

Monterey College of Law

CONSTITUTIONAL LAW I

MIDTERM EXAMINATION

FALL 2024

Prof. Migdal

EXAM INSTRUCTIONS

You will have three hours to complete this exam. There are two essay questions to be answered in Questions 1 and 2; Question 3 consists of four short answer questions. Each question will count for 1/3 of your exam grade.

Unless expressly stated, assume that there are no Federal or State statutes on the subjects addressed.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and fact upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other.

Your answer should evince your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles. Instead, try to demonstrate your proficiency in using and applying them.

If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions, and discuss all points thoroughly.

Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

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Midterm Examination Fall 2024

Question No. 1

The United States president has had a tumultuous presidency over the last four years. Afraid that he will not win reelection, he decides to have his opponent in the upcoming election, an unmarried orphan, killed. To this end, he discusses the matter with his attorney general who convinces him not to use the government's resources or entities to accomplish the killing. Frustrated, the president seeks out his campaign manager and together they hatch a plot to hire a hitman to accomplish the task. The President uses his own funds to hire the hitman. The hitman accomplishes the task while his opponent is campaigning in the State of Sunshine, but is caught in the process of the killing and confesses that the president hired him. The killing causes two cases to be filed against the president- one civil and one criminal. The criminal case is brought in state criminal court in the State of Sunshine. A non-profit organization, "the justice league," a group of orphans formed to assert the legal rights of those without family to do so, files civil suit directly to the U.S. Supreme Court alleging violations of the fifth, sixth, and fourteenth amendments and various state-law tort claims on behalf of the slain opponent.

In the criminal matter, the president moves to dismiss the case against him claiming absolute immunity from prosecution. The trial court denies the motion and the appellate court and court of last resort in the Sunshine State affirm. The United States Supreme Court grants certiorari in the matter.

In the civil matter, the president moves to dismiss the action on jurisdictional grounds that it is non-justiciable.

1. In the criminal case before the United States Supreme Court, what issues will the prosecution and defense raise and how will the court likely rule and why?
2. In the civil case before the United States Supreme Court, what arguments for and against the United States Supreme Court's jurisdiction can the parties make and how is the court likely to rule and why?
3. In the civil case before the United States Supreme Court, what arguments for and against justiciability can the parties make and how is the court likely to rule and why?

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Question No. 2

After voters approved an initiative enshrining the recreational use of marijuana into the Moonshine State's constitution, the Moonshine State's legislature became concerned with the recent influx of foreign corporations applying for business licenses in Moonshine State to sell marijuana and marijuana-related products. Additionally, it was concerned with residents of West Moonshine State, a neighboring State to the west of Moonshine State, moving east to Moonshine State to take advantage of its new marijuana laws and, in so doing, put pressure on its worsening housing crisis. Moreover, studies showed that the initiative had a disproportionate impact on men with several studies noting that men showed a particular propensity for dissociative behavior after prolonged use of marijuana and marijuana-related products. Accordingly, the Moonshine State's legislature passed the "Reefer Madness" bill that restricted the licensing of new marijuana businesses to those business entities that had already been conducting business in Moonshine State for five years prior to their business license applications. The law also prohibited the sale of marijuana or marijuana-related products to residents of Moonshine State who had become residents of the State within one year of the bill's passage. Finally, the law restricted the amount of marijuana or marijuana-related products that men could purchase or possess, setting specific guidelines and penalties for violation thereof.

1. Cheech, a new, male, resident of Moonshine State who moved to Moonshine State six months after it passed its initiative, brings suit due to the restrictions of Moonshine State's restrictions on the male gender. Analyze the Constitutional arguments Cheech can raise in a lawsuit to challenge the reparations law, and Moonshine State's likely responses and defenses. How should the Supreme Court rule and why?
2. The Bing Bong Corporation applied for a license to open a marijuana and marijuana-related products business in Moonshine State after it passed its initiative, but is located in a different State. Moonshine State, however, denied its permit application, citing the reefer madness bill. Bing Bong brings suit under the commerce clause and the privileges and immunities clause. Analyze the Constitutional arguments Bing Bong can raise in a lawsuit to challenge the Reefer Madness law, and the likely responses and defenses to be raised by Moonshine State. How should the Supreme Court rule and why?
3. Laura has just moved to Moonshine State, but has been denied access by every shop selling marijuana or marijuana-related products due to her having recently moved to Moonshine State. She brings suit under the privileges and immunities clause and the commerce clause. Analyze the Constitutional arguments Laura can raise in a lawsuit to challenge the Reefer Madness law, and the likely responses and defenses to be raised by Moonshine State. How should the Supreme Court rule and why?

