



**The University of New Mexico**

---

School of Law Library  
MSC11 6080  
1 University of New Mexico  
Albuquerque, NM 87131-0001  
Telephone (505) 277-0939  
FAX (505) 277-0068

This document was scanned pursuant to the express permission of its author and rights holder.

The purpose of scanning this document was to make it available to University of New Mexico law students to assist them in their preparation and study for Law School exams.

This document is the property of the University of New Mexico School of Law. Downloading and printing is restricted to UNM Law School students. Printing and file sharing outside of the UNM Law School is strictly prohibited.

**NOTICE: WARNING CONCERNING COPYRIGHT RESTRICTIONS**

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is no to be "used for any purpose other that private study, scholarship, or research." If the user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

Examination No. \_\_\_\_\_

UNM School of Law  
Final Examination

Professor James Ellis  
Tuesday, May 11, 2004  
Take-Home Examination

526 CONSTITUTIONAL RIGHTS  
INSTRUCTIONS

This is an eight-hour, open-book final examination.

Your eight hours begin when you open this question for the first time. You should not pick up the question until you are ready to begin, or as close to that time as practical. Similarly, you should return your answer to the staff as soon as possible after your time has elapsed. Working on the exam past the eight-hour deadline will constitute a violation of the Honor Code.

The exam question will be available to be picked up after 9:30 on Tuesday, May 11th. Answers must be returned by 4:00 on Friday, May 14<sup>th</sup>.

In preparing your answer, you may consult your textbook, published and photocopied supplements, any notes prepared by you (either alone or in conjunction with your classmates), treatises and other primary or secondary materials to be found in the law library. Please note that this exam is not a research project. It is my belief and anticipation that you can prepare a successful answer based solely on the course materials and your notes alone, but I have no objections if you want to consult the full text of a relevant case or check your understanding against a secondary source. You may not discuss any aspect of this exam or your answer with any other student or any other individual.

Your answer is limited to 3,500 words. Please count the words in your answer and write the total on the first page of your exam answer. No credit will be awarded for anything past the 3,500 words of your answer.

You have eight hours to write an exam answer that is no longer than that expected of a four-hour, in-class, ambush-style exam. This gives you the opportunity re-read a case or two and any notes or materials you might deem relevant to the question, and consider your answer. It also gives you the opportunity to read over what you have written to determine whether it makes sense to you.

**GOOD LUCK!**

## QUESTION

Questions of matrimony have raised quite a stir in the States of Bliss and Sanctimony. You will not be surprised to learn that constitutional issues have arisen.

In Bliss, Gamine Winsome, the Mayor of the city of Ignorance, announced that she would begin conducting marriage ceremonies “regardless of the gender or sexual orientation of the individuals involved.” (Under the domestic relations law of Bliss, mayors are authorized to perform “lawful marriages.”) Among the first couples to seek to take advantage of the Mayor’s new policy were Daphne and Lilith, lesbians who had lived together as partners for years and who wanted desperately to have their union recognized as a legal marriage. Following the ceremony, Mayor Winsome told the happy couple, “You know that the Bliss state statute only provides for marriage between people of the opposite sex, but since I believe that law to be archaic and unconstitutional, I am happy to sign your marriage certificate,” which she then did. Daphne and Lilith proceeded directly to the state Adoption Bureau and applied to be adoptive parents. Under Bliss law, only legally married couples are eligible to adopt children, and gays and lesbians are explicitly prohibited from becoming adoptive parents. The social worker rejected their application, because she believed their marriage certificate to be unlawful, but was evidence that they were gay. Daphne and Lilith have sued the Adoption Bureau, asking a state trial court to require the Bureau to approve their application, alleging violations of both the Federal and State Constitutions. The trial judge dismissed their lawsuit, and they have appealed to the Bliss Supreme Court.

Another gay couple, Niles and Martin, also persuaded Mayor Winsome to perform a marriage ceremony. But unlike Daphne and Lilith, Niles and Martin already had a minor son, Frederick, whom Martin had fathered during his earlier, heterosexual marriage. That marriage had ended with his wife’s death, so Martin had sole legal custody of the boy, although he and Niles had shared parental responsibilities for years, and Frederick views them both as his “fathers.” Martin and Niles had hoped that the municipal ceremony would bolster their deteriorating relationship, but, alas, it did not. When it became clear that their differences were irreconcilable, Niles sued Martin for divorce in Bliss state court, asking for both spousal support and joint custody of Frederick. The state trial court dismissed the divorce action, stating that the marriage ceremony had been unlawful, and therefore the court lacked jurisdiction to grant a divorce. The court also held that joint custody was impossible since they had never been legally married. Niles appealed to the Bliss Supreme Court on both State and Federal constitutional grounds.

The turmoil surrounding this domestic dispute also spilled over into Frederick’s elementary school. After he had suffered substantial teasing and verbal abuse from his classmates, Frederick showed up in school wearing a T-shirt that proclaimed, “I Have Two Fathers. You Got a Problem with That?” Sadly, the shirt only made things worse, and Frederick was involved in a fistfight on the playground. The principal let the other kids involved in the fight off with a warning, but ordered Frederick to go home and come back with another shirt. When Frederick refused, following a five minute conversation

with the principal, he was suspended for 30 days. A state trial court dismissed his lawsuit challenging (both substantively and procedurally) his suspension, and he has appealed to the Bliss Supreme Court.

