

**Memorandum to Students**

# **Exam Prospectus Mass Media Law**

**Spring 2013**  
**Texas Tech University School of Law**  
**Visiting Associate Professor of Law Eric E. Johnson**

## **1. OVERALL POINTS**

**Purpose:** I am writing this document to give you specific information that will help you prepare for and know what to expect on the Spring 2013 Mass Media Law final exam.

**Fairness:** My paramount value in designing and grading the exam is fairness. Over the years, I have thought long and hard about how to make exams and grading more fair, and you will see the product of that reflection in this memo. As a whole, this memo is intended to eliminate the potential for surprise on the exam by disclosing as much as I can about the exam in advance.

**My goal and your goal:** Your goal in writing your exam response is to show your mastery of the material presented in the course and your skills in analyzing legal problems involving the course's subject matter. My goal in designing the exam is to provide you with a full and fair opportunity to do so.

Now let me get into some details.

## **2. DETAILS AND PARAMETERS**

Section 12 of the syllabus sets out the basic parameters of the exam. I will reiterate the major points here and expand on a few:

**Kind of exam:** The exam will consist entirely of a set of hypothetical facts requiring analysis by means of an essay-type written response, plus a theory/policy question. (There will not be any short-answer or multiple-choice questions.)

**Duration:** You will have four hours in which to write your exam response. Despite the four-hour duration of the exam session, I plan to write a "three-hour" exam – that is, an exam that could, in my judgment, be thoroughly and competently answered in three hours or less. Thus, I intend for you to have plenty of breathing room.

**Source of exam:** Your exam will entirely comprise fresh material written by me. I will not re-use any material whether published or unpublished, including other exams.<sup>1</sup>

**What materials you may reference and have with you:** The exam will be administered on an open-book basis. You may bring with you any materials on paper

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<sup>1</sup> But, note that I plan to use materials from our class as inspiration for designing the hypothetical fact pattern for the exam. See § 3, below.

that you like, including books, outlines, printouts, notes, etc. There is no limitation on this. For instance, I have seen some exams that require students only to bring outlines that the students, themselves, have authored. There is no such requirement in this class.

Non-paper materials are not permitted. No electronic or interactive resources (such as a tablet computer, smart phone, etc.) may be used or referenced. You may, of course, use a laptop running exam software to write your exam (and I recommend this), but you may not reference files stored thereon during the examination session.

**Word limit:** Your response on the exam will be limited by word count. There will be one general word limit for the entirety of your response. (That is, there will not be separate word limits for separate questions or portions of your response). As the syllabus provides, all word limits are “hard,” and I will not give credit for the portion of your response, if any, that exceeds the limit. (See Syllabus §12-2(c).)

If you are typing your exam using exam software installed on your laptop, you will be able see an automatically generated word count.

If you will be handwriting your exam, I recommend that you estimate ahead of time - by practicing writing on bluebook pages - how many words you tend to write per page. That way that you can have a good approximation of the point at which you will be approaching the limit. Do note, however, that an actual word count will be used for grading the final exam. While I will not deduct points if you go over, I will not give credit for the portion of the response that is overage. Keeping the same hard word limit for typed and handwritten exams is, in my view, the only way to be fair.

### 3. TOPICS ON THE EXAM / HOW I WILL DESIGN THE EXAM

The best way for me to tell you what to expect is for me to tell you what I will draw from and what will constrain me when writing the exam.

**Kinds of questions:** The exam will have two questions on it, each of a different type.

- *Theory/policy analysis:* There will be a “theory” or “policy” type question that will call for you to provide normative argumentation about the law. In other words, instead of analyzing what the law *is*, you will be asked to argue about the law as it *ought to be*. This question will be weighted as one-twelfth (1/12) of your exam grade.<sup>2</sup>
- *Legal analysis:* There will be a question broadly calling for you to provide legal analysis (i.e., to analyze a set of parties’ legal positions, including possibly explaining how you would advise a client) in response to a set of hypothetical facts. This question will be weighted as eleven-twelfths (11/12) of your exam grade.

**The Correspondence Principle:** The most important thing to me when I write an exam is what I call the Correspondence Principle. It is this: The emphasis on the exam will track the emphasis in class and in the readings.

