1962

Constitutional Law: Final Examination (May 31, 1962)

William & Mary Law School

Repository Citation

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Directions: Discuss fully each issue raised by the following questions whether or not the answer to any one issue would be decisive of the question.

I. State X has a Fair Employment Practice Law forbidding any employer to discriminate in hiring employees because of race, creed, color, or national origin. The law is enforced by a Commission. Another law of X provides it shall be unlawful to operate any aircraft in the state unless licensed in accordance with United States laws and regulations. D, airline, operating in several states, is licensed by the Civil Aeronautics Board (Federal). P applied to D for a job as a pilot and was refused because he was a Negro. P took his case to the Fair Employment Commission which ordered D to give P the first opportunity to enroll in a flight training course. D appeals to the Supreme Court of X by proper procedure. The United States was allowed to intervene on behalf of P. Should the Court affirm or reverse the Commission's order? Why?

II. D is in the prison of State X under sentences aggregating 60 years. He hires you, an attorney, and relates the following story: He was arrested at his parents' home, not being presented with a warrant, when he was in an alcoholic daze, and was not permitted to contact anyone; that thereafter he was questioned constantly by authorities in a coercive manner for four or five days until he confessed; that thereafter he was held incommunicado in jail and not taken before any court for formal charges until 10 days after his arrest; that he was forced to plead and plead guilty after which he was assigned an attorney; that the attorney upon first interview said, "Well, I see you've confessed; there is nothing I can do for you," and proceeded to advise him to waive indictment and trial by jury; that trial proceeded immediately and that, within six months, he received his sentences. You accept the case, wishing to raise Federal Constitutional questions. What procedure will you undertake? Upon what grounds?

III. State X has a law prohibiting the sale for human consumption of meat which has not been inspected in X and certified by an inspector before slaughter; the inspector being appointed under state law. Y has law which lays a tax on goods sold for consumption. D is in the business of processing and selling meat products in X, and frequently purchases unprocessed meat from state Y which he then resells in X without the seal of approval used by the X inspector, although it bears a similar seal from Y. D also sells meat products in Y. He has not qualified to do business in Y, but sends salesman there to solicit orders. There is no sales or branch office in Y. Orders are relayed to D, in X, by mail or phone and require acceptance by D. The meat is then shipped from X. Title passes on delivery to the carrier in X; collection is not made in Y. D collects the sales tax in advance and remits to Y. D is being prosecuted in X for violation of the X law and is seeking declaratory judgment in Y to invalidate the Y law. What results? Why?

IV. State X has enacted a law which lays a tax on resident merchandizers as to their stock held in storage. Non-residents are exempt from the tax. This law further taxes, regardless of residence, all personal property "used in business." Personal property, according to the law, is used, according to the phrase, "used in business" when stored or kept on hand as "merchandise," except that merchandise of a non-resident is not "used in business" if held in a warehouse for storage only. D, a resident of X, is a retailer who sells from a retail store by sample only. Actual merchandise is kept in a warehouse, and delivery is direct from the warehouse to the customer. The tax commissioner of X threatens action against D for collection of the tax. D protests on the ground that the tax was levied on merchandise held in a warehouse for storage only. Knowing that X has a policy of attracting business and industry, should D be held subject to the tax? Why? State the criteria upon which your determination is based.

V. D, owner and operator of a small retail bookstore, is arrested for selling a book entitled, "Haid in a Haystack," under state law prohibiting "the possession, production, creation, formulating, or preparing, for sale, any literature which is licentious, obscene, or which appeals to a prurient interest." Assuming that the book contains passages which, if read alone, are pure sex, and assuming that you represent D at trial, (a) What motion (in effect) should you make prior to trial; and (b) assuming the case proceeds to trial, What instruction should you insist the judge give?
VI.
The City of X has an ordinance prohibiting the use of its streets for advertising purposes by use of signs carried on, or as a part of any motor vehicle, which exceed 10 x 12 feet in size. Unless permission is first obtained from the City Manager. D, labor union, is trying to organize the employees of Y Company and, as part of the organizational campaign, places 12 x 14 foot signs on a truck extolling the advantages of unionism and drives it through the city streets. The police frown at D, and several citizens remark on the size of the signs. Fearing prosecution, D, framing an action according to the state's declaratory judgments act, seeks to determine his right to proceed with his organizational campaign. He loses through all state courts, by which time his union has dissolved and abandoned their claims, but D nonetheless appeals to the U. S. Supreme Court. What result? Why?

VII.
D is a federal marshal assigned as a body guard to one of the Justices of the Supreme Court of the United States. While pursuing such duties in State X, D apprehends Y in the act of attempting to throw acid in the eyes of the Justice, screaming that the Justice is a Communist. D takes Y to the closest police station but, before arrival Y breaks and runs. Y is fat and slow; D is trim and fast, but D shoots and kills Y in a deliberate manner. In X attempted maiming is a felony. Assume there is no Federal law on the subject. In X anyone may arrest for a felony committed in his presence. 18 U.S.C. § 20 provides, in substance, that whoever under color of state law deprives the inhabitants of any state of any of the rights, privileges or immunities protected by the Constitution and laws of the U. S. shall be imprisoned... D is indicted in X for manslaughter. Assuming the indictment is technically correct, what defenses, if any, does D have? Assuming D goes to trial under the Federal law, what objections, if any, can be made to the indictment? If D goes to trial in Federal Court, what, in substance, must the court charge the jury?