

EXAM NUMBER : _____

Constitutional Law Exam Number 1

Fall 1999
Professor Judges

Instructions:

Please write your exam number in the space provided on *each* page of this exam.

You will have the usual class time (1:20) for this examination. The point distributions stated for each question are approximations to use as guides in budgeting your time. I reserve the prerogative to adjust the weight of questions that, on reflection, turn out to be real toads.

Please follow the specific instructions for each set of questions. *Read each question carefully!!*

Write your answers in the spaces provided on this examination. You may use the backs of pages as well if absolutely necessary, but I will not accept anything not written on the pages of this exam.

This exam is a combination of short answer and multiple choice questions. I am looking for carefully thought-out, well-reasoned, and concise answers rather than lengthy ones. You need not cite case names in your answers, but you should be able to describe the important cases and their reasoning when appropriate to answer the question fully.

Please answer only the questions asked. Answers that are non-responsive (i.e., that answer a question you would prefer I had asked rather than the one I actually did ask) will receive no credit. On the other hand, partial credit is available for each question. If you have a clue, by all means give it a shot. If you believe that you require additional facts or information to discuss an issue, you should make a reasonable assumption (tell me what you have assumed) and proceed.

This is a closed-book exam. You may not use any extra-cranial materials.

Remember: *RDQ!*

When you have finished, please place your exam face down in the box at the front of the room. Then get out of here and go relax in whatever way safely suits you.

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Part I: Short essays (total value: 40%)

Instructions: Please write a brief essay for each of the following items. Each is worth approximately *20 points*.

1. The federal Drug-Free School Zones Act of 1999 makes it a crime to possess in excess of one gram of methamphetamine within 1,000 feet of a school. Develop and respond to an argument to be presented to the United States Supreme Court challenging the constitutionality of the Act. (Keep in mind that the Court on occasion does overrule prior decisions and has articulated standards for overruling constitutional precedent.)
2. As do a number of other states, the State of Arkihoma permits "scratch-and-win" gambling, whereby licensed operators sell cards with concealed items (e.g., numbers, words, pictures, etc.) which the purchasers reveal by scratching off the covering material. If one or more of the concealed items matches the item provided on the face of the card, the purchaser wins a specified amount of money paid by the vendor. Scratch-and-win gambling has always been a highly regulated industry. The cards must comply with regulations designed to prevent fraud and counterfeiting. Part of the regulatory process involves periodic inspection of card manufacturers to promote compliance. Scratch-and-win cards are produced by a total of fifty different manufacturers located in fifteen states. Only one manufacturer is located in Arkihoma, in the city of Springtonville, which is in the Third Legislative District. In 1998, Arkihoma amended its law governing scratch-and-win gambling. Section One of the 1998 Amendment requires that, after July 1, 1999, all scratch-and-win cards sold in Arkihoma must (a) be manufactured in Arkihoma and (b) bear the mark, "Printed in Arkihoma for sale in Arkihoma Only." Section Two provides that cards used in Arkihoma between January 1, 1999 and June 30, 1999 (i.e., before Section One went into effect) must bear the mark, "For Sale in Arkihoma Only." One of the 1998 amendment's co-sponsors, Third District Representative Hannah Nasal, has long complained of the costs associated with inspection of out-of-state card manufacturers. Discuss the 1998 amendment's constitutionality.

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Part II: Multiple Choice (total value: 20%)

Instructions: Each of the following questions or incomplete statements in this Part is followed by a series of suggested answers or completions. Choose the *best* of the stated alternatives and *briefly* state the reason for your choice (i.e., why you selected the item you did and why you rejected the others). Each question is worth approximately *10 points*.