Seeking to avoid further conflict, the principal ordered that the book “Heather Has Two Mommies,” a sensitive portrayal of a nontraditional family, which had been in the school library for two years, be “deacquired.” Martin (whom you may assume has standing) brought suit for an injunction ordering the book restored to the shelves, citing both State and Federal constitutional arguments, and the state court dismissed the suit. This dismissal, you will not be surprised to learn, has been appealed to the Bliss Supreme Court.

Meanwhile, in the State of Sanctimony, Jerome and Bulldog (both of whom *are* men; you must be thinking of Eddie, whose hypothetical case would involve altogether different constitutional issues) applied for a marriage license and were denied by the clerk at the License Bureau, who noted that such marriages were unlawful in Sanctimony. Jerome and Bulldog meet all the other requirements (age, blood tests, filing fee, etc.) for marriage licenses under state law. They filed suit in state court to force the License Bureau to grant them a license, claiming that the denial of their application violated both Federal and State Constitutions. The trial court dismissed their suit, and they have appealed to the Sanctimony State Supreme Court.

The juxtaposition of these two disputes in neighboring States has engendered widespread controversy. In Sanctimony, Frasier, a radio talk show host who favors gay marriage, urged his listeners, “Any of my listeners who want to be married to a person of the same sex may be able to hoodwink our State’s bureaucrats, who are notoriously dim, into granting a marriage license if one of the couple has a gender-ambiguous name, like ‘Pat’ or ‘Tony.’ It would be really perfect if some of you among my listeners would try to do this and thereby demonstrate to every citizen just how incompetent and inefficient their so-called public servants really are.” Roz, a local minister of the Foursquare-Whatever-Feels-Good Church was asked whether such an attempt to violate the laws of Man was inconsistent with the Laws of God. She responded to the private inquiry, and then repeated in her sermon the next Sunday, that she was certain that God would not disapprove of any attempts to overturn unjust and unconstitutional laws. Having heard both the radio broadcast and Roz’s sermon, two members of her congregation did, in fact, apply for such a license, but were rejected by the more-vigilant-than-expected clerks. Sanctimonious prosecutors had Roz and Frasier arrested and charged them with incitement to unlawful activity. They were convicted, and have appealed their convictions to the Sanctimony Supreme Court on State and Federal constitutional issues.

The FCC has placed a “letter of admonishment” in the file of the radio station that broadcast Frasier’s show, noting that discussion of both gay marriage and approving discussion of lawlessness were inappropriate for children who might be listening to his 2:00 P.M. broadcast. The station has appealed this action to the U.S. Court of Appeals for the District of Columbia Circuit.

While Roz was out on bail, awaiting trial, she decided to continue her efforts on behalf of gay marriage by placing the following paid advertisement in the Sanctimonious Sentinel, a daily newspaper, "Will perform religious marriage ceremonies for any couple, with or without a license. Gay couples particularly welcome. Suggested Contribution: \$50." The state Attorney General sought and obtained, from a state trial court, an injunction against Roz and the Sentinel, prohibiting them from running any advertisements in the future "on the subject of gay marriage." The injunction has been appealed to the State Supreme Court on State and Federal grounds. Three gay couples responded to the ad, and a wedding ceremony was held for each, at the conclusion of which the congregation said, in unison (reading from the prepared text included in the back of the officially recognized hymnal of their denomination), "According to the tenets of our Faith, these people are married. Their unions are holy and are blessed by the Lord." None of these couples had obtained marriage licenses, and none attempted to register their unions with the state. Nonetheless, Roz was prosecuted and convicted for performing illegal weddings, and appeals from that conviction.

You are employed by "Rent-a-Clerk," a privatized business in suburban Bangalore, that assists in the drafting of judicial opinions for both the Sanctimony and Bliss Supreme Courts, as well as the D.C. Circuit. Prepare judicial opinions on each lawsuit.

## **APPENDIX**

### **BLISS STATE CONSTITUTION (portions)**

ARTICLE I. The free exchange of views being essential to the progress of our People, every citizen has the inviolable right to freely express his views, being responsible for the abuse thereof.

ARTICLE IV. All People are, by Nature, free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety, happiness and privacy.

ARTICLE V. In access to public areas, accommodations, and facilities, every person shall be free from discrimination based on race, religion, or national ancestry and from arbitrary, capricious, or unreasonable discrimination based on age, sex, or physical condition.

ARTICLE IX. Education is the very foundation of the State. Every child shall have the right to a free, equal, and effective public education.

\*\*\*\*\*

### **SANCTIMONY STATE CONSTITUTION (portions)**

ARTICLE I. The State shall not deprive any person of life, liberty, or property, without due process of law, nor deny to any person equal protection of the laws.

### **SANCTIMONY DOMESTIC RELATIONS CODE (portions)**

SECTION 8. Marriage is a sacred institution. Only marriages between a man and a woman shall be recognized in this State. All other purported marriages are void and are an abomination against all that is Holy.

SECTION 9. Any person who purports to conduct a marriage ceremony that does not conform to the requirements of this Code shall be guilty of a misdemeanor.

### **SANCTIMONY CRIMINAL CODE (portions)**

SECTION 275. Any person who advocates the duty, necessity, or propriety of committing any unlawful act shall be guilty of a felony.

**[END OF EXAMINATION]**