

**CONSTITUTIONAL LAW
FINAL EXAMINATION
Professors Malaguti and Winig**

Fall 2004 Semester

YOUR ENTIRE SOCIAL SECURITY NUMBER:

INSTRUCTIONS:

The instructions run onto the next page. You may read this page and then turn the page to finish reading the instructions. You are not to look beyond the second page of instructions until you are instructed to begin the exam.

Please take three (3) blue books. Please write "Scrap" on one of the blue books. Please write "Two" and "Three" on each of the other two blue books. Please write your social security number *on all four* blue books.

Please do not identify yourself in any way other than by social security number. Please do not write any information in your blue book, scrap book, or this exam booklet that might reveal who you are.

This is a closed-book examination; other than writing implements, you are not to have any materials on your table or at your feet. Please place all books, knapsacks, briefcases, etc. at the side or front of the room.

Please do not use your own scrap paper. You may use the blue book labeled "Scrap" as scrap paper. Please turn in your scrap blue book with your exam blue book and this exam booklet. I will not accept any blue books after you have turned in your exam materials -- no exceptions.

This examination consists of three parts:

Part One consists of 16 short fact patterns, each of which has a number of questions that follows and inquires about the law and analysis that applies to the particular fact pattern. You are to read each fact pattern carefully and answer each question that follows. On one or two occasions, there are questions that appear without a prior fact pattern. There are a total of 50 questions, and you are to answer them all. The suggested time for Part One is one and one-half hours (90 minutes).

Please place your answers to Part One in the space provided **in this exam book**, not in the blue book. Please limit your answers to the lines provided below each question. We will not read beyond the lines provided under each question. Please make each

answer readable in terms of neatness and the size of your handwriting. (We will not use a magnifying glass to read your answers.) Please answer the question responsively; don't provide information not asked for in the question. For example, if the question asks "Who wins?" please state the name of the person who wins; don't state why he or she wins. Please state your reasoning only if the question asks for it.

Part Two consists of one (1) substantial essay question. Please put your answer in a blue book entitled "Part Two," and not into this examination booklet. Please limit your answer to five (5) single-spaced bluebook pages. The suggested time for Part Two is forty-five (45 minutes).

Part Three consists of two (2) shorter essay questions. Please put your answers in a blue book entitled "Part Three," and not into this examination booklet. Please limit your answer to each essay questions to three (3) single-spaced bluebook pages. The suggested time for Part Three is forty-five (45 minutes).

Please take note again that Parts Two and Three are to go in **separate** blue books. Do not put both parts in the same blue book.

Despite the fact that the suggested time for all three parts is three hours, we will give you three and one-half (3.5) hours to complete the exam. You may use the extra half hour however you like, if you choose to use it at all.

Please make your answers legible. There is a bathroom book at the front of the room. Please sign out and in when you leave the room.

You have three and one-half (3-1/2) hours to complete the exam. We will tell you when there are 15 minutes left, at which point *no one* may leave the room. We will also warn you when there are 5 minutes left and 1 minute left. When we call time, you are to bring up your exam and blue books *immediately*.

GOOD LUCK!

QUESTIONS

PART ONE

DIRECTED ESSAYS

SUGGESTED TIME: ONE AND ONE-HALF HOURS (90 MINUTES)

PERCENTAGE OF EXAM POINTS: 50%

INSTRUCTIONS FOR PART ONE:

This part consists of 16 short fact patterns, each of which has a number of questions that follows and inquires about the law and analysis that applies to the particular fact pattern. You are to read each fact pattern carefully and answer each question that follows. On one or two occasions, there are questions that appear without a prior fact pattern. There are a total of 50 questions, and you are to answer them all.

Please place your answers in the space provided **in this exam book**, not in the blue book. Please limit your answers to the lines provided below each question. We will not read beyond the lines provided under each question. Please make each answer readable in terms of neatness and the size of your handwriting. (We will not use a magnifying glass to read your answers.) Please answer the question responsively; don't provide information not asked for in the question. For example, if the question asks "Who wins?" please state the name of the person who wins; don't state why he or she wins. Please state your reasoning only if the question asks for it.

