AMERICAN LAW PROGRAM
The Catholic University of America, Columbus School of Law
Jagiellonian University, Faculty of Law and Administration
18th year, 2017-2018

ENTRANCE EXAM – ESSAY PART

Dear American Law Program Candidate!

In order to let the American Law Program stuff assess your English language skills and abilities to actively participate and benefit from the regular courses, we kindly ask you to take our Entrance Exam. As the amount of students willing to join the program exceeds the amount of students who can be admitted, it serves also the selection of the best candidates in an objective manner.

To make the assessment and competition both fair and reasonable, we kindly ask you to obey the following rules:

During the exam **you are not allowed** to:
- consult anyone nor any materials, except for the texts that we distribute;
- look at other candidate's work;
- leave the room without permission;
- possess turned on cell phones or similar devices.

During the exam **you are supposed** to:
- write in a readable way, so that we are able to read your answers and grade them;
- mark your papers with your PESEL only.

The exam contains of two parts and **altogether lasts 75 minutes.**

The **first part**, is an **essay** part. Your task is to write an essay on the separate sheet of paper, on the assigned topic, which is based on the text attached in order to inspire you. You are supposed to show us that you can discuss a general legal topic in an interesting manner and proper English. Your essay must not exceed one sheet of the given paper. You have **45 minutes** to complete this part. After this time you must turn in your essay. This part is graded for 0-30 points.

The **second part**, which you are supposed to take later, is a **reading** part. You should read the text provided carefully. You may take notes on the separate sheet of paper. After **20 minutes** you must turn in the texts, but you may still keep the notes. Then you receive the questions and answers sheet. You are supposed to mark T for True and F for False on the given questions, for which you have **another 10 minutes**. This part is graded for 0-20 points.

The **results** should be available in the middle of July 2017. The results will be sent to you via e-mail and published on our website: http://www.law.uj.edu.pl/okspo/pl/alp.

Good luck!

Essay Question

Antonin Scalia, as a judge of the U.S. Supreme Court, in Warsaw, in 2009, delivered a speech entitled "Mullahs of the West: Judges as moral arbiters", in which he expresses his position that judges are allowed only to interpret law, not to create – in fact – new laws under dynamic legal interpretation.

I do assert, […] that in a democratic society the binding answer to that value-laden question should not be provided by […] unelected judges. […] Roe v. Wade is perhaps the prime example, requiring abortion-on-demand throughout the United States. But there are many more examples. Six terms ago, we held laws against private consensual sodomy, laws that had existed in perfect conformity with the Constitution for over 200 years, to be impermissible, citing, inter alia the Court of Human Rights' Dudgeon case to prove the meaning of the Due Process Clause of the American Constitution.

[…] Why have judges not always been such pioneering policymakers? The answer is that until relatively recently the meaning of laws, including fundamental laws or constitutions, was thought to be static. What vague provisions such as a right to "respect for … private life," or a right to "equal protection" meant at the time of the constitution's enactment could readily be determined (in most controversial areas) from the accepted and unchallenged practices that existed at that time. And what the constitution permitted at the time of its enactment it permitted forever; only the people could bring about change, by amending the constitution. Thus, in 1920, when there had come to be general agreement that women ought to have the vote, the United States Supreme Court did not declare that the Equal Protection Clause of the Constitution had "acquired" a meaning that it never bore before; rather, the people adopted the Nineteenth Amendment, requiring every State to accord women the franchise.

Under a regime of static law, it was not difficult to decide whether, under the American Constitution, there was a right to abortion, or to homosexual conduct, or to assisted suicide. When the Constitution was adopted, all those acts were criminal throughout the United States, and remained so for several centuries; there was no credible argument that the Constitution made those laws invalid. Of course society remained free to decriminalize those acts, as some States have; but under a static Constitution judges could not do so. A change occurred in the last half of the 20th century, and I am sorry to say that my Court was responsible for it. It was my Court that invented the notion of a "living Constitution."

[…] And it is we, of course, the Justices of the Supreme Court, who will determine when there has been evolution, and when the evolution amounts to progress. On the basis of this theory, all sorts of entirely novel constitutional requirements were imposed, from the obligation to give a prior hearing before terminating welfare payments to the obligation to have law libraries in prisons.[…]

Surely it is obvious that nothing I learned in my law courses at Harvard Law School, none of the experience I acquired practicing law, qualifies me to decide whether there ought to be (and hence is) a fundamental right to abortion or to assisted suicide.