Question 3

Write a short answer to questions A, B, C, and D; Each question is worth 25 points.

- A. James Vanderstrand buys a parcel of beachfront property in Northcastle State, USA, planning to build luxury, high-rise condominiums. Before he can do so, however, the Northcastle State legislature enacts a law restricting the building of multi-family housing within 20 miles of any coastline in the State citing noise and crowding. James brings suit alleging that the law is an unconstitutional taking of his property without compensation. How is the court likely to analyze and rule on the issues raised in James's lawsuit?
- B. Johannes, a bird enthusiast, submits his application to sponsor the addition of the "puteketeke" to Seastate's bird of the year contest. Seastate, however, rejects Johannes's application because Puteketekes are known for wetting their nests. Johannes, however, believes that Seastate has rejected his application because he was born in a country outside of the United States and brings suit in federal court under the 14th amendment. While his suit is pending trial, Seastate's contest is held without the Puteketeke and the Titmouse wins the contest. In light of all of the factors and events outlined above, would the federal court be willing to reach the merits of Johannes's claim? Discuss.
- C. Concerned with the wild fluctuations in price in the U.S. grape market, Congress passes a law restricting the amount of grapes that farmers can produce each year. Dino, a grape farmer, produces grapes on his farm up to the limit of Congress's law, but additionally produces a little extra and uses the extra grapes to produce table wine for himself and his immediate family. Dino was cited for violation of the law and brings suit alleging that the law violates the commerce clause. How is the court likely to analyze and rule on the issues raised in Dino's lawsuit?
- D. The President of the United States, after becoming embroiled in scandal is impeached. Upon presentment to the senate of the house's articles of impeachment, the senate passes a rule permitting senators to vote on whether to remove the President by proxy vote. The President brings suit arguing that the Senate's rule violates Article I of the Constitution. In light of all of the factors and events outlined above, would the federal court be willing to reach the merits of the President's claim? Discuss.

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Brief Answer key to

Constitutional Law Midterm Exam

Fall 2024

Profs. King (hyb Sec2), Wagner (slo), Migdal (mcl), Loo (kcl), Ruskell (hyb Sec1)

Question 1

1. In the criminal case, the court will have to determine whether the President's act is an official act or an unofficial act under *Trump v. USA*. Additionally, though the admission of the president's discussion with his attorney general prior to hiring the hitman would likely be inadmissible in the case, it is also the president's best evidence that the act was an official one. Whether the President could admit exculpatory evidence of official acts is an open question. The best answers will analogize to the Court's specific discussion of the various acts at issue in the case as official or unofficial.
2. In the civil case, the court does not have original jurisdiction to hear the matter as suits against the President do not fall under Article III's original jurisdiction. The best answers will include a discussion of *Marbury v. Madison*.
3. The justiciability issue here is third-party standing. Students will analyze whether the justice league has itself suffered harm, whether the aggrieved party is likely to assert its own claim, and whether it has a sufficient nexus to the person for whom it asserts associational standing such that there is an Article III case or controversy.

Question 2

1. Students will analyze Cheech's equal protection claim based on gender and apply heightened scrutiny. Is the State's interest important enough to justify its gender-based restriction?
2. Students will properly note that the privileges and immunities clause does not apply to corporations and then proceed to analyze the issue under the dormant commerce clause. The best answers will refer to the *Tennessee Wine & Spirits Retailers Association v. Thomas* and note that the durational residency prohibition is not narrowly tailored to achieve a legitimate local purpose.
3. Here, students will analyze whether the privileges and immunities clause applies. Here, it is properly applied to a state law that discriminates against out-of-staters. However, is Laura's right a fundamental right protected by the P&I clause? *Baldwin v. Fish & Game Commission of Montana* would suggest it is not as the activity is a recreational one unrelated to earning a living or other economic interests.

