



An Explanation of the Miller Test for Obscenity

The Miller test is the national standard for determining whether material is legally “obscene” in the United States. The test is named after the 1973 case during which it was developed, *Miller v. California*. Prior to the Miller case, obscenity standards were vaguer and more inconsistent. The Miller test is also known as the “three-prong obscenity test” because the test has three criteria:

1. Does the work, as judged by “the average person, applying contemporary community standards,” taken as a whole, appeal to the prurient (inappropriately sexual) interest?
2. Does the work depict or describe, in an explicit, “patently offensive way,” sexual conduct or excretory functions as defined by state laws?
3. Does the work, taken as a whole, lack serious literary, artistic, political or scientific value?

A work is deemed obscene under this test only if it meets *all three* criteria. In general, the first two criteria are intended to reflect community standards while the final one considers the perspective of a reasonable person in the country as a whole. A work may be considered obscene in one community and acceptable in another, but, if it has merit outside of the objectionable content, it will not be illegal under the Miller test. Even genuinely pornographic materials are not, for the most part, legally obscene in the United States. Obscene material is illegal to sell or disseminate. However, due to the right of privacy alluded to in the Bill of Rights, possession of obscene material for private use is not illegal.

In Michigan, our state obscenity statute is interpreted as equivalent to the Miller standard due to the outcome of the 1979 Michigan Supreme Court case *People v. Neumayer*.

More information:

- Citizen’s Guide to U.S. Federal Law on Obscenity: <https://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-obscenity>
- Obscenity and the Miller case: <https://www.law.cornell.edu/wex/obscenity>
- Summary of *People v. Neumayer*: <https://law.justia.com/cases/michigan/supreme-court/1979/59093-2.html>