

EXAMPLE EXAMINATION INSTRUCTION AND QUESTIONS

This handout is to be consulted, along with the outline of the lecture ***Taking Law School Examinations***, while watching the video on “Taking Law School Examinations.”

FINAL EXAMINATION

1. This is an open book examination; there are 11 pages, including this one. You may consult with any materials you wish.
 2. You will be given 3 hours to complete the examination. There are 4 questions. You should allocate your time approximately as follows:

Question I	-	30 minutes
Question II	-	45 minutes
Question III	-	45 minutes
Question IV	-	60 minutes
 3. Please read all questions carefully and make sure you understand the facts before you begin answering. Write legibly and be as concise as possible.
 4. Deal with all the issues raised even if you believe the disposition of any one of them is controlling. If there are ambiguities in the facts, make whatever assumptions are necessary to resolve an issue; if additional facts are needed, state what these facts are and why they are needed.
 5. In answering any question, you should not feel bound by anything you have said in answering an earlier question.
 6. Good luck and have a nice vacation.
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TORTS

Summer 1991

Professor Eisenberg

FINAL EXAMINATION

INSTRUCTIONS

1. There are 9 pages and 2 questions in this exam. You must answer both questions one and two.
 2. Read the questions carefully and confine your responses to an analysis of the questions as written. Do not assume any facts not set forth in the questions.
 3. You have four hours to complete the exam. I have given suggested times for each question, leaving one half hour to spare. You may allocate your time as you wish. I recommend that you spend some time organizing your thoughts before you begin to write and that you reserve some time to go over your responses after you have completed the exam.
 4. You may refer to the Franklin & Rabin casebook, your class notes, a dictionary, and any outlines you have prepared yourself or with other students in the course. You may not refer to any commercial study aids or hornbooks.
 5. Leave a left-margin of at least one inch on every page of your answers. If you are handwriting your answers, please write in bluebooks on every other line and on only one side of the page. If you are typing, please double space.
 6. Good luck.
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TYPE A

International Law Exam
December 1991

Part B2: Shorter Essay Question (1/2 hour)

Explain the legal relationship between UN Charter Articles 41, 42 and 51 (to be found at pages 110 to 112 in the documentary supplement).

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Friedman Con Law Final Fall 1991

Part II

A. ***(30 minutes)***

“Constitutional issues are not about what substantive standards apply, but rather about who determines and applies those standards. Government or private individuals; federal or state government; political branches or judiciary; executive or legislature; trial or appellate court – these are the issues that determine virtually all constitutional law.”

Write a concise essay, making use, where appropriate, of materials covered in this course, explaining the extent to which you agree or disagree.

TYPE A, cont'd

Barbara Fields writes (see pp.103-4 of the supplemental course materials):

[R]ace is neither biology nor an idea absorbed into biology by Lamarckian inheritance. It is ideology, and ideologies do not have lives of their own. Nor can they be handed down or inherited: a doctrine can be, or a bane, or a piece of property, but not an ideology. If race lives on today, it does not live on because we have inherited it from our forebears of the seventeenth century or the eighteenth or nineteenth, but because we continue to create it today...

Those who create and recreate race today are not just the mob that killed a young Afro-American man on a street in Brooklyn or the people who join the Klan and White Order. They are also those academic writers whose invocation of self-propelling 'attitudes' and tragic flaws assign Africans and their descendants to a special category, placing them in a world exclusively theirs and outside history—a form of intellectual apartheid no less ugly or oppressive, despite its righteous (not to say self-righteous) trappings, than that practiced by the bio- and theo-racists; and for which the victims, like slaves of old, are expected to be grateful. They are the academic 'liberals' and 'progressives' in whose version of race the neutral shibboleths difference and diversity replace words like slavery, injustice, oppression and exploitation, diverting attention from the anything-but-neutral history these words denote. They are also the Supreme Court and spokesmen for affirmative action, unable to promote or even define justice except by enhancing the authority and prestige of race...

Do you agree or disagree with Fields? Why or why not? Make sure that you make clear what you think Fields is saying in the quoted paragraph.

TYPE B

Question 3

Responding to the perception that public schools are failing to educate black males and that black males in turn are experiencing difficulties of crisis magnitude, many school systems, among them some that are majority black and some that are majority white, have initiated “immersion schools” specifically for black makes. These public schools stress Afrocentric curricula.

Identify any constitutional issues presented by the establishment of these schools and discuss the strengths and weaknesses of the arguments made supporting or attacking the constitutionality of such schools.

