Test Bank for The Law of Public Communication 9th Middleton

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Test Bank

for

The Law of Public Communication

Ninth Edition

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CHAPTER 1: Public Communication and the Law

I. True/False Questions

1. The federal constitution is the country's ultimate legal authority. (True)

2. The U.S. Supreme Court, the nation's supreme judicial body, has the last word on the meaning of the federal constitution. Each state's Supreme Court is the interpreter of that state's constitution. (True)

3. Amendments to the U.S. Constitution must be ratified by three-fourths of the state legislatures or by state constitutional conventions in three-fourths of the states. (True)

4. The federal constitution is easy to amend and therefore has been changed frequently. (False)

5. Federal regulatory agencies are bound by the requirements of the Administrative Procedure Act (APA). The APA specifies the procedures that must be employed when an agency enacts rules or enforces regulations. (True)

6. A Federal Communications Commission (FCC) rule limiting the amount of advertising appearing in a magazine may be challenged on the ground that the agency has exceeded its statutory authority. (True)

7. The Supremacy Clause of the U.S. Constitution provides that state law cannot supersede federal law. (True)

8. Most communication cases are brought in criminal court rather than civil court. (False)

9. Common law is enacted by legislatures or administrative agencies. (False)

10. The U.S. Constitution mandates only one federal court, the U.S. Supreme Court, but allows Congress to create other courts. (True)

11. The U.S. Constitution provides that amendments must be ratified by the President. (False)

12. Three circuits of the U.S. Court of Appeals, the Second Circuit, the D.C. Circuit, and the Ninth Circuit, are especially important to communication law. (True)

13. The U.S. Supreme Court rarely exercises original jurisdiction; it primarily functions as an appellate court. (True)

14. The majority of justices currently serving on the U.S. Supreme Court were appointed by Republican presidents. Consequently, the Court is more conservative now than during the 1960s when a majority of the justices had been appointed by Democrats. (True)

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15. From 1994 to 2005, the U.S. Supreme Court had stable membership and two distinct voting blocs emerged. (True)

16. The U.S. Supreme Court refuses to grant the vast majority of petitions for certiorari it receives. (True)

17. In criminal cases, the burden of proof requirement is known as "beyond a reasonable doubt." In civil cases, same burden of proof requirement applies. (False)

18. Unlike federal judges, most state court judges are elected. (True)

19. Of the six sources of law in the United States, the common law is the most important. (False)

20. The number of cases filed with the U.S. Supreme Court has remained stable since 1954. (False)

21. Justice Scalia and Thomas are most likely to vote with Justices Ginsberg and Breyer. (False)

22. Obscenity law is an example of a type of law enforced by private parties through civil actions. (False)

23. Chief Justice Rehnquist sought to reduce the number of cases heard by the Supreme Court. In the later part of his tenure, the Court agreed to hear arguments in fewer than 100 cases a term. (True)

24. The number of cases accepted for oral argument has been declining slightly under Chief Justice Roberts. (True)

25. Original jurisdiction cases are increasingly rare on the Supreme Court's docket. (True)

II. Key Terms

Common Law: The body of law developed from custom and tradition as recognized by judicial decisions. Common law is largely based on previous judicial decisions. The judicial policy of stare decisis, which means "let past decisions stand" is critical in common law. In common law cases, a judge decides a case by applying the law established by other judges in earlier, similar cases.

Statutory Law: The law made by statutes enacted by legislative bodies such as the U.S. Congress and state legislatures. Statutes set forth enforceable rules to govern social behavior; almost all of this country's criminal law is statutory. Since legislatures have no enforcement powers, they necessarily rely upon the executive branch to enforce laws. For example, the

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executive branch decides how vigorously obscenity statutes will be enforced. The judicial branch interprets statutes and has the authority to find that statutes are unconstitutional.

Administrative Law: Rules and decisions created by administrative agencies such as the FCC, the FTC, and the SEC. Congress creates administrative agencies to supervise activities or industries that require more attention than legislatures can provide. Administrative agencies are unique in the American system of government because they engage in activities that resemble legislative, executive, and judicial functions. Administrative agencies engage in rule making, a process similar to the legislative function. They also perform executive functions when they enforce rules against a firm or individual. Finally, they adjudicate disputes, resolving complaints against firms or individuals.

