

SECTION _____

EXAM NO. _____

CONSTITUTIONAL LAW II

Sections A and B

Instructor: Mr. Freeman

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FIRST MIDTERM EXAMINATION

Spring, 1995

PART I

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. 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. Alan Adams died in 1990 and devised fifteen acres of land to the Capital City Board of Education for use by athletic teams composed of white players only. A condition subsequent provided that, if any athletic teams with non-white players were permitted to use the athletic fields, the Board's interest would be divested and the land would pass to Bill Barton. Knowing that it would be illegal and unconstitutional to use the land for all-white athletic teams, the Board of Education ignored the racial restriction. In 1994, Barton filed the appropriate action to get possession and title of the land. The state court held in favor of Barton. The case is now before the United States Supreme Court on federal constitutional grounds only. What result, and why?

Best Answer:

The issue is whether the state enforcement of the racially discriminatory covenant is state action and is violative of Equal Protection. The rule is that states are limited by the 13th, 14th and 15th Amendments against racial discrimination. However, private action is limited by the 13th Amendment. A state may not discriminate, but it can enforce neutral laws. Like the case of Bacon's Park, the conveyance was based on racial discrimination. A state may not aid private racial discrimination. The court will use the "But for" test. But for the judicial enforcement, would there be discrimination. The deed was conveyed between a willing buyer and a willing seller and contained the racial discriminatory covenant regardless of the state court action. The state is solely stepping in and enforcing its neutral property laws. Also a question is whether judicial action can be government action. The Court has found that a state acts through its agents, and whatever its agents do when clothed in the power of the state – that action is state action. So, even though a state court may be considered state action, the judicial enforcement of the racially discriminatory covenant passes the "But for" test. In other cases regarding state action, this also resembles the case where a woman contracted for a grave site in which only whites could be buried. Her husband, a Native American, died and court allowed the racially discriminatory contract stand because there was a willing buyer and willing seller. So, Court will likely hold that Barton gets the property even though decision is based on racial discrimination; judicial enforcement between a willing buyer/seller is not state action. Also, state use of land in a non-discriminatory manner is a non-issue.

2. Gotham is a city of 750,000 people, half of whom are black. In common with many northern "rust belt" cities, Gotham is characterized by a dwindling industrial base as factories move south, rising unemployment, "white flight," and high poverty and crime rates. African American community leaders, supported by respected psychologists, convinced the Board of Education to limit enrollment at several public schools to African Americans. Enrollment at these schools is voluntary, and there are far more applicants for admission at these schools than there are seats in the classrooms. A group of taxpayers brought suit challenging the constitutionality of these single race schools. The case was finally decided by the United States Supreme Court. What result, and why?

Best Answer:

The crucial issue in this circumstance is whether single race schools violate the 14th Equal Protection clause.

These are public schools, which means state action is involved; therefore, the 14th Amendment is applicable. The classification discriminates on its face; therefore strict scrutiny applies. The reason for strict scrutiny is the determination by the courts that race is a suspect class, because it has the 3 indicia of suspectness (immutable physical characteristics, political powerlessness, and history of discrimination). Although this is a classification that discriminates against whites instead of blacks, the Court has held that this is applicable to both invidious and benign classifications. The preference of one group over another for no reason other than race is unconstitutional (Bakke). In order for the court to uphold this provision, there would have to be an Executive, Legislative or Judicial finding of past discrimination to warrant such an action. The recommendation by psychologists would probably not qualify. Separate but equal school systems have been held unconstitutional as they stigmatize black citizens into thinking they are less than whites. However, whites are not considered stigmatized when preferential treatment is given to black citizens. This is an argument for not using strict scrutiny; however, in this circumstance, it would probably not work. The compelling interest of giving black children a quality education is available through other methods; therefore, this clarification is necessary to achieve that objective.

3. The state legislature of the State of Franklin enacted a statute that prohibited incestuous marriages between closely-related persons, including first cousins. David Davis and Dorrie Donaldson, first cousins who are deeply in love with each other and want to marry each other, have filed suit challenging the constitutionality of this statute as applied to first cousins. The case was finally decided by the United States Supreme Court. What result, and why?

Best Answer:

The issue is whether denial to incestuous marriages violates Equal Protection of the 14th Amendment. The court has found that marriage is a fundamental right coming from the right of privacy. In Zablocki, the court held that all non-incidental regulations and infringements of the fundamental right to marry are subject to strict scrutiny. Zablocki, the state of Wisconsin denied any person a marriage license who had minor issue they were not supporting without a court order. The Wisconsin statute directly infringed on the fundamental right to marry. In applying strict scrutiny the court will determine if there is a compelling state interest and if the means are necessary in attaining that compelling interest. Strict scrutiny is "Strict in theory, fatal in fact," and invariably all statutes will fall. But, Zablocki said that any incidental infringements on the right to marry are subject to Rational Basis Review. Such things as age, bigamy, and incestuous statutes pose only an incidental infringement on the right to marry. The Court recognizes the state has an interest in regulating marriage, so long as its regulations are only incidental to marriage. So, since on incest, the state has an interest in preventing malformed children who may become wards of the state, and it is possible that a reasonable legislator can believe that the statute denying incestuous marriage is reasonably related to preventing the health/morals of the state, the Court will uphold the statute. So, the Court will uphold the incestuous marriage ban in the State of Franklin using Rational Basis Review.

4. The federal government's G.I. Bill of Rights provides for federal expenditures to pay for part of the tuition of military veterans at public and private universities. Because a disproportionate number of veterans are men, Carol Carter brought suit alleging that this provision is unconstitutional. The case was finally decided by the United States Supreme Court. What result, and why?

Best Answer:

The question is whether the legislation violates Ms. Carter's Equal Protection of the laws which are guaranteed by the 5th Amendment's Due Process clause.

In this circumstance, the classification is neutral on its face, and neutral as applied. However, a disparate impact is created. In order to determine the validity of the legislation, the court will look to see if there was a discriminatory intent. To discern this, they will look at previous procedures, legislative history, and historical analysis (basically, any direct or circumstantial evidence). However, if the intent requirement is not found, Rational Basis will apply. If however, a discriminatory intent is found, intermediate scrutiny would apply because gender is a semi-suspect class (immutable physical characteristics, history of purposeful discrimination and political powerlessness). Intermediate scrutiny says that this classification must have a fair and substantial relation to an important government objective. In this case, however, there does not seem to be a discriminatory intent. Congress enacted this to help veterans, not to discriminate against women. Therefore, Rational Basis applies. Congress can reasonably believe that this legislation is rationally related to the legitimate goal of awarding veterans for their military service.