**Alternate Case Problems**

*Chapter 2*

**Constitutional Law**

**2-1. Commercial Speech.** In 1983, Gary Peel, an Illinois attorney, began placing on his letterhead the following statement: “Certified Civil Trial Specialist/By the National Board of Trial Advocacy.” In so doing, Peel violated Rule 2-105(a) of the Illinois Code of Professional Responsibility, which prohibits lawyers from holding themselves out as “cer­tified” or “specialists” in fields other than admiralty, trademark, and patent law. The Attorney Registration and Disciplinary Commission (ARDC) censured Peel for the viola­tion. The ARDC claimed that Peel’s letterhead was misleading because it implied that Peel had special qualifications as an attorney, although in fact no such thing as a civil trial specialty existed in Illinois; because the word *certified* might be interpreted to mean “licensed,” and the National Board of Trial Advocacy (NBTA) did not have the authority to license lawyers; and because, given the fact that not all attorneys licensed to practice in Illinois are certified by the NBTA, Peel’s assertion might erroneously be construed by some readers to mean that those who are certified by that board are supe­rior to those who are not. Peel argued that Rule 2-105(a) violated his constitutional right to free speech and appealed the ARDC’s decision to the United State Supreme Court. What will the Court decide? Discuss. [*Peel v. Attorney Registration and Disciplinary Commission,* 496 U.S. 91, 110 S.Ct. 2281, 110 L.Ed.2d 83 (1990)]

**2-2. Commerce Clause.** In 1957, Rhodes and several other Georgia landowners en­tered into a sixty-five-year timber purchase contract with Inland-Rome, Inc. Thereafter, In­land-Rome cut timber from the landowners’ land and then removed it for processing in certain Georgia facilities, after which it was shipped as lumber products to points throughout the country. In 1986, the landowners claimed that Inland-Rome had breached the contract, and they filed suit. Inland-Rome moved to compel arbitration be­cause the parties had agreed, in their contract, to arbitrate any disputes arising there­un­der. Georgia law enforces arbitration clauses only if they are contained in construc­tion contracts. Arbitration clauses are enforceable under the Federal Arbitration Act only if the contracts in which they appear affect interstate commerce. Inland-Rome con­tended that because lumber products from the cut timber were shipped throughout the nation, the contract related to interstate commerce, and therefore the Federal Arbitration Act should apply. Will the court agree? Discuss. [*Rhodes v. Inland-Rome, Inc.,* 195 Ga.App. 39, 392 S.E.2d 270 (1990)]

**2-3. Freedom of Speech.** The City of Tacoma, Washington, enacted an ordinance that prohibited the playing of car sound systems at a volume that would be “audible” at a distance greater than fifty feet. Dwight Holland was arrested and convicted for violating the ordinance. The conviction was later dismissed, but Holland filed a civil suit in a Washington state court against the city. He claimed in part that the ordinance violated his freedom of speech under the First Amendment. On what basis might the court conclude that this ordinance is constitutional? (Hint: In playing a sound system, was Holland actually expressing himself?) [*Holland v. City of Tacoma,* 90 Wash.App. 533, 954 P.2d 290 (1998)]

**2-4. Freedom of Speech.** In 1988, as a result of a general election, Arizona added Article XXVIII to its constitution. Article XXVIII provided that English was to be the official language of the state and required all state officials and employees to use only the English language during the performance of government business. Maria-Kelly Yniguez, an employee of the Arizona Department of Administration, frequently spoke in Spanish to Spanish-speaking persons with whom she dealt in the course of her work. Yniguez claimed that Article XXVIII violated constitutionally protected free speech rights and brought an action in federal court against the state governor, Rose Mofford, and other state officials. Does Article XXVIII violate the freedom of speech guaranteed by the First Amendment to the U.S. Constitution? Why or why not? [*Yniguez v. Mofford,* 730 F.Supp. 309 (D.Ariz. 1990)]

**2-5. Equal Protection.** Adela Izquierdo Prieto, age forty-two, had worked for a govern­ment-owned and -operated radio and television station in Puerto Rico for over a decade when, without any prior notice, she was suddenly transferred from her television pro­gram to a position in radio. Her replacement in the television program was a twenty-eight-year-old woman with less experience. Agustin Mercado Rosa, the administrator of the television channel, explained to a newspaper reporter that Izquierdo was removed be­cause “we need new faces” and because Izquierdo’s replacement “is young, attractive and refreshing.” Izquierdo sued Mercado, alleging in part that the transfer discrimi­nated against her on the basis of age and therefore violated her rights under the equal protec­tion clause. Mercado claimed that the transfer was rationally related to further­ing a le­gitimate state interest in maximizing viewership for the public television chan­nel and therefore was a permissible action. Will the court agree with Mercado? (In forming your answer, disregard the fact that Prieto could have sued Mercado under a federal law pro­hibiting age discrimination in employment. She based her claim only on the equal pro­tection clause. The sole issue here is whether the state’s interest was suf­ficient to justify replacing Prieto.) [*Izquierdo Prieto v. Mercado Rosa,* 894 F.2d 467 (1st Cir. 1990)]

