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Chapter 2: The First Amendment

Test Bank

Multiple Choice

1. Laws that indirectly limit the freedom of speech while achieving other substantial government objectives are called _____.
a. content-based restrictions
b. content-neutral restrictions
c. time, place, and manner restrictions
d. both content-based restrictions and content-neutral restrictions
e. both content-neutral restrictions and time, place, and manner restrictions
Ans: E
Cognitive Domain: Comprehension
Answer Location: How the Supreme Court Reviews Laws Affecting First Amendment Rights
Difficulty Level: Medium

2. Courts find content-based restrictions of speech constitutional if they _____.
a. pass intermediate scrutiny
b. are both rational and reasonable
c. are a form of symbolic speech
d. pass strict scrutiny
e. do not violate due process
Ans: D
Cognitive Domain: Knowledge
Answer Location: How the Supreme Court Reviews Laws Affecting First Amendment Rights
Difficulty Level: Easy

3. The First Amendment prohibits abridgements of the freedom of speech and the press by _____.
a. Congress only
b. the federal executive branch only
c. the federal government only
d. federal, state, and local legislatures only
e. all levels and branches of government
Ans: E
Cognitive Domain: Knowledge
Answer Location: How Government Restrains First Amendment Freedoms
Difficulty Level: Easy

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4. Instrumentalists argue that the First Amendment advances all of the following goals except _____.
a. truth
b. checking government abuse
c. obscenity
d. self-governance
e. self-fulfillment
Ans: C
Cognitive Domain: Knowledge
Answer Location: Why We Value the First Amendment
Difficulty Level: Easy

5. Prior restraints on speech are _____.
a. the least intrusive means to regulate speech
b. presumptively unconstitutional
c. rarely constitutional
d. presumptively unconstitutional and rarely constitutional
e. all of these
Ans: D
Cognitive Domain: Comprehension
Answer Location: How Government Restrains First Amendment Freedoms
Difficulty Level: Medium

6. Content-neutral regulations are also called _____.
a. time, place, and manner regulations
b. majoritarian regulations
c. balancing regulations
d. purposive regulations
e. truth, equity, and fairness regulations
Ans: A
Cognitive Domain: Knowledge
Answer Location: How the Supreme Court Reviews Laws Affecting First Amendment Rights
Difficulty Level: Easy

7. Under strict scrutiny, a law is constitutional only if it _____.
a. is reasonable and rational
b. is narrowly tailored to serve a compelling government interest
c. advances an important public interest and falls within the powers of government
d. none of these
e. never passes strict scrutiny
Ans: B
Cognitive Domain: Comprehension
Answer Location: How Government Restrains First Amendment Freedoms
Difficulty Level: Medium

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8. In *Near v. Minnesota*, the Supreme Court ruled that _____.
a. prior restraints pose a serious threat of censorship
b. laws that punish past actions by banning future publications are a form of prior restraint
c. prior restraint is justified when media criticize government officials
d. prior restraints pose a serious threat of censorship as well as that laws that punish past actions by banning future publications are a form of prior restraint
e. prior restraints are never constitutional
Ans: D
Cognitive Domain: Knowledge
Answer Location: How Government Restrains First Amendment Freedoms
Difficulty Level: Easy

9. In *New York Times v. United States*, the Supreme Court said that _____.
a. government bears an extremely heavy burden of proof to justify prior restraints
b. prior restraints are constitutional when speech tends to harm important government interests
c. prior restraints are constitutional whenever government disfavors speech
d. government bears an extremely heavy burden of proof to justify prior restraints and prior restraints are constitutional when speech tends to harm important government interests
e. prior restraints are constitutional when speech tends to harm important government interests and prior restraints are constitutional whenever government disfavors speech
Ans: A
Cognitive Domain: Knowledge
Answer Location: Requiring Speech
Difficulty Level: Easy

