

Communications Law

Liberties, Restraints, and the Modern Media

Sixth Edition

JOHN D. ZELEZNY

Attorney at Law

Wadsworth Cengage Learning

CONTENTS

Preface

Sixth Edition Themes and Highlights

Sample Syllabus

Suggestions for Using the Text

Chapter 1 The U.S. Legal System

Chapter 2 The First Amendment

Chapter 3 Risks to Public Safety

Chapter 4 Damage to Reputation

Chapter 5 Invasion of Privacy

Chapter 6 Access to Places and Information

Chapter 7 Media and the Justice System

Chapter 8 Creative Property

Chapter 9 The FCC and Broadcast Licensing

Chapter 10 Electronic Media Content

Chapter 11 Obscenity and Indecency

Chapter 12 Commercial Speech

PREFACE

This manual is a guide and test bank for instructors using the Sixth Edition of *Communications Law: Liberties, Restraints and the Modern Media*.

First the manual provides a summary of Sixth Edition themes and highlights. This is a quick look at a few of the legal developments that instructors should watch or stress in communications-law courses beginning in 2010.

Next is a sample syllabus for a semester-long, undergraduate course in communications law, followed by some suggestions on how to utilize the textbook. The syllabus is similar to what I've used in law classes of moderate size — between 30 and 60 students. A mild incentive for class participation is described in the syllabus, and the exams, though primarily multiple-choice in format, also include an essay component. This hybrid exam format is an excellent way to determine a student's understanding of the law, and is similar to the format used in many states' bar exams.

The section titled "Suggestions for Using the Text" provides some ideas for using the textbook as a basis for classroom discussion and test questions. This section also includes some general recommendations on conducting class sessions and incorporating supplemental readings into the course.

Following the "Suggestions" section are 12 chapters that correspond with the chapters in the textbook. Each of the chapters in this manual contains a summary of key points, a discussion of the hypothetical problem presented at the beginning of each textbook chapter, a selection of multiple-choice questions, and then a few short-answer questions. I also suggest using the hypothetical scenario that begins each chapter as the basis for a full-fledged essay question.

I hope this manual will prove useful as you guide students through this challenging course. If you have suggestions for improving this manual or the textbook, or if you have questions about conducting law classes, please feel free to contact me through a Wadsworth representative or directly via e-mail at john@johnzelezny.com.

John D. Zelezny

SIXTH EDITION THEMES AND HIGHLIGHTS

This Sixth Edition of *Communications Law* was produced at a time of upheaval in the media landscape. Consumers and advertisers were abandoning traditional media for the Internet, a seemingly more nimble, engaging and promising medium. Whether newspapers, TV broadcasters, and other avenues of mainstream journalism would survive – and in what form – was the subject of much debate and even federal-government inquiry. Traditional advertising agencies were scrambling, too, to provide new services to clients and establish a new business model for their own survival.

In communications law, Internet issues were dominating professional discussion and increasingly entering the courts. The Sixth Edition of *Communications Law* reflects this shift, though the lineup of chapters has not changed. Here are a few key points for those instructing a media-law course with the Sixth Edition:

- The growth of user-generated content (UGC) on the Internet is the most significant recent development in communications law. UGC, such as the uploaded videos on YouTube, create high risks of legal liability – not only for those who upload the content, but also for the site operators.
- User-generated content creates potential liability for copyright infringement, disclosure of trade secrets, trademark infringement, defamation, statutory and common-law invasion of privacy, obscenity, child pornography, and child-safety violations – all despite the First Amendment. Examples of these problems are provided in appropriate places throughout the textbook.
- A key question for many Internet services – including newspapers and broadcast stations that maintain sites with UGC – is how to avoid or minimize liability. Two federal statutes play key roles by granting qualified immunity to host sites. One is §230 of the Communications Decency Act of 1996, which provides immunity from defamation and related state-law civil claims when the service provider acts in good faith (discussed in chap. 4). The other is §512 of the Digital Millennium Copyright Act of 1998, which provides immunity against copyright claims when certain conditions are met (discussed in chap. 8).
- Another potentially significant development has been the First Amendment lawsuits challenging state and federal restrictions on political expression by corporations and interest-groups. The most fascinating case is *Citizens United v. FEC*, a case with the potential to disrupt decades of campaign-reform law assumptions. The case is discussed in chapter 2 but not in a satisfying manner because it was still pending in the U.S. Supreme Court as this edition went to press.
- And a word about the chapter-opening hypothetical problems: Most of these remained virtually the same as in the previous edition. But the hypotheticals in chapters 2, 3, 8 and 12 are new, and the one in chapter 11 is much revised. This was done to reflect current issues and to better incorporate “new media” examples.

