Exam # _____

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FINAL EXAM

INSTRUCTIONS:

DO NOT GO BEYOND THIS PAGE UNTIL THE EXAM BEGINS.

THIS IS A CLOSED BOOK EXAM.

MAKE SURE YOUR **EXAM #** is included at the top of this page.

1. Read each answer before selecting the best one.
2. Identify the BEST answer.
3. WRITE the correct answer on the answer sheet – the last page. You may detach the page to enter your answer but make sure before doing so that you write your EXAM NUMBER on the answer sheet.

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Comment [d1]: The correct answer is shown in yellow. Comments on the side explain why the other answers are incorrect.

1. Which of the following aspects of World War II did NOT have a significant effect on the American legal system?

(a) Minorities and women were subjected to greater discrimination during the war;
(b) Economic demand during wartime reduced the impact of the Great Depression;
(c) The growing power of the Soviet Union raised fears about communism;
(d) The "baby boom" that followed World War II created a spike in crime in the 1960's.

Comment [d2]: This isn't true; minorities and women actually had greater opportunities during the war that led to demands for greater opportunity and equality when the war ended.

Comment [d3]: These are all true.

2. In 1943, in *West Virginia v. Barnette* (the 2nd of the "flag salute" cases), the majority held that

(a) Religious beliefs could only be overridden by a compelling governmental interest;
(b) Offensive speech was best dealt with by permitting more speech, rather than less;
(c) Silence could never be the basis for government compulsion;
xx(d) Government officials could not prescribe orthodoxy.

Comment [d4]: This isn't correct; the compelling interest test wasn't developed until Sherbert

Comment [d5]: This argument wasn't made

Comment [d6]: This isn't correct; sometimes you must speak; for example, if you are granted immunity and have to testify in court

Comment [d7]: This is the basis for Jackson's opinion

3. Justice Frankfurter's dissent in *Barnette* made each of the following arguments EXCEPT

(a) Judges should not substitute their own idea of the wisdom of legislation for the test of whether legislation is constitutional;
xx(b) Measures taken in wartime should be granted substantial deference;
(c) Religion should not be the basis for granting exemptions to otherwise enforceable statutes;
(d) Compelling a person to say the words of the flag salute is not a way to compel belief.

Comment [d8]: Frankfurter didn't reference the war.

4. The first Japanese internment case to reach the U.S. Supreme Court was *Hirabayashi v. U.S.* In that case the Supreme Court

(a) Permitted U.S. citizens to be interned;
xx(b) Permitted discriminatory treatment based upon race;
(c) Permitted the internment of anyone who could not prove citizenship;
(d) None of the above.

Comment [d9]: The only issue was a curfew, not the forced relocation

Comment [d10]: Citizenship wasn't an issue

5. In *Weeks v. U.S.*, decided in 1914, the defendant was prosecuted for selling lottery tickets. The U.S. Supreme Court

(a) Reversed the conviction because the sale did not occur in interstate commerce;
xx(b) Reversed the conviction because the defendant did not consent to a search of his house;
(c) Affirmed his conviction because the 14th amendment did not apply to state criminal prosecutions;
(d) None of the above.

Comment [d11]: This wasn't a federalism case

Comment [d12]: The search violated the 4th amendment

Comment [d13]: This was a federal, not a state case

6. When the U.S. Supreme Court decided *Olmstead v. U.S.* in 1928, which of the following is NOT true?

xx(a) The case involved the prosecution of bootleggers avoiding prohibition
xx(b) The court decided that wiretapping was not an illegal search and seizure
xx(c) Justice Brandeis wrote that government is to be most feared when its purposes are beneficent.
xx(d) Justice Brandeis wrote that when government becomes a lawbreaker it breeds contempt for the law.

Comment [d14]: All of these statements are true.

7. Progressive reformers in the 1920s put most of the blame for the rise in urban crime on:

(a) Broken families;
(b) Racial discrimination;
(c) Poverty;
xx(d) Outdated police practices.

Comment [d15]: This is the one focused on in Pound and Frankfurter's comment p. 450

8. *Brown vs. Board of Education* had each of the following effects EXCEPT

(a) The courts had difficulty formulating a remedy for *de facto* segregation;
(b) Congress passed the Civil Rights Act;
(c) Advocates of other forms of social change praised the Court's leadership;
xx(d) Segregation became illegal in public accommodations;

Comment [d16]: These were all consequences of Brown

Comment [d17]: This was only true after Congress passed the Civil Rights Act.

