

TIME LIMIT: 50 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.
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. The legislature of the State of Franklin enacted a statute requiring that all railroad trains operating in Franklin employ a minimum of ten employees on each train. Franklin & Western Railway Co. is a privately owned railroad company, incorporated in Delaware, which transports goods and passengers between New York City and Los Angeles. On this cross-country trip, the train passes through 15 states, including Franklin. The Railway Company filed suit in federal court to enjoin the enforcement of the statute against it. The case was finally decided on its merits by the United States Supreme Court. What result, and why?

BEST ANSWER

The issue here is whether the state's regulation imposes an undue burden on interstate commerce. I believe it does and the court will rule in favor of the railroad. The state under its police powers may pass laws that have a rationale basis toward general welfare, health, safety and in this case economic well being of employment.

The Southern Pacific case showed the balancing test which should apply here. First, is this an issue of local diversity or national uniformity. If its national, the state may not regulate. If it's local then we must look at whether the statute discriminates against interstate commerce. It appears not to since all trains are treated the same from instate and out of state. However, I believe it does pose a burden, an undue burden on interstate commerce. The state would have to show a greater interest in keeping the regulation than the undue burden put on interstate commerce. Like Southern Pacific, the regulation has an effect outside of Franklin by forcing employees to get on board at the border, if the train has less than 10 employees, effectively making a non-stop train either comply with Franklin's regulation in the state where it begins and comply until the ending state or next state where it stops. Franklin would have to have a large amount of interest to have this regulation upheld, especially if no other states have similar regulations. Perhaps they could show a geographical need in Franklin for additional employees on the train due to dangerous terrain...

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2. After extensive hearings, the legislature of the State of Franklin concluded that acupuncture had little if any medical value. Furthermore, the legislature found that many who relied on acupuncture often delayed seeking traditional medical treatment for serious medical conditions such as cancer until it was too late to save their lives. Consequently, the legislature enacted a statute prohibiting the practice of acupuncture anywhere in the state. Several acupuncturists filed suit in federal court to enjoin the enforcement of the statute against them, claiming that it would deprive them of their livelihood. The case was finally decided by the United States Supreme Court. What result, and why?

BEST ANSWER

The issue in this question is whether the state of Franklin may abridge the acupuncturist's economic liberty. The due process clause of the 14th amendment mandates that no state shall abridge individual's life, liberty or property without due process of law. This is a substantive due process issue. The court will analyze the very substance of the liberty being deprived to determine whether the acupuncturists have a fundamental right or a mere liberty interest. Economic liberty has been determined by the supreme court to be a liberty interest, not a fundamental right, hence the court will use the rational relation test, instead of strict scrutiny, to determine if the state may abridge it. In this rational relation test, the burden is proof is on the individual to show that the state regulation is not rationally related to a legitimate state end. If reasonable minds can differ as to this relation, the court will defer this judgement to the state legislature. Here, the state's goal is a legitimate policing power concern, safety and health of its citizens. And further, the state's evidence suggests that the regulation is rationally related to this legitimate end. One might argue that total prohibition is not a rational remedy, but if reasonable minds can differ, and here they can, the court will defer to the state legislature. Thus, the court will uphold the states statute, abridging the acupuncturist's economic liberty. (If the court would have used the strict scrutiny test, the state would have to show a necessary relation to a compelling state interest, and the state reg. would be struck down, but here, liberty interests are judged with rational relation analysis.)

3. The legislature of the State of Franklin decided that the state's judicial system was in need of reform. One of the many "reforms" was the enactment of a state statute that abolished trial by jury in civil case where the amount of damages sought was less than \$10,000. Discuss the constitutionality of this statute under the United States Constitution and relevant theories interpreting it. The seventh amendment of the United States Constitution provides: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved "

BEST ANSWER

The issue here is whether the state statute is constitutional. There are three major theories that may control the issue:

1. Total incorporation theory advanced by the interpretivists which feel that all of the Bill of Rights are unincorporated in the due process clause of the 14th amendment.

2. Selective incorporation, a "middle ground" theory that advances the belief that those amendments of the Bill of Rights should be selectively incorporated into the due process clause if they are fundamental to the concept of ordered liberty.

3. The Natural Law Theory by the non-interpretivists who believe that substantive due process is determined by higher law and has nothing to do with the Bill of Rights. Here the interpretivists would say that the state statute violated the due process clause of the 14th amendment because it is in direct derogation of the 7th amendment which is applicable to the states through the 14th amendment and would strike it down. The non-interpretivists advancing the natural law theory would look to see whether a trial by jury in these cases was fundamental to the concept of ordered liberty. They would probably hold that, since a civil jury would not be deciding matters of life or personal liberty but economic liberty, the state statute was not unconstitutional. The individuals that advance the selective unincorporation doctrine would find that the 7th amendment was not applicable to the states because it is not selectively incorporated into the due process clause of the 14th amendment.

4. Capital City, State of Franklin, owns and operates the only telephone company in the city. Allen Adams has had telephone service for several years, but when he was laid off from his job he became unable to pay all of his bills. In spite of his receipt of several notices that his telephone service would be terminated if his bill were not paid, Adams fell four months behind. Finally, the city-owned telephone company terminated his telephone service, without affording Adams the opportunity to argue that his telephone service should not be terminated. Discuss the constitutionality of the termination of Adams' telephone service.

BEST ANSWER

Procedural due process issues involve 2 inquiries. 1. Is there a deprivation of liberty in property? 2. If so, what process is due?

1. Was Allen deprived of a right to property? Yes, but the property was leased on contract. Adams was entitled to that property only as long as he paid for it. When the contract terminated because of his late of payments, he no longer had any property interest in it. Thus, no hearing of any kind is required, reinforced for the fact that no hearing is required if the facts leading up to termination are not in dispute. Here they were not. Allen did not pay.

2. Even assuming that property was taken, what process is due? Here we apply a balancing test. How important is the property to the individual? In this case it is probably fairly important that he have phone service to help him find another job. What is the risk of erroneous deprivation of the property? The risk is very slight, if someone doesn't pay their bill for four months, it seems reasonable that the telephone company would not have committing an error in discontinuing service.

3. Weigh the first two against the reasonableness of the state providing a hearing before terminating phone service. In this case he would have lost on the entitlement issue and the balancing test. It would be very unreasonable to expect the phone co. to provide a pre-termination for every person who failed to pay their bill for an extended period of time. The likelihood that the state could recover past due bills is slight.

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