**Comprehensiveness:** In keeping with the Correspondence Principle, I will strive to be very comprehensive in terms of the coverage of topics on the exam. I will use the syllabus as a checklist, and I will attempt to seed an issue for every major substantive

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<sup>2</sup> There is more about the format of this question and what it will require in § 4, below.

doctrinal topic (represented by Modules 8 through 34 on the syllabus) into the hypothetical facts of the exam. I may not succeed in getting every single one in there, but I can guarantee that I will come close. (As a consequence, I recommend that you refer to the topic list on the syllabus as a checklist of a sort when spotting issues on the exam.)

**Breadth and depth of coverage:** Any material presented in class or in the readings is potentially fair game for the exam – except for those areas specifically excluded below. But, in keeping with the Correspondence Principle, the emphasis given to topics will correspond to how much attention they received in class and in the readings. So, if some doctrinal point was not given significant attention in class or made only a minor appearance in the reading, then you can be sure it will not loom large on the exam. In fact, it won't even loom medium.

Now, I cannot guarantee that no obscure point will find its way onto the exam. Why not? Well, there is always the possibility that some clever student will make a brilliant point regarding some tiny point of law, even if I never intentionally meant to include it. Such a possibility is a natural consequence of having an open-ended hypothetical fact pattern calling for an open-ended essay response. Obviously, I can't hold it against the clever student who sees something I didn't, and in such a situation I will happily award a few extra points, although not a windfall.

So, the bottom line is, the more you know, the better, but do not obsess about trying to learn all the finer points. Prioritize your studying based on what I explain next.

**The focus list – what I will draw from in writing the exam problem:** When I sit down to write the exam, in order to obey the Correspondence Principle, I will look for areas that were emphasized in the course. To accomplish that, I will make particular reference to the following, which we can call the “focus list.” This is where you should concentrate your studies.

- The doctrine covered in any of the documents (slideshows, etc.) posted online under the heading “Classroom Notes, Presentations, and Exercises,” but not including the “exercises.”<sup>3</sup>
- The examples, problems, and realotheticals found in the documents (slideshows, etc.) posted online under the heading “Classroom Notes, Presentations, and Exercises,” but (again) not including the “exercises.”<sup>3</sup>
  - I may use these examples, problems, and realotheticals, as I explain below, as a source of inspiration for creating fresh hypothetical facts for the exam.
- The AP Briefing on Media Law, especially where that material was fleshed out with a case we read in the casebook or was emphasized in discussion in class.
- The cases in the casebook, albeit to a limited extent in that my emphasis will be on the major points of law represented by the cases rather obscure points of doctrine or minute details.
  - I may use the main facts of cases as inspiration for fashioning the hypothetical facts for the exam.

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<sup>3</sup> The “exercises” concern skills, and those I have excluded from coverage on the exam. See the subsection “Specific areas excluded or partially excluded,” below.

Note that while I will look to the problems, realotheticals, examples, and facts of cases as inspiration in designing the hypothetical facts for the exam, I will not actually re-use them on the exam. This means that some fictional events in the exam hypothetical may be loosely similar to, but not the same as, problems, realotheticals, examples, and facts of cases. To put it another way, these things will give you a very good idea of the kind of thing to expect on the exam, but they will not represent an opportunity to draft portions of your exam answer ahead of time.

**Specific areas excluded or partially excluded:** I will not test you at all on the skills content of the course, and it will form no basis for your exam grade. That means, in terms of studying for the exam, you can safely ignore anything within the "Skills Track" portion of the syllabus. So, to be clear, I will neither award nor deduct points on any basis of style, punctuation, or journalistic- or letter-writing technique. Substantive content is what I will care about.

I also will not *directly* test you on any of the material from Modules 1-4 (concerning the structure of the mass media industry). Note that I will, however, assume a basic level of understanding of how the industry works in crafting the exam hypothetical. Also, some basic appreciation for the structure of the industry may help you answer the theory/policy question. Thus, I would recommend for your studying that you briefly review your notes on Modules 1-4, but I would not study those materials beyond that.

I also will not *directly* test you on the material from Module 5, regarding journalistic ethics, in the sense that I will not ask a journalistic ethics question per se, such as "Analyze whether Person X has comported with generally accepted journalistic ethics." But, you should give this topic some limited attention in your studies for at least two reasons. First, journalistic ethics can be useful as an input into some kinds of legal analysis. The prime example of this is that determinations of actual malice in defamation are often made with reference to prevailing journalistic practice. Second, you might choose to make use of your knowledge of journalistic ethics in composing an answer to the theory/policy question, although there would be no necessity that you do so.