Appellate courts: A court that reviews the actions of a lower court after an appeal by one of the parties in a case. Appellate courts do not hold new trials and generally do not reevaluate the facts of cases. Rather, their responsibility is to ensure that trial courts use the proper procedures and apply the law correctly. Appellate court judges decide cases primarily on the basis of lower court records, briefs written by lawyers, and oral arguments by attorneys. Both the federal and state court systems have intermediate appellate courts and final or supreme courts.

Certiorari: The name of a writ asking the U.S. Supreme Court to review a case. The U.S. Constitution specifies only a small number of instances where the Supreme Court has original jurisdiction and few cases go to the Supreme Court on automatic appeal. Thus, the Court has great discretion in selecting which cases it will hear. Parties seeking Supreme Court review of a lower court decision submit a petition for certiorari which explains why the issues in the case warrant the attention of the Supreme Court. The Court usually accepts cases presenting important new legal issues or to resolve disputes among lower courts. Four justices must vote yes if the Court is to grant a writ of certiorari. The Court rejects about 99% of the petitions for certiorari.

III. Essays

1. Explain the three types of challenges that may be raised against an administrative agency's action.

Federal judges reviewing agency actions ensure that administrative agencies act with the boundaries set by the Constitution and statutory law. An administrative agency is given a specific grant of authority from Congress to regulate certain areas or activities. Thus, one challenge that may be raised against an agency's action is that the agency has exceeded its statutory authority. For example, until 2009, Congress specifically excluded tobacco products from the FDA's jurisdiction. In a 2000 case, the tobacco industry claimed the FDA exceeded the authority then granted by Congress when the FDA banned outdoor tobacco advertisements near schools and playgrounds. The Supreme Court agreed with the tobacco industry, stating that an administrative agency's power to regulate in the public interest must always be grounded in a valid grant of authority from Congress.

Administrative agencies are also required to engage in reasonable decision making. This means that agency actions may be challenged as being arbitrary and capricious. Courts reviewing agency actions under this standard do not substitute their judgment as to what is the best policy.

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Rather, they merely explore the agency's action to determine if it is illogical. For example, an appellate court ruled that the FCC was arbitrary and capricious when it ruled that one company could own two television stations in the same market but not a television station and a cable system. The court said it was illogical for the FCC to conclude that tv station and cable system ownership was harmful when the agency found that multiple tv station ownership was in the public interest.

Finally, administrative law must comply with the Constitution. Since regulatory agencies such as the FCC, FTC, FEC, and SEC can affect public communication, courts closely examine the rules of those agencies to ensure that First Amendment rights are not harmed. For example, the Supreme Court ruled that the FEC acted unconstitutionally when it sought to punish the Colorado Republican Party for purchasing radio advertising during a political campaign. The Supreme Court ruled that a political party's independent expenditures were constitutionally protected speech and exempt from FEC regulation.

2. Describe the U.S. Supreme Court's process in hearing and deciding a case.

The Constitution specifies only a limited number of instances in which the Supreme Court has original jurisdiction in a case. Thus, the Court has great discretion in deciding which cases it will hear. A party seeking Supreme Court review of a case files a petition for a writ of certiorari; the petition explains why the case involves issues of significance. If four justices agree with the petition, the Court places the case on its calendar.

Once a writ of certiorari is issued, the attorneys file briefs arguing their positions. The briefs describe the facts of the case, the decisions by lower courts, and legal arguments. After the justices review the briefs, the Court hears oral argument. Typically, each side receives one half hour; an attorney's presentation is frequently interrupted by justices asking questions or challenging the arguments being presented.

After the oral arguments, the justices meet to discuss the case. During this conference, a vote is taken. If the Chief Justice is in the majority, he decides who will write the opinion of the Court. If the Chief Justice is in the minority, the senior justice in the majority assigns the opinion writing task. The choice of an author for an opinion is significant because the author can weave in his or her political philosophy, view of the role of the Court, and interpretation of law.

After a justice drafts an opinion for the Court, the draft is circulated to the other justices for comment. Drafts of concurring and dissenting opinions may be shared as well. The justices may bargain over the language in the drafts and votes may shift. Once finalized, the opinion of the Court is publicly announced. Typically, a justice is identified as the author of the Court's opinion. Where the opinion is not attributed to a justice, it is noted as a per curiam opinion.