SAMPLE SYLLABUS

Communications Law

Course Description & Objectives:

This course examines the federal, state, and local laws that most directly affect mass communication in the United States. The course will serve as a kind of "survival kit" for communications students while at the same time providing a liberal arts perspective on the law. You should gain the following:

- (1) a basic understanding of the American legal system, its institutions, and some of its terminology;
- (2) a broad understanding of First Amendment principles as they relate to mass communication; and
- (3) a working knowledge of the laws that directly restrict or enhance information gathering and message dissemination in the mass media, and an understanding of the rationales behind those laws.

Textbooks:

John D. Zelezny, *Communications Law: Liberties, Restraints and the Modern Media*, 6th ed., Wadsworth, 2010.

John D. Zelezny, *Cases in Communications Law*, 6th ed., Wadsworth, 2010.

Exams and quizzes:

Your grade for this course will be derived primarily from three exams. The first two will count 100 points each, and the comprehensive final will be worth 150 points. Most of the exam points will be based on multiple-choice or short-answer questions, but each exam will also include at least one major essay question in which you will be asked to analyze the legal implications of a described scenario.

In addition to the exams, 10 unannounced reading quizzes will be given during the semester. Each will be worth 10 points and will cover the textbook and casebook pages assigned for that day's class.

Final grades:

Final grades will be based on your percentage of points out of the 450 possible on exams and quizzes, as follows:

- 90% = A
- 80% = B
- 70% = C
- 60% = D

Extra credit:

Up to 20 extra credit points may be earned for the semester by writing one of the following: (1) three one-page case briefs on cases found in your casebook, or (2) a single case brief of a media-law case you find in the campus library. The briefs must be typed, must exhibit your original thought, and must follow the format outlined in the casebook.

Class participation:

This class follows a lecture-discussion format in which student participation is highly beneficial to the learning process. Therefore, in the calculation of final grades, up to 10 bonus points may be awarded to students who excelled in class attendance, preparation, and participation. These points are awarded at the instructor's discretion and are given only to students whose classroom performance is clearly exemplary.

Make-ups:

Make-up exams are given only when the instructor is notified — at the earliest opportunity — of personal illness, family emergency or conflicting institutional necessity (such as a required trip for the debate team). Normally, notification must be in advance of the scheduled exam.

Outline:

The U.S. legal system	Chap. 1
The First Amendment	Chap. 2
Risks to public safety	Chap. 3
Damage to reputation	Chap. 4
<i>*** First exam — 100 points</i>	
Invasion of Privacy	Chap. 5
Access to places and information	Chap. 6
Media and the justice system	Chap. 7
Creative property	Chap. 8
<i>*** Second exam — 100 points</i>	
The FCC and broadcast licensing	Chap. 9
Electronic media content	Chap. 10
Obscenity and indecency	Chap. 11
Commercial speech	Chap. 12
<i>*** Comprehensive final exam — 150 points</i>	

Study Tips:

Most students find this course to be highly interesting and valuable. At the same time, law can be a formidable subject. Success in this course will require effortful thinking on your part, and memorization alone will be insufficient to meet the course objectives. Here are some suggestions:

- Study your assigned readings prior to the class sessions at which they will be discussed. Make margin notations as you read, and be prepared to participate in class discussion.
- Take thorough notes in class. And if you must miss a class, make sure you obtain the notes from a friend. Outline your notes and reading material prior to exams.
- Form a serious study group with two or three other members of the class. Use your study-group sessions to discuss hypothetical problem scenarios; this is a good way to pinpoint areas where you may need further study.
- And finally, bring your textbooks to each class session; we will refer to them.

SUGGESTIONS FOR USING THE TEXT

Communications Law: Liberties, Restraints, and the Modern Media contains some special features intended to make the text a valuable tool for instructors who like to supplement lectures with Socratic questioning or class discussion. One of these features is a hypothetical scenario to begin each chapter. The hypothetical is intended to provide practical context for students and entice them to solve the puzzle. In addition, the hypothetical can be used as a class discussion starter.

Answers to the hypotheticals as written can be found at various junctures in each chapter and to some extent in a chapter's final summary point. But in this manual you will find suggestions for how the hypotheticals can be easily altered in class to pose different legal problems and evoke critical thinking and analysis. Particularly when students may seem a bit dazed by legal principles in the abstract, instructors may find that returning to the hypothetical — either in original or altered form — sparks interest and provides additional continuity to class discussion.

