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Introduction to American Law  
Hebrew University, Faculty of Law  
Fall Semester, 2007-2008  
May 4, 2008  
Final Examination #C  
Judge Murray Richtel

### **Instructions-Please Read Carefully**

This exam consists of three questions. You will have two hours to complete the exam. You should allow 25 minutes for question number one and 47.5 minutes each for questions two and three. Your grade will be based upon an allocation of 20% to question one and 40% to questions two and three. NOTE: THERE ARE SOME COMMON FACTS FOR QUESTIONS 1 AND 2.

I suggest that you read each question carefully and then take some time to organize your thoughts before you begin to write. You may write your answers in English or Hebrew. Please select the language in which you are best able to express yourself. I am interested in seeing how well you understand the material and not how you express yourself in English. There is no bonus for writing in English.

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**B'HATZLECHA**

**COMMON FACTS: Questions # 1 and # 2: (Exam #C 2007)**

California has a law entitled the "Compassionate Use of Marijuana Act (CAMU)." It allows the use of marijuana for medical purposes and allows a person to privately grow and possess marijuana if a Doctor has prescribed marijuana as a proper medical treatment.

As part of the national "War on Drugs", Congress has passed the "Comprehensive Marijuana Control Act." That act prohibits the possession of marijuana for any purpose.

In passing the act Congress made numerous findings, including the following:

"A major portion of the traffic in marijuana flows through interstate and foreign commerce. Local distribution and possession of marijuana contributes to the growing interstate flow of marijuana. Federal control of this local activity is essential to control the interstate flow of marijuana.

Donna Drysdale, a resident of California, has been advised by her Doctor to smoke marijuana as the appropriate pain control treatment for her eye disease. In full compliance with CAMU, she has grown her own marijuana to use in her treatment.

**Question #1 (Exam #C 2005) (25 Minutes)**

Suppose Drysdale makes a claim in the California Superior Court, a trial court, that if she were to be prosecuted for possession of home grown marijuana for medical use, that it would violate her right to privacy under the United States Constitution. Suppose you are a California Superior Court Judge, what use would you be permitted or required to make of the following court decisions. In responding please make use, of relevant terms you have learned in this course such as for example stare decisis. **You need not discuss the result you would reach but only the effect of the decision.**

A. A decision of the Supreme Court of Michigan that under the right to privacy contained in the Michigan Constitution there is right to use marijuana for medical purposes.

B. A decision of the Supreme Court of Oregon that under the United States Constitution there is right to privacy, which protects the right to use marijuana for medical purposes.

C. A decision of another California Superior Court Judge that the right to privacy recognized by the United States Supreme Court in Roe v. Wade does not include the right to use marijuana for medical purposes.

D. The decision of the United States Supreme Court in Roe v. Wade that "the right of privacy is broad enough to encompass a woman's decision to terminate her pregnancy."

E. A decision of the California Supreme Court that homosexuals have a right to marry protected by the right to privacy recognized by the United State's Supreme Court in Roe v. Wade.

**Question #2 (Exam #C 2007) (47.5 Minutes)**

Suppose the United States Prosecutor has advised Drysdale that unless she stops growing marijuana she will be prosecuted under the Comprehensive Marijuana Control Act. She has filed a lawsuit asking the court to declare the federal statute unconstitutional and to prevent the government from prosecuting her. What will her arguments be? How will the prosecution respond? As the trial judge, what will your decision be?

**YOU ARE TO ASSUME THAT THERE ARE NO PRIVACY ISSUES RAISED BY THIS QUESTION # 2.**

**Question #3 (Exam #C 2007) (47.5 Minutes)**

In 1986, four years before the United States Supreme Court's decision in *Employment Division v. Smith*, the Court decided *Goldman v. Weinberg*. The holding of the Court was that the Free Exercise Clause did not require the Air Force to exempt an Orthodox Jewish Officer from a clothing regulation that prevented him from wearing a kippa while on duty. The Court stated: "In a military community there is simply not the same protection of the individual as there is in civilian society."

In response to that ruling, Congress passed the following statute:

10 UNITED STATES CODE 774: Members of the United State's Armed Forces while on duty must only wear the standard military uniform. However, an on-duty member of the Armed Forces may wear an item of religious significance in addition to the standard military uniform, if the item is neat and conservative, unless the item would interfere with the performance of military duties.

Sergeant Adam Aaron is an atheist and serves in the United States Air Force. He has two supervising officers, Major Bubba Berra and Colonel Charlie Cofax. Berra who is Jewish wears a kippa and Cofax who is Catholic wears a cross on a chain on his neck. These religious items are neat and conservative and do not interfere with the performance of Berra's and Cofax's military duties.

