
HOWARD UNIVERSITY SCHOOL OF LAW
CONSTITUTIONAL LAW I SECTION 2

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Spring 2009 Final Exam Instructions

May 1, 2009

General Instructions

1. You have **three (3) hours** for the exam.
2. Times noted for the questions reflect the amount of time I estimate it would take to answer each question. Please note that although the time noted for each question does relate somewhat to the points for that question, it may not do so in a strict one-to-one fashion.
3. The exam is three (3) pages long, excluding this instructions page.
4. There are two (2) questions worth 90 points each, for a total of 180 possible points.
5. Write legibly and clearly in blue or black ink.
6. Use headings as appropriate.
7. **Respond to the question asked, not to questions that might have been asked.** Even though the fact pattern may be based on one of the hypothetical problems given during the semester, the call of the question may be different and the facts have been revised. In your responses, do not spend time on matters that are not issues just to show me how much you know. This exam tests professional judgment as well as knowledge of the material we covered in Constitutional Law I.

Permissible exam materials

The exam is closed book.

No materials other than the exam itself, blank scratch paper, and bluebooks are allowed.

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Question 1. 90 points. Estimated time: 80 minutes.

Assume Congress enacts (and the President signs) the Medical Information and Services Law (MISL) with numerous provisions including among others:

1. All lawful residents of the United States must have a MedID card on which the following information is contained in electronic form: name, address, phone, email; social security number; primary care physician name, specialty, and contact information; insurance information; medical history; and other medical information such as allergies, immunizations, blood type, phenotype, national and ethnic information, DNA information to the extent known, and the like.
2. All information throughout the nation's medical care system must comply with a federally mandated format for the information so that all medical providers can access and update the information on the card.
3. "Medical providers" is defined to include doctors, nurses, medical technicians, paramedics, insurers, hospitals, clinics, emergency medical technicians, and all people and institutions that provide medical services.
4. All medical providers must use the MedID card for treatment, billing, and reporting purposes.
5. All physicians and other medical providers must report all of the medical services they provide to everyone. The reports are to be done automatically at the end of each week and are to be submitted electronically to a central federal database where the medical records of each individual are kept and updated.
6. In order to provide transition time, medical providers must comply with this law and patients must have and use MedID cards not later than July 1, 2011.

Before enacting the law, Congress held extensive hearings, gathered information, and made the following findings contained in the conference committee report on the bill:

7. The United States medical care system is expensive and its costs need to be contained.
8. The medical care system involves interstate commerce in medical education, treatment, payment, and diagnosis.
9. Research on medical care issues is hampered by difficulty in obtaining and analyzing health- and treatment-related data due largely to the lack of a central repository of such information and the lack of uniformity in the way in which the information is stored.
10. The quality of patient treatment suffers from delay caused by lack of accurate and current medical data being readily available and easily shared by medical care providers and those who pay for the medical care.

Before the MISL compliance date of July 1, 2011 for most aspects of the law, a non-governmental organization called SOOMB (Stay Out of My Body) (pronounced *soom* (rhymes with “soon”)-*bee*)), sued in federal court on behalf of its members (1) to prevent the federal government from collecting MedID-related information from the SOOMB members themselves; (2) to prevent the government from requiring SOOMB’s members from being forced to carry and use the MedID; and (3) to prevent the federal government from collecting MedID-related information about anyone from insurers, hospitals, doctors, pharmacists, and other medical care providers.

Evaluate all federal constitutional issues reasonably raised *except* (1) matters concerning state sovereignty and (2) the merits of the substantive claims by SOOMB that MISL violates its members’ constitutional rights including (perhaps among others) the right to privacy.

Question 2. 90 points. Estimated time: 90 minutes.

Assume Congress passed a bill in 2008 that provided for a procedure for detainees held by U.S. officials or military forces wherever they are in the world to obtain review of the lawfulness of their detention in an Article III court. This bill was intended to be a substitute for the Constitutional right of habeas corpus and as written would in fact pass constitutional muster as a habeas corpus substitute. The President vetoed the bill and Congress overrode the veto.

Ten years later the government of Sudwangin was engaging in genocide against an ethnic group within its own borders. The United Nations Security Council, pursuant to the United Nations Charter (a treaty validly ratified by the United States), passed a formal Resolution authorizing the use of military

force by the U.N. against Sudwangin. In accordance with the U.N. Security Council Resolution and a subsequent U.S. agreement with the U.N. for the U.S. to provide troops, President Eleanor vonRobinson committed U.S. troops to fight in Sudwangin under the auspices of the U.N. Congress passed a joint resolution authorizing the expenditure of funds for the commitment of troops to this war.

The Security Council Resolution provides that people held by U.N troops during the war have a right to obtain review of the lawfulness of the detention before an international tribunal established for that purpose. Assume that the prisoners held by the U.S. under U.N. auspices do indeed receive such a review by the international tribunal upon request and that the review process meets all international and U.S. standards of due process regarding the legality of their detention. The U.S. does not hold these hearing in either a U.S. Article III court or in a U.S. military court and there is no appeal or review process for the matters to be heard by an Article III court or a U.S. military court.

A. Several Sudwanginese nationals detained during the fighting sought review in U.S. federal court of the lawfulness of their detention. They are being held in a military prisoner of war camp run by the U.S. under U.N. auspices in Sudwangin.

President Eleanor vonRobinson asserts that the U.S. courts have no power to hear a claim from a foreign national held by U.S. troops in a foreign land because of the terms of the agreement with the U.N. under which the U.S. committed troops.

You were newly hired by the Office of the White House Counsel and have been asked to evaluate the President's assertion under the Constitution.

B. Tex Paier-Bolton ("TPB" for short) is a neo-isolationist and doesn't believe the U.S. should participate in the U.N at all and certainly not in a U.N. sanctioned war when the U.S. has not been directly attacked. TPB sues the United States in United States District Court claiming that the U.S. participation in the U.N.-sanctioned war is unconstitutional. You are a law clerk for the Honorable George Alexander, the U.S. District Court judge assigned to the case. He has asked you to explore and evaluate possible grounds for dismissing PB's suit prior to trial on the merits.

End of Exam