

**Constitutional Law II—Spring 2025**

**Kern County College of Law (Prof. Bennett)  
& San Luis Obispo College of Law (Prof. Wagner)**

**Final Exam**

Instructions:

Read each question carefully. This exam tests your understanding of the material covered in Con Law II. You do not need to include any matter from Fall (Con Law I).

*Question 1* is a 1-hour question, worth 100 points.

*Question 2* is a 1-hour question, worth 100 points.

*Question 3* consists of four short answer questions, each worth 25 points, and you should spend one hour on all four, that is, approximately 15 minutes each.

Be sure to discuss both sides of the argument—do not be conclusory.

## Question #1

The Daley City Star newspaper reporter, Megan Kind, received a voice mail from a disguised voice, “Hey Megan, I know you cover the courts. You need to know that Charlotte Brown is hiding evidence that Winnie Adams killed Beau Diddley. I have proof.”

Charlotte Brown was the District Attorney, Winnie Adams was the owner of a well-known local restaurant, and Beau Diddley was a local rock ‘n roll guitarist and a member of Beau’s Backstreet Boys—the headliner every weekend at the biggest nightclub in town.

Beau’s body had been found days before in the middle of a downtown intersection at 2 a.m. and the coroner determined he had died from multiple stab wounds. Megan knew that Charlotte and Winnie were best friends and had been since kindergarten. Megan also knew that Winnie and Beau had been dating for several years, but the rumor was that Beau had a new girlfriend.

Megan was intrigued and saved the voicemail. The next day, she received another voicemail from the same disguised voice, “Hey Megan, if you’re interested in what I called you about, meet me at the city parking garage, level C-1 tonight at 10.” When she arrived, Megan saw a darkly clad figure riding a scooter, who drove toward her and tossed an envelope at her feet. Inside were investigation reports, including one reporting that Winnie had confessed to killing Beau in a fit of rage over his new girlfriend. Another report indicated Charlotte had read the confession but was discounting it. At a press briefing the next morning, the police chief and Charlotte agreed they had no suspects in Beau’s murder.

Megan immediately drafted a story for the front page. The editor was intrigued but concerned, so he sent the story, the envelope and its contents, and the two transcribed voicemails to you—the attorney for the Daley City Star.

What constitutional concerns arise, if any? What legal advice do you give the editor and Megan? Discuss.

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## Question #2

Mary is a devout Roman Catholic. She attends mass every day and believes the Roman Catholic Church, headed by the Pope in Rome, is the only true Christian church. She refuses to go to weddings, baptisms, funerals or any other activity in any church but a Catholic church.

Debbie and Darrell are high school sweethearts who married while in college. Both are seeking theology degrees and upon graduation will become licensed United Methodist ministers.

Mary owns a bakery and makes cakes for all occasions. Debbie and Darrell and their extended families have always purchased baked goods from Mary, including beautifully decorated cakes for many family events, including Debbie and Darrell's wedding.

The state in which Debbie, Darrell, and Mary live and in which Mary does business has an anti-discrimination statute, which among other things, covers religion: "All persons within the jurisdiction of this state are free and equal, and no matter what their ... religion... are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

Debbie and Darrell are planning a large reception to celebrate their ordinations. The party will be for friends and family, as well as their parishioners at the local United Methodist Church where they currently serve as youth ministers.

Debbie went to Mary's bakery and discussed having elegant cake prepared for the celebration. When Debbie told her the Bible verse she wanted on the cake and gave Mary a picture of the "Cross and Flame"—the United Methodist Church logo—to pipe onto the cake, Mary refused the order. She told Debbie, "The only true church is the Roman Catholic Church. If you do not follow the Pope, it is a sacrilege. I cannot support anyone who supports any reform ideology. I will not support the United Methodist Church."

Mary's words stung Debbie. She left the bakery, went to another bakery and placed the order. When she got home, she told Darrell about her experience. They agreed she should sue Mary for religious discrimination.

What are Debbie's claims? Discuss

What are Mary's defenses? Discuss

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### Question #3

#3-A.

Beth suffers from an incurable disease that will cause her death within the next two years. A new drug could provide a cure. The drug is currently in animal testing; if those tests are successful, human testing will begin, but not for at least three years. Beth has petitioned the various federal agencies responsible for the testing protocols to obtain permission to receive the drug now. She is willing to waive all legal rights and provide informed consent. The agencies have all denied her request because of safety concerns. She sued the federal government for permission to take the drug. What is Beth's best constitutional argument? What result?