Question 3

- A. Students will determine whether this is a possessory or regulatory taking and, if a regulatory taking, has the owner been deprived of all economically viable beneficial use of the property under *Lucas*?

- B. The issue here is mootness as the contest is already over by the time the case reaches the court. However, students may note that this could be a controversy that persists but evades review as future challengers would be unlikely to have a final resolution on the matter before it reaches the supreme court.
- C. This is a *Wickard* issue testing students' knowledge of the cumulative effect doctrine in the commerce clause jurisprudence. If all grape growers similarly grew extra grapes for personal consumption, would it substantially affect interstate commerce in the aggregate?
- D. Students will properly note that the US supreme court has determined that impeachment questions are non-justiciable political questions.

1)

1.

Prosecution

In the criminal case before the United States Supreme Court, the prosecution will raise the issue that the president was acting outside of his official capacity as president and therefore, there is no absolute immunity from criminal prosecution.

Absolute Immunity in Criminal Prosecutions

In order to determine whether the president has absolute immunity from criminal indictment, we must determine whether the president was acting within his official conduct as president. If it is determined that the president was acting consistent with his enumerated powers, then the president will have absolute immunity from criminal prosecutions. Also, if the president is determined to have acted within his official conduct as president, or within the outer perimeter of his authority, then the presumption is that the president has immunity. However, in the adverse, if it is determined that the president was acting outside of his authority, or outside of his official acts as president, then there is no immunity from criminal prosecution.

The prosecution is going to argue that the president, by ordering the assassination of a political opponent, hiring the hitman using his own funds, that these actions are well beyond the scope of his official conduct as president. Additionally, the president went beyond the advice of his attorney general, who discouraged the president from employing the use of government resources or entities. After the president was discouraged. However, it may be argued to the adverse, that the attorney general did not discourage the president's plot to kill a political opponent, but rather to find other means to do so. If it is determined that the president, in seeking the employ of a third party, the hitman, and

*Need
discussion
about use
of
statements
to A.G.
at trial*

using his own funds for the assassination plot was outside the scope of his official acts as president, then the Supreme Court will determine that the president is guilty. Only if these actions are considered outside the president's official conduct, not in furtherance of his official acts of president, or within the powers and authorities vested to the president, the Court will proceed with the criminal prosecution.

Defense

Absolute Immunity in Criminal Prosecutions

see supra

To the contrary, the defense will argue that the president was acting within his official conduct as president, furthering his bid for reelection, thus presumptively giving the president immunity from criminal prosecutions in furtherance of his official acts as president. The defense will argue that the president's own advisors and political managers aided in the assistance of this plot, therefore, falling within the scope of the president's authority to act. However, the Court is unlikely to find that the defense's argument is valid. Although the Court may find that the president's efforts towards a reelection are official conduct that the president is entitled to engage in, the Court will not find the use of political advisors and executives to conspire in the killing of a political opponent as acting within the official conduct of the president, especially if the president went so far as to use his own funds to hire the assassin.

Conclusion

As for the criminal case against the president, the Supreme Court will find that the president does not have absolute immunity for the prosecution of the killing of a political opponent, given that the president was acting outside of his official conduct, thus no absolute immunity applies to those actions.

2.

As for the jurisdiction of the Supreme Court over this civil matter, the Court is likely to find that the Court does have jurisdiction to hear this matter and proceed with a ruling.


Defendants

Absolute Immunity in Civil Cases for Official Acts

A president has absolute immunity from civil liability for actions that are within his official conduct, however, if certain conduct of a president is found to be from unofficial acts, the president does not have absolute immunity to that liability.

