

# Mmc 4200 exam 2

[Law](#), [Common Law](#)



## MMC 4200-Spring 2012 Review Sheet for Second Exam Copyright©2012

## Prof. Sandra Chance Chapter 5- Privacy

## 1. Where did the right to privacy come from?

- Development of the 20th century and often traced back to an 1890 article in the Harvard Law Review written by Samuel Warren and Louis Brandeis who argued that advances in technology and the voyeurism of urban newspapers necessitated new legal protections for privacy.
- The right to privacy is protected by the U. S. Constitution. (The right to be let alone and free from unwarranted governmental intrusion.
- because "gossip had become a business," argues that it was rooted in the individual's dignity in the law of copyright and trespass
- Right to privacy isn't in the Constitution, new added on expressed right

## 2. What are the four torts of privacy?

- Private facts
- Intrusion: a physical or technological invasion of a person's privacy
- False light: public portrayal of someone in a distorted or fictionalized
- Appropriation: unauthorized commercial exploitation of someone's identity

## 3. What are the elements for a private fact case?

Publication of a private matter that is: (1) highly offensive to a reasonable person, AND (2) is not of legitimate concern to the public. -TRUTH is not a defense. -Must be widely published. -publication of information that is "so

intimate" and the publication of which is "so unwarranted" as to shock or "outrage the community's notions of decency"

4. What are the defenses to a private fact case?

- First Amendment – Protects most truthful information lawfully acquired IF not highly offensive to a reasonable person and of legitimate concern to the public.

- Newsworthiness Public Records and Occurrences – Strange and Unusual? – Newsworthiness over Time

- Consent

5. What are the elements of intrusion? - Reasonable expectation to privacy - Intentional invasion of a person's physical seclusion or private affairs - Highly offensive to a reasonable person - Physical, electronically or mechanical - Does not require publication, only information gathering a single person can be sued

6. What is the general rule about filming, photographing and recording? - If it is in public there is an implied consent, if not in a public place consent is needed.

Media personnel can photograph, film, and record what they easily see/hear in public places provided they do not harass, trespass or otherwise intrude - Public: street, parks - Quasi-public: prison, restaurant or a mall

7. When is intrusive behavior typically found not to be highly offensive? - Expectation of privacy that you are in, in a place with high -more likely to be offensive (bedroom or hospital), lower- not typically highly offensive- applies

to public figures as well - Obama's bedroom is as private as mine 8. What are the rules about secret recording (hidden cameras)?

See Dietemann v. Time, Inc. - Hidden devices are indispensable tools of newsgathering (newsgathering) - In Florida it is unlawful to record without other parties, you have to obtain permission - Cannot audiotape without consent if they have a reasonable expectation of privacy in Florida

9. What are the elements of a trespass? - Physical invasion of someone's property without the consent of the owner (physical) - Only defense is consent - Ex: FoodLion, went past where public is let in, weird meats being sold sued for the act of trespass but not the information required

10. What is the defense of custom and usage? See Florida Publishing Co. v. Fletcher. -Custom and Usage, Florida one of the few. It is a defense for intrusion and trespass, public officials gave you implied consent - Firefighter letting photographer follow him

11. What are the elements of a false light tort? See Cantrell v. Forest City Publishing Co. - Person Not identified - Portrayed in a false light - Harmed - Distortion: deleting elements, fictionalization: adding new elements

12. When must a plaintiff prove "actual malice" in a false light case? See Time, Inc. v. Hill. - Involved in a newsworthy

13. What are the defenses for a false light case? What's happening in Florida? Remember the Anderson case from our class discussion. - Truth, individual was not identified, privileged source, actual malice proof required by plaintiff, consent, not offensive to a reasonable person - Florida does not recognize false light only defamation

14. What are the elements of appropriation? What's happening in Florida? One who appropriates to his/her own use or benefit the name or likeness of another is subject to liability to the other for invasion of privacy.

- Unauthorized commercial use of another's name or likeness.
- Protects a person's property right
- Right of publicity – Advertisements – Look Alikes and Sound Alikes
- Defenses – Newsworthiness? Zacchini v. Scripps? Howard Broadcasting Co. – Consent In Florida:
- Lawsuit over “ Perfect Storm” filed by family members of William Tyne, captain of the Andrea Gail.
- Florida Supreme Court rules in favor of Warner Brothers.
- Florida Statute 540. 08 prevents the use of a person's name or likeness to directly promote a product or service. Does not apply to publications, including motion pictures, which do not promote a product or service.

