

ONLINE COMMUNITIES: RISK AND REWARDS

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Facing Up to Facebook

- Must I?
- May I?
- Can I?
- Should I?

Must I?

- Vicarious liability?
 - "We reject the proposition that the doctrine of respondeat superior renders schools liable for the acts of their students A student's status as student does not, by itself, make the student an 'employee' or 'servant' of the school the student attends." – *Kavanagh v. Boston University* (Mass. 2003)
- CDA?
 - "Through this provision, Congress granted most Internet services immunity from liability for publishing false or defamatory material so long as the information was provided by another party." – *Carafano v. Metrosplash.com, Inc.* (9th Cir. 2003)

Must I?

"This means that sexual harassment, such as the vile behavior we've all heard about that takes place on websites like juicycampus.com, is forbidden under Title IX."

"OCR will take no . . . action regarding this allegation Letters of findings are not formal statements of OCR policy and should not be relied upon, cited, or construed as such."

May I?

- Privacy issues?
 - "The defendant is subject to liability . . . only when he has intruded into a private place, or has otherwise invaded a private seclusion that the plaintiff has thrown about his person or affairs. Thus there is no liability for the examination of a public record concerning the plaintiff, or of documents that the plaintiff is required to keep and make available for public inspection. Nor is there liability for observing him or even taking his photograph while he is walking on the public highway, since he is not then in seclusion, and his appearance is public and open to the public eye." – *Restatement (Second) of Torts § 652B*
- Jurisdiction?
 - Where *is* MySpace?

May I?

- The code applies to the on-campus conduct of all students and registered student organizations. The code also applies to the off-campus conduct of students and registered student organizations in direct connection with:
 - Any activity sponsored, conducted, or authorized by the university or by registered student organizations;
 - Academic course requirements, such as internships, field trips, or student teaching;
 - Any activity that causes substantial destruction of property belonging to the university or members of the university community or causes serious harm to the health or safety of members of the university community; or
 - Any activity in which a police report has been filed, a summons or indictment has been issued, or an arrest has occurred for a crime of violence.

May I?

- "The court does not disagree with Defendants that the Blog Post is vulgar. It is generally distasteful and, in parts, objectively offensive. However, the Blog Post is not 'unprofessional.' Rather, it is entirely *non-professional*, and therefore it falls outside the purview of the Honor Code. Yoder did not post the Blog 'as a representative of the School of Nursing.' Moreover, the Blog Post is not 'written work, spoken words, actions [or] interactions with patients, families, peers [or] faculty.' It is simply a crude attempt by Yoder to be humorous in describing an anonymous prolonged labor and delivery. It was written without any clearly intended audience and posted on Yoder's own personal MySpace page. That the Blog Post was technically accessible to the public does not fundamentally change the nature of the writing."

May I?

- "To be sure, Yoder's attempt at humor was an abject failure. Her observations on women, children, motherhood and the birthing process are, for the most part, crass and uncouth. . . . Regardless, the court does not judge the Blog Post on its comedic or literary merit. Despite what we, or Defendants, may think of it, the Blog Post does not violate the professionalism provision of the Honor Code because it was not created or used in any professional context. Again, if the SON wishes for the professionalism affirmation in the Honor Code to apply to every act or all conduct of a SON student everywhere and at all times in all contexts, it must give fair notice by explaining such obligation clearly."

Can I?

- Americans currently spend 17% of their online time on social networks
- > 350 *million* Facebook users
 - > 8 *billion* minutes spent each day
 - > 55 *million* status updates each day
 - > 2.5 *billion* photos uploaded each month
 - > 3.5 *billion* pieces of "content" posted each week

Can I?

- Plus:
 - Myspace
 - Flickr
 - Twitter
 - Blogspot
 - YouTube
 - Classmates.com
 - Google Groups
 - Yahoo! Groups
 - LinkedIn
 - Friendster
 - Mylife
 - Bebo
 - Hi5
 - MyYearbook
 - LiveJournal
 - . . .

Can I?

- "The Net interprets censorship as damage and routes around it."