Aaron has filed a lawsuit against the Air Force, Berra and Cofax asking that the officers be required to remove the kippa and cross. He claims that allowing them to wear such items violates the First Amendment to the United States Constitution. The Air Force has denied that claim and Berra and Cofax have claimed that if they are required to remove the religious items, that their First Amendment rights will be violated. What arguments will each of the parties make? What will the judge decide?

Introduction to American Law  
Hebrew University, Faculty of Law  
Fall Semester, 2007-2008  
Final Examination B (March 30, 2008)  
Judge Murray Richtel

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Question #1 is true/false. Regarding Questions #2 –3, I suggest that you read each question carefully and then take some time to organize your thoughts before you begin to write. You may write your answers in English or Hebrew. Please select the language in which you are best able to express yourself. I am interested in seeing how well you understand the material and not how you express yourself in English. There is no bonus for writing in English. Your conclusions are not important; it is the analysis that counts

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**B'HATZLECHA**

**Question 1: (Exam B, 2007-8):** Please place and **X** by those statements that are completely true in Sections A and B below. "It depends," is not a possibility.

**A.** In Chief Justice Marshall's opinion in *Marbury v. Madison*, he ruled that:

- \_\_\_\_\_ 1. The Bill of Rights only protects Americans from the actions of the federal government.
- \_\_\_\_\_ 2. The power of Judicial Review is given to the Supreme Court by the Due Process provision of the Fourteenth Amendment.
- \_\_\_\_\_ 3. The U. S. Supreme Court has the power to declare the actions of the Secretary of State unconstitutional.
- \_\_\_\_\_ 4. President Adams was subject to the constitution and ordered Adams to appoint Mr. Marbury to be a judge.
- \_\_\_\_\_ 5. President Jefferson was subject to the constitution but did not order Jefferson to appoint Mr. Marbury to be a judge.

**B.** New Jersey had a statute requiring that the following prayer be read by public school teachers in class at the beginning of each school day:

"Almighty God, we are dependent on you for all the good things in our lives and we ask that you bless us, or parents, our school, and our country."

In the case of the case of *Engle v Vitale*, the U.S. Supreme Court considered whether that prayer violated the Establishment Clause of the First Amendment as applied to the states by the Fourteenth Amendment. The court ruled the statute unconstitutional saying:

" In general, the constitution prohibits government participation in religious activity. Clearly, that prohibition must at least mean that in his country, it is no part of the role of government to write official prayers for the American people that refer to God and that are part of a program carried out by the government even in cases like this where the prayer is non-denominational and students are not required to say it. Therefore, we conclude that the New Jersey statute is unconstitutional."

After the decision in Engle, Colorado adopted a statute that stated:

“At least ten verses from the Holy Bible shall be read without comment, at the beginning of each public school day. Any child shall be excused from the Bible reading upon the written request of a parent.”

Assume you are a trial judge in Colorado and you have a case in which it is claimed that the statute requiring Bible reading violates the Establishment Clause of the First Amendment as applied to the states by the Fourteenth Amendment. Please indicate with an **X** which of the following statements is correct;

- \_\_\_\_\_ 1. Under the doctrine of stare decisis, the Engle decision requires you to declare the Colorado statute unconstitutional.
- \_\_\_\_\_ 2. The language of the US Supreme Court quoted above in Engle is dicta.
- \_\_\_\_\_ 3. The Engle decision does not require you to declare the statute unconstitutional.
- \_\_\_\_\_ 4. Only the US Supreme Court can overrule its own precedent and therefore you must declare the Colorado statute unconstitutional.
- \_\_\_\_\_ 5. If you declare the statute unconstitutional, the US Supreme Court must grant a Petition for Certiorari requested by the State of Colorado.
- \_\_\_\_\_ 6. On appeal, the US Supreme Court may either overrule or affirm your decision
- \_\_\_\_\_ 7. If on appeal, the US Supreme Court disagrees with your decision, it will be reversed.
- \_\_\_\_\_ 8. If you decide the statute is unconstitutional, your power to invalidate it is derived from Marbury v. Madison.
- \_\_\_\_\_ 9. If the California Supreme Court had declared a statute using the exact same language as the Colorado statute constitutional, you would not be required by the doctrine of stare decisis to declare the Colorado statute constitutional.
- \_\_\_\_\_ 10. If Federal Court of Appeals had declared a statute using the exact same language as the Colorado statute unconstitutional, you

would be required by the doctrine of stare decisis to declare the Colorado statute unconstitutional.

\_\_\_ 11. If the Colorado Supreme Court had declared the statute constitutional, you would be required by the doctrine of stare decisis to declare the Colorado statute constitutional.

\_\_\_ 12. If a fellow Colorado trial judge had declared the statute constitutional before you decided your case, you would still be free to declare the Colorado statute unconstitutional.

\_\_\_ 13. Once the US Supreme Court decided the Engle case, the only way to change the decision was by constitutional amendment.

\_\_\_ 14. If the US Supreme Court determines that a decision that it has made is incorrect, the doctrine of stare decisis prevents it from correcting its mistake.

