

PART I  
TIME LIMIT: 35 MINUTES

INSTRUCTIONS:

1. Please do not use pencil to write this part of the examination. If you use a felt-tip or fountain pen, make sure that your answer does not "bleed" on to the next sheet of paper.
2. WRITE ONLY ON THE LINES AND IN THE SPACE PROVIDED. WRITE ONLY ONE LINE OF SCRIPT ON EACH LINE. DO NOT WRITE IN THE MARGINS. DO NOT WRITE ON THE REVERSE SIDE OF THE PAGE. DO NOT WRITE IN A BELOW AVERAGE SIZE OF SCRIPT.
3. Do not take the examination from the room in which you are writing.
4. When you are finished with this part of the examination, place it on the instructor's table at the front of the room announced at the beginning of the examination. You may then begin to work on Part II of the exam.
5. Do not assume facts not given, and do not change the facts. In particular, do not assume the existence of statute & unless referred to in the question.

Discuss each issue fairly raised by a fact pattern, even if your answer on one issue makes discussion of another issue unnecessary. Complete in full your discussion of one issue before discussing another issue.

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*STUDENTS: DO NOT WRITE IN THE SPACE BELOW*

CONSTITUTIONAL LAW I GRADING SHEET  
FALL 1993

EXAM NO. \_\_\_\_\_

MIDTERM EXAM --  
ESSAY QUESTION --  
MULTIPLE CHOICE --

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TOTAL SCORE --  
GRADE FOR EXAMS --  
COURSE GRADE --

A. Allen Arkin and Betty Barnes were untenured teachers at Washington Public High School in Capital City, State of Franklin. During the middle or the 1991-1992 school year, for which they had year-long teaching contracts, they fell in love with each other, and decided to cohabit without getting married. In fact, Allen already had a wife, to whom he still was legally married. Allen and Betty's relationship became common knowledge among staff and students at Washington Public High School. They admitted to their principal, other teachers, and their students that they were living together and engaging in sexual activities in the privacy of their dwelling. In March, Allen and Betty were informed that the school board had summarily fired them from their teaching positions, effective immediately, for violating a school board policy that prohibits teachers from engaging in sexual activities with persons not their spouses. The policy was adopted because of the school board's belief that, in these times of teenage sexual promiscuity, teachers should set a good moral example for their students. Two rarely enforced state laws prohibit sexual intercourse between unmarried persons. Allen and Betty filed suit to recover their jobs and back pay. The case finally was decided by the United States Supreme Court. What result, and why?

#### BEST ANSWER

The first issue is a procedural due process issue. The 5th and 14th amendments state that no person shall be deprived of life, liberty or property without due process of law. The questions are 1- What property or liberty right is being taken away. There must be an entitlement to a property or liberty interest in order to have a claim of due process. Mere expectation of the right is not sufficient. The next question is What process is due? In order to determine this, the nature of the property interest must be determined. The adequacy of procedures needed fall under a balancing test which weighs the importance of the interest to the individual. The risk of error with present procedures used and the value of any additional safeguards; the fiscal and administrative burden placed on the government due to the additional procedures. Because both teachers had a valid year long contract which was out prematurely, there is an entitlement. Thus the balancing test will be used in this and the interest is very important to the teachers because they depend on their salary to live, and the value of safe guards would also reduce the risk of error. The administrative and fiscal borders probably wouldn't be too great since the school could come up with efficient, informal, unbiased hearings. Thus in this instance notice and pre- termination hearing would probably be required

B. Don and Doris Davis, now in their forties, finally realized a long-time dream when they were able to purchase, for \$200,000, a 200' by 200' undeveloped beachfront property along Lake Erie on which to build a home for themselves and their children. The land was located in the Town of Lakeview. However, before they could begin construction, the Lakeview Town Council enacted an ordinance which prohibited all further development and construction of buildings within 300 feet of Lake Erie. The Davises bought suit challenging the constitutionality of this ordinance. At trial, the Davises proved that the value of their land, as a result of the ordinance, was only \$7,500. The case finally was decided by the United States Supreme Court. What result, and why?

**BEST ANSWER**

All lawyers of state governments have the power of eminent domain as part of the police power. It is often necessary to deprive private landowners of their land for the public good, but the 5th amendment requires that just compensation be paid. In this case, however, the city has not paid for or taken title to the land, rather it has regulated the land. Regulations are often necessary and the court has consistently upheld the right of city and state to set zoning rules. The essential question, however, is when does a regulation go too far and become a taking which requires just compensation.

In this case, since the landowners are virtually deprived of any economically useful purpose for the land, the court is likely to rule that a taking has occurred. Regulations are necessary, but when no economically viable use of the land is left, the government has taken the land and just compensation will be required. This case demonstrates that while governmental use of the police power is often necessary for land regulation, when the city or state go too far, the court will often step in to protect landowners who are deprived of land without just compensation.