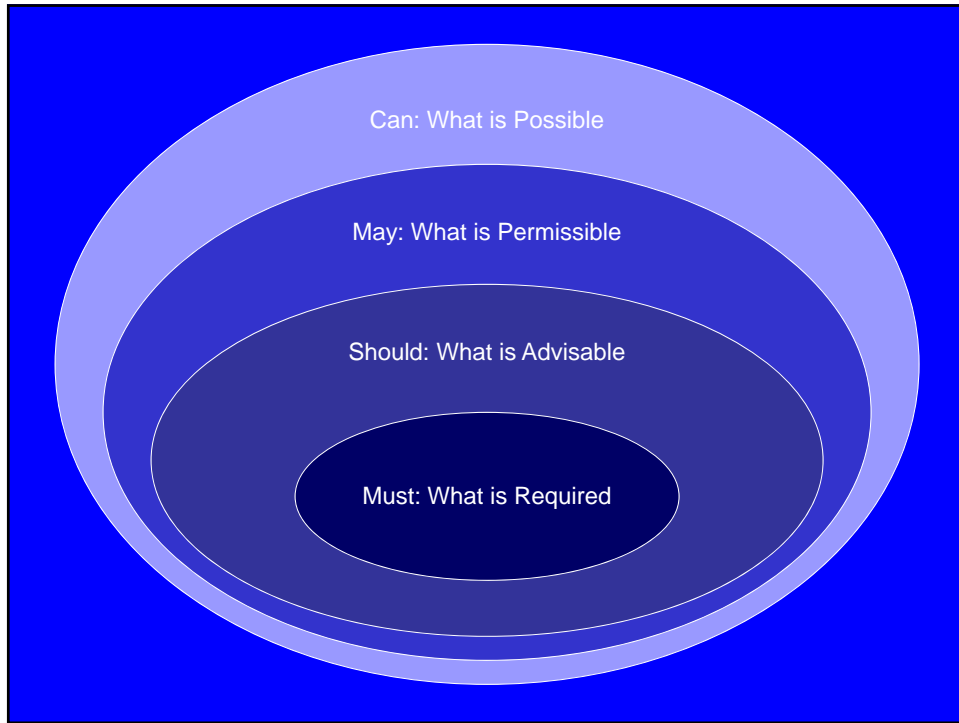
Should I?

- Assumed duty and liability?
 - "One who undertakes . . . to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking . . ." – *Restatement (Second) of Torts* § 323
- What is it you're really concerned about?

Everything Old is New Again

Three Key Misconceptions

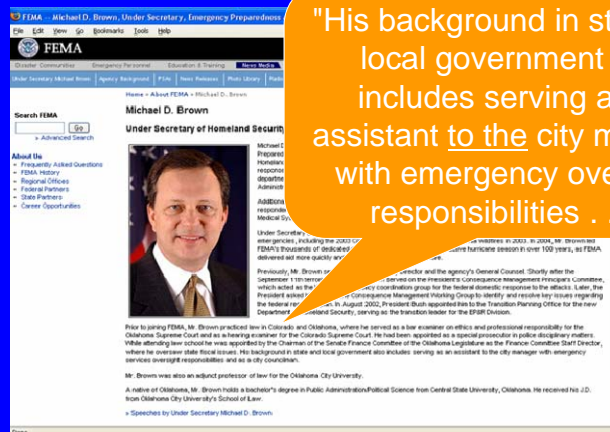
- Cyberspace is a separate legal jurisdiction
 - In fact, conduct that is illegal or a violation of policy in the "offline" world is just as illegal or a violation of policy when it occurs online
- If it's technically possible, it's legal
 - In fact, the technology has some legal implications, but it does not define the outer limits of the law
- Free *access* = free *speech* = *unfettered* speech
 - In fact, even public institutions may limit the use of their computer resources to business-related purposes



45% of employers are using social networking sites to screen job candidates

35% of employers have decided not to hire a candidate based on the candidates postings to social networking sites

You Can Run, But You Can't Hide



Talkin' 'Bout My Generation

- Ronald/Nancy Reagan: "Just say no."
- Bill Clinton: "I experimented with marijuana a time or two, and I didn't like it. I didn't inhale it, and never tried it again."
- George W. Bush: "When I was young and foolish, I was young and foolish."
- Barack Obama: "Yes, I inhaled. Wasn't that the point?"

