

Paris

Session : Janvier 2023 – 1^{er} semestre
Année d'étude : TROISIEME ANNEE DE LICENCE DE DROIT
Discipline : ANGLAIS JURIDIQUE

(Unités d'Enseignements Complémentaires 1)

Titulaire(s) du cours : Channel ANDREWS, Patrice LECOCQ

Durée de l'épreuve : 1H30

Document(s) autorisé(s) : LES DOCUMENTS ET LES APPAREILS ELECTRONIQUES NE SONT PAS AUTORISES

Ce sujet comporte 2 pages. Avant de composer, veuillez vérifier que votre sujet est complet.

I. COMPLETE THE FOLLOWING SENTENCES, ADDING 15-30 WORDS. DO NOT START A NEW SENTENCE. (20points)

1. One of the main purposes of punishment is....
2. Even though the freedom of expressive association...
3. On cross-examination.....
4. In order for a plea bargain to be accepted by a judge...
5. In Terry v. Ohio....

II. READ THE FOLLOWING DOCUMENT AND ANSWER EACH OF THE QUESTIONS BELOW (TEN LINES EACH/100 WORDS). USE YOUR OWN WORDS. DO NOT QUOTE DIRECTLY FROM THE TEXT (30 POINTS)

“A landmark Supreme Court fight over social media now looks likely”

By Robert Barnes and Ann E. Marimow, *The Washington Post*, September 19, 2022

Conflicting lower court rulings about removing controversial material from social media platforms point toward a landmark Supreme Court decision on whether the First Amendment protects Big Tech's editorial discretion or forbids its censorship of unpopular views.

The stakes are high not just for the government and the companies, but because of the increasingly dominant role platforms such as Twitter and Facebook play in American democracy and elections. Social media posts have the potential to amplify disinformation or hateful speech, but removal of controversial viewpoints can stifle public discourse about important political issues.

Governments that say conservative voices are the ones most often eliminated by the decisions of tech companies scored a major victory Friday, when a divided panel of the U.S. Court of Appeals for the 5th Circuit upheld a Texas law barring companies from removing posts based on political ideology. (...)

But a unanimous panel of the U.S. Court of Appeals for the 11th Circuit went the other way earlier this year, saying that a similar Florida law violated constitutional protections for tech companies that do not want to host views on their platforms that they find hateful, divisive or false.

Judge Kevin Newsom criticized a depiction of social media platforms as “dumb pipes ... reflexively transmitting data from point A to point B.” Instead, he wrote, their **“content-moderation decisions constitute the same sort of editorial judgments” entitled to First Amendment protections when made by a newspaper.**

All of the appeals court judges considering the Florida and Texas laws have noted the difficulty of applying some Supreme Court precedents regarding legacy media. (...)

“We are in a new arena, a very extensive one, for speakers and for those who would moderate their speech,” wrote Judge Leslie Southwick, who has served on the 5th Circuit for 15 years and dissented from Friday's decision.

“None of the precedents fit seamlessly. ... The closest match I see is case law establishing the right of

newspapers to control what they do and do not print, and that is the law that guides me until the Supreme Court gives us more.”

It is possible such guidance will come soon, perhaps in the term that begins next month. Disagreements among lower courts about important legal issues is the most likely driver of the Supreme Court’s decision to take up a case, and Florida’s petition challenging the 11th Circuit ruling is due at the high court Wednesday. (...)

Oldham’s opinion [in the 5th Circuit case] [held] that social media companies “offer a rather odd inversion of the First Amendment.”

“That Amendment, of course, protects every person’s right to ‘the freedom of speech,’” Oldham wrote. “But the platforms argue that buried somewhere in the person’s enumerated right to free speech lies a corporation’s unenumerated right to muzzle speech.”

Generally, legal experts closely tracking the case said the 5th Circuit decision is at odds with long- standing court precedent and warned that the Texas law would force the companies to disseminate what they consider misinformation and harmful content on their platforms. (...)

At its core, the First Amendment protects against government infringement on speech. Courts have also held that the First Amendment protects the right of private companies, including newspapers and broadcasters, to control the speech they publish and disseminate. That includes the right of editors not to publish something they don’t want to publish. (...)

Oldham distinguished newspapers from social media platforms, which Oldham writes are more akin to “common carriers” like telephone companies. (...) Legal experts said the court was correct to note the difference, but that online platforms are distinct from phone companies, for instance, which do not cut off service based on the content of a conversation. (...)

Some laws that would be unconstitutional as applied to news outlets and their publishing decisions may be permitted when it comes to social media platforms, Jameel Jaffer, director of the Knight First Amendment Institute at Columbia University, suggested. A social media company could be required, for instance, to explain its decision to remove someone from its platform or to be more transparent about how it moderates content.

Both the Texas and Florida laws have such provisions, and the judges reviewing them were inclined to let them stand.

Alan Z. Rozenshtein, a professor at the University of Minnesota Law School, agreed with the 5th Circuit’s description of social media platforms as increasingly central to public discussion, and said there is potentially a role for some government regulation of content moderation. But he said the Texas law goes too far, calling the 5th Circuit’s position that content moderation is censorship “extreme.”

The companies, he said, are trying to create platforms that their users “want to hang out on.”

“We can talk about whether or not Nazis and terrorists should have the right to speak, but it’s not straightforward censorship,” he said. “If you have an unmoderated cesspool, that’s great for the trolls, but that’s not conducive to other people’s speech — especially to those who are going to be threatened and turned off. There has to be some balance.” (...)

Questions:

1. What general constitutional issue does the article focus on? Why might the U.S. Supreme Court hear a case raising it soon? (5 pts)
2. What have the 5th and 11th Circuits held on this issue and why? What do experts think of those rulings? (15 pts)
3. Discuss and give your opinion on the underlined sentence. (10 pts)

III. CASE STUDY. ANSWER THE FOLLOWING PRACTICAL CASE IN APPROXIMATELY 300 WORDS. (+/- 10%) (50 POINTS)

At 3:00 a.m. Saturday morning a homeowner called the Sunnydale Police Department to notify officers about a house party taking place next door. The caller was concerned as some of the party guests appeared to be under the legal age of drinking, seemed intoxicated, and looked to be preparing to drive away. Two officers on patrol drove towards the scene. As the officers arrived, they saw one of the party guests, 17-year-old Mike, drive away from the house party. The officers made a U-turn, turned on their police sirens, and attempted to pull Mike’s car over. However, Mike began speeding above the speed limit and refused to stop his car. Mike drove through a red light and hit a pedestrian crossing the street. Mike then immediately stopped his car to help the pedestrian and was approached by the police while doing so. As the police approached Mike he began to cry hysterically while exclaiming “I’m sorry. This was my first-time drinking. I was celebrating my birthday. I will turn 18 tomorrow.” One of the officers stated “thanks for the confession. You are now under arrest.” Unfortunately, the pedestrian was severely hurt and died in the hospital. Mike was later charged with Drinking Under the Influence (D.U.I.) and the death of the pedestrian.

Comment on the legal implications that this case raises and suggest the sentence that Mike could receive if he were convicted of the crimes that he was charged with.