

Media Law

LAW 6841, Class No. 25302

Mondays & Tuesdays, 9:30 – 10:55 a.m.
Holland Hall 345
Spring 2020

Prof. Clay Calvert

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Office Hours: Tuesdays, 12:00 – 3:00 p.m. (and by appointment)

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Course Description:

This course focuses on bodies of law – constitutional, common law and statutory – affecting the gathering and dissemination of information by the media. Topics covered include: 1) First Amendment doctrines and standards of scrutiny as they affect the media, speech and press; 2) theories for protecting speech and the press; 3) defamation; 4) privacy (public disclosure of private facts, intrusion into seclusion, and appropriation); 5) liability for emotional, physical and economic harms caused by the media; 6) subpoenas and searches; 7) media access to information and locations; 8) comparing the regulation of print, broadcasting and the internet; and 9) disfavored speech (obscenity, child pornography, broadcast indecency and commercial speech). Attention is given early to regulating speech on new technologies and to possibly adapting First Amendment theories and doctrines to deal with these technologies.

Learning Outcomes:

Learning outcomes include understanding and being able to explain and apply: 1) key theories and rationales for protecting speech and the press under the First Amendment; 2) important First Amendment doctrines and rules that affect the media, speech and press, as well as being able to understand strengths and weaknesses of those doctrines and rules; 3) the elements, defenses and privileges of multiple torts including, but not limited to, defamation, intentional infliction of emotional distress, intrusion into seclusion and public disclosure of private facts; 4) cases (including their names, facts, holdings and the rules/doctrines associated with them) affecting media law. Additionally, students should also be able to demonstrate the ability to understand the interactions and intersections between First Amendment jurisprudence and tort law affecting the media. Furthermore, students should be able to propose, explain and defend potential changes in both First Amendment doctrines and torts that affect the media.

Required Casebook:

MARC A. FRANKLIN ET AL., MEDIA LAW: CASES AND MATERIALS (9th ed. 2016).

Other Materials:

Other materials including, but not limited to, edited versions of additional cases, are posted in the “Files” folder on the Canvas website for the course. Additionally, future reading assignments (those beyond for the first eleven weeks of the class listed here on this syllabus) will be posted on Canvas.

Attendance:

Attendance is required. Students must sign an attendance roster circulated at the start of each class. It is your responsibility to find the attendance roster at the start of each class. No student will be permitted to sign the attendance roster after class. It is a violation of the course rules and the UF Law Honor Code to falsely indicate that you were present in class or to assist a classmate in such misrepresentation. Six or more unexcused absences may adversely affect one’s grade and may result in being ineligible to sit for the exam at the end of the semester.

If you miss a class, you are responsible for obtaining notes from a fellow student who attended class, as well as obtaining any handouts from a fellow student.

Please be on time.

A seating chart will be circulated after the end of the drop-add period. Your seat on that day of class will be your seat for the rest of the semester.

Class Preparation:

Students should expect to spend, on average, approximately two hours preparing for every hour of in-class time. That means should spend at least six hours a week preparing outside of class for this three-credit class.

I will randomly call on students in class. Students should be prepared and ready to discuss the materials from the reading in a thoughtful and informed manner.

Laptops:

No electronic devices (laptops, tablets, netbooks, smart phones, etc.) may be used during class. Students violating this rule will be asked to leave the classroom.

Recording Devices:

Use of recording devices (audio and/or video) is not permitted in the classroom without my prior permission.

Academic Honesty:

Academic honesty and integrity are fundamental values of the University community. Students are bound by the UF Law Honor Code, which can be found at the following link:

<https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>

Exam, Grading Information and Grading Scale:

Your final course grade will be based primarily on an in-class, three-hour final examination that will be closed-notes, closed-books format with no outside aids allowed.

The exam is currently scheduled for Thursday, April 30, 2020, at 1:00 p.m.

As tentatively planned, the exam might involve a combination of items: 1) a hypothetical fact pattern requiring analysis in a clear Issue-Rule-Analysis-Conclusion format; 2) an extensive battery of multiple-choice and true-false questions regarding cases, doctrines and rules; and 3) either multiple short-answer questions or one question that will require a more extended, in-depth answer, analysis and/or argument. This format is tentative and is subject to change.

Your grade is subject to modification based upon course attendance as described above.

The Levin College of Law’s mean requirement applies to this elective class. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>

Accommodations:

Students requesting accommodation for disabilities must first register with the Disability Resource Center:

- <https://disability.ufl.edu/students/>
- <https://disability.ufl.edu/students/get-started/>

Once registered, students will receive an accommodation letter that must be presented to the Assistant Dean for Student Affairs when requesting accommodations. Students with disabilities should follow this procedure as early as possible in the semester.