**Some thoughts regarding the content in Modules 6-7 and 36-39:** The material presented in Module 6 (Theory and History of Media Freedom) may be useful to you in answering the theory/policy question, but I will not design the theory/policy question in such a way as to specifically require application of content from Module 6. You might choose to answer the theory/policy question by drawing on material you encountered elsewhere in the course. (So, there will be no necessity for applying anything from John Milton's *Areopagitica*, for example; but you might find an occasion for doing so in the theory/policy question if you are so inclined.)

The material in Module 7 (First Amendment Analytical Structure) was primarily presented to orient you in anticipation of material to come in later modules. So, I would recommend studying this material for the exam, but you should think of it more as a way to see how everything fits together rather as a set of doctrines that you will need to specifically employ.

At this point in the semester, we have yet to explore the material organized under Tier 3 on the syllabus (i.e., Module 36: Paparazzi and Gossip Rags; Module 37: Wikileaks and Contemporary National Security Issues; Module 38: Blogging; Module 39: Journalists and Social Media). Once we get into these modules, you will see that they represent an opportunity for us to apply doctrine we learned in Tier 2 of the course.

Thus, these modules will function as a review and will help you prepare for the exam. In addition, you might choose to draw on content from these modules to help you in crafting an answer to the theory/policy question. Also, this material also could be useful on the main legal-analysis question, but note that I will not attempt to seed issues for each of Modules 36-39 into the exam hypothetical as I will strive to do for Modules 8-34.

**Jurisdictional coverage:** All the hypothetical facts on the exam will take place in a hypothetical state within the United States, with no circuit court of appeals specified. You will not be tested on the law of any particular state, municipality, or circuit.

#### 4. FORMAT

The exam will be similar in form to essay exams I have given in the recent past. To get a feel for them, check out my exam archive.<sup>4</sup> In particular, you will note there are two exams for Media & Entertainment Law, both of which should be quite useful to you in studying. One of them has a model answer.<sup>5</sup>

**The kind of fact patterns I tend to write:** I try to make my exams interesting and engaging. They often have pictures, images, sidebars, and the like. In comparison to other exams, you may find that my exams are heavy on narrative, plot, character, and backstory. As a practicing lawyer, I found that real-life cases are heavy on drama and narrative detail. So I have strived to include the same in my exams. In my view, this gets the exam closer to the real-life practice of law than the kind of stripped-down one-paragraph hypotheticals you tend to find on the multistate bar exam.

A consequence of my writing exams this way is that the exam ends up containing factual details that, while useful for holding the story together, are not fulcrums for the legal analysis. So, for instance, sometimes photos or graphics offer something useful to the legal analysis, but sometimes they are just decoration. A student once asked me, pointing to a sentence in one of my old exams, "I know that every single sentence in a law school exam is put in there for some reason, so why did you put this sentence in the exam? How does it change the analysis?" Well, my exams aren't like that. There will be various details that don't matter to the analysis. This is the way facts come to your desk in real life: Some are very significant, some are merely useful, others are irrelevant. I aim for my exams to be similar to real casefiles in this sense.

**Don't get unduly anxious about dropped issues:** Making things interesting and more realistic is not the only reason I write exams the way I do. I also do it to reduce arbitrariness. In my view, with a reservoir of facts that is both wide and deep, there is less at stake with any given issue. To be more specific, the fact-filled, broadly comprehensive, and relatively long nature of my exam hypotheticals reduces arbitrariness by increasing opportunities for students to show off their knowledge. Anyone can, in the pressure of an exam session, blow by something important. On my exams, that won't destroy your grade. Dropping an important issue here or there will not be disastrous if you do well with the rest of the material. In fact, I have found that the top-grade recipients in my classes have never exhausted all the possibilities for legal analysis. Not only that, I can confidently say that the top grades usually miss at least one significant issue that can be found among the B exams. In my view, this method of exam

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<sup>4</sup> There is a link from my home page. Or you can go directly to [http://www.ericejohnson.com/exam\\_archive.html](http://www.ericejohnson.com/exam_archive.html).

<sup>5</sup> Just keep in mind that the Media & Entertainment Law course contained a lot of material (in particular, entertainment law material) that was not covered in this class.

design helps to develop a good overall picture of students' mastery of the course, rather than seeing who can walk a tightrope without slipping.

