

GLOSSARY

A

absolute privilege An immunity from libel suits granted to government officials and others based on remarks uttered or written as part of their official duties.

absolutist theory The proposition that the First Amendment is an absolute, and that government may adopt no laws whatsoever that abridge freedom of expression.

actual damages Damages awarded to a plaintiff in a lawsuit based on proof of actual harm to the plaintiff.

actual malice A fault standard in libel law: knowledge before publication that the libelous material was false or reckless disregard of the truth or falsity of the libelous matter.

administrative agency An agency, created and funded by Congress, whose members are appointed by the president and whose function is to administer specific legislation, such as law regulating broadcasting and advertising.

admonition to a jury Instructions from a judge to a trial jury to avoid talking to other people about the trial they are hearing and to avoid news broadcasts and newspaper or magazine stories that discuss the case or issues in the case.

Alien and Sedition Acts of 1798 Laws adopted by the Federalist Congress aimed at stopping criticism of the national government by Republican or Jeffersonian editors and politicians.

amici curiae “Friends of the court”; people who have no specific legal stake in a lawsuit but are allowed to appear on behalf of one of the parties in a case.

answer A document often filed by a defendant in response to a civil complaint that denies allegations and factual assertions.

appellant The party who initiates or takes the appeal of a case from one court to another.

appellate court A court that has both original and appellate jurisdiction; a court to which cases are removed for an appeal.

appellee The person in a case against whom the appeal is taken; that is, the party in the suit who is not making the appeal.

appropriation In the law of privacy, use of a person’s name or likeness without consent for advertising or trade purposes.

arraignment The first official court appearance made by a criminal defendant at which he or she is formally charged with an offense and called on to plead guilty or not guilty to the charges contained in the state’s indictment or information.

B

bait-and-switch advertising An illegal advertising strategy in which the seller baits customers by an advertisement with a

low-priced model of a product but then switches customers who seek to buy the product to a much higher-priced model by telling them that the cheaper model does not work well or is no longer in stock.

bench-bar-press guidelines Informal agreements among lawyers, judges, police officials and journalists about what should and should not be published or broadcast about a criminal suspect or criminal case before a trial is held.

bond; bonding A large sum of money given by a publisher to a government to be held to ensure good behavior. Should the publisher violate a government rule, the bond is forfeited to the government, and the newspaper or magazine cannot be published again until a new bond is posted.

C

California Plan See *Missouri Plan*.

candidate access rule Section 312 of the Federal Communications Act, which forbids a broadcaster from instituting an across-the-board policy that denies all candidates for federal office the opportunity to use the station to further a political campaign.

case reporter A book containing a chronological collection of the opinions rendered by a particular court for cases that were decided by the court.

challenge for cause The request by a litigant in a criminal or civil case that a juror be dismissed for a specific reason.

change of veniremen Drawing a jury from a distant community in order to find jurors who have heard little or nothing about a criminal case or criminal defendant.

change of venue Moving a trial to a distant community in order to find jurors who have not read or viewed prejudicial publicity about the defendant.

Child Advertising Review Unit (CARU) The children’s branch of the advertising industry’s self-regulation program that evaluates child-directed advertising and promotional material in all media in order to advance truthfulness and accuracy and to protect minors’ online privacy while visiting advertisers’ Web sites.

citation The reference to a legal opinion contained in a case reporter that gives the name, volume number and page number where the opinion can be found. The year the opinion was rendered is also included in the citation.

civil complaint A written statement of the plaintiff’s legal grievance, which normally initiates a civil suit.

Classified Information Procedures Act (CIPA) This federal law gives procedures for courts to apply in determining whether to protect and seal classified information that

could jeopardize national security from unnecessary public disclosure at any stage of a criminal trial.

collateral bar rule A rule that bars someone who violates a court order from trying to defend this action by arguing that the court order was unconstitutional.

commercial speech doctrine The legal doctrine that states that truthful advertising for products and services that are not illegal is normally protected by the First Amendment to the U.S. Constitution.

common law Principles and rules of law that derive their authority not from legislation but from community usage and custom.

concurring opinion A written opinion by an appellate judge or justice in which the author agrees with the decision of the court but normally states reasons different from those in the court opinion as the basis for his or her decision.