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Welfare Law, Fall 1991

Question 2 (30 points)

Should Congress amend Title IV of the Social Security Act to provide that states may no longer set payment standards lower than their need standards? (A state’s flexibility in selecting a need standard would be unchanged from current law.) Discuss the various implications of such an amendment, present arguments for and against, pick a side and defend your choice.

TYPE C

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Question Two

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(Suggested Time: 1 1/2 hours)

Hutchins City is a community that is deeply divided over the abortion issue. The local Planned Parenthood clinic, which has been providing pregnancy counseling services and performing abortions since 1973, has been the target of sporadic protests by right-to-life organizations over the years. A Hutchins City ordinance provides that picketers at a place of business must stay on the public sidewalks, must keep moving at all times and may not prevent members of the public from entering a building. In January of this year a local right-to-life leader, Art, was elected Chief of Police of Hutchins City by a narrow margin. Since Art's election the protesters have become increasingly aggressive in their efforts to dissuade patients from entering the clinic as police intervention has declined. This summer local demonstrators have been joined by the right-to-life activists from around the country in picketing the clinic. Planned Parenthood obtained a court order directing the Hutchins City police department to enforce the local ordinance in June. Since that time, a single police officer has been at the clinic during demonstrations to admonish the demonstrators to obey the statute. The demonstrators have developed a technique of standing close to each other on the sidewalk directly in front of the clinic entrance and taking tiny "baby steps" to keep moving in order to comply with the statute while still making their presence as conspicuous as possible to those who would enter the building.

On July 1, Belinda learned that she was approximately 8 weeks pregnant. Belinda, a recovering alcoholic, already had a two-year old child who suffered from fetal alcohol syndrome and feared that the stress of another pregnancy might lead her to start drinking again. She decided to go to the Hutchins City Planned Parenthood Clinic for counseling on July 15. There she was greeted

TYPE C, cont'd

by approximately 200 protesters, including two dozen children who were picketing alongside their parents. The protesters carried signs with pictures of bloody aborted fetuses and chanted "Stop the slaughter now!" Belinda asked Ernest, the police officer at the scene, to tell the protesters to clear a path so that she could enter the building. Ernest replied that as long as the protesters kept moving and did not restrain Belinda from entering the building, there was nothing he could do. "I've got strict instructions from my boss, lady. I could lose my job," he explained. Belinda took a deep breath and decided to elbow her way through the picket line. As she got past the line of protesters on the sidewalk and attempted to cross a narrow entryway in front of the clinic door, a group of children broke away from the picket line and surrounded her, crawling on their hands and knees and pleading "Please don't kill your baby." Forced to climb over the protesting children, Belinda tripped on an outstretched leg of 8-year-old Clark and fell on top of him. Clark burst into tears and his mother, Dina, stepped forward and pushed Belinda aside, angrily telling her to leave her son alone. As other protesters held Dina back, Belinda made a hasty retreat. She had felt ambivalent about having an abortion all along, and her encounter with the protesters left her badly shaken. She embarked on a 4-day drinking binge that night, her first since her child had been born two years earlier. Three weeks later, sober once more and concerned that she might give birth to another child with fetal alcohol syndrome, Belinda returned to Planned Parenthood, crossed the picket line without mishap, and had an abortion.

Belinda seeks your legal advice as to the tort claims and defenses that might arise from the foregoing acts. Realizing that you have not yet studied criminal and constitutional law, she has retained separate counsel to advise her on these aspects of the situation and asks that you confine your analysis to tort issues.

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THE END

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TYPE C, cont'd

Question 1

In response to the spiraling cost of health care, the vast inequities in accessing health care and what it determined to be national health care crisis, Congress enacted legislation signed by the President designed to ensure comprehensive access to health care. The National Health Care Act of 1991 (NHCA) rests on a number of Congressional findings which are recited at length in the introduction to the legislation, including:

- 1) The provision of health care insurance has become so linked to employment that it is considered a term or condition of employment.
 - 2) Employers are best positioned to provide health care coverage for employees because of their relationship to employees and because of the resources at their disposal.
 - 3) In the absence of employee-sponsored health care insurance, employees are subject to significant uncertainties regarding access to health care, often resulting in inadequate coverage with devastating economic consequences for them.
 - 4) An increasingly aging baby boom population is putting unmanageable demands on the existing health care system.
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- 5) Health care is a right, not a privilege.

- 6) A mandatory employee –sponsored National Health Care Insurance System promotes employee morale, reduces labor unrest, and has beneficial effects on national commerce.

