

Examination number _____

UNIVERSITY OF MISSOURI SCHOOL OF LAW

Constitutional Law, 5220L

Section 1

Professor Carl H. Esbeck

Fall Semester 2012

Directions to Part I -- Essay

(1 hour and 10 minutes)

Place your examination number in the upper right-hand corner of this examination. When finished, return either your computer printout or bluebook. Also return these examination questions.

Answer the question asked. Answer only the question asked.

Arrange your answers in sequential order. That is, put Question 1 first, then Question 2, then Question 3, and etc. If you want to skip over a Question and come back to it later, leave a blank space or blank page and begin the next Question.

You are encouraged to use your laptop to complete this Part I.

If you do not use your laptop, write your answer in the bluebook provided. Use a pen with blue or black ink. Write on only one side of each page. Do not write in the left-hand margin. Do not tear pages out of the bluebook.

You may take with you into the examination room your casebook (including photocopied handouts), the 2012 Supplement to the casebook, your own classroom notes (not borrowed notes), an outline which is entirely your own work product, and a copy of the U.S. Constitution marked up by you. It is an Honor Code violation to have in your possession any other materials during the examination.

*** * * Part I Begins on the Next Page * * ***

PART I -- ESSAY (1 HOUR AND 10 MINUTES)

Question 1 (25 minutes): Assume Congress enacts the Shareholder Democracy Act of 2012 (SDA). The legislation concerns the shareholder rights of for-profit corporations whose securities are traded on a public stock exchange in the United States. SDA vests in shareholders standing to bring a private civil action in a federal district court against the officers and directors of such a corporation that have authorized a contribution to a Political Action Committee (PAC). Section 1 of the act states that its “purpose is to enhance the power of shareholders vis-à-vis corporate officials and control political campaign spending.” Section 2 states that the shareholder-plaintiffs need not show that the value of their shares was diminished because of the PAC contribution. Rather, all that need be shown is that a PAC contribution was made sometime during the prior year. In defense of the shareholder claim, Section 3 of the act states that the officers and directors must show that “in the view of the voting public the contribution advanced the interest of corporation profits.” In the absence of such a Section 3 showing, the officers and directors must pay damages to each shareholder-plaintiff in the amount of three times the PAC contribution plus the shareholder-plaintiffs’ reasonable attorney’s fees. The damages are to be awarded by the court following a bench trial. Is SDA consistent with the U.S. Constitution? Explain.

Question 2 (15 minutes): Congress enacts the National Youth Service Act (NYSA). The NYSA requires every U.S. citizen turning 18 years of age to serve one year in national service. This entails enrolling in the Peace Corps, VISTA, AmeriCorps, Teach-America, or alternatively doing domestic environmental clean-up under the supervision of the federal Environmental Protection Agency. During their year-long national service citizens are provide with food, shelter, transportation, and tax-free pay of \$100 per week. The only exemptions from NYSA are for citizens enrolled in the U.S. armed forces, pregnant, or severely disabled. Does Congress have the authority to enact NYSA? Explain.

Question 3 (15 minutes):

Subpart A: For \$22 per month you can subscribe to Morningstar’s Financial Information website which has information to evaluate the performance of several hundred publicly traded mutual funds. Is the information supplied protected by the First Amendment? Explain.

Subpart B: Assume you are driving on Interstate Highway 70 toward Kansas City. You spot a billboard with the picture of an olive green helicopter in flight. In bold letters written over the right half of the picture appears, “Be All You Can Be. U.S. Army”. Is the billboard protected by the First Amendment? Explain.

Question 4 (15 minutes): Assume the MU School of Law has a practice concerning the admission of women students. This occurs relatively late in the process, essentially in May, June and July for the class entering in mid-August. Applicants are admitted from the Law School's wait list as necessary to keep the entering class from falling below 40 % women. Is this consistent with the U.S. Constitution? Explain.

*** END OF PART I ***

Turn in both these examination Questions and your answers.

After a 10 minute break, all students will begin Part II together.