

MIDTERM EXAM

State Constitutional Law (Spring 2024) | Professor Colin Doyle

INSTRUCTIONS

Exam Format

This exam has two parts.

Part I consists of two short answer questions. Part II consists of an essay question. The two parts are equally weighted as one half of your total grade.

On the Exemplify software, enter your answers to Part I under Question 101 and your answers to Part II under Question 102.

Given that you have four hours to complete this exam and two equally weighted parts, arithmetic and common sense may lead you to spend two hours on each part. But your mileage may vary. Four hours should be ample time to complete this exam. Whether and how you use the four hours is up to you.

The character limit for each of the three parts of the exam is 10,000 characters. Let's spell this out so that no one is mistaken. Part I (Question 101) has a character limit of 10,000 characters. Part II (Question 102) has a character limit of 10,000 characters. You can track the length of your answer with Exemplify's on-screen character count tool. Make sure that you are tracking the "characters with spaces" count, not the word count. The character limits apply to each part of the exam individually.

Do not exceed the character limits. Any writing beyond these limits will not be considered in evaluating your exam answers.

The purpose of the character limit is to encourage you to organize your answers and write clearly. You should spend a fair amount of time thinking and taking notes before starting to write your exam responses. A shorter answer that is focused and organized is much better than a longer answer that is disorganized and unfocused. You do not need to reach the character limit to perform well on this exam.

You can use contractions but do not use abbreviations unless those abbreviations are supplied in the fact pattern. If you use abbreviations that are not permitted, during grading those abbreviated words will be replaced with the full version of the word for determining the character count.

The events in the exam take place in the fictional state of Loyola. Like all other

states in the union, the state of Loyola is bound by Supreme Court precedent on issues of federal constitutional law that apply to the states. Unless otherwise specified, the state constitutional law cases that we have read from other states are persuasive, not binding, authority.

For every question on the exam, Loyola has the same state constitution. Pages 4-5 of the exam list out potentially relevant provisions from the Loyola state constitution. Not every provision will be relevant to every question. Page 6 of the exam lists out potentially relevant notes on Loyola's constitutional jurisprudence.

If you believe that you need to know facts that the questions do not provide, please state the assumptions explicitly and proceed to answer the question. But please read the questions carefully. Do not waste your time and character count by addressing issues that are not raised by the facts specified in the question.

Reliance on materials not covered by the course — including cases, other legal authorities, law review articles, treatises, and hornbooks — will not be credited when evaluating your answers.

Confidentiality

This exam is confidential. You may not share or discuss the exam — including its contents or your answers — with anyone at any time after you receive the exam, or after the other person has received the exam, until the midterm grades are posted. In answering the questions on this exam, you may not ask others for help, and you may not ask computer software to generate the text of any part of your exam answers. Violation of these rules constitutes prohibited conduct under Section 11.1 of the JD Handbook and similar rules in Handbooks for Graduate Programs.

Exam Questions

Any questions about the exam that arise during the exam must be directed to the Office of the Registrar, not the professor. The Office of the Registrar may be contacted in person at the office located in Founders Hall, Room 105, by phone at 213-736-1130, by email at registrar@lls.edu, or by chat on the Office of the Registrar's website at <https://www.lls.edu/academics/officeoftheregistrar/>.

You are not permitted to contact the professor concerning any exam-related questions until midterm grades are posted, because it is important to preserve anonymity during the exam administration process.

Anonymity

Use your 7-digit LLS ID Number on this exam. Do not include your name and do not make any remarks that will jeopardize your anonymity or anyone else's

anonymity on the exam before the exam grades are posted.

LOYOLA CONSTITUTION

For every question on the exam, Loyola has the same state constitution. This page lists out potentially relevant state constitutional provisions. Not every provision will be relevant to every question.

Article 1, § 1

That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of those ends they have at all times, an inalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper.

Article 1, § 2

The dignity of the human being is inviolable. All people have certain inherent and inalienable natural rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

Article 1, § 3

No person shall be denied the equal protection of the laws. All laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens.

Article 1, § 7

All people have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no person can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against their consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship.

Article 1, § 9

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article 1, § 15

No person shall be deprived of their property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of their life, liberty, or estate, without due process of law.

Article 1, § 20

Both male and female citizens of this State shall enjoy equally all civil, political, and religious rights and privileges.