10. If the First Amendment stands as a nearly complete ban on prior restraints, they nonetheless may be constitutional to prevent _____.
a. obscenity
b. incitements of violence
c. interference with ongoing military operations in times of war
d. incitements to overthrow the government
e. all of these
Ans: E
Cognitive Domain: Comprehension
Answer Location: How Government Restrains First Amendment Freedoms
Difficulty Level: Medium

11. In First Amendment jurisprudence, original intent means the _____.
a. perceived purpose of the constitutional framers
b. purpose of any individual's comments
c. outcome of a Supreme Court ruling on free speech

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d. none of these
Ans: A
Cognitive Domain: Knowledge
Answer Location: What the First Amendment Means
Difficulty Level: Easy

12. The Supreme Court generally interprets freedom of speech and freedom of the press _____.
a. to provide greater protection for freedom of speech
b. by defining the press as a speaker
c. by combining the two terms into freedom of expression
d. by defining all forms and formats of media as full members of the free press
Ans: C
Cognitive Domain: Comprehension
Answer Location: Why We Value the First Amendment
Difficulty Level: Medium

13. To guide its application of the First Amendment, the Supreme Court relies on _____.
a. original intent, textual interpretation, ad hoc balancing, and categorical balancing
b. novel ideas introduced during oral argument
c. public opinion
d. original intent, strict scrutiny, and hyperbole
Ans: A
Cognitive Domain: Comprehension
Answer Location: What the First Amendment Means
Difficulty Level: Medium

14. Prior review _____.
a. is part of the final editing process of a newspaper
b. enables government to stop publications before they reach the public
C. is the examination of the facts during a jury trial
d. provides checks and balances to avoid errors in judicial decisions
Ans: B
Cognitive Domain: Comprehension
Answer Location: Where the First Amendment Came From
Difficulty Level: Medium

15. Laws of general application _____.
a. do not apply to the media
b. apply to the media in the same way as other businesses
c. violate the First Amendment when applied to media because they directly infringe the freedoms of speech and of the press
d. none of these
Ans: B

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Cognitive Domain: Comprehension
Answer Location: How the Supreme Court Reviews Laws Affecting First Amendment Rights
Difficulty Level: Medium

16. When the Supreme Court reviews the constitutionality of laws, it applies _____.
a. rational review, minimum scrutiny, or the compelling interest test
b. rational review, intermediate review, or facial review
c. rational review, intermediate review, or strict scrutiny
d. the rule of law
Ans: C
Cognitive Domain: Knowledge
Answer Location: How the Supreme Court Reviews Laws Affecting First Amendment Rights
Difficulty Level: Easy

17. In reviewing the constitutionality of laws, the Supreme Court has established that an important government interest is _____.
a. a significant but not compelling interest
b. an interest of the highest order
c. sufficient to justify content-based regulations of speech
d. necessary to impose laws of general application
Ans: A
Cognitive Domain: Knowledge
Answer Location: How the Supreme Court Reviews Laws Affecting First Amendment Rights
Difficulty Level: Easy

18. To determine the constitutionality of government actions, the Supreme Court employs _____.
a. one test to treat all laws equally
b. different tests to allow the Court to reach its desired outcomes
c. one test for all laws that directly or indirectly affect the freedom of speech
d. different tests to respond to the different impacts of government actions on constitutionally protected rights and freedoms
Ans: D
Cognitive Domain: ComprehensionAnswer Location: How the Supreme Court Reviews Laws Affecting First Amendment Rights
Difficulty Level: Medium

19. The Supreme Court has said that, under the First Amendment, political speech is _____.
a. not a part of the protected freedom of speech
b. at the core of the protected freedom of speech
c. not a distinct category of speech

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d. always protected from any form of regulation
Ans: B
Cognitive Domain: Knowledge
Answer Location: Speaking Politics
Difficulty Level: Easy

20. In several recent decisions, the U.S. Supreme Court has held that state or federal limits on campaign spending _____.
a. directly advance the Constitution's express protection of free and fair elections
b. are essential to protect elections from corruption
c. advance the core purpose of the First Amendment
d. unconstitutionally restrict the freedom of speech protected by the First Amendment
Ans: D
Cognitive Domain: Knowledge
Answer Location: Speaking Politics
Difficulty Level: Easy

