

Examination Number \_\_\_\_\_

UNIVERSITY OF MISSOURI-COLUMBIA SCHOOL OF LAW

**FEDERAL CIVIL RIGHTS, 5415L**

Professor Carl H. Esbeck

Winter Semester 2005

Directions to Essay Examination  
(3 hours)

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.

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

You may bring with you to the examination only your casebook, statutory supplement, and your own classroom notes. You may also bring a course outline if it is entirely your own work product.

Place your examination number in the upper right-hand corner of this examination.

When finished, return both your bluebook and these examination questions.

\* \* \* Question 1 Begins on the Next Page \* \* \*

## FEDERAL CIVIL RIGHTS, 5415L

### Question 1: (5 minutes)

On page 1229 of the casebook the following appears, “[T]hese federal assistance provisions often have been interpreted to proscribe behavior which, even if engaged in by the government, would not be barred by the Constitution.” What does the casebook author mean?

### Question 2: (25 minutes)

Westminster College, a private school located in Fulton, MO, has a health clinic and pharmacy for students. There are two pharmacists on duty 8-5 Monday through Friday, but only one on weekends. On Sunday April 24, 2005, a student arrives at the pharmacy two hours after the clinic opens. She has a doctor’s prescription for a “morning-after pill,” a drug for women who recently engaged in unprotected sexual intercourse. If there was a resulting conception, the pill prevents implantation of the ovum (fertilized egg) in the uterus—hence no successful pregnancy. The pharmacist on duty has scruples about such a pill taking human life and refuses out of conscience to fill the prescription. However, the pharmacist directs the student to two other pharmacies within a half mile open at that day and hour. Does the student have a federal private cause of action for damages against the pharmacist for discrimination? Explain.

### Question 3: (30 Minutes)

“Section 8 housing” is a short-hand reference to a federally funded housing program administered by the U.S. Department of Housing and Urban Development. Qualified low-income individuals are eligible for section 8 housing vouchers. A voucher allows the poor to lease an apartment or house from a private-sector landlord while tendering the voucher in lieu of monthly rent. In turn, the landlord redeems the voucher for \$500 per month at a local nationally chartered bank. HUD reimburses the bank.

A twenty-three year old Latino comes to your law office for advice. She is a divorced mother. Her section 8 landlord is pressuring her to engage in sexual intercourse strongly suggesting that he will report her to the U.S. Immigration Service if she refuses. She enjoys her apartment which is close to church and her child’s day care center and she does not want to move.

Is there a private civil remedy under the following statutes? Explain:

- (A) 42 U.S.C. § 1985?
- (B) 42 U.S.C. § 1982?
- (C) Title VIII of the Civil Rights Act of 1968?

**Question 4: (30 minutes)**

The article below appeared in the Columbia Daily Tribune on February 3, 2005. Assume that all the facts reported in the article are true. Does the incident described in the article violate one or more of the federal civil rights laws studied in this course? Explain.

**Question 5: (1 hour and 30 minutes)**

On Sunday afternoon, March 6, 2005, the MU men's basketball team was to play the KU Jayhawks at the new Mizzou Arena in Columbia, Missouri. Four KU fans, three students and one KU graduate (respectively, Chris Kaufman, Rich Littrell, Christian Green, and Andrew Wymore), drove to Columbia and purchased tickets to attend the game and cheer for the Jayhawks. They brought with them a sign that had various names of the MU Arena crossed out above the sentence, "Call it what you want, it'll always be Allen Fieldhouse East," referring to the name of the KU basketball arena in Lawrence. {see photograph}

The four KU fans obtained the permission of the seating-section usher to hang their sign over the balcony in front of their section on condition that the sign did not block any spectator's view of the game. As it turned out, the banner was mounted in front of a seat occupied by MU Police Department Chief Carter Ward – who was off-duty and out of uniform. The sign was not blocking Ward's view of the game floor. Nonetheless, when someone brought the sign to his attention Ward began to tear it down.

This caused one of the KU fans, Kaufman, to try to stop Ward by grabbing the partly disassembled banner away from Ward. Ward seized Kaufman by the shirt and shoved him against the rail as the two argued over the banner. Seeing the altercation, a second KU student, Littrell, intervened and the physical interaction was diffused. A nearby spectator and MU fan, Barry Lewis, observed the incident. “I was concerned that he [Kaufman] would fall over the railing,” Lewis observed. “It was an assault; way blown out of proportion. These kids never raised their voices; they were respectful,” Lewis said.

[photograph]

However brief the altercation, the pre-game melee drew crowd attention and spectators began gawking and shouting. Soon another MU police officer and head of security for the game, Major Cody Smith, arrived at the scene wearing his uniform. By now Ward had identified himself to the four KU fans as a university police officer and said he had the authority to eject them. Ward and Smith proceeded to escort the four students to an exit and tell them they were ejected from the arena. Wymore, who had not been involved in the physical altercation, asked for a reason. Smith said that, “You four were trespassing and thus your tickets were revoked.” When Wymore persisted as to why, Smith replied, “It is University policy.”

After being ejected, Wymore proceeded outside the arena to a box office. There he purchased another ticket and again entered the arena – but without the banner. When Wymore was spotted by Smith, Wymore was stopped, arrested for trespassing, and booked at the MU police station. Wymore was then transferred to the Boone County Jail (by prior arrangement with the county, as the university does not have its own holding cell), where his three KU friends later bailed him out.

The next business day, Monday, March 7<sup>th</sup>, Kaufman filed a written complaint with the MU Police Department against Ward. Kaufman’s charges were the use of

excessive force and an abuse of authority. Because the complaint was against the Chief of Police, the Internal Investigations Officer referred the complaint to the MU Office of Administrative Affairs. The matter is under active investigation by the Vice Chancellor. If substantiated, the complaint could result in Ward being suspended without pay, demoted, or fired.

On Monday, May 2nd, the four KU fans filed a complaint in the U.S. District Court for the Western District of Missouri. Referencing 42 U.S.C. §§ 1983, 1988(b), they seek compensatory and injunctive relief, as well as attorney fees. In Count One, all four plaintiffs allege that their free speech was abridged. In Count Two, each of the four plaintiffs alleges that his property (ticket) was taken without due process of law. In Count Three, Kaufman alleges a battery on his person by Ward in violation of his right to be free of unwanted or unjustified touching of his body. In Count Four, Wymore alleges that his arrest for trespass was unlawful. And in Count Five, Wymore alleges that the conditions at the jail where he was confined were unconstitutional.

Named as defendants are MU Chief of Police Carter Ward, MU Police Major Cody Smith, and The Board of Curators of the University of Missouri, as the governing agency of the University of Missouri System (all four campuses, including the Columbia campus).

Legal research has discovered § 223.44(8) R.S. Mo. 2002, concerning the authority of off-duty police officers. It says, “Off-duty municipal police, county sheriffs and their deputies, and state highway patrol officers shall have full authority to act as officers with respect to crimes committed in their presence.”

Assume you are legal counsel for all three defendants. What defenses should you consider raising with respect to Counts 1 through 5? How would you expect plaintiffs to respond? Explain.

- (A) Count One is against Ward, in his personal and official capacities, and seeks only damages.
- (B) Count Two is against Ward and Smith, in their personal and official capacities, and seeks damages and injunctive relief.
- (C) Count Three is against Ward, in his personal capacity, and seeks only damages.
- (D) Count Four is against Smith, in his personal and official capacities, and seeks damages and injunctive relief.
- (E) Count Five is against The Board of Curators and seeks damages and injunctive relief.

\* \* \* END OF EXAMINATION \* \* \*