

Constitutional Law
Emory University School of Law

Professor Mary L. Dudziak

Spring 2013

April 24, 2013

Final Examination
Instructions

Time limitation:

Reading period: 30 minutes

Exam writing time: 3 hours

1. **DO NOT LIFT THIS COVER SHEET UNTIL INSTRUCTED TO DO SO BY THE PROCTOR.**
2. This exam begins with a 30 minute reading period. During the reading period you should read the entire exam carefully at least once. You may take notes or may outline your answers if you would like. **YOU MAY NOT BEGIN WRITING YOUR ANSWER ON YOUR COMPUTER OR IN A BLUE BOOK UNTIL THE PROCTOR TELLS YOU THAT THE WRITING PERIOD HAS BEGUN.**
3. Professional Conduct Code pledge: "I acknowledge that in this, as in all other law school activities, I am bound by the Professional Conduct Code."

Signed (using exam number): _____

4. This exam is 8 pages long, including these instructions. It consists of three parts, which will be equally weighted in grading: two essay questions and one set of six short answer questions. You will have three hours to answer the questions.
5. There is no length limitation for answers to the essay questions. Short answers must be 300 words or less.
6. If using a laptop to write your answers, you must have Electronic Bluebook installed on your computer, and **you must select "Blocked" when you see a box that asks if this is a blocked or unblocked exam.** If you have trouble with your computer during the exam, the law school requires that you complete your exam

- by writing it in a bluebook.
7. If using bluebooks to write your answers, put your exam number on every bluebook, and begin each section of the exam in a new bluebook.
 8. This exam is open-book, meaning that you may refer to any print materials in your possession. You may not access the internet or files on your computer, however.
 9. You will be able to fully answer the questions based on our course material and class lectures and discussions. To illustrate your knowledge of our course material, refer to course readings, particularly relevant cases and other authorities, in your answers. References to cases and other sources *do not* need to be in proper citation form, and you *do not* need to use footnotes or endnotes.
 10. Be careful to acknowledge any quotations and close paraphrasing you use by referring to sources in your exam answer. It is important that you do not present the writing of others as your own. For that reason, if you quote from or closely paraphrase from a treatise or similar source, cite the source and use quotation marks when appropriate.
 11. Be sure to fully answer the questions asked. Should your answer depend on any facts not provided in the questions, please specify such facts and explain their relevance.
 12. **Applicable law:** The law applicable to this exam is the law as it was on our last day of class, April 19, 2013. Any cases decided between that date and the date of this exam should not be considered.
 13. Because some students may be taking make-up exams, do not share information about the content of the exam questions with anyone until the full exam period is over. In order to preserve blind grading, do not contact your professor to discuss any aspect of the exam during the period between administration of the exam and publication of grades.
 14. If you have trouble during the exam and need assistance, please see Dean Katherine Brokaw in room G131.
 15. Return the exam questions to the proctor at the end of the exam.
 16. Good luck!

Part I

Essay Question #1

George Harrison and Ahmad Jamal live in River City, East Dakota. George, who grew up in East Dakota, owns a music store and teaches guitar and other music classes. Ahmad is an accountant, and is originally from West Carolina. George is 30-years-old, and Ahmad is 29. They met when they were both students at East Dakota State University. After graduating, in 2005 they both moved to River City and eventually bought a home together. George and Ahmad are committed to each other. They would like to get married, but East Dakota does not recognize same-sex marriage.

George has a sister and two brothers, all living in East Dakota. George and Ahmad have been very close to George's sister, Jane, her husband Leo, and their three young children, Martin, Emily and Natalie, ages seven, four and two. George and Ahmad have often babysat the children. When Jane and Leo celebrated their 10-year wedding anniversary with a trip to Paris a year ago, George and Ahmad took care of the children for a week. The three children call both George and Ahmad "uncle." George is estranged from his parents and his brothers, who do not approve of his relationship with Ahmad.

Two months ago, when on their way home after going to the movies, Jane and Leo were in a traffic accident. They were hit head-on by a drunk driver, and killed instantly. Jane and Leo did not have a will, however they had told George and Ahmad that if anything ever happened to them, they wanted the couple to raise their children. George's parents took care of their grandchildren immediately after the accident, but after a couple of weeks, George's brother Jesse and his wife Sandy moved the children into their home 300 miles away. George and Ahmad have only seen the children at Jane and Leo's funeral. George's brothers and parents refuse to talk with them about the children's future. George and Ahmad's inability to see their nieces and nephew has compounded their grief. They are concerned about the children living with Jesse and Sandy, since Sandy once left Jesse after a domestic violence incident. The couple has had many difficulties during their five-year marriage. But George has heard that they are planning to adopt the children.

George and Ahmad have sought the assistance of your law firm, Gibbard & Harmer. They would like to adopt Martin, Emily and Natalie. They believe they would provide an ideal, loving home for the children, and they want to carry out Jane's and Leo's wishes. Living with George and Ahmad would provide continuity for the children, since they would be able to stay in their current school and day care, and could continue to play with their friends. George and Ahmad have a home, with room to spare, not far from where Jane, Leo and the children lived.

