

FINAL EXAMINATION
CONSTITUTIONAL LAW II

Professor Power
Time: 2 ½ hours
CLOSED BOOK

This is a 2 ½ hour closed book examination. You should allocate your time as follows:

Question I - 1 hour
Question II - 30 minutes
Question III - 1 hour

The examination contains 5 pages. Check now to be certain that you have the entire exam. You are required to hand in your copy of the exam along with your exam booklets. Place your exam number where indicated on this page and on each exam booklet. On each booklet, please indicate both the number of that particular book in the series of books you write and the total number in the series, e.g., book 2 of 3.

Your writing must be legible. I will do my best to decipher your handwriting, but I cannot give credit unless I can figure out what you write. **Please write on only 1 side of each page**, and, if your handwriting makes it necessary, write on the every other line.

Attempt to answer the questions on the basis of the facts given. If you find it necessary to make any factual assumption in writing your answer, please **state** the assumption and **explain** why you are making it. If you believe that additional information is necessary to answer a question, explain what information is necessary and how it would affect your answer.

Exam Number _____

I. (1 hour)

The State of Disbelief is one of the United States. It is in the western part of the state and contains 3 major cities, Sodom, Gomorrah and Hoboken.

Disbelief was sparsely populated in the late 1800's. Its cities, which were then small towns, provided services to wagon trains heading west and cattle drives heading east. Merchants in Hoboken sold everything from fresh horses to non-perishable foods. Sodom and Gomorrah, as you may have guessed, provided entertainment for weary travelers. While there were other forms of entertainment, we are concerned only with gambling, which was open and notorious in both towns. In fact, gambling was legal in Disbelief, and both Sodom and Gomorrah had thriving casinos and poker parlors. Underscoring the legality of these businesses, the most successful casino was owned by the state's chief law enforcement officer. He was Arthur Krapps, and his casino was called "Marshall Art's."

By the 1920's, after the cattle drives and wagon trains stopped traveling through Disbelief, the state's economy faltered and its population decreased. The few remaining citizens pooled their resources and began a new industry - typewriter manufacturing. After a few years Disbelief was the leading producer of typewriters in the nation. The population grew, and soon the number of citizens working in the typewriter industry outnumbered those who had been engaged in gambling and other entertainment fields. The new residents wanted Disbelief to "clean up" its image and the legislature responded. In 1931, the legislature outlawed all forms of gambling and named a new chief law enforcement officer, Purity Plan. Marshall Plan led an aggressive and successful campaign to close the poker parlors and casinos. From 1931 to the present, there was **no** gambling in Disbelief except for "friendly" poker games, which Plan tolerated as long as nobody got hurt.

By the late 1980's, the typewriter business was in dire straits, largely because no one had bought a typewriter in years. With the building of a massive interstate highway system, however, Disbelief had again become the crossroads of the western United States. Local industrialist Jonathan "Bugsy" Seagull put 2 and 2 together and decided that legalized gambling was the answer to the state's fiscal woes. He commissioned a study, which concluded that casinos in 1 city alone would attract hundreds of thousands of tourists and provide 3,000 new jobs for Disbelievers (and add millions of dollars in new tax revenues for the state). The commission report warned, however, that gambling was addictive and that it was statistically likely that hundreds of people would lose their savings if it became easy for them to gamble.

Seagull got himself elected governor and drafted legislation to implement his vision. The members of the legislature, after reading the commission report, passed Seagull's proposal. It provided, in pertinent part, as follows:

Sec. 1. "Casinos will be licensed to operate only in the city of Sodom."

Sec. 2. “No residents of Disbelief may gamble at the casinos;”

Sec. 3. “All other gambling in Disbelief is strictly prohibited.”

John Law was named chief law enforcement officer. Marshall Law vowed strict enforcement of the new statute.

