Constitutional Law (Sec. A): Final Examination (January 7, 1972)

William & Mary Law School
There are 9 questions. Budget your time — 20 minutes average for each question. There are usually five points within each question. Be specific.

1. Casebook, pp. 302-03

   1. The search for limits. a. Do the "prohibition of shipment" aspects of Darby leave any "local" activity outside of congressional power?...Does the disavowal in Darby signify a final rejection of the "protest" limitation in McCulloch v. Maryland, where Marshall stated that the court would invalidate laws "for the accomplishment of objects not entrusted to the government"?...What "objects" are "entrusted" to Congress by the commerce clause? Should the Court restrict Congress to "commercial," "economic" objects? Did the opportunity to impose such a limitation pass with the line of decisions traced in Sec. 3, starting with the Lottery Case?

2. Casebook, p. 648

   2. Multiple inconsistent burdens — actuality or risk? Were the commerce clause criteria as stated in Huron consistent with those in Bibb? With Southern Pacific? Is the "burden" argument only maintainable on a showing of "competing and conflicting local regulations"?...What if Chicago and Cleveland were in the future to impose "competing and conflicting" regulations on the Huron Company's ships? (Would that cause Detroit's ordinance to fall, or Chicago's, or Cleveland's, or all three?)

3. Casebook, pp. 871-72

   Is the (foregoing) statute constitutional? The law applies only to federal prosecutions. Could Congress make these standards applicable to state trials as well, drawing on its power to "enforce" the due process clause under § 5 of the Fourteenth Amendment? Would such a law be justifiable under the rationale regarding § 5 set forth in the Morgan case...?

   Casebook Supplement, p. 56

   How significant is the inroad on Miranda v. Arizona suggested by the 5 to 4 decision in Harris v. New York...? (Worth double credit plus "brownie points")

4. Casebook, p. 981

   (Referring to editor's comments in preceding paragraph, the editor then asks:) Are the summary dispositions consistent with the minimal requirements of due process as articulated by the Court?...Is the distinction between "economic" and "civil liberties" cases sufficiently clear to justify the differences in judicial scrutiny?...Is it to be expected that a Court engaged in invalidating a considerable number of laws in the civil liberties area will be able to adhere consistently, and to quite the present extent, to non-intervention in the economic and social sphere? Is there any constitutional justification for the present degree of difference in judicial scrutiny of the two types of legislation? (This last question worth double credit plus "brownie points")

5. Casebook, pp. 1047-48

   (Near top of page:) Is there a "doctrinal escape" by limiting the "new solicitude" to "minorities that seem permanently voiceless and invisible," to whom the power structure in the political process "may incline to pay little heed"?

   3. "Fundamental rights." What rights are sufficiently "basic" to evoke the new careful scrutiny?...Is there need to press equal protection analysis to safeguard those rights, which already have independent constitutional footing?...

   (Bottom of page:) Do the post-1966 cases elaborate rational standards more adequately?

QUESTION 5 - CONTINUED NEXT PAGE
5. Continued:

(Middle of next page:) Do inherent limits on judicial capabilities suggest and require limits on the new equal protection?

6. Casebook, pp. 1176, 1185, 1187

(After quoting Kalvin's statement that demonstrations are an appeal to public opinion:) If that is so, can the Court respond to the communication element by labeling it conduct?

Did the Logan Valley Plaza case contain a more adequate analysis of the public forum problem than Adderley and the prior cases?

To what extent do the doctrines of the early licensing cases...govern the modern regulation of meetings and parades through permit requirements and other "prior restraints"? (Double credit and brownie points for the last two of the three questions here)

7. Casebook supplement, pp. 125-47

Discuss all aspects of the Pentagon Papers case as they affect First Amendment freedoms. (Credit for this question, 10-plus.)

8. Casebook, p. 1360; Casebook Supplement, p. 172

(After reviewing the critique of the Elementary and Secondary Education Act of 1965:) Is that complaint likely to succeed under the criteria of the Allen case? Under those of earlier cases?... May buses and books be constitutionally distinguished from salaries and buildings?... Grant to schools from grants to students? Loans from grants?

In answering these questions, refer to the 1971 aid to education cases in the supplement.


Discuss, with reference to the basic principles in the cases from Baker v. Carr through Reynolds v. Sims, the suggestion of retreat from One-Man-One Vote in the supplement.