

Sultan

CONSTITUTIONAL LAW II

Fall 1996

INSTRUCTIONS

The proctor will first distribute the essay question and scrap paper. One hour later you will receive the blue books. You will then have thirty minutes to answer the question.

Read the entire examination carefully before you write. Plan your answers. WRITE IN INK. WRITE CLEARLY ON ONE SIDE OF THE PAGE ONLY. DO NOT REPEAT THE QUESTION. BE AS DETAILED AND SPECIFIC AS IS POSSIBLE. ANSWER THE QUESTION.

DO NOT SURVEY AN AREA OF THE COURSE. RATHER APPLY THE LAW TO THE FACTS. DO NOT REPEAT YOURSELF. No materials of any kind are allowed with you. All question sheets must be handed in with your blue book (s).

Please make sure you have your examination number on each blue book and that they are sequentially numbered before you submit them to the proctor.

GOOD LUCK

Eight out of 10 American women of childbearing age have taken the Pill to prevent pregnancy, yet most are unaware that the oral contraceptive has another use. In a somewhat higher dose, it can serve as a "morning after" drug to avoid pregnancy after unprotected sex.

That is hardly news in Europe, where for more than a decade millions of women have been using the Pill for that purpose. And it was hardly a secret to U.S. pharmaceutical companies. But drugmakers have been reluctant to market or label their products as emergency contraception pills in the U.S., fearing that it would subject them to lawsuits, protests or even boycotts.

Now the U.S. Food and Drug Administration has decided to take

matters into its own hands. The agency has published a notice in the Federal Register declaring that oral contraceptives can be used safely and effectively to avoid pregnancy as late as three days after intercourse. While the action falls short of formal FDA approval, which can be granted only when a manufacturer files an application, it gives unmistakable and official sanction to emergency use. "We're delighted," says Gloria Feldt, President of the Planned Parenthood Federation of America. "We've been using this procedure for many years in our clinics but were not able to publicize it" without FDA sanction.

The FDA's decision was based largely on testimony by James Trussell, director of the Office of Population Research at Princeton University, at a committee meeting late last month. Citing large-scale morning-after trials involving six different oral contraceptives, Trussell reported a 75% drop in the rate of pregnancies. Women in the trial were asked to take a set of two or four pills (depending on dosage), the first set within 72 hours of unprotected intercourse, the second dosage 12 hours after the first set. The result: only 2% of those who took emergency contraception became pregnant, compared with the 8% who normally conceive without such measures.

Still, the FDA's action has proven to be controversial. While medical authorities consider that pregnancy begins when a fertilized egg implants itself in the uterus, most right-to-life advocates insist that life begins when the egg is fertilized, before implantation, and denounce any subsequent intervention. Trussell points out, however, that postcoital use can work at any of four stages in the female reproductive cycle. It can prevent ovulation, fertilization of the egg or transportation of the egg to the uterus; it can also make the uterine lining inhospitable to implantation. In any individual, he says, there is no way to determine at which stage pregnancy is prevented.

Planned Parenthood, however, was emboldened by the FDA decision. It will begin urging smaller pharmaceutical firms to package their pills specifically as emergency contraception. "The FDA has gone as far as they can go," says Feldt. "They're clearly inviting the manufacturers to repackage the Pill."

First Pharmaceut (FP) has for years been marketing their version

of the pill under the label "Rx For You." FP is a wholly owned subsidiary of the American Enterprise Group (AEG), a multinational corporation with holdings in diverse investments and products, with headquarters in San Francisco, California.

On September 1, 1996, the FP CEO and Board, meeting at their corporate headquarters in Flint, Michigan, decides that there is a vast market out there for the repackaging of "Ex For You" as a morning after pill. News of this decision is leaked to the press, and on September 10, 1996, is announced nationwide on most media outlets.

One week later, the Save our Children Foundation (SCF) a national right-to-life group, in an "emergency meeting" in Washington D.C., issues the following news release:

They have thrown down the gauntlet, and we must respond for the sake of literally millions of our unborn children. We hereby call upon all people of good conscience to join us in boycotting not only all FP products, but the far more numerous products of all AEG enterprise. We also ask them to join us in picketing not only the business locations, but also the homes of the top officials of all AEG enterprises.

Five days later, in full page adds in all the nations leading newspapers, SCF repeats the above requests, and lists all the products to be boycotted, and the names and addresses, both business and home, of all top executives in AEG Enterprises, with those of FP in bold print.

I. List all legal issues, in the order of their priority (most important first, etc.) presented by the above facts.

II. In the same priority, discuss how these issues will be resolved, and WHY they will be so resolved.

END OF EXAMINATION