15. What are your defenses if you get sued for appropriation? See Zacchini v. Scripps-Howard - Newsworthiness - Consent - Individual not identified - The First Amendment

16. What are the elements for an emotional distress lawsuit? • [pic] Conduct that atrocious and utterly intolerable in civilized community, outrageous conduct by the media is thought to cause extreme anxiety (usually unsuccessful)

17. What's the difference between private figures and public official/figures suing for intentional infliction of emotional distress? See *Hustler Magazine v. Falwell* - Public figures have to prove actual malice

18. What is participant monitoring? What is the law in Florida? How is this different from the federal law? - law permits one party to a conversation to record or transmit a conversation without telling the other party, law is less tolerant of third party members recording conversations than - must have consent - federal law and most states permit participant monitoring if not conducted for criminal purposes 19. Do reporters trespass when they misrepresent themselves to acquire information from public businesses? - FL no because of custom and usage, other states might be different

20. When is the media responsible for physical harm, which results from incitement, negligence or lack of duty not to publish material due to foreseeable harm? - Only held liable for foreseeable harm and incitement (when programs or stories appear to cause physical harm- *Bradenburg v. Ohio*-Hitman Manual Chapter 7 - Political Speech

21. How do the speech rights of corporations differ from individuals? Do corporations have First Amendment rights to free speech? When can these rights be limited or restricted? See *First National Bank of Boston v. Belotti* and *Pacific Gas & Electric v. Public Utilities Comm.* - Corporations can be required to testify against themselves and have no right of privacy - Provide commercial information to consumers - Allowed to lobby government - Not required to carry messages they oppose

22. What are the rules about corporations/individuals contributing to political campaigns? How did these change after Citizens United v. FEC? - Corporations can give unregulated expenditures to promote a candidate. They cannot give contributions because it is direct to the campaign.

23. Are governmental regulations on corporate speech constitutional? See Buckley v. Valeo. Yes

24. What is the Bipartisan Campaign Reform Act? The Bipartisan Campaign Reform Act of 2002 (BCRA) includes several provisions designed to end the use of nonfederal, or " softmoney" (money raised outside the limits and prohibitions of federal campaignfinancelaw) for activity affecting federal elections. These include: • Prohibiting national parties from raising or spending nonfederal funds • Requiring state, district and local party committees to fund certain " federal election activities" with federal funds (i. e. ard money) and, in some cases, with money raised according to new limitations, prohibitions, and reporting requirements (i. e. Levin funds), or with a combination of such funds. • Limiting fundraising by federal and nonfederal candidates and officeholders on behalf of party committees, other candidates, and nonprofit organizations. Campaign reform act 1974 defined what corporate expenditures were and placed limitations on them. Bipartisan Campaign Reform Act put even more limiations on corporate expenditures and when they could use money to pay for ads and limited whther they

25. What is a PAC? -Political Action Committee

26. What are the differences between expenditures and contributions, and why are these distinctions significant? - Contributions are gifts of money or

services given directly to a candidate or campaign committee. The Supreme Court in Buckley, felt that limiting contributions helps prevent quid pro quo - Expenditures is money spent independently of candidates to advocate a company's position. This speech is considered “ pure speech” and therefore is not restricted and limits on them are a direct restraint on political speech

27. What are “ electioneering” communications?

28. What is express advocacy? - Express advocacy is directly promoting a candidate by using buzz words such as “ Vote for\_\_” or “ Elect \_\_”

29. What provisions of the BCRA were upheld as constitutional by the U. S. Supreme Court in its Citizens United v. FEC decision? - Preventing corporate and federal campaigns from making contributions directly to candidates was upheld as constitutional 10. What are the concerns raised by the Citizens United holding? What are the benefits of this decision? Concerns include “ quid pro quo” or the idea that donating or supporting a candidate will require that candidate to help the supporter in the future. Dollars in exchange for votes - Instead of giving money to candidate, spending money on candidate

Chapter 8 – Commercial Speech 1. How did the First Amendment protections for commercial speech evolve? See Valentine v. Chrestensen and New York Times v. Sullivan. - In Valentine v. Chrestensen, the supreme court ruled that commercial speech/advertisement feel outside of first amendment protected speech.

The Valentine ruling was known as the “ Commercial Speech Doctrine” In NYT v. Sullivan, the Supreme court said political advertisements, even if purchased, were still protected speech 2. What is the extent of First



Amendment protection for commercial speech? Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council. The First Amendment protects 3. What “test” does a judge use in determining whether a regulation of advertising is an unconstitutional regulation because it violates the First Amendment? - The Four Part Test was created by Hudson Gas v.

