones and burning the Quran Chapter 4: p. 125 – 139 * <i>NY Times v. Sullivan</i> (1964) Online (Bb) Quiz #2
Week 7	Defamation cont'd: Actual Malice Standard; Public/Private Figure <i>Gertz v. Robert Welch, Inc.</i> (1974) Defamation in the digital age cont'd; Extension of Speech Protection: Parody and Satire; <i>Hustler v. Falwell</i> (1988) CDA §230 (Online Immunity for Third-party posts); Revenge Porn	10/3 – 10/7 * <i>Gertz v. Welch</i> Chapter 4: p. 139 - 158 * <i>Hustler v. Falwell</i> * “Revenge Porn” articles, and article on CDA section 230.
Week 8	Government Speech <i>Pleasant Grove City, Utah v. Summum</i> (2009) <i>Walker v. Texas Division</i> (2015)	10/10 – 10/14 * <i>Pleasant Grove, Utah v. Summum</i> * <i>Walker v. Texas</i> Hypo #1 Due 10/12 12:00pm
Week 9	Review Past Material; Prepare for Midterm Exam	10/17 – 10/21
Week 10	MIDTERM WEEK	10/24 – 10/28 Exam must be completed by 10/28, 8:00pm
Week 11	Right of Privacy: False Light; Intrusion into Seclusion; Disclosure of Private Facts; Misappropriation <i>Sipple v. Chronicle Publishing</i> (1984) <i>White v. Samsung</i> (1992)	10/31 – 11/4 * <i>Sipple v. Chronicle Publishing</i> * <i>White v. Samsung</i> Chap 5: 189 - 220
Week 12	Right of Publicity: Traditional/Legacy and Social Media <i>Abdul-Jabbar v. General Motors</i> (1996) <i>Fraley v. Facebook</i> (2011)	11/7 – 11/11 * <i>Abdul-Jabbar v. General Motors</i> ; * “Former NCAA Athletes ... Right of Publicity” article (LATimes article) Chap 5: 220 - 232 Quiz #3 on Bb

Week 13	<p>Copyright and Fair Use;</p> <p>Digital Millennium Copyright Act Safe Harbors;</p> <p>Regulation of the Media Industries; Net Neutrality</p>	<p>11/14 - 11/18</p> <p>* <i>Luke Campbell v. Acuff-Rose</i> * “Supreme Court Rejects FCC Fines ...” *Net Neutrality Articles (2) Chap 6: 245 - 276</p> <p>Lessig TED talk link on Bb</p> <p>Hypo #2 Due 11/16, 12:00PM</p>
Week 14	~THANKSGIVING BREAK~	<p>11/21 – 11/25</p> <p>NO READING ASSIGNMENTS</p>
Week 15	<p>Obscenity v. Pornography v. Indecency; Film & Video Game regulation</p> <p><i>Luke Records v. Navarro</i> (1992) <i>U.S. v. Stevens</i> (2010) <i>Brown v. EMA</i> (2011)</p> <p>Campus/Off-campus Student Speech <i>Tinker v. Des Moines</i> (1969) <i>Bell v. Itawamba County School Board</i> (2015)</p>	<p>11/28 – 12/2</p> <p>*<i>Luke Records v. Navarro</i>; *“U.S. v. Stevens: Win, Lose or Draw for Animals?”; *<i>Brown v. EMA</i> (read: p. 1-18 ONLY) Chap 10: 437 - 450 *Park, “Restricting Anonymous ‘Yikety Yak’” <i>article</i></p>
Week 16	<p>Newsgatherer’s Privilege; <i>Branzburg v. Hayes</i> (1972)</p> <p>Anonymous Speech <i>McIntyre v. Ohio Elections Commission</i> (1995)</p> <p>Corporate Speech, Campaign Finance <i>Citizens United</i> (2010)</p>	<p>12/5 – 12/9</p> <p>Chap 8: 361 - 379 *<i>McIntyre v. Ohio Elections Commission</i> *<i>Citizens United</i> article links</p>
Week 17	FINAL EXAM WEEK	FINAL ON BEACHBOARD