Please work quickly but carefully through these questions. You will have enough time to answer all of the questions within the suggested time if you have adequately learned the law.

If you have not finished this Part of the exam when the suggested time is up, you should go onto the next part of the exam, and come back to finish it later.

QUESTIONS:

Questions 1 through 3 are based on the following facts:

The third largest industry in the state of Beefophalia is the raising of cattle for slaughter and sale as meat for human consumption. After the outbreak of "foot in mouth"/"hoof in mouth"/"mad cow" disease in Europe, the Beefophalia Commissioner of Agriculture and Forestry sent the following alert to the Beefophalia legislature:

As a result of the current outbreak of foot and mouth disease in European livestock and the fact that meat consumed in the United States, including Beefophalia, is imported from foreign countries, there is an imminent danger that Beefophalia citizens will substantially decrease their consumption of meat, including meat raised or processed in Beefophalia, if they cannot identify the source of the meat. Beefophalia's livestock industry has already suffered severe financial distress as a result of the four-year drought that this state has experienced. The threat of substantial decline in the consumption of meat poses an imminent peril to Beefophalia's livestock industry. Additional economic losses threaten the continuation of the livestock industry in Beefophalia. The livestock industry in Beefophalia is a vital part of Beefophalia's economic base. Therefore, financial deterioration and subsequent failures in the

livestock industry require immediate action to restore public confidence in the Beefophalia livestock industry.

In 2003 the Beefophalia legislature enacted, and the Beefophalia governor subsequently signed, a new provision to the state statutes to require all meat sold for human consumption anywhere within the state to be labeled in one of three ways:

- A. "This meat was produced from livestock entirely raised and produced within the State of Beefophalia";
- B. "This meat was not produced from livestock entirely raised and produced within the State of Beefophalia, but the livestock was entirely raised and produced within one of the United States";
or
- C. "This meat was not produced from livestock entirely raised and produced either within the State of Beefophalia, or within one of the United States."

The statute further provided that each violation of the statute by failure to appropriately label is punishable by civil penalties of up to \$500.00; each sale of improperly labeled product is considered a separate offense under the statute. The Beefophalia Department of Agriculture and Forestry is charged with the administration and enforcement of the labeling statute.

The statute became effective on May 17, 2003. The United States Beef Council has challenged the validity of the Beefophalia labeling statute.

1. Which issue that we studied this semester in Constitutional Law presents the United States Beef Council's best argument that the new Beefophalia labeling statute is unconstitutional under the Federal Constitution?

2. Under the issue identified above, please state the standard of review that a court is likely to employ in considering the Beefophobia labeling statute.

3. In the space provided immediately below, please make the argument that the statute is unconstitutional using the standard identified in your answer to Question 2:

Questions 4 through 8 are based on the following facts:

Several New Hampshire legislators have become convinced that the N.H. State Liquor Commission loses too much business when skiers who come to the state bring their own beer and alcohol with them, even though liquor prices in New Hampshire are generally lower than those in most other states, and New Hampshire does not have a "bottle bill" requiring the payment of can and bottle deposits on beer cans and bottles. Consequently, the Legislature has passed a law stating that non-New Hampshire residents must pay a 15% surcharge to purchase liquor in New Hampshire. New Hampshire residents who show a valid state ID do not have to pay the surcharge. The Massachusetts Outing Club has challenged the law.

4. Which issue that we studied this semester in Constitutional Law presents the Massachusetts Outing Club's best argument that the New Hampshire statute is unconstitutional under the Federal Constitution?

5 Under the issue identified above, please state the standard of review that a court is likely to employ in considering New Hampshire statute.

6. If any exceptions to the issue identified in your answer to Question 4 apply under these facts, please describe how it will apply in the space below.

7. What justiciability impediment, if any, does the Massachusetts Outing Club face?

Go to next page for Question 8

8. In the space provided below, please explain why or why not the possible impediment you identified in your answer to Question 7 will or will not prevent the Massachusetts Outing Club from prevailing in its action.

