AMERICAN LAW PROGRAM
The Catholic University of America, Columbus School of Law
Jagiellonian University, Faculty of Law and Administration
17th year, 2016-2017

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 2016. 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

The State of New York in the late 19th century passed a legislation, which limited the working time of bakers. The U.S. Supreme Court in: *Lochner v. New York*, 198 U.S. 45 (1905), claimed that this legislative intervention was improper.

"[T]he plaintiff in error violated the one hundred and tenth section of article 8, chapter 415, of the Laws of 1897, known as the labor law of the State of New York, in that he wrongfully and unlawfully required and permitted an employee working for him to work more than sixty hours in one week. […]

The statute necessarily interferes with the right of contract between the employer and employee concerning the number of hours in which the latter may labor in the bakery of the employer. The general right to make a contract in relation to his business is part of the liberty of the individual protected by the Fourteenth Amendment of the Federal Constitution. […]

The State therefore has power to prevent the individual from making certain kinds of contracts, and, in regard to them, the Federal Constitution offers no protection. If the contract be one which the State, in the legitimate exercise of its police power, has the right to prohibit, it is not prevented from prohibiting it by the Fourteenth Amendment. Contracts in violation of a statute, either of the Federal or state government, or a contract to let one's property for immoral purposes, or to do any other unlawful act, could obtain no protection from the Federal Constitution as coming under the liberty of person or of free contract. […]

There is no reasonable ground for interfering with the liberty of person or the right of free contract by determining the hours of labor in the occupation of a baker. There is no contention that bakers as a class are not equal in intelligence and capacity to men in other trades or manual occupations, or that they are able to assert their rights and care for themselves without the protecting arm of the State, interfering with their independence of judgment and of action. They are in no sense wards of the State. Viewed in the light of a purely labor law, with no reference whatever to the question of health, we think that a law like the one before us involves neither the safety, the morals, nor the welfare of the public, and that the interest of the public is not in the slightest degree affected by such an act. The law must be upheld, if at all, as a law pertaining to the health of the individual engaged in the occupation of a baker. It does not affect any other portion of the public than those who are engaged in that occupation. Clean and wholesome bread does not depend upon whether the baker works but ten hours per day or only sixty hours a week. The limitation of the hours of labor does not come within the police power on that ground.

It is a question of which of two powers or rights shall prevail - the power of the State to legislate or the right of the individual to liberty of person and freedom of contract. The mere assertion that the subject relates though but in a remote degree to the public health does not necessarily render the enactment valid. The act must have a more direct relation, as a means to an end, and the end itself must be appropriate and legitimate, before an act can be held to be valid which interferes with the general right of an individual to be free in his person and in his power to contract in relation to his own labor."

Should the parties of the contract be limited in their freedom? When (if at all) and based on what kind of values and conditions should the legislature be allowed to interfere with the contractual freedom? Are there any groups or situations to which those rules (if any) should apply more or less?

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ENTRANCE EXAM – READING PART (TEXT)

Read the text about the admissibility of a criminal punishment, when polygamy was commited by a Mormon Church member, which was confirmed by the U.S. Supreme Court in: *Reynolds v. United States*, 98 U.S. 145 (1878). 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. CHIEF JUSTICE WAITE delivered the opinion of the court. […]

On the trial, the plaintiff in error, the accused, proved that, at the time of his alleged second marriage, he was, and for many years before had been, a member of the Church of Jesus Christ of Latter-Day Saints, commonly called the Mormon Church, and a believer in its doctrines; that it was an accepted doctrine of that church

"that it was the duty of male members of said church, circumstances permitting, to practise polygamy; . . . that this duty was enjoined by different books which the members of said church believed to be of divine origin, and, among others, the Holy Bible, and also that the members of the church believed that the practice of polygamy was directly enjoined upon the male members thereof by the Almighty God, in a revelation to Joseph Smith, the founder and prophet of said church; that the failing or refusing to practise polygamy by such male members of said church, when circumstances would admit, would be punished, and that the penalty for such failure and refusal would be damnation in the life to come."

Upon this proof, he asked the court to instruct the jury that, if they found from the evidence that he

"was married as charged - if he was married - in pursuance of and in conformity with what he believed at the time to be a religious duty, that the verdict must be 'not guilty.'"

This request was refused, and the court did charge

"that there must have been a criminal intent, but that if the defendant, under the influence of a religious belief that it was right - under an inspiration, if you please, that it was right - deliberately married a second time, having a first wife living, the want of consciousness of evil intent - the want of understanding on his part that he was committing a crime -- did not excuse him, but the law inexorably in such case implies the criminal intent."