Public Service Commission - Is the speech commercial expression eligible for first amendment protection - Does the government have a substantial interest in regulating the expression - Does the regulation directly advance the governmental interest - Is the regulation narrow 4. Does the First Amendment protect false advertising? No 5. When are regulations (also known as “prior restraint”) permissible when it comes to advertising? What are some other differences between commercial and political speech? 6. What is the Central Hudson test and when is it used? The central Hudson test is the narrowly tailored requirement of the Four Part test. It is used to ensure that regulations on speech are the least restrictive possible. 7. What is the FTC? What does it regulate? Where does its authority come from? What powers does it have? - The Federal Trade Commission which operates and receives authority from the Federal Trade Commission Act of 1914. Its primary mission is to protect consumers from unfair or deceptive market practices and to promote competition. It has the power to hold investigations, require advertisers to verify the accuracy of advertising claims. 8. What is an unfair practice? Unfair practice, as described by Congress, is one that causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or competition. This

is more likely to occur in customer treatment than advertisements 9. What is a deceptive ad - The FTC defines deceptive as one that is likely to mislead a reasonable consumer with a material statement or omission. Advertisements don't necessarily have to deceive someone to be deceptive, they just must have a " tendency" " capacity" or be " likely" to mislead 10. What are express and implied falsehoods? - Express falsehoods are ones that make a direct representation using the direct meanings of words. They directly state something that is untrue, such as " caffeine free" coffee that contains caffeine. Implied falsehoods are statements of omission in advertisements that create a false impression 11. What authorities can regulate advertising? - States can enact legislation that prohibits unfair acts or deceptive advertising. Federal government can regulate advertising 12. What is the FTC's complaint process? Citizens or competitors can make complaints.

Citizens cannot sue through federal courts. Can only complain to FTC and hope the FTC takes action. 13. What is the Lanham Act and when is it used? - The Lanham Act prevents people from advertising false or misleading information 14. What is RICO and when is it useful to stop misleading or deceptive advertising? - RICO is the Racketeering Influenced and Corrupt Organizations Act which curbed organized crime's infiltration of businesses, preventing uses of interstate enterprise, and fraudulent use of telephones or mail to promote illegal practices 15. What's happening with personal data collection?

Websites, businesses, social media, like Facebook? - Personal data is being used for identity theft 15. When are corporations required to report financial information? See SEC v. Texas Gulf Sulphur Co. 16. What is the SEC? Where

does it get its authority? What does it have authority over? - The SEC is the Securities and Exchanges Commision and it has authority over publicly traded corporations in the New York Stock Exchange, and the availability to the public of its information 17. What is Rule 10(b)? What does it prohibit? How does it define fraud? See SEC v. Texas Gulf Sulphur Co. Rule 10b-5 prevents insider trading, or making decisions to sell or buy stock based on information that is not available to the public 18. What is " insider trading" and what are the penalties for insider trading? See SEC v. Texas Gulf Sulphur Co. - Insider training is buying or selling securities based on nonpublic corporate information 19. What does " tipping," " tipper" and " tippee" mean? See SEC v. Texas Gulf Sulphur Co. - Tipping- passing non public material onto friends or brokers so they can trade - Tipper- A person who passes on the nonpublic material Tippee: a person who receives an insider tip and makes a securities trade based on the information Important Cases: Chap. 5-Privacy Cox Broadcasting Corp. v. Cohn Court established nearly complete First Amendment protection for the media to report information from official records available in open court when a Georgia father couldn't bring a privacy suit against a TV station for naming his daughter violating a Georgia statute (broadcast of a rape victim a misdemeanor) Supreme Court said " the First Amendment does not permit a privacy suit against the media for disseminating private information contained in public records" Florida Star v.

BJF. Court said the First Amendment protects publication of lawfully acquired truthful information about a matter of public importance unless prohibiting publication will further a state interest " of highest order" -weighed

individually, after Court reversed a judgment of Jacksonville newspaper publishing the full name of BJF rape victim, Florida Star acquired it from a gov. news release. S. Court reversed because it was a violent crime of paramount importance Florida v.

Globe Communications, Inc. Florida law was unconstitutional " that it was unconstitutional to publish the name of a victim of a sexual offense" because it was overly broad Cape Publishing, Inc. v. Bridges public exposure in an event involving suicide, threatened murder, and police was of legitimate public interest, the court said, just as other crimes, arrests, police raids, accidents, and fires are of public interest Dietemann v. Time, Inc.