George and Ahmad will face difficulties with adoption in East Dakota, however. In 2008, East Dakota voters adopted an amendment to the state constitution that states:

Sanctity of Marriage and Family Amendment

- A. Only marriage between one man and one woman is recognized as valid under the laws of East Dakota.
- B. For adoption of children in East Dakota, preference is given to lawfully married couples.

George and Ahmad do not want to challenge the state's ban on same-sex marriage. They only want to be able to adopt their nieces and nephew. You are a summer law clerk working for Gibbard & Harmer. The partner you're working for, Rilo Kiley, is handling the family and adoption law issues in this case. Since the Sanctity of Marriage and Family Amendment would enable Sandy and Jesse to prevail in a custody dispute over the children, Ms. Kiley wants you to write a memo addressing whether, as applied to George and Ahmad's case, Section B violates the U.S. Constitution. Please identify the nature of any constitutional rights they may have, and discuss relevant caselaw. Evaluate the strengths and weaknesses of potential constitutional arguments, and tell Kiley whether or not you think the couple is likely to prevail.

Part II

Essay Question #2

Research using stem cells from human embryos that were created for in vitro fertilization, but ultimately not needed, has been highly controversial. Medical researchers argue that breakthroughs in treatment of genetic diseases like Parkinson's Disease are possible through embryonic stem cell research. Critics, however, question the ethics of human embryo research, and some argue that any embryo is a potential human life that must be protected. The use of federal funds in such research is currently restricted to the use of preexisting stem cell lines, which bars the use of new embryonic stem cells.

When federal research funding was initially restricted, the Pacifica state legislature enacted a law providing state funding for embryonic stem cell research. Other states, particularly those with important medical research facilities, and states hoping to attract related start-up companies, are considering following Pacifica's lead.

Senator Juliet Montoya believes that a human embryo is a human life entitled to protection. She would like to stop human embryo research through federal regulation and federal incentives. Senator Montoya has proposed the following statute:

A. Protection of Unborn Life Act

A human embryo is a potential human life entitled to protection.

B. Ban on Human Embryo Research

1. Federal research funds may not be used for research resulting in the destruction of a human embryo.¹
2. States may not support research that results in the destruction of a human embryo.

C. Penalties

1. The knowing and willful destruction of a human embryo for research purposes in the District of Columbia is a violation of federal criminal law resulting in punishment by incarceration for one year or more.

¹ This provision is intended to clarify and codify preexisting federal restrictions.

2. Within one year of the passage of this Act, each state must enact a prohibition on the destruction of human embryos for research purposes under the state's criminal code.
3. Penalties for violating such state prohibitions must include incarceration for one year or more.
4. In any state that has not enacted the requisite criminal penalties for violating this act within the required time-period, federal criminal law shall apply to intrastate actions resulting in destruction of a human embryo for research purposes.

D. Ban on Interstate Shipments

1. The interstate shipment of human embryos for research purposes is prohibited.
2. The interstate shipment of products, drugs, and devices derived from research using human embryos is prohibited.

E. Amendment to Health Records Digitization Act:²

1. Full federal funding under the Health Records Digitization Act shall be contingent upon compliance with the Protection of Unborn Life Act.
2. To comply with this Amendment, states may not fund human embryo research.
3. A state violating this provision will lose 50% of HRDA funding.³

You are an aide to Senator Montoya. She would like your advice about whether there are any problems with her draft statute that might lead the Supreme Court to strike it down. In particular, she's concerned that the State of Pacifica or private researchers

² The [hypothetical] Health Records Digitization Act provides funding to public and private hospitals for the purpose of turning paper health records into digital records to improve the accuracy and accessibility of health records. The goal of the HRDA is to ensure that all hospital health records are fully digitized by 2020.

³ All states have reported that HRDA funding is essential to their ability to digitize hospital records by the 2020 deadline. The funding is a tiny portion of overall state budgets, however (significantly less than 1% of all health care-related funding).

within the state may argue that the statute is unconstitutional, so she is especially concerned about the constitutionality of Sections B (2), C (2), (3) and (4), D and E. In addition, she would like to be fully prepared to respond to questions from her Senate colleagues about the constitutional basis for this statute.

Write a memo to Senator Montoya taking up whether Congress has power to pass this statute. Also identify potential constitutional challenges to the Act. Cite and discuss any cases supporting your analysis. If you believe that there are important constitutional issues beyond the scope of our course, do not address those matters. (Senator Montoya is asking another staff member to address such issues, including whether the proposed statute violates the first amendment rights of researchers).

Part III

Short Answer Questions

Word limit for each answer: 300 words.

(If an answer exceeds the word limit, it will be graded on the basis of the first 300 words only.)

[10 short answer questions are deleted from this copy.]