Nondiscrimination paper

Non-Discrimination in Law [Word Count: 612] [45 words apiece] Question #2. The plaintiff also alleged that the university's action violated its right to free exercise of religion. The appellate court did not address this issue. How would you analyze the free exercise issue Would it be a strong argument for the university See generally the Student Edition Section 1. 6. 2; and see particularly the Employment Division v. Smith case in Section 1. 6. 2.

The Free Exercise Clause states, " Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." (" First Amendment-Religion and Expression," 2009). According to this clause, no institution has the ability to either establish religion at an institution or prohibit the free exercise thereof. This would probably exclude, however, private institutions, which can indeed stipulate their own rules. In this case, the free exercise issue would not be a strong argument for the university. [79 words]

1. When may colleges and universities legally regulate the distribution by students of material that some students, faculty, or community members would find offensive See generally the Student Edition Sections 9. 3. 3, 9. 3. 5, and 9. 3. 6. Do private institutions have more latitude in such regulation than public institutions See generally the Student Edition Section 9. 3. 6.

Generally, free speech is not prohibited. The only time a college or university may regulate offensive material is if the material is illegal speech, i. e., it has the ability to incite a riot. Private institutions have no more latitude over such regulation in this matter than public institutions do; this is the legal judgment on such an issue. Otherwise, anything else is permissible-even, perhaps shockingly, hate speech. [68 words]

2. What legal and policy guidelines should institutions follow in developing regulations regarding offensive or indecent student expression See the Student Edition sections cited in note 1 above; and see generally Section 8. 6. 3 of the Student Edition.

Policy guidelines given by universities in their handbook should always strive to strike a balance in terms of what behaviors are considered desirable and undesirable. With regard to the issue of offensive or indecent student expression, universities can give demerits for inappropriate behavior or actions otherwise deemed dangerous to the smooth operation of the campus. However, from a legal standpoint, as mentioned before, any kind of free speech is prohibited, short of committing defamation or inciting a riot. [78 words]

3. Chief Justice Burger and Justice Rehnquist cited various reasons for disapproving the majority opinion. Do you agree with them What implications do their views have for institutional academic freedom For the academic freedom of students and faculty members

In this case, the author does not personally agree with the justices' opinion. The implications of their views on institutional academic freedom are manifold. Mainly, one worries that if free speech is outlawed on a campus just because somebody doesn't agree with it-what will be outlawed next, opinion in general The fact that the university wanted to regulate free speech in such a manner demonstrates that the spirit of generosity with regard to what those in academia can say-students and faculty-has been severely reduced. Moreover, it emphasizes a low regard for the free flow of ideas which do not hurt anyone physically, cause a riot, or defame someone.

[111 words]

4. For a case involving indecent or offensive speech by a faculty member, see Martin v. Parrish, set out in Section 6. 2. 2 above. How do you reconcile the result in Papish with the result in Martin v. Parrish; can you justify the greater protection for the student in the former than for the faculty member in the latter

When a threat of bodily harm, or any kind of threat, is involved in the situation, greater protection can be justified for any party involved in a case. [28 words]

1. The majority opinion identifies two questions for determination: (1) on the basis of the facts alleged, whether the defendants' actions violated the student plaintiffs' First Amendment rights; and (2) if so, whether the individual defendants (specifically Dean Carter) would be relieved of liability for money damages under the " qualified immunity" doctrine. It is important to separate the analysis of the two questions and to understand the difference between them. It also is important to note that a grant of qualified immunity, as the majority provides to defendant Carter, does not end the litigation but only precludes the plaintiffs from obtaining a money damages remedy from that defendant. Qualified immunity is discussed in the Student Edition Section 4. 4. 4. 1.

The author concurs with this statement completely. [7 words]

2. The four dissenting judges on this en banc court disagree with the seven majority judges on both of the questions in the case (see note 1 above). In particular, they disagree on the applicability of the Hazelwood case - a point

relevant to both questions. Which opinion has the better of the argument about Hazelwood

The opinion which has the better argument about Hazelwood is most evidently the one that argues in favor of the decision that the student plaintiffs' First Amendment rights were violated. [30 words]

4. The majority and dissenting opinions in Hosty both mention another student press case decided a few years before Hosty by another en banc court: Kincaid v. Gibson, 236 F. 3d 342 (6th Cir. 2001). Kincaid is discussed in the Student Edition Section 9. 3. 3, pp. 550-52. How does the Kincaid court's analysis of First Amendment issues differ from the Hosty court's analysis Which case do you think is the better reasoned

Kincaid's court's analysis is slightly more detailed than the Hosty case, and is much better reasoned. [16 words]

5. The court in Hosty and the court in Kincaid both emphasize " public forum" analysis. What is the public forum issue, and how does each court resolve it For more on the public forum concept, see the Student Edition, Section 8. 5. 2; and see also the Illustration of Public Forum Concepts in Sec. 8. 5 of the Student Edition.

" The three categories of public spaces identified by the Court are (1) the traditional public forum, (2) the designated public forum (which might be either 'limited' or 'unlimited'), and (3) the non-public forumhow the Court has defined the traditional public forum, and how it has applied the First Amendment to regulations restricting speech in the traditional public forum" applies in this case (" Restricting Speech in the Traditional Public Forum:

Defining the Forum," 2009). Each court resolves this issue differently. [79 words]

5. If a court in a case like Hosty or Kincaid were to decline to apply Hazelwood or the
Hazelwood " framework," what then happens to public forum analysis Does public
forum analysis continue to apply to student press cases, whether or not Hazelwood
applies If so, then what is the practical significance of declining to apply Hazelwood In what salient respect(s) does an analysis using the Hazelwood framework (as in Hosty) differ from an analysis that does not use the Hazelwood framework (as in Kincaid)
Public forum analysis would have been completely negated. Public forum analysis would continue to apply to student press cases, regardless of Hazelwood. The practical significance of declining to apply Hazelwood would be in cases where the public forum is used justly. The most salient respect of an analysis using the Hazelwood framework versus the other framework is that certain cases, such as those of student press cases, could be deemed thrown out of the court. [75 words]

6. Under the facts alleged by the student plaintiffs in Hosty, would the defendants' actions be considered a " prior restraint" on the press If so, what significance would this have for the analysis See generally the Student Edition Section 9. 3. 1.
The defendants' actions would be considered a " prior restraint" on the

press. If so, the significance of this would be that free speech law would be violated, as no one should have the right of prior approval for a student newspaper. [41 words]

REFERENCES

First amendment-religion and expression. (2009). Available: http://caselaw. lp. findlaw. com/data/constitution/amendment01/.

Restricting speech in the traditional public forum: defining the forum. (2009). Available: http://www. law. umkc. edu/faculty/projects/ftrials/conlaw/tradforum. htm.