

Exam No. _____

WIDENER UNIVERSITY
SCHOOL OF LAW - HARRISBURG

CONSTITUTIONAL LAW

FINAL EXAM

General Instructions: Please read these general instructions **before** taking the exam. Detach this face sheet after you begin your exam, sign and return it to the proctor at the end of the exam.

1. No smoking is allowed in the exam room. If you need to leave the room for any purpose, please sign out at the Proctor's desk. A sign-out sheet is provided for that purpose. Only one student is allowed outside the exam room at a time.

2. You are under the Law School Honor Code during this exam. You are advised that any attempt to gain an unfair advantage during the exam is a violation of the Honor Code and may result in prosecution before the Honor Board or Faculty Grievance Committee. You are further advised that you are under an obligation to report any incident occurring during the exam in which any other student attempts to gain an unfair academic advantage. Examples of unfair academic advantage include:
 - a. cheating or collaborating on any exam;
 - b. use of any materials during an exam other than those specifically authorized for use.
 - c. any breach of the rules providing for anonymous grading;
 - d. failure to cease writing immediately when time is called; and
 - e. misrepresentation with respect to absence from a scheduled exam or with respect to lack of information concerning the content thereof.

Special Instructions:

ENDORSEMENT BY STUDENT

I have read the foregoing and I certify that I have neither given nor received aid from any other student in the taking of this exam. I further certify that I have not witnessed any other student giving or receiving aid during the exam, unless noted below. Signature _____

**Final Examination
Constitutional Law I**

**Time: 2 ½ hours
Closed Book**

This is a 2 ½ hour, closed book exam. It consists of 2 parts. Part I (1 ½ hours) consists of 3 short essay questions. Take roughly ½ hour to answer each, as they will be weighed equally in determining the final grade. Part II consists of 1 hour-long question.

The exam contains 6 pages. Check now to be certain that you have the entire exam. You are required to hand in your copy of the exam along with your exam booklets. Place your exam number where indicated on this page and on each of your exam booklets. On each booklet, please indicate both the number of that particular book in the series of books you write and the total number of the series, e.g., book 2 of 3.

Your writing must be legible. I will do my best to decipher your handwriting, but I cannot give credit unless I can figure out what your answer says. **Please write on only one side of each page, and, if your handwriting makes it necessary, write on every other line.**

Attempt to answer the questions on the basis of the facts given. If you find it necessary to make any factual assumption in writing your answer, please state the assumption and explain why you are making it. If you believe that additional information is necessary to answer the question, explain what information is necessary and how it would affect your answer.

Part I. (1 ½ hours)

A. (½ hour)

Assume that Congress passes a law that increases the salaries of all government employees who served with our military forces in Operation Desert Shield and Desert Storm. A provision in that law requires that the persons who accept the salary increase must be tested for Leishmania Tropica, a parasite that has been found in the blood of some returning soldiers. Another provision of the same law gives \$10.00 a week to all U.S. residents who have quit smoking in the past year. (Don't I wish). At the same time, and in order to fund the weekly payments to former smokers, Congress increased the fee charged tobacco companies for federal inspection of their processing plants by 20%. The sponsor of the smoking aspects of the law recently described it as intended to encourage more people to quit for their own good.

Are these provisions constitutional?

B. (½ hour)

In Coker v. Georgia, 433 U.S. 584 (1977), the Supreme Court held that sentencing the defendant to death for the rape of an adult woman would be “grossly disproportionate and excessive punishment,” thereby violating the 8th Amendment’s cruel and unusual punishment clause. There was no majority opinion, and three of the justices who voted to overturn the death sentence have now retired from the Court. Assume that Congress is debating whether it should enact a statute that imposes the death sentence on persons who sell illegal drugs. Although some persons believe that selling drugs is tantamount to murder, most attorneys who have studied Coker believe that the decision clearly interprets the Constitution to prohibit capital punishment of anyone convicted of a crime other than murder.

Is it unconstitutional for members of Congress to vote in favor of the death sentence for drug dealers? Is it unconstitutional for the President to sign it into law? If he does, what are the constitutional obligations of judges who are asked to sentence drug offenders under the new law? And finally, what are the constitutional obligations of Supreme Court justices if a case challenging the constitutionality of the sentencing law properly comes before the Court? I hope that this warning is unnecessary, but here goes. This question is not about the death penalty; it is about precedent and the nature of constitutional law.

C. (½ hour)

The following is modified from a column in the *New York Times* by an attorney named Carl Diehl:

Before we offer the framers another toast, we should look at the result of their handiwork and give serious consideration to convening a new constitutional convention. The United States today has the highest crime rate of any industrial society, a homeless crisis, an unparalleled illegal drug problem, and a perpetually unbalanced budget.

How can we blame all of this on men who lived 200 years ago? Aren't we the ones who got into this mess? Absolutely. And that's the problem. Our Constitution doesn't allow us to hold anyone accountable.

Try taking the President to task for the crime problem. He'll say that's a local or state concern. Make your mayor answer for the same mess and she'll wail that the problem is national in scope. Ask the states to account for wretched schools and they'll say they have no money, but the federal government will say that the states are responsible for public education. Everyone blames someone else.

