

Exam Number _____

HAMLIN UNIVERSITY SCHOOL OF LAW

Date of Examination: December 5-December 18, 2005

Professor: Pielemeier

Semester: Fall 2005

FINAL EXAMINATION-MASS MEDIA LAW

CODE OF CONDUCT

Violations of the Code of Conduct include (1) unauthorized conversation among students concerning the examination; (2) giving, receiving, or soliciting unauthorized aid; (3) using materials that are not specifically permitted by the written examination instruction; (4) exceeding the examination time limit; or (5) any other dishonest conduct in connection with the examination.

INSTRUCTIONS

1. This examination consists of six (6) page(s) in addition to this cover page. Please ensure that you are not missing any pages.
2. The time allowed for this examination is three (3) hours.
3. Outside material permitted: NONE

SPECIAL INSTRUCTIONS:

- a. This examination consists of six questions. Suggested amounts of time to spend are stated with each question. These suggested times total three hours, which is the total amount of time permitted for the exam.
- b. Answers containing only your conclusions will receive little credit. Taking into account the amount of time recommended for each question, state fully the reasons supporting your answers. In addition, discuss all issues reasonably raised by each question, even though your resolution of one issue may render the others moot.
- c. The fact scenarios in the questions are not set in any particular state. You should discuss all issues reasonably raised based on general principles of law (including constitutional law) that were discussed in this course.

I (10 minutes)

The Discovery Channel on cable television produced a show entitled “The World’s Most Outstanding Undercover Stings.” It aired the program on four different occasions: at 8:00 p.m. on June 3, 2004, and 10:00 a.m. on September 26, 2004, at 2:00 p.m. on February 8, 2005, and at 10:00 a.m. on August 3, 2005.

Small portions of the show depict Dr. Martin Lee, a surgeon, as a “corrupt” physician who had been found guilty of insurance fraud. In fact, although Dr. Lee was arrested for insurance fraud, he was acquitted of the charge.

Dr. Lee learned of the show after the August 3, 2005 broadcast. He sued The Discovery Channel for defamation on September 5, 2005. The Discovery Channel moved to dismiss based on the fact that the applicable statute of limitations requires suit within one year after the claim accrues.

How should the court rule on the motion? Briefly explain.

II (20 minutes)

Arthur Grone was charged with the first degree murder of three of his former girlfriend’s children. In proceedings preliminary to the actual criminal trial, and before any jury selection had taken place, certain evidentiary issues arose. Grone’s attorney moved to close, to the press and the public, the court’s hearing on his motion to exclude from evidence hearsay statements made by two of the murdered children about Grone. The trial court granted the motion, stating:

It seems to me that if the nature of the children’s statements gets out to the press and the statements are not admitted as evidence at the trial, then I think it tends to present a problem in selecting an unbiased jury. There’s been a lot of media publicity about this case already, and I fear that if the press learns about the nature of these statements, it may report on the statements in ways that might not present an accurate public perception of evidence that should be considered in this case. And I’m not sure that potential jurors could avoid being influenced if they learned of the statements. I just can’t think of any other way to avoid that problem, so I’m granting the motion to close the hearing.

Discuss the propriety of the court’s decision.

III (30 minutes)

On November 29, 2005, Federal Communications Commission Chairman Kevin J. Martin testified on the subject of communications decency before the Committee on Commerce, Science and Transportation of the United States Senate. In his testimony, Mr. Martin said “Most consumers today can choose among hundreds of television channels, including some of the best programming introduced. But television today contains some of the coarsest programming ever aired.” One option he suggested as a “solution” to the latter problem was as follows:

Alternatively, the programming that cable and DBS [direct broadcast satellite] operators offer in the expanded basic package could be subject to the same indecency regulations that currently apply only to broadcast. [Banning the dissemination of “indecent” programming except between the “safe harbor” hours of 10:00 p.m. to 6:00 a.m.] This standard would apply only to channels that consumers are required to purchase as part of the expanded basic package, not premium channels.

This solution would respond to the many people calling for the same rules to apply to everyone—for a level playing field. Indeed, today programming the broadcast networks reject because of concerns about content may end up on competing basic cable networks. If cable and satellite operators continue to refuse to offer parents more tools such as family-friendly programming packages, basic indecency and profanity restrictions may be a viable alternative that should be considered.

Discuss the constitutionality of extending the current restrictions of dissemination of indecent broadcasting to cable television, although, as Mr. Martin said, not extending them to premium channels [those for which the cable customer must pay a fee in addition to the cost of basic cable].

IV (40 minutes)

Acme Insurance Company advertises and sells cancer insurance. When anyone contacts it about potential coverage, Acme offers to send an agent to their home to have a “private conversation” about cancer insurance.

WAAA-TV decided to do an investigative report about cancer insurance. As part of its investigation, it arranged to have employees who did not regularly appear on the air to call Acme and agree to have an agent come to their home. WAAA also arranged to have the conversations with the agents recorded by hidden cameras.

WAAA later broadcast its investigative report. This was preceded by several “teasers” over a couple of days urging listeners to be sure to watch its “expose” of the cancer insurance industry.

