

6.13.05 (Ashman & Haig)  
Media Law I

Another teacher who doesn't know how to use the technology in a class room.  
Beginning with the Paris Hilton Carl's Burger Ad.

He is giving a lecture on his experience in St. Lucia and it has NOTHING to do with this class! He is totally plugging his next class....

## I. Freedom of Speech

- First Amendment:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

- 14th Amendment:

“Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

## II. Exceptions

### A. Copyright infringement

### B. Incitement

- Brandenburg v. Ohio (U.S. Supreme Court, 1969)
  - " [T]he constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."

### C. Defamation (Libel and Slander)

- Elements
  - Publication
    - anyone who reports information may be liable
    - "republisher" equally liable; but
      - requirement of proof of fault
      - media entitled to certain privileges in reporting information
      - conduits not liable
  - Identification
    - "of or concerning the plaintiff"
    - NY Times v. Sullivan (U.S. Supreme Court, 1964)
      - criticism of government not necessarily "of and concerning" individuals in government
  - Defamation
    - words tend to injure one's reputation; diminish person's standing in community



- eavesdropping, use of telephoto lenses, wiretapping, etc.
- elements
  - intrusion into private place, conversation or matter
  - in manner highly offensive to reasonable person
- key issue is whether plaintiff enjoyed "reasonable expectation of privacy" under circumstances
  - e.g., public restaurant vs. walled compound
- use of hidden recording devices generally permitted except in plaintiff's home
- use of illegally obtained material lawful unless journalist participated in illegal gathering
- Publication of private information
  - elements
    - publicity of private facts about individual
    - revelation is offensive to reasonable person
    - material not of legitimate public concern
  - often arises in cases of press naming rape victims
- False light
  - elements
    - publication of material puts individual in false light
    - false light would be highly offensive to reasonable person
    - publisher was at fault
  - often arises in cases of
    - docudramas (where real life events represented but fictionalized)
    - improper use of photo (e.g., using person's photo in connection with story)

#### E. Obscene material

- what we think of as "pornography"
- Supreme Court has struggled to define obscenity
  - unhappy with case-by-case approach
  - led Justice Stewart in *Jacobellis v. Ohio* (1964) to write:
    - "[U]nder the First and Fourteenth Amendments criminal laws in this area are constitutionally limited to hard-core pornography. I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it, and the motion picture involved in this case is not that."
- *Miller v. California* (U.S. Supreme Court, 1973) established three-part test
  - An average person, applying contemporary community standards, finds the work, taken as a whole, appeals to prurient interest
    - community defined as entire state
    - presents problems as more and more mass media is distributed nationally, not regionally or locally
  - The work depicts in a patently offensive way sexual conduct specifically defined by applicable state laws
    - *Jenkins v. Georgia* (U.S. Supreme Court, 1974), court ruled this applies to hard-core sexual material
      - includes "representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated" and "representations or

descriptions of masturbation, excretory functions, and lewd exhibition of genitals"

- The work in question lacks serious literary, artistic, political or scientific value
  - not determined by tastes or standards of average person in community
  - test is whether a reasonable person could find serious literary, artistic, political or scientific value
  - evidence primarily expert testimony

### III. Indecent material

- unlike obscenity, entitled to First Amendment protection
- broadcasting (television and radio) subject to regulation by Federal Communication Commission (FCC)
- issue: what is indecency?
  - [FCC v. Pacifica Foundation](#) (U.S. Supreme Court, 1978), determined for first time the meaning of indecency in broadcast context; has remained substantially unchanged
    - Carlin's offending [monologue](#)
    - [discussion questions](#) on Pacifica
- "Safe Harbor"
  - 10:00 p.m. to 6:00 p.m.
- Recent FCC forfeiture actions
  - [2003 Golden Globe Awards](#)
  - [Super Bowl XXXVIII Halftime Show](#)
  - [Married by America](#)
- The vocal opposition: [Parents' Television Council](#)
- Other current issues
  - increasing penalties for violations
  - regulating cable television stations
  - confusion and fear of penalty among broadcast stations leading to self-censorship
    - Saving Private Ryan
    - A Company of Soldiers
    - The Family Guy