For an opinion to be binding precedent it must have the support of a majority of the justices participating in the case; this is usually five justices. In situations where no opinion attracts the support of the majority of the justices, the opinion with the most support is known as a plurality opinion.

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CHAPTER 2: The First Amendment

I. True/False

1. The framers of the Constitution intended the First Amendment to protect citizens from interference with their freedom of expression by state and local governments as well as by the federal government. (False)

2. The Supreme Court disfavors content regulations; yet the First Amendment protects political speech more than it protects advertising. (True)

3. In the 1950s, the Supreme Court ruled in Dennis v. United States that a citizen's membership in the Communist Party constituted a clear and present danger to the nation. (True)

4. The Supreme Court has ruled that high school students have a constitutional right to criticize the principal in a school sponsored newspaper. (False)

5. A federal appellate court in Chicago (the Hosty v. Carter) ruled in 2005 that state university officials can censor state university newspapers—much like high school principals can censor high school papers—if the regulations are reasonable and serve the educational goals of the university. (True)

6. "Fighting words," by definition, encourage large groups to riot. (False)

7. "Fighting words" are words delivered face-to-face that provoke another individual to retaliate. (True)

8. In Brandenburg v. Ohio, the Supreme Court ruled that threatening to get "revengence" at some distant time constitutes a clear and present danger. (False)

9. In R.A.V. v. City of St. Paul, the Court ruled it is constitutional for an ordinance to punish cross burning motivated by racial or religious hatred but not for motives against gays or labor union members. (False)

10. In R.A.V. v. City of St. Paul, the Supreme Court ruled that cross burning is a prohibited true threat regardless of the cross burner's motivation (racial hatred, homophobia, religious hatred, etc.) (False)

11. It violates the First Amendment to forbid judicial candidates from speaking on public issues during an election campaign. (True)

12. A board of city commissioners would be justified under the constitution prohibiting a civil rights parade that might have a "tendency" to draw hostile opposition. (False)

13. The independent, off-campus student newspaper is a traditional public forum. (False)

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14. It is constitutional to punish all expression in the legal category of "hate" speech, the Supreme Court has ruled. (False)

15. In Virginia v. Black, the Supreme Court ruled that burning crosses in any location is always an unprotected expressive act intended to intimidate. (False)

16. In Morse v. Frederick, the Bong Hits for Jesus case, the Supreme Court held constitutional an ordinance prohibiting county residents from encouraging the legalization of marijuana by voter referendum. (False)

17. When Professor Vince Blasi says the First Amendment serves a "checking value," he argues the First Amendment permits institutional press entities to monitor and "check" the powers of government institutions. (True)

18. It is constitutional to punish all expression in the legal category of "depicting cruelty to animals," the Supreme Court has ruled. (False)

19. A federal appeals court has ruled (Kowalski v. Berkeley County Schools) that school officials can punish a high school student for off-campus internet posts that harass and bully a fellow student. (True)

20. It is a crime, the Supreme Court has ruled, to falsely claim having won a military medal. (False)

21. The Supreme Court has ruled the First Amendment does not permit a state university to deny funding to a campus religious magazine if the university funds magazines on other topics. (True)

22. American courts generally will not enforce judgments against American media by foreign courts for libel, hate speech and other torts if the expression would be protected under the First Amendment in the United States. (True)

23. A federal appeals court ruled in United States v. Fullmer that the Stop Huntingdon Animal Cruelty organization presented a clear and present danger by inciting electronic civil disobedience through such means as urging members to crash corporate websites and to overload and thus immobilize corporate e-mail and phone servers. (True)

24. The Supreme Court ruled in Waters v. Churchill and Garcetti v. Caballos that government employees might be punished for critical comments made internally about their employment or fellow employees. (True)

25. The Supreme Court had a majority of "absolutists" between 1945 and 1955. (False)

26. To some, free speech is valued as a fundamental right. (True)

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27. One of the main purposes of First Amendment due process is to prevent government officials from acting arbitrarily when they ban or regulate speech. (True)

