

MEDIA LAW 6841-20244

University of Florida Levin College of Law Syllabus & Reading Assignments Spring 2023 (3 credit hours)

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Office Hours: Tuesdays 3:00-5:00 or drop by or set appointment

Class Meeting Time and Location: MoWe, 9:00-10:25, Holland Hall 345

Course Description and Objectives: What is Media Law?

This class deals with various bodies of law that regulate the media industry, including constitutional law, state tort law, federal and state statutes, and administrative regulations. This class also examines the role of the media in our society.

There is a substantial component of First Amendment law in this class, and we will be reading many U.S. Supreme Court decisions. If you hated Constitutional Law, or if you hate parsing Supreme Court decisions, you will not like this class. On the other hand, this class will serve as a nice complement to your basic constitutional law class. This class will reinforce your skills in constitutional analysis and will give you a thorough grounding in the portion of the First Amendment that guarantees freedom of the press. I have had many former students tell me that this course helped them on the bar exam and in their practices. I will bring in current controversies in the news that raise issues of Media Law. Please feel free to bring current controversies to my attention so I can share them with the class.

My objectives are for you to know the “black-letter rules” of Media Law, which include constitutional law, common law, and statutes; be able to apply these black-letter rules to novel fact patterns; understand and be able to employ the major methodologies the Supreme Court uses to resolve First Amendment cases; and develop your advocacy skills by making cogent and persuasive arguments in writing on all sides of media law issues.

Student Learning Outcomes:

At the end of this course, I expect you to be able to:

- (a) articulate whether the press clause of the First Amendment gives any rights to the press not already provided by the speech clause;
- (b) articulate why some First Amendment doctrines appear to be “medium-specific” and make cogent arguments for whether that aspect of First Amendment jurisprudence should continue;
- (c) identify content-based and content-neutral regulations of expression and apply appropriate doctrines to analyze the constitutionality of such regulations;
- (d) identify torts that affect the media and analyze fact patterns that lie at the intersection of tort law and the First Amendment;
- (e) make cogent arguments about what kind of actors should be described as “the press” for purposes of granting press passes or other special legal treatment not available to the general public;
- (f) make cogent arguments for and against the proposition that the press play a special role in democracy;
- (g) identify and analyze the constitutionality of prior restraints and explain why prior restraints on the press are presumptively unconstitutional;
- (h) explain the Supreme Court’s “categorical approach” to the regulation of expression,
- (i) articulate the purposes of the First Amendment, and
- (j) analyze statutes, common law, and constitutional doctrines that the press relies on to gain access to information controlled by the government.

Required Book: MARC A. FRANKLIN, DAVID A. ANDERSON, LYRISSA C. BARNETT LIDSKY & AMY GAJDA, CASES AND MATERIALS ON MEDIA LAW (9TH ED. 2015). Please be sure to register for the Canvas page for this course. Please bring required book to class every day.

Class Participation and Professionalism:

Participation in classroom discussion is crucial to your success in learning Media Law. I will employ various strategies to encourage and incentivize your participation, but it is not part of your grade in the course. I am a “soft” Socratic teacher, meaning I will call on students randomly to answer questions. You can notify me before class if you do not want to be called on for a particular class; just make sure you do not do it often. If I call on you and you say you are unprepared, I will circle back to you the following day. I employ this method to encourage you to read the material carefully. I also strive to model the legal reasoning process, generate discussion of the type you might have with a colleague or partner in your law firm, and allow the class to gain from the insights of those who may be reticent to volunteer. I have high expectations for your performance in this class and your eventual performance as attorneys.

Typical questions I will ask about each case are as follows: What are the facts? What portion of the Constitution, statute, or common law rule is implicated? What was the holding? What was the rationale? What interpretative methodology or methodologies did the Court use to support its rationale? How many votes supported the holding? Was there a dissent? Why did the parties want to pursue this case? Does this case only benefit or disadvantage the press, or does it apply to other speakers or other newsgatherers? How did the historical or social context of the case shape the decision? If the facts of the case were changed in some respect, would the case come out differently? How would you have argued this case if you represented the parties? What interpretive methodology would you have relied on to persuade the Court? What are the effects of the Court's decision? What important issues are left open by the Court's decision? Do changes to the technology of communications mean the doctrine we study should be reconsidered?

As you can see, I am interested in teaching you how to make “constitutional” arguments—arguments that other lawyers would recognize as appropriate for resolving contested issues of constitutional law. That said, the contents of this course will inevitably touch on your personal and political beliefs and even matters you may consider fundamental to your identity: we will be discussing the role of the media in society, the role of Big Tech and its effect on public discourse, how to regulate harmful speech and whether the category of harmful speech should be expanded, and other important but potentially polarizing issues. I ask you to practice empathy and be sensitive to the different experiences, perspectives, and opinions your classmates may bring to our discussions. One of the skills that you must develop as a lawyer is how to have respectful discussions with others when you have significant differences of personal or political opinion, and I am going to do my best to model those skills in the classroom. To that end, you may find me articulating arguments or perspectives that I deem to be missing from our discussion, or you may find that I call on you to articulate the “other side.” I challenge you to learn to articulate arguments that do not comport with your own personal or political beliefs, because this is an essential legal skill. If you feel that one of our discussions has missed an important perspective but you feel uncomfortable articulating that perspective, you may email me, and I may circle back to include it without attribution to you. I ask you to be thoughtful (in both senses of that word), be self-critical, presume (rebuttably) your classmates are engaging in discussion in good faith, and listen carefully and respectfully to all views.

