SECTION	EXAM NO
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CONSTITUTIONAL LAW I Sections A and B Instructor: Mr. Freeman Page 1 of 4
FINAL EXAMINATION
Fall 1994

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 statutes unless referred to in the question.
- 6. 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.

1. In common with many other large urban areas, Capital City, State of Franklin, suffered from an inner city from which most industrial and commercial activity had departed. In an effort to bring back more business activities, and increase employment in the inner city, in 1987 the City council of Capital City enacted an ordinance creating a "tax free" zone in the inner city. The ordinance provided that businesses moving into the zone, and employing at least twenty employees, would be exempt from city real property taxes for ten years. As a result of the ordinance, several businesses negotiated agreements with the city to move into the zone in return for the tax exemptions. In 1993, because of declining revenues, the City Council repealed the tax exemption. When the businesses refused to pay real property taxes, Capital City filed suit to collect the taxes. The cases finally were decided by the United States Supreme Court. What result, and why?

BEST ANSWER

issue presented here is whether the state of Franklin can retroactively impair a public contract. Article I Sec. 10 of the constitution was designed to prohibit retroactive impairment. The clause evolved to allow retroactive impairment where it serves an important and legitimate public purpose, for the achievement of that public purpose and is reasonable impairment of the contract necessary for the achievement of the public purpose justifying the legislation. One limitation and protection of a public contract is the state cannot bargain away its police powers. However, a state can bargain away its fiscal powers. Once a tax exemption is given, a state cannot take it away for its duration, here ten years. Also, the court will ask if the legislation is reasonable and necessary. In the case of a public contract where the state is a party, less deference will be given to the legislature since there is a conflict in interest. There is also no ambiguity in the language; it is for 10 years, with four years remaining. In the case there was ambiguity, the contract would be interpreted in favor of the state. The most likely result is a ruling in favor of the business.

2. Alan Alberts is an eighteen year old high school student who was expelled from school for refusing to shave off his beard, which was prohibited by a school board rule that prohibited all facial hair. Alan brought suit challenging the constitutionality of the rule, alleging that it violated his rights to personal autonomy. The case finally was decided by the United States Supreme Court. What result, and why?

BEST ANSWER

The issue in this case is does Alan Alberts have a fundamental right to control his appearance, and if so, does the school board have a compelling reason for which to control a student's appearance.

A fundamental right has been interpreted by the court to mean many things: some Justices have called a fundamental right, a right which is fundamental to the concept of ordered liberty: other justices have said a fundamental right is one that is rooted in our nation's history and tradition: other justices have stated that a fundamental right is one derived from natural law. Generally, one can say that a fundamental right is one which is located in the "right of privacy?" those rights that are of a very personal matter. Therefore, the court will likely find Alberts has a fundamental right in controlling his personal appearance.

The school board must therefore show a compelling reason which is necessary to achieve that end. The school board must survive the court's strict scrutiny.

In this case the school board is probably trying to create a certain environment within the school: it is somehow trying to shape how their students should look. There does not appear to be a compelling reason for them to control the appearance of their students. Having no facial hair does not promote health, safety, moral or welfare and the school board therefore does not have a compelling reason to exercise this power.

The court will therefore hold that an 18 year old has a fundamental right to control his appearance: it is a personal autonomy issue with which the school board has no right to interfere.

Betty Barton was convicted in state court of the offense of larceny. She has appealed her conviction on the grounds that the criminal prosecution was not commenced by means of a grand jury indictment, in spite of the Fifth Amendment of the United States Constitution, which states in part: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury..." The case finally was decided by the United States Supreme Court. What result, and why?

BEST ANSWER

The issue in this case is whether or not Barton's conviction should be struck down on the grounds that it violated the 5th Am. grand jury requirement. The Bill of Rights containing the 5th Am. was originally intended to apply only to the Federal Govt. With the passage of the 14th Am. and its due process clause, much of the Bill of Rights has been incorporated against the states. The Court has taken a position of selective incorporation, though, and has not incorporated the entire Bill of Rights. The court only incorporates those rights which it feels are fundamental to our concept of ordered liberty. That is to say, is a right so fundamental that taking it would damage or even destroy our system of liberty and government. In prior cases dealing with grand jury requirements the court has held that the grand jury requirement is not fundamental to our concept of ordered liberty and only applies to the federal govt. and not to the states. A grand jury requirement in state cases would be something for the state legislature to enact; otherwise, it is not required for state cases. The court would uphold Barton's conviction on these grounds.