9. Please circle **every one** of the following statements that are **true** about the original jurisdiction of the Supreme Court of the United States?

- The Court has only the original jurisdiction that Congress confers upon it.
- The Court has the original jurisdiction set forth in Article III of the Constitution.
- The Court has the original jurisdiction set forth in Article III of the Constitution, plus whatever original jurisdiction Congress chooses to add.
- The Court has the original jurisdiction set forth in Article III of the Constitution, minus whatever original jurisdiction Congress chooses to take away.

Questions 10 and 11 are based on the following facts:

The state of Peaceable recently adopted a gun control law that prohibits anyone, including a gun club, from using targets that "depict human figures, human effigies, human silhouettes or any human images thereof." The law exempts training facilities for law enforcement personnel from the prohibition. Violation of the statute is punishable by a fine, or imprisonment of up to one year in the House of Correction. The "Second Amendment Rod and Rifle Club," a gun club located within the state of Peaceable, wishes to use targets that depict Osama bin Laden's face, and brought an action in Federal Court asking for a declaration against the state officers responsible for enforcing the law that the law impermissibly infringes on its and its members rights to free speech. The new gun control law has gone into effect and neither the Second Amendment Rod and Rifle Club, nor any of its officers or members have been prosecuted under the statute. The defendants are considering bringing a motion to dismiss on procedural grounds involving justiciability.

10. What ground should the defendants raise in support of their argument for dismissal?

11. In the space provided below, please explain whether, and why or why not, the complaint should be dismissed.

Questions 12 and 13 are based on the following facts:

Assume that, after Major League Baseball (MLB) and the Players Association were unable to come up with a meaningful plan to prevent players from using anabolic steroids and growth hormone therapy to enhance their fame performance, Congress passed, and the President signed, a law requiring MLB to test every MLB player for steroid and growth hormone presence once every three weeks during spring training and the regular season, and to randomly test all players, with only 24 hours' notice, three times each during the off season. Congress' new testing policy diverges from that currently stated in the collective bargaining agreement that won't expire until 2006. The Players Association wants to challenge the constitutionality of the new testing law.

12. Which issue that we studied this semester in Constitutional Law presents the Players Association's best argument that the new testing law is unconstitutional under the Federal Constitution?

13. In the space provided below, please explain whether, and why or why not, the Players Association will prevail under the issue you identified above.

Questions 14 through 17 are based on the following facts:

The Age Discrimination in Employment Act of 1967 (ADEA) makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." Since its enactment, the ADEA's scope of coverage has been expanded to cover state employers and employees. In 1974, Congress expressly and clearly extended application of the ADEA's substantive requirements to the States. A number of individuals in Florida have sued the State

of Florida, alleging that one of the state universities had discriminated against them on the basis of their age. The State of Florida has moved to dismiss the suit on the ground that it is immune from such suits.

14. What is the best ground on which the State of Florida can claim immunity?

15. Why would that ground at least initially appear to apply?

16. Will the individuals prevail under any exceptions to such immunity apply to this action? (Circle the best answer.)

YES

NO

17. Why or why not?

18. In the case of *Goodridge v. Department of Public Health* (the same-sex marriage case), the Massachusetts Supreme Judicial Court made its decision "appeal proof" from further inquiry by the United States Supreme Court. In the space provided below, please briefly explain how it did so.

Questions 19 through 21 are based on the following facts:

Idris is a highly successful Saudi banker who was born and raised in Sudan. In March 1998, Idris purchased \$18 million worth of shares in El-Shifa, a corporation organized under the laws of Sudan. At

the time, El-Shifa was the sole and exclusive owner of a manufacturing facility located in Khartoum, Sudan. El-Shifa was the largest pharmaceutical manufacturing company in Sudan and used the Plant to supply drugs sorely needed by the impoverished people living in that country.