NOTES ON LOYOLA CONSTITUTIONAL JURISPRUDENCE

For provisions of the Loyola state constitution that are worded similarly to provisions in the federal constitution, the Loyola Supreme Court adopts the U.S. Supreme Court's interpretation of the provision unless the Loyola Supreme Court finds a "compelling reason" to interpret the provision differently.

When the language of the Loyola state constitution differs materially from the federal constitution, the Loyola Supreme Court does not defer to the U.S. Supreme Court's interpretation of federal provisions but will carefully consider how other state supreme courts have interpreted similar provisions. With provisions that are present in the state constitution and absent in the federal constitution, the Loyola Supreme Court has repeatedly found that the state constitution offers greater rights guarantees than the federal constitution.

The Loyola Supreme Court has adopted the tiers of scrutiny from federal constitutional law: strict scrutiny, intermediate scrutiny, and rational basis review. The Loyola Supreme Court has commented that the rational basis standard of review in Loyola "is not a toothless one."

PART I (QUESTION 101) SHORT ANSWER QUESTIONS

Question 1

Five years ago, the State of Loyola passed a statute that prohibits public universities from considering national standardized test scores, like the SAT, as part of its admissions criteria for undergraduate programs. The law was passed out of a concern that the use of standardized tests created race and class inequities in college admissions, as the average scores on standardized tests tend to be lower for lower-income, Black and Hispanic students than for upper-income, white and Asian students. Over the past five years, public universities in Loyola have regularly admitted fewer lower-income Black and Hispanic students than before. Critics of the law contend that this is because the remaining, discretionary parts of the admissions process have even larger racial and economic disparities than standardized test scores.

You are a junior lawyer at a firm with a strong pro bono practice specializing in education rights. Your clients are a group of lower-income, Black and Hispanic students who performed well on the SAT but were denied admission to public universities in the State of Loyola. These students want to challenge the constitutionality of the statute that prohibits the consideration of standardized test scores.

A partner at your firm has asked you to write a persuasive memo advancing the strongest legal argument for your clients under Article 1, § 3 of the Loyola constitution.

Question 2

A case has recently come before the Supreme Court of the State of Loyola.

Yasmin Day and David Yu are now divorced. When they were married, they planned to have children and underwent in vitro fertilization (IVF) treatment. With IVF treatment, doctors retrieve eggs from a woman's ovaries through a minor surgical procedure. In a laboratory, the collected eggs are fertilized with a man's sperm to produce fertilized embryos. If the process produces a fertilized embryo, that embryo is then transferred to the woman's uterus. The IVF treatment proved successful. Day and Yu have one daughter, Iris, who is now four years old. The treatment also resulted in five frozen embryos that are currently stored at a fertility clinic in the State of Loyola. Shortly after Iris turned two, Day and Yu separated and later divorced. Day and Yu have joint custody of Iris, who splits her time evenly between both households.

Day and Yu were able to agree upon all the terms of their divorce except for the disposition of the frozen embryos. When Day and Yu signed up for the IVF treatment, they did not execute a written agreement specifying what should happen to the unused embryos. Day would like the embryos to be destroyed. Yu wants the embryos to be preserved. Day claims that she cannot feel closure on this chapter of her life knowing that those embryos are still being kept viable. Day would like to start new, serious romantic relationships but feels that the existence of these embryos is preventing her from starting her new life. Yu wants to preserve the embryos. Yu is concerned that if he and Day ever reconcile their differences and get back together but their embryos have been destroyed, then he and Day will not be able to have another child because future IVF treatment may not be successful.

A Loyola state statute provides that in the case of a dispute over the disposition of frozen embryos, absent a written agreement specifying what should be done, the provider of the egg has exclusive authority over the embryos. Day asserts that under the state statute, she has the right to dispose of the embryos. Yu is challenging the constitutionality of the state statute under Article 1, §3 and §20 of the Loyola state constitution. The trial court and court of appeals ruled that the statute was constitutional and that Day has the right to dispose of the embryos.