#3-B

In response to a series of studies in federal prisons showing that prisoners who engage in weekly worship are less likely to re-offend, the Attorney General sends an administrative order to the wardens that they are not to burden religious worship or practices by inmates in any way. Several wardens are troubled by this order because of certain religious practices they see in the institutions including a group who claims White Supremacist views are a religion. The wardens fear prison violence as a result. The wardens ask the Attorney General to repeal the order. What should the AG do and why?

#3-C

City has a series of municipal ordinances. One restricts loud music that interferes with peaceful enjoyment anywhere in City. And yet another restricts speeches in the business district to between 6:00 p.m. and 8:00 p.m. David opposes the mayor of City. He decides to paint a sandwich-type sign reading, "The Mayor is a dumb fraud. Kick him out!" with a caricature of the mayor as an elephant being kicked in the rump as he rolls down a hill. Can the mayor stop David's protest (in whole or in part, why or why not), if David protests by wearing his sign, while singing "The Times They Are a' Changin'" and playing his electric guitar and harmonica on the street in front of city hall during business hours?

#3-D

For many years, during the month of December City Hall has hosted a 20 foot tall Christmas Tree (sponsored by the local interfaith council), a similarly sized Menorah (sponsored by the local Jewish temples), and a 6 foot diameter Earth with a banner reading "Mother Earth Fellowship wishes you a happy Winter Solstice" (sponsored by the Mother Earth Fellowship, a neopagan religious group). The newly elected Mayor believes the symbols are all unconstitutional. The Mayor asks you, a prominent local attorney, if he should allow the symbols this December. What advice do you give and why?

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## ANSWER OUTLINE

### CONSTITUTIONAL LAW – KCL & SLO

Profs. Bennett & Wagner

Q1:

- I. **Students may be tempted to run directly to *Times v. Sullivan*, but they need to explain why they get there. The first issue is what is the editor's concern? It is truth or falsity of the story and what happens if it is false.**
- II. **Libel**
  - A. ***False and unprivileged; writing, printing, other fixed representation; exposing someone to hatred, contempt, ridicule, or causing them to be shunned or injured in their occupation.***
  - B. ***Application***
    1. *Don't know if it is false but intended to be printed in newspaper.*
    2. *Shunned or injured in occupation (Charlotte)—can anybody trust this DA. Hatred, contempt, or ridicule (Winnie)—murderer.*
    3. *Real issue is privilege*
- III. **First Amendment issue is "privilege"**
  - A. ***Why is there possibly a privilege?***
    1. *Freedom of speech and press*
    2. *Matter of public concern (murder)*
  - B. ***About a public figure or private figure?***

Students need to discuss *NY Times v. Sullivan*.

    1. **Charlotte—is she a public figure?**

Charlotte is the District Attorney, typically an elected official, therefore a public official (public figure). This affects the Burden of Proof.  
P must prove "actual malice" by clear and convincing evidence—knowledge of falsity or reckless disregard of its truth or falsity.  
What facts tend to show malice? No evidence it is actually false.  
Reckless disregard: Unverified reports received from an anonymous source, not from police or DA's office. Charlotte and police chief say no suspects, which contradicts reports.
    2. **What should Megan do to avoid actual malice—advice re Charlotte?**

Call Charlotte and report consequences: Charlotte's denial or her failure to respond
    3. **Winnie—is she a public figure?**

Winnie is a business owner. Popular restaurant. Girlfriend of local celebrity guitarist. Does that make her a public figure—no. So what's her burden of Proof  
P must prove negligence in publishing the false statement, meaning D failed to use reasonable care to determine its truth or falsity.  
What facts tend to show Negligence: Unverified reports received from an anonymous source, not from police or DA's office. Charlotte and police chief say no suspects, which contradicts reports.
    4. **What should Megan do to avoid negligence—advice re Winnie?**

Call Winnie and report consequences: Winnie's denial or her failure to respond. Might take more than that because negligence is a lower standard than recklessness. May need to seek corroboration.