21. The legal protection of anonymous speakers online and offline is _____.
a. determined in the United States by balancing the rights of anonymous speakers against other important values
b. absolute and certain
c. consistent around the world
d. the most protected form of speech in the United States
Ans: A
Cognitive Domain: Knowledge
Answer Location: Speaking Anonymously
Difficulty Level: Easy

22. In the area of government speech, the U.S. Supreme Court has _____.
a. said the First Amendment clearly establishes absolute protection of the freedom of speech of individual government speakers
b. found the First Amendment does not deal expressly with government speech or speakers
c. held that the government has unlimited control over all the speech of its agencies and employees
d. established clear and consistent precedents when regulation of government speech and speakers is constitutional
Ans: B
Cognitive Domain: Knowledge
Answer Location: Speaking for and as the Government
Difficulty Level: Easy

23. Traditional public forums include _____.
a. all online spaces (such as chat rooms) and all public properties
b. any government property that is not involved with national security

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c. public property designed and historically used for public gathering and association
d. public property designed for other purposes but available for public use
Ans: C
Cognitive Domain: Knowledge
Answer Location: Assembling and Speaking in Public and Nonpublic Places
Difficulty Level: Easy

24. When government funds activities that involve expression, it _____.
a. always creates a public forum
b. never creates a public forum
c. may not discriminate on the basis of the content of expression if it creates a public forum
d. may always discriminate on the basis of the content of expression
Ans: C
Cognitive Domain: Comprehension
Answer Location: Assembling and Speaking in Public and Nonpublic Places
Difficulty Level: Medium

25. In *Reed v. Town of Gilbert,* the Supreme Court held that laws _____.
a. that refer to categories of speech are content neutral
b. are never facially unconstitutional
c. that distinguish treatment based on the message are content-based
d. prohibiting live music after 7 p.m. are overbroad
Ans: C
Cognitive Domain: Knowledge
Answer Location: How Government Restrains First Amendment Freedoms
Difficulty Level: Easy

True/False

1. A traditional public forum is closed to nongovernment users to protect the core purpose of the property.
Ans: F
Cognitive Domain: Knowledge
Answer Location: Assembling and Speaking in Public and Nonpublic Places
Difficulty Level: Easy

2. Textualists believe that interpretation of the Constitution should be guided entirely by its own language without reference to history or contemporary issues.
Ans: T
Cognitive Domain: Knowledge
Answer Location: What the First Amendment Means
Difficulty Level: Easy

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3. The First Amendment came first in the Bill of Rights because the framers believed it was the most important and core right of the people.
Ans: F
Cognitive Domain: Knowledge
Answer Location: Where the First Amendment Came From
Difficulty Level: Easy

4. The First Amendment stands as a nearly absolute ban to prior restraint.
Ans: T
Cognitive Domain: Knowledge
Answer Location: Where the First Amendment Came From
Difficulty Level: Easy

5. Government regulations that target the content of speech because of government disfavor with the ideas expressed are called content-neutral.
Ans: F
Cognitive Domain: Knowledge
Answer Location: How the Supreme Court Reviews Laws Affecting First Amendment Rights
Difficulty Level: Easy

6. Through its self-delegated power to interpret and apply the U.S. Constitution, the U.S. Supreme Court determined that the First Amendment limits the power of state legislatures as well as Congress.
Ans: T
Cognitive Domain: Knowledge
Answer Location: What the First Amendment Means
Difficulty Level: Easy

7. Justices who rely on original intent to determine the correct meaning and application of the First Amendment argue that the framers understood and left a clear record of the meaning of the freedom of speech and of the press.
Ans: T
Cognitive Domain: Knowledge
Answer Location: What the First Amendment Means
Difficulty Level: Easy

8. Ad hoc balancing is used to determine the proper awards or penalties when judges make equity rulings.
Ans: F
Cognitive Domain: Knowledge
Answer Location: What the First Amendment Means
Difficulty Level: Easy