9. In *Gaines*, a case decided in 1938, the petitioner, an African-American, argued that the State of Missouri had an obligation to permit him to attend a white law school. The U.S. Supreme Court in *Gaines* held

(a) Gaines was entitled to a legal education, but it could be provided to him by a neighboring state, so long as the State paid for it;
(b) Separate but equal was inherently unequal;
xx(c) The duty to provide an equal education could not be discharged by sending the petitioner to another state;
(d) Any distinction based upon race was unconstitutional.

Comment [d18]: The court specifically rejected this defense

Comment [d19]: They weren't ready to go this far; it just had to be equal, even if it was separate

Comment [d20]: Not yet.

10. The practice of lynching claimed more than 3500 lives in the United States. When efforts were made to pass federal legislation that would make lynching a crime,

(a) Congress refused to take up the legislation;
xx(b) Southern senators blocked passage of the law;
(c) The nation was too preoccupied by the Second World War to pay attention to the issue;
(d) The Supreme Court declared that the 14th amendment only applied to state action.

Comment [d21]: Not true. The House passed an anti-lynching bill

Comment [d22]: The effort was made in the 30's before the war began

Comment [d23]: The Court never ruled on the issue

11. New Deal liberalism differed from classic liberalism in which of the following respects?

(a) Classical liberalism feared the power of government, whereas New Deal liberalism supported an expanded role for government;
(b) Classical liberalism relied upon an objective morality, whereas New Deal liberalism leaned toward moral relativism;
(c) Classical liberalism defended economic liberty, whereas New Deal liberalism placed personal liberty on a higher plane than economic liberty;
xx(d) All of the above.

Comment [d24]: Each of these statements is true.

12. The lawyers who acted as architects of New Deal legislation had the most in common with which of the following thinkers?

(a) Herbert Spencer
xx(b) Jerome Frank
(c) David Brewer
(d) Oliver Wendell Holmes

Comment [d25]: Spencer was an advocate of social Darwinism

Comment [d26]: Frank believed in law as an engine of social change

Comment [d27]: Brewer believed in limited government

Comment [d28]: Holmes was more of a moral relativist

13. The "Brandeis brief" was noteworthy because

(a) It consistently defended the rights of states against encroachment by the federal government;
(b) It consistently defended the rights of individuals against usurpation by state or federal government;
xx(c) It used sociological evidence in place of legal argument;
(d) It incorporated the "legal science" of Christopher Columbus Langdell.

Comment [d29]: See p. 464

14. The U.S. Supreme Court struck down economic regulation passed by states in response to the Great Depression based upon:

xx(a) The Article I power of Congress to regulate interstate commerce;
xx(b) The residual powers of states protected by the 9th amendment;
xx(c) The due process clause of the 14th amendment;
xx(d) The privileges and immunities clause of the 14th amendment

Comment [d30]: I meant to say "prior to the Great Depression" – there's no case in our materials about striking down state regulation **in response to** the Great Depression

15. In the "sick chicken" case, *Schechter v. U.S.* the Supreme Court struck down what kind of legislation?

(a) Regulations regarding transportation of chickens in interstate commerce;
xx(b) Regulations designed to prop up the price of chickens;
(c) Regulations insuring minimum health standards;
(d) None of the above.

Comment [d31]: The Court didn't object to legitimate regulation; it only struck down that aspect of the legislation that regulated the wages and hours of employees, which in turn would keep up the price of chickens.

16. When the Supreme Court struck down New Deal legislation, President Roosevelt responded by:

(a) Proposing amendments to the Constitution that would in effect overrule the adverse decisions;
(b) Expanding the number of Supreme Court justices;
xx(c) Delivering a "Fireside Chat" explaining why he thought the Supreme Court was not part of the "team";
(d) None of the above.

Comment [d32]: Roosevelt **proposed** an expansion of the Court, but it never happened

17. When the Supreme Court began granting broad deference to Congress to regulate the economy, it maintained its commitment to close scrutiny of regulations affecting

xx(a) Discrete and insular minorities;
(b) Businesses vitally affecting the nation's welfare;
(c) State and local governments;
(d) All of the above.

Comment [d33]: See Carolene Products

18. In *Palko v. Connecticut* Justice Cardozo wrote an opinion for the U.S. Supreme Court that held that

(a) The right to be protected from double jeopardy was a fundamental right;
(b) The 14th amendment required state law to conform to the limitations on the federal government contained in the Bill of Rights;
xx(c) The rights enumerated in the first ten amendments to the U.S. Constitution were incorporated into the 14th amendment only insofar as such rights were essential to a scheme of ordered liberty;
(d) None of the above.

Comment [d34]: No, the court rejected this claim

Comment [d35]: This would be "full incorporation," which was rejected

Comment [d36]: This is the idea of "selective incorporation"

19. *Erie v. Tompkins* affected the role of federal courts by

(a) Changing the standards for the admissibility of expert scientific testimony;
xx(b) Requiring federal courts to rely on state law in deciding the merits of diversity cases brought in federal court;
(c) Promoting the idea of a "federal common law";
(d) None of the above.