In August 1998, after the United States Embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania, were bombed in nearly simultaneous attacks that were linked to Osama bin Ladin and the terrorist organization al-Qaeda, President Clinton ordered the armed forces of the United States to conduct strikes in Afghanistan and Sudan intended to "disrupt bin Ladin's terrorist network and destroy elements of its infrastructure" there. The stated purpose of the strikes was to "destroy, in Sudan, [a] factory with which bin Ladin's network is associated, which was producing an ingredient essential for nerve gas."

The day after the strikes, the President sent a letter to Congress in which he stated that the Plant was being used to produce chemical weapons. The President stated the United States had acted in self-defense, and that the strikes were a necessary and proportionate response to the imminent threat of further terrorist attacks against U.S. personnel and facilities. The President claims to have ordered the strikes "pursuant to [his] constitutional authority to conduct U.S. foreign relations and as Commander and Chief Executive."

El-Shifa's plant was destroyed and Idris sued the United States government in Federal Court, seeking \$50 million in damages as compensation for the destruction of the El-Shifa plant and claiming that the action constituted an uncompensated taking under the takings clause of the Fifth Amendment. The Clinton Administration has argued that the Federal Courts should not even hear the suit.

19. If the Federal Court agrees with the Clinton Administration that that the Federal Courts should not even entertain the suit, on what ground will it do so?

20. What standards will the Court apply in so deciding?

Go to next page for Question 21

21. Briefly explain how the "necessary and proper clause" works.

Questions 22 and 23 are based on the following facts:

James McFarland, Jr. was charged violating four counts of the federal "Hobbs Act," 18 U.S.C. § 1951, for the robbery of local convenience stores in Fort Worth, Texas. In pertinent part, the Hobbs Act states:

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section—

...

(3) The term 'commerce' means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction."

On November 20, 1998, he allegedly took "about \$100, close to \$100" from the Buy-Low Convenience Store. On December 3, 1998 he allegedly took \$1,500 to \$2,000 from the Gateway Discount Liquor Store. On December 11, 1998, he allegedly stole about \$50 from the Quickway Shopping Convenience Store. At trial, there was testimony that some of the merchandise sold by these stores was originally manufactured or processed outside of Texas, although no specifics as to what percentage or amount of such goods was offered. There was no evidence that, as a result of the charged robberies, the retail stores actually reduced or delayed any purchases of inventory, and the testimony suggests that they did not. There was no evidence that any of the robberies resulted in any of the stores even slightly delaying any payment to any party as a result of the charged robberies.

22. The United States Attorney prosecuting McFarland has just completed presenting the government's evidence, and McFarland would like to ask the Court to dismiss the Hobbs Act case against him. What is the best constitutional argument that McFarland can make?

23. What factors will the Court consider in deciding whether the argument will prevail?

24. As a result of the efforts of various environmental groups, the State of Intoxication recently enacted a statute prohibiting the sale of any non-alcoholic beverage in glass bottles. The statute does not apply to in-state manufacturers who bottle the beverages in glass bottles, but distribute the non-alcoholic beverages out-of-state. Assume that the Intoxication Supreme Court, the highest appellate court of the State of Intoxication, adjudges the bill to be unconstitutional on the ground that it violates the contracts clauses of both the federal and the state constitutions. The Intoxication Attorney General now seeks review of this decision in the United States Supreme Court. What is the best argument that the United States Supreme Court should not hear the appeal?

Questions 25 and 26 are based on the following facts:

Scientists recently discovered that the bark of a certain species of birch tree can be used to develop a drug that has been successful in treating several types of cancer. As a result, Congress has authorized funding to pharmaceutical houses using the bark of these trees to make the cancer drug. The species of birch tree, while commonly found on the West coast and the mountain states, is found most predominately in Oregon. The Oregon Division of Environmental Protection has declared the tree to be an endangered species, and state law prohibits cutting down the trees, or stripping its bark.

25. What is the best argument that the Oregon law protecting the trees is invalid?

26. What is the best argument that your answer to Question 25 does not apply to these circumstances, and that the Oregon law should stand?