The defense will argue that the the Court does not jurisdiction to hear this case since the president has absolute immunity from actions taken during his official conduct as president, thus any civil actions against the president are barred. Similar to the criminal case, the defendants will argue that the president, in a race for reelection, acting in his capacity of president to seek reelection, was acting within his official acts, thus he is shielded with absolute immunity from civil liability.

Supreme Court Last Resort

 The defendants will argue that the Supreme Court is the court of last resort and that the Supreme Court does not have original jurisdiction over this matter. The civil case must be filed directly in state court first prior to finding its way to the Supreme Court.

Plaintiffs

No Absolute Immunity in Civil Cases for Unofficial Acts

see supra

Plaintiffs, here, will argue that the Court has valid jurisdiction to preside over this civil case because the president was acting outside his official conduct and capacity as president when he hired the hitman with his own funds and ordered the killing of his political opponent. This conduct is well beyond the authority given to the president, thus no absolute immunity will shield the president from civil liability for unofficial acts of the presidency.

Supreme Court has Original Jurisdiction over President's actions

The plaintiffs are likely to argue that the Supreme Court has original jurisdiction over the acts and authority of the President of the United States, thus making the Supreme Court prime for adjudicating the matter.

Conclusion

In the event that civil actions can bypass the state trial level and upper courts, the the Court is likely to find that the president was acting outside of his official conduct as president, thus no absolute immunity protects the president from civil liability, the civil case may proceed with the Supreme Court having proper jurisdiction.

3.

In the civil case against the president, the question of the Court's jurisdiction depends on the justiciability of the case. The plaintiffs will argue that the non-profit organization, the justice league, has a justiciable case to be heard by the court, thus prime for adjudication. The defense, will argue that the Court does not have jurisdiction over the civil case because the plaintiffs do not have standing.

Plaintiffs

Justiciability

In order for a case to be heard by the court and the court issue a ruling, there must be an actual case or controversy between adverse parties. Justiciability requires that the plaintiffs have standing, the claim not be moot, the claim be ripe, and the claim is prime for adjudication, meaning it is not a advisory opinion or a political question.

Standing

In order for a case to be adjudicated, a plaintiff must establish that they have standing. In order to establish that they have standing, a plaintiff must show that they have suffered a concrete injury, directly traceable to actions taken by defendant, and the injury is redressable in the event of a favorable judgment for the plaintiff.

In this case, the plaintiff is not the party who directly suffered an injury, thus the general standing requirement fails to be met. However, the plaintiffs will contend that they have prudential standing, third party standing.

Prudential Standing (3rd party standing)

Generally, a claim of another may not be asserted by a third party, however, if the third party would have difficulty in bringing a claim, or if the relationship between the third party and the plaintiff would be adversely affected, or if the plaintiff's injury will cause a harm to the third party, may there exist third party standing.

Here, the plaintiff will argue that the non-profit organization, the justice league, has prudential standing to bring a claim for those would be unable to, orphans. Being as the slain political opponent of the president was an orphan, the plaintiffs will argue that there is a special and close relationship between orphans and the orphan presidential candidate who was killed because orphans in the nation could look to the slain as a symbol that they, even as orphans, can achieve greatness. Further plaintiffs may contend that the injury to the plaintiff, his assassination, would have a ripple effect on how the nation

views orphans, as lesser citizens, thus directly causing an injury to other orphans, the aggrieved third party.

Ripeness

In order for a case to be adjudicated, the claim must be ripe and cannot be anticipatory.

Plaintiffs will argue that they have suffered an injury and is ripe for adjudication. There is no anticipated harm, as there has already been an injury suffered by a member of their represented group.

Defendant

Justiciability

see supra

The defense will argue that the Court has no jurisdiction over the civil action brought by the justice league due to a lack of justiciability. The defense will contend that the plaintiffs do not have standing to bring this action, because they were not injured.