28. In Texas v. Johnson, the Supreme Court ruled that flag burners might be punished because the government has a compelling interest in preserving the peace and preserving the flag as a symbol of national unity. (False)

29. The president of State University can remove bottled fetuses from an anti-abortion display at the university's designated public forum if the fetuses are "highly offensive" to other students. (False)

III. Multiple Choice

1. If a court applies the strict scrutiny test to a government speech regulation, the government must justify the regulation by proving it has a _____ for regulating the speech.
   A. Rational interest
   B. Reasonable interest
   C. Probable cause
   D. A Necessary Tendency
   E. None of the above

Answer: E

2. A county ordinance prohibits newspapers from publishing stories favoring abortions, stories the ordinance says will provoke "discord and dissention" in the community. When a newspaper challenges the law, a court will subject the ordinance to
   A. A bad tendency test
   B. A clear and present danger test.
   C. The fighting words doctrine
   D. Strict scrutiny
   E. None of the above.

Answer: D.

3. A federal appellate court in California ruled that web pages depicting abortion doctors in "Wanted Posters" constitute _____:
   A. Fighting words
   B. Defamation
   C. A true threat
   D. Obscene expression.
   E. C and D.

Answer: C.

4. A state university speaker's platform, established in 1995, is _____ public forum.
   A. a traditional
   B. a dedicated
   C. public content

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D. a nonpublic
E. not a

Answer: B

5. The City of Midville adopts a law making it illegal for "a large number" to picket at one time. A court likely will find the law
   A. Unnecessary.
   B. Unconstitutionally vague.
   C. Content-specific.
   D. Viewpoint-specific.
   E. An acceptable time, place, and manner restriction.

Answer: B

6. The independent student newspaper off campus is _____ public forum.
   A. A Traditional
   B. A Dedicated
   C. Not a
   D. A paper
   E. Non-public

Answer: C

7. First Amendment rights include the power to
   A. Assemble in groups.
   B. Solicit money for churches, political parties and ideological causes.
   C. Receive information.
   D. All of the above
   E. A and C only

Answer: D

8. The government can license the following media operators because they operate on a limited spectrum.
   A. Cable operators
   B. Newspaper publishers
   C. Broadcasters
   D. Internet Service Providers
   E. Advertising agencies

Answer: C

9. The First Amendment serves several purposes, EXCEPT
   A. Finding Truth
   B. Promoting Self-fulfillment
   C. Encouraging family values
   D. Allowing change with stability
   E. Checking government power

Answer: C.

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10. In McIntyre v. Ohio Elections Commission, the Supreme Court ruled that a state statute banning anonymous campaign literature "designed to influence voters" was
    A. A constitutional prohibition on potentially fraudulent campaign literature.
    B. A constitutional prohibition on potentially libelous campaign literature.
    C. An unconstitutional subject matter regulation.
    D. A and B above.
    E. None of the above.

Answer. C.

11. Which amendments are involved when a court rules that a state violates freedom of expression?
    A. 1st Amendment only
    B. 1st and 5th
    C. 1st and 13th
    D. 1st and 14th
    E. All of the above amendments.

Answer. D.

12. Precedent suggests a law punishing speech because the speech "might encourage young people to engage in harmful activity" is probably
    A. Constitutional because the government has a compelling interest to discourage youths' harmful activity.
    B. Constitutional because the government has a substantial interest to discourage youths' harmful activity.
    C. Unconstitutionally vague.
    D. Unconstitutionally false.
    E. None of the above.

Answer C.

13. The Supreme Court ruled in McIntyre v. Ohio Elections Commission that punishing distribution of anonymous campaign literature that might influence an election is an example of
    A. An unconstitutional viewpoint regulation.
    B. An unconstitutional subject matter regulation.
    C. A constitutional regulation because the government has a compelling interest in halting fraud and libel.
    D. A constitutional regulation because the government has a reasonable need to stop littering.
    E. None of the above.

Answer. B.

14. A county ordinance prohibits a newspaper, its website and its blogs from publishing stories favoring legalization of marijuana, stories the ordinance says "might encourage young people to engage in harmful activity." When a newspaper challenges the law as a violation of the First Amendment, a court will subject the ordinance to
    A. A balancing test

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B. A clear and present danger test.
C. Strict scrutiny.
D. The youthful protection exception.
E. None of the above.

