

Anonymous # _____

FINAL EXAMINATION
Federal Courts § O
Professor McManamon
Fall 2012

This examination is a three-hour, open-book test. You are allowed to refer to any written materials in answering the questions. Of course, no discussion about the examination is allowed with anyone else—except me—during the test.

There are three parts to this exam. The first part is worth one-half of the grade, and the second and third parts are worth one-quarter each.

If you are handwriting your exam, write only on one side of each sheet of paper. And remember, a legible exam makes a happy professor!

Do NOT identify yourself as a graduating senior. All papers will be graded as if you are a graduating senior.

Good luck to all.

PART I
(suggested time: 1½ hour)

Choose any one pair of quotations that begin the chapters and/or sections of the casebook. Explain both authors' points of view, using cases we have studied this semester to support your discussion. Finally, note which perspective you favor, explaining why.

PART II
(suggested time: 45 minutes)

1. Discuss the ways in which one can resort to the federal courts to enforce federal law against a state. Indicate any method(s) that may be questionable today. Mention any method(s) that might be added to a plaintiff's arsenal if the Supreme Court were to switch its vote from 5-4 to 4-5.

2. Explain the rules of standing when challenging federal governmental action in the federal courts. Note which parts of the law are constitutionally mandated, pointing to the constitutional provision and theory, and which parts are prudential only. Are there any parts of standing law that are difficult to assign to the constitutional or prudential category given recent standing cases?

PART III
(suggested time: 45 minutes)

In 2001, the Internal Revenue Service seized real property belonging to Pewter Metal Products, Inc., to satisfy Pewter's federal tax delinquency. The tax code required the IRS to give notice of the seizure, and there is no dispute that Pewter received actual notice by certified mail before the IRS sold the property to Darue Engineering & Manufacturing. Although Pewter also received notice of the sale itself, it did not exercise its statutory right to redeem the property within 180 days of the sale, and after that period had passed, the Government gave Darue a quitclaim deed.

Five years later, Pewter brought a quiet title action in state court, claiming that Darue's record title was invalid because the IRS had failed to notify Pewter of its seizure of the property in the exact manner required by the tax code, which provides that written notice must be "given by the Secretary to the owner of the property [or] left at his usual place of abode or business." Pewter said that the statute required personal service, not service by certified mail.

Darue removed the case to federal district court as presenting a federal question, because the claim of title depended on the interpretation of the notice statute in the federal tax law. The district court declined to remand the case at Pewter's behest after finding that the "claim does pose

a significant question of federal law” and ruling that Pewter’s lack of a federal right of action to enforce its claim against Darue did not bar the exercise of federal jurisdiction. On the merits, the court granted summary judgment to Darue, holding that although the code by its terms required personal service, substantial compliance with the statute was enough.

The federal court of appeals affirmed. On the jurisdictional question, the panel thought it sufficed that the title claim raised an issue of federal law that had to be resolved, and implicated a substantial federal interest (in construing federal tax law). The court went on to affirm the district court’s judgment on the merits. The United States Supreme Court granted certiorari on the jurisdictional question alone to resolve a split within the courts of appeals on whether *Merrell Dow Pharmaceuticals Inc. v. Thompson* always requires a federal cause of action as a condition for exercising federal-question jurisdiction.

You are the clerk to a Supreme Court Justice. She has asked you to write a memorandum discussing the arguments for and against jurisdiction and advising her how she should rule.