**Alternate Case Problem Answers**

*Chapter 2*

**Business and the Constitution**

**2-1A. *Commerce clause***

The court did not agree with Inland-Rome that the contract related to interstate commerce. Therefore, the Federal Arbitration Act did not apply and the arbitration clause was not enforceable. The court found that the contract between the parties did not in itself relate to the interstate shipment of any product. “To the contrary,” the court stated, “it relates solely to the sale of standing timber located exclusively in Georgia.” Interstate commerce was affected but only *after* Inland-Rome’s performance under the contract with the landowners was completed. Therefore, federal law did not apply, and the contract was subject to Georgia law. The state of Georgia enforced arbitration clauses, but only if they were contained in construction contracts. Therefore, arbitration of the contract could not be compelled.

**2-2A. *Freedom of speech***

The court dismissed Holland’s complaint, and he appealed. The state intermediate appellate court affirmed the lower court’s decision. The state intermediate appellate court initially determined that, in playing a car sound system loud enough to violate the ordinance, Holland was not actually expressing himself. (He was only listening.) This meant that, as to Holland, the ordinance regulated only his conduct, not his expression. The court held that the First Amendment “protect[s] the communication and expression of someone attempting to broadcast music or another type of message, but that noise is subject to regulation.” The court concluded that Holland failed to show “a real and substantial threat to expression in relation to the ordinance’s legitimate sweep.” The court also pointed out that “[t]his ordinance has clear guidelines. A person of ordinary intelligence knows what it means for sound to be ‘audible’ at more than 50 feet away.”

**2-3A. *Equal protection***

The district court dismissed the plaintiffs’ complaint. The plaintiffs appealed. The U.S. Court of Appeals for the Second Circuit affirmed the lower court’s decision. The plaintiffs argued that because the ordinance applied to female topless entertainment, but not to male topless entertainment, it violated the equal protection clause. As a gender-based distinction, this ordinance’s classification was subject to intermediate scrutiny. The appellate court pointed out that gender-based distinctions are acceptable in circumstances in which the two genders are not similarly situated. The court concluded that “New York City’s objectives of preventing crime, maintaining property values, and preserving the quality of urban life, are important. We also believe that the [ordinance’s] regulation of female, but not male, topless dancing, in the context of its overall regulation of sexually explicit commercial establishments, is substantially related to the achievement of New York City’s objectives.” The court noted that, in drafting the ordinance, the city regulated “only the types of establishments that have been found to produce negative impacts on the communities in which they are located.” Male topless establishments were not among those found to have negative effects. “The male chest is routinely exposed on beaches, in public sporting events and the ballet, and in general consumption magazine photography without involving any sexual suggestion. In contrast, public exposure of the female breast is rare under the conventions of our society, and almost invariably conveys sexual overtones. It is therefore permissible for New York City \*  \*  \* to classify female toplessness differently from the exhibition of the naked male chest. This does not constitute a denial of equal protection.”

**2-4A. *Freedom of speech***

The court held that the state constitutional provision establishing English as the official language for state employees was invalid because it was overbroad and gave rise to substantial potential for inhibiting constitutionally protected free speech rights. The court stated that “Article XXVIII, by its literal wording, is capable of reaching expression protected by the First Amendment, such as Gutierrez’s [a co-plaintiff’s] right to communicate in Spanish with his Spanish-speaking constituents.” To determine whether the Article XXVIII reached a substantial amount of constitutionally protected conduct, the court had to first interpret the meaning of Article XXVIII. The plaintiffs (Yniguez and others) claimed that it was a blanket prohibition on the use of any lan­guage other than English in the state workplace. The defendants, however, considered the article to be merely a directive for state and local governmental entities to act in English when acting in their sovereign capacities. The court held that the article’s plain language indicated that with limited exceptions, the article prohibited the use of any language other than English by all officers and employees of all political subdivisions in Arizona while performing their official duties. Given this interpretation, the court concluded that “there is a realistic danger of, and a substantial potential for, the unconstitutional application of Article XXVIII.” The article was therefore voided by the court.

**2-5A. *Equal protection***

The court agreed with Izquierdo. Mercado appealed to the U.S. Court of Appeals for the First Circuit, which reversed this decision. Under the rational-basis test, the question was whether there was any rational basis under which Mercado’s actions related to a legitimate state interest. Mercado’s ostensible objective was to replace Ms. Izquierdo with someone with greater audience appeal. The court stated that “Mr. Mercado could have rationally believed that having ‘new [and young] faces’ would maximize audience drawing power.” The purpose of public television “includes serving the public by providing increased access to information and enhanced opportunities for education. Benefit to the public as a whole is maximized the more people take advantage of the services provided. Thus, to maximize viewership by making programs as appealing as possible is a legitimate objective in the operation of government-owned television stations.”

**2-6A. *Freedom of speech***

Yes. The court denied the board’s motion for summary judgment. The court held that the library did not have to provide Internet access, but that if it did, it could not restrict its patrons’ access to sites on the Internet because the library “disfavors their content.” According to the court, under the free speech clause of the First Amendment, the library could impose content-based restrictions on access to the Internet only on showing “a compelling state interest and means narrowly drawn to achieve that end.” The court explained that even when a library, or any government entity, has a legitimate purpose—”whether it be to prevent the communication of obscene speech or materials harmful to children”—the means it uses to regulate must be a reasonable response that “will alleviate the harm in a direct and material way.” The court concluded that the plaintiffs adequately alleged a lack of such a reasonable means in this case.

