1965

Constitutional Law: Final Examination (May 21, 1965)

William & Mary Law School

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DIRECTIONS: Discuss fully each issue raised by the following questions whether or not any one issue is decisive of the question.

I. P, a married adult with no minor children, a devout member of a religion which does not believe in the giving or accepting of blood transfusions. Suffering from a bleeding ulcer, P is admitted to a hospital. Upon entry P furnished her doctor with religious literature which explained her belief against blood transfusions and also signed a document releasing the doctor from all liability. However, P's condition deteriorated to the point her doctor believed a transfusion was necessary to save her life. P said she'd submit to surgery, but would not consent to having the transfusion. P's husband also refused to authorize the transfusion. Thereupon, the doctor had a guardian appointed for P without notice to P or her husband by a court of competent jurisdiction who authorized the transfusion for P. In trial court P sought to have the appointment of the guardian nullified and the transfusion authorization rescinded. P was unsuccessful so appealed. Pending the appeal, P recovered (thanks to the transfusion) and the guardian was discharged. The case is now before the Supreme Court. The former guardian has moved to dismiss the appeal. P insists on a decision on the merits. What result? Why?

II. After burglary of jewelry, the police had reasonable cause to believe D was implicated. Thereupon, the police on the basis of an "eavesdropping statute" and by affidavit property prepared obtained judicial consent to "bug" D's filling station. The bug was planted by entering D's premises without his knowledge or consent. Thereafter, a conversation was overheard, via the bug, leading the police to believe D would soon be in possession of certain pistols. A search warrant was then obtained to search D's auto. The pistols were found and D was charged with unlawful possession of them. The statute under which D's premises were "bugged" reads as follows: "An ex parte order for eavesdropping . . . may be issued by any magistrate . . . upon oath or affirmation . . . that there is reasonable ground to believe evidence of any crime may be thus obtained, and particularly describing the person or persons whose communications are to be overheard. . . ." D now moves to suppress the evidence seized on the authority of the search warrant. What result? Why?

III. State X has enacted laws which provide that public funds may be expended by the State and by localities within the state for educational purposes in nonsectarian private schools and institutions of learning in addition to the regular public schools. All children between the ages of six and 20 are eligible who have not completed high school. The amounts so paid could not exceed the cost per pupil of education in the public schools of the applicant's residence. Any such grant could be used except for tuition. Upon successful application the grants are paid to the applicants to Whom they are entitled to relief and also that Ps did not allege any facts showing they were entitled to relief and also that Ps did not allege any facts claiming they have been denied admission to any school, public or private. What result? Why?

IV. In a recent revision of its tax laws, State X has provided that insurance companies shall be taxed at a certain rate. The tax is laid on the gross receipts of business done within the state whether the business is interstate or intrastate. Payment of the tax is a prerequisite to receiving a certificate of authority to do business. Domestic insurance companies are, however, exempt from the tax. Another tax is laid on merchandise which is held for storage only. From this tax, however, non-resident businesses are exempt. A, an insurance company incorporated in State Y, and B a warehouseman domiciled in State X, are defendants in suits by the state taxing authorities for non-payment of taxes. Both A and B defend solely on constitutional grounds. Should A and B have to pay the respective taxes? Why?
V. D was arrested at his home on a charge of burglary, but was allowed to call his lawyer before being taken to the police station. The lawyer then called the station, informing the police he had been retained by D and wished to speak to him. Before the lawyer arrived however D was interrogated by the police in a friendly manner which resulted in D's making inculpatory statements. At trial, D's lawyer objected to the use of the inculpatory statements, saying, "To permit the use of these statements in evidence against D is a violation of due process." D was convicted, appealed to the state's supreme court where the conviction was affirmed, and now believing it would be futile to bring habeas corpus under the state's procedure, brings habeas corpus in a federal district court. Should D be successful? Why?

VI. D, Negro, was denied permission to play on a golf course owned and maintained by X city. Notwithstanding, D laid the greens fee on the counter and proceeded to play the course. The management of the golf course then called the police who arrested D on the basis of an applicable trespass law. There is no dispute that D was denied permission to play the course because of his race, and there is no dispute that all technicalities of the trespass law have been met. D was convicted, and his conviction has been affirmed by the state supreme court. (1) Name and describe the procedure which D should use to gain review by the Supreme Court of the United States. (2) Assuming D has properly raised questions of equal protection of the laws and aside from the Civil Rights Act give (a) the reasons why his conviction should be reversed and (b) the reasons why his conviction should be affirmed. (3) Discuss D's rights under Title II of the Civil Rights Act of 1964.

VII. In 1940 the laws of state X provided that certain state lands could be sold on a long term basis for the benefit of the school fund. The terms were specified a down payment of 1/40 of the principal with annual payments of principal and interest. In the event of default of payment of interest, the contract could be terminated and the lands forfeited to the State to again be resold for the benefit of the school fund. The law provided further that where lands were forfeited to the state for non-payment of interest, the purchasers or their vendees could have their claims reinstated by paying into the treasury the full amount of interest due. In 1950 the law was amended to make the right to reinstatement applicable only if exercised within five years of forfeiture. In 1961, P bought certain land under the law then existing. In 1951, interest payments having fallen into arrears the land was forfeited to the state and subsequently resold to D city. In 1957, P tendered the interest payments in arrears and subsequently filed suit against D to quiet title to the land. D defended its title on basis of the 1950 amendment to the 1940 law. The trial court quieted title in P, holding the 1950 amendment unconstitutional. D appeals. What result? Why? (Exclude any discussion of limitation or latches.)