
HOWARD UNIVERSITY SCHOOL OF LAW
CONSTITUTIONAL LAW I SECTION 2

PROF. STEVEN D. JAMAR

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Spring 2017 Final Exam Instructions

May 5, 2017

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 40 points, 70 points, and 50 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

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SPRING 2017 FINAL EXAM

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Question 1. 40 points. Estimated time: 50 minutes.

In 2014 the state of Primont enacted a law prohibiting online service providers like Comcast and Verizon, social media like Facebook and Twitter, search engines like Google, and online commercial sites like Amazon.com from selling to others their customers' search histories, histories of visited websites, and identification of products searched for, viewed, or purchased. The companies were still permitted to gather such information their own purposes and for use for targeted advertising for those advertising on their own sites as long as the information itself was not disclosed to or sold to third parties such as other vendors, advertisers, and companies of all sorts.

In 2014 a new online social media platform launched. This new online platform was called "Vacay" (for "vacation"). It provided online opportunities to virtually visit cities, to plan itineraries, and to track one's travels in real time. Vacay's business model depended upon its ability to gather information about its customers from their online activities and to sell it to others. The ban by Primont would apply to Vacay and would require it to have special programming for customers who are Primont state residents in order to comply with the law. This would impose a significant cost on Vacay. If every state adopted the same or similar restrictions or if as few as six states with large populations imposed such restrictions, Vacay would not be a viable business. The problem faced by Vacay would be exacerbated if states imposed different restrictions from each other.

Assume the federal government, starting in 2003, had banned online service providers and search engines from gathering and distributing the same kind of information, but had allowed the other types of businesses which did business online, like Vacay, credit card companies, Amazon.com, and and big box stores like Target, to gather and use but not sell the information. Assume that in 2015 Congress repealed all federal restrictions, including both statutory restrictions and regulations promulgated by administrative agencies, on companies of all types relating to gathering, using, and selling or otherwise disseminating information about users. The law repealing such restrictions included a prefatory paragraph that provided:

Privacy is an important interest of the people of the United States, but the federal laws and regulations in place do not serve either the people

or commerce well because they are confusing, inconsistent, and unfairly treat some businesses better than others.

Vacay ignored the Primont restrictions and did business online with Primont residents throughout the period 2014 to the present. In 2017 Primont sued Vacay in federal court for Vacay's 2016 and 2017 actions that violated Primont law with respect to Vacay's Primont customers. Assume subject matter and personal jurisdiction are proper.

Evaluate Vacay's constitutional defense(s).

Question 2. 70 points. Estimated time: 60 minutes.

The city of San Bonapolis decided to be a sanctuary city. As a sanctuary city it decided it would not assist the U.S. Department of Homeland Security Immigration and Customs Enforcement (ICE) agents in identifying, apprehending, or holding undocumented immigrants sought by ICE. San Bonapolis police and other employees would not obstruct ICE, but they would not assist ICE.

This decision upset the president who had campaigned on a platform of capturing and deporting all illegal aliens and undocumented immigrants. In furtherance of fulfilling his campaign pledge, the president reassigned staff and funds from other parts of Homeland Security and the Justice Department to assist in the effort. He also issued an executive order that any state or municipality that did not support the president and ICE in their efforts would no longer receive federal funds for any of the following purposes:

- Support for law enforcement including material and training;
- Funding for road construction;
- Funding for environmental actions such as upgrading sewers and sewage treatment plants;
- Funding for economic development and urban renewal.

You are an city attorney for the city of San Bonapolis. The mayor has asked you to review the executive order and advise the city on its options. Do so including your legal assessment of the constitutionality of executive order including noting additional information you would need to prepare a more complete response.

Question 3. 50 points. Estimated time: 50 minutes.

Congress enacted a bill that the president duly signed into law that required state and local governments to provide ergonomic work stations for all state employees.

The same law also applied to private businesses with more than 10 employees. Bex, a 28 years old woman in good health, worked in a data-entry position of the state of Minneorange Department of Revenue (MDOR). Because the Department of Revenue did not provide ergonomic keyboards, chairs, and workstations, Bex was at risk of developing carpal tunnel syndrome, neck problems, and lower back problems after several years of working at such non-ergonomic work stations. She could ultimately develop chronic medical problems like osteoarthritis if she were susceptible to it; her susceptibility would not be known for at least 20 years. Bex had not yet developed any such infirmities or repetitive stress disorders.

Bex sued the state of Minneorange to provide her with a proper ergonomic work station for her. Minneorange moved to dismiss the claims.

Evaluate the likelihood of success of Minneorange's motion to dismiss.

End of Exam