consent A defense in both libel and invasion of privacy cases that provides that individuals who agree to the publication of a libelous story or the appropriation of their name cannot then maintain a lawsuit based on the libel or the appropriation.

consent order or decree A document in which an individual agrees to terminate a specific behavior, such as an advertising campaign, or to refrain from a specific action, such as making a certain advertising claim.

constitution A written outline of the organization of a government that provides for both the rights and responsibilities of various branches of the government and the limits of the power of the government.

contempt of court An act of disobedience or disrespect to a judge, which may be punished by a fine or jail sentence.

continuance The delay of a trial or hearing; that is, the trial is postponed.

copyright That body of law that protects the works created by writers, painters, photographers, performing artists, inventors and others who create intangible property.

copyright notice The words "Copyright © 2010 by Don R. Pember," for example, which indicate to a user that a work is copyrighted by the author or creator.

corrective advertising Rules established by the Federal Trade Commission that require an advertiser to correct the false impressions left by deceptive advertising in a certain percentage of future advertisements.

counterspeech The preferred remedy for speech that we disagree with is not censorship, but to add more speech to the marketplace of ideas in order to counter it or to rebut it.

court's opinion The official opinion of an appellate court that states the reasons or rationale for a decision.

criminal libel A libel against the state, against the dead, or against a large, ill-defined group (such as a race) in which the state prosecutes the libel on behalf of the injured parties.

criminal prosecution; criminal action A legal action brought by the state against an individual or group of individuals for violating state criminal laws.

criminal syndicalism laws Laws that outlaw advocacy, planning or processes aimed at establishing the control over industry by workers or trade unions.

D

damages Money awarded to the winning party in a civil lawsuit.

defamation Any communication that holds a person up to contempt, hatred, ridicule or scorn and lowers the reputation of the individual defamed.

defendant The person against whom relief or recovery is sought in a civil lawsuit; the individual against whom a state criminal action is brought.

demurrer An allegation made by the defendant in a lawsuit that even if the facts as stated by the plaintiff are true, they do not state a sufficient cause for action.

de novo "New or fresh." In some instances a court of general jurisdiction will hear an appeal from a case from a lower court and simply retry the case. This is a de novo hearing.

dicta Remarks in a court opinion that do not speak directly to the legal point in question.

direct appeal The statutorily granted right of an aggrieved party to carry the appeal of a case to the U.S. Supreme Court. The high court can deny this right if the appeal lacks a substantial federal question.

dissenting opinion A written opinion by a judge or justice who disagrees with the appellate court's decision in a case.

E

en banc; sitting en banc A French term to describe all or most of the justices or judges of an appellate court sitting together to hear a case. This situation is the opposite of the more typical situation in which a small group (called a panel) of judges or justices in a particular court hears a case.

equal time rules Section 315 of the Federal Communications Act, which states that when broadcasters permit a legally qualified candidate for elective office to use their broadcasting facilities, all other legally qualified candidates for the same elective office must be given similar opportunity.

equity A system of jurisprudence, distinct from common law, in which courts are empowered to decide cases on the basis of equity or fairness and are not bound by the rigid precedents that often exist in common law.

Espionage Act A law adopted by Congress in 1917 that outlawed criticism of the U.S. government and its participation in World War I in Europe.

executive privilege An asserted common-law privilege of the president and other executives to keep presidential papers, records and other documents secret, even from Congress.

executive session A popular euphemism for a closed meeting held by a government body such as a city council or school board.

F

fair comment A libel defense that protects the publication of libelous opinion that focuses on the public activities of a person acting in a public sphere.

fair use A provision of the copyright law that permits a limited amount of copying of material that has been properly copyrighted.

false light That portion of privacy law that prohibits all publications or broadcasts that falsely portray an individual in an offensive manner.

Federal Communications Act The law, adopted in 1934, that is the foundation for the regulation of broadcasting in the United States.

Federal Communications Commission (FCC) A five-member body appointed by the president whose function is to administer the federal broadcasting and communications laws.

federal open-meetings law (Government in Sunshine Act) A federal law that requires approximately 50 federal agencies and bureaus to hold all their meetings in public, unless a subject under discussion is included within one of the 10 exemptions contained in the statute.

