

Question I (Bad Frog candy) (50 points)

fully protected speech? BF argues even though on label-satire-social commentary------(3) _____
protected symbolic speech?-BF argues satisfies Spence test-intended to communicate a message
and message likely to be understood by audience particularly because finger is generally
recognized symbol & slogans that accompany the frog and the name of the company------(4) _____
as protected symbolic speech analyzed under O'Brien-within power of authority, substantial
interest to protect young children, narrowly tailored, gov't int unrelated to suppression of
expression-BF argues gov't interest is related to suppression of expression-regulated only
because of message communicated by frog-so fails O'Brien and so apply strict scrutiny--(5) _____
strict scrutiny - gov't argues compelling interest to protect young children particularly when
offensive frog appears on label of product designed to appeal to children like Joe Camel
necessary means? gov't argues least restrictive-can still sell product in many other ways-(4) _____
BF argues too restrictive of adult access in order to protect children-kept off shelf in most places
people buy candy, ineffective means to achieve ends, access only behind counter chills adult
audience (treated like adult entertainment)------(4) _____
commercial speech - BF argues label is a form of adv'g-communicates source of product, not
false, misleading or illegal------(3) _____
gov't argues unprotected - labels don't communicate any information to consumers------(3) _____
Central Hudson test-not false or misleading, sub'l int, directly advance, narrowly tailored(2) _____
gov't argues sub'l interest in protecting minors from profane ads, ban on labels in places where
children could be found would directly advance that interest; restriction is narrowly tailored
because only applies to young children, only in places where they can be found and allows sales
to adults & BF argues doesn't directly advance given prevalence of profanity throughout our
culture & not narrowly tailored------(6) _____
fighting words - while giving the finger could be fighting wds in the right circumstance not here
because no face to face exchange and not directed at a particular individual------(3) _____
obscenity-not obscenity because no appeal to the prurient interest even though reference to a
sexual act------(3) _____
content-based decision by gov't-based on message communicated-concern with the primary
effect of speech on child audience not a secondary effect (see strict scrutiny above)------(3) _____
prior restraint -unbridled admin discretion to restrict label------(2) _____
vagueness of basis for gov't decision------(2) _____
miscellaneous (3) _____