Comment [d37]: No, that was Daubert

Comment [d38]: That's what the court rejected in *Erie*

20. Martin Luther King's *Letter from a Birmingham Jail* responded to concerns raised by his fellow pastors. Which of the following arguments did King NOT make?

(a) There is a moral duty to disobey unjust laws;
(b) Unconstitutional laws can only be tested by civil disobedience;
(c) Segregation is sinful;
xx(d) The 14th amendment requires states to provide equal protection of the laws

Comment [d39]: King wasn't making a legal argument; he made a moral argument

21. In *Regents of California v. Bakke*, the Supreme Court considered an affirmative action plan in medical school admissions. The Supreme Court held:

xx(a) It is permissible to use race as a factor in admissions, but it is impermissible to designate a fixed number of places for minorities;
(b) A specific number of places in an entering class may be reserved for minority candidates, but only if that number is reasonable
(c) A specific number of places in an entering class may be reserved for minority candidates, but only if that number is justified by a compelling state interest;
(d) None of the above.

Comment [d40]: This is the distinction between a preference and a quota

Comment [d41]: Any fixed quota is unconstitutional

Comment [d42]: Same

22. In *Johnson v. Transportation Agency, Santa Clara County*, an employee sought to overturn a county's use of an affirmative action plan to address past gender discrimination. The U.S. Supreme Court held

(a) Gender discrimination was not as serious as race discrimination;
xx(b) Affirmative action could only be used to remedy past discrimination;
(c) Females could be preferred over males only when they were otherwise equally qualified;
(d) Unless the employer would be liable for employment discrimination in failing to hire members of one gender, employment standards must be gender-neutral.

Comment [d43]: The court may have thought this, but it didn't say so

Comment [d44]: The plaintiff in Johnson was more qualified, but still didn't ge the job

Comment [d45]: The court didn't require an existing finding of discrimination to engage in affirmative action

23. In *Romer v. Evans*, an amendment to the Colorado state constitution was challenged as an unconstitutional violation of the rights of sexual minorities. The U.S. Supreme Court held:

xx(a) The law was unconstitutional because it did not apply to all citizens equally;
(b) The law was unconstitutional because it granted special rights to one group over another;
(c) The law was unconstitutional because it invaded the privacy of individuals;
(d) None of the above.

Comment [d46]: This is what the court said

Comment [d47]: It was the proponents of the amendment who opposed "special rights"

Comment [d48]: Privacy wasn't the issue

24. In *Griswold v. Connecticut*, the U.S. Supreme Court declared unconstitutional a state law that restricted the availability of contraceptives. Justice Douglas' opinion relied upon:
(a) the 4th amendment's protection from search and seizure;
xx(b) the 1st amendment's right to freedom of association;
(c) the due process clause of the 14th amendment;
(d) All of the above.

Comment [d49]: None of the opinions relied on the 4th amendment

Comment [d50]: This was what concurring justices thought

25. *Roe v. Wade* struck down a Texas law that made abortion a crime. In finding a constitutional right to make determinations about whether to terminate a pregnancy, the majority held:

(a) Prior to the end of the first trimester of pregnancy, there is no medical reason for preferring childbirth over abortion;
(b) After the fetus reaches viability, the state has an interest in preserving the life of the fetus;
(c) During the second trimester, the state has a legitimate interest in regulating the practice of abortion;

xx(d) All of the above.

26. Advocates of same-sex marriage have drawn support for a constitutional right to same-sex marriage from each of the following EXCEPT:

(a) The equal protection clause of the 14th amendment to the U.S. Constitution;
(b) The principle of separation of church and state;
(c) State constitutional guarantees of equal protection;
xx(d) Freedom of contract.

Comment [d51]: This isn't part of the argument

27. As a result of the Defense of Marriage Act, passed by Congress in 1996, states

(a) Must give full faith and credit to the marriage laws of other states;
xx(b) May adopt laws that permit same-sex marriage;
(c) Are limited to recognizing marriage as between one man and one woman;
(d) None of the above.

Comment [d52]: No, the explicit limitation on giving full faith and credit is the reason for DOMA

Comment [d53]: DOMA is laissez-faire

Comment [d54]: See the previous answer

28. The Smith Act was passed by Congress to protect against subversion and espionage. The Supreme Court held that the government could punish speech only if

(a) it presented an immediate threat to person or property;
(b) it was made after the individual had been given fair warning that the speech was illegal;
(c) it occurred in interstate commerce;
xx(d) None of the above.

