

Bar Exam Essay Question (SAMPLE)

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SAMPLE BAR EXAM QUESTION (LN 02-01)

The City of Acme had an ordinance which provided: "It shall be unlawful for a person to disturb the public peace and quiet by shouting, whistling, loud or vulgar conduct, or the playing of musical instruments, radios or other means of amplification, at any time or place so as to unreasonably annoy or disturb the quiet comfort and repose of persons in the vicinity."

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One day, Jimmy C. Corn, was strolling down the sidewalk wearing shorts and a shirt, while reading a newspaper when he stepped in a large pile of dog manure. Annoyed that his shoes were soiled he began shouting a loud tirade of rants such as "stupid f*** dog, f***, mother****" while walking on the sidewalk.

Jimmy was shouting these rants so loud that an elderly woman named Betsy Bowen who was walking nearby overheard Jimmy's outburst and reported Jimmy to the police. While Jimmy was scraping the manure off his shoes, a police officer approached Jimmy and placed him under arrest for violating the ordinance.

Jimmy contacts you from the police station and requests that you defend him on the charge of violating this ordinance.

Assuming that all of the facts in this question can be proven and that Jimmy's language would be characterized as vulgar and offensive, what are the issues involved; and the probable outcome?

SAMPLE ANSWER

This is a constitutional law question.

Issue: Is the ordinance unconstitutional because it is vague and over broad thereby violating the First and Fourteenth Amendment?

Rule of Law:

The First Amendment states that Congress shall make no law "abridging the freedom of speech." The First Amendment is applied to the states through the Fourteenth Amendment. The issue is whether the Acme city ordinance is unconstitutionally vague or over broad and significantly compromises the First Amendment.

An statute is unconstitutional if it does not provide fair notice of the type of conduct prohibited, or encourages subjective or discriminatory application by delegating to those empowered to enforce the ordinance unfettered discretion in determining how to enforce the ordinance or when it has been violated.

The rules governing the construction of statutes apply with equal force when interpreting municipal ordinances.

Application of the Rule of Law:

City of Acme will argue that the ordinance was constructed with the proper savings language: "to unreasonably annoy or disturb", and that this language has been interpreted as creating the reasonable person standard.

Jimmy will likely argue that using the words "annoy" or "disturb" is over broad, vague and not subject to the reasonable person standard. In addition, Jimmy will add that what may annoy or disturb one person, may not necessarily annoy or disturb another.

Court will probably hold that the terms "annoy" when coupled with the reasonable person standard is not unconstitutionally over broad. The court should consider the potential of the ordinance to chill constitutionally protected free speech.

Conclusion:

Court will conclude that the ordinance was designed to serve a legitimate and significant governmental interest of preserving the peace and quiet of the municipality and is therefore not unconstitutionally over broad.

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