And […] I am questioning the propriety – indeed, the sanity – of having a value-laden decision such as this made for the entire society […] unelected judges. There are no scientifically demonstrable "right" answers to such questions, as opposed to answers that the particular society favors. […]"

Should the judges be allowed to decide moral issues in favor of the current society expectations? Should they decide as they personally believe, or as the society believes? Or should they limit to the wording and interpretation of legal acts as of original legislator, by interpretation of the legislator primary will, which is unequivocal. Does it make difference, whether they are elected, or not?

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ENTRANCE EXAM – READING PART (TEXT)

Read the text of the United States Supreme Court judgment in: *School District of Abington Township, Pennsylvania v. Schempp* (1963). You should understand the main issues and reasoning. You may also take notes. After 20 minutes you will have to turn in the text and answer the questions with a use of your notes as well as your memory and understanding only.

“Mr. Justice Clark delivered the opinion of the Court.

Once again, we are called upon to consider the scope of the provision of the First Amendment to the United States Constitution which declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof […]" in case of a state action requiring that schools begin each day with readings from the Bible.

On each school day at the Abington Senior High School between 8:15 and 8:30 a.m., while the pupils are attending their home rooms or advisory sections, opening exercises are conducted pursuant to the statute. The exercises are broadcast into each room in the school building through an intercommunications system, and are conducted under the supervision of a teacher by students attending the school's radio and television workshop. Selected students from this course gather each morning in the school's workshop studio for the exercises, which include readings by one of the students of 10 verses of the Holy Bible, broadcast to each room in the building. This is followed by the recitation of the Lord's Prayer, likewise over the intercommunications system, but also by the students in the various classrooms, who are asked to stand and join in repeating the prayer in unison. The exercises are closed with the flag salute and such pertinent announcements as are of interest to the students. Participation in the opening exercises, as directed by the statute, is voluntary. The student reading the verses from the Bible may select the passages. There are no prefatory statements, no questions asked or solicited, no comments or explanations made, and no interpretations given at or during the exercises. The students and parents are advised that the student may absent himself from the classroom or, should he elect to remain, not participate in the exercises.

The reading of the verses, even without comment, possesses a devotional and religious character and constitutes, in effect, a religious observance. The devotional and religious nature of the morning exercises is made all the more apparent by the fact that the Bible reading is followed immediately by a recital in unison by the pupils of the Lord's Prayer. The fact that some pupils, or, theoretically, all pupils, might be excused from attendance at the exercises does not mitigate the obligatory nature of the ceremony, as the act unequivocally requires the exercises to be held every school day in every school in the Commonwealth. The exercises are held in the school buildings, and perforce are conducted by and under the authority of the local school authorities, and during school sessions. Since the statute requires the reading of the "Holy Bible," a Christian document, the practice prefers the Christian religion. The record demonstrates that it was the intention of the Commonwealth to introduce a religious ceremony into its public schools.

In *Zorach v. Clauson* (1952), we gave specific recognition to the proposition that "[w]e are a religious people whose institutions presuppose a Supreme Being." The fact that the Founding Fathers believed devotedly that there was a God and that the unalienable rights of man were rooted in Him is clearly

evidenced in their writings, from the Mayflower Compact to the Constitution itself. This background is evidenced today in our public life through the continuance in our oaths of office from the Presidency to the Alderman of the final supplication, "So help me God." Likewise, each House of the Congress provides through its Chaplain an opening prayer, and the sessions of this Court are declared open by the crier in a short ceremony, the final phrase of which invokes the grace of God.

This is not to say, however, that religion has been so identified with our history and government that religious freedom is not likewise as strongly imbedded in our public and private life. Nothing but the most telling of personal experiences in religious persecution suffered by our forebears, *see Everson v. Board of Education* (1948), could have planted our belief in liberty of religious opinion any more deeply in our heritage. It is true that this liberty frequently was not realized by the colonists, but the views of Madison and Jefferson [on the idea of separation between Church and State], came to be incorporated not only in the Federal Constitution but likewise in those of most of our States. This freedom to worship was indispensable in a country whose people came from the four quarters of the earth and brought with them a diversity of religious opinion. Today authorities list 83 separate religious bodies, each with membership exceeding 50,000, existing among our people, as well as innumerable smaller groups.

In *Minor v. Board of Education of Cincinnati* (1870), the ideal [was stated] as to religious freedom as one of absolute equality before the law, of all religious opinions and sects. The government [shall be] neutral, and, while protecting all, it prefers none, and it disparages none.