Questions 1-2 are based on the following facts:

The Department of Transportation for the Commonwealth of Tomato ("DOTCommTom") recently accepted bids for the Vine River Bridge project. Tonkatoyz Construction Co., a highway construction company based in the neighboring State of New Potato, was awarded the contract as the lowest bidder. Section 151 of the Tomato Code provides: "All laborers on public works projects funded by the Commonwealth must have been residents of the Commonwealth for at least 120 days before their employment on such projects. Failure to comply with this requirement is sufficient grounds to refuse to pay the contract price." Each Commonwealth public works contract contains a "Section 151" clause. Although the Vine River Bridge project is funded completely by the Commonwealth, Tonkatoyz employed Sabrina Skidder and Danny Dozer, both of whom are skilled and reliable workers who had been with Tonkatoyz for years, but who are residents of New Potato. When Tonkatoyz was notified by DOTCommTom that continued violation of Section 151 could result in withholding of contract payments, it fired Skidder and Dozer.

1. Tonkatoyz, Skidder, and Dozer brought an action for injunctive relief in the United States District Court for the District of Tomato against the Tomato Secretary of Transportation and other DOTCommTom officials challenging Section 151 and the "Section 151" clause in the contract. How should the court rule?

1. For plaintiffs unless defendants can show that nonresident workers impose a special economic burden on the Commonwealth.

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2. For defendants, because plaintiffs' action is barred by the Eleventh Amendment.
3. For plaintiffs, because Section 151 on its face discriminates against out-of-state commerce.
4. For defendants, because regulation of public employment is a traditional governmental function.
5. For defendants, because the equitable abstention doctrine of *Younger v. Harris* precludes federal judicial review of state contract disputes

Explain:

2. For purposes of this question only, assume that soon after their dismissal from Tonkatoyz but before the court rules on the action against the Tomato defendants, Skidder and Dozer are hired by the YoYo Construction Co., a private firm based in New Tomato that specializes in large construction projects throughout the region. How should the court rule on defendants' ensuing motion to dismiss?
 1. For defendants, because Skidder's and Dozer's subsequent employment eliminated any case or controversy between the parties.
 2. For defendants, because Skidder's and Dozer's subsequent employment eliminated diversity between the parties.
 3. For plaintiffs, because defendants' actions nevertheless caused an injury in fact to a legally protected interest.
 4. For plaintiffs, because the alleged harm is capable of repetition yet evading review.
 5. For plaintiffs, because defendants' motion is not ripe.

Explain:

Part III: True or False (total value: 10%)

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Instructions: Indicate whether each of the following statements is true or false and give a *brief* reason for your answer. Each of the items is worth approximately 5 *points*.

1. Absent an explicit pre-emption provision, courts will infer pre-emption only when compliance with both federal and state regulatory provisions is impossible or when state law stands as an obstacle to accomplishment of federal objectives.
2. The Eleventh Amendment is not a bar to a federal-court action against a state to enjoin violation of state law under the "stripping doctrine" of *Ex parte Young*.

Part IV: Identification (total value: 30%)

Instructions: *Concisely* identify, compare, or contrast the following issues. Each of the following items is worth approximately 10 *points*.

1. Political checks versus political questions
2. "Internal" and "external" limits on congressional power
3. "Representation reinforcement"

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Constitutional Law Exam Number 2

Fall 1999
Professor Judges

Instructions:

Please write your exam number in the space provided on *each* page of this exam.

You will have two hours for this examination. The point distributions stated for each question are approximations to use as guides in budgeting your time. I reserve the prerogative to adjust the weight of questions after scoring the tests.

Please follow the specific instructions for each set of questions. *Read each question carefully!!*

Write your answers in the spaces provided on this examination. You may use the backs of pages as well if absolutely necessary, but I will not accept anything not written on the pages of this exam.

This exam is a combination of essay, multiple choice, and short answer items. I am looking for carefully thought-out, well-reasoned, and concise answers rather than lengthy ones. You need not cite case names in your answers, but you should be able to describe the important cases and their reasoning when appropriate to answer the question fully.

Please answer only the questions asked. Answers that are non-responsive (i.e., that answer a question you would prefer I had asked rather than the one I actually did ask) will receive no credit. On the other hand, partial credit is available for each question. If you have a clue, by all means give it a shot. If you believe that you require additional facts or information to discuss an issue, you should make a reasonable assumption (tell me what you have assumed) and proceed.

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Part I: Essays (total value: 50%)

Instructions: Please write an essay for each of the following items. Item 1 is worth approximately 30 points and Item 2 is worth approximately 20 points.