Q2:

- I. This question requires the students to grapple with competing first amendment rights. Students should talk about the fact that the cake and website cases concern state statutes that protect fundamental, but unenumerated rights. Here, the statute is applied to protect an enumerated right.
- II. Debbie's claim is violation of discrimination act.
  - A. **Debbie cannot make a 1st A claim—Mary is not a government actor.**
  - B. **State prohibits businesses from discriminating on the basis of religion**
    1. *Mary expressly said she would not accept the order because of Debbie's religion*
    2. *Students might discuss that Debbie, as a minister, should be conscious of 1st A issues, not want to burden another person's free exercise.*
- III. **Mary's defenses**
  - A. **1st A – Congress shall make no law respecting establishment of religion or interfering with the free exercise thereof.**
  - B. **14th A – applied to the states**
    1. *State antidiscrimination statute interferes with Mary's free exercise rights*  
Mary has a right to practice her religion as she sees fit  
Smith test  
Court is moving away from Smith test – Masterpiece, 303—Strict Scrutiny?
    2. *State antidiscrimination statute interferes with Mary's free speech rights*  
Freedom to avoid speech  
Freedom from compelled speech
    3. *But isn't Mary's refusal interfering with Debbie's rights of religion and free speech? How should the court handle the direct competition between enumerated rights?*

Q3-A:

Is there a fundamental Right? What is the fundamental right? Is there sufficient justification for the infringement? (animus, state's interests). Is the infringement sufficiently related to the state's purpose? No court case has ever concluded that people have a fundamental right to medical care, a particular form of medical care, or a right to take any drug they desire.

Q3-B:

While government may not interfere with free exercise absent a legitimate governmental interest, the government has a legitimate interest in the safety of prisons. The AG's order is too broad ("in any way")—oversteps what the cases say about free exercise. The Wardens have raised a legitimate concern about what that might mean for safety. The AG should rescind the order. Rescinding the order would not change the inmates' rights to freedom of religion.

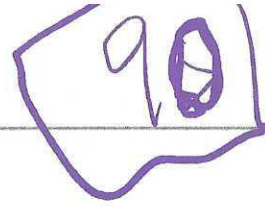
Q3-C:

1st A, through the 14th.

- A. **Are the restrictions content based?**
  - 1. *Music—no, doesn't matter what kind of music or where and not outlawed.*
  - 2. *Speeches—maybe, why that restriction in the business district? Maybe legit for businesses to operate, but also restricts political speech to a time when not very many people are around.*
- B. **If content neutral, is it legit time place manner restriction?**
  - 1. *Loud music at anytime, probably because of the injury to persons that can result—hearing, can't think or function. No rule against music, only how loud it is. So maybe the Mayor can make him stop playing the guitar?*
  - 2. *Speeches during business hours? Make him come back at 6? But if not neutral?*

Q3-D:

- I. **Students should recognize the Lemon Test would apply but for Kennedy and discuss both.**
  - A. **Under Lemon: 1. secular purpose; 2. neither advances nor inhibits religion; 3. avoids excessive entanglement.**
    - 1. *Secular? Traditional with both religious and secular interpretations (tree & menorah), earth is secular. All put up together, similar size, no focus on particular dogma/doctrine.*
    - 2. *Neither advances/inhibits: Nothing tells people to go to a particular church nor believe anything in particular.*
    - 3. *Entanglement: Administrative support/government location. Admin may constitute excessive entanglement, so maybe unconstitutional. But case where creche was included with other symbols met the test. So unlikely.*
  - B. **Under Kennedy: Does conduct conform to historical practices and understandings?**
    - 1. *Conforms to historical practices: city has historically included all 3; similarly sized;*
    - 2. *question whether celebration of Winter Solstice is historical practice/understanding, but the symbol and message are secular. So unlikely to be unconstitutional.*



1)

LEGAL CONCERNS REGARDING REPORTING ON THE DEATH OF BEAU DIDDLEY AND THE CLAIMS MADE BY THE DARK CLAD FIGURE:

DEFAMATION AND THE FIRST AMENDMENT

Although defamatory speech is considered to not be protected speech under the first amendment, the first amendment will still limit a state's ability to allow plaintiffs to recover for defamation actions.

If the plaintiff is a public official (i.e., an elected official or candidate) or an public figure(i.e, someone who has thrusted themselves in the limelight) then the plaintiff must meet a high standard to be able to recover in a defamation action in that they must:

1. Prove the falsity of the statement made,
2. and prove the defendant was acting with actual malice--meaning that the defendant knew the statement was false or acted with reckless disregard as to its veracity.

Here, we know that Winnie Williams is a well known restaurant owner and the girlfriend of Beau Diddy, therefore she is not a public official. Additionally, her capacity as a restaurant owner and the girlfriend of a local rocker does not rise to the qualification of her "thrusting herself into the limelight." Thus Winnie would not be beholden to the constitutional restrictions applicable when a plaintiff in a defamation action is a public figure of public official.