The only issue on appeal is the constitutionality of the state statute under Article 1, §3 and §20 of the Loyola state constitution. Write both the majority opinion and a dissenting opinion for the Loyola Supreme Court on the constitutionality of the statute. Please note that if the Loyola Supreme Court rules that the state statute is unconstitutional, the case will be remanded to the lower courts to resolve remaining constitutional issues of the parties' fundamental rights to preserve or dispose of the embryos. Those issues should not be resolved in your majority or dissenting opinions.

PART II (QUESTION 102) ESSAY QUESTION

You are a law clerk for Justice Hahn, a newly appointed justice of the Loyola Supreme Court. An interesting new case has been filed in a trial court in the State of Loyola. In anticipation of the case one day reaching the Loyola Supreme Court, Justice Hahn has asked you to write an objective memo assessing potential state constitutional law claims in this case.

April Mullen and Kiera Crawford are women, U.S. citizens, and residents of Loyola. For the past five years, Crawford and Mullen have been romantically involved with one another and recently purchased a home together. Crawford and Mullen would like to marry each other. They applied for a marriage license but were denied. Mullen's father and Crawford's father are brothers, making Mullen and Crawford first cousins. Loyola state law prohibits first cousins from marrying one another. Loyola Code Ann. § 607.13 "Prohibited marriages; exceptions," reads, in relevant part:

A man may not marry his mother, grandmother, daughter, granddaughter, sister, brother's daughter, sister's daughter, father's sister, mother's sister, the daughter of his father's brother or sister or the daughter of his mother's brother or sister. A woman may not marry her father, grandfather, son, grandson, brother, brother's son, sister's son, father's brother, mother's brother, the son of her father's brother or sister or the son of her mother's brother or sister. A person may not marry that person's parent, grandparent, child, grandchild, sibling, nephew, niece, aunt or uncle.

The statute was passed in 1995, fifteen years before the Loyola Supreme Court recognized a state constitutional right to same sex marriage in *Santana v. Bowen* (2010). In *Santana v. Bowen*, the Loyola Supreme Court adopted the reasoning of the Massachusetts Supreme Judicial Court in *Goodridge v. Department of Public Health*, finding a right to same-sex marriage on overlapping due process and equal protection grounds. 98 N.E.2d 941 (Mass. 2003).

Mullen and Crawford are now challenging the ban on first cousin marriage on multiple grounds. First, they contend that the statute by its text does not apply to them: even if the statute were constitutional, it should not prohibit Mullen and Crawford from obtaining a marriage license. Second, if the statute does apply to them, they contend that it violates their right to due process and equal protection under Article 1, §§ 1, 2, 3, 7, 15, and 20 of the Loyola State Constitution.

The State of Loyola contends that the statute does apply to Mullen and Crawford: Even though the statute was enacted prior to the recognition of same-sex marriage in the state of Loyola, the statute should be interpreted to apply to same-sex couples both as an ordinary matter of statutory interpretation and under Article 1, §§ 3 and

20 of the Loyola State Constitution. The State of Loyola also contends that the Loyola State Constitution does not guarantee an unenumerated right to first cousins being able to marry one another. The State contends that such a right is not rooted in the state's history and that the statute serves important state interests in promoting public health and morals, providing a positive setting for procreation and family life, and fostering a diverse community.

Your job is to write a memo assessing any potential state constitutional law claims and advising Justice Hahn how to rule in this case. Justice Hahn does not subscribe to a particular interpretive method but is eclectic in the methods she uses to understand statutes and constitutions. In your brief time working for her, you know that she takes constitutional interpretation seriously and wants to decide cases correctly.

As another clerk has been tasked with writing a memo concerning any federal constitutional law claims, your memo should only address state constitutional law claims.

Some other information that may be worth considering:

The state of Loyola initially banned first cousins from marrying in 1868 when the state passed a series of statutes regulating marriage. These statutes included provisions regarding the statutory age for marriage, property rules, and (now repealed) bans on interracial marriage.

Recent scientific studies have found that the risk of serious genetic defects in the children of first cousins is 1.7 to 2.8 percentage points higher than for children of unrelated parents, who face a 3 to 4 percent risk of serious genetic defects. The study also found that the risk of mortality for children of first cousins was 4.4 percentage points higher.

No other state has recognized a constitutional right for first cousins to marry. Some states have statutes prohibiting marriage between first cousins; some states have statutes permitting marriage between first cousins; and some states have statutes permitting marriage between first cousins under certain conditions related to age and fertility.

END OF EXAM