

SECTION

EXAM NO

CONSTITUTIONAL LAW II

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Sections A and B

FINAL EXAMINATION

Instructor: Mr. Freeman

spring, 1994

PART 1

TIME LIMIT: 40 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.

STUDENTS: DO NOT WRITE IN THE SPACE BELOW

CONSTITUTIONAL LAW II GRADING SHEET

SPRING 1994

EXAM NO.

MIDTERM EXAM

ESSAY QUESTION

MULTIPLE CHOICE

TOTAL SCORE

GRADE FOR EXAMS --

COURSE GRADE

1. Adams State University is a state university with a competitive admissions policy. Applicants must obtain a composite score of over 1,200 on the Scholastic Aptitude Test (SAT) and place in the upper 25% of their high school class to be given further consideration for admission. Alan Alberts is an African-American whose application was rejected because his SAT score was only 1,050. Alan brought suit to compel Adams State to admit him as a student. He proved at trial that, under the university's admission policy, 50 % of white applicants and 35% of black applicants were admitted. His case ultimately was decided by the United States Supreme Court. What results, and why?

BEST ANSWER

The issue in this case is whether Alan Alberts lack of admission constitutes a violation of the Equal Protection clause of the 14th Amendment. Under the 14th Amendment, race is a suspect class demanding the strict scrutiny protection. The governmental interest asserted by the state must be compelling to override a fundamental right. There are three ways to determine a regulation of statute is discriminatory and a violation of equal protection. If a regulation is facially discriminatory, meaning on its face, it will be judged by strict scrutiny. If there is a discriminatory application, meaning it is neutral on its face, but applied in a discriminatory or arbitrary manner, like the Yick Wo case, then the court will use strict scrutiny. The last is if it is a discriminatory purpose, that is the regulation is neutral as applied and on its face but has a disparate impact. If the intent of the regulation is to further the disparate impact then the regulation will be judged by strict scrutiny. If there is a disparate impact but no intent or purpose, then the court will apply the rational basis test. There are three ways the court will judge intent or purpose by the historical background of the legislative action, the departures from the normal procedures, and the legislative or administrative background. Looking at Alan Alberts, the admissions policies of Adams State definitely created a disparate impact. However, using the three part test for intent or purpose, Adam State did not intend to create this disparate impact. As a result the rational basis test will be used because there was no intent to bring it to discriminate. The policy will stand, Alberts will be denied admission.

2. Capital City High School has two spring athletic teams a baseball team for men and a softball team for women. Betty Barton, a woman brought suit seeking an injunction to be permitted to try out for the baseball team. Charles Carson, a man, brought suit seeking an injunction to be permitted to try out for the softball team. Both cases ultimately were decided by the United States Supreme Court. What results, and why?

BEST ANSWER

Because the policy is furthered by a city high school, there is state action and the Equal Protection Clause of the 14th Amendment applies. The issue is whether the city denies equal protection to women when it denies them a choice to play on the baseball team and whether it denies men equal protection when it denies them a chance to play softball.

Gender is a semi-suspect class because it contains all 3 indicia of suspectness, immutable character, history of unequal treatment, political powerlessness. A regulation that classifies on the basis of gender must serve an important government objective and the class must be substantially related to that objective. In the area of gender, the court has used an ad hoc Lochner approach, where it basically determines the reasonableness on its own. This is because unlike in economics, the court knows personal liability better than the legislature. The court will apply the same test to both men and women, even though men don't have a history of discrimination, because the same standard must apply to both benign and invidious class.+