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9. The U.S. Supreme Court consistently has interpreted the free press clause of the First Amendment to confer special privileges and responsibilities on the press.
Ans: F
Cognitive Domain: Knowledge
Answer Location: What the First Amendment Means
Difficulty Level: Easy

10. The crime of sedition punishes truthful criticism of government.
Ans: T
Cognitive Domain: Knowledge
Answer Location: Where the First Amendment Came From
Difficulty Level: Easy

11. The U.S. Supreme Court has said that prior restraint is sometimes necessary to counterbalance the power of large media corporations to drown out alternate voices and different ideas.
Ans: F
Cognitive Domain: Knowledge
Answer Location: Where the First Amendment Came From
Difficulty Level: Easy

12. John Milton said that the open exchange of ideas in an unfettered marketplace will allow convincing falsehoods to overcome the truth.
Ans: F
Cognitive Domain: Knowledge
Answer Location: Where the First Amendment Came From
Difficulty Level: Easy

13. The social contract is part of the First Amendment that requires the people to act responsibly in exchange for their freedoms.
Ans: F
Cognitive Domain: Knowledge
Answer Location: Where the First Amendment Came From
Difficulty Level: Easy

14. Throughout history, the U.S. Supreme Court has relied heavily on natural rights theory to guide its First Amendment interpretations because this theory provides clear boundaries to personal liberties.
Ans: F
Cognitive Domain: Comprehension
Answer Location: Where the First Amendment Came From
Difficulty Level: Medium

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15. Functionalists, or instrumentalists, believe that the First Amendment protects the freedom of speech and of the press only because these freedoms advance important societal goals, such as democracy.
Ans: T
Cognitive Domain: Comprehension
Answer Location: Why We Value the First Amendment
Difficulty Level: Medium

16. A classical prior restraint imposes broad government power to review and select acceptable content before ideas are published.
Ans: T
Cognitive Domain: Knowledge
Answer Location: How Government Restrains First Amendment Freedoms
Difficulty Level: Easy

17. Court injunctions that stop publication are always unconstitutional prior restraints.
Ans: F
Cognitive Domain: Knowledge
Answer Location: Where the First Amendment Came From
Difficulty Level: Easy

18. The government bears an exceptionally heavy burden of proof to justify any prior restraint because prior restraints are inherently likely to distort the marketplace of ideas and to punish ideas that government disfavors.
Ans: T
Cognitive Domain: Comprehension
Answer Location: How Government Restrains First Amendment Freedoms
Difficulty Level: Medium

19. Content-based laws must pass intermediate scrutiny to be constitutional.
Ans: F
Cognitive Domain: Knowledge
Answer Location: How the Supreme Court Reviews Laws Affecting First Amendment Rights
Difficulty Level: Easy

20. Because content-based laws pose a greater risk to the freedom of speech and of the press than do content-neutral laws, the U.S. Supreme Court uses a more lenient test to determine when content-neutral laws are constitutional.
Ans: T
Cognitive Domain: Comprehension
Answer Location: How the Supreme Court Reviews Laws Affecting First Amendment Rights
Difficulty Level: Medium

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21. Private property that is used by the public is called a traditional public forum.
Ans: F
Cognitive Domain: Knowledge
Answer Location: Assembling and Speaking in Public and Nonpublic Places
Difficulty Level: Easy

22. Originalists believe that interpretation of the Constitution should be guided by the actual text of the document.
Ans: F
Cognitive Domain: Knowledge
Answer Location: What the First Amendment Means
Difficulty Level: Easy

23. The First Amendment protection for freedom of expression means prior restraints by government are constitutional only as a last resort to meet a compelling need.
Ans: T
Cognitive Domain: Comprehension
Answer Location: What the First Amendment Means
Difficulty Level: Medium

24. Both content-based and viewpoint-based regulations target speech because of government disfavor with the ideas expressed.
Ans: T
Cognitive Domain: Comprehension
Answer Location: How the Supreme Court Reviews Laws Affecting First Amendment Rights
Difficulty Level: Medium