Questions 27 through 30 are based on the following facts:

Some private landowners have sued the Massachusetts Department of Telecommunications and Energy (DTE) in regard to regulations (the Regulations) it promulgated to deal with telecommunications systems. At issue is the so-called "nondiscriminatory access mandate" of the Regulations, which commands that "a utility shall provide a [telecommunications] licensee with nondiscriminatory access to any pole, duct, conduit, or right-of-way used or useful, in whole or in part, for the purposes described in M.G.L. c. 166, § 25A, owned or controlled by it...." Under Section 45.02 of the Regulations the definition of "utility" encompasses private landowners.

27. What provision of the Federal Constitution provides the landowners' best argument that the DTE Regulations are unconstitutional?

28. What categories or classifications must one consider when applying the constitutional provision identified in your answer to Question 27?

29. Which one of those categories/classifications applies to the facts presented?

30. What will the result be of applying the category/classification identified in your answer to Question 29?

Questions 31 through 34 are based on the following facts:

In 1998 the Alahambra legislature enacted the Anti-Obscenity Enforcement Act, which prohibits "the sale of any device designed or marketed as useful primarily for the stimulation of human genital organs." The American Civil Liberties Union brought a lawsuit in federal court to enjoin enforcement of the law. Purveyors of sex toys joined the suit, claiming that the law served no rational purpose, because Alahambrans could obtain sex toys from neighboring states and the law did not prohibit the sale of other items used for sexual gratification, such as ribbed condoms and vibrating muscle massagers which could be adapted for sexual purposes.

31. What constitutional rights that we discussed this semester, if any, are at issue in the above-stated facts?

32. What standard of review should the court consider for a statute banning the use of sexual toys?

Go to next page for Question 33

33. In the space provided below, make a rational argument using proper law that the teachings of *Griswold v. Connecticut* should apply.

34. In the space provided below, make a rational argument using proper law that the teachings of *Griswold v. Connecticut* should not apply.

Questions 35 through 40 are based on the following facts:

Julliard, an African-American woman, applies for a job with XYZ Inc., a private company that owns and operates an area of land with retail establishments, commercial buildings leased out for office use and residential buildings leased to tenants who live there. The land area is so large that XYZ, Inc. calls it "Nicetown." Nicetown has a private security force that operates as a police force, and it has numerous employees who run the day-to-day affairs of Nicetown. Before her interview begins, an officer of the corporation informs her that XYZ is no longer hiring. The next day, Julliard learns that in fact XYZ was hiring when she went in for an interview. Julliard would like to sue XYZ for discrimination on the basis of race.

35. For what reason will the 13th Amendment to the United States Constitution *not* serve as a viable basis for Julliard's lawsuit?

36. What is the best argument that the 14th Amendment will *not* serve as a viable basis for Julliard's lawsuit?

37. Make your best argument that the answer you gave to Question 36 does not apply, and that the 14th Amendment *will* serve as a viable basis for Julliard's lawsuit?

38. Assume that the court does allow Julliard to proceed with her lawsuit under the equal protection clause of the 14th Amendment. What are the three possible standards of review that the court may follow in analyzing her case, and to which classifications does each standard of review apply?

A. _____

B. _____

C. _____

39. Who bears the burden of proof for each of the above-stated standards? (Circle the correct answer.)

- | | | |
|----|----------|-----|
| A. | Julliard | XYZ |
| B. | Julliard | XYZ |
| C. | Julliard | XYZ |

40. Which of the above-stated standards will apply to Julliard's lawsuit?

Questions 41 through 43 are based on the following facts:

Under the law of the State of Matrimonia, the mother of minor children is presumptively entitled to custody upon the divorce of the children's parents. This presumption may be overcome only by "clear and convincing evidence that the mother is an unfit parent."

41. In a claim by a father, who is a party in a divorce case, that the statute violates the equal protection clause of the 14th Amendment, which standard of review should the court apply?

