

First Amendment Limits



•First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.



• Is all speech Free?

• NO!!!

Limits on Free Speech include:

- Copyright
- Clear and Present Danger
- Defamation (Libel/Slander)
- Incitement to commit crimes
- Fighting words/hate speech
- Ads for illegal products or blatant false advertising
- Speech disruptive to school activities
- Obscenity

• What is obscenity?

• Evolving definition:

• 1868 – Regina v. Hicklin

- Something is obscene if “the tendency of the matter in question is to deprave and corrupt those whose minds are open to immoral influences”

• 1954 – Roth v. US

- To the average person, applying contemporary standards, the dominant theme appeals to prurient interests

• 1966 – “Fanny Hill” Case

- 1. Dominant theme must appeal to prurient interest
- 2. Must be patently offensive and affront community standards
- 3. Be utterly without redeeming social value

• What is obscenity?

- Evolving definition:
- 1973 – Miller v. Us
 - 1. Average person, applying contemporary community standards, finds the work as a whole to appeal to prurient interest
 - 2. Work depicts conduct that is specifically defined and prohibited by state law
 - 3. Work, as a whole, lacks serious literary, artistic, political, or scientific value (LAPS test)
- **Work in question must fail ALL 3 parts to be obscene**