25. The First Amendment does not limit the power of state or local legislatures.
Ans: F
Cognitive Domain: Knowledge
Answer Location: What the First Amendment Means
Difficulty Level: Easy

26. In ad hoc balancing, courts employ strict rules of statutory interpretation.
Ans: F
Cognitive Domain: Knowledge
Answer Location: What the First Amendment Means
Difficulty Level: Easy

27. Truthful criticism of government was punished under sedition laws.
Ans: T
Cognitive Domain: Knowledge
Answer Location: Foundations of First Amendment Theory
Difficulty Level: Easy

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28. The First Amendment is a nearly complete ban to prior restraints.
Ans: T
Cognitive Domain: Knowledge
Answer Location: Where the First Amendment Came From
Difficulty Level: Easy

29. To be constitutional under strict scrutiny review, a law must reasonably advance an important government interest.
Ans: F
Cognitive Domain: Comprehension
Answer Location: How the Supreme Court Reviews Laws Affecting First Amendment Rights
Difficulty Level: Medium

30. Content-neutral time, place, and manner restrictions must pass strict scrutiny in order to be constitutional.
Ans: F
Cognitive Domain: Knowledge
Answer Location: How Government Restrains First Amendment Freedoms
Difficulty Level: Easy

Essay

1. Discuss the role of public forums with regard to free speech. Be sure to define the different categories of forums and explain why they exist.
Ans: The concept of public forums recognizes two fundamental concepts. First, the important freedoms of speech and press protected for the people by the First Amendment cannot be exercised unless people have the means and the opportunity to exchange ideas. Second, government property is, at least in part, held by government for use by the public. When these two concepts are combined, it becomes clear that public property, in some instances, provides the obvious, natural, and essential location for citizens to express and exchange ideas and to exercise their core freedom of expression rights. However, not all government property is equally accessible to the citizenry because some government functions (e.g., prisons, nuclear power sites, etc.) are undermined by public access, or public access may endanger public health and safety. Recognizing this, the Supreme Court has established three categories of forums: traditional public forums, designated public forums, and nonpublic forums. Where government property has, through history, tradition, or practice, been devoted to public assembly and expression, the location becomes a traditional public forum in which government may regulate the time, place, and manner of public use but may not exclude certain speakers or types of speech based on content. Designated public forums exist when free expression sometimes is compatible with the primary function of a government facility (such as public schools,

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universities, or meeting rooms in city halls). Thus, when university classrooms are empty, the university may designate them for use by the public. During those designated times, the university may control use of the rooms only to the extent it could regulate a traditional public forum. Nonpublic forums exist where public expression is incompatible with the primary function of government property. Citizens have no right to assemble in nonpublic forums.
Cognitive Domain: Comprehension
Answer Location: Assembling and Speaking in Public and Nonpublic Places
Difficulty Level: Medium

2. What was the U.S. Supreme Court's decision in *Near v. Minnesota* (the *Saturday Press* case)?
Ans: The Supreme Court ruled that the state law banning future issues of the "nuisance" publication was an unconstitutional prior restraint. The Court said that although the law was drafted to look like punishment after the fact for harmful speech, its effect was to stifle future content on the basis of government disfavor with the ideas expressed. This is the essence of censorship. The Court said prior restraint violates a core principle of the First Amendment that protects wide-open robust public debate particularly about government officials and government action. Prior restraint is presumptively unconstitutional and is far less acceptable than punishment after the fact because of its ability to severely distort the marketplace of ideas.
Cognitive Domain: Comprehension
Answer Location: How Government Restrains First Amendment Freedoms
Difficulty Level: Medium