\_\_\_ 15. As a Colorado trial judge, you could find that the statute in question violates the State Constitution, even if it does not violate the US Constitution.

## **Question 2: (Exam B 2007-2008)**

The United States Congress has passed the "The Steroid Prevention Act (SPA)." It provides as follows:

*Major League Baseball (MLB) has teams in 32 cities in 17 different states; the teams travel from state to state to play games and fans go from state to state to watch games; MLB generates an annual gross revenue for all of its teams in excess of \$6 billion. Steroids are used regularly by approximately 9% per cent of all players for improving their strength. This steroid usage has a negative on players health, encourages the illegal trade in steroids and impacts our country's youth and may ultimately put MLB at risk of declining revenue which would result in substantially less tax revenue.*

*In light of these findings, it is necessary to create the office of MLB Steroid Prevention. Its Director shall establish a program of random testing for steroid usage for MLB players. If*

*a player refuses to cooperate in the testing or fails a test, the Director shall order MLB to suspend the player for one year. If MLB fails to issue a suspension order it shall be subject to a fine of up to \$500, 000.*

Sammy Safon earns his living as a baseball player for the Colorado, Rockies, a MLB team. Safon's child has a serious illness that requires Safon to remain in Colorado at all times. Thus, he does not travel to his team's games outside the state.

The Director requested Safon to take a steroid test. That required Safon to provide the Director with blood and urine samples Safon refused to take the test and the Director ordered MLB to suspend him. MLB refused.

Relying on the SPA, the Director has asked a court to force Safon to take the test and for MLB to suspend Safon or to pay a fine of \$500, 000 if it does not suspend him. Safon claims the SPA violates his right to privacy. MLB claims the statute exceeds the power of Congress. What are the best arguments that Safon and MLB's can make? How will the government respond? How would you rule as the Judge applying the principles you have learned in this course? If you make any factual assumptions that are not contained in the above facts, please be certain to explain what they are.

**Question 3: (Exam B, 2007-8)**

In 1942, Congress enacted a Pledge of Allegiance to the American Flag. The pledge provides: "I pledge allegiance to the flag of the United States of American and to the Republic for which it stands, one nation, indivisible, with liberty and justice for all." In 1954 the pledge was amended by Congress to add the words: "under God" after Nation. Thus, the pledge now reads in part "one Nation, under God." The Congressman who offered the legislation said its purpose was "to contrast this country's belief in God to the Soviet Union's embrace of atheism."

A Californian statute provides: "Every public school class shall recite the Pledge of Allegiance at the beginning of each school day."

Students who do not wish to say the pledge are permitted to remain silent while the rest of the class recites the pledge.

A student who does not want to recite the pledge has filed a lawsuit challenging the constitutionality of the statute. What claims that you have studied in this course will she make and what would her strongest arguments be? How will the state respond? How would you expect the US Supreme Court to decide the matter and why? If you were on the U.S. Supreme Court what would you decide and why using the principles you have studied?

Introduction to American Law  
Hebrew University, Faculty of Law  
Fall Semester, 2007-2008  
Final Examination A (February 22, 2008)  
Judge Murray Richtel

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**B'HATZLECHA**

**Question 1: (Exam A, 2007-8):**

Please place and **X** by those statements that are completely true in Sections A and B below. "It depends," is not a possibility.

**A.** In Chief Justice Marshall's opinion in *Marbury v. Madison*, he ruled that:

\_\_\_\_\_ 1. The Bill of Rights protects Americans from the actions of the federal government but not actions of the state governments.

\_\_\_\_\_ 2. The Due Process provision of the Fifth Amendment gives the Supreme Court the power of Judicial Review.

\_\_\_\_\_ 3. The U. S. Supreme Court has the power to declare the actions of Congress unconstitutional.

\_\_\_\_\_ 4. President Jefferson was subject to the constitution and ordered Jefferson to appoint Mr. Marbury to be a judge.

\_\_\_\_\_ 5. President Jefferson was subject to the constitution but did not order Jefferson to appoint Mr. Marbury to be a judge.

**B.** New Jersey had a statute requiring that the following prayer be read by public school teachers in class at the beginning of each school day:

"Almighty God, we are dependent on you for all the good things in our lives and we ask that you bless us, or parents, our school, and our country."

In the case of the case of *Engle v Vitale*, the U.S. Supreme Court considered whether that prayer violated the Establishment Clause of the First Amendment as applied to the states by the Fourteenth Amendment. The court ruled the statute unconstitutional saying:

" In general, the constitution prohibits government participation in religious activity. Clearly, that prohibition must at least mean that in his country, it is no part of the role of government to write official prayers for the American people that refer to God and that are part of a program carried out by the government even in cases like this where the prayer is non-denominational and

students are not required to say it. Therefore, we conclude that the New Jersey statute is unconstitutional.”