Upon this charge and refusal to charge, the question is raised whether religious belief can be accepted as a justification of an overt act made criminal by the law of the land. The inquiry is not as to the power of Congress to prescribe criminal laws for the Territories, but as to the guilt of one who knowingly violates a law which has been properly enacted if he entertains a religious belief that the law is wrong.

Congress cannot pass a law for the government of the Territories which shall prohibit the free exercise of religion. The first amendment to the Constitution expressly forbids such legislation. Religious freedom is guaranteed everywhere throughout the United States, so far as congressional interference is concerned. The question to be determined is, whether the law now under consideration comes within this prohibition.

The word "religion" is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the history of the times in the midst of which the provision was adopted. The precise point of the inquiry is what is the religious freedom which has been guaranteed.

Before the adoption of the Constitution, attempts were made in some of the colonies and States to legislate not only in respect to the establishment of religion, but in respect to its doctrines and precepts as well. The people were taxed, against their will, for the support of religion, and sometimes for the support of particular sects to whose tenets they could not and did not subscribe. Punishments were prescribed for a failure to attend upon public worship, and sometimes for entertaining heretical opinions. The controversy upon this general subject was animated in many of the States, but seemed at last to culminate in Virginia. In 1784, the House of Delegates of that State, having under consideration "a bill establishing provision for teachers of the Christian religion," postponed it until the next session, and directed that the bill should be published and distributed, and that the people be requested "to signify their opinion respecting the adoption of such a bill at the next session of assembly."

This brought out a determined opposition. Amongst others, Mr. Madison prepared a "Memorial and Remonstrance," which was widely circulated and signed, and in which he demonstrated "that religion, or the duty we owe the Creator," was not within the cognizance of civil government. Semple's Virginia Baptists, Appendix. At the next session, the proposed bill was not only defeated, but another, "for establishing religious freedom," drafted by Mr. Jefferson, was passed. […]

In a little more than a year after the passage of this statute, the convention met which prepared the Constitution of the United States. Of this convention, Mr. Jefferson was not a member, he being then absent as minister to France. As soon as he saw the draft of the Constitution proposed for adoption, he, in a letter to a friend, expressed his disappointment at the absence of an express declaration insuring the freedom of religion (2 Jeff.Works 355), but was willing to accept it as it was, trusting that the good sense and honest intentions of the people would bring about the necessary alterations. […]

Accordingly, at the first session of the first Congress, the amendment now under consideration was proposed with others by Mr. Madison. It met the views of the advocates of religious freedom, and was adopted. Mr. Jefferson afterwards, in reply to an address to him by a committee of the Danbury Baptist Association (8 *id.* 113), took occasion to say:

"Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of the government reach actions only, and not opinions -- I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion or prohibiting the free exercise thereof,' thus building a wall of separation between church and State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore man to all his natural rights, convinced he has no natural right in opposition to his social duties."

Coming as this does from an acknowledged leader of the advocates of the measure, it may be accepted almost as an authoritative declaration of the scope and effect of the amendment thus secured. Congress was deprived of all legislative power over mere opinion, but was left free to reach actions which were in violation of social duties or subversive of good order.

Polygamy has always been odious among the northern and western nations of Europe, and, until the establishment of the Mormon Church, was almost exclusively a feature of the life of Asiatic and of African people. At common law, the second marriage was always void (2 Kent, Com. 79), and from the earliest history of England, polygamy has been treated as an offence against society. After the establishment of the ecclesiastical courts, and until the time of James I, it was punished through the instrumentality of those tribunals not merely because ecclesiastical rights had been violated, but because upon the separation of the ecclesiastical courts from the civil the ecclesiastical were supposed to be the most appropriate for the trial of matrimonial causes and offences against the rights of marriage, just as they were for testamentary causes and the settlement of the estates of deceased persons.

