

WIDENER UNIVERSITY SCHOOL OF LAW - HARRISBURG BRANCH

**Constitutional Law Final Exam
Professor Power**

I. (1 hour)

In view of both the current political setting (polls suggest that many voters resent “Wall Street” yuppies) and the weakening economy, many members of Congress are concerned about “junk bonds.” For the purposes of this examination, junk bonds are risky, long-term, high-yield investments. They are attractive to investors because they pay a high rate of interest. But many junk bonds are issued to support speculative business ventures that may very well fail. When that happens, the investors can lose everything. At the present time, many such business ventures *are* failing. Testimony before congressional committees indicates that 2 effects of the large number of business failures are public demands for costly federal “bailouts “ to pay off investors and an usually high number of businesses and individuals filing for bankruptcy. Some economists also believe that junk bonds pressure investment markets to increase interest rates generally and that the high yield of such bonds makes it difficult for deserving but cautious businesses to attract investors.

Among the proposals now pending before Congress are the following:

- (A) To prohibit all junk bonds;
- (B) To tax junk bonds at a high rate;
- (C) To give tax credits or deductions to companies that do not issue junk bonds;
- (D) To prohibit states and municipalities from issuing junk bonds.

You are an attorney for the U.S. Senate and are asked to comment on Congress’s authority to enact these proposals into law. One logical source of authority would be the interstate commerce clause, but watch out. Assume that there is a Supreme Court decision from the late 1800's, Ponzi v. Drexel, Burnham, Lambert, Inc., which holds that the federal government may not rely on its commerce power to regulate the issuance or sale of bonds because such authority is reserved to the states. Thus, you should discuss other potential sources of authority. You may, of course, argue the commerce power as well, but if you do so, you should explain why the Court might not follow Ponzi today. All other cases and doctrines are as studied in this course.

Article I, Section 8 of the U.S. Constitution is set out on page 3.

II. (1 hour)

TMN Turtles, Inc. produces tomatoes of unusually high quality at a farm near York, PA. Since it would have cost \$2 million to build packing facilities there, the company ships the tomato harvest in bulk just across the border to Mutantville, MD, where it operates centralized and efficient packing facilities. The company sorts, packs and ships from Mutantville in accordance with all applicable Maryland laws.

The Pennsylvania Vegetable Stabilization Act, however, imposes several requirements on farms and related businesses operating in Pennsylvania. The key provisions of the Act require that all fruits and vegetables grown in Pennsylvania meet certain standards of wholesomeness and quality. In order to enforce this requirement and to help consumers select their produce, all fruits and vegetables grown in PA. must be “packed in regular compact arrangement in standard containers approved by the Pennsylvania Secretary of Vegetables and marked as having been grown in Pennsylvania.” TMN Turtles’ tomatoes meet all wholesomeness and quality standards, but do not comply with the packaging requirements in 2 respects. First, the standard containers approved by the Secretary expose the contents so that purchasers may judge their quality. The company’s containers are opaque and shaped like turtle shells. Second, the containers do not indicate that the tomatoes are grown in Pennsylvania but instead are marked “packaged in Mutantville.” The company defends both the shape and marking as necessary for its marketing strategy.

Pennsylvania Vegetable Secretary Shredder, acting under the authority of the statute, entered an order preventing TMN Turtles from shipping tomatoes to Mutantville or selling them inside Pennsylvania without complying with the statute. The company filed suit, alleging that the Secretary’s action was unconstitutional. The District Court ruled for the company; the Court of Appeals reversed.

The Court of Appeals relied, in part, on 2 portions of the Federal Vegetable Rights Act of 1990. These portions of the Act state, in pertinent part:

FVRA Section 101: “A state may regulate the production and sale of fruits and vegetables for health or safety reasons, unless its regulations discriminate against produce from other states.”

FVRA Section 201: “No federal district or appellate court, including the U.S. Supreme Court, shall have jurisdiction to review any state statute, judicial ruling or administrative decision governing the production or sale of fruits or vegetables.”

Turtles v. Shredder is now before the Supreme Court. Write an opinion in the case. **This is an order:** be more like Chief Justice Marshall than like Chief Justice Chase - even if you think the resolution of one issue decides the case, you should go on to present your analysis on any other issues arguably presented by this fact situation.