After the decision in Engle, Colorado adopted a statute that stated:

“At least ten verses from the Holy Bible shall be read without comment, at the beginning of each public school day. Any child shall be excused from the Bible reading upon the written request of a parent.”

Assume you are a trial judge in Colorado and you have a case in which it is claimed that the statute requiring Bible reading violates the Establishment Clause of the First Amendment as applied to the states by the Fourteenth Amendment. Please indicate with an **X** which of the following statements is correct:

\_\_\_\_\_ 1. You are bound by the doctrine of stare decisis to follow decisions made by the US Supreme Court and thus, Engle requires you to declare the Colorado statute unconstitutional.

\_\_\_\_\_ 2. The language of the US Supreme Court quoted above in Engle is dicta and therefore you are not bound by the doctrine of stare decisis.

\_\_\_\_\_ 3. If Engle, had been decided by the Colorado Supreme Court, you would have been required to declare the Colorado statute unconstitutional.

\_\_\_\_\_ 4. Only the US Supreme Court can overrule its own precedent and therefore you must declare the Colorado statute unconstitutional.

\_\_\_\_\_ 5. If you declare the statute unconstitutional, the US Supreme Court is not required to hear an appeal by the State of Colorado.

\_\_\_\_\_ 6. On appeal, the US Supreme Court may either reverse or affirm your decision.

\_\_\_\_\_ 7. If on appeal, the US Supreme Court disagrees with your decision, it will be overruled.

\_\_\_\_\_ 8. If you decide the statute is unconstitutional, your power to invalidate it is derived from Marbury v. Madison.

\_\_\_\_\_ 9. If the California Supreme Court had declared a statute using the exact same language as the Colorado statute unconstitutional,

you would be required by the doctrine of stare decisis to declare the Colorado statute unconstitutional.

\_\_\_ 10. If Federal Court of Appeals had declared a statute using the exact same language as the Colorado statute unconstitutional, you would be required by the doctrine of stare decisis to declare the Colorado statute unconstitutional.

\_\_\_ 11. If the Colorado Supreme Court had declared the statute unconstitutional, you would be required by the doctrine of stare decisis to declare the Colorado statute unconstitutional.

\_\_\_ 12. If a fellow Colorado trial judge had declared the statute unconstitutional before you decided your case, you would be required by the doctrine of stare decisis to declare the Colorado statute unconstitutional.

\_\_\_ 13. If the US Supreme Court decides that it has wrongfully decided the Engle case, the doctrine of stare decisis does not prevent it from changing its prior ruling.

\_\_\_ 14. If there is dissatisfaction with a ruling of the US Supreme Court, it can be changed by constitutional amendment.

\_\_\_ 15. As a Colorado trial judge, you could find that the statute in question violates the State Constitution, even if it does not violate the US Constitution.

## **Question 2: (Exam A, 2007-8)**

Following the brutal rape of a flight attendant in the parking lot of the Los Angeles airport and the murder of a pilot in a restroom at the Chicago airport, Congress conducted hearings to investigate the violence. As a result of the hearings, Congress passed "The National Airport Workers Safety Act." It provides as follow:

*US Code 1: Findings: There has been an increase in violence in the national transportation system. Since 1996 there have been 782 crimes of violence committed against transportation workers resulting in more than 2500 days of lost employee time, countless delays in the arrival and departure of trains and planes, and an annual increase in costs to the industry of more than \$400 million for additional overtime pay for workers, the training of new employees to replace those who quit due to fear of violence and increased insurance costs.*

*US Code 2: It is a crime to commit an act of violence against a transportation worker. A transportation worker is any employee of a business that engages in the transportation of people or products. Crime of violence means murder or rape.*

Danny Darom is a pilot for Tiool Airlines living in Los Angeles. As part of his work for Tiool, he regularly flies passenger planes from Los Angeles to New York and back. His wife Daniela, a flight attendant with Tiool who worked on the Los Angeles to Hawaii trips, was having an affair with Sammy Safon, the officer manager of Tiool at the Los Angeles airport. Danny did not know of the affair but one night he came home early from a trip to New York and caught Daniela and Sammy together. He pulled out his handgun and shot Daniela and Sammy killing them both.

He is charged with their murders under US Code 2. His lawyer claims that the law under which Danny is charged is unconstitutional. What arguments will he make? How will the prosecution respond? Based upon the United States Supreme precedent, how would you expect the court to decide? ? If you make any factual assumptions that are not contained in the above facts, please be certain to explain what they are.