Standing

see supra

In order for a plaintiff to have standing, a plaintiff must establish that they have suffered an injury caused by defendant's actions. In this case, the defense will argue that the group of orphans who are bringing the suit, did not suffer any concrete injury traceable to the actions of the defendant. This would eliminate the standing, or the stake, in the litigation that plaintiff is claiming. Defense will further add that no injury was sustained by any member of the group of orphans, and since no concrete injury could be established by either of them, there is no way to directly trace the president's actions, the defendant's

actions, to any loss they claim to have suffered. Additionally, the defense will add that even if the plaintiffs are able to establish that an orphan like them has been injured and causation established, the question that will remain would be, what is proper relief? How would a favorable judgment to the plaintiffs, the justice league, bring remedy to their loss? How can that be based, would be the question.

Prudential Standing

see supra

Since the plaintiffs will argue that they have third party standing, bringing a claim for those who are unable to because of their relationship with the plaintiff, or because of the harm they have sustained, the defense will argue that there is no third party standing here. In the event that the plaintiffs argue that the harm caused to the killed political opponent will have a negative effect on the rest of the orphan population, the defense would counter by saying that the injury claimed by the third party is not an actual or imminent harm. The harm claimed by the plaintiffs will be anticipatory, thus failing to establish concrete injury requirement.

Ripeness

In order for a case to be adjudicated, the claim must be ripe and cannot be anticipatory.

The plaintiffs may argue that they have a ripe claim because they have suffered a harm, however, the defense will contend that the claim is anticipatory, thus the Court has no jurisdiction over the matter until an actual harm has resulted.

Conclusion

Regarding the justiciability argument, the Court is likely to find that the plaintiffs do not have a justiciable claim that is ripe for adjudication since they lack standing. The Court

will add that the non-profit organization, the justice league, has not suffered a harm and that the claim of prudential standing fails since there is no special or close relationship between the plaintiff and the third parties, nor is there any immediate harm to the third parties as a result of the injury to the plaintiff.

Question Two

✓ Cheech's claim against the State
Equal Protection: Cheech will likely argue that the provision of the "Recker Madness" Bill which restricts the amount of marijuana or related products men can purchase or possess violates his right to equal protection of the law under 14th Amendment.

The Equal Protection clause of the 14th Amendment guarantees the right of each and every citizen to equal treatment before the law free from discrimination.

In order to bring a claim under the Equal Protection clause Cheech will have to establish there has been discriminatory action by the government against a suspect, Quasi-suspect, or other class of citizen/individuals. Here, Cheech is alleging discrimination on the basis of gender which is a Quasi-suspect, so the court will likely apply intermediate scrutiny.

✓ Intermediate Scrutiny means that the burden of proof is on the complaining state to establish that the state has an important government objective in passing the legislation and the law is reasonable

tailored towards achieving that objective.

Here, Moonshine State will likely argue that the research showing the disproportionate effects of marijuana and related products have on men gives the state a legitimate interest in ~~purchasing~~^{restricting} the amount of marijuana men as a class can purchase or possess.

Cheech will likely respond by claiming that the link to dissociative behavior after prolonged use of marijuana is not a sufficient state interest to justify the discrimination.

The Court will likely rule against Cheech because the ~~states~~ state has established an important government objective in safeguarding the ~~the~~ health and safety of its male citizens that the Court will likely find sufficient to pass intermediate scrutiny.

Bing Boney Corp.'s claim

* Privileges and Immunities: The privileges and immunities clause of the Constitution only applies to individuals not corporations.

If Bing Bong, a corporation, brings a claim based upon the privileges and ~~immunities~~ immunities clause, it will most likely fail.

Commerce Clause: Congress has the right under article I section 8 of the Constitution to regulate interstate commerce.

Bing Bong may assert that because marijuana is a drug that is prohibited by a federal statute the federal government has manifested its intent to regulate in totality the field of regulating the production and distribution of marijuana and Moonshine is pre-empted from passing the "recreational madness" bill or even allowing for legal marijuana use in the first place.

Assuming that argument fails, Bing Bong may still choose to bring a case under the dormant commerce clause, and the following is likely to occur.

Dormant Commerce Clause (DCC): where there is no federal law on point and a state seeks to legislate commerce in a manner that is discriminatory against out of state businesses the court may find that the state legislation

is an unconstitutional violation of the commerce clause.

