

Obscenity and Pornography - Terms and Tests

Obscenity - Literally, that which may not be said; from the Latin, *obscenus* - not said. Obscenity is *per se* beyond the protection of the First Amendment. Colloquial meanings include: that which causes immoral thoughts, that which is contrary to norms of decency or modesty, and that which is repulsive or excessive. Obscenity includes, but is not limited to explicit pornography; it may also include blasphemy and profanity.

Pornography - Sexually explicit pictures, writing, or other material whose primary purpose is to cause sexual arousal; from the Greek *pornographos*, writing about prostitutes. Not all pornography is obscene.

Tests for Obscenity

Hicklin Test (*Tendency to Deprave and Corrupt*), from *Queen v. Hicklin*, (1868, Britain).

whether the tendency of matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.

Roth Standard, from *Roth v. US* (1957)

- a. "whether to the average person, applying contemporary community standards,
- b. the dominant theme of the material, taken as a whole, appeals to the prurient interests,"
- c. the work is without redeeming social value.

Fanny Hill Standard, from *Memoirs of a Woman of Pleasure (Fanny Hill) v. Mass.* (1966)

- a) the dominant theme of the material taken as a whole appeals to a prurient interest in sex;
- (b) the material is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters; and
- (c) the material is utterly without redeeming social value.

Miller Standard, from *Miller v. California*, (1973)

- (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest,
- (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and
- (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.