Evaluations:

Your voluntary feedback on the quality of instruction in this course is very important and can be completed online at:

- <https://evaluations.ufl.edu/evals/Default.aspx>

Evaluations are typically open during the last two or three weeks of the semester. Your feedback is very important to me. Thank you very much in advance for taking the time to do this!

Reading Assignments, Weeks One Through Eleven:

Below are the reading assignments for the first eleven weeks of the course, which brings through the first three weeks *after* Spring Break (Spring Break is week eight, with no new reading). All readings should be done before coming to class, and you should be prepared to thoughtfully and thoroughly discuss the readings in class. I will call on people, so please be ready.

I reserve the right to modify the assignments from time to time, and to utilize additional handouts, overheads and other materials. Some assignments are from the required casebook and some are posted on Canvas.

After about the first seven or eight weeks of class, and based upon our progress in keeping with the reading schedule below, I will then post the reading assignments for the remainder of the semester on Canvas.

Addendum:

The professor reserves the right to make reasonable changes to the reading schedule, exam format and course policies at any time during the semester.

Reading Assignments: Weeks One – Eleven

Week No. 1 (Jan. 13 – 14): *New Media, Old Doctrines & Free Speech Theories*

- Monday: *Brown v. Entm't Merchs. Ass'n + Packingham v. North Carolina* [both cases are in the “Files” folder on Canvas]
- Tuesday: *Knight First Amend. Inst. v. Trump* + Casebook pp. 3 – 19 [the *Knight* case is in the “Files” folder on Canvas]

Week No. 2 (Jan. 20 – 21): *Old Media, Different Treatment*

- Monday: No Class (Martin Luther King Jr. Day)
- Tuesday: Casebook pp. 87 – 93 (focus on *Tornillo*) + pp. 123 – top third of 130 (focus on *Red Lion Broad.*) + pp. 158 – top two-thirds of 166 (focus on *Turner Broad. Sys.*)

Week No. 3 (Jan. 27 – 28): *Evolving Doctrines & the Internet, Then on to Prior Restraints*

- Monday: Casebook pp. 166 – top of 175 (focus on multiple cases, including but not limited to *U.S. v. O'Brien*, *Ark. Writers Project v. Ragland*, *Reed v. Town of Gilbert* and *Reno v. ACLU*).
- Tuesday: Casebook pp. 29 – top two-thirds of 46 (focus on Blackstone's writings, *Patterson v. Colorado*, *Near v. Minnesota*, *Tory v. Cochran*, *Alexander v. United States*, the Pentagon Papers Case (*New York Times v. U.S.*) and the Progressive Case (*U.S. v. Progressive*)).

Week No. 4 (Feb. 3 – 4): *Fair Trial Concerns in Gagging the Press, Parties & Attorneys; Then on to Stopping the Press from Publishing Lawfully Obtained Facts*

- Monday: Casebook pp. 46 – 63 (focus on *Nebraska Press Ass'n v. Stuart*, *Beaufort Cnty Bd. of Educ. v. Beaufort Cnty* and *Gentile v. State Bar of Nevada*) + *People v. Bryant* [the *Bryant* case is in the “Files” folder on Canvas].
- Tuesday: Casebook pp. 80 – 84 (*Smith v. Daily Mail*), pp. 315 – 324 (*Cox v. Cohn* and *Florida Star v. B.J.F.*) and pp. 469 – 476 (*Bartnicki v. Vopper*).

Week No. 5 (Feb. 10 – 11): *Misc. First Amendment Issues Affecting the Press*

- Monday: Review & Catch-Up Day (or in-class case exercise) – No New Reading
- Tuesday: Casebook pp. 94 – 100 top of page (*Simon & Schuster Inc. v. New York State Crime Victims Bd.*) + pp. 371 – 375 top third of page (*Cohen v. Cowles Media Co.*) + pp. 555 – 558 (newsroom searches, *Zurcher v. Stanford Daily* and Privacy Protection Act of 1980).

Week No. 6 (Feb. 17 – 18): *Disfavored Categories of Speech: Part I*

- Monday: Casebook pp. 108 – 112 (focus on, among other things, *Chaplinsky v. New Hampshire*, *R.A.V. v. City of St. Paul*, *United States v. Stevens*, *Roth v. United States*, the *Miller* test for obscenity on the top of 111, and *Stanley v. Georgia*).
- Tuesday: Casebook pp. 112 – 115 top of page (focus on, among other things, *New York v. Ferber*, *Ashcroft v. Free Speech Coal.* re: Child Pornography Prevention Act of 1996, and 18 U.S.C. § 2256 (2) (A) defining sexually explicit conduct).