**Question 3: (Exam A, 2007-8):**

While you were enjoying your first semester at the Hebrew University Law School, the semester was interrupted by a strike. But not before you finished studying the First Amendment in your course "Introduction to American Law." Now, because there was no school, you are on skiing vacation in Colorado in the United States with an Israeli friend who was studying engineering. Today, while you are in Boulder your friend showed you the following article he has just read in the newspaper and says: "What is going on with these Americans- I thought they had separation of Church and State?" He asks you to explain what the issues in the case are and how the Court will likely resolve the potential lawsuit described in the newspaper article. What will you tell him? If there are any factual assumptions you make that are not expressed in the article, you should state them in your answer.

Wednesday, Dec. 19, 2007

BOULDER DAILY CAMERA

### **Council passes eruv lease**

A plan to build a Jewish religious boundary in central Boulder hit a bump in the road Tuesday night, but the Boulder City Council still offered its blessing.

Some members of the Boulder City Council took issue with the proposal to grant a lease to Congregation Aish Kodesh to build an eruv, or religious boundary.

After lengthy debate, the council voted 5-2 to approve the eruv.

City Councilman Macon Cowles argued against the lease and along with Councilwoman Lisa Morzel voted against the eruv.

"There have been people important in my life whose very lives in the United States came from their having fought against the regimes in Europe that required them to live within certain boundaries, required Jews to live within certain places," Cowles said. "I believe that there are many people who would be offended with the idea that we are going to take a demarcation for religious purposes to make it convenient for a community to abide by an ancient rule."

By the end of the debate, City Councilman Matt Appelbaum said he thought concerns about the eruv had been addressed - and approving the lease will make life better for many in Boulder's Jewish community, he said.

"I think the questions and concerns were good - I'm glad we had the discussion," he said. "But I don't think those concerns override the community good that comes out of this."

In an e-mail memo sent earlier Tuesday, Cowles had said he appreciates the intention behind the eruv, but wanted to make sure the city stays on the right side of First Amendment law.

If Boulder leases public space to one religious group, First Amendment principles will require the city to give any other group the same treatment in the future, Cowles said — which could lead to a "slippery slope" of applications. He added: "Do we want to establish a precedent. One request may well lead to another. I think we ought to have a legal memo from our city attorney about the long-term interests of this."

Jewish law forbids its adherents from doing any sort of work outside the home — including mundane tasks such as carrying a wallet in a pocket or carrying a child — on the Sabbath, unless they're within an eruv. Religious rules just call for an unbroken barrier, so the congregation will be able to take advantage of many of the telephone and power lines that run along those streets, inserting lengths of nearly invisible nylon-covered Kevlar where necessary to fill the gaps

Acting City Attorney Jerry Gordon said that the city already has a process that lets residents lease rights-of-way for patio seating and other uses of public space. Gordon said, "We're also not allowed to have a policy that says we're going to treat religions in a more harsh or restrictive way than other users who apply for a permit."

Rachel Sacks was one of two dozen people who came to tell the City Council that the eruv would greatly improve the quality of life for observant Jews living in Boulder.

Today, she said, she and her husband take turns going on walks on the Sabbath, because one of them has to stay home to look after the children, whom they're forbidden from carrying.

"The most amazing thing about having an eruv is being able to go on walks together, to feel like it's a day of rest instead of a day of extra stresses," she said.

Hansel Horton told the City Council that he could see no reason why modern government should pass a law to enable "a group of fanatics to rely on some 4,000 year old idea as a way of avoiding their self imposed desire to do nothing on the Sabbath."

Robert Forwerth of the American Civil Liberties Union said his organization is considering filing a lawsuit to have the curv removed.

Introduction to American Law  
Hebrew University, Faculty of Law  
Fall Semester, 2006-2007  
Final Examination A (February 20, 2007)  
Judge Murray Richtel

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**B'HATZLECHA**

**Question 1: (24 Minutes-25%)**

make of the decision in Zerikra v Ohio ? If the Kentucky Supreme Court were to uphold the trial court's ruling based upon the Kentucky Constitution, please explain what, power if any, the US Supreme Court would have to review that ruling.

In answering these questions, please discuss the following terms if they are relevant: 1. dictum 2. precedent 3. stare decisis 4. overrule 5. affirm.

If you decide that a term would have nothing to do with your decision making process, please explain why.

### **Question 2: (48 Minutes-40%)**

Congress passed a statute seeking to deal with all of the activities of organized crime groups. (Like the Mafia) For example, it made it a crime to transport women from one state to another in order to carry on prostitution activity. The evidence before Congress showed that organized crime groups and their members would lend money received from illegal activities such as gambling, prostitution and narcotics at very high rates of interest, usually to poor people, who could not otherwise borrow money. If a debt was not repaid, then violence was often used in efforts to collect the unpaid money. One part of the statute passed by Congress provides:

Section 333: It is unlawful for any person to use violent means to collect a debt."

