

# *Media Law*

## LAW 6841, Class No. 21243

Mondays & Tuesdays, 9:00 – 10:25 a.m.  
Holland Hall 355B  
Spring 2022  
Prof. Clay Calvert

**Office:** 343 Holland Hall

**Office Hours:** Mondays, Noon – 3:00 p.m. (and by appointment)

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### **Course Description:**

This course focuses on different bodies of law – constitutional, common 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 and intrusion into seclusion); 5) liability for emotional, physical and economic harms caused by the media; 6) newsroom searches and subpoenas; 7) media access to information and locations; and 8) comparing the regulation of print, broadcasting, cable and the internet. 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, public disclosure of private facts, and appropriation; and 4) cases (including their names, facts, holdings and the rules/doctrines associated with them) affecting media law and/or the First Amendment. 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 required case readings, are posted in the “Files” folder on the Canvas websites for the course.

**Attendance:**

Attendance is required and will be taken each day. 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 have a legitimate reason for missing a class, you should contact me, either in person or via email, before that class or within 24 hours after that class ends for your absence to be excused.

If you miss a class, you are responsible for obtaining notes from a fellow student who attended class. Please be on time.

The Levin College of Law’s policy on attendance can be found [here](#).

**Class Preparation:**

You should expect to spend, on average, approximately two hours preparing for every hour of in-class time. That means you 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. You should be prepared and ready to discuss the materials from the reading in a thoughtful and informed manner.

**Laptops:**

Laptop computers or similar devices may be used during class, but only for purposes of note taking for this class and/or outlining for this class. Laptop computers or similar devices may not be used for any other purposes. You will be asked to leave the classroom if you use them for other purposes.

### **Recording of Lectures:**

You are allowed to record video or audio of class lectures. The purposes for which these recordings may be used, however, are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

A “class lecture” is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To “publish” means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third-party note/tutoring services.

### **Academic Honesty:**

Academic honesty and integrity are fundamental values of the University community. You 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 a three-and-half (3.50) hour final examination that, as tentatively planned, will occur in an in-person, closed-notes, closed-books format. The word “tentatively” is used because this is subject to change due to changes in the COVID-19 situation.

The exam currently is scheduled for **Wednesday, May 11, 2022, at 1:00 p.m.**

As tentatively planned for an in-person, closed-notes, closed-books format, the exam will involve two parts: 1) a hypothetical-based essay question that may include several subpart questions, and 2) a part consisting of from four to six short-answer questions. This format and structure is tentative and is subject to change, particularly if changes in the COVID-19 situation necessitate that the exam occur remotely. Additionally, the length of time to complete the exam may 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. That policy can be found [here](#). The following chart describes the specific letter grade/grade point equivalent in place:

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

### **Exam Delays and Accommodations:**

The law school policy on exam delays and accommodations can be found [here](#). It applies to the exam given in this class.

### **Accommodations:**

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

- <https://disability.ufl.edu>
- <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 (Assistant Dean Brian Mitchell) when requesting accommodations. Students with disabilities should follow this procedure as early as possible in the semester.

### **Evaluations:**

You are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is [here](#). You will be notified when the evaluation period opens and can complete evaluations through the email you will receive from GatorEvals, in the Canvas course menu under GatorEvals, or at <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available [here](#).

### **Addendum:**

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

### **Reading Assignments for the Course:**

Below are the reading assignments for the course. 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.

# Reading Assignments

## Week No. 1 (Jan. 18):

### *The First Amendment & Theories for Protecting Speech*

- **Monday:** Casebook pp. 3 – 19. In addition to the early history of the First Amendment, pay particular attention to the discussion of the various values and purposes served by protecting free speech.

## Week No. 2 (Jan. 24 – 25):

### *New Media, Old Doctrines*

- **Monday:** *Brown v. Entertainment Merchants Association* [*Brown* is in the “Files” folder on Canvas]
- **Tuesday:** *Packingham v. North Carolina* + *Knight First Amendment Institute v. Trump* [Both cases are in the “Files” folder on Canvas]

## Week No. 3 (Jan. 31 – Feb. 1):

### *Distinguishing Content-Based Laws from Content-Neutral Laws & Toward a Medium-Specific First Amendment Jurisprudence*

- **Monday:** Casebook pp. 166 (start at bottom quarter of page) – pp. 168 (through the top third of the page). Focus on three cases: *United States v. O’Brien*, *Arkansas Writers Project v. Ragland* and *Reed v. Town of Gilbert*.
- **Tuesday:** Casebook pp. 87 – 93 (focus on *Tornillo*) + pp. 123 – 130 (top third of the page (focus on *Red Lion Broadcasting*)).