In regards to Charlotte Brown, she is the district attorney--an elected official. Thus Charlotte will qualify for the constitutional restrictions regarding public officials.

Charlotte could only succeed in an action for defamation if she could prove that the statements provided by the dark clad figure that would end up in the story were indeed false. Additionally, it would be wise for the newspaper and Megan to vet the veracity of the reports provided by the dark clad figure at least with due diligence--that is because, Charlotte may only prevail if she can prove that the daley star and megan acted with actual malice--meaning the defendants would have to have known the statement was false or just been so reckless as to the truth of the statement.

If the plaintiff is a private individual who is seeking defamation in regards to a matter of public concern (i.e, a matter concerning democracy, the democratic process, or other matters important to society) then the plaintiff must prove:

1. falsity of the statement made,
2. and must prove at the least negligence on the defendant's party in assessing the veracity of the statement.

In order to obtain punitive damages, the private plaintiff must prove actual malice (defined supra).

As determined supra, Winnie is a private individual as the definition applies to defamation actions. However the murder of Beau Diddley, a local rock star, is a matter of public concern in Daley City, especially if you combine the factors of his local stardom and a murder case.

Thus, Winnie would face less stringent requirements than Charlotte in her defamatory action against the Daley Star and Megan, in that she would only have to prove the falsity of statements accusing her of murder and she would only have to prove negligence on the part of the defendants to be awarded damages.

Again, Winnie could even be awarded punitive damages in this scenario if Megan and the Daley Star could be found to have known the statement is false or was extremely reckless as to the statement's veracity.

If the plaintiff is a private individual who is seeking defamation in regards to a matter not of public concern, then there are no constitutional restrictions to their defamation action and they are free to be awarded presumed or punitive damages without proving actual malice, but that would not apply to Charlotte or Winnie.

*NO - negligence req'd.*  
*As what advice about Winnie?*

THE PRESS HAS A RIGHT TO BROADCAST MATERIAL OBTAINED ILLEGALLY

*Charlotte*

The press will be protected to broadcast news information that may have been acquired illegally so long as the press played no part in illegally obtaining said information and if the matter is of public concern (defined supra).

Here, Megan was called by an unknown person who claimed to have information on the Beau Diddy murder. It is reasonable to surmise that this person illegally obtained the investigation reports that seem to implicate Winnie in the murder and implicate Charlotte of obstructing justice. However,

Megan played no role in illegally obtaining the reports she simply went to meet a source for a news story. Here, the information given to Megan is a matter of public concern because it involves the murder of Beau Diddly, which no doubt has captivated Daly City's attention, because he was a headliner every weekend at the most popular night club in town. Even if, Beau's stardom alone does not make it a matter of public concern, his murder surely does.

Thus, Megan and the Daley Star would not be held liable for broadcasting illegally obtained information regarding the beau diddly murder.

CONCLUSION:

There are legitimate concerns in publishing this article, that can, for the most part be cured if the newspaper and Megan exercise due diligence and properly vet the information provided by the dark clad figure.

*But isn't what is required different for public vs private figure?*

2)

DEBBIE'S CLAIMS AGAINST MARY

90

nice job

Here, Debbie would be able to sue Mary on the grounds specified the state's anti-discrimination statute. The law clearly states that everyone in the state are free and equal and are entitled to all services in all business establishments regardless religion. Here, Mary refused to provide baking services to Debbie specifically because of Debbie's religion. Therefore, Debbie would be able to bring action against Mary for violating the anti-discrimination statute.

MARY'S DEFENSES:

FREE EXERCISE CLAUSE

The free exercise clause of the first amendment prohibits the enactment of any law abridging one's rights to practice their religion.

- LAWS OF GENERAL APPLICABILITY

However, it is well established that the free exercise clause cannot be employed to challenge the laws of general applicability(i.e, laws that are applied across the board and are neutral to religion). If it is found that a law does indeed aim to interfere with the practice of a religion, well then the law would have to pass strict scrutiny--meaning that the government action would have to be necessary to achieve a compelling government interest with no less discriminatory alternative.

Here, Debbie would argue that the state's statute violates the free exercise clause in that it abridges her ability to practice the religion of Catholicism. However, that argument will fail because the state's anti-discrimination law is one of general applicability. The word "all" is prevalent throughout the language of the statute and it does not single out Catholicism.