**Format of the theory/policy question:** The theory/policy question will put you in a position to think more like a lobbyist or an appellate lawyer who is arguing a case of first impression, rather than a lawyer who is advising a client in a more typical capacity. For this question, I will provide you with a fictional context for writing your answer and a side for you to be on, but the question will largely allow you to choose your own ground.

Here is an example of such a question:

*[A certain client]* has asked you to write a brief letter to the editor of a national newspaper proposing and arguing for a change in the law that would benefit *[a certain person, organization, or interest group]*. Specify what change you would make and present your argument for it.

You can see that the question prescribes a certain side for you to be on, but it also provides a great deal of freedom in how you choose to answer. The theory/policy question on your exam will work similarly. It is intentional, on my part, to make the question easy to study for and answer, especially in view of the fact that it will be weighted as only one-twelfth of your exam grade. If you engage actively with the material when studying, you may find that your preparation for answering the theory/policy question comes about almost as a byproduct. At any rate, the theory/policy question should not cause you to feel pressure to master any particular aspect of the theoretical material from the course.

## 5. ORGANIZATION

Organization is very important in an exam response. In fact, I've found it to be so important, it is now my practice to take it largely out of the exam taker's hands.

For your exam I will provide you with a pre-determined organizational structure, broken up into various subparts. You will find examples of this in the more recent exams in my online exam archive. By requiring all exam responses to adhere to the same format, I can grade all the exams in the same way, which helps me to be as fair as possible.

For example you might get a call-of-the-question and subpart structure like this:

Analyze the parties' legal positions. Organize your response as follows, clearly labeling the subparts:

*Subpart A:* Discuss any claims that may be brought by Party A.

*Subpart B:* Discuss any claims that may be brought by Party B.

*Subpart C:* Discuss any claims that may be brought by Party C.

*Subpart D:* Discuss any claims that may be brought by Party D.

*Subpart E:* If there is anything else you wish to discuss, which does not belong in any of subparts A through D, please put it under this Subpart E.

Your subpart structure will look something like this, although the way in which the subparts are divided up might well be different. Instead of being organized by parties and the claims that those parties could bring, the subparts might be organized by parties and the claims that might be brought against them. Alternatively, the subparts might track particular occurrences, places, or relationships. (Again, you can see examples from my past exams.) After I write the hypothetical, I will design the subpart structure so that it breaks down the analysis in a logical, sensible way.

No matter how I prescribe the organization of your response, you can be sure that the subparts will not all be given equal weight. Thus, it may be entirely appropriate for one subpart to have very little content, while another subpart might call for very detailed analysis. You will have to use your judgment to determine how much analysis is needed with regard to any particular subpart.

## 6. ABBREVIATIONS

I will include in the exam a table of pre-defined abbreviations for you to use in your response, if you like. Again, examples can be found among my more recent exams in my online exam archive. Feel free to use other reasonable abbreviations as well; although if they are not completely obvious, you should define them the first time you use them.

## 7. ISSUES WITH TEXT: REPEATING, WRITING, TYPING, ETC.

Here are some specific pieces of advice for your writing.

**Repetition:** Be complete, but avoid redundancy. Specifically, do not repeat the exact same analysis with substituted parties. I will not give double the points for the same content that appears twice. (Along these lines, computer users should probably not use the cut-and-paste function.) Instead, to the extent called for, you may incorporate analysis by reference to another portion of your answer. For example, it would be appropriate to say something like, "The analysis with regard to Party B is the same as that for Party A, except that \_\_\_\_\_."

**Spelling, grammar, etc:** There are no points to be won or lost for spelling, grammar, or stylistic aspects of writing, so long as I can understand what you are saying. If grammar or spelling issues render text ambiguous, then it's a problem. But not otherwise. Substantive content is what matters.

**Computer-typed exams:** Don't worry unduly about typos. As long as I can understand what you are saying, you're fine. There's no premium on prettiness.

**Handwritten exams:** If you are handwriting, please write only on one side of the page in your bluebooks and use a blue or black pen. Skip lines. Finally, I cannot grade what I cannot read, so be sure that your handwriting is readily legible.

**No premium on speed:** Note that since you will have four hours to answer the exam, and since there will be a strict word limit, there will be no premium on how fast you can write or type.

## 8. FINAL THOUGHTS

Remember, it's an open book exam, so don't get too anxious. Study the big concepts, pay attention to the focus list (in §3, above), and get a good night's rest. I wish you the best of luck!