Federal Trade Commission (FTC) A five-member body appointed by the president whose function is to administer the federal laws relating to advertising, antitrust and many other business matters.

fighting words doctrine A legal doctrine that permits prior censorship of words that create a clear and present danger of inciting an audience to disorder or violence.

FOIA See *Freedom of Information Act*.

Freedom of Information Act (FOIA) A federal law that mandates that all the records created and kept by federal agencies in the executive branch of government must be open for public inspection and copying, except those records that fall into one of nine exempted categories listed in the statute.

FTC See *Federal Trade Commission*.

G

gag order A restrictive court order that prohibits all or some participants in a trial from speaking about a case or that stops publications and broadcasting stations from reporting on certain aspects of a case.

Government in Sunshine Act See *federal open-meetings law*.

grand jury A jury whose function is to determine whether sufficient evidence exists to issue an indictment or true bill charging an individual or individuals with a crime and to take such persons to trial. It is called a grand jury because it has more members than a petit, or trial, jury.

H

heckler's veto A situation that occurs when the audience's negative, adverse and sometimes violent reaction to the message conveyed by a peaceful speaker is allowed to control and silence

the speaker. The duty, instead, should be on the government to protect the speaker rather than to allow a "veto" of the speech by the audience.

I

identification As used in a libel suit, the requirement that the plaintiff prove that at least one person believes that the subject of the libelous remarks is the plaintiff and not some other person.

impeachment A criminal proceeding against a public officer that is started by written "articles of impeachment" and followed by a trial. The House of Representatives, for example, can issue articles of impeachment against the president, who is then tried by the Senate.

indictment A written accusation issued by a grand jury charging that an individual or individuals have committed a specific crime and should be taken to trial.

information A written accusation issued by a public officer rather than by a grand jury charging that an individual or individuals have committed a specific crime and should be taken to trial.

intermediate scrutiny The standard of judicial review for content-neutral laws, such as time, place and manner regulations, that requires the government to prove that the regulation is content neutral; justified by a substantial interest; not a complete ban on communication; and narrowly tailored.

intrusion An invasion of privacy committed when one individual intrudes upon or invades the solitude of another individual.

invasion of privacy A civil tort that emerged in the early 20th century and contains four distinct categories of legal wrongs: appropriation, intrusion, publication of private facts and false light.

J

judgment of the court The final ruling of a court, which determines the outcome of a lawsuit. It is different from the verdict, which is the decision of the jury in a trial.

judicial decree A judgment of a court of equity; a declaration of the court announcing the legal consequences of the facts found to be true by the court.

judicial instructions A statement (often written) made by a judge to the members of a jury informing them about the law (as distinguished from the facts) in a case.

judicial review The power of a court to declare void and unenforceable any statute, rule or executive order that conflicts with an appropriate state constitution or the federal constitution.

jury A group of men and women called together in a trial court to determine the facts in a civil or criminal lawsuit. It is sometimes called a petit jury to distinguish it from a grand jury.

jury nullification The controversial power of a jury, despite its sworn duty under oath to apply a law as interpreted and instructed by a judge, to instead ignore (and thereby

to “nullify”) a law and decide a case according to its own conscience and sensibilities or, as the U.S. Supreme Court once put it, the ability of a jury to acquit “in the teeth of both law and facts.”

L

legal brief; brief Written legal argument presented to the court by one or both parties in a lawsuit.

libel Published or broadcast communication that lowers the reputation of an individual by holding him or her up to contempt, ridicule or scorn.

licensing process The process by which a government gives a publisher or a broadcaster prior permission to print a newspaper or operate a broadcasting station. Revocation of a license can be used as punishment for failing to comply with the law or the wishes of the government. Licensing of the printed press in the United States ended in the 1720s.

litigant A party in a lawsuit; a participant in litigation.

litigated order An order issued by a government agency, like the FTC, requiring that a particular practice, such as a certain advertisement, be stopped.

M

memorandum order The announcement by an appellate court of a decision in a case that does not include a written opinion containing the rationale or reasons for the ruling.

misappropriation Taking what belongs to someone else and using it unfairly for one’s own gain; for example, attempting to pass off a novel as part of a popular series of novels written and published by someone else. It is often called unfair competition.