42. If the State of Matrimonia attempts to justify the law by asserting that it causes a more streamlined and efficient application of the law that saves Matrimonia taxpayers millions of dollars a year, will the state be successful in its justification? (Circle the best answer.)

YES

NO

43. Why or why not?

Questions 44 and 45 are based on the following facts:

The bar examiners of almost all 50 of the United States, as well as the District of Columbia and some United States territories employ a bar examination to, at least some degree, determine whether applicants are qualified to practice law. All of the states and jurisdictions that use the bar examination as a qualification device believe that this is a matter of consumer protection: the unknowing public must be assured that anyone bearing the "attorney" moniker has at least minimal competence to handle complex, personal and often confidential matters.

For at least part of the testing, most states use the "Multistate Bar Examination" (MBE) created and written by the National Conference of Bar examiners. Given over the course of six hours, the MBE consists of 200 multiple choice questions and has the look and feel of a "standardized" test. It has been a fact since the MBE was first given, and continues to remain a fact today, that in racial terms whites pass the MBE at a significantly higher rate than non-whites.

Albion, an African-American who graduated in the top ten percent of his Ivy League law school class, applied to the bar of the State of Anxiety but failed the Anxiety bar exam because his MBE score was one point below that considered acceptable. Albion has sued the individuals who administer the Anxiety bar exam in federal court, seeking a declaratory judgment that the MBE, as administered, has a disproportionate impact based on race, and is therefore racially discriminatory in violation of the equal protection clause of the 14th Amendment.

44. What is the standard of review that the federal court will apply in considering Albion's case?

45. What will Albion have to show in order to secure a higher standard of review and win the case?

Questions 46 through 48 are based on the following facts:

The University of Mamalia School of Veterinary Medicine, one of the nation's top public veterinary schools, follows an official admissions policy that seeks to achieve student body diversity. Focusing on students' academic ability coupled with a flexible assessment of their talents, experiences, and potential, the policy requires admissions officials to evaluate each applicant based on all the information available in the file, including a personal statement, letters of recommendation, an essay describing how the applicant will contribute to veterinary school life and diversity, and the applicant's undergraduate grade point average (GPA) and Medical College Admission Test (MCAT) score. Additionally, under the policy Mamalia admissions officials look beyond grades and scores to so-called "soft variables," such as recommenders' enthusiasm, the quality of the undergraduate institution and the applicant's essay, and the areas and difficulty of undergraduate course selection. In practice, Mamalia engages in a highly individualized, holistic review of each applicant's file, giving serious consideration to all the ways an applicant might contribute to a diverse educational environment. There is no policy, either *de jure* or *de facto*, of automatic acceptance or rejection based on any single "soft" variable. The policy does not define diversity solely in terms of racial and ethnic status and does not restrict the types of diversity contributions eligible for "substantial weight," but it does reaffirm the veterinary school's commitment to diversity with special reference to the inclusion of African-American, Hispanic, and Native-American students, who otherwise might not be represented in the student body in meaningful numbers. By enrolling a "critical mass" of underrepresented minority students, the policy seeks to ensure their ability to contribute to the school's character and to the veterinary profession.

Shepherd Woolf, a white applicant whose undergraduate GPA and MCAT score was higher than the GPA and MCAT scores of many non-white applicants, but lower than the GPA and MCAT scores of other non-white applicants, has sued Mamalia in federal court asserting that the school discriminated

against him on the basis of race in violation of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and 42 U. S. C. §1981. He claims he was rejected because the veterinary school gives applicants belonging to certain minority groups a significantly greater chance of admission than students with similar credentials from disfavored racial groups.

46. What standard of review will the federal court apply in analyzing Woof's case?

47. Will the standard of review be the same when a white plaintiff brings the case as when a non-white plaintiff brings the case? (Circle the best answer.)

YES

NO

48. The United States Supreme Court has ruled that the high standard of review you (hopefully) identified in your answer to Question 46 can be met. What governmental interest has the Court used to justify that high standard?

