

C.2

CONSTITUTIONAL LAW

Mr. Cole

Spring, 1993

The following examination is rated at one point per minute, so that a twenty minute question is worth twenty points, and so on. Please be aware of the time/points for each question and budget your time accordingly. The total examination is scheduled for 240 minutes, or four hours. You will have until 6:00 P.M.

Write only in bluebooks unless you are typing and do not put your name on the paper. On the front of your first bluebook put the following information.

Name
Constitutional Law
Mr. Cole
Spring, 1993
Exam Number

The examination is broken down as follows:

I. Introduction (No points)

II. 90 minutes/points.

1. 5 minutes/points.
2. 5 minutes/points.
3. 10 minutes/points.
4. 20 minutes/points.
5. 30 minutes/points.
6. a. 15 minutes/points.
b. 5 minutes/points.

III. Choose six out of seven at 10 minutes/points each
= sixty minutes/points.

IV. 90 minutes/points.

1. 30 minutes/points.
2. 30 minutes/points.
3. 30 minutes/points.

Good Luck.

I. Introduction (No Points.)

A wise teacher once said, "The Constitution defines the role of the Supreme Court in American government and the Supreme Court defines the role of the Constitution in American Government." When asked to explain, he simply muttered, "Mu."

A third year student interprets that statement as follows: "The Constitution says what it says, and the Supreme Court does what it does."

A second year student says, "What makes you think the teacher was so wise?"

A first year student says, "What makes you think the teacher was wise or not wise?"

An entering student says, "Can I still get in Business School?"

What are the Questions and Who Decides Who Decides?

Here are the Questions. In your answers, pay attention to time limits.

II. (90 Minutes.)

1) What does the Constitution have to do with the question of who decides? What did the Marbury case have to say about how the Constitution handles the question of who decides? (5 minutes.)

2) "The Federal Government is a government of limited power." What does that mean? (5 minutes.)

3) One of Congress's powers is to "regulate Commerce ... among the Several States Where is this power found in the Constitution? Is there a judicial check on this power or only a political check? What is the difference between a "judicial check" and a "political check"? (10 minutes.)

4) What "judicial check," if any, did the Court employ to limit the commerce power of Congress prior to the 1930's? Explain in detail, citing cases. (20 minutes)

5) What "judicial check," if any, does the Court use to limit the power of States to enact economic and social legislation which conflicts with the commerce clause? Explain in detail, citing cases. (30 minutes.)

6) Congress has the power "To provide and maintain a Navy."
"The President shall be Commander in Chief of the Army and Navy
of the United States ..."

a. Suppose the President orders that discrimination against homosexuals be ended in the Navy? Is this within the power of the President? Without knowing any case law in this area, what are the essential questions the Court would address in analyzing this question? Is this a political question? If not, who decides who decides and why? (10 minutes.)

b. How would a "structuralist argument" be used to prevent the President from ordering the Navy to do something that was not specifically prohibited by the Constitution? (5 minutes.)

III. (60 Minutes.)

What was the disagreement between the majority and the dissent (or concurrence) in the following cases, and what did that disagreement have to do with the question of who decides? Mention the approximate date of each case and say whether the majority or dissent better states the law at the present time. (10 minutes each.) Choose any six of the following seven. (60 minutes.)

- 1) *Bowers vs. Hardwick.*
- 2) *Lochner vs. New York.*
- 3) *Duncan vs. Louisiana.*
- 4) *Zablocki vs. Redhail.*
- 5) *Keyes vs. School District of Denver.*
- 6) *San Antonio Independent School District vs. Rodriguez.*
- 7) *Supreme Court of Hew Hampshire vs. Piper.*

IV. (90 minutes.)

A student at the University of Montana comes to you for legal advice on a series of issues. What kinds of things would you say about the following questions:

1. He is disturbed by the fact that he has to pay tuition of over \$12,000 because he is from Georgia while in-state students from Montana only pay \$600 per semester. He has heard that Congress is considering a bill which would require all State universities to charge the same tuition for all students. He

wants to know if such a law would be constitutional, and if it is not passed if there is something that can be done to challenge the Montana policy. Someone told him that there were several different constitutional arguments against this policy. (30 minutes.)

2. A young woman at the University has sued him in a paternity suit, claiming that he is the father of her child. Your client says that he only went out with the woman once, and never touched her. The relevant Montana statute says that anyone sued by a mother to determine who fathered her child must submit to a blood test. The test is 99% accurate but your client faints at the sight of blood and does not want to submit to a blood test because the claim against him is totally frivolous. The young woman is bringing the paternity action because under a newly passed Montana statute, she must notify the father before a physician can perform an abortion. (30 minutes.)

3. Your client is disturbed by the lack of minorities at the University of Montana. It seems that most of the minority students in Montana go to a primarily black university, although the University of Montana does not discriminate on the basis of race in its admission policy. When the student asked the Dean about the problem, she said that it had just always been that way. In addition, interracial living arrangements of any kind are forbidden for all enrolled students. Your client wants to know if there is anything he can do about these problems. (30 minutes.)