In. St. Louis, Missouri, John Chnoon, a butcher who had a poor financial background was unable to borrow \$1000 for his business from his bank because of his poor credit history. He asked his neighbor, Aaron Poshaya, to loan him the money. Poshaya agreed to loan him \$1000 for 6 months on the condition that at the end of 6 months Chnoon would pay him back \$1250. At the end of six months, when Chnoon did not pay, Poshaya beat him with a metal pipe and warned him that he would return the next day and beat him again if Chnoon did have the money to repay him. Chnoon called the police and Poshaya was arrested.

to promote quality education, and that called for us to reschedule those days because of high absenteeism, much higher than the average, mainly among Jewish students."

The Sycamore District also closes its schools for a "Winter Holiday" in December, always during the week of Christmas.

Introduction to American Law  
Hebrew University, Faculty of Law  
Spring Semester, 2005  
Final Examination #A  
Judge Murray Richtel

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627

### **Instructions-Please Read Carefully**

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**B'HATZLECHA**

**Question # 1: (Exam #A, 2005)**

In 1995, the United States Supreme Court in Standard v Kentucky considered the question of whether it was constitutional under the Eighth Amendment ban on cruel and unusual punishment to execute an 18 year old Defendant who was 17 and the time she committed a murder. In its opinion the Court stated:

“In answering this Eighth Amendment question, we must determine whether under the evolving standards of decency that mark the progress of a maturing society a punishment is so disproportionate as to be cruel and unusual. In Thompson v. Ohio, we decided that our standards of decency do not permit the execution of an offender under the age of 16 at the time of the crime because of the relative lack of maturity of 16 year olds. We have also banned the execution of the mentally retarded. But, we think Jones v. California is closer to this case. There we permitted California to execute a 19 year old woman who was 18 at the time she murdered her parents concluding that 18 year olds have sufficient maturity to fully understand the nature of their conduct and face the law’s ultimate penalty. Thus, we believe such a sentence imposed on the 18 year old defendant in this case would not be cruel and unusual in violation of the Eighth Amendment.

In 2004, Judge Thomas Clarence a trial judge on the Michigan District Court refused to allow the jury to consider the death penalty for a 17 year old mentally retarded boy Benny Sela who had murdered his baby twin sisters on the grounds that such punishment would violate the Eighth Amendment. He relied on a 1998 case from the Supreme Court of Nevada, Vegas v. Nevada in which on Eighth Amendment grounds, that court set aside the death sentence of a 17 year girl who had murdered her grandmother.

Assume you are a Michigan District Court judge and you have a case in which a 17 year old boy has been charged with murdering his parents and the prosecution is seeking the death penalty. The boy’s defense lawyer has asked you to prevent the jury from considering the death penalty relying upon 1. Judge Clarence’s decision, 2. Vegas v. Nevada and 3. Standard v. Kentucky.

What use would you be required or permitted to make of those three decisions in reaching your conclusion? In answering, please discuss the following terms if they are relevant. If you decide that a term would not be relevant, please explain why. 1. dictum; 2. holding; 3. precedent; 4. stare decisis; 5. overrule.

**You need not discuss the result you would reach but, only the effect of the term.**

## Question 2: (Exam #A, 2005)

The Colorado legislature has passed "The Educational Support and Salary Act" (ESSA) which provides as follows:

1. \$27,500 shall be allocated annually for the salaries of each public school teacher.
2. In the event that a teacher in a private school receives less than \$27,500 in annual salary, then each such teacher shall receive up to an additional \$5000, provided that the total salary may not exceed \$27,500.
3. Paragraph 2 above does not apply, to schools which receive more than 50 per cent of their funding from religious institutions.
4. All schools shall receive \$1000 per year for each student who receives a score of 20% below the average for their grade level on the state's reading examinations. That money must only be used for the cost of teachers who are reading assistance specialists or on reading assistance instructional materials. Schools which receive more than 50 per cent of their funding from religious institutions must file an annual report from each teacher working as a reading assistance specialist declaring that the teacher has not used any material with religious content in his or her reading classes.

Article Two of the Colorado Constitution provides: "Equal educational opportunity is a fundamental right of all citizens and no citizen shall be denied any right to education because of race, religion or natural origin".

St. Mary's School receives more than 50 per cent of its funding from the Catholic Church and pays its teachers \$22,500 per year. Colorado refused the school's demand to pay its teachers an additional \$5000 relying on Paragraph 3 of ESSA. Colorado intends to pay the school \$10,000 for reading specialists under Paragraph 4 of ESSA.

The parents of Sally Smith, a St. Mary's student, filed suit to force Colorado to pay the additional \$5000 claiming a violation of their daughter's rights under Article Two of the Colorado Constitution and the First Amendment to the United States Constitution. Colorado defended on the ground that it would violate the First Amendment to the United States Constitution if it paid the additional salary to St. Mary's teachers.

Jim Jones, an atheist has claimed that it would be a violation of his First Amendment rights if Colorado pays for any of the cost of reading assistance specialists at St. Mary's. Colorado disagrees with Jones.