3. After *New York Times v. United States*, is prior restraint of media ever possible in the United States? Explain briefly.
Ans: In *New York Times v. United States*, the Court did *not* close the door to all prior restraint. While it is the least permissible form of speech regulation, prior restraint is still possible under certain extraordinary conditions that the Court did not lay out explicitly except to say that the government bears a very heavy burden of proof to justify prior restraints. The Court also said prior restraints may be constitutional to stop an extreme, clear, and present danger to a government interest of the highest order. These conditions certainly include some situations that raise national security concerns. The Court suggested that prior restraints could be constitutional to prevent: (a) obstruction of military recruitment, (b) publication of troop locations, numbers, and movements in time of war, (c) obscene publications, (d) incitements to violence, (e) incitements to forcible overthrow of government, and (f) expression of fighting words likely to promote imminent violence.
Cognitive Domain: Application
Answer Location: Requiring Speech
Difficulty Level: Hard

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4. Using principles and Supreme Court decisions you have learned in the first two chapters of the text, briefly explain why the governor of Missouri's emergency executive order banning night-time protests likely would be found constitutional even if it restricts the protesters' rights of freedom of speech and assembly.
Ans: An excellent answer would discuss some or all of the following:
a. Executive orders are a legitimate source of law
b. Public safety and security are government interests of the highest order (compelling)
c. Laws serving a compelling government interest unrelated to the content of speech generally are reviewed under strict scrutiny, which means they are most likely to be found constitutional
d. This executive order likely would not be considered content-based because it does not directly and intentionally target the content of speech because of government disfavor
e. Content-neutral laws that incidentally infringe the freedom of speech are subject to a balancing of interests in which the government interests generally trump individual rights
f. Content-neutral laws are reviewed under intermediate scrutiny that asks whether:

– the law falls within the legitimate power of government: Yes, advancing the public safety and security
– the law advances an important government interest: Yes
– the government interest is not related to the suppression of speech: Yes
– the law is narrowly tailored/a good fit: Yes, it is a classic Time/Place/Manner regulation

Cognitive Domain: Application
Answer Location: Assembling and Speaking in Public and Nonpublic Places
Difficulty Level: Hard

5. Explain briefly the decision and reasoning of two Supreme Court rulings that establish but limit the control of government over government employee speech.
Ans: An excellent answer would discuss some or all of the following:
a. The First Amendment is silent on the question.
b. The free speech clause does not apply to government speech (*Pleasant Grove v. Summum*).
c. Government cannot (practically, physically, financially, or theoretically) support the speech of an unlimited number of people (*Pleasant Grove v. Summum*).
d. The government has a right to control the content of its own speech (image, imprimatur, etc.). Without this right, the government could not run and regulate effectively because its messages could always be diluted and subverted.
e. The government's control of its speech must be balanced against the employee's right of free speech (*Borough of Duryea v. Guarnieri*).

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f. When and to the degree that employee speech represents the government and is directly related to government programs, it may be regulated to advance legitimate government interests (*Garcetti v. Ceballos*).
g. Individual government employees enjoy freedom of speech when that speech neither represents government nor undermines the ability of government to operate its programs effectively.
Cognitive Domain: Comprehension
Answer Location: Speaking for and as the Government
Difficulty Level: Medium

6. Use the Supreme Court's 2015 ruling in *Reed v. Town of Gilbert* to discuss the distinction made between content-based and content-neutral regulations of speech.
Ans:
a. Traditionally, content-based regulations restrained particular speech due to government disfavor with its content while content-neutral regulations incidentally infringed on speech to advance a government interest unrelated to speech. Thus, content-based regulations historically have lain at the heart of government censorship. Content-neutral laws have controlled aspects of speech related to time, place, and manner to, for example, assure community safety and aesthetics.
b. In *Reed* the majority of the Court said a law is content based on its face, and therefore subject to strict scrutiny, if it requires reference to the content of speech to determine its application. Any categorical distinction (e.g., incitement or obscenity of campaign finance) seems to require such reference. Many such laws don't suggest the same government intent to censor nor do these differentiations, which may be purely operational, necessarily create unreasonable disparities in the treatment of different types of speech.
c. The Court in *Reed* said its ruling did not eliminate content-neutral sign rules that apply different restrictions based on sign size or location rather than the type of speech.
Cognitive Domain: Analysis
Answer Location: How the Supreme Court Reviews Laws Affecting First Amendment Rights
Difficulty Level: Medium

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