

**STETSON UNIVERSITY COLLEGE OF LAW
Gulfport, Florida**

GENERAL INSTRUCTIONS

I DIRECT THE ATTENTION OF ALL STUDENTS TO THE FOLLOWING:

1. The answers and the pledge are to be identified by examination number only.
2. During the course of the examination, the examination and answers may not be removed from the rooms prescribed for taking the examination.
3. This examination ends at the expiration of the time allotted, or when the examination is turned in, whichever comes first.
4. The instructor will be permitted to grade only answers that have been submitted during the examination, in the manner indicated by the instructor.
5. From the conclusion of the time prescribed for the examination, students are forbidden from communicating with the instructor with reference to this examination until grades have been turned into the Registrar's Office except that students may communicate with the instructor at any time concerning matters related to the Code of Student Professional Responsibility.

TIME FOR EXAMINATION: FOUR HOURS

SPECIAL INSTRUCTIONS

1. This is a LIMITED OPEN BOOK examination. You may use the textbook and supplement for the course, your notes, any handouts distributed in class, and outline(s) you prepared either alone or in conjunction with others.
2. This examination consists of SIX (6) pages. You should check now that you have all pages.
3. This examination consists of three (3) questions for which essay answers are required. The questions may be answered in any order you would like. In other words, it is not necessary that you begin with the first question. **YOU MUST ANSWER ALL THREE QUESTIONS.**

4. The point values and suggested times for each question are as follows:

Question #1: 15 Points – Suggested Time: Fifty Minutes

Question #2: 15 Points – Suggested Time: Fifty Minutes

Question #3: 70 Points – Suggested Time: Two Hours and
Twenty Minutes

5. If you are using bluebooks to answer, please answer each question in its own bluebook and indicate on the cover of the book the question you are answering. You may, of course, use more than one bluebook for each question if you wish; just do not have any portion of an answer for more than one question in the same book. If you are using a computer to answer the questions, please start your answer to each essay question on its own page.

GOOD LUCK AND HAVE A WONDERFUL BREAK

PLEASE TURN THE PAGE TO BEGIN WHENEVER YOU ARE READY

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Question #1: (15 Points; Suggested Time: Fifty (50) Minutes)

Assume that in elections held in 2002, the citizens of Iowa elected a majority of candidates who ran on a strong anti-abortion platform to serve in the State legislature. They each had promised to do everything possible to aggressively restrict the availability of abortions in Iowa. Further assume that the legislature enacted as the first order of business in the new session in 2003 the Iowa Abortion Reflection Act of 2003 (the “Act”), the relevant portions of which are:

It is the belief of the people of the State of Iowa that the preservation of potential human life is a critical role of government. One critical way in which to ensure that the potentiality of human life can be protected is by ensuring that a person seeking an abortion deeply reflect on their decision. As such, and without wishing to infringe any right determined to exist under the Constitution of the United States, the State of Iowa requires the following:

1. Any woman seeking to have an abortion at any time from conception through the point of viability of the fetus, must at least 24 hours in advance of having the procedure performed undergo an ultrasound examination. The woman must then certify that she has been shown the ultrasonic images of the fetus before the abortion may be performed.
2. Failure to comply with the provisions of the Act by any medical care provider in the State of Iowa shall be punishable by the imposition of a civil fine not to exceed \$10,000, and the suspension of such medical care provider’s licence for not less than one year.
3. The requirements of this Act are not applicable in cases in which a medical care provider certifies that he or she, in the good faith exercise of his or her medical judgment, believes that the medical condition of the pregnant woman is such that an abortion must be performed immediately so as to safeguard the life or health of the pregnant woman.

You should assume that an ultrasound examination is a medical procedure during which a device is placed on a woman’s stomach and sound waves are used to take images of the fetus in the womb. You should further assume that the procedure is non-invasive. That is, the ultrasonic device must merely be placed on the woman’s stomach in order to work. The examination takes approximately 15 minutes from start to finish and the images are immediately available. There is no risk of harm to either the woman or the fetus as a result of the ultrasonic examination.

A group of pregnant woman have filed a lawsuit claiming that the Act is invalid under the Due Process Clause of the United States Constitution. You are the judge in the case. Both sides have moved for summary judgment on the issue of the constitutionality of the statute under the Due Process Clause. What is your decision and why?