**2-7A. *Due process***

The U.S. Court of Appeals for the Eighth Circuit held that “it would be fundamentally unfair to hold Ashland accountable on probation for actions beyond its control. Ashland maintains that it would violate its due process rights to punish it for probation violations based solely on the future acts or omissions of MAP, which is a separate company not under Ashland's control. We agree.” The court reasoned that "a defendant may not be sentenced for the crimes of another .  .  . . We believe that the probation conditions challenged here similarly improperly conditioned Ashland's probation on the conduct of MAP.” The St. Paul Park Refinery “is no longer a business site of Ashland, but is owned, operated, and controlled by MAP, a third party that was not charged or sentenced in this case. As a minority stakeholder of MAP, Ashland has no control over or ability to direct MAP's day-to-day operation of the refinery, and is not in a position to ensure that continual access is granted to the probation office.” Ashland had upgraded the sewer at the St. Paul Park Refinery, but “it had to obtain MAP's consent in order to implement this project at MAP's facility.” The court “excise[d] the objectionable conditions” from the probation order, although finding it “reasonable that, to the extent that it can, Ashland should allow the probation office to monitor its compliance” with the sewer upgrade.

**2-8A. *Due process***

The court agreed with the Yurczyks’ reasoning, as regarded their substantive due process rights, that the on-site construction requirement did “not have a substantial bearing upon the public health, safety, morals, or general welfare of the community” and “was not based upon a legitimate governmental objective.” The county appealed this ruling to the Montana Supreme Court, which affirmed the judgment of the lower court. The state supreme court held that the on-site construction requirement was not rationally related to a legitimate governmental interest. The court pointed out that county officials were “unable to identify any health and only minimal safety concerns that the on-site construction provision addressed. As to general welfare \*  \*  \* the preservation of property values may implicate legitimate government concerns in some zoning situations, [but] there is nothing \*  \*  \* here that demonstrates these concerns actually drove the formulation of the regulations at issue. Indeed \*  \*  \* the modular home would not have affected property values in the area,” according to one official, who “testified that homes built off-site ‘would have no real bearing upon market values at all,’ ” because District 17 “is a rural setting, and it’s spread out into large

**2-9A. *The commerce clause***

Under the commerce clause, the national government has the power to regulate every commercial enterprise in the United States. The commerce clause may not justify national regulation of noneconomic conduct. Interstate travel involves the use of the channels of interstate commerce, however, and is properly subject to congressional regulation under the commerce clause. Thus, SORNA—which makes it a crime for a sex offender to fail to re-register as an offender when he or she travels in interstate commerce—is a legitimate exercise of congressional authority under the commerce clause.

In the actual case on which this problem is based, a federal district court dismissed Hall’s indictment. On the government’s appeal, the U.S Court of Appeals for the Second Circuit reversed the dismissal and remanded the case for further proceedings, based on the reasoning stated above.

**2-10A. A Question of Ethics**

**1.** According to the United States Supreme Court in this case, in the Federal Cigarette Labeling and Advertising Act of 1965 (FCLAA), “Congress pre-empted state cigarette advertising regulations like [Massachusetts’] because they would upset federal legislative choices to require specific warnings and to impose the ban on cigarette advertising in electronic media in order to address concerns about smoking and health. In holding that the FCLAA does not nullify the Massachusetts regulations, the [U.S. Court of Appeals for the] First Circuit concentrated on whether they are ‘with respect to’ advertising and promotion, concluding that the FCLAA only pre-empts regulations of the content of cigarette advertising.” The Supreme Court did not agree: “There is no question about an indirect relationship between the Massachusetts regulations and cigarette advertising: The regulations expressly target such advertising. The Attorney General’s argument that the regulations are not ‘based on smoking and health’ since they do not involve health-related content, but instead target youth exposure to cigarette advertising, is unpersuasive because, at bottom, the youth exposure concern is intertwined with the smoking and health concern.”

**2.** Regarding a state’s or a locality’s ability to enact generally applicable zoning restrictions, the Supreme Court recognized that “state interests in traffic safety and esthetics may justify zoning regulations for advertising. Although [in the FCLAA] Congress has taken into account the unique concerns about cigarette smoking and health in advertising, there is no indication that Congress intended to displace local community interests in general regulations of the location of billboards or large marquee advertising, or that Congress intended cigarette advertisers to be afforded special treatment in that regard. Restrictions on the location and size of advertisements that apply to cigarettes on equal terms with other products appear to be outside the ambit of the pre-emption provision. Such restrictions are not ‘based on smoking and health.’ ” The Court noted that the pre-emption provision “in no way affect[s] the power of any State or political subdivision of any State with respect to the taxation or the sale of cigarettes to minors, or the prohibition of smoking in public buildings, or similar police regulations. It is limited entirely to State or local requirements or prohibitions in the advertising of cigarettes.” An argument against local governments’ exercise of their zoning power to regulate tobacco products’ advertising is that “states and localities also have at their disposal other means of regulating conduct to ensure that minors do not obtain cigarettes.”