

STUDY QUESTIONS FOR THE DOC2 FINAL EXAMINATION  
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The following questions are intended as STUDY AIDS for the DOC2 final exam. It is POSSIBLE that one or more of these questions will appear on the Essay portion of the final. It is also POSSIBLE that NONE of the questions will appear on the final. The purpose of this handout is to prepare you for the KIND of question you should expect on the Essay portion of the exam. Working out your own answers to these questions requires a grasp of the fundamental concepts and arguments discussed in DOC2, concepts and arguments you will need to know in order to provide good answers to the essay questions on the exam itself.

The final examination is CLOSED BOOK. During the exam, you are not permitted to consult notes, books, or any other study aids.

GOOD LUCK ON THE FINAL!!!

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1. Becky, currently a player on the varsity women's ice hockey team at Schmandiego University ("SU", for short: a public university in California), asks to try out for the men's ice hockey team and is rebuffed. Becky claims that her ice hockey playing skills far outrun the corresponding skills of her fellow female teammates, and that she should be given a chance to compete on equal terms with hockey players with skills comparable to hers (who all happen to be men). SU provides three reasons to keep the status quo. First, speaking generally, the athletic abilities of women differ from those of men, and the principles that determine who is eligible to play for which sports team should be premised, not on exceptional cases (such as Becky's), but on average ability within the relevant groups. Second, sexual integration will damage or destroy the unique "culture of competitiveness" associated with men's ice hockey. Third, since male athletes would rather play with and compete against other male athletes, sexual integration will significantly lower the general level of athletic achievement (by deterring capable male athletes) and hence fail to provide exceptional female athletes with the opportunities they seek.

Mary claims that SU's policy denying Becky the opportunity to try out for the men's ice hockey team is unconstitutional. John disagrees. Considering the relevant constitutional provisions, and applying principles and precedents discussed in this course, defend either Mary's position or John's position as completely and as concisely as you can, considering both the arguments favoring your position and responding to the counterarguments available to your opponent.

2. Javier is terminally ill, paralyzed from the neck down, and in great irremediable pain. Before his paralysis and illness, Javier was a world famous ballet dancer. He has no immediate family or friends, other than his wife, Alma. Javier now languishes in a Rhode Island hospital. Both before and after he contracted his debilitating illness, Javier executed a living will requesting assistance in committing suicide should he ever become terminally ill, in great irremediable pain, and unable to end his own life without assistance. Citing a Rhode Island law that bans assisted suicide, Javier's doctors have consistently refused to prescribe drugs that would hasten his death. One evening, with no one else in his hospital room, Alma gives Javier a dose of poison that will end his life painlessly in one day. The encounter is captured on the hospital security cameras, which reveal that Javier explicitly and repeatedly begged his wife to give him the lethal dose. Alma is caught, admits what she has done, and Javier's doctors realize that they can keep him alive by placing him in a magnetic field that neutralizes the poison. (If the magnetic field is removed, the poison will painlessly cause his death.) In the face of his refusal, Javier's doctors place him in the magnetic field anyway. As they reason, the fact that Javier is now dying of the poison is the result of an illegal act that should not have happened in the first place. The State of Rhode Island agrees with Javier's doctors, and refuses to intervene on his behalf. Citing *Cruzan*, Javier sues Rhode Island in Federal Court, alleging that the State's refusal to remove the magnetic field violates his constitutional right to be free of unwanted medical treatment. Rhode Island counters that removing the magnetic field would amount to assisting Javier in committing suicide, and that assisted suicide bans are constitutionally permissible under *Glucksberg*. The case comes before the U.S. Supreme Court on appeal.

You are an associate justice of the U.S. Supreme Court. Considering the relevant constitutional provisions, and applying principles and precedents discussed in this course, render a fully reasoned decision in this case, considering both the arguments favoring your position and responding to the counterarguments available to your opponent.

3. Suppose that Adele and Barbara, both homosexuals, obtain a marriage license from the State of Massachusetts, and that Barbara is a veteran with an army pension. Three days after getting married, Barbara is killed in an automobile accident. Suppose further that, although Federal Law grants the spouses of deceased army veterans the right to their pensions, the Federal Government refuses to grant Adele the right to Barbara's pension on the grounds that the Federal Defense of Marriage Act (1996) defines marriage as being "a legal union between one man and one woman as husband and wife".

Mary claims that the Defense of Marriage Act (DOMA) is unconstitutional. John disagrees. Considering the relevant constitutional provisions, and applying principles and precedents discussed in this course, defend either Mary's position or John's position as completely and as concisely as you can, considering both the arguments favoring your position and responding to the counterarguments available to your opponent.