Another option is to use a modified version of a chapter hypothetical as the basis for an essay exam question. This ensures that the exam will contain a significant analytic component, while at the same time giving students a scenario that is familiar in some respects.

Students should be encouraged to bring their textbooks to every class session. Though most of each class session may be devoted to lecture, more active thinking can be fostered by occasionally calling on students to explain a term or principle or to recite the facts and outcome of a case discussed in the text.

Instructors who wish to include an even greater dose of case analysis during class sessions should consider assigning students to read the complete judicial opinions in the campus library. One or two students might be assigned cases to read for the following class. The chapter endnotes contain full citations for cases mentioned in the text, including those cases not referred to by name.

Instructors who would prefer to supplement their courses with carefully edited versions of cases should adopt *Cases in Communications Law*, also published by Wadsworth. That supplemental book contains more than 60 cases, each edited to focus on the substantive communications-law issues.

CHAPTER 1

The U.S. Legal System

SUMMARY

Most students taking an undergraduate course in communications law have had little formal instruction on how the legal system actually works in the United States. Though an exhaustive understanding of the legal system is not a prerequisite to studying the substance of communications law, a rudimentary understanding of the system is indeed necessary. Therefore, this chapter acquaints students with basic legal concepts, procedures, and terminology that necessarily will be encountered in later chapters of the textbook.

Specifically, students should understand that the law comes from federal and state jurisdictions and that within each jurisdiction there are multiple sources of law, with varying degrees of supremacy. It is also important that students understand how state and federal court systems are structured and the difference between trial and appellate courts. Furthermore, students should know the basic stages involved in criminal prosecutions and civil litigation, and they should understand why only a small percentage of cases actually go to trial. The chapter also illustrates how to read a case citation — an important point for students who may wish to look up the actual judicial opinions in some communications law cases.

Perhaps the most difficult concept in this chapter is that of common law and how it relates to the broader term, case law. The term common law refers to rules that originated independently in the courts, as judges strove to fairly resolve the disputes before them. Case law is sometimes used synonymously with common law, but it can also be a broader term that refers not only to common law rules but to any court interpretations of other sources of law, such as constitutional provisions or statutes. In either instance — whether establishing legal principles from scratch or applying laws written by legislative bodies — the court rulings may establish binding precedent.

THE HYPOTHETICAL: THREAT OF A LAWSUIT

A chapter explaining the legal system and a host of legal terms can seem a bit dry and abstract. The hypothetical problem at the beginning of this chapter is intended to combat that tendency by combining a realistic scenario with some curiosity-raising questions about how the legal system would apply.

By reading the chapter, students should find the answers to the questions posed at the end of the hypothetical. Occasional paragraphs or sentences in the text refer back to the hypothetical. In addition, the last paragraph in the summary points section, at the end of the chapter, contains brief answers to most of the questions presented in the hypothetical.

Instructors may wish to change the facts of this hypothetical slightly for purposes of class discussion. For example, suppose that instead of a threatened copyright lawsuit from the newspaper, a local resident identified in one of the stories vowed to sue the radio

station for libel. This would change a couple of the answers substantially. Libel law in most jurisdictions is primarily of common law origins, rather than statutory. And the lawsuit would more likely be filed in state court rather than federal.

What if the threat was from the Federal Communications Commission, which concluded that the station broadcast indecency? Now the source of the law would be a combination of federal statute and administrative rules; the "case" would not initially go to court but rather to an agency hearing; and the federal court battle might begin only after the FCC sends the station a notice of its decision to fine the station.

EXAM QUESTIONS

1. The term jurisdiction refers to
 - a. the geographical territory within which a government may exercise authority.
 - b. the subject area or type of dispute over which legislatures and court systems have authority.
 - * c. Both a and b
 - d. None of the above

2. The federal government exercises exclusive jurisdiction over
 - a. advertising regulation.
 - b. privacy law.
 - * c. copyrights.
 - d. obscenity prosecutions.

3. Lawsuits concerning federal constitutional rights may be adjudicated in
 - a. federal court only.
 - b. state court only.
 - * c. federal court or state court.

4. The final arbiter on all legal questions involving the U.S. Constitution is
 - a. Congress.
 - b. the U.S. Attorney General.
 - * c. the Supreme Court of the United States.
 - d. the various state supreme courts.