Missouri Plan A system used in some states by which judges are appointed to the bench initially and then must stand for re-election on a ballot that permits citizens to vote to retain or not retain the judge.

N

National Advertising Division (NAD) Part of the Council of Better Business Bureaus, this industry organization evaluates and rules on the truthfulness of advertising claims. Complaints are normally brought to the NAD by competing advertisers.

National Advertising Review Board (NARB) The appeals body of a two-tier system created by the advertising community in 1971 for self-regulation that works closely with the National Advertising Division, the investigative body, in affiliation with the Better Business Bureau.

negligence A fault standard in libel and other tort law. Negligent behavior is normally described as an act or action that a reasonably prudent person or a reasonable individual would not have committed. In libel law, courts often measure negligence by asking whether the allegedly libelous material was the work of a person who exercised reasonable care in preparation of the story.

neutral reportage An emerging libel defense or privilege that states that it is permissible to publish or broadcast an accurate account of information about a public figure from a reliable source even when the reporter doubts the truth of the libelous assertion. The defense is not widely accepted.

nonjusticiable matter An issue that is inappropriate for a court to decide because the jurists lack the knowledge to make the ruling, because another branch of government has the responsibility to answer such questions, or because a court order in the matter would not likely be enforceable or enforced.

O

open-meetings laws State and federal statutes that require that certain meetings of public agencies—normally in the executive branch of government—be open to the public and the press.

open-records laws State and federal statutes that require that certain records of public agencies—normally in the executive branch of government—be open for inspection and copying by the public and the press.

opinion The written statement issued by a court that explains the reasons for a judgment and states the rule of law in the case.

oral argument An oral presentation made to a judge or justices in which the litigants argue the merits of their case.

original jurisdiction Jurisdiction in the first instance, as distinguished from appellate jurisdiction. A court exercising original jurisdiction determines both the facts and the law in the case; courts exercising appellate jurisdiction may rule only on the law and the sufficiency of the facts as determined by a trial court.

overbreadth doctrine A statute or regulation will be declared unconstitutional if it sweeps up and bans a substantial amount of protected speech in the process of targeting unprotected speech; in other words, the doctrine prohibits the government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the same process.

P

per curiam opinion An unsigned court opinion. The author of the opinion is not known outside the court.

peremptory challenge A challenge without stated cause to remove a juror from a panel. Litigants are given a small number of such challenges in a lawsuit.

petitioner One who petitions a court to take an action; someone who starts a lawsuit, or carries an appeal to a higher court (appellant). This person is the opposite of a respondent, one who responds to a petition.

plaintiff An individual who initiates a civil lawsuit.

pleadings The written statements of the parties in a lawsuit that contain their allegations, denials and defenses.

plurality opinion A Supreme Court opinion in which five justices cannot agree on a single majority opinion—there is no

opinion of the court—but that is joined by more justices than any other opinion in the case.

precedent An established rule of law set by a previous case. Courts should follow precedent when it is advisable and possible.

presumed damages Damages a plaintiff can get without proof of injury or harm.

pretrial hearing A meeting prior to a criminal trial at which attorneys for the state and for the defense make arguments before a judge on evidentiary questions—for example, whether a confession made by the defendant should be admitted as evidence at the trial. This type of hearing is sometimes called a suppression hearing.

Printers' Ink statute A model law drafted in 1911 to control false or misleading advertising. Most states adopted some version of this model in the early 20th century. Such laws are largely ineffective because they are not normally enforced.

prior restraint Prepublication censorship that forbids publication or broadcast of certain objectionable material, as opposed to punishment of a perpetrator after the material has been published or broadcast.

Privacy Act A federal statute that forbids the disclosure of specific material held by federal agencies on the grounds that its release could invade the privacy of the subject of the report or document.

public figure The designation for a plaintiff in a libel suit who has voluntarily entered a public controversy in an effort to influence public opinion in order to generate a resolution of the issue.

public official The designation of a plaintiff in a libel suit who is an elected public officer or is an appointed public officer who has or appears to have considerable responsibility for or control over the conduct of governmental affairs.

publication In libel law, exposing an allegedly libelous statement to one person in addition to the subject of the libel.

publication of private information In privacy law, publicizing embarrassing private information about an individual that is not of legitimate public concern. More than one person must see or hear this information.

puffery Often expansive hyperbole about a product that does not contain factual claims of merit. Normally, puffery is permitted by the law (e.g., “This is the best-looking automobile on the market today”).

punitive damages Money damages awarded to a plaintiff in a lawsuit aimed not to compensate for harm to the injured party but to punish the defendant for his or her illegal conduct.

