Constitutional Law: Final Examination (May 31, 1957)

William & Mary Law School

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CONSTITUTIONAL LAW
May 1, 1957

Directions: Three hours allowed. Close book.

Do NOT write your name on your bluebook. Do put the circled number appearing on the first page of your examination questions on the covers of all your bluebooks and do sign in when you turn in your books.

In answering the questions state the legal issues involved in each problem, the legal doctrines which are applicable, and the various considerations which bear upon the manner in which the legal doctrines will be applied by the Court. In the extent feasible, cite relevant cases by name and show how they are applicable to the problem.

Please answer the questions asked. If you consider further facts necessary in answering any question, state explicitly what additional facts you are taking into consideration.

In general, allocate your time according to the value of the questions. Please answer all five questions; each question will be read and graded separately.

I. (30 points)

On July 1, 1960, Congress passes the Federal Business Association Act. This statute provides that "all individuals, partnerships, corporations and other organizations engaged in any occupation, trade, business, industry or other enterprise affecting commerce among the several states shall, as a condition of carrying on such enterprise, obtain a certificate from the Federal Business Association Commission. The Commission is empowered (1) "to establish such standards of wages and conditions of labor as shall be reasonable; (2) to make such rules and regulations concerning trade and industrial practices as will eliminate unfair competitive practices, conserve natural resources and promote the fullest possible utilization of the present productive capacity of industries; and (3) to make such rules and regulations as will protect the electoral processes of the Nation from violence and corruption." The Act also provides that compliance with the Commission's standards concerning working conditions and its regulations concerning trade practices and corrupt electoral practices is a condition precedent to obtaining a Federal Business Association Certificate and that violation of any of the Commission's standards or regulations is ground for revocation.

Among the Commission's regulations which are included in the certificates of all enterprises is the following:

"The enterprise shall not make any contribution whatsoever in connection with the candidacy, nomination, election or appointment of any person for or to any office or position in the Government of the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or two of the foregoing."

The Pennsylvania Sand Co., a sole proprietorship owned and operated by X, applies for and obtains a certificate. It produces sand in Pennsylvania, all of which it sells in Pennsylvania to Pennsylvania steel companies for use in lining their troughs. The steel companies sell a substantial part of their products outside the state.

In the campaign of November, 1960, the Pennsylvania Sand Co. makes a contribu-
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(20 points)

Write a law review note on "The Fourteenth Amendment as a Limitation upon State Power." Use the following as an outline:

I. The Incorporation of the Bill of Rights into the Fourteenth Amendment

A. Procedural Due Process
   1. In General, What is Procedural Due Process?--From Training to Adjudication
   2. Specifically,
      a. Right to Indictment by Grand Jury and to Trial by an Impartial Jury
      b. A Fair Tribunal--an Unbiased Judge
      c. The Assistance of Counsel
      d. Unreasonable Searches and Seizures and the Admission of Evidence Obtained by Them.
      e. Freedom from Compulsory Self-Incrimination
      f. Coerced Confessions

B. First Amendment Rights

II. The Development of the Substantive Due Process Doctrine and the Present State of the Law

III. What are the Privileges and Immunities of Citizens of the United States?

(20 points)

Assume that State X had and still has a provision in its constitution, adopted in 1990, providing that "all educational institutions within the State shall be exempt from state and local taxation."

In 1890, Mr. Donor gave his very substantial fortune for the establishment of a trust, the income of which was to be devoted to the creation and maintenance of four colleges within State X. In the trust instrument Donor designated the Governor of the State, the Chief Justice of the State Supreme Court, and the Speaker of the House of Representatives of the State as the trustees to execute and administer the terms of the trust, and he provided that they were to be succeeded by subsequent holders of the offices as and when elected or appointed.

Donor provided that at College One admission should be limited to "poor negro orphans."
He provided that at College Two admission should be limited to "poor white orphans".

He provided that at College Three admission should be limited to "members of the Methodist Church."

He provided that at College Four admission should be limited to "female residents of State X."

The trust instrument further provided that if any student should be found to have gained admission contrary to the limitations indicated for each college his resignation would terminate automatically.

No other limitations regarding admission to the various schools were set forth in the trust instrument.

In 1956, through oversight on the part of the administrative officials of the various colleges, a poor white orphan gained admission to College One; a poor negro orphan gained admission to College Two; a member of the Jewish religion gained admission to College Three; and a female student of State Y and a male resident of State X gained admission to College Four.

In each case the College, after admission of the student, discovered its mistake and acting in accordance with the requirements of the trust and with the approval of the trustees, notified each student that his or her registration had terminated automatically and that he or she must leave the College within a reasonable time. In each case the student was living in a college dormitory room and each refused to leave, even after the expiration of a reasonable time, on the ground that he or she had a constitutional right to remain as a student.

In each case the College obtained the aid of the city in physically removing the student from the College premises after all other means of informal procedure had failed. The policeman acted in each case under the authority of a city ordinance which provided that a person remaining on the property of another without the consent of the owner should be removed by the police officers through the use of reasonable force, if necessary.

All of the students involved came to you for legal advice. Each desires to be admitted to the institution to which he or she had originally been admitted, and such is interested in suing and/or having the federal government prosecute any institution or individual against whom he or she has a valid complaint.

What is your advice?

IV.

The War Claims Act of 1945 created the War Claims Commission, an exclusively quasi-judicial and quasi-legislative agency, to receive and adjudicate the claims of prisoners of war, civilian internees, and certain others who had been damaged by actions of enemy governments during World War II. The Act set a term of office for the Commissioners by limiting the life of the Commission itself, but did not
In 1950 President Truman, with the advice and consent of the Senate, as required by the Act, appointed Mr. Petitioner to the Commission. In 1953 Petitioner was removed from office by President Eisenhower, who wished to staff the Commission with personnel of his own selection. Petitioner, alleging that the President had no authority to remove him, sued in the Court of Claims for the salary he would otherwise have earned prior to the termination, pursuant to statute, of the limited life of the Commission. The Court of Claims dismissed the claim. The Supreme Court grants certiorari.

As counsel for Petitioner, what argument(s) would you make? As counsel for the Government, what argument(s) would you make? As a member of the Court, how would you decide? Why?

V. (10 points)

You are an attorney in the Justice Department. The President has asked the Attorney General to prepare a memorandum on the qualifications that the President should look for in making his appointments to the Supreme Court. In the light of your knowledge of constitutional law and the history of the Court as a governmental institution (the role the Court has played in the way the country is governed) and your knowledge of the Justices who have served on the Court, as well as in the light of your own analysis of the role that the Court should play in the way the country is governed, prepare a draft for the Attorney General. To the extent feasible, cite cases and/or historical incidents to substantiate your views.