What arguments would each side make? How would the United States Supreme Court resolve the issues? You may assume that the Smiths and Jones have standing to sue.

### Question 3: (Exam #A, 2005)

The United States Congress has passed "The NBA Marijuana Prevention Act." It provides as follows:

*The National Basketball Association (NBA) has teams in 24 cities in 19 different states; its teams travel from state to state to play games and fans go from state to state to watch games; the NBA generates an annual gross revenue for all of its teams in excess of \$2.5 billion. Marijuana is used regularly by approximately 15 per cent of all NBA players. This marijuana usage has a negative impact on our country's youth and may ultimately put the NBA at risk for declining revenue which would result in substantially less tax revenue for the government.*

*In light of these findings, it is necessary to create the office of "NBA Marijuana Supervision Director." The Director shall establish a program of random testing for marijuana usage for NBA players. If a player refuses to cooperate in the testing or fails a test, the Director shall order the NBA to suspend the player for one year. If the NBA fails to issue a suspension order it shall be subject to a fine of up to \$500,000".*

Mark Bonds plays for the NBA team in San Francisco. He has an eye disease which affects his vision and would prevent him from playing basket ball. However, if he smokes marijuana three times per week, he has no vision problem and is able to play in the NBA. Although the possession and use of marijuana is generally illegal in California, there is an exception for the medical use of marijuana.

The Director requested Bonds to take a marijuana test. Bonds refused but admitted he uses marijuana three times per week when he is in California. The Director ordered the NBA to suspend Bonds and the NBA refused. Relying on the statute, the Director wants to go to court to force the NBA to suspend Bonds. What constitutional claims that you have studied in this course would Bonds and the NBA make in opposition to the Director's law suit? How would you rule as the Judge? If you make any factual assumptions you that are not contained in the above facts, please be certain to explain what they are.

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Introduction to American Law  
Hebrew University, Faculty of Law  
Fall Semester, 2006-2007  
Final Examination A (February 20, 2007)  
Judge Murray Richtel

### **Instructions-Please Read Carefully**

This exam consists of three questions. You will have two hours to complete the exam. You should allow 24 minutes for question number one and 48 minutes each for questions two and three. Your grade will be based upon an allocation of 20% to question one and 40% each to questions two and three.

I suggest that you read each question carefully and then take some time to organize your thoughts before you begin to write. You may write your answers in English or Hebrew. Please select the language in which you are best able to express yourself. I am interested in seeing how well you understand the material and not how you express yourself in English. There is no bonus for writing in English.

**THIS IS NOT AN OPEN BOOK EXAM AND YOU MAY NOT HAVE ANYTHING OTHER THAN WRITING MATERIALS WITH YOU DURING THE EXAM.** If you have any questions you are free to ask the teaching assistant for assistance.

I hope you find the exam interesting and I look forward to seeing you at the University next fall.

**B'HATZLECHA**

**Question 1: (24 Minutes-25%)**

make of the decision in *Zerikra v Ohio* ? If the Kentucky Supreme Court were to uphold the trial court's ruling based upon the Kentucky Constitution, please explain what, power if any, the US Supreme Court would have to review that ruling.

In answering these questions, please discuss the following terms if they are relevant: 1. dictum 2. precedent 3. stare decisis 4. overrule 5. affirm.

If you decide that a term would have nothing to do with your decision making process, please explain why.

### **Question 2: (48 Minutes-40%)**

Congress passed a statute seeking to deal with all of the activities of organized crime groups. (Like the Mafia) For example, it made it a crime to transport women from one state to another in order to carry on prostitution activity. The evidence before Congress showed that organized crime groups and their members would lend money received from illegal activities such as gambling, prostitution and narcotics at very high rates of interest, usually to poor people, who could not otherwise borrow money. If a debt was not repaid, then violence was often used in efforts to collect the unpaid money. One part of the statute passed by Congress provides:

Section 333: It is unlawful for any person to use violent means to collect a debt."

In. St. Louis, Missouri, John Chnoon, a butcher who had a poor financial background was unable to borrow \$1000 for his business from his bank because of his poor credit history. He asked his neighbor, Aaron Poshaya, to loan him the money. Poshaya agreed to loan him \$1000 for 6 months on the condition that at the end of 6 months Chnoon would pay him back \$1250. At the end of six months, when Chnoon did not pay, Poshaya beat him with a metal pipe and warned him that he would return the next day and beat him again if Chnoon did have the money to repay him. Chnoon called the police and Poshaya was arrested.

to promote quality education, and that called for us to reschedule those days because of high absenteeism, much higher than the average, mainly among Jewish students."

The Sycamore District also closes its schools for a "Winter Holiday" in December, always during the week of Christmas.