A number of residents are outraged for various reasons. The Moral Plurality, a group that believes gambling to be sinful, opposes legalized gambling of any sort. A local social group, the Poker Playmates, opposes the law because it prohibits the group’s friendly poker games and prevents its members from gambling in the casinos. Finally, Donald Trumpet, who owns most of Hoboken, is irate because he wants to build a casino on land he owns in that city.

The Moral Plurality, Poker Playmates, and Trumpet file an action that challenges the new statute as unconstitutional. **You are the judge. Rule on their claims.**

II. (30 minutes)

Affirmative Action is one of the more difficult topics in Constitutional Law. Discuss the issue and the present state of the doctrine as clearly and concisely as possible. I am all too aware that “clear” and “concise” are terms few would ascribe to the Supreme Court’s opinions in this area. That is precisely why I want you to do it.

III. (1 hour)

A number of recent stories in the print and broadcast media discuss the growing controversy concerning health and pregnancy. Newsweek describes the conflict as follows:

“A generation ago, women smoked cigarettes and drank alcohol throughout their pregnancies and nobody looked twice. But these days, with health alerts about everything from caffeine to aspirin, pregnancy has never seemed more hazardous.”

As a result, governmental bodies are increasingly pressured to decide whether and how to intervene.

The State of Corporesano (one of the United States) has responded by implementing a number of practices at state-owned installations and by changing some of its law enforcement policies.

Corporesano operates state-owned liquor stores. Effective July 1, 1991, all such stores must post a warning in a prominent location near the cash register. The warning is to state:

SURGEON GENERAL’S WARNING. Drinking by Pregnant Women May Result in Fetal Injury, Premature Birth, Serious Birth Defects, and Low Birth Weight.

State employees at such stores are required to point out the warning to noticeably pregnant customers. While there are no restrictions on purchases by pregnant customers, state employees are directed to try to obtain the customer’s name and telephone number. That information is to be provided to the Regional Health Commissioner, who is then to contact the pregnant woman and encourage her to obtain prenatal health counseling.

In addition, the criminal justice system is to help provide assistance in this regard. Typically in Corporesano, persons arrested for petty drug use or prostitution are released on minimal bail pending trial. The Attorney General has now directed all local prosecuting agencies to argue at bail hearing that pregnant women arrested on such charges should not be released until they are screened for drug or alcohol dependency. Most of those with dependency problems will still be released on bail, but will receive outpatient care at drug or alcohol treatment facilities. Those with very serious dependency problems, on the other hand, would be required to stay in a drug treatment center during the last 2 months of their pregnancies.

Here are some facts and opinions presented to the state agencies that adopted these programs:

- A 1988 Gallup Poll found that 48% of those responding agreed that a woman who engages in behavior adverse to fetal health is an unfit mother.

- There is scientific proof that regular drinking increases the risks of low birth weight and premature birth. In a small number of cases, regular drinking causes severe birth defects or mental retardation.
- There is no question that the use of most illegal drugs during pregnancy is dangerous. Most doctors agree that women who stop using drugs at some point during pregnancy will almost certainly help the baby to some degree.
- In Seattle, 2 cocktail waitresses were fired for rudeness after they balked at serving a pregnant woman a strawberry daiquiri. They instantly became local heroes for standing up for their principles.
- One expert in behavioral psychology says, "Prosecuting someone for taking drugs during pregnancy is really counterproductive. You lock a woman up because she's pregnant and you're sending a signal that if you want to stay out of trouble, don't go for prenatal care.
- Doctors say a fetus is most vulnerable in the first trimester, when most women don't appear pregnant and, at least during early stages, may not know themselves that they are pregnant.
- Drug or alcohol abuse by men may very well harm the male reproductive system, with the result that a fetus may be damaged from conception. In addition, drug or alcohol abuse by men sometimes leads to violent behavior that endangers maternal and fetal health.
- Many pregnant women receive dirty looks or nasty comments if they drink in public - even though doctors say there's no definitive evidence that one drink during a pregnancy is harmful.

Discuss all constitutional issues.