The legislation provides that every private employer of fifteen or more persons must provide health care insurance. Congress specifically delegated to the Department of Health and Human Services (HHS) the task of establishing the minimum adequate coverage required under the Act and promulgating regulations for its implementation, with the proviso that a joint House and Senate committee would have the power to void or modify the HHS minimum standard or regulations if after hearings on the matter the committee determines them to be inadequate.

Private employers with fewer than 15 employees are not required to provide health insurance.

The NHCA requires federal, state and local governments to provide health care insurance for all of their respective employees pursuant to the standards established by HHS.

In devising its standards and promulgating regulations, HHS prohibits the use of any health care insurance provided as a result of the NHCA for any abortion-related medical services, including counseling.

Numerous suits are filed challenging the constitutionality of the NHCA of 1991 and its implementing regulations. Among the plaintiffs are several states, taxpayers, private employers, unemployed persons, individuals working for employers with less than 15 employees, and pro-choice advocates challenging the abortion restrictions.

Identify all potential constitutional claims on behalf of each category of plaintiffs and fully discuss the strengths and weaknesses of each claim.

TYPE D

Contracts. Section 1 (Prof. Frier) Final Examination, page 1 17 December 1991, 8:30 – 12:00

1. The Toy Market (Thirty Minutes)

Diana Diode is a sales representative for Allied Products, which manufactures and sells electronic games to large independent toy stores in a multi-state region. Diode solicits her business through contact with store proprietors.

On September 15, 1991, Diode met with Chip Carter, owner and manager of the Toy Market in Hutchins City; Carter had occasionally purchased from Allied Products over the past four years. After discussion, Carter agreed to a large order of various hand-held electronic games, in expectation of heavy business during the upcoming holiday season since all the games were in great demand. Diode listed the ordered items on a form provided by Allied Products, and she then had Carter sign the order form, a copy of which she left with him. On its face, the order form stated in large type that:

“Allied Products is not bound until this order has been accepted at its home office. Our sales representative has no authority to bind us to an order. All orders are irrevocable.”

A month and a half later, Carter, who had become concerned that none of his order had arrived yet, called Allied Products’ home office to inquire when delivery would begin; he was informed that his order had not been accepted because of a substantial rise in market price after the order’s submission.

Carter, who is outraged at what he considers Allied Product’s cavalier treatment of a customer, seeks your advice. He tells you that he has been forced to buy equivalent goods from another supplier, for \$2,000 more than if Allied Products had delivered as promised. He says: “The money is important, of course. But I’ve been had. I don’t want to let them get away with this. What can I do? They were obligated to deliver weren’t they?”

What advice do you give to Carter? What steps, if any, would you take on his behalf?
Why?

TYPE E

1. Which of the following was not a significant defect of American government under the Articles of Confederation?
 - a.) The requirement that amendments be approved unanimously by the states.
 - b.) The absence of a true national executive.
 - c.) The absence of a true national legislature.
 - d.) The absence of a true national judiciary.
 - e.) The absence of an effective national taxing power.

2. Which of the following was not a significant compromise adopted by the Constitutional Convention of 1787?
 - a.) Creation of a bicameral legislature, one house apportioned by population and the other by states.
 - b.) Prohibiting state impairment of the obligation of contracts, but not to the extent that the state restricted creditors' rights.
 - c.) Protection of the states' ability to allow the importation of slaves, the protection to last only for twenty-one years.
 - d.) Counting slaves, but not on a person-by-person basis, in determining the population of a state for purposes of apportionment of representatives and of direct taxes.
 - e.) Election of the President by a method under which a state's number of votes depended on, but was not strictly proportional to, its population.

3. Which of the following is an accurate statement about the Bill of Rights?
 - a.) It was adopted in fulfillment of promises made by leading Federalists during the debates over ratification of the Constitution.
 - b.) It provided a significant limitation on state power throughout much of the nineteenth century.
 - c.) The Supreme Court has held that it has been incorporated against the states by the fourteenth amendment.
 - d.) Because it is a matter of federal constitutional law, it is not binding on state judges and other officers.
 - e.) None of the above.

4. Which of the following is an accurate statement about Marbury v. Madison?
 - a.) The Court's assertion of judicial review allowed the Court to issue a compulsory order in the case against the Secretary of State.
 - b.) The Court would probably not have asserted the power of judicial review had it not been for the relatively harmonious political climate of the era.
 - c.) The essence of the Court's analysis of the judicial review question is that the Court itself is the exclusive legitimate governmental interpreter of the Constitution.

TYPE F

QUESTION ONE

(One and One-Half Hours)

Please write a dissenting opinion in *Paramount Communications, Inc. v. Time, Inc.*, 571 A.2d 1140 (Del. 1990), a copy of which is in the 1991 Case Supplement at 74-90.