Question #2: (15 Points; Suggested Time: Fifty (50) Minutes)

The Grand Canyon is located in the northern portion of Arizona. One of the major attractions at the Canyon is taking a helicopter tour of the various parts of this national wonder. You should assume that the Canyon is entirely within the State of Arizona. It is, however, close enough to other States such as Utah and Nevada that companies in these States have also become involved in helicopter charter flights.

The non-Arizona companies started competing in the tour business at the Grand Canyon in 2000. In fact, since beginning competition with Arizona based companies in 2000, the non-Arizona companies have amassed a 40% share of the market. These non-Arizona companies took in over \$2,000,000 in revenue just in 2002 based on Grand Canyon tours. By the way, the State of Arizona itself owns some helicopters and runs its own charter helicopter business at the Grand Canyon competing with both the Arizona and non-Arizona companies.

In 2003, the Arizona legislature enacted the Grand Canyon Helicopter Act (the “Act”). The Act required all helicopters flying in the Canyon to be equipped with at least one non-automated fire control system. In other words, each helicopter needed to have at least one system on board that was not computer-operated that could be used to suppress a fire. The legislature’s stated rationale was the protection of the safety of passengers on tour helicopters.

The problem faced by the non-Arizona companies was that they all had newer helicopters than those used by the Arizona companies, including the State of Arizona itself. The newer helicopters have several automated systems, each highly effective. They do not, however, have any non-automated systems such as those present on older helicopters. It would cost several million dollars to install such non-automated systems in the non-Arizona helicopters.

A non-Arizona helicopter tour company (Utah Chopper) has filed a lawsuit in the United States District Court for the District of Arizona claiming that the Act is invalid under the United States Constitution. Specifically, Utah Chopper claims that the Act violates the dormant commerce clause. You are the judge assigned to the case. How do you rule and why? In rendering your decision, you should assume that the United States Congress had not enacted any laws that are relevant to your analysis.

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PLEASE TURN PAGE FOR QUESTION #3

Question #3: (70 Points; Suggested Time: Two Hours and Twenty Minutes)

Assume that the State of Rhode Island has a statute that allows same-sex couples to be married under the same terms as different-sex couples. Will and Jack were very excited about this revolutionary approach taken by Rhode Island. In January 2003, they moved to Newport, Rhode Island and began planning their wedding. But, as you will see, things have not gone as smoothly as planned.

In September 2003, that the United States Congress enacted the Federal New Home Construction Protection Act (the “Act”). In relevant part, the Act provided that “No State, Territory or Possession of the United States, including the District of Columbia, shall recognize as a lawful marriage any union that is not between a man and a woman.” In support of this Act, Congress specifically found as follows:

- The new home construction industry is a very important one in the United States. The industry has a direct and substantial economic impact on interstate commerce, including but not limited to the shipment of material across state lines as well as the migration of workers and customers in connection with the new homes.
- Statistics show that married couples are more likely to buy newly constructed homes than non-married individuals.
- If there were fewer married couples in the United States there would be fewer sales of new homes.
- To the extent that the institution of marriage was diluted by allowing same-sex couples to marry, the institution of marriage would be less important in our society.
- If the institution of marriage became less important, fewer people would elect to be married. Thus, there would be fewer new home sales.
- This reduction in the sale of new homes would have a direct, important, and negative impact on the new home construction industry.

You are a lawyer specializing in constitutional litigation. Will and Jack came to you after they heard about the Act, which President Bush has signed into law. They have asked you to answer two questions:

First: They want you to briefly explain why the federal Act matters at all. After all they want to be married under a Rhode Island law that specifically allows a same-sex marriage. What would you say about this issue?

Second: They want you to prepare a memorandum for them laying out all the possible constitutional arguments that they could use to challenge the Act under the United States Constitution. You should assume that Will and Jack have the requisite legal standing to attack the Act. Please be sure to provide your legal assessment of whether the potential avenues of constitutional attack would be successful.

**ON MY HONOR, I HAVE
NEITHER GIVEN NOR
RECEIVED AID ON THIS
EXAMINATION.**

EXAM NO. _____

END OF EXAMINATION – HAVE A WONDERFUL BREAK!!!

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