**2-6. Freedom of Speech.** The Board of Trustees of the Loudoun County Library in Virginia opted to provide Internet access for its patrons. The board also adopted a “Pol­icy on Internet Sexual Harassment.” This required that Web site blocking software be in­stalled on all library computers to “a. block child pornography and obscene material (hard core pornography)” and “b. block material deemed harmful to juveniles under ap­plicable Virginia statutes and legal precedents (soft core pornography).” Mainstream Loudoun, an association of individuals, claimed that this policy blocked their access to such sites as the Quaker Home Page. Mainstream filed a suit in a federal district court against the board, alleging that this was an unconstitutional restriction on their right to access protected speech on the Internet. The board filed a motion for summary judg­ment. Does the First Amendment limit the ability of a public library to restrict its pa­trons’ access to information on the Internet? Discuss. [*Mainstream Loudoun v. Board of Trustees of the Loudoun County Library,* 7 F.Supp.2d 783 (1998)]

**2-7. Due Process.** Ashland, Inc., was the sole owner of the St. Paul Park Refinery, an oil refinery in Minnesota, when Ashland and Marathon Oil Co. announced their intent to combine their refining and marketing assets into a new entity, Marathon Ashland Petroleum LLC (MAP). Marathon was to own the largest share of MAP, and control its operations, while Ashland was to own about a third of the new company. The day after this announcement, a series of explosions and fires at the St. Paul Park Refinery injured several workers. Ashland pleaded guilty to criminal charges relating to the release of a hazardous air pollutant into a sewer line. A federal district court sentenced Ashland to, among other things, five years’ probation subject to various conditions, including an upgrade of the sewer at the St. Paul Park Refinery, to which a probation officer was to have continual access. Meanwhile, as part of the deal with Marathon, Ashland had transferred ownership of the refinery to MAP. Ashland appealed to the U.S. Court of Appeals for the Eighth Circuit, contending in part that the probation conditions violated its due process rights. Should the court rule in Ashland’s favor on this point? Why or why not? [*United States v. Ashland, Inc.,* 356 F.3d 871 (8th Cir. 2004)]

**2–8. Due Process.** In 1994, the Board of County Commissioners of Yellowstone County, Montana, created Zoning District 17 in a rural area of the county and a planning and zoning commission for the district. The commission adopted zoning regulations, which provided, among other things, that “dwelling units” could be built only through “on-site construction.” Later, county officials were unable to identify any health or safety concerns that were addressed by requiring on-site construction. There was no evidence that homes built off-site would negatively affect property values or cause harm to any other general welfare interest of the community. In December 1999, Francis and Anita Yurczyk bought two forty-acre tracts in District 17. The Yurczyks also bought a modular home and moved it onto the property the following spring. Within days, the county advised the Yurczyks that the home violated the on-site construction regulation and would have to be removed. The Yurczyks filed a suit in a Montana state court against the county, alleging in part that the zoning regulation violated their due process rights. Does the Yurczyks’ claim relate to procedural or substantive due process rights? What standard would the court apply to determine whether the regulation is constitutional? How should the court rule? Explain. [*Yurczyk v. Yellowstone County,* 2004 MT 3, 319 Mont. 169, 83 P.3d 266 (2004)]

**2–9.** **The Commerce Clause.** Under the federal Sex Offender Registration and Notification Act (SORNA), sex offenders must register and update their registration as sex offenders when they travel from one state to another. David Hall, a convicted sex offender in New York, moved to Virginia, where he did not update his registration. He was charged with violating SORNA. He claimed that the statute is unconstitutional, arguing that Congress cannot criminalize interstate travel if no commerce is involved. Is that reasonable? Why or why not? [*United States v. Guzman,* 591 F.3d 83 (2d Cir. 2010)]

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

In 1999, in an effort to reduce smoking by children, the attorney general of Massachusetts issued comprehensive regulations governing the advertising and sale of tobacco products. Among other things, the regulations banned cigarette advertisements within one thousand feet of any elementary school, secondary school, or public playground and required retailers to post any advertising in their stores at least five feet off the floor, out of the immediate sight of young children. A group of tobacco manufacturers and retailers filed suit against the state, claiming that the regulations were preempted by the federal Cigarette Labeling and Advertising Act (FCLAA) of 1965, as amended. That act sets uniform labeling requirements and bans broadcast advertising for cigarettes. Ultimately, the case reached the United States Supreme Court, which held that the federal law on cigarette ads preempted the cigarette advertising restrictions adopted by Massachusetts. The only portion of the Massachusetts regulatory package to survive was the requirement that retailers had to place tobacco products in an area accessible only by the sales staff. In view of these facts, consider the following questions. [*Lorillard Tobacco Co. v. Reilly,* 533 U.S. 525, 121 S.Ct. 2404, 69 L.Ed.2d 532 (2001)]

**1.** Some argue that having a national standard for tobacco regulation is more important than allowing states to set their own standards for tobacco regulation. Do you agree? Why or why not?

**2.** According to the Court in this case, the federal law does not restrict the ability of state and local governments to adopt general zoning restrictions that apply to cigarettes, as long as those restrictions are “on equal terms with other products.” How would you argue in support of this reasoning? How would you argue against it?