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Chapter 02
The First Amendment: The Meaning of Freedom

Multiple Choice Questions

1. In 2011, the U.S. Supreme Court in *Brown* v. *Entertainment Merchants Association*
A. upheld a law that allowed the censorship of sexually explicit movies.
B. struck down a law that allowed the censorship of sexually explicit movies.
C. upheld a law that restricted minors' access to violent video games.
D. struck down a law that restricted minors' access to violent video games.

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2. Laws limiting minors' access to video games depicting violent images are subject to the standard of judicial review known as
A. intermediate scrutiny.
B. reasonable review.
C. strict scrutiny.
D. rigorous review.

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3. The primary goal of free speech in Meiklejohnian theory is
A. self-realization.
B. the voting of wise decisions.
C. protecting artistic expression.
D. discovery of the truth.

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4. The U.S. Supreme Court's 2012 ruling in *United States* v. *Alvarez* struck down part of a federal law known as the
A. Stolen Valor Act.
B. Patriot Act.
C. Anti-Terrorism Prosecution Act.
D. Sedition Act.

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5. According to the textbook, a great "historical myth" regarding the First Amendment is that
A. it only protects political speech.
B. John Peter Zenger was the individual who drafted it.
C. it is first because it is the most important right.
D. George Washington was the individual who drafted it.

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6. The 2009 appellate court ruling in *Plame Wilson* v. *Central Intelligence Agency* best illustrates the point that
A. government employees who sign secrecy agreements may be subject to prior restraints.
B. community censorship of the speech of government employees is unconstitutional.
C. jury nullification is a key problem in cases involving the Central Intelligence Agency.
D. the access theory supports the disclosure of Central Intelligence Agency documents.

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7. As described in the textbook, the access theory of freedom of expression can be seen as a remedy to correct some of the flaws with which one of the following other theories?
A. Meiklejohnian theory
B. marketplace of ideas theory
C. absolutist theory
D. self-realization theory

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8. The incorporation doctrine links the First Amendment with the
A. Second Amendment.
B. Third Amendment.
C. Tenth Amendment.
D. Fourteenth Amendment.

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9. The *Brandenburg* test for incitement is also commonly used in
A. libel cases.
B. invasion of privacy cases that involve the intrusion tort.
C. obscenity cases.
D. wrongful death actions aimed at the mass media.

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10. The case of *United States* v. *Bell* involved a prior restraint on
A. national security secrets.
B. fraudulent tax advice.
C. a newspaper publishing false statements about public officials.
D. a newspaper publishing false statements about a child.

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Short Answer Questions

11. Explain what "community censorship" means and provide an example of it.

Community censorship involves the silencing of speech by private people or business entities, often as a result of pressure exerted by political activists, public interest groups, and economic stakeholders. [The section in Chapter 2 titled "Community Censorship, Then and Now" includes several examples.]

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12. Set forth the four components or elements of the test articulated by the U.S. Supreme Court in *Brandenburg* v. *Ohio*.

1) The speech in question must be "directed" or intended to cause lawless action. 2) The action in question must be "imminent," meaning that the time between the speech in question and the lawless action must be very close or proximate. 3) The action in question that allegedly is being advocated must actually be "lawless," meaning that there must be a criminal statute forbidding it or punishing it. 4) The action itself must be "likely" to occur, meaning that it is substantially probable to result from the speech in question.

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13. Identify the two basic elements or parts of the symbolic speech doctrine.

1) Actor: The person engaging in the conduct must intend to convey a specific or particular message with his or her conduct. 2) Audience: There must be a great likelihood, under the surrounding circumstances in which the conduct takes place, that some people who witness it will reasonably understand the specific or particular message that was intended by the actor.

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14. As listed and described in the textbook, set forth the four key rules that are important to understand when the government engages in a prior restraint on speech.

1) Prior restraints by the government on speech are presumptively unconstitutional and thus the burden falls on the government to prove in court that a prior restraint is justified.
2) The government's burden in justifying a prior restraint is high, with courts often requiring it to prove there is a compelling interest or an interest of the highest order justifying the restraint.
3) The scope of any prior restraint (how broadly the restraint is drafted and how much speech is restrained) must be very narrow, so as not to stop publication of any more speech than actually is necessary to effectively serve the government's allegedly compelling interests.
4) Speech that falls outside the scope of First Amendment protection (obscenity, child pornography, and false advertising, for instance) can be restrained by the government, but only after a judicial proceeding in which a court has determined that the speech indeed is not protected.

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15. Explain what is meant by absolutist theory.

Absolutist theory holds that the First Amendment provides for an absolute or complete barrier against any government censorship. The government cannot censor the press or speech for any reason. There are no exceptions, no caveats, no qualifications to the guarantees of free speech and press. The words "no law" in the First Amendment mean exactly that—Congress cannot make any laws restricting expression.

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16. Explain the distinction between content-based and content-neutral regulations.

Laws that regulate protected speech based on the content, topic or subject matter of that speech are called content-based regulations. In contrast, laws that apply regardless of the content, topic or subject matter of a message are categorized as content-neutral regulations. Content-based regulations are subject to strict scrutiny judicial review. Content-neutral regulations are subject to intermediate scrutiny judicial review.

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Fill in the Blank Questions

17. The First Amendment was adopted in the year _____.
1791

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18. The balancing theory that weighs the interests in any situation on a case-by-case basis is known as _____ balancing.
ad hoc

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19. In order to justify a regulation on speech under the strict scrutiny standard of judicial review, the government must prove that it has a _____ interest.
compelling

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True / False Questions

20. The outcome of the seditious libel trial involving John Peter Zenger represents an example of jury nullification.
TRUE

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21. The counterspeech doctrine maintains that the remedy for speech that offends us is not censorship or violence, but rather the remedy is to add more speech to the marketplace of ideas to counteract or contradict the disagreeable speech.
TRUE

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22. The First Amendment was an effective tool in blocking prosecutions under the Espionage Act of 1917.
FALSE

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23. In 2010, the U.S. Supreme Court in *United States* v. *Stevens* refused to create a new category of unprotected speech for videos depicting images of animal cruelty.
TRUE

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24. ABC canceling the show "Roseanne" after the show's star and co-creator posted a racist tweet is an example of censorship by the Federal Communications Commission.
FALSE

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25. Viewpoint-based discrimination is a subset of content-based regulation and is considered even worse than a content-based regulation.
TRUE

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