In *Everson v. Board of Education,* this Court, through Mr. Justice Black, stated that the "scope of the First Amendment designed forever to suppress" the establishment of religion or the prohibition of the free exercise thereof. In short, the Court held that the Amendment requires the state to be a neutral in its relations with groups of religious believers and nonbelievers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them.

In *Zorach v. Clauson,* Mr. Justice Douglas, for the Court, reiterated: There cannot be the slightest doubt that the First Amendment reflects the philosophy that Church and State should be separated. And, so far as interference with the "free exercise" of religion and an "establishment" of religion are concerned, the separation must be complete and unequivocal. The First Amendment, within the scope of its coverage, permits no exception; the prohibition is absolute. The First Amendment, however, does not say that, in every and all respects, there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter.

The wholesome "neutrality" of which this Court's cases speak thus stems from a recognition of the teachings of history that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other. This the Establishment Clause prohibits. The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion, then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that, to withstand the strictures of the Establishment Clause, there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.

And a further reason for neutrality is found in the Free Exercise Clause, which recognizes the value of religious training, teaching and observance and, more particularly, the right of every person to freely choose his own course with reference thereto, free of any compulsion from the state. Hence, it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion.

We agree with the trial court's finding as to the religious character of the exercises. Given that finding, the exercises and the law requiring them are in violation of the Establishment Clause. The conclusion follows that […] the laws require religious exercises and such exercises are being conducted in direct violation of the rights of the appellees and petitioners. […] We agree […] that the State may not establish a 'religion of secularism' in the sense of affirmatively opposing or showing hostility to religion, thus 'preferring those who believe in no religion over those who do believe. We do not agree, however, that this decision in any sense has that effect.

Finally, we cannot accept that the concept of neutrality, which does not permit a State to require a religious exercise even with the consent of the majority of those affected, collides with the majority's right to free exercise of religion. While the Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to *anyone,* it has never meant that a majority could use the machinery of the State to practice its beliefs.

The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality.

Mr. Justice STEWART, dissenting.

It has become accepted that the decision in *Pierce v. Society of Sisters,* upholding the right of parents to send their children to nonpublic schools, was ultimately based upon the recognition of the validity of the free exercise claim involved in that situation. It might be argued here that parents who wanted their children to be exposed to religious influences in school could, under Pierce, send their children to private or parochial schools. But the consideration which renders this contention too facile to be determinative has already been recognized by the Court: 'Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way.'

It might also be argued that parents who want their children exposed to religious influences can adequately fulfill that wish off school property and outside school time. With all its surface persuasiveness, however, this argument seriously misconceives the basic constitutional justification for permitting the exercises at issue in these cases. For a compulsory state educational system so structures a child's life that if religious exercises are held to be an impermissible activity in schools, religion is placed at an artificial and state-created disadvantage. Viewed in this light, permission of such exercises for those who want them is necessary if the schools are truly to be neutral in the matter of religion. And a refusal to permit religious exercises thus is seen, not as the realization of state neutrality, but rather as the establishment of a religion of secularism, or at the least, as government support of the beliefs of those who think that religious exercises should be conducted only in private.

Our decisions make clear that there is no constitutional bar to the use of government property for religious purposes. On the contrary, this Court has consistently held that the discriminatory barring of religious groups from public property is itself a violation of First […] Amendment guarantees.

The dangers both to government and to religion inherent in official support of instruction in the tenets of various religious sects are absent in the present case[…], which involve only a reading from the Bible unaccompanied by comments which might otherwise constitute instruction. […]

In the absence of coercion upon those who do not wish to participate—because they hold less strong beliefs, other beliefs, or no beliefs at all—such provisions cannot, in my view, be held to represent the

type of support of religion barred by the Establishment Clause. For the only support which such rules provide for religion is the withholding of state hostility—a simple acknowledgment on the part of secular authorities that the Constitution does not require extirpation of all expression of religious belief.

I have said that these provisions authorizing religious exercises are properly to be regarded as measures making possible the free exercise of religion. But it is important to stress that, strictly speaking, what is at issue here is a privilege rather than a right. In other words, the question presented is not whether exercises such as those at issue here are constitutionally compelled, but rather whether they are constitutionally invalid. And that issue, in my view, turns on the question of coercion.