5. The main trial court in the federal system is called the
 - * a. United States District Court.
 - b. Superior Court of the United States.
 - c. United States Court of Appeals.
 - d. Federal Circuit Court.

6. The United States is composed of how many sovereign legal systems?
 - a. 49
 - b. 3
 - c. 50
 - * d. 51

7. Federal and state judicial systems consist of two basic kinds of courts. They are:
 - a. justice courts and equity courts.
 - b. jury courts and justice courts.
 - * c. trial courts and appellate courts.
 - d. local courts and supreme courts.

8. Under the doctrine of judicial review, it is the role of each state court system to
 - a. administer the applicable precedent accordingly.
 - * b. interpret that jurisdiction's constitution.
 - c. determine whether statutes make good public policy.
 - d. None of the above

9. Statutes enacted by the federal government are published in the
 - * a. United States Code.
 - b. Federal Reporter.
 - c. Journal of Federal Regulations.
 - d. Statutory File.

10. Laws passed by federal administrative agencies are published in the
 - a. U.S. Administrative Code.
 - b. Federal Supplement.
 - * c. Code of Federal Regulations.
 - d. U.S. Daily Journal.

11. What is the hierarchy of laws, from the most powerful source to the least powerful?
 - a. Constitutional law, common law, statutory law and administrative law
 - b. Constitutional law, administrative law, common law and statutory law
 - c. Common law, constitutional law, administrative law and statutory law
 - * d. Constitutional law, statutory law, administrative law and common law

12. Legal rules conceived and fostered independently by the courts are known as
 - a. administrative law.
 - b. constitutional law.
 - * c. common law.
 - d. statutory law.

13. Without the _____ , common law would simply be a worthless muddle of disjointed rules.
 - a. federal judicial system
 - * b. doctrine of precedent
 - c. U.S. Constitution
 - d. doctrine of judicial review

14. In most jurisdictions, statutes passed by legislative bodies are systematically arranged in bound volumes. These compilations are referred to as
- a. statutory law.
 - b. statutory journals.
 - * c. codes.
 - d. decisional law.
15. In a criminal case
- a. the government prosecutes accused individuals.
 - b. the evidence of guilt must be convincing beyond a reasonable doubt.
 - c. the injured individual is compensated by the government.
 - * d. Both a and b
16. One area that is mainly a criminal matter is the law of
- a. copyright.
 - * b. obscenity.
 - c. torts.
 - d. libel.
17. The usual remedy sought in a civil lawsuit is
- a. a fine and time in jail.
 - * b. compensation in the form of money.
 - c. a new contract.
 - d. an official apology.
18. The party who initiates a civil lawsuit is called the
- a. prosecutor.
 - b. appellee.
 - * c. plaintiff.
 - d. applicant.
19. Which of the following wrongful acts most likely would be a breach of contract rather than a tort?
- a. Publishing harmful falsehoods about another person.
 - b. Secretly "bugging" someone's house.
 - * c. Failing to pay a model who posed for photographs.
 - d. Playing a cruel practical joke over the radio.
20. When there is no contested issue of fact, a judge may end a case prior to trial by granting a motion for
- a. settlement.
 - b. change of venue.
 - c. injunction.
 - * d. summary judgment.

21. An appealing party is referred to as the
- a. appellee.
 - b. respondent.
 - * c. appellant.
 - d. plaintiff.
22. Each year the U.S. Supreme Court receives several thousand requests for review. Of these, the Court actually decides about how many cases?
- * a. 100
 - b. 1,000
 - c. half of all requests
 - d. 90 percent
23. A weaker substitute for a majority opinion is a
- a. dissenting opinion.
 - * b. plurality opinion.
 - c. concurring opinion.
24. Suppose the case of *Laurel v. Hardy* was decided by the U.S. Supreme Court in 1990 and the opinion is published at page 210 of the United States Reports, volume 464. The proper citation would be:
- a. *Laurel v. Hardy*, 1990, U.S. 464, 210.
 - b. *Laurel v. Hardy*, 210 U.S. vol. 464, 1990.
 - * c. *Laurel v. Hardy*, 464 U.S. 210 (1990).
 - d. 464 *Laurel v. Hardy* 210/1990.
25. A significant limitation on courts is that they may only rule on "justiciable controversies." What does this mean?

[Courts are empowered only to resolve specific legal disputes between particular people or entities whose legal rights are in jeopardy. Courts may not issue rulings on abstract or hypothetical legal questions.]