4. The year is 2050. World oil supplies have dwindled to nothing. Not having developed alternative sources of energy quickly enough, and having suffered one particularly devastating accident at a California nuclear power plant, the United States economy has ground to a virtual halt. Despite the humanitarian assistance of the international community, the United States does not have enough food to feed its population. So the Federal Government passes a law (the One Child Act) penalizing women (with severe fines or jail time) below the poverty level who have more than one child. In defense of the law, the Federal Government cites the fact that many children in poor families will die or suffer malnutrition if poor women are allowed to decide for themselves how many children to bear. Sally Smith, a poor Kansas woman who has just given birth to her second child, is found guilty under the One Child Act, and has been sentenced to one year in prison. Ms. Smith files suit in Federal District Court, claiming that the One Child Act is unconstitutional. She loses the suit, and the case reaches the U.S. Supreme Court on appeal.

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5. Imagine that the Montana State Department of Education has adopted a “Women First” hiring policy that gives a slight preference to female over male applicants for teaching jobs. In defense of its new policy, Montana argues (on the basis of strong statistical evidence) that schoolchildren who are taught by women perform significantly better on standardized tests, drop out of school less frequently, go on to college more frequently, and report greater satisfaction with their experience in school than do schoolchildren who are taught by men. John Jones and his sister, Maria Mitchell, are the only applicants for the job of kindergarten teacher at Marshall Elementary, a new public school in Bozeman, MT. Although John and Maria are well qualified for the job and have virtually indistinguishable resumes, Marshall Elementary implements state policy and hires Maria rather than John. John sues the state of Montana in Federal District Court, alleging that the “Women First” hiring policy is unconstitutional. After the District Court judge rules against him, John appeals the decision to the U.S. Supreme Court.

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6. The year is 2100 and the point of fetal viability has been pushed back to conception. In the same year, the Texas legislature passes an Anti-Abortion Act (call it “AAA”) proscribing abortion at *every* stage of pregnancy except when necessary to protect the life or health of the mother. (Abortion is here defined as a procedure that involves or results

in the death of the fetus.) As its main reason for enacting this statute, Texas claims that it is pursuing its interest in protecting potential fetal life.

Mary claims that AAA is unconstitutional. John disagrees. Considering the relevant constitutional provisions, and applying principles and precedents discussed in this course, defend Mary's position or John's position as completely and as concisely as you can, considering both the arguments favoring your position and responding to the counterarguments available to your opponent.

7. [THIS IS A PURELY FICTIONAL STORY.] Brian and Cheryl are siblings who were separated at birth under tragic circumstances. As they grew up, neither had any inkling of the existence of the other. Both do well in high school and become members of Thurgood Marshall college in 2006. They sit together in class, realize that they have a great deal in common, and, over time, fall in love. Before they are able to consummate the relationship, both Brian and Cheryl discover that they are siblings (never mind how). After some significant soul searching, Brian and Cheryl decide that their love for each other is stronger than any sexual taboo. Recognizing that any child they conceive together may be born with serious mental or physical disabilities, Brian (with Cheryl's approval) undergoes voluntary sterilization. However, there is a California law that bans incest, including sexual relations between siblings. California claims that this law is needed to protect public health and achieve the important end of discouraging the kind of sexual conduct that society (as embodied in the will of the majority of the State legislature) finds to be morally unacceptable.

Mary claims that California's law is unconstitutional. John disagrees. Considering the relevant constitutional provisions, and applying principles and precedents discussed in this course, defend either Mary's position or John's position as completely and as concisely as you can, considering both the arguments favoring your position and responding to the counterarguments available to your opponent.

8. David, Julia, and Rachel are adult members of the Fundamentalist Church of Jesus Christ of Latter Day Saints, a Mormon sect. All three accept the Church's teachings that men should, when they reach maturity, marry more than one woman. One evening in his home in Salt Lake City, David proposes to Julia and Rachel together, and both women accept. Under Utah law, polygamy is illegal. So when David, Julia, and Rachel apply for two marriage certificates, the county clerk refuses the application. In defense of the ban on plural marriages, Utah claims (a) that marriage, by definition, is between one man and one woman, (b) that it is permissible for the State to express moral disapproval of polygamy, and (c) that polygamous marriages are not optimal settings for child-rearing. David, Julia, and Rachel claim that Utah's ban on polygamy violates the fundamental right to marry the person of one's choosing, and is therefore unconstitutional under the Due Process Clause of the 14<sup>th</sup> Amendment. They also argue that the ban discriminates against them on grounds of religion, and that this kind of discrimination is unconstitutional under the Equal Protection Clause of the 14<sup>th</sup> Amendment.

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