And why not? The Constitution makes an irrational division of responsibilities between federal and state, and among executive, legislative and judicial branches. It misallocates resources and responsibilities. And it enshrines procedural roadblocks in Congress, executive agencies and the courts, none of which can get anything done by itself. And the states can't get anything done without the help of the federal government.

Let's redo the Constitution to fit the 20th century. Thomas Jefferson urged a new revolution and Constitution every 19 years. The Framers created the largest republic in the history of mankind. But their handiwork is suffering from terminal arteriosclerosis. Just 8 years after they enacted the Articles of Confederation, the Framers saw that they had problems and scrapped them. After 202 years, let's have the courage to follow their example.

Discuss. You may agree or disagree with Mr. Diehl on the question of whether a new Constitution would be a good idea, but your answer should address **both** the accuracy of his description of our Constitutional system **and** the reasons for separating powers among the branches and between the states and the nation.

Part II. (1 hour)

The Scrooge Mack Truck Company is one of the largest common carriers in the country. It holds a certificate from the Interstate Commerce Commission, a federal administrative agency, which means that the company meets all federal standards and is therefore permitted to pick up goods in one state and deliver them to another. Based on that certificate, Scrooge offers services in 48 states and the District of Columbia. Among other routes, Scrooge carries commodities through Pennsylvania on Interstate 80, the principal east-west route linking New York and Chicago, and on Interstate 81, a major north-south route.

Scrooge's main truck is a tractor pulling a 40-foot-long, 2-axle trailer. This unit, commonly called a "semi," totals 55 feet in length. This is the most common truck on the nation's highways. Scrooge hopes to economize and increase its hauling capacity by changing over to using a tractor pulling 2 trailers. This unit, commonly called a "tandem," totals from 65 to 70 feet in length.

The Commonwealth of Pennsylvania, however, recently enacted a statute that restricts highway vehicles to a total length of 55 feet. The statute was enacted shortly after a well-publicized accident in Harrisburg, the state capital. A tandem truck broke apart, with the second trailer crossing the median strip of I-81 and smashing into 2 oncoming cars. At legislative hearings on the "55 Foot Bill," the American Trucking Association produced evidence that tandems are generally as safe as semis. The Association presented U.S. DOT tests that revealed that tandems are inferior to semis in only 3 respects: semis take less time to pass because they are shorter; semis may back up for longer distances; and semis are somewhat less likely than tandems to jackknife. The test results suggested that tandems are arguably superior to semis in several other respects. For example, they maneuver somewhat more efficiently and are less susceptible to wind. No evidence was presented to the legislature other than testimony concerning the tandem accident on I-81 and the Transportation Department report.

Several amendments to the "55 Foot Bill" were discussed in the floor debates, and 2 were ultimately adopted. First, tandem trucks as long as 65 feet may transport goods to and from several designated "border" cities, such as Philadelphia, which engage in substantial trade with bordering states. Second, the law allows semis hauling livestock or farm vehicles to be as long as 65 feet.

The amended bill passed with large majorities in both houses. The Governor, a former railroad engineer named Casey Jones, announced at the signing ceremony that "Pennsylvanians no longer will be intimidated by tandem trucks. Let companies shipping products through our fair state use the railroads. They need the business anyway."

The Scrooge Mack Truck Company has filed suit challenging the Pennsylvania law as unconstitutional. You are the judge. Write an opinion disposing of **all** constitutional issues

likely to be raised in the case, on the merits or otherwise. Assume that no pertinent statutes are in effect other than those mentioned in this question.

III. (40%)

Robin Shahar is an attorney who graduated 6th in her class in 1991 from Emory University Law School. Michael Bowers is the Attorney General of Georgia. In 1990, following Ms. Shahar's completion of a summer clerkship at the Georgia Department of Law, Mr. Bowers gave her a written offer of employment, as an assistance attorney general, after graduation.

Ms. Shahar accepted the offer, and was told to report for work on Sept. 23, 1991. Prior to that reporting date, however, Mr. Bowers wrote Ms. Shahar, stating that he had "withdrawn the offer of employment because of the purported marriage between you and another woman." He added: "As the chief legal officer of this state, inaction on my part would constitute tacit approval of this purported marriage and jeopardize the proper functioning of this office."

Mr. Bowers had become aware of the "purported marriage" he referred to in his letter after Ms. Shahar responded to an inquiry on a routine personnel form, regarding marital status, by stating that she was "engaged to Francine." Her relationship with Francine Shahar was subsequently solemnized in a Jewish wedding ceremony.

Although Georgia law does not recognize marriages between persons of the same sex, neither does it make it a crime to participate in a wedding ceremony where both parties are of the same sex. Georgia law does make sodomy a felony, whether performed between persons of the same sex or of different sexes, and whether between married or unmarried persons.

Assume that Robin Shahar brings an action against Attorney General Bowers, challenging his rescission of the job offer as a violation of her constitutional rights. You are the judge. Draft an opinion disposing of all constitutional issues considered in this course that are likely to be presented in the case.