

Examination number \_\_\_\_\_

UNIVERSITY OF MISSOURI SCHOOL OF LAW

Professor Carl H. Esbeck

Spring Semester 2013

**Religious Liberty, 5865L**

**Directions to Essay Examination**  
**(2 hours and 30 minutes)**

Place your examination number in the upper, right-hand corner of this page. When finished, return these examination questions and submit your answers.

Arrange your answers in sequential order. That is, put your answer to Question 1 first, then Question 2, then Question 3, and etc.

Answer the question asked. Answer only the question asked.

You may bring with you into the examination room your casebook, TWEN handouts, cases and statutes that were assigned, and your own classroom notes. You may bring a course outline if it is entirely your own work product. No other materials are permitted.

You are encouraged to use your laptop to complete the examination.

If you do not use your laptop, write your answers in the bluebook provided. Use a pen with blue or black ink. Write on only one side of each page. Do not write in the left-hand margin. Do not tear pages out of the bluebook. Do not insert your scratch paper in your bluebook.

**\*\*\* Question 1 Begins on the Next Page \*\*\***

## ESSAY EXAMINATION (2 hours and 30 minutes)

**Question 1 (25 minutes):** Mary, an unmarried female, is hired as a secretary at Bethel Christian School, a K-6 elementary school operated by First Assembly of God Church. In addition to Mary, the school has about 200 students, seven teachers, and a principal. All employees are members of the Church, as is required as a condition of employment. After working at Bethel School for two years, Mary announces her engagement to marry next June. When Mary does not soon thereafter tender her resignation effective before her wedding date, she is told by the principal that her contract will be terminated in June when school gets out for summer. The reason given is the biblical belief that married women should be in the home and anticipating children. Mary gets a lawyer and sues the Bethel School alleging sex discrimination in employment (there are married male employees). The school denies liability raising the defense that Bethel is a religious organization that may lawfully discriminate on a religious basis.

Mary's lawyer is considering three responses to the Bethel School's defense:

- (A) The asserted religious belief does not exist.
- (B) The asserted religious belief is not important.
- (C) The asserted religious belief exists but is not the real reason.

Are any of these three responses permitted by the First Amendment? Explain.

### **Question 2 (25 minutes):**

(A) Explain the "federalism clause" theory of the Establishment Clause and why it matters.

(B) Is the "federalism clause" theory of the Establishment Clause persuasive? Explain.

**Question 3 (25 minutes):** In *Mozert v. Hawkins Sch. District* (1987) the rule was that the mere exposure to religiously offensive ideas while attending public school failed to violate a student's right to religious freedom. However, in cases such as *Engel v. Vitale* (1962) and *Schempp* (1963) a public school student's mere exposure to prayer and devotional Bible-reading was found to violate the student's religious freedom. Can these cases be reconciled? Explain.

**Question 4 (25 minutes):** One major consequence of *Christian Legal Society v. Martinez* (2010) was to deny to a campus religious student organization a First Amendment right to select its own leaders. On the other hand, *Hosanna-Tabor Lutheran Church & School v. EEOC* (2012) upheld a First Amendment claim by a religious school that it had the authority to select its leaders. Did *Hosanna-Tabor* overrule *Martinez* insofar as religious organizations have a First Amendment right to select their own leaders? Explain.

**Question 5 (25 minutes):** With respect to the Affordable Care Act's contraception mandate, recall that a "religious employer" is exempt from the mandate. The definition of "religious employer" is narrow. Such an employer has to be nonprofit and is essentially a church or other house of worship, or a religious order such as the Benedictines or the Franciscans. Religious organizations outside the definition complain that the distinction is that some are "not religious enough," in the view of the government, whereas others are "religiously approved," thus receiving the government's imprimatur.

Does the exemption from the contraception mandate for a "religious employer" violate the Establishment Clause? Explain.

**Question 6 (25 minutes):** The e-mail that is reproduced below was sent from the MU School of Law by a member of the secretarial staff to the law school community as one item listed in a weekly notice of upcoming events, e.g., make-ups, student organization meetings, guest speakers, CLEs. The Buddha Day event was listed 12th out of a total of fifteen events listed. Does the Buddha Day listing violate the Establishment Clause? Explain.

**Sent:** Thursday, April 25, 2013 12:55 PM  
**To:** MU LAW Everyone; MU LAW 3L; MU LAW 2L; MU LAW 1L  
**Subject:** Upcoming Law School Events, April 26- May 3

| Buddha Day   |
|--|
| Event Type: Other  |
| Event Description : Buddha Day, or Vesak, is a celebration that commemorates the Buddha's birth, enlightenment, and death, and his passing into nirvana. It is named for the month of May and is celebrated on the first full moon of May. Vesak is the most important holiday in the Theravada Buddhist countries of Southeast Asia. though its |

observance varies from culture to culture. In the United States, it has become the occasion for a common celebration that unites different Buddhist traditions and schools, Asian and non-Asian, immigrant and convert, Theravadin and Mahayana (for different schools of Zen, which is a tradition of the Mahayana school of Buddhism, the Buddha's birthday is celebrated according to a different calendar and falls on April 8; his enlightenment and death are also assigned to different days). Vesak celebrations are a time for the rededication of one's commitment to the Buddha's teachings and to practice.

Date : 5 May 2013 – Wat Angkor Buddhist Temple,  
Hallsville, MO 7 p.m.

\* \* \* End of Examination \* \* \*

**Turn in these examination questions and submit your answers.**