Grading Evaluation--Methods by which students will be evaluated:

I will evaluate your performance in this class based on your performance on the final exam and your completion of two quizzes assigned during the semester. Everyone who completes the quizzes will get the full range of points available. Failure to complete the quizzes will result in a deduction of 20 points from your final exam score. The final exam will be scored on a scale of 200 points (50 points per essay question).

Final Exam Format: Your final exam in this course will be a 4-hour, open-book, take-home exam. It will consist of three essay questions worth 50 points each, and you will be limited to answering each essay question in 750 words or fewer. I will provide you with

the instructions for the final exam on the Canvas Page for this course approximately one week before the final exam date.

Class Attendance:

Please let me know if you will miss class or have missed class. You may miss four classes without excuse. If you miss more than four classes without a valid excuse, you will be dropped from the class.

Please do not arrive late to class if you can avoid it. Let me know if you must leave early. Please turn off your cell phone during class and focus on what is happening in the classroom. I reserve the right to lower your final grade if you engage in behavior that disrupts the learning environment for your classmates.

Exam Delays and Accommodations

The law school policy on exam delays and accommodations can be found here <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/forms-applications/exam-delays-accommodations-form>.

Information on UF Law Grading Policies

This course follows the Levin College of Law's grading policies found [here](#).

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

Online Course Evaluation Process:

Students are expected to provide feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via

<https://ufl.bluera.com/ufl/>.

Recordings of Class Discussions.

All classes will be recorded via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will work with faculty to determine when students may have access to these recordings, and the recordings will be password protected. It is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.

ABA OUT-OF-CLASS HOURS REQUIREMENTS: ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. According to ABA Standard 310, given that we will have three “classroom hours” per week, at least 6 hours of preparation are required outside of class.

Statement on Academic Honesty:

UF Law’s Honor Code is located [here](#). As future members of the legal profession, I expect you to conduct yourself with the highest degree of integrity, truthfulness, professionalism, and respect for the rules and the dignity of others. Any dishonesty or attempt to gain unfair advantage while in law school will be scrutinized by the Bar in determining whether you will gain admission. Act accordingly.

Statement on Diversity and Inclusion:

Every student is a valued member of our classroom. It is important to the learning environment that you feel included and that you are comfortable participating in class discussions and communicating with me on any issues related to the class. If your preferred name is not the name listed on the official UF roll, please let me know as soon as possible by e-mail or otherwise. I will gladly call you what you’d like to be called.

You may change your “Display Name” in Canvas if you desire. Canvas uses the "Display Name" as set in myUFL. The Display Name is what you want people to see in the UF Directory, such as "Allie" instead of "Allison." To update your display name, go to one.ufl.edu, click on the dropdown at the top right, and select "Directory Profile." Click "Edit" on the right of the name panel, uncheck "Use my legal name" under "Display Name," update how you wish your name to be displayed, and click "Submit" at the bottom. This change may take up to 24 hours to appear in Canvas. This does not change your legal name for official UF records.

Health and Wellness Resources:

- U Matter, We Care: If you or someone you know is in distress, please contact umatter@ufl.edu, 352-392-1575, or visit U Matter, We Care website to refer or report a concern and a team member will reach out to the student in distress.
- Counseling and Wellness Center: Visit the Counseling and Wellness Center website or call 352-392-1575 for information on crisis services as well as noncrisis services.
- Student Health Care Center: Call 352-392-1161 for 24/7 information to help you find the care you need, or visit the Student Health Care Center website.
- University Police Department: Visit UF Police Department website or call 352-392-1111 (or 9-1-1 for emergencies).

Basic Needs Assistance:

Any student who has difficulty accessing sufficient food or lacks a safe place to live is encouraged to contact the Office of Student Affairs. We care about you, and we can help.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS

This list of assignments is offered as a guide to the direction of the course. Our pace will depend in part on the level of interest and the level of difficulty of each section and is subject to change. I will give you notice at the end of day of how much I expect to cover the following day.

CLASS	PART	SUBJECT	READING
1, 2	The First Amendment and Government Regulation	I. Foundations of Media Law A. The Role of the First Amendment B. Emergence of Media Law C. Evolution of the News Media	♦ Read CB 3-27
3	Hot Topic	Big Tech and the Press	NetChoice LLC v. Attorney Gen. Netchoice v. Paxton
4,5,6		II. First Amendment Principles that Apply to Media Generally: A. Prior Restraints on Publication B. Contempt C. Direct Prohibitions D. Indirect Burdens E. Disfavored Speech	♦ Read CB 29-122
7	Hot Topic	Twitter Files	Reason Article Reading TBA (waiting for documents to be released)

8,9,10		III. Different Rules for Some Media A. Broadcasting B. Cable C. The Internet	♦ Read CB 123-182
11	Hot Topic	Section 230: What's Next?	Gonzalez v. Google LLC
12, 13, 14, 15	Legal Issues Arising from Publication	IV. Defamation	♦ Read CB 185-294
16		Hot Topics: Defamation Reform	§ 2:3.50. Judicial critiques of New York Times v. Sullivan, 1 Law of Defamation § 2:3.50 (2d ed.)
17, 18		V. Protecting Privacy	♦ Read CB 295-354 ♦
19,20		VI. Liability for Emotional, Economic, & Physical Harm	♦ Read CB 355-406
21	Hot Topic	TBA	TBA
22		Review Day	
23, 24		IX. Subpoenas and Searches	♦ Read CB 509-560
25		X. Access to Info	♦ Read CB 561-576
26, 27		XI Access to Judicial Proceedings	♦ Read CB 637-678
28	FOIA Now	McBurney v. Young	McBurney v. Young, 569 U.S. 221, 133 S. Ct. 1709, 185 L. Ed. 2d 758 (2013)
		Review Session Room and Time TBA	