Introduction to American Law  
Hebrew University, Faculty of Law  
Fall Semester, 2006-2007  
Final Examination B (March 22, 2007)  
Judge Murray Richtel

### **Instructions-Please Read Carefully**

This exam consists of three questions. You have two hours to complete the exam. You should allow 24 minutes for question number one and 48 minutes each for questions two and three. Your grade will be based upon an allocation of 20% to question one and 40% each to questions two and three.

I suggest that you read each question carefully and then take some time to organize your thoughts before you begin to write. You may write your answers in English or Hebrew. Please select the language in which you are best able to express yourself. I am interested in seeing how well you understand the material and not how you express yourself in English. There is no bonus for writing in English.

**THIS IS NOT AN OPEN BOOK EXAM AND YOU MAY NOT HAVE ANYTHING OTHER THAN WRITING MATERIALS WITH YOU DURING THE EXAM.** If you have any questions you are free to ask the teaching assistant for assistance.

I hope you find the exam interesting and I look forward to seeing you at the University next fall.

**B'HATZLECHA**

#### **Question 1: (24 Minutes-25%)**

The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment. The United States Supreme Court in Zerikra v Ohio considered the question of whether it was constitutional under that amendment for the state of Ohio to use a

lethal injection execute a defendant convicted of murder. In its opinion the Court stated:

“In answering this Eighth Amendment question, we look to our earlier decisions. In Thompson v. Nevada, we decided that our standards of decency permit execution in the electric chair. In Jones v. California we allowed a death sentence to be carried out by a firing squad. We believe that a death sentence carried out by injection is much more humane than the electric chair and firing squad and therefore is not cruel and unusual in violation of the Eighth Amendment.

The death penalty statutes in Colorado and Kentucky gives a defendant sentenced to death the option of choosing a lethal injection or the firing squad. If the defendant refuses to choose, the sentence is imposed by lethal injection.

In Bryant v. Colorado, the Colorado Supreme Court ruled that it was cruel and unusual punishment under the Eighth Amendment to require a defendant to select the way in which he would be executed and therefore held the Statute unconstitutional. The United States Supreme Court refused the Colorado prosecutor’s request to review the case.

Tal Brandy was sentenced to death in Kentucky but refused to make a choice arguing that the Kentucky law was unconstitutional under both the Eighth Amendment to the US Constitution and Article X of the Kentucky Constitution which using the same language as the US Constitution prohibits “cruel and unusual punishment.” Brandy based his claim on Bryant v. Colorado.

Assume you are the trial judge with the responsibility to decide Brady’s claim:

What use may you make of Kentucky Constitution, Zerikra v Ohio and Bryant v. Colorado?. What is the impact of the decision of the United States Supreme Court not to hear the Bryant case? In answering this question, please discuss the relevance if any of the following terms. If a term is not relevant, please explain why. 1. dictum 2. precedent 3. stare decisis 4. affirm 5. holding.

**Question 2: (48 Minutes-40%)**

Congress passed a statute (Mandatory School Days Law) that requires that the public school year in all states be lengthened to 240 days per year (48 weeks of school for 5 days with 4 vacation weeks) from the current state average of 200 days per year. (40 weeks of school for 5 days with 12 vacation weeks)

The evidence before Congress showed that the United States was suffering at home and abroad in economic competitiveness. Congress found that a substantial cause of the competitive disadvantage was the poor educational level of American workers when compared to that of the Japanese who have a 240-day school year. Congress also found that an increased educational level would lead to greater productivity, export volume and product quality. In addition, Congress found that due to a need for national uniformity in this area, all states must comply. If a state does not comply with the federal law, it is not entitled to participate in a federal program, which allows states to borrow money from the federal government at low interest rates in order to build public schools.

The state of Montana does not have the financial ability to keep its schools open 240 days per year and it depends upon federal money to build its new schools. It has filed a lawsuit asking the court to declare the Mandatory School Days Law unconstitutional. What arguments will Montana make? What will the United States argue in favor of the statute? Who will win?

**Question 3: (48 Minutes-40%)**

In Boulder, Colorado there are ten grammar schools (for children ages 5-11). Seven are public schools and three are private. One of the private schools is not religious and the other two are religious, one Catholic and one Jewish.

About 60% of Boulder's children of grammar school age attend the public schools, 15% each of the Catholic and Jewish schools and 10% the nonreligious private school.

Six of the public schools have their own playgrounds, but one public school and the private schools do not. It is the practice in Boulder for those schools without playgrounds to rope off an area of the public street next to the school during recess time to create a safe play area for the school children. This is done according to a law ( The Recess Law) passed by the Boulder City Council. Under the law, the ropes are supplied by the police who also put up and take down the ropes. The police also redirect traffic when necessary. School officials supervise the children during the recess period. The ropes and salaries of the police are paid for by the City of Boulder.

A citizen of Boulder has filed a lawsuit alleging that The Recess Law violates the Establishment Clause of the First Amendment? What arguments will she make? How would the City respond? What would the United Supreme Court decide?