

**UNIVERSITY OF UTAH
COLLEGE OF LAW
EXAMINATION COVER SHEET**

Student Examination Number: _____

Constitutional Law II

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Summer 2011

FINAL EXAMINATION

Instructions

1. You must turn in TWO hard copies of your exam to Megan Tippits in the front office by 5pm Friday July 15. Late exams will be penalized one half grade.
2. This exam consists of 3 pages, including this one. Write or type your Exam Number on your copy of the of the examination questions, and return it to the registrar's office at the end of the exam. Please also write or type your Exam Number on each page of your answer.
3. Please double-space your answers and use Times New Roman 12 pt font, with 1 inch margins. Number your pages.
4. You may consult the casebook, your notes, outlines and any other written materials you wish. Citations (which do not need to be in Bluebook form) should only be to cases we covered in class. You should not conduct any online research during the exam.
5. The exam consists of two questions. Question I will count for 60% of your grade and Question II will count for 40%. Your combined word count for both questions should not exceed 2500 words. I recommend that you set aside 1500 words for Question I and 1000 words for Question II and allocate your time accordingly.
6. Include a word count at the end of each question and a total word count at the end. Overlength portions of answers will not be read. Do not assume that you should reach the word limit — you should strive for clarity, organization, and brevity.
7. The questions may fail to provide some information that you consider important. Should you find it necessary to make factual assumptions, clearly state and explain your assumptions and their significance to your answer.

Good luck and enjoy the rest of the summer!

Question I

You are a first year associate at the Murky, Lurky & Perky Law Firm and your supervising partner has asked you to evaluate the position of the firm's client, the local school district (LSD), which has recently found itself embroiled in a number of legal disputes.

The LSD operates a public high school for the gifted and talented called Students & Scholars (S&S). The management of that school has in turn hired a private company, Prep for Success (PFS), to teach certain classes at S&S, including sexual education.

Management of S&S are involved with managing a number of other public schools, both for the local school district and for other school districts. They regularly use Prep for Success to teach classes like sex ed and physical education, typically after a bidding process in which the contract is awarded to the lowest bidder. PFS is used in a total of 10 of the LSD's 12 schools and in 5 schools in the area outside the LSD. The contractual agreement with Prep for Success indicates that PFS employees must use official S&S curricula, standard S&S materials, and follow all S&S guidelines and rules as to the instruction of S&S students. Although these PFS employees are hired and paid by PFS, they report to S&S management while at the school and may be subject to S&S employee discipline proceedings should they violate internal school guidelines and rules.

The LSD's legal woes are as follows:

First, at the beginning of the school year, the LSD announced a new policy regarding instructional materials at its schools. The policy prohibits the use of any materials that could be construed as advocating homosexuality or homosexual behavior.

A school employee got wind of the policy before it went into effect and issued a series of "Tweets" over her private Twitter feed that described the policy and criticized the LSD. The LSD fired the employee for violating the confidentiality clause of her employment contract, and filed a cease and desist order, seeking to stop her from issuing any further Tweets on the policy. The ex-employee has now counter-sued the LSD. The LSD also faces a possible lawsuit from unhappy parents over the underlying policy.

Second, the LSD received a number of complaints from parents, teachers and administrators at S&S about a group of male students at the school who were wearing sunglasses at all times, including inside classrooms, during class. These students claimed to be members of the Church of Goodness, which teaches (among other beliefs) that men have particular power through their eyes and must therefore always shield their eyes from all who are not related to them. The LSD issued a memo to all parents at S&S, informing them that all male students would be prohibited from covering or otherwise shielding their eyes with sunglasses or any other obstructive means during class because doing so interfered with their ability to see the blackboard and was distracting to other students. The LSD was sued by a group of disgruntled parents who are members of the Church of Goodness.

Third, the local newspaper has recently run a series of articles about Prep for Success, the private company to whom S&S has contracted some of its courses. The articles uncover links between the company and the Church of Goodness. PFS was founded by the founding members of the Church of Goodness, operated almost exclusively by members of the Church, and shares the same finances as the Church. The articles speculate that management of S&S have ties to the Church as well. It is also revealed in the articles that PFS employees routinely permitted male students to cover their eyes in accordance with Church doctrine and in defiance of the memo issued by the LSD. LSD has now been sued by a group of parents who are not members of the Church for failing to enforce the prohibition on eye coverings in all of its classrooms and for hiring Prep for Success.

In writing your memo, you may assume any facts not supplied by your partner, but should note that you are so assuming and indicate why such facts are necessary for your analysis. Your partner values concise answers and good organization and you are eager to impress her.

Question II

The city of New Freedom has long been concerned about the genital mutilation of children. It believes that genital cutting, as such mutilation is also known, is morally and ethically wrong and both physically and psychologically damaging to children subjected to the practice. Earlier this year, the city embarked on a two pronged campaign to end genital cutting. First, it enacted a city-wide ban on “any and all cutting, mutilation, or other physical damage done to any child’s genitals for any reason, if that child is younger than 5 years old.” Second, it created a series of public service announcements to educate its citizenry on the dangers of genital cutting. One such announcement, which aired on the local public television station (owned and operated by the city), featured a still image of a number of celebrities, with a caption below that said “ We don’t cut our kids, and neither should you!”

In response to the city’s campaign, a group of activists has tried to purchased airtime on the same television station for its own series of ads, which feature still images of a different assortment of celebrities, with a caption below that says “Circumcision is normal! You’re the parent, you decide!!” The city has refused to sell the requested airtime to the activists on the grounds that it only sells airtime to private individuals.

You have been approached by the group of activists and famous local celebrity, Clifford Roskinski. The activists would like to know what their legal rights and responsibilities are and Roskinski would like to explore a legal claim against the city for unauthorized use of his image and for defamation. Please advise these potential clients as to their legal claims. [NB: male circumcision is an integral part of the Jewish religion and it typically takes place in a religious ceremony held 8 days after a baby is born.]