Answer. C.

15. When arrested during an antiwar protest in Indiana, Gregory Hess shouted, "We'll take this f***ing street later." The Supreme Court ruled Hesses' speech to be an example of:
    A. A clear and present danger.
    B. A true threat
    C. Obstruction of a police officer
    D. Fighting words.
    E. None of the above

Answer. E.

16. None of the following categories of speech enjoy constitutional protection EXCEPT:
    A. False advertising
    B. Obscenity
    C. Depictions of animal cruelty
    D. True Threats
    E. Fighting words

Answer. C.

IV. Key Terms/Short Answers

Absolutist: Explain briefly why justices Black and Douglas were characterized as "absolutists."

Justices Black and Douglas argued that "no law" in the First Amendment prohibited legislatures or courts from imposing restrictions on virtually any speech or publishing.

Fourteenth Amendment: What is the contribution of the Fourteenth Amendment to First Amendment freedom of expression? Give an example.

The Fourteenth Amendment allows the courts to strike down state and local government regulations that would violate First Amendment freedoms if imposed by the federal government. In Near v. Minnesota, the Supreme Court declared unconstitutional a state statute forbidding scandalous and malicious speech. The Court ruled the statute violated the First and Fourteenth Amendments.

Vagueness and Overbreadth: What is the difference between a vague and an overbroad law? Give examples.

A vague law is so unclear that a reasonable person cannot understand it and know what expression is prohibited; to avoid running afoul of a vague law, speakers will censor themselves. An overbroad law regulates speech that constitutionally may be regulated but it also regulates protected speech. The Supreme Court declared "indecency" in the Telecommunications Act of

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1996 to be unconstitutionally vague because it was not precisely defined. The law prohibiting indecency was also overbroad because it unconstitutionally prohibited protected indecent speech for adults while constitutionally prohibiting indecency for minors.

Why have publishers said good riddance to the **"bad tendency"** test?

The bad tendency test was vague and elusive, allowing government to prohibit or punish expression having a "tendency" to harm, without the government having to demonstrate the speech would cause concrete harm.

Explain briefly what Alexander Bickel, the New York Times' attorney in the Pentagon Papers case, meant when he said after his victory: **"We extend the legal reality of freedom of at some cost to its limitless appearance."**

Bickel meant that the Supreme Court suggested limits to First Amendment freedoms at the same time it ruled the New York Times had a First Amendment right to publish stolen, confidential documents. Before the Pentagon Papers case, First Amendment freedoms may have appeared limitless because the Supreme Court had never ruled on the constitutionality of a prior restraint on the publication of stolen government documents. The Times won a great victory in New York Times v. United States, but all justices except two suggested circumstances in which an injunction on publication might be constitutional in the future, thus curbing the "limitless appearance" of freedom.

V. Essays

1. Billy Bob, 28, proclaims on the "I Hate Everyone" web page that he plans to make bombs. "I'm tired of the media splattering garbage all over the place, and I'm not going to take it no more." Bob says. "If the elite media don't stop ruinating the country, we have to do something drastic." Police arrest Bob for issuing "fighting words." True? Define "fighting words" and tell whether the speech fits the definition. Support your conclusion with a comparison to at least one Supreme Court fighting words case.

Billy Bob's statements on the "I Hate Everyone" web page may be aggressive and inappropriate, but they do not constitute fighting words. For speech to be considered "fighting words" it must motivate someone to respond with violence based on the very utterance of the words. Fighting words are used in face-to-face confrontations; they are a "slap" that contribute nothing to public discourse. Disseminated broadly over the Internet, Bob's words were not addressed to any individual; the "media elite" is a broad term designating no one. This case is similar to Cohen v. California in which the Supreme Court ruled that a man did not issue fighting words when he wore a jacket in a courthouse proclaiming "Fuck the Draft." People who disagreed with the statement could look away, the Court said. In both cases, the speech was not targeted at anyone specifically, and its intent was not to incite violence, but to express an opinion.

2. Bob Editor, editor of the Palisades High School newspaper, says on the paper's website that a school math teacher named Mr. Whiz is a "loser" who ought to be "got rid of in any way possible." Principal Book suspends Editor from school for two days for his

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