1. In 1976, the California Supreme Court decided the famous “palimony” case between actor Lee Marvin and his lover, Michelle Triola. The *Marvin* court ruled, among other things, that express “cohabitation contracts” between unmarried partners should be enforced, “except to the extent that the contract is explicitly founded on the consideration of meretricious sexual activities.” The decision was soon adopted by other jurisdictions, including the State of Avocado’s Supreme Court. Robin and Sandra are a lesbian couple who live in the State of Avocado. Both are lawyers. They have been together since 1985. They would get married, except that Section 101 of the Avocado Domestic Relations Code denies legal recognition to homosexual marriages. The *Marvin* case gave Robin and Sandra the idea of formalizing their relationship by express contract. Accordingly, in 1987 they drafted and executed a “Relational Contract By and Between Robin and Sandra,” which in essence provided by agreement all of the incidents that the law accords the marital relationship, including financial arrangements regarding property and support both between themselves and with regard to any children they may have. In 1990, Robin and Sandra decided that they wanted to have a child. Robin arranged for artificial insemination. Not wanting to use an anonymous donor, Robin and Sandra chose their friend Thomas, himself a successful attorney living in the far-off State of Artichoke, to be the donor. He agreed. Section 201 of the Avocado Code follows the Uniform Parentage Act in providing that, “[t]he donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor’s wife is treated in law as if he were not the natural father of a child thereby conceived.”

All went well at the outset. Robin gave birth in 1991 to Tyler, a healthy son. Two developments, however, eventually intruded on Tyler’s life with his “two moms.” The first was the State of Avocado’s “Family Values Act of 1992,” which was sponsored by State Representative Henry Jekyll, who had become increasingly concerned about “alternative lifestyles.” Section 301 of the 1992 Act explicitly overruled Avocado case law recognizing “cohabitation contracts.” The second development was more gradual. Although Robin, Sandra, and Thomas had originally agreed that his role was that of donor only, when Tyler was three years old he became interested in his biological father. Robin and Sandra arranged for Thomas frequently to visit Tyler and the two guys eventually formed a close relationship. Tyler began referring to Thomas as “Dad.” Trouble came when, by the time Tyler was four years old, Thomas (who, when Tyler was two years old, had married but had no other children) wanted to take Tyler back to Artichoke for a two-week visit with Thomas’s family – without Robin and Sandra. The two women, in reaction to Thomas’s efforts to establish an independent parental relationship with Tyler, cut off all contact between Thomas and Tyler. In response,

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Thomas brought an action in Avocado court seeking legal and physical custody.

The trial court ruled in Thomas' favor in 1996, citing among the reasons for that result the fact of Robin's and Sandra's homosexual relationship, their unmarried status, the invalidation of their "Relational Contract" under Section 301 of the 1992 Act, and Thomas's ability to provide Tyler a family life based on heterosexual marriage.

Robin and Sandra appealed the trial court's ruling. Discuss the constitutional issues relevant to their appeal.

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2. Tom and Ray Magliozzi's restaurant, the Drive-By Pasta Shop, was located in the upscale Village of Concord-on-the-Green. At first, Tom and Ray's business prospered, partly in response to their popular call-in radio show, "Pasta Talk." They soon were interested in expanding their Shop. They applied to the Village Zoning Board for a permit to build a drive-up pasta window, which required the expansion of their small parking lot to accommodate the drive-through lane. The Board granted the permit on the condition that Tom and Ray allow the Green Earth Recycling Company to install a cardboard recycling bin on their lot. The size of the bin (which resembles a dumpster) and the need to prohibit parking in front of it reduced Tom and Ray's trade by taking scarce parking space away from customers. Soon thereafter, the Village Council passed two ordinances that further affected Tom and Ray's business. The Container Ordinance required all carry-out food to be packaged in paperboard containers made from recycled products and prohibited use of the cheaper Styrofoam containers. The Container Ordinance cut into Tom and Ray's business because customers dislike the paperboard containers' inability to keep food hot and tendency to leak. The final blow came when the Village also enacted the Restaurant Closing Ordinance, which prohibited restaurants in the Village from operating between 10:00 PM and 5:00 AM. Because many of Tom and Ray's customers are students from the nearby Gates College of Computer Science, who tend to stay up late, the Shop did much of its business between 10:00 PM and its usual closing time of 2:00 AM. After the Restaurant Closing and Container Ordinances went into effect, business at the Drive-By Pasta Shop declined precipitously. The cumulative force of these measures forced Tom and Ray to close their Shop and to sell the building, land, and fixtures for half the original value. The purchaser subsequently opened a convenience store on the premises, which operates at a small profit.