Week No. 7 (Feb. 24 – 25): *Disfavored Categories of Speech: Part II*

- Monday: Casebook pp. 141 – 150 top of page (focus on, among other things, 18 U.S.C. § 1464, *FCC v. Pacific Foundation*, *FCC v. Fox Television Stations, Inc.* and of the Notes, with a special focus on Notes 1 and 6).
- Tuesday: Casebook pp. 115 – 122 (focus on, among other things, *Greater New Orleans Broad. Ass'n v. U.S.* and the *Central Hudson* test for commercial speech cases described within it, and all of the Notes, with a special focus on the Michael Jordan cases and the Supreme Court's ruling in *Sorrell v. IMS Health Inc.*) + *Zauderer v. Office of Disciplinary Counsel* [the *Zauderer* case is in the "Files" folder on Canvas]

Week No. 8 (Mar. 2 – 3): *Spring Break*

Week No. 9 (Mar. 9 – 10): ***Access to Judicial Proceedings & Access to Law Enforcement Searches and Recording Information and Police***

- Monday: Casebook pp. 637 – 659 (focus on, among other things, *Gannett Co. v. DePasquale*, *Richmond Newspapers v. Virginia*, *Globe Newspaper v. Superior Court*, *Press-Enterprise I*, *U.S. v. King*, *U.S. v. Dinkins*, *Press Enterprise II* and *Leigh v. Salazar*).

- Tuesday: Casebook pp. 464 – 469 middle of page (focus on, among other things, *Berger v. Hanlon*, *Wilson v. Layne* and laws regarding wiretapping and recording of conversations) +
Casebook pp. 480 (starting with “*Citizen Journalism and Police Encounters*”) – 482 (first two-thirds of the page through *Foster v. Svenson*) (focus on, among other things, *ACLU v. Alvarez*, *Glik v. Cunniffe*, *Gericke v. Weare Police Dep’t*, *Crawford v. Gieger* and *Foster v. Svenson*).

Week No. 10 (Mar. 16 – 17): ***Media Liability for Emotional & Physical Harm***

- Monday: Casebook pp. 355 – 370 (focus on, among other things, the *Restatement (Second) of Torts* § 46 definition (and elements) of the tort of intentional infliction of emotional distress, *Hustler Mag. Inc. v. Falwell*, *Snyder v. Phelps*, *Citizen Publishing Co. v. Miller* and *Esposito-Hilder v. SFX Broad.*) +
Armstrong v. H&C Communications [the *Armstrong* case is in the “Files” folder on Canvas] +
Hustler ad parody that sparked the *Falwell* case [the ad parody is in the “Files” folder on Canvas]

- Tuesday: Casebook p. 71 (the paragraph on *Brandenburg v. Ohio*) +
pp. 378 – 388 (top third of page) (focus on, among other things, *Herceg v. Hustler Magazine, Inc.*, *Weirum v. RKO*, and *Olivia N. v. Nat’l Broad. Co.*) +
Stricklin v. Stafani [the *Stefani* case is in the “Files” folder on Canvas].

Week No. 11 (Mar. 23 – 24): *Privacy Torts: Public Disclosure of Private Facts and Intrusion into Seclusion*

- Monday: Casebook pp. 295 – 312 (focus on, among other things, the Warren & Brandeis law journal article, the *Restatement (Second) of Torts* § 652D definition (and elements) of the public disclosure tort, *Haynes v. Alfred Knopf, Inc.*, *Benz v. Washington Newspaper Publishing Co.*, *Diaz v. Oakland Tribune*, the notes discussing how newsworthiness should be defined, *Sipple v. Chronicle Publishing Co.*, and the “Privacy Rights of Survivors” cases of *Reid v. Pierce County*, *Catsouras v. Dep’t of California Highway Patrol*, *Marsh v. County of San Diego* and *National Archives and Records Administration v. Favish*).
- Tuesday: Casebook pp. 443 – 463 (focus on, among other things, the *Restatement (Second) of Torts* § 652B definition (and elements) of the intrusion tort, *Shulman v. Group W. Productions, Inc.*, *Sanders v. ABC, Inc.*, *Galella v. Onassis*, California’s anti-paparazzi legislation and *Florida Publishing Co. v. Fletcher* in the trespass section).