

**FINAL EXAMINATION**  
**CONSTITUTIONAL LAW - BOTH SECTIONS**  
**Professor Power**  
**3 ½ Hours**

**Question 1 (90 minutes)**

Bram Stoker, Inc. (BSI) is a Connecticut corporation that operates 8 blood plasma centers in 4 states. One of those centers is in Hartford, Connecticut. The business pays market value for blood, which varies depending on the scarcity of and demand for different blood types. BSI collects blood from individuals by employing a technique known as neck extraction, in which 2 sharp incisions are made on the provider's neck and a pint or so of blood is removed by a vacuum process. The blood is then separated into plasma and other components. Most of the components are discarded but the plasma is sold to pharmaceutical manufacturers and hospitals.

Companies that buy or sell blood products, unlike enterprises that obtain it from volunteers and provide it to medical facilities free of charge, are subject to federal supervision under the Federal Blood Act. That Act includes the following requirements:

Regulation of Vendors

- a) Vendors affecting interstate commerce must be licensed by the Department of Health and Human Services. Such licenses shall be issued only upon a showing that the vendor's place of business and blood products meet certain safety, purity and potency standards.
- b) A licensed physician must determine that a person selling his or her blood is sufficiently healthy to provide blood before the first sale and thereafter at subsequent intervals of no longer than 1 year.
- c) All blood products sold must bear a label stating the blood type, the date of extraction, and the age and sex of the individual selling blood.

Regulation of Purchasers

- a) No hospital receiving federal funding in any respect may purchase blood products from any source other than a federally licensed vendor.
- b) Hospitals may accept free donations of blood products from any source, whether or not it is licensed.

The state of Connecticut recently enacted a statute governing the sale of blood and blood products. It imposes a \$200 license fee on all blood plasma centers in the state, requires

that all blood extractions be supervised by a licensed physician, and limits the price paid to persons selling their own blood to \$25 a pint, regardless of its market value. The statute incorporates by reference the Federal safety, purity and potency standards, but also imposes requirements beyond those contained in the federal statute. Specifically, the statute requires that all blood be tested for hepatitis and that no person be permitted to sell his or her blood more than once every 3 months. The statute also requires that no hospital or other medical facility in Connecticut provide blood to any patient unless that blood was obtained in accordance with the Connecticut requirements, although there is no requirement that the blood be extracted in Connecticut.

BSI and Van Helsing General Hospital, a Hartford hospital receiving federal funds for the treatment of Medicare patients, have filed an action challenging the requirements of the federal and Connecticut statutes. They raise all arguably pertinent constitutional issues. Draft an opinion, giving due regard to the appropriate arguments on both sides.

### **Question 2 (40 minutes)**

You are the attorney for Bluenose County, North Carolina. The County Sheriff has asked for your advice concerning a possible obscenity prosecution of Henry E. Hudson, the proprietor of “Adult Toys ‘R’ Us,” a retail establishment in the county. The Sheriff reports that an undercover officer purchased the following items at the store:

1. A film titled “Orifice Orgy.” It is a 90-minute film with a plot concerning office politics. Approximately ½ of the film consists of depictions of men and women engaged in various sex acts;
2. A pack of playing cards in which each card has a photograph of an individual nude man or woman;
3. A pamphlet published by the North American Child Love Association. It contains 3 articles advocating legalization of sexual relations between adults and consenting children. It also contains 2 short stories, illustrated with drawings, concerning sexual relations between adults and children.

North Carolina statutes prohibit the sale of sexually explicit materials to the extent permitted by the Constitution. Please advise the Sheriff whether any, some or all of these items can be successfully prosecuted under the Constitution. Your answer should explain what the County must prove in order to prevail in a criminal prosecution

### **Question 3 (40 minutes)**

The Supreme Court is occasionally referred to as the final arbiter of the United States Constitution. The Court suggested as much in Marbury v. Madison, in which it asserted the

authority to review actions of the President and Congress. It reiterated that point in Cooper v. Aaron, in which the Court insisted that even non-parties must acquiesce in its rulings. Moreover, in Baker v. Carr, (do not panic, it was not assigned in this course), the Court referred in passing to the “responsibility of this Court as ultimate interpreter of the Constitution.” Many observers seem to agree, as evidenced by the fact that all but a handful of the materials assigned in this course are Supreme Court opinions.

There are reasons to take issue with this assertion, however, and there are certainly ways in which other entities or groups have some authority in this regard. It is fair to say, for example, that other branches of the federal government, the states, and even individuals can affect the Supreme Court’s ability to interpret the Constitution and can influence, if not direct, the outcome of particular cases.

Criticize the assertion that the Supreme Court is supreme under the Constitution. You may agree or disagree with the assertion, but your answer should include a discussion of the direct or indirect roles of other institutions in the resolution of constitutional disputes.

#### **Question 4 (40 minutes)**

The State of Disarray is considering amendments to its statutes concerning Family Law. Among the proposed new laws are the following:

- a. Persons who have undergone sex change operations shall be treated by law as members of their “new” sex, and accordingly shall be permitted to marry only members of their prior “natural” sex.
- b. At marriage, men shall be required to retain the surname given at birth, although they may hyphenate it with their wife’s surname if they so choose. At marriage, women may choose to retain their given surname, hyphenate it with their husband’s surname, or take their husband’s surname.
- c. All children shall be fingerprinted upon reaching 5 years of age. Copies of each set of fingerprints shall be provided to the Missing Persons Bureau of the local police department, the Clerk of the Family Court, and to the child’s parents.
- d. All forms of birth control, with the exception of abortions performed without the assistance of a licensed physician, shall be legal.

You have been asked to advise the legislature concerning these matters. Please write a brief analysis in which you discuss whether each proposed law would be unconstitutional, permitted by the constitution, or, perhaps, required by the constitution.