The report included footage of four different Acme agents discussing cancer insurance in the homes of the station’s employees. The broadcast showed that the agents consistently exaggerated statistics about the incidence of cancer in the United States, and exaggerated the benefits provided by Acme’s insurance policies.

In addition, all four agents expressed similar stories about “why I’m in this business,” always referring to a relative of theirs who had had cancer and emotionally recounting how a cancer insurance policy would have helped. (Apparently all references to relatives with cancer were true, but the stories given by all four agents about how cancer insurance would have helped were remarkably similar.)

The broadcast ended by going to a page on a state Commissioner of Insurance web page entitled “A Shopper’s Guide to Cancer Insurance,” which contained several “Cautions” about the limitations of cancer insurance.

After the report was broadcast, sales of Acme’s cancer insurance policies plummeted in the area, as did the sales by the agents whose conversations had been broadcast.

Acme and the four agents sued WAAA for the privacy torts of public disclosure of private facts, intrusion, and appropriation. The damages they sought included damages for their decrease in sales, which they attributed to the broadcast. They did not allege that anything in the broadcast was false. Discuss their likelihood of success.

V (20 minutes)

[Note: In 2005, the U.S. Supreme Court denied review of a case based on the following facts.]

The Uniontown Times published the following article. The Times received the information from a Uniontown police officer.

City police arrested James Boles, 15 of Farmington Sunday on charges he allegedly raped a 7-year-old girl he was babysitting at her Uniontown home Friday evening. Boles turned himself in to police Sunday and was charged with two counts of rape and one count of indecent assault. Charges against Boles were filed at the Connellsville Juvenile Detention Facility, where he is being held, police said.

Under the law of the state, Boles is a juvenile, and juvenile criminal proceedings are confidential and closed to the public. It is illegal for government officials to disclose juvenile law enforcement records.

Boles sued the Times for public disclosure of private facts. Discuss whether the imposition of liability would be constitutional under the U.S. Constitution.

VI (60 minutes)

Reverend Elise Scott was the minister at the First Baptist Church in Bigtown, where she gave a sermon almost every Sunday. One day, Elise's husband, Daryl Scott, suffered severe brain injuries as a result of a fall down the stairs at his home and was admitted to a local hospital and placed on a feeding tube.

Two weeks later, Daryl's mother, Susan Scott, filed a petition with the local probate court to be named Daryl's guardian. Elise filed a cross-petition to be named Daryl's guardian and a hearing was scheduled. John Baker, a reporter for a local television station, WXYZ-TV, attended the hearing, in which Susan's (Daryl's mother) testimony included the statements, "I've known Elise for a long time now and I just don't trust what she's going to do. I'm worried she might want to have Daryl's feeding tube removed." Elise testified that she had "no intention of having the feeding tube removed."

Immediately after the hearing was over, Baker briefly interviewed Susan. Susan's comments included "Elise isn't so high and righteous you know. Her divinity degree didn't even come from an accredited school." When Baker asked Elise; who was in the immediate area, if she had any comment. Elise said, "Susan hasn't liked me from the day I met Daryl. That's why she's saying all these things."

That evening, WXYZ-TV included a short report about the hearing in its evening news. The story included the quotations noted in the preceding two paragraphs.

One week later, the probate court issued an order determining that Daryl was without capacity to care for his person or property, and it appointed Susan as his guardian. WXYZ-TV reported this as well. Elise then filed a petition for re-consideration, and the court said it would hold a hearing on the petition one month later.

The day after the initial hearing was reported; some local internet "blogs" included comments on the case. One comment speculated, "I wonder if Elise pushed him down the stairs," and this generated further extensive comment on the internet about that possibility. Other comments included, "the police ought to look into it," and "I think the police are looking into it." Baker occasionally looked at these blogs and saw such comments.

WXYZ also had a telephone number where viewers could call in "tips" that were recorded by the station. By the time the probate court hearing on Susan's petition for re-consideration was scheduled to take place, WXYZ had received twenty recorded "tips," most but not all of them anonymous, suggesting that Elise had pushed Daryl down the stairs or that the police were looking into that possibility.

The evening of the hearing on Elise's petition for re-consideration, WXYZ-TV's news included a brief factual story on the hearing. It had not attempted to interview either Elise or Susan after the hearing. WXYZ's story also included the statements, "We've received several calls and seen several statements on the internet suggesting that Elise may have pushed Daryl down the stairs,"

and “We’ll keep following this story for you as things develop.”

Elise then sued WXYZ-TV for defamation, asserting that its reporting of the statements of Susan made at and after the first hearing as well as the first quoted statement in the preceding paragraph were false and defamatory. Assume Elise’s divinity degree is in fact from an accredited school. Also assume that WXYZ-TV never asked Elise about her divinity degree, never contacted local authorities to ask if there was any suspicion or investigation of wrongdoing by Elise, and that in fact local authorities had no suspicion of such wrongdoing. Finally, assume that WXYZ-TV news personnel, including Baker, would testify that they had seen no reason to doubt the truth of the statements broadcast and that they “were just reporting the news.”

Discuss the likelihood of Elise prevailing on her claim, including a discussion of all defenses WXYZ would reasonably raise.