Contents

| 1 / 1 | juce | | puge m |
|-------|---------|---|--------|
| Ac | knowled | lgments | xviii |
| | PART | I THEORY | 1 |
| 1 | Form | alism and Categorical Doctrine | 3 |
| | 1.1 | Unprotected Categories of Speech | 4 |
| | 1.2 | Boring Down into the Categories | 12 |
| | | 1.2.1 Obscenity | 12 |
| | | 1.2.2 Defamation | 15 |
| | | 1.2.3 Fraud | 17 |
| | 1.3 | Reasoned Balancing, Not Ad Hoc Balancing | 18 |
| 2 | Dom | inant Academic Approaches to Free Speech | |
| | Streng | gths and Shortcomings | 19 |
| | 2.1 | Personal Autonomy | 20 |
| | | 2.1.1 Autonomy Theory | 20 |
| | | 2.1.2 Evaluating Autonomist's Claims | 22 |
| | | 2.1.3 Autonomy and Copyright | 25 |
| | 2.2 | Self-Government | 28 |
| | 2.3 | The Marketplace for Truth | 35 |
| | 2.4 | Convergences and Divergences of Methodologies | 38 |
| 3 | Free S | Speech and Proportionality | 40 |
| | 3.1 | A Matter of Theory | 42 |
| | 3.2 | Primary and Secondary Concerns | 51 |
| | | | |

vii

Contents

| Civic Community and Social Context | |
|--|----|
| 4.1 Communications | 60 |
| 4.2 A Contextual Theory of Free Speech | 61 |
| 4.3 Speech and Other Constitutional Values | 63 |
| 4.4 Pluralistic Free Speech | 66 |
| 4.5 Balancing Content | 70 |
| PART II APPLICATION | 75 |
| US Formalism and EU Proportionality Alternative | 77 |
| Offense, Incitement, True Threats, and Hate Speech | 83 |

Offense, Incitement, True Threats, and Hate Speech 6

-

viii

4

5

| | 6.1 | Offensive Speech | 84 |
|---|------|---|-----|
| | 6.2 | Incitement | 85 |
| | | 6.2.1 Historical Dimensions | 85 |
| | | 6.2.2 The Modern Test | 87 |
| | 6.3 | Critics of the True Threats Doctrine | 92 |
| | 6.4 | European Court of Human Rights and Hate Speech | 95 |
| 7 | Terr | orist Incitement on the Internet | 99 |
| | 7.1 | Material Support for Foreign Terrorist Organizations | 100 |
| | 7.2 | International and Foreign Laws against Incitement | |
| | | and Terror | 102 |
| | 7.3 | Drafting a United States Cyberspace Terrorist Statute | 104 |
| | 7.4 | Social Media Platform Liability | 110 |
| | | 7.4.1 International Guidance | 110 |
| | | 7.4.2 Communications Decency Act § 230 Immunity | 112 |
| | 7.5 | Counterarguments | 113 |

| 8 | First Amendment on Campus | | | 117 |
|---|---------------------------|---|--|-----|
| | 8.1 | Contemporary Campus Speech Issues | | 119 |
| | 8.2 | Doctrinal, Statutory, and Judicial Considerations | | |
| | | on the Enforcement of Campus Codes | | 123 |
| | | 8.2.1 | Campus Codes and Constitutional Doctrine | 124 |
| | | 8.2.2 | Hostile Campus Environment: | |
| | | | Title VI Litigation | 125 |
| | | 8.2.3 | Lower Court Findings on Campus Codes | 129 |
| | 8.3 | Curre | nt University Policies | 132 |

| | | Contents | ix |
|-------|--|--|-----|
| 9 | High Schooler Speech in the Age of the Internet | | 138 |
| | 9.1 | Student Speech Doctrine | 138 |
| | 9.2 | Lower Court Review of Schools | 143 |
| | | 9.2.1 On-Campus Speech | 144 |
| | | 9.2.2 Off-Campus Speech | 146 |
| | 9.3 | Conflicting Constitutional Values in Schools: the Case | |
| | | of Confederate Symbols | 149 |
| 10 | On the Campaign Trail Money and Politics | | 157 |
| | 10.1 | Campaign Financing Law: Burger Court | 159 |
| | | 10.1.1 Unlimited Expenditure | 159 |
| | | 10.1.2 Contributions by People and Corporations | 161 |
| | 10.2 | Campaign Financing Law: Roberts Court | 162 |
| | | 10.2.1 Corporate Expenditures | 162 |
| | | 10.2.2 Aggregation of Contributions | 169 |
| | 10.3 | Representative Democracy and Market Priorities | 171 |
| | Con | clusion | 173 |
| Note | s | | 178 |
| Index | | 225 | |
| | | | |

× .