



Exam Number _____

FINAL EXAMINATION
IN
CONSTITUTIONAL LAW

May 2, 1997
2:00-5:30 P.M.

Professor Shanor

This exam contains three one-hour questions which will be weighted approximately equally. In order that you may outline and review your answers, or to give you a more leisurely time to answer the questions, you are provided an additional half-hour in which to complete the exam.

The exam is **open book** and may be taken only in rooms assigned for taking this exam. The exam is governed by the Honor Code. If you believe additional information is needed to analyze any question, state what you think is needed and why it makes a difference.

Read, think, and organize before you write!

WRITE ALL YOUR ANSWERS IN THE SPACE PROVIDED ON THE ANSWER SHEETS HANDED OUT WITH THIS EXAM (FOUR PAGES PER QUESTION).

WRITE YOUR EXAM NUMBER ON EACH PAGE OF THE ANSWER SHEETS AND ON THE COVER OF THIS EXAM. YOU MUST RETURN BOTH THE EXAM AND THE ANSWER SHEETS TO RECEIVE CREDIT FOR THE COURSE.

GOOD LUCK AND HAVE A WONDERFUL SUMMER!

Question I
(one hour)

In state tort actions, juries may award punitive damages to punish the defendant for outrageous conduct. Traditionally, determination of punitive damages has been a matter solely of state law: some states do not permit punitive damages at all, other states limit the size of punitive damages awards, and most states permit unlimited punitive damages awards.

The United States Congress recently enacted, and the President duly signed into law, the following legislation:

THE PUNITIVE DAMAGES REFORM ACT OF 1997

(a) FINDINGS.-The Congress finds that-

- (1) excessive punitive damages awards have a direct and undesirable effect on interstate commerce by increasing the cost and decreasing the availability of goods and services; and**
- (2) the state laws governing punitive damages awards have evolved inconsistently within and among the States, resulting in a complex, contradictory, and uncertain regime that unduly burdens interstate commerce.**

(b) THEREFORE -

- (1) In any suit brought in any state or federal court, any award of punitive damages in excess of an amount to be determined the Chair of the Finance Committee of the United States Senate after consultation with the Attorney General of the United States, shall be reduced to such an amount, but such amount shall not exceed \$250,000.**

Jane Green, a lawyer who represents plaintiffs in tort suits, has represented several clients who received punitive damages awards in excess of \$1 million. As payment for her services, Green normally receives one third of any award her clients win. Expecting that The Punitive Damages Reform Act of 1997 ("PDR") will greatly decrease her income, Green files suit in federal district court, asserting that the PDR violates the separation of powers.

Analyze the following issues in the space provided:

- (1) Is Green's suit justiciable? Does the PDR violate the separation of powers?
- (2) Assume the PDR is upheld and that many defendants who benefit from the PDR (by having punitive damages awards reduced) do business with the United States military. Assume further that President Gore, whose campaign was strongly supported by tort plaintiffs' lawyers, issues an executive order in January 2001, stating that the armed forces may not buy any product manufactured by, or in any other way do business with, any defendant who has a punitive damages award against it reduced under the PDR, unless that defendant voluntarily pays the plaintiff the full amount of punitive damages originally awarded by the jury. Analyze whether the President has the authority to issue this executive order.

Question II
(one hour)

New Hope, a state with a population that is approximately 80% white and approximately 20% non-white, has for many years had an affirmative action policy for student admissions to its state universities. Under this policy, which was recently ruled unconstitutional under the Equal Protection Clause of the Fourteenth Amendment, there had been a 20% non-white quota. Absent this quota, only 5% non-whites would have been admitted under the other admissions criteria used in the New Hope university system. Incidentally, approximately 15% of New Hope's university students have traditionally come from other states.

Pat Dent, the Chancellor of New Hope's university system, recently announced an alternative to the judicially-invalidated affirmative action policy. Under Dent's new "Top Ten" admissions policy, the top 10% (ranked by grade point average) of the students from each high school in the state would be admitted to New Hope's universities. Because of residential segregation, the effect of the Top Ten policy will likely be that non-white students would constitute about 20% of the students admitted to New Hope's universities. No out-of-state students would be admitted.

Dent has stated that the Top Ten policy would (1) promote ethnic diversity among students and ensure that students from all over the state would be admitted and (2) equalize educational opportunities among students who may have suffered because some New Hope high schools are less well funded and provide less educational opportunity than other high schools.

Write a memo in the space provided answering these questions:

(1) Does the Top Ten policy violate the Equal Protection Clause of the Fourteenth Amendment?

(2) Does the Top Ten policy violate (a) the Commerce Clause or (b) the Privileges and Immunities Clause of Article IV?

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(one hour)

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Question III
(one hour)

Due to advances in medical technology, a woman who has stopped producing eggs can become pregnant, using her own previously-frozen eggs or eggs donated by another, when such eggs are fertilized outside her body and implanted in her uterus. Such a process recently enabled a 63-year old woman to become pregnant and give birth to a baby.

Public concern over artificially assisted births in older women has led Congress to consider the following legislation:

FAMILY PRESERVATION ACT OF 1997

(a) FINDINGS.-The Congress finds that-

- (1) medical technology allows childbirth long after natural biological processes would permit birth;
- (2) artificially induced births in older people will increase the number of children whose parents die before the children reach maturity;
- (3) the increased number of parentless children will undermine the family structure central to American values and increase the number of children requiring public financial support;
- (4) both the undermining of family structure and the increased need for public funds will impair the nation's economy; and
- (5) the states have failed to act to address these pressing national problems.

(b) THEREFORE -

- (1) No one may implant a fertilized egg in a human being over the age of 60.
- (2) Violation of this statute shall be punishable by a fine of not more than \$10,000 and imprisonment of not more than 6 months.

Write a memo in the space provided analyzing whether the Family Preservation Act:

(1) Is a valid exercise of Congress's power under (a) the Commerce Clause and (b) section 5 of the Fourteenth Amendment; and

(2) Violates the Due Process Clause of the Fifth Amendment (do not address any equal protection issues which this Act may raise).