Thus, Mary's defense claiming the statute violates the free exercise clause of religion will fail.

ESTABLISHMENT CLAUSE

The establishment clause provides that the government shall enact no law in respect to the establishment of religion. This clause requires the government pursue a neutral course towards religion in that government action should not be coercive(i.e, should not force one to practice or

refrain from practicing a religion) and it should not exhibit any preference of one sect over the other. Additionally, in cases not related to financial aid, government actions that burden a religion specifically will typically be found to be invalid under the establishment clause.

Here, Mary will argue that the state's statute violates the establishment clause because it is coercive in nature and perhaps exhibits favor the United Methodist church because it forces her to produce a cake for an infidel when she is very religious and refuses to recognize other religions.

#### LEMON TEST:

Under the lemon test, a violation of the establishment clause will not be found and strict scrutiny will not be required if the government action is:

1. secular in purpose,
2. neither advances or prohibits religion,
3. and does not encourage excessive entanglement between government and religion.

Here, the state's anti-discrimination statute is indeed secular in purpose and nature, and has been enacted for the secular purpose to prevent discrimination in the state. The language of the statute does not advance religion or prohibit religion. However, for the most devout of religious followers who feel compelled to discriminate, this requirement to provide services and business to all people may indeed feel like a prohibition on their religion. In analyzing a so-called entanglement between the government and religion, it is urged to examine whether it is difficult to see where on the spectrum the roles of government and religion begin and end. If there is significant overlap then there is an entanglement. However, here the law on its face is secular in purpose and nature and should not encourage an excessive entanglement.

Thus, the law would pass the Lemon Test, and if the test still controlled, then Mary's defense would be defeated.

*Interest* The lemon test has since been overruled by the Kennedy test that provides that a violation of the establishment clause will be found if the government action coerces one to practice a religion (or refrain from practicing a religion). The test also considers the framers' (of the constitution) intent to the accommodation of religion.

Mary would argue that the law is coercing her to refrain from practicing her religion, and would attempt to utilize the notion of religious accommodation and its importance to the framers as reasoning for finding that the law violates the establishment clause.

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*not really establishment*

While the Kennedy test represents her best chance to prevail, Mary's argument will still fail because the law does not prohibit her from practicing her religion.

Additionally, even if the law was found to violate the establishment clause, it may very well pass strict scrutiny (defined supra) because it is necessary to achieve a compelling governmental interest in anti-discrimination. The government would have the burden to prove that there are no less restrictive alternatives and that the action is necessary to achieve the compelling governmental purpose.

#### OVER-BREADTH

A law will be found to be over broad if it seeks to regulate more speech or conduct than is constitutionally allowed.

Mary may also argue that she has a right to refuse service to whoever she wants and that this law is over broad and prevents her from doing that.

that argument will likely fail, because she refused service explicitly on the basis of Debbie's Religion.

#### CONCLUSION:

Debbie will prevail in her claim against Mary.

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16.25

3)

3-A

is there a fund right to have med. care? No so what's the govt std? Rational basis -

SUBSTANTIVE DUE PROCESS

Substantive due process is a legal doctrine that aims to prevent the infringement of an individual's fundamental rights even if the procedural processes carried out in regard to the government action in issue are deemed to be fair.

OK. so what's the govt action here?

RIGHT TO PRIVACY

The right to privacy is safeguarded as a fundamental right under the due process clause of the 14th amendment. The right to privacy encompasses a plethora of rights that includes:

- The right to refuse medical treatment.

but she's not refusing!

Beth's best constitutional argument is that she has a fundamental right to refuse the current medical treatment that is available to her.

Beth also possesses the right to provide informed consent and promise to waive any possible legal action she may take against the drug company if taking the treatment backfires.

Those are her best arguments.

Apply the facts - the arg. is not the rule the arg. is the facts!

3-B

18.75

AG's order says "all OK do not inhibit"

Wardens ESTABLISHMENT CLAUSE

want to restrict. Can they do that? do they have a legit?

The establishment clause provides that the government shall enact no law in respect to the establishment of religion. This clause requires the government pursue a neutral course towards religion in that government action should not be coercive (i.e., should not force one to practice or

refrain from practicing a religion) and it should not exhibit any preference of one sect over the other. Additionally, in cases not related to financial aid, government actions that burden a religion specifically will typically be found to be invalid under the establishment clause and must meet strict scrutiny.