Q

qualified privilege In libel law, the privilege of the reporter (or any person) to publish a fair and accurate report of the proceedings of a public meeting or public document and be immune from lawsuit for the publication of libel uttered at the meeting or contained in the document.

R

Radio Act of 1912 The first federal broadcast law, which imposed only minimal regulation on the fledgling broadcast industry. Radio operators were required to have a license under this statute.

Radio Act of 1927 The first comprehensive national broadcast law, which provided the basic framework for the regulation of broadcast that was later adopted in the Federal Communications Act of 1934.

respondent The person who responds to a petition placed before a court by another person; the opposite of the petitioner. At the appellate level, the respondent is often called the appellee.

restrictive order A court order limiting the discussion of the facts in a criminal case both by participants in the case and by the press. See also *gag order*.

retraction In libel law, a statement published or broadcast that attempts to retract or correct previously published or broadcast libelous matter. A timely retraction will usually mitigate damages, and in some states that have retraction laws, plaintiffs must seek a retraction before beginning a lawsuit or they lose the opportunity to collect anything but special damages.

right of publicity An offshoot of privacy law that protects the right of persons to capitalize on their fame or notoriety for commercial or advertising purposes.

right of reply A little-used libel defense that declares as immune from a lawsuit a libelous remark made against an individual in reply to a previously published libelous remark made by that individual.

rule of four At least four justices of the U.S. Supreme Court must agree to hear a case before a petition for a writ of certiorari will be granted.

S

scienter Guilty knowledge. In many criminal prosecutions, the state must prove that the accused was aware of the nature of his or her behavior. In an obscenity case, for example, the state must normally show that the defendant was aware of the contents of the book he or she sold.

secret dockets The practice by some courts of keeping private and out of the view of both reporters and the general public the names and docket numbers of cases, thus keeping secret the very existence of the cases themselves.

Section 312 See *candidate access rule*.

Section 315 See *equal time rules*.

Sedition Act of 1918 An amendment to the Espionage Act adopted in the midst of World War I that severely limited criticism of the government and criticism of U.S. participation in the European war.

sedition libel Libeling the government; criticizing the government or government officers. It is sometimes called sedition.

sequestration of the jury Separating the jury from the community during a trial. Usually a jury is lodged at a hotel and members are required to eat together. In general, sequestration means to keep jurors away from other people. Exposure to news reports is also screened to shield jurors from information about the trial.

shield laws State statutes that permit reporters in some circumstances to shield the name of a confidential news source when questioned by a grand jury or in another legal forum.

single mistake rule In libel law, a rule that states that it is not libelous to accuse a professional person or businessperson of making a single mistake (e.g., “Dr. Pat Jones incorrectly diagnosed the patient’s illness”).

sitting en banc See *en banc*.

slander Oral defamation.

Smith Act A federal law adopted in 1940 that makes it illegal to advocate the violent overthrow of the government.

special damages Damages that can be awarded to a plaintiff in a lawsuit upon proof of specific monetary loss.

spectrum scarcity The notion, in the realm of the FCC’s regulation of over-the-air broadcasting, that there are a finite number of frequencies on which to broadcast and that, in turn, there are more people who want to broadcast than there are available frequencies.

split of authority A disagreement among lower courts on the same legal issue.

stare decisis “Let the decision stand.” This concept is the operating principle in the common-law system and requires that judges follow precedent case law when making judgments.

state secrets privilege An executive branch privilege, often asserted during wartime, that allows the government to block a lawsuit if any information disclosed during it would adversely affect national security. Under this doctrine, the United States may prevent disclosure of information during a judicial proceeding if there is a “reasonable danger” the disclosure would expose military matters that, in the interest of national security, should not be divulged.