US Court of Appeals ruled Dietman, a quackdoctor, could collect damages from Time, Inc. for invasion of his privacy by two Life magazine employees who secretly photographed the doctor at his house as he waved a wand over bottles of body tissue and rubbed what he said was the cancerous breast of the other journalist, transmitter in journalist's purse went to a police car, awarded Dietman because it was in a private place Hustler Magazine v. Falwell

Falwell sued for libel, invasion of privacy, and intentional infliction of emotional distress. Supreme Court reversed because an outrageous standard of liability is constitutional because it is too subjective and would punish the publishers' motives, ad did not contain actual facts, or actual events therefore it was so outrageous it could be true, lost defamation, won emotional distress in court of appeals, then supreme court reversed it. Zacchini v. Scripps Howard Broadcasting Co.

Supreme Court ruled that the First Amendment did not bar a human cannonball from pursuing a publicity suit under Ohio law against a television station that broadcast his entire act during a news program, Supreme Court called it "professional property" media lost Cantrell v. Forest City Publishing Co. Margret Cantrell sued for invasion of privacy because she was in false light due to a story by a reporter's deliberate falsifications that implied she was interviewed, claiming he had an interview with her, Supreme Court ruled there was NYT actual malice when the reporter falsified the information Fla. Publishing Co. v. Fletcher tate supreme court ruled that a Florida Times Union photographer didn't trespass when he accompanied firefighters into a private home after a major fire that killed a 17-yr old, Cindy Fletcher and published a picture of her body outline, but Court said the photographer was invited in by fire officials so there was an implied consent—legal influence is limited to Florida cases involving catastrophes Time, Inc. v. Hill family sued saying they had been portrayed in false light during a play that was recreated of their hostage situation, won lower court, Supreme Court said if it's a newsworthy issue must prove actual malice Anderson v.

Pensacola News Journal (class discussion) Anderson was a political figure, him and wife going through divorce and went on a hunting trip, accidentally killed her. Portrayed in false light by the newspaper made him look like murder, won in lower courts, Florida supreme court does not recognize false light "it duplicates existing torts without the attendant protections of the first amendment, instead they do defamation" can't claim false light in Florida. Braun v.

Soldier of Fortune Soldier of Fortune negligently published an advertisement that resulted in the death of Richard Braun, killer hired after he placed an ad " Gun for Hire" Court ruled that Fortune violated a public duty not to publish a clearly identifiable unreasonable risk of harm, ruling did not violate first amendment because publisher did not check danger and legality of advertisement-foreseeable harms? media responsible Chap. 7 – Political Speech Buckley v.

Valeo Court said the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment" upheld the federal law that sets limits on campaign contributions but ruled that spending money to influence elections is a form of constitutionally protected free speech, made distinction on contribution limits from expenditure limits, BUT part of the law was struck down.

First National Bank of Boston v. Belotti bank wanted to buy ads opposing an income tax, law said that they couldn't publish it because it hadn't nothing to with the bank's business, Supreme Court created an almost unlimited First Amendment freedom for non-media corporations to spend money to support social issues—founded on the right of citizens to receive political speech by corporations Pacific Gas & Electric v. Public Utilities Comm.

Supreme Court ruled that Pacific Gas could not be forced to include a newsletter from a consumer group in the company's billing envelope, unconstitutional for the commission to force them to publish messages they don't agree with Citizens United v. FEC overturned 100 years of laws and regulations, rejected quid pro quo (corruption) the distortion (level playing

field-wealthy skewing marketplace of ideas) case based on Hilary movie made by non-profit Citizens United, filed an injunction to stop Election Committee from applying BCRA, injunction denied, Supreme Court overturned saying

Chap. 8 - Commercial Speech Valentine v. Chrestensen passing out handbills, statute in NY prohibiting passing out handbills, city arrested him, Supreme Court ruled NY could stop distribution because it was purely commercial advertising that fell outside first amendment protection, 1976 Virginia Pharmacy established protection for purely commercial advertisers Virginia State Board of Pharmacy v.

Virginia Citizens Consumer Council law against publishing prices, citizens have first amendment right to receive and publish information Central Hudson Gas & Electric v. Public Service Court upheld utility's right to promote the use of electricity Kasky v. Nike Nike accused of sweatshops, sent out a press release, sued, Nike lost because they sent out misleading information not protected by the First Amendment SEC v. Texas Gulf Sulphur Co. company issued press release to damper fears about large copper deposits, 12 days later hit huge deposit, insiders bought and sold stock Exam Review Know implied falsehood vs expressed falsehood. Expressed-written or said Implied-the ad itself implies that the product can do something it really can't do. When can RICO be applied? When there is overwhelming corruption. People are being swindled In Florida no false lighthouse because it's so similar to defamation. False light DOES NOT exist.