Questions 49 and 50 are based on the following facts:

In order to combat the visual blight and litter that political signs cause around election time, the Town of Amnesia has enacted an ordinance that bans the posting of political signs on public and private property except during the period extending from seventeen days prior to any primary, general or special election until forty-eight hours following the closing of the polls. Violation of the ordinance carries a small fine, and a potential jail sentence for repeated offenses. Ron Mitney, a local candidate running for town selectman, has challenged the constitutionality of the ordinance.

49. As a first point of analysis in his case, Ron should argue that the ordinance is:

because:

50. What standard of review will apply if Ron prevails in the argument set forth in your answer to Question 49?

END OF PART ONE

PART TWO

ESSAY QUESTION

SUGGESTED TIME: FORTY-FIVE (45) MINUTES
PERCENTAGE OF EXAM POINTS: 25%

INSTRUCTIONS FOR PART TWO:

This part consists of one (1) substantial essay question. Please put your answer in a blue book entitled "Part Two," and not into this examination booklet. Please limit your answer to five (5) single-spaced bluebook pages.

QUESTION:

The 1970 federal Controlled Substances Act (CSA) establishes five "schedules" of certain drugs, which it defines as "controlled substances." Marijuana is a schedule 1 controlled substance. For a drug or other substance to be designated as a schedule 1 controlled substance, it must be found: (i) that the substance "has a high potential for abuse;"(ii) that the substance "has no currently accepted medical use in treatment in the United states; and (iii) that there is "a lack of accepted safety for use of the drug or other substance under medical supervision."

Among other things, the CSA makes it unlawful to knowingly or intentionally manufacture, distribute, dispense, or possess a controlled substance." In the CSA, Congress set forth certain findings and declarations":

- (2) The illegal importation, manufacture, distribution, possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.
- (4) Local distribution and possession of controlled substances contribute to the swelling interstate traffic in such substances.
- (5) Controlled substances manufactured and distributed intrastate cannot be differentiated from those manufactured and distributed interstate. Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and those manufactured and distributed intrastate.
- (6) Federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic.

In 1996, voters of the state of Fornicalia passed proposition 215, which is codified as the "Compassionate Use Act of 1996." Among other purposes, the Compassionate Use Act is intended to ensure that seriously ill Fornicalians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in treatment of cancer, anorexia, AIDS, chronic pain, arthritis, migraine or any other illness for which marijuana provides relief.

The Compassionate Use Act is intended to ensure that patients and their caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanctions. Consequently, the Compassionate Use Act exempts a patient or primary caregiver who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician from certain other Fornicalia code sections that make cultivation or possession of marijuana illegal.

Claire Roache, a Fornicalia resident, suffers from several serious medical conditions, including an inoperable brain tumor, life threatening weight loss, a seizure disorder, constant nausea, and several chronic pain disorders. She has been using marijuana as a medication for the past five years, every two waking hours of every day. Her doctor confirms that Roache has tried essentially all other legal alternatives, and all are either ineffective or result in intolerable side effects. He states that traditional medicine has utterly failed Roache, and that foregoing marijuana treatment may be fatal.

Because Roache is physically unable to cultivate her own marijuana, two caregivers grow it for her and provide it to her free of charge. In growing Roache's marijuana, the caregivers allegedly use only soil, water, nutrients, growing equipment and supplies originating from or manufactured within California. Once the marijuana has been cultivated, Roache processes some of it into cannabis oils, balm and foods.

Roache, who is not married, has several nieces and nephews who live nearby but attend out-of-state colleges. During vacations and school breaks, they come to visit Roache, and help with the cultivation of her marijuana. One of her nieces often assists Roache in processing the marijuana into cannabis oils and balms.

In August, 2002, deputies from the Bong County Sheriff's Department and agents from the federal Drug Enforcement agency came to Roache's home. The sheriff's deputies concluded that Roache's use of marijuana was legal under the Compassionate Use Act. After a three hour standoff involving the Bong County DA and the US Attorney for the Eastern district of Fornicalia, the DEA agents seized and destroyed Roache's eight marijuana plants. Fortunately, Roache has enough marijuana to meet her medical needs until more plants can be cultivated.