statute of limitations A law that requires that a legal action must begin within a specified period of time (usually one to three years for a civil case) after the legal wrong was committed.

statutes Laws adopted by legislative bodies.

statutory construction The process undertaken by courts to interpret or construe the meaning of statutes.

strict scrutiny The standard of judicial review for content-based statutes, requiring the government to prove that it has a compelling interest (an interest of the highest order) in regulating the speech at issue and that the means of serving that interest are narrowly tailored such that no more speech is restricted than is necessary to serve the allegedly compelling interest.

subpoena A court document that requires a witness to appear and testify or to produce documents or papers pertinent to a pending controversy.

substantiation A Federal Trade Commission rule that requires an advertiser to prove the truth of advertising claims made about a product or service.

summary judgment A judgment granted to a party in a lawsuit when the pleadings and other materials in the case disclose no material issue of fact between the parties, making it possible for the case to be decided on the basis of the law by the court. A summary judgment avoids a costly jury trial.

summary jury trial An abbreviated jury trial where jurors hear arguments but no witnesses are called and little evidence is presented. The jurors can issue an informal verdict, which can be used as the basis for a settlement of the case, thus avoiding a full-blown and costly trial.

survival statute A statute that permits an heir to continue to maintain a lawsuit if the plaintiff died after the suit was filed but before it was resolved.

symbolic speech doctrine The two-part judicial test used to determine when conduct rises to the level of “speech” within the meaning of the First Amendment. The person engaging in the conduct must intend to convey a particularized message with his or her conduct and there must be a substantial likelihood, under the circumstances in which the conduct takes place, that some members of the audience will understand the meaning that was intended.

T

time, place and manner restrictions or rules Rules, when justified by a substantial government interest, that can regulate the time, place and manner of speaking or publishing and the distribution of printed material.

tort A civil wrong not based on a contract, against the person or property of another. Typical torts are libel, invasion of privacy, trespass and assault.

trade libel Product disparagement, and not considered true libel; disparaging a product as opposed to the manufacturer or maker of the product.

trade regulation rules (TRRs) Rules adopted by the Federal Trade Commission that prohibit specific advertising claims about an entire class of products. For example, makers of fruit drinks that contain less than 10 percent fruit juice cannot advertise these products as fruit juice.

trespass Unlawful entry on another person’s land or property.

trial court Normally the first court to hear a lawsuit. This court is the forum in which the facts are determined and the law is initially applied, as opposed to an appellate court, to which decisions are appealed.

true threats A category of speech that is not protected by the First Amendment. Statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular person or group of people.

U

unfair competition See *misappropriation*.

V

variable obscenity statutes A Supreme Court doctrine that permits states to prohibit the sale, distribution or exhibition of certain kinds of nonobscene matter to children, so long as these laws do not interfere with the accessibility of this material to adults.

verdict The decision of a trial jury based on the instructions given to it by the judge.

viewpoint-based discrimination The worst form of content-based regulation that exists when the government censors or regulates one particular viewpoint or side on a given topic or issue but does not censor or regulate another viewpoint or side on the same topic or issue. For instance, if the government censored pro-life speech on the topic of abortion but did not censor pro-choice speech on the topic of abortion, that would constitute viewpoint-based discrimination. Viewpoint-based discrimination by the government on speech is always unconstitutional.

void for vagueness doctrine A statute or regulation is unconstitutional if it is so vague that a person of reasonable and ordinary intelligence would not know, from looking at its terms, what speech is allowed and what speech is prohibited.

voir dire A preliminary examination the court makes of people chosen to serve as jurors in a trial. People can be challenged for cause or on the basis of a peremptory challenge by either side in the legal dispute.

W

warrant A written order, signed by a judge or magistrate, that may take many varieties, such as a search warrant that allows a law enforcement officer to search for and seize property or possessions that constitute evidence of the commission of a crime.

writ of certiorari A writ by which an appellant seeks the review of a case by the U.S. Supreme Court. When the writ is granted, the court will order the lower court to send up the record of the case for review.

Z

Zapple Rule A corollary to the equal time rules that states that when the supporters of a legally qualified candidate are given time on a radio or television broadcast, the supporters of all other legally qualified candidates for the same office must also be given equal opportunity.