

Study Guide: Final Exam
Concepts, Cases, Tests, Torts, Tensions and Terms

NOTE: *This study guide is to be used as a companion to the study guide for the midterm. The final is cumulative, because we can't simply forget or push aside the First Amendment, but the emphasis is on material we've covered since the midterm, beginning with libel.*

What you should know (or at least know about):

Libel

The Six Hurdles: Defamation/Identification/Publication (and re-publication)/Fault/Falsity/Injury

The single mistake rule

Three kinds of libel defamation (libel per se, etc.)

Renwick v. News & Observer (Raleigh) (1984)

Times v. Sullivan, 1964

Curtis Publishing v. Butts, 1967

AP v. Walker, 1967

Fault thresholds

Plaintiff categories

Firestone v. Time, 1972

Gertz v. Welch, 1983

Milkovich v. Lorain Journal

Lohrenz v. Donnelly, 2003

Burnett v. National Enquirer, 1981

David Bar Katz v. National Enquirer, 2014

Jesse Ventura v. Estate of Chris Kyle (author, Navy SEAL)

Eramo v. Rolling Stone (2016)

Richard Jewell and the Centennial Park bombing

Types of damages

Retraction statutes

Other libel defenses (besides the hurdles)

 Summary judgment

 Consent

 Statute of limitations

 Jurisdiction

 Wire service defense

 Anti-SLAPP designation and Rule 11

 The truth

 Absolute privilege

 Qualified privilege (Fair Report)

 Neutral reportage

 First Amendment opinion defense; fair comment and criticism

 Ollman v. Evans (1984) and the Ollman Test

Hustler v. Falwell

Philadelphia Newspapers v. Hepps

ISP immunity/Section 230 of the Communications Decency Act of 1996
McIntyre v. Ohio Elections Commission (1995)
Dendrite Int'l v. Doe (2001) and the Dendrite test

Privacy

Privacy as a negotiated right

Privacy as a constitutional right (Fourth Amendment, Warren & Brandeis)

Technological innovation and privacy

Other realms of privacy (solitude, intimacy, reserve, anonymity)

1890 *Harvard Law Review*, "Right to Privacy", by Brandeis and Warren

"reasonable expectation of privacy"

Privacy Act of 1974

Privacy Protection Act of 1980

USA PATRIOT Act

Fourth Amendment

Terry Bollea (Hulk Hogan) v. Gawker (2016)

Privacy law as tort law:

- Appropriation: Paulo Pavesich and New England Life Insurance, right to privacy v. right to publicity; name OR likeness (Bush's ears, Leno's chin, impersonators); Cartoons case; Vanna White Samsung case; names and likenesses in the newspaper >> Booth Rule; consent
- Intrusion: physical invasion, technology pushing law, trespass and surveillance, ride-along cases (Hanlon v. Berger, Wilson v. Layne,); Le Mistral v. CBS; Dietemann v. Time, Galella v. Onassis, patchwork approach to privacy: COPPA, ECPA, Driver's License Protection Act (and South Carolina), HIPPA, FERPA, USA PATRIOT Act
- Publication of private facts: naming rape victims; Cox Broadcasting v. Cohn; Barber v. Time; what's "news"?
- False light: Georgia tort. How is it different from libel?

Access to Information

Public's "right to know" v. other priorities, like privacy, due process

Richmond Newspapers v. Virginia

Branzburg v. Hayes

Access to prisons

Zemel v. Rusk

Saxbe v. Washington Post

Houchins v. KQED

Pell v. Procunier

Vincent Foster death scene photos

Dale Earnhardt death scene photos

FOIA, 1966

Electronic Freedom of Information Act, 1996

Open Government Act, 2007

FOIA

What is an agency?
What is a record?
Who is a person?
How do you use FOIA?
What are its exemptions?
Additional statutes denying disclosure of infor., such as Homeland Sec. Act

Open records and open meetings (sunshine laws)
Government in Sunshine Act of 1976
Georgia Open Records Act of 1959
Harris v. Cox Enterprises
Macon Telegraph v. Board of Regents (UGA)
Exemptions to Open Records Act
Georgia Open Meetings Act of 1965
What do you do if you are denied access?