By the statute of 1 James I (c. 11), the offence, if committed in England or Wales, was made punishable in the civil courts, and the penalty was death. As this statute was limited in its operation to England and Wales, it was at a very early period reenacted, generally with some modifications, in all the colonies. In connection with the case we are now considering, it is a significant fact that, on the 8th of December, 1788, after the passage of the act establishing religious freedom, and after the convention of Virginia had recommended as an amendment to the Constitution of the United States the declaration in a bill of rights that "all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience," the legislature of that State substantially enacted the statute of James I., death penalty included, because, as recited in the preamble, "it hath been doubted whether bigamy or poligamy be punishable by the laws of this Commonwealth." 12 Hening's Stat. 691. From that day to this, we think it may safely be said there never has been a time in any State of the Union when polygamy has not been an offence against society, cognizable by the civil courts and punishable with more or less severity. In the face of all this evidence, it is impossible to believe that the constitutional guaranty of religious freedom was intended to prohibit legislation in respect to this most important feature of social life. Marriage, while from its very nature a sacred obligation, is nevertheless, in most civilized nations, a civil contract, and usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties with which government is necessarily required to deal. In fact, according as monogamous or polygamous marriages are allowed, do we find the principles on which the government of the people, to a greater or less extent, rests. Professor, Lieber says, polygamy leads to the patriarchal principle, and which, when applied to large communities, fetters the people in stationary despotism, while that principle cannot long exist in connection with monogamy. Chancellor Kent observes that this remark is equally striking and profound. 2 Kent, Com. 81, note (e). An exceptional colony of polygamists under an exceptional leadership may sometimes exist for a time without appearing to disturb the social condition of the people who surround it; but there cannot be a doubt that, unless restricted by some form of constitution, it is within the legitimate scope of the power of every civil government to determine whether polygamy or monogamy shall be the law of social life under its dominion.

In our opinion, the statute immediately under consideration is within the legislative power of Congress. It is constitutional and valid as prescribing a rule of action for all those residing in the Territories, and in places over which the United States have exclusive control. This being so, the only question which remains is whether those who make polygamy a part of their religion are excepted

from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do, must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship; would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband; would it be beyond the power of the civil government to prevent her carrying her belief into practice?

So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief?

To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and, in effect, to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.

A criminal intent is generally an element of crime, but every man is presumed to intend the necessary and legitimate consequences of what he knowingly does. Here, the accused knew he had been once married, and that his first wife was living. He also knew that his second marriage was forbidden by law. When, therefore, he married the second time, he is presumed to have intended to break the law. And the breaking of the law is the crime. Every act necessary to constitute the crime was knowingly done, and the crime was therefore knowingly committed. […] The only defence of the accused in this case is his belief that the law ought not to have been enacted. It matters not that his belief was a part of his professed religion; it was still belief, and belief only. […]

Upon a careful consideration of the whole case, we are satisfied that no error was committed by the court below."

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ENTRANCE EXAM – READING PART (QUESTIONS)

Based on the read text of the U.S. Supreme Court judgment in *Reynolds v. United States* – 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 court instructed the jury that if it decides that Reynolds was married for the second time because of sheer religious duty, the verdict must be: not guilty.		
3.	The Court had doubts, whether the Congress can prescribe criminal laws for the particular states.		
4.	The First Amendment to the U.S. Constitution indirectly forbids such legislation, which prohibits the free exercise of religion.		
5.	Lacking the legal definition of 'religion', the history of the legislation on religious matters in common law was analyzed by the Court.		
6.	The draft of the bill proposed in Virginia, 1784, was supposed to have been pioneering with regard to the freedom of religion, but later the scope of innovativeness of this enactment was weakened.		
7.	Mr. Madison claimed that religious matters should not have been within cognition of the State.		
8.	Mr. Jefferson claimed that religion is a private matter, relation between the God and the man, and none other, including government, could be allowed to interfere with it.		
9.	Mr. Jefferson in his speech presented before the Congress, later agreed as an authoritative declaration of the scope and effect of the amendment, included the concept of the wall of separation between Church and State.		
10.	The Congress was under the First Amendment initially not allowed to regulate on religious matters, even if they affected social duties or were subversive of good order.		

11.	In early England there was no civil court jurisdiction over marriage and succession matters.		
12.	The act of James I on punishable polygamy was not enacted in the U.S. because, until the establishment of the Mormon Church, it was obvious as a part of the legal system.		
13.	It is claimed that polygamy inevitably affects the principle on which the society is based.		
14.	According to the Court laws cannot interfere with religious beliefs, but they can with religious practices.		
15.	The acceptance of polygamy is a matter of organization of society, which is in exclusive dominion of the particular states, but not the federal legislation.		
16.	The Court decided that in some situations professed doctrines of religious belief can be superior to the law of the land.		
17.	The Court feared of anarchy, if there would be a common application of religious based excuse.		
18.	To constitute a crime there must be a direct intent to break the law.		
19.	Mr. Reynolds knew that his second marriage was forbidden by law.		
20.	The Court ruled accordingly with the judgment of the lower court.		