Please discuss the merits of any constitutional claims that Tom and Ray may have.

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Part II: Multiple Choice (total value: 30%)

Instructions: Each of the questions or incomplete statements in this Part is followed by a series of suggested answers or completions. Choose the *best* of the stated alternatives and *briefly* state the reason for your choice (i.e., why you selected the item you did and why you rejected each of the others). Each question is worth approximately *15 points*.

1. Which of the following statements is true?
 - A. A woman has a fundamental right to terminate her pregnancy before the point of viability, and any laws interfering with her exercise of that right will be subjected to strict judicial scrutiny.
 - B. When state action impairs contracts to which the state itself is a party, the Supreme Court generally will defer more readily to the legislature's choice of means and ends than when the state action impairs a purely private contract.
 - C. The Supreme Court's method of analysis involving land-use regulations is the same as in many other areas of constitutional law: the Court always applies a balancing test.
 - D. Pursuit of one's livelihood is a fundamental right protected by the Privileges or Immunities Clause of the Fourteenth Amendment.
 - E. The Due Process Clauses provides heightened protection against governmental interference with certain fundamental rights and liberty interests.

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2. When Tom and Ray's Drive-By Pasta Shop closed in 1994, they retired to live in a modest cabin on 50 acres of wooded, undeveloped land in rural Dirt County, in the State of Artichoke. They support themselves by raising mushrooms on their property. Thomas, a successful attorney living in the city of Artichoke Heart, approached them in 1995 about a proposal to develop Tom and Ray's land. The parties executed a contract in late 1995 under which Thomas was to provide the capital and Tom and Ray the land for the development of a 40-acre trailer park. Progress went slowly on the project, however, because Thomas's attention was distracted by his litigation against Robin and Sandra. Nevertheless, Thomas did hire a general contractor and had plans drawn up for the trailer park, which would have required clear-cutting 40 of Tom and Ray's 50 acres.

It was at this point that the Yertle turtle intervened. Yertles are small, large-mouthed turtles that once were plentiful throughout the South-Central region, including the State of Artichoke. Sprawling suburban development, however, has destroyed much of their habitat and the Yertle is now an endangered species. The federal Yertle Turtle Protection Act of 1997 prohibits the development of land designated by the Secretary of the Interior as Yertle habitat to the extent that it will substantially degrade that habitat. In early 1998, the Secretary declared various remote areas in the South-Central region to be Yertle habitat, including the portion of Dirt County containing Tom and Ray's 50 acres. Because clear-cutting of forest land constitutes substantial degradation of Yertle habitat under the Act, the Secretary's ruling spelled the end of the potentially lucrative trailer park project.

In Tom and Ray's constitutional challenge to the Secretary's action, they will most likely

- A. Lose, because the Secretary's action affects more than a limited class of parties.
- B. Win, because the Secretary's action substantially impairs the obligation of contract.
- C. Lose, under the incorporation doctrine.
- D. Win, because the Secretary's action interferes with their liberty of contract.
- E. Lose, because under the Act clear-cutting is a "noxious use" of land.

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Part III: Short Answer (total value: 20%)

Instructions: Please concisely answer the following items. Each is worth approximately *five points*.

1. How did the majority opinion in *Washington v. Glucksburg* (the “assisted suicide” case) reconcile its result with prior cases?

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2. What is the current status of substantive economic due process?

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3. What common themes run through the Court's treatment of the Contracts, Just Compensation, and Due Process Clauses?

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4. This item is based on the following facts:

Suppose Calvin asserts his “right to remain ignorant” under the Due Process Clause of the Fourteenth Amendment. What factors will a court consider in evaluating his claim?

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