
HOWARD UNIVERSITY SCHOOL OF LAW
CONSTITUTIONAL LAW I SECTION 2

PROF. STEVEN D. JAMAR

202-806-8017

Spring 2016 Final Exam Instructions

April 26, 2016

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 does 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 three (3) questions worth 90 points, 30 points, and 40 points respectively for a total of 160 possible points.
5. If you are not typing your exam, write legibly and clearly in blue or black ink.
6. Respond to the question asked, not to questions that might have been asked. In your responses, do not spend time on matters that are not relevant just to show me how much you know. This exam tests professional judgment as well as knowledge of the material we covered in the course.
7. One or more of the matters you are asked to assess for constitutionality may have a clear answer. For such matters you should provide as complete an explanation as is appropriate so that the reader will understand your analysis and why the matter is not a close one. Other matters may be less certain of outcome and may depend upon filling a gap in the current legal doctrine. For such issues, policies and principles at stake are particularly appropriate to discuss.

Permissible exam materials

The exam is closed book. No materials other than the exam itself, blank scratch paper, the laptop with the exam software, and (for those not using the exam software) exam books are allowed.

HOWARD UNIVERSITY SCHOOL OF LAW

CONSTITUTIONAL LAW I SECTION 1

Professor Steven D. Jamar

202-806-8017

SPRING 2016 FINAL EXAM

APRIL 26, 2016

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

Assume that in 2012 Congress enacted and the President signed a law entitled the “National Economic Stimulus Law” (NESL). The law provided as follows:

1. The purposes of this law are to stimulate the economy; to support the middle class; and to lift more people out of poverty.
2. All private employers are required to pay a minimum wage of \$15.00 per hour.
3. A tax credit in the amount of 30% of capital investment in solar power generation equipment is available to all private businesses, not-for-profit organizations, and individuals that invest in solar power generation equipment installed on their own property.
4. State and local governments are eligible for grants to fund or to directly create rural broadband access to the internet through wireless and/or copper wire and/or fiber optic cable networks.
5. To be eligible for the broadband grants, state and local governments must meet the following conditions:
 - a. The speed of the rural broadband access must be at least 1.0 to 1.5 Mbps;
 - b. The broadband access must reach at least 95% of rural residents in the state within three years from the initial grant;
 - c. The state must raise the minimum wage of all state and local employees to \$15.00 per hour;
 - d. Access by rural user must not exceed the average cost of basic broadband service in urban and suburban areas;
 - e. The state must prohibit discrimination by state and local governments and their employees and agents on the bases of race, national origin, gender, gender identity, religion, age, disability, and sexual orientation in the provision of all governmental services and benefits.
 - f. The state must waive sovereign immunity for any and all claims arising in connection with the grant or in connection with the provision of broadband internet access in the state.

6. With respect to any claims that may arise under against the state or local governments by individuals or private entities under this law, state sovereign immunity is abrogated and a private cause of action against the state or local government concerned is created in favor of the affected person.
7. All states must comply with the requirements of this law by December 2015.
8. Any provision of this statute that may be deemed unconstitutional by a court of law is to be severed with the balance of the statute remaining in full force and effect.

Lovine R. Earle, a resident of Wayback, a small, remote town in the state of Oklansa, cannot get cell phone coverage and relies on her landline phone for communications, including her internet connection. She could get television through a satellite provider such as Direct TV, but does not want television. It is now April 2016 and Earle still does not have broadband connection to the internet.

Earle is a hunting and fishing guide in the hill and lake country of Oklansa and makes a meager living. She estimates that if she had a strong internet presence and if she had good cell phone coverage, she could develop a much larger, successful business because people, especially those under 35 years old, could find her online and contact her by phone, even if she were out with other clients as a guide for hunting or fishing or just hiking and camping. She estimates that she loses about \$30,000 per year due to the lack of broadband coverage in Wayback and in the areas where she takes people as a guide.

In the 4 month off-season, Earle works as a caretaker at the Wayback State Park, a park owned and operated by the state of Oklansa. Earle is paid \$7.50 per hour for a 20 hour per week job by the state.

In November 2015 her supervisor at Wayback State Park learned that Lovine R. Earle was transgender person who identifies, dresses, and considers herself female though genetically she is male. Under state law, it is lawful to discriminate against such transgendered people, while under provision 5.e of the NESL, it would not be.

In 2013, 2014, and 2015, the state of Oklansa accepted federal grants under the NESL program. However, Oklansa has provided broadband coverage to only 85% of its rural residents.

Earle comes to you for advice on whether and on what grounds she can sue the state under the NESL provisions.

Evaluate her likelihood of success and advise her on how to proceed.

Question 2. 30 points. Estimated time: 30 minutes.

The state of Midteros requires all businesses with a physical presence in Midteros and doing business in the state to register with the state.

For businesses located outside of Midteros, Midteros imposes a registration fee for doing business in Midteros measured by 7% of the gross sales from items or services sold within Midteros. Midteros imposes a \$1000.00 registration fee for all business located within Midteros. Midteros has a 5% sales tax that applies to all goods and services sold within the state by businesses located in the state.

Emazing.com, Inc., is a business located in the state of Northos. Emazing does business throughout the country via the internet, selling a wide range of goods and services of the cultish health variety such as various herb-based health and diet supplements, books and other material on yoga and mindfulness, and also provides online advice, counseling, and spiritual instruction through chat lines and video-conferencing such as FaceTime or Skype.

Emazing has refused to pay the 7% registration fee. The state of Midteros sued Emazing in federal court to recover the 7% fee.

Evaluate Midteros's likelihood of prevailing.**Question 3. 40 points. Estimated time: 45 minutes.**

For 60 years the United States has attempted to isolate the small communist country of Freedonia, refusing to recognize the government, refusing to send or receive ambassadors from it, and imposing a trade embargo. Congress imposed the trade embargo through legislation enacted 60 years ago and duly signed into law by the President.

President Reelest has just recognized the government of Freedonia, exchanging ambassadors and taking other steps to normalize relations including allowing people to freely travel between the two countries. She has not removed the trade embargo, however.

Senator Leeb Eration, a federal Senator from the state of Isolatia, has sued President Reelest in federal court to force the President to undo the recognition of state of Freedonia's government and to undo the normalization of relations with it.

President Reelest moves to dismiss the suit on several grounds.

Evaluate the likelihood of success of President Reelest's motion.**End of Exam**