Under DCC a state law may be discriminatory on its face, have discriminatory effect or purpose, or place a substantial burden on interstate commerce. If the Court finds that a state law places a substantial burden on interstate commerce then the court will apply the *Dole* test to determine if the benefit to the state outweighs the burden imposed on interstate commerce.

Here, the Court will likely find that the "reefer madness" bill is discriminatory on its face as it expressly prohibits issuing licenses to business that have been conducting business in Moonshire state for less than five years.

In order to uphold the bill, Moonshire must demonstrate ~~an~~ a non-economic interest in passing the legislation and no other non-discriminatory means of achieving that interest. Moonshire will likely argue that the interest was in addressing its worsening housing crisis.

However the court will likely find that interest is economic in nature and rule in favor of Bing Bong based on the DCC.

Laura's claim against Moonshine Commerce Clause: See above

DCC: See above

Moonshine again will likely reach to its housing crisis as a justification for the discriminatory nature of the "vector madness" bill. A housing crisis, however, is a fundamentally economic issue. One could ~~evening prohibiting people~~ argue that prohibiting people from coming to your state to spend money and engage in commerce is counterproductive if your goal is to address a housing crisis.

The Court will likely rule in Laura's favor on the commerce clause issue because the law is discriminatory on its face and there are less discriminatory ways to address the state's goal ~~the~~ of addressing its housing crisis.

Privileges and Immunities: The privileges

and minorities clause protects the fundamental rights and ~~common~~ economic activities of individual citizens regardless of what state they are in. The clause however only applies to government action not private conduct.

If the marijuana sellers were ~~discriminating~~ discriminating against Laura on their own volition then she could not invoke this protection. In deciding to pass legislation that prohibits Laura, as an out of state, from ~~exercising~~ exercising her economic liberties Moonshine has effectively violated the privileges and minorities clause, and the Court will likely rule in Laura's favor.

Although Moonshine may argue that the purchasing and use of marijuana is not a sufficiently fundamental right to invoke the privileges and minorities clause. This argument will likely fail because what Laura is seeking to protect are her economic liberties, not her right to use marijuana specifically.

Question 3

A.) James has brought suit based upon his fifth amendment right against an unjust taking of private property without just compensation. Here, there is no permanent physical occupation of James' property by the government, so the Court will likely analyze James' claim based on the economic utility of property should the Court choose to uphold the North Castle state law. Given that a parcel of "beach front" property presumably retains much of its economic utility, even without the building of multi-family housing, the Court will likely find that the state law has not effectuated a taking pursuant to case precedent established in *Penn Central v. New York*.

B.) The federal Court would likely not be willing to reach the merits of Johnson's case because the issue is likely moot and not redressible by a ruling in favor of Johnson. A case or controversy is moot if the axis of the ~~plaint~~ plaintiff's claim has already reached its conclusion. Here, the contest has already occurred and a

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winner has already been declared. Unless Johnson is seeking an order for Seastate to hold the contest, the issue is likely moot. If the Court does decide to reach the merits of the case, it would have to address Johnson's claim based on the equal protection ~~clause~~ clause of the 14th Amendment and apply strict scrutiny because he is alleging discrimination on the basis of national origin.

C.) The Court is likely to rule in Dino's favor because under the Constitution Art. I Sec. 8 Congress is permitted to regulate interstate commerce. Here, the extra grapes being produced by Dino ~~and~~ are for personal use by him and his immediate family. Congress will likely argue that the aggregate effect of Dino's behavior should other grape producers choose to do the same, would have a substantial impact on interstate commerce. This argument will likely be unsuccessful as Dino and his family are making personal use of the extra grapes rather than selling, and in fact the activity that the government

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Wickard
with AGU's
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seeks to enforce against here is not at all economic in nature.

D.) The federal Court would not likely be willing to reach the merits of the president's claim because of the Political Question doctrine. In order to adjudicate the manner in which members of Senate are allowed to vote based on an internal rule the Senate has adopted for itself would require the Court (Judiciary) to exercise a degree of control over another branch of government that is unconstitutional and prohibited by the political question doctrine.