Comment [d55]: In *Dennis* the Supreme Court permitted a prosecution to prevent future threats

Comment [d56]: *Dennis* doesn't require fair warning

Comment [d57]: Not an issue

29. In *NY Times v. Sullivan* the Supreme Court held

(a) A public official can recover damages for defamatory speech if the speech is shown to be false and published with actual malice;
(b) The first amendment limits the power of states to enforce common law protections such as libel and slander laws;
(c) Even false speech enjoys constitutional protection;
xx(d) All of the above.

Comment [d58]: Each of these statements is true.

30. In *Engel v. Vitale* a prayer was read at the beginning of the school day over the public address system. The Supreme Court held:

xx(a) The participation of public officials in drafting the prayer violated the separation of church and state;
(b) Requiring students to listen to the prayer was a violation of the Establishment Clause;
(c) Prayers are unconstitutional unless they are purged of denominational preference;
(d) All of the above.

Comment [d59]: The Court held that even if the prayers were nondenominational and voluntary, they would still be unconstitutional

31. In *Employment Division v. Smith* an employee appealed the denial of unemployment benefits. The U.S. Supreme Court held:

(a) Freedom of belief is absolute, but freedom of action is not;
(b) A law that burdens religion is constitutional if it is a neutral law of general application;
(c) States may exempt religious believers from the application of laws burdening religion, but they are not required to;
xx(d) All of the above.

32. In 1966 *Miranda v. Arizona* the U.S. Supreme Court required states to exclude evidence that was obtained from criminal suspects in violation of the fifth amendment. Which of the following is NOT true?

(a) The protections of the fifth amendment to the U.S. Constitution apply to states as well as the federal government;
(b) Statements made by the defendant are excluded if they are obtained in violation of the warnings required in *Miranda*, but evidence obtained by other means is admissible to convict the defendant;
(c) In the decade that followed *Miranda*, crime in the United States increased substantially;
xx(d) Earl Warren's background as a defense attorney made him a target for popular attacks against the Warren Court.

Comment [d60]: This is true; even though crime wasn't *caused* by the decision

Comment [d61]: This isn't true because Warren was a prosecutor, not a defense attorney

33. When Congress attempted to substitute a "totality of the circumstances" test for the rigid prescription in the *Miranda* case, the Supreme Court responded by

xx(a) Rejecting Congress' right to decide questions of constitutional law;
(b) Permitting Congress to modify federal, but not state, rules of evidence;
(c) Remanding the case to a trial court to make determinations of fact;
xx(d) Expressing a preference for specific as distinguished from general guidelines.

Comment [d62]: Either this answer or D is acceptable

Comment [d63]: See the summary on pp. 552-53

34. In *Daubert v. Merrell Dow* the U.S. Supreme Court

(a) Expected the trial judge to be the gatekeeper for determining whether expert scientific testimony should be admissible;
(b) Required trial judges to permit the introduction of evidence even if the judge found the evidence unpersuasive;
(c) Liberalized the rules for the admissibility of scientific testimony;
xx(d) All of the above.

35. Karen Ann Quinlan was in a coma when her father asked for her to be removed from life support. The Supreme Court of New Jersey held

(a) There is no obligation to continue life support if in professional medical judgment the patient's condition is hopeless;
(b) There is an obligation to discontinue life support if the patient has previously denied permission for life support under such circumstances;
(c) Karen Ann Quinlan's father had the right to decide what Karen would want if she were capable of expressing herself;
xx(d) All of the above.

36. In *Washington v. Glucksberg* a group of physicians and patients asked a federal court to find a constitutional right to obtain assistance in committing suicide. In its opinion the U.S. Supreme Court held:

(a) There is a constitutional right to refuse treatment but no constitutional right to obtain assistance in taking affirmative steps to end one's life;
(b) The right to suicide is not a "fundamental liberty" protected by the due process clause of the 14th amendment;
(c) States are free to adopt laws that permit assisted suicide, but there is no constitutional right to such assistance;
xx(d) All of the above.

37. In *Lawrence v. Texas* the U.S. Supreme Court struck down a Texas law that prohibited homosexual sodomy. In doing so, the court:

xx(a) Relied on the "right to privacy" identified in *Roe v. Wade;*
(b) Extended the ruling in *Bowers v. Hardwick;*
(c) Held that discrimination on the basis of sexual orientation was unconstitutional;
(d) All of the above

Comment [d64]: *Bowers v. Hardwick* was the previous case that held that laws against homosexual sodomy *were* constitutional

Comment [d65]: The concurring opinion would have limited the holding of *Bowers* in that way.

Comment [d66]:

ANSWER SHEET (YOU MAY DETACH THIS SHEET, BUT PLEASE MAKE SURE YOU TURN IT IN ALONG WITH YOUR EXAM!

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