## Week No. 4 (Feb. 7 – 8):

### *Toward a Medium-Specific First Amendment Jurisprudence Continued & on to Prior Restraints on Speech*

- **Monday:** Casebook pp. 158 – top two-thirds of 166 (focus on *Turner Broad.*).
- **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. 5 (Feb. 14 – 15):

### *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*).
- **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. 6 (Feb. 21 – 22):

### *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. 7 (Feb. 28 – Mar. 1):**

***Miscellaneous First Amendment Issues Affecting the Press***

- **Monday:** Review & Catch-Up Day – 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. 8 (Mar. 7 – 8):**

***Spring Break — No Classes***

**Week No. 9 (Mar. 14 – 15):**

***Public Disclosure of Private Facts***

- **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:** Continue with discussion of reading from above.

**Week No. 10 (Mar. 21 – 22):**

***Intrusion into Seclusion and Trespass***

- **Monday:** 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).
- **Tuesday:** Continue with discussion of reading from above.



## Week No. 11 (Mar. 28 – 29):

### *Intentional Infliction of Emotional Distress (IIED) & Media Liability for 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] + Real Campari ad with Jill St. John [the real Campari ad is in the “Files” folder on Canvas].
- **Tuesday:** Casebook p. 71 (the paragraph on *Brandenburg v. Ohio*) + pp. 378 – 388 (through the top third of the page. Focus on, among other things, *Herceg v. Hustler Magazine, Inc.*, *Weirum v. RKO*, and *Olivia N. v. National Broadcasting Co.*) + “Orgasm of Death” article from *Herceg* [in the “Files” folder].

## Week No. 12 (Apr. 4 – 5):

### *Defamation Law*

- **Monday:** Casebook pp. 185 – 203 (stop at “Fault”). In addition to the two cases excerpted in this span of pages (the cases of *MacElree v. Philadelphia Newspapers, Inc.* and *Matherson v. Marchello*), all of the textual material before and after the cases (including but not limited to the “Notes and Questions”) is very important, as it addresses many of the elements, rules and requirements of defamation law. In other words, please be sure to read all of the material carefully, not simply the two excerpted cases.
- **Tuesday:** Casebook pp. 203 – 214 (top of page). The case of *New York Times Co. v. Sullivan* is the most important defamation case in terms of extending First Amendment protection to the press when reporting on public officials and their official conduct; we will spend nearly all of the class period on it. + “Heed Their Rising Voices” ad from *Sullivan* [in the “Files” folder].

## Week No. 13 (Apr. 11 – 12):

### *Defamation Law Continued*

- **Monday:** Casebook pp. 214 – 223 (top of page). There are many cases discussed here, each of which relates in some way to actual malice – its extension to public-figure plaintiffs, its meaning (i.e., what reckless disregard means and what is evidence of it), when a knowingly altered quote becomes false for purposes of actual malice, and standards of proof related to actual malice. All of this is important. Although there is not a large excerpted case in this span of pages, you should pay attention to all of the cases mentioned.
- **Tuesday:** Casebook pp. 223 (top of page) – 237 (top third of page). The case of *Gertz v. Robert Welch, Inc.* is probably the second most important defamation case in terms of the relationship between state libel law and the First Amendment. We will spend most of the class period discussing it, as well as the notes that follow it through and including the discussion of *Dun & Bradstreet v. Greenmoss Builders*.

## Week No. 14 (Apr. 18 – 19):

### *Defamation Law Continued*

- **Monday:** Casebook pp. 237 (top third of page) – 253 (middle of page). This material relates to sorting out who is a public official, who is a public figure, who is a private figure, and who has the burden of proving truth/falsity. Pay particular attention to the following cases: *Rosenblatt v. Baer*; *Monitor Patriot Co. v. Roy*; *Time, Inc. v. Firestone*; *Wolston v. Readers Digest Association*; *Hutchinson v. Proxmire*; *Waldbaum v. Fairchild Publications*; *WFAA-TV, Inc. v. McLemore*; and *Philadelphia Newspapers, Inc. v. Hepps*.
- **Tuesday:** Casebook pp. 255 – 261 (top third of page), paying particular attention to the cases of *Ollman v. Evans* (including the four factors articulated in that case) and *Milkovich v. Lorain Journal Co.* on the question of fact v. opinion in defamation law + Casebook pp. 278 (bottom of page) – 285 (middle of page), paying particular attention to *Salzano v. North Jersey Media Group*. + *Moore v. Cohen* (selected excerpts) [*Moore v. Cohen* is located in the “Files” folder] + Florida Retraction Statute [the Florida Retraction Statute is located in the “Files” folder] + Florida Anti-SLAPP Statute [the Florida Anti-SLAPP Statute is located in the “Files” folder].

**Week No. 15 (Apr. 25):**

***Catch-Up Day***

- **Monday:** No Reading: We will use this day to catch up on material.