Fearing that any future raids may permanently deprive her of access to medical marijuana, Roache has come to you for help. She does not understand why the Compassionate Use Act does not protect her against the actions of the federal agents, and wants to know if there is any way to prevent future raids. Please discuss with her all relevant constitutional issues. Please discuss both sides of each issue so you can help her assess her chances of success.

PART THREE

ESSAY QUESTION

SUGGESTED TIME: FORTY-FIVE (45) MINUTES
PERCENTAGE OF EXAM POINTS: 25%

INSTRUCTIONS FOR PART THREE:

This part consists of two (2) shorter essay questions. Please put your answers in a blue book entitled "Part Three," and not into this examination booklet. Please limit your answer to each essay questions to three (3) single-spaced bluebook pages.

QUESTIONS:

A. A fungus affecting evergreen trees has been identified in many of the southern states. Although the fungus seems to be spreading rapidly, there is no accurate information as to how it is transmitted or how dangerous it is to trees or to humans. Some people have reported annoying rashes after coming in contact with the fungus, and there is some anecdotal evidence that humans coming in contact with infected trees may inadvertently pass the fungus on to other trees and plants. There have been some reports that young children and babies who come in contact with the fungus may become seriously ill.

The State of Northampton Hampton Legislature has passed a law prohibiting the sale in Northampton of any Christmas trees not grown in the state. In addition, the Legislature has established a Christmas Tree Inspection Board to examine all Christmas trees sold in the state for signs of the fungus. The Board has seven members, three appointed by the Governor, two appointed by the Northampton Chamber of Commerce, and two appointed by the Speaker of the Northampton House of Representatives. The Board inspects all Christmas trees grown in Northampton, and has the sole authority to declare the trees "fungus free." Only trees designated "fungus free" may be sold in the state. Because of the costs of the inspection program, trees grown in other states are not eligible for inspection by the Board, and therefore may not be sold in the state.

Red Green, who operates an ice cream store in Northampton, on the Massachusetts border, has traditionally sold Christmas trees from his parking lot during November and December. Because the ice cream store is not near any Northampton wooded areas, Red has always bought his trees from Massachusetts suppliers located just over the border, significantly reducing his transportation costs. Under the new legislation, Red is unable to sell any Massachusetts-grown trees in Northampton.

Red has come to you for help. Please advise him as to all relevant constitutional issues.

B. Bigcity, which has a large minority population, has had a continuing problem with the poor quality of its public schools. Bigstate has just been notified that it has been selected to receive millions of dollars in federal funds to improve the quality of the Bigcity public schools. The funds are specifically earmarked for building renovations, reduction of class size (hiring more teachers), adoption of a basic core curriculum and state-of-the-art special needs programs.

Because of the poor quality of the Bigcity public schools, many parents have opted to send their children to charter schools, which receive per-pupil stipends from Bigcity, and have benefitted from very generous state grants. Several legislators have been heard to comment privately that the per-pupil stipends and state funds being devoted to the Bigcity charter schools is detracting from other state programs.

In announcing the federal grant, Bigstate has required that, because it wants to ensure that every Bigcity child benefits from the educational excellence the new federal funding will make possible, all Bigcity students in grades 1-12 must attend Bigcity public schools. "Undisclosed sources" in the Bigstate Governor's office have also revealed that the lack of accountability of the charter schools, and

Bigstate's inability to monitor academic progress in the charter schools contributed to the decision to require all Bigcity public school students to attend public schools.

The parents of many poor children, who have essentially given up on the Bigcity schools and have enrolled their children in charter schools, have come to you for help. They want you to advise them as to their best constitutional arguments against the state and predict their likelihood of success if they challenge the ruling forbidding them from sending their children to private schools. They tell you that 75% of the students in Bigcity are members of minority groups and wonder if that will affect their legal options.

END OF EXAMINATION

HAVE A NICE HOLIDAY