
HOWARD UNIVERSITY SCHOOL OF LAW
CONSTITUTIONAL LAW I SECTION I

PROF. STEVEN D. JAMAR

Spring 2020 Final Exam Instructions

April 27, 2020

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 correlate with the points for that question, it does not do so in a strict one-to-one fashion.
3. The exam is two (2) pages long, excluding this instructions page.
4. There are three (3) questions worth 50 points each for a total of 150 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 issues that might be in the fact pattern but which are not raised by the call of the question. 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. Some constitutional law issues raised in the problems may have clear answers. 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, the policies and principles at stake are particularly appropriate to discuss. Even if you consider the resolution of one issue dispositive of the issue, normally it is best to consider other issues raised as well.

Permissible exam materials

You may use any resources you wish to use, other than each other (or other people generally), during the exam.

HOWARD UNIVERSITY SCHOOL OF LAW

CONSTITUTIONAL LAW I SECTION 1

Professor Steven D. Jamar

SPRING 2020 FINAL EXAM

APRIL 27, 2020

Question 1. 50 points. Estimated time: 45 minutes.

Assume there is a national medical emergency in the form of a pandemic disease called “FluTenX” which is caused by a virus which is both 10 times as infectious and 10 times as deadly as the common flu. Assume further that there is a federal Medical Emergency Law (MEL) under which the president is empowered to invoke extraordinary powers including the power to order companies to produce goods that are in short supply like surgical masks, disease-testing kits, and drugs that are known to be effective in treating the disease. However, the president, against the advice of every medical expert in and out of the administration, has refused to exercise this authority, leaving the solution, he says, “to the free market.”

While investigating the disease, Dr. Margaret Jones, a physician who specializes in infectious diseases and epidemiological dangers related to infectious, deadly diseases, contracted FluTenX. She has sued the president asking the federal court to order him to invoke MEL for her benefit and for the benefit of the country to help address the pandemic.

The president has filed a motion to dismiss on the grounds that the issues are not justiciable and that even if they are, he is immune from suit.

Evaluate the justiciability and immunity issues and rule on the motion to dismiss.

Question 2. 50 points. Estimated time: 50 minutes.

Congress investigated the failure of many states to provide health care to state employees either directly or through health insurance. Congress’s findings showed that literally millions of workers had to obtain health insurance through other means at their own expense and that millions more were uninsured throughout the country.

After making those findings and placing them in the official Congressional Record, Congress enacted a law which the president signed called the State Employee Medical Care Act (SEMCA) which requires states either to directly pay for all health care needs of state employees or to provide health insurance coverage as spelled out in the law to all state employees. SEMCA expressly abrogates state sovereign immunity and expressly creates a private cause of action and right to sue the state under SEMCA for any state employee whose medical bills have not been or are not being paid by the state or the state’s health insurer.

Illniana neither pays for its employees’ medical costs directly nor provides the health insurance mandated by SEMCA. Bill Pope, an employee of the State of Illniana,

has sued under the federal SEMCA statute to force the state to pay for the cancer treatments he needs at a cost of \$60,000 per year. Such cancer treatments would be covered under the insurance coverage required by SEMCA.

Assume that while people have a constitutional right to seek medical treatment, they do not have constitutional right under the 14th Amendment to force a state government to pay for medical treatment.

The State of Illniana concedes that the law is a valid exercise of federal power under the Interstate Commerce Clause and that the state is required to pay for medical expenses of employees either directly or through providing insurance. Nonetheless, Illniana has moved to dismiss the suit on the grounds Pope cannot sue it because Illniana is protected by the doctrine of state sovereign immunity.

Evaluate and rule on Illniana's motion to dismiss.

Question 3. 50 points. Estimated time: 45 minutes.

The State of Ludittania passed a law, called "NoAI," banning the use of artificial intelligence (AI) in any connection with any commerce being conducted in the state. The Ludittania Secretary of State has stated that the use of AI harms people in the state by invading their privacy because companies gather and use private information about customers and prospective customers and then disseminate that information to others, typically through selling it. The Ludittania Secretary of State also said that the use of AI for products and services, especially in the agriculture sector, harms the health of people, though when pressed she could not explain how the use of AI was connected to the health of anyone.

Many interstate companies, including Amazon, Facebook, Apple, Microsoft, and Google, and many local companies, including MediTec, GreenerFields, and TravelTime, use AI to optimize their production of products and their delivery of services to customers. These companies also use AI to optimize systems for using their products and services, e.g., properly timing the application of appropriate amounts of fertilizer, herbicides, and pesticides on farms. The aim of all of the businesses using AI is to increase sales by using AI to make their products and services better tailored to individual customer needs and interests.

BetterHarvest (BH), a company not incorporated in Ludittania, sells products and services in Ludittania and across the country. It uses its proprietary AI program to help farmers optimize growing their crops. BH competes with GreenerFields, Inc., (GF) a business incorporated in Ludittania. GF manufactures its products and has its principle place of business in Ludittania, but sells its products and services nationwide.

The State of Ludittania has sued BH and GF to stop their use of AI in their products and services in Ludittania in violation of the NoAI statute.

Evaluate the chances of BetterHarvest and GreenerFields prevailing in the lawsuit on the grounds that the NoAI law is unconstitutional.

End of Exam