It is clear that the dangers of coercion involved in the holding of religious exercises in a schoolroom differ qualitatively from those presented by the use of similar exercises or affirmations in ceremonies attended by adults. Even as to children, however, the duty laid upon government in connection with religious exercises in the public schools is that of refraining from so structuring the school environment as to put any kind of pressure on a child to participate in those exercises; it is not that of providing an atmosphere in which children are kept scrupulously insulated from any awareness that some of their fellows may want to open the school day with prayer, or of the fact that there exist in our pluralistic society differences of religious belief.

In these cases, therefore, what is involved is not state action based on impermissible categories, but rather an attempt by the State to accommodate those differences which the existence in our society of a variety of religious beliefs makes inevitable. The Constitution requires that such efforts be struck down only if they are proven to entail the use of the secular authority of government to coerce a preference among such beliefs.

To be specific, it seems to me clear that certain types of exercises would present situations in which no possibility of coercion on the part of secular officials could be claimed to exist. Thus, if such exercises were held either before or after the official school day, or if the school schedule were such that participation were merely one among a number of desirable alternatives, it could hardly be contended that the exercises did anything more than to provide an opportunity for the voluntary expression of religious belief. On the other hand, a law which provided for religious exercises during the school day and which contained no excusal provision would obviously be unconstitutionally coercive upon those who did not wish to participate. And even under a law containing an excusal provision, if the exercises where held during the school day, and no equally desirable alternative were provided by the school authorities, the likelihood that children might be under at least some psychological compulsion to participate would be great. In a case such as the latter, however, I think we would err if we assumed such coercion in the absence of any evidence.

What our Constitution indispensably protects is the freedom of each of us, be he Jew or Agnostic, Christian or Atheist, Buddhist or Freethinker, to believe or disbelieve, to worship or not worship, to pray or keep silent, according to his own conscience, uncoerced and unrestrained by government. It is conceivable that these school boards, or even all school boards, might eventually find it impossible to administer a system of religious exercises during school hours in such a way as to meet this constitutional standard—in such a way as completely to free from any kind of official coercion those who do not affirmatively want to participate. But I think we must not assume that school boards so lack the qualities of inventiveness and good will as to make impossible the achievement of that goal."

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ENTRANCE EXAM – READING PART (QUESTIONS)

Based on the read text of the United States Supreme Court judgment in: *School District of Abington Township, Pennsylvania v. Schempp* (1963) – in particular your notes as well as your memory and understanding to it, decide whether the statements below are True (T) or False (F). You have 10 minutes to complete this part of the exam.

PESEL:

		True	**False**
1.	The opinion of the Court was written by a single member we know from name.		
2.	The First Amendment to the United States Constitution declares the prohibition of exercise of religion by the people, when they infringe the principle of non-establishment.		
3.	The exercises at school are conducted freely and spontaneously by the students themselves.		
4.	The limit to the exercise is length of the instruction made by the student, which should be no longer than till 8:30.		
5.	The exercise contains of a Christian prayer		
6.	There are opening prayers at each House of the Congress, as in the judgment cited in the read judgment.		
7.	The reason of the religious freedom given by the cited judgment in the read judgment as the first chronologically is indispensability in the country with such a diversity of religious opinions.		
8.	According to the judgment cited in the read judgment "neutrality" demands using the State power neither to handicap, nor to favor religion.		
9.	According to the judgment, the First Amendment undeniably demands a separation of the Church and State		
10.	The test checking "neutrality" as adopted by the Court, analyses the purpose and primary effect of the enactment.		
11.	The religious character of the exercise was confirmed in the judgment.		
12.	The judgment agreed on admissibility of the conducted exercise.		

13.	There is a tendency expressed in the judgment to give varied protection of religious freedom under neutral criteria of the size of religious community.		
14.	In the dissenting opinion it is stated, based on a cited judgment, that from the perspective of religious freedom it is enough to allow for parochial (Church) schools, in which religious exercise will be undertook.		
15.	According to the dissenting opinion it is always prohibited to allow religious groups to use government property.		
16.	As the dissenting judge claimed, the case should rather analyze the coercion of students onto participation in the exercise.		
17.	Ceremonies subject to children attendance are prone to be more coercive than those subject to adult attendance, as the dissenting judge claimed.		
18.	The structure of school environment may be a source of pressure for children, but due to its indirect character it is not meaningful for the dissenting opinion.		
19.	The necessity to excuse absence during the ceremony is, according to the dissenting opinion, causes compulsion in the form undertaken as in the analyzed case.		
20.	According to the dissenting opinion it is impossible to combine varied beliefs and their exercises in the school environment.		