

Instructions:

This is a “take-home” examination. This exam is intended to be a learning exercise in itself and is designed to draw from all the material assigned and covered in lecture throughout the semester. You are permitted to use your casebook, notes, outlines and any other materials you would like to employ in order to answer the questions presented. However, during the period you are taking the exam, you are not permitted to collaborate with any other persons, students or otherwise; each of you are required to work separately and alone. Collaboration will be treated as a violation of the law school’s Honor Code and referred to the Associate Dean of Academic Affairs. From the moment you receive your final exam, I will cease answering any questions related to the course material.

The exam consists of two (2) essay questions and five (5) short answer questions. Answer all questions within the page limitations indicated for each; additional material in excess of the guidelines will not be considered or graded. Please make sure to stay on point and address the questions presented as thoroughly as you can. When discussing a prevailing legal standard, please make sure to address the dissenting viewpoints. The weight given to each section of the exam is noted by each section heading.

In terms of formatting, responses to the questions should be double-spaced using 12 point, Times New Roman, font.

NO IDENTIFICATION OF ANY KIND, OTHER THAN YOUR EXAM NUMBER, SHOULD BE PLACED ON THE EXAM ANSWERS YOU SUBMIT. Please make sure to number and include your Exam Number on each and every page of the exam answers you submit.

I. Section One: Essay Portion (*One-third (1/3) of the Overall Grade*)

1. In this course we discussed at length the issue of governmental regulation of abortion in the United States, Canada and Germany. For each nation (the United States, Canada and Germany) and citing to the materials we have covered in this course, please discuss the competing constitutional rights of persons and governmental interests courts have identified as being implicated by the governmental regulation of abortion and where these rights and interests are found in the text of each nation's constitution or in their general social/political order.

Please also discuss the differing methods the courts in each nation have employed for balancing these competing constitutional rights and governmental interests.

A complete answer will compare and contrast the differing methods the courts in each nation have employed for balancing the competing constitutional rights and governmental interests implicated by the governmental regulation of abortion and whether the practical effect of the balance struck in each nation is the same or different.

Limit your answer to no more than four (4) pages.

2. In this course we have discussed at length the question of "hate speech" in the context of freedom of expression in the United States, Canada and Germany. Please discuss the standards each nation (the United States, Canada and Germany) has developed with regard to content-based governmental regulations on expression and how these standards are employed in the context of "hate speech".

Please also discuss the role foreign law and/or international law plays (or doesn't play) in the constitutional standards each nation has developed to address the issue of "hate speech" in relation to freedom of expression.

A complete answer will compare and contrast the differing frameworks developed by the courts in the United States, Canada and Germany with regard to content-based governmental regulations on expression and, citing to specific examples, why differences or similarities exist.

Limit your answer to no more than four (4) pages.

II. Section Two: Short Answer Portion (*Two-thirds (2/3) of the Overall Grade*)

1. In no more than two (2) pages and citing materials we covered this semester, discuss the constitutional protections for freedom of expression developed within the defamation regimes in the United States and England with regard to matters involving public persons in relation to matters of public concern.

2. In no more than two (2) pages and citing materials we covered this semester, compare and contrast the manner in which the courts addressed the issue of entanglement of government and religion in the *German School Prayer Case*, the *German Classroom Crucifix Case II* and *Van Orden v. Perry*. Your analysis should include a discussion of the differing factual circumstances in each case and the presence or absence of governmental coercion and the impact such coercion (or the absence thereof) had on the courts' analysis.
3. In no more than two (2) pages and citing to materials we have covered this semester, discuss the role that international human rights regimes and international law have played (or not played) in the analysis employed by the courts in the United States, Canada and by the European Court of Human Rights in abolishing or limiting capital punishment (or extraditing persons to retentionist countries without assurances that capital punishment will not be sought) based on the individual right to life and/or freedom from cruel and unusual punishment (inhuman and degrading treatment).
4. In no more than one (1) page, compare and contrast the "Oakes" analysis under Section 1 of the Canadian Charter of Rights and Freedoms and the "strict scrutiny" analysis employed by the United States Supreme Court in relation to governmental infringements on fundamental rights.
5. In no more than one (1) page, please address one of the following questions (please select either (a) or (b) below to answer):
 - a) Citing materials we covered this semester (from any jurisdiction), discuss the difference between the "intrinsic" and "utilitarian" theories as to why freedom of expression exists within a constitutional system and how these theories can manifest themselves in case law.
 - b) Citing materials we covered this semester (from any jurisdiction), compare and contrast any three of the following constitutional principles: originalism, textualism, functionalism, practical concordance and purposive analysis.