The attorney general should repeal the order because although the burden on religious worship would violate the establishment clause and cause the order to have to pass strict scrutiny (government action must be necessary to accomplish a compelling government interest with no less discriminatory alternative)--it is likely that the order will pass strict scrutiny because the safety of the prisoners, the well being of the prison guards, and the prevention of violence are of utmost importance and such circumstances will meet the criterion.

*no. free exercise*

**3-C**

*OK - you got there →*

*good but you're confused about free exercise vs establishment*

CONTENT-BASED RESTRICTIONS

**18.75**

Restrictions to speech that are content based must pass strict scrutiny in order to be constitutionally valid.

*Start with is there speech*

There are two types of content-based restrictions:

*What is speech here?*

1. Subject matter restrictions (i.e, speech is prohibited based on the topic of the speech), and
2. Viewpoint restrictions (i.e, speech prohibited based on the ideology of the speech).

*sign  
music  
guitar*

PUBLIC FORUMS

Public forums are government property that have historically been open to speech such as streets, and sidewalks.

*harmonica*

DESIGNATED PUBLIC FORUMS

Designated public forums are government property that was not historically open to speech but the government has designated to allow speech activity on a temporary or permanent basis.

*what's protected?  
what means  
scrutiny?*

The government may regulate speech via time, place, and manner restrictions at public forums and designated public forums if:

1. the restriction is content-neutral,

2. it is important to a substantial government purpose, and
3. there are alternative channels for communication that are left open.

If the forum is a nonpublic forum (i.e., where the government has closed off speech) or a limited public forum (government property that is not a public forum or a designated public forum) then the government may impose regulations via time, place and manner restrictions if:

1. the restriction is viewpoint neutral, and
2. is important to a substantial government interest.

Here, David is beholden to two city ordinances while engaging in his righteous protest, the first being that an ordinance that restricts loud music anywhere in the city. If the area in front of city hall is considered to be a public or designated public forum then the ordinance restricting anywhere in the city would likely be held to be unconstitutional because it leaves no other alternative channels open for David to play his music. The city would be able to prove that the law is content neutral and that it serves an important interest of protecting the peaceful enjoyment of the city. *does it stop him from playing? manner restriction*

If the area in front of city hall, is considered a non-public forum then the no sound ordinance has a better chance of being upheld because the restriction is view-point neutral in that it does not promote or prohibit a certain ideology or political faction. The purpose to protect peaceful enjoyment would be sufficient in this scenario. *N*

Additionally, the no-sound ordinance is very vague as it does not offer any decibel level requirement which would make a reasonable person wonder what constitutes loud music. In the same vein, the law could found to be overbroad because it prohibits far too much speech than is constitutionally allow, in part because it is so vague. *good.*

The second ordinance that restricts speech from 6pm to 8pm in the business district likely would be held valid if in public forum or in a nonpublic forum, this is because the restriction is content-neutral (and thus viewpoint neutral), so long as the government could provide a substantial government interest for the restriction. *you misread it "to between*

Thus David, would be able to protest in front of city hall (if it is a public or designated public forum), except if it is located in the business district and it is 6pm. to 8pm.

3-D

16.25

In advising the Mayor, I would first point him to the establishment clause.

**ESTABLISHMENT CLAUSE**

The establishment clause provides that the government shall enact no law in respect to the establishment of religion. This clause requires the government pursue a neutral course towards religion in that government action should not be coercive (i.e, should not force one to practice or refrain from practicing a religion) and it should not exhibit any preference of one sect over the other.

I would advise him that in today's society, a Christmas Tree and even a Menorah (to an extent) have become largely secularized and are thought of in regards to the winter season more so than they are for their religious message. Additionally the Mother Earth fellowship ornament includes a message of a happy winter solstice--which is a naturally occurring phenomenon, not a religious message. The troubling fact of the arrangement of the 3 pieces in the city hall is that the arrangement may exhibit a clear religious preference for the sects of Christianity and Judaism because the Christmas tree is 20 feet tall and the menorah is similarly sized to the tree--meanwhile the mother earth fellowship earth only has a 6 foot diameter. The Christian and Jewish ornaments will dwarf the earth and send a message that those sects are preferred--communicating to followers of the earth fellowship that their religion is not as important to the government as Christianity and Judaism are.

Thus, the ornaments, as arranged, will violate the constitution and the Mayor remove them or rearrange them.

Lemon test?

Kennedy test?

**END OF EXAM**