

**CONSTITUTIONAL LAW
FINAL EXAM**

Prof. Hesse

Exam # _____
Spring 2008

Instructions:

Three-hour time limit. Please note the point value assigned to the questions and manage your time accordingly.

You may use your textbook and your personal notes/outlines during the examination. You may **NOT USE** any commercially published materials other than your textbook.

Be certain that your exam number is on each page of the exam and on the machine-scored answer sheet.

PART I

The first 16 questions are true/false questions. The remaining 6 questions are multiple choice questions. Read the questions (and answers) carefully and reflect for a moment before selecting an answer. Enter your answer choice on the machine-scored answer sheet. (Use A for true and B for false on the first ten questions.)

The point value of each of the first 16 questions is 4 points.
The point value of each of the last 6 questions is 6 points.

TRUE or FALSE

1. The Bill of Rights (Amendments I – X) applies only to the federal government.
2. In routine cases, due process requirements are met if a law is rationally related to a permissible government objective.
3. The United States Supreme Court has held that all the rights and guarantees of the Bill of Rights are applicable to the states through the liberty provision of the 14th Amendment Due Process Clause.
4. Regulation of abortion prior to viability of the fetus is constitutionally permissible only if the regulation is necessary to serve a compelling interest.
5. Before the state denies an application for a driver's license, it must provide the applicant with notice and an opportunity to be heard.
6. Discriminatory laws subject to rational basis review are always upheld.
7. University admissions policies seeking to promote diversity by considering race and ethnicity must make individualized determinations and satisfy strict scrutiny.
8. State law classifications based on alienage must be substantially related to an important governmental interest.
9. State law classifications based on gender must be substantially related to an important governmental interest.
10. Classifications that discriminate against men in order to remedy past discrimination against women can be constitutional if they are narrowly drawn to achieve that goal.
11. Direct regulation of the content of speech is not constitutionally permissible.
12. Advocacy of illegal conduct can be constitutionally protected speech.

13. A law that is vague and overbroad is unconstitutional even if it is narrowly applied to First Amendment activity the state can legitimately regulate.
14. Modern commercial speech is regulated by the same standards that apply to political speech.
15. Public assistance for tuition generally available to all citizens is not barred by the Establishment Clause even if parochial schools are the primary beneficiaries of the assistance.
16. State laws granting exemptions from generally applicable laws for the purpose of relieving burdens on free exercise of religion are violations of the Establishment Clause.

MULTIPLE CHOICE

17. Which of the following is LEAST LIKELY to trigger the right to procedural due process?
- a. the interest of a purchaser in a contingent sale agreement.
 - b. the interest of a state employee under an "at will" contract of employment.
 - c. the interest of a plaintiff in a negligence action.
 - d. the interest of a student in avoiding suspension from school.
18. Which of the following classifications will NOT trigger a higher standard than rational basis review?
- a. race
 - b. national origin
 - c. gender
 - d. wealth
 - e. illegitimacy
19. Which of the following has NOT been held to be a fundamental right requiring strict judicial review?
- a. interstate travel
 - b. privacy
 - c. housing
 - d. marriage
 - e. all of the above are fundamental rights.

20. Which of the following statements is MOST accurate?
- a. Defamation of public officials is fully protected speech.
 - b. The regulation of defamation is left to the states.
 - c. In setting defamation standards relating to private person, states are free to choose negligence, actual malice or strict liability.
 - d. Public officials and public figures in defamation actions must prove actual malice to prevail.
21. Which of the following is the LEAST accurate statement of the law relating to the establishment of religion?
- a. The government action must have a secular legislative purpose.
 - b. The Establishment Clause is principally concerned with discrimination against religion.
 - c. If the primary effect of a law is advancement or inhibition of religion, the Establishment Clause is violated.
 - d. Laws involving excessive entanglement of government with religion or promotion of political divisiveness violate the Establishment Clause.
22. Which of the following is MOST LIKELY to constitute state action?
- a. a storage company selling stored goods to satisfy a lien authorized by the State Commercial Code.
 - b. termination of utility services by a privately owned company subject to extensive state regulation.
 - c. a private school receiving 90% of its funding from government sources firing one of its employees.
 - d. attachment of property by a private party by means of a writ issued by a court clerk and served by the sheriff.

Do not assume the existence of any law or regulation not specifically mentioned in the facts provided. Carefully identify inferences and assumptions drawn from the facts in the explanation for your answer.

The point value of question 23 is 15 points.

The point value of question 24 is 20 points.

The point value of question 25 is 30 points.

23. [15 points] A group of 16 families distressed with the morality and lifestyle of their communities decided to form a community built around a belief system of morality, piety, collective responsibility and harmony. They found each other through internet communication of shared religious, philosophical and political beliefs. They joined together to purchase a housing development in a rural town. The development had 16 single-family houses and a small recreational building that also served as a meeting hall for the group. There were 51 children in the community, 36 of whom attended public school. The communal life style required each adult to take responsibility for all children when the parents were not present.

The community resolved all internal disputes in a “communal court” made up of all adults in the community. Mark Rule, a nine year old, was behaving aggressively in the recreation building and would not respond to directions from the supervising adult, Calvin McRae. After failed efforts to discipline the child, McRae struck the child intending to hit him on the back, but Rule suddenly moved and was struck in the face. A communal court was convened and McRae was admonished.

When Rule attended school on the following day, his teacher observed the mark on his face and inquired. Rule said that a neighbor had hit him. The teacher had heard of earlier events in the community involving what he regarded as “strange” parental behavior. He suspected abuse and reported the incident to the Child Protective Services (CPS) of the State Department of Human Services.