Reporter's Privilege and Shield

Source confidentiality and Reporter's privilege
Shield law (state and federal)
What is privilege?
Branzburg v. Hayes (again)
Times v. U.S. (Pentagon Papers case)
James Risen and the CIA
Free Flow of Information Act (federal shield law that has been proposed)
Why don't reporters want to reveal their sources? (3 big reasons)
How Branzburg decision evolved; Potter Stewart's test
Saxbe v. Washington Post
Newsroom searches:
Zurcher v. Stanford Daily
Privacy Protection Act of 1980
Justice Department's search of Associated Press's electronic records in 2013
Cohen v. Cowles Media Co. and promissory estoppel
Tips for reporters promising sources confidentiality

Free Press v. Fair Courts

Judicial process: Free press v. fair trial, First v. Sixth
First Amendment; Sixth Amendment
Types of prejudicial press coverage
Remedies at a judge's disposal
Sheppard v. Maxwell
Prior restraints
Nebraska Press Assn. v. Stuart: 3 factors before prior restraint is allowed
Dickinson v. US
Salameh trial after WTC bombing
Open courts v. Guantanamo Bay
Richmond Newspapers v. Virginia (again)

Press-Enterprise v. Riverside Superior Court test
Exceptions to open courts/open trials (4)
Cameras in courtrooms
Estes v. Texas, 1965
Chandler v. Florida, 1980

Commercial Speech

Commercial speech v. political speech (four major contrasts)
Grid of FA protections by content (type of expression) and medium
FTC Act of 1914
Consumer culture
Valentine v. Christensen, 1942
Times v. Sullivan, 1964
Bigelow v. Virginia, 1975
Virginia State Board of Pharmacy v. Virginia Citizens, 1976
Reno v. ACLU, 1997
Advertising categories that CAN be banned
Compelling v. substantial interest
Central Hudson V. Public Service Commission and the four-part Central
Hudson Test (Commercial Speech Doctrine)
Posadas case
Rubin v. Coors
44 Liquormart v. Rhode Island
Greater New Orleans Broadcasting v. US
Nike v. Kasky, 2003
Citizens United v. Federal Election Commission, 2010
How regulation works: Self-regulation (Lanham Act); Consumer Action; Government
Action (FTC)
False advertising
Lanham Act, section 43a, 1938
FTC options when acting on advertising, from guidelines to injunctions (7 options)
Defenses for an advertiser

Regulation of Airwaves (broadcast spectrum)

Where we got the FCC, and why? The rationale for the FCC's regulatory authority,
and how it has changed since then (scarcity).
Radio Act of 1912
Radio Act of 1927
Communications Act of 1934
Red Lion Broadcasting Co. v. FCC, 1969
Herald Publishing v. Tornillo
Cable Communications Policy Act of 1984
Consumer Protection and Competition Act of 1992
Turner v. FCC, 1994
Telecommunications Act of 1996
Reno v. ACLU, 1997 (again)
The Fairness Doctrine

The Equal Time Rule
Fox TV v. FCC, 2012
FCC v. Pacifica, 1978
Net Neutrality
Branded content/Native advertising/VNRs

Copyright/Intellectual Property

Trademarks and patents
Copyright infringement v. Plagiarism
1790 copyright law (14 years with one renewable)
Sonny Bono Copyright Extension Act
Rural Telephone Service v. Feist Publications, 1991
Fair Use and its four dimensions
US Code, Title 17
Digital Millennium Copyright Act of 1998
Sony Corp. v. Universal City Studios, 1984
MGM v. Grokster, 2005
Lenz v. Universal Music Corp., 2007
Campbell v. Acuff-Rose Music, 1994
Castle Rock Entertainment v. Carol Publishing, 1997