CPS investigated the incident and discovered that the members of the community treated all children’s issues in their communal court and that all 16 adults were aware of the incident involving McRae. CPS charged Rule’s parents with complicity in the abuse of their child and obtained an order removing Rule and his sister to a foster home pending final determination of the case. CPA also charged all of the adults in the community except McRae with violation of the law requiring “all persons having reason to suspect that a child has been abused ... to immediately report” the details of the incident to the CPS. “Abused” is defined as “intentionally physically injured.” Violation of the reporting law is punishable by a fine of no more than \$1000 and/or imprisonment up to 6 months.

In a hearing on the charges for complicity and failure to report, the parents moved to dismiss the charges on grounds that their behavior is constitutionally protected. The Court should

- a. deny the motion since the state has a strong interest in the protection of children.
- b. grant the motion because the Defendants acted pursuant to a sincerely held religious belief.
- c. deny the motion and allow a jury to determine whether McRae intentionally injured Rule.
- d. grant the motion because Rule’s parents have a constitutional right to determine how their child should be raised.

Select the best answer and indicate your choice by checking the box. Explain your answer on the following blank sheet of paper by specifying the controlling judicial standards and applying those standards to the facts. Please write your answer carefully and legibly. Illegible answers will be regarded as incorrect.

Do not write on the back of the sheet.

Laptop users are limited to a maximum of 750 words.

24. [20 Points] Ali Firas is a 20-year-old Iraqi who served in Iraq as an interpreter for the United States Army until 2007. In the spring of 2007 Firas applied for a student visa to attend Northern State College in their pre-med program. Northern State admitted Firas and he was granted the visa. Firas was able to get listed as an interpreter for the state and federal court system and would be called as needed. No other work was available for Firas at the time and he was left without sufficient resources to live and attend school.

Firas applied for financial aid at Northern State. On the application Firas indicated that he was a foreign national. The application form then asked whether he intended to become a US citizen. Because he intended to get a medical degree and return to Iraq, Firas answered “no.” His application for financial aid was denied because a state law denied state financial aid to foreign nationals who are not in the process of seeking US citizenship.

Firas sought to appeal the decision but was told that Northern State was bound by state law. It was explained that the state wished to encourage aliens to become US citizens and that the policy promotes the goal of educating those who are, or will become, members of the electorate. Further, because financial resources were scarce, the state wished to limit access to those resources to citizens or citizen-to-be.

Firas filed suit in federal court claiming a violation of constitutional rights. The facts are not in dispute. Firas moves for summary judgment. The State moves to dismiss or in the alternative, for summary judgment. The Court should:

- a. grant the State’s motion to dismiss because as a noncitizen Firas has no constitutional protections other than procedural due process.
- b. grant summary judgment for Firas because the State has not met its burden of proof.
- c. grant summary judgment for the State because its basis for denying financial aid is reasonable.
- d. grant summary judgment for Firas because the policy is both overinclusive and underinclusive.

Select the best answer and indicate your choice by checking the box. Explain your answer on the following blank sheet of paper by specifying the controlling judicial standards and applying those standards to the facts. Please write your answer carefully and legibly. Illegible answers will be regarded as incorrect.

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25. [30 Points] Iraq War Victims for Peace (Victims) is an organization whose members have been wounded while serving with the United States Armed Forces in both the Gulf War and the ongoing hostilities in Iraq and Afghanistan. Victims applied for permission to use the foyer of the Administration Building at the Veterans Administration Regional Medical Center (a federal government facility). The Regional Medical Center is a 45-acre campus with a number of buildings; the Administration Building is separate from any of the patient services facilities. The foyer of the Administration Building is a large open space in which the Veterans Administration hosts events, ceremonies, large parties and visiting delegations; for fire safety purposes, the capacity of the foyer is rated at 200 persons.

In its application for permission to use the foyer, Victims listed the purposes of the event as two-fold: first, Victims wanted to invite veterans housed at the facility to come to the foyer to register to vote; second, Victims wanted to protest the mishandling of wounded Iraq War veterans using 12 silent men and women in uniform handing out informational brochures. The Regional Administrator denied the use of the foyer offering no specific reasons and citing the following general regulation:

Demonstrations. (i) All visitors are expected to observe proper standards of decorum and decency while on VA property. Toward this end, any service, ceremony, or demonstration, except as authorized by the head of the facility or designee, is prohibited.

(ii) For the purpose of the prohibition expressed in this paragraph, unauthorized demonstrations or services shall be defined as, but not limited to, picketing, or similar conduct on VA property; any oration or similar conduct to assembled groups of people, unless the oration is part of an authorized service; the display of any placards, banners, or foreign flags on VA property unless approved by the head of the facility or designee; disorderly conduct such as fighting, threatening, violent, or tumultuous behavior, unreasonable noise or coarse utterance, gesture or display or the use of abusive language to any person present; and partisan activities, i.e., those involving commentary or actions in support of, or in opposition to, or attempting to influence, any current policy of the Government of the United States, or any private group, association, or enterprise.

Victims asked for specific reasons for the denial but the Regional Administrator declined to provide any further information regarding the application. Victims asked for a list of groups or individuals who were permitted to use the foyer in the past year and were provided with a partial list including the Veterans of Foreign Wars, the Disabled American Veterans, the State Republican Party, the Daughters of the American Revolution, the American Legion and the Retired Military Officers Association. Victims formally sought information regarding an appeal of the Regional Administrator's decision and were informed in writing that there was no appeal process.

Victims has approached the law firm for which you work to determine what rights they have in this situation. You have been asked to identify the constitutional issues, spelling out the relevant judicial standards, applying those standards to the facts and determining whether, in your judgment, Victims would prevail in litigation against the Veterans Administration.

Please write your answer carefully and legibly on the following blank sheets of paper. Illegible answers are regarded as incorrect. Do not write on the back of the page.

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