

UNIVERSITY OF MARYLAND  
SCHOOL OF LAW

**CONSTITUTIONAL LAW: STRUCTURE  
(3 HOURS)**

**Day Division**  
**Professor Singer**

**Friday, May 1, 2009**  
**9:00 AM – 12:00 PM**

No. \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

**Submitted Electronically: Yes**\_\_\_\_\_ **No**\_\_\_\_\_

**INSTRUCTIONS:**

1. **Honor Code.** Student conduct, during exams and at all other times, is governed by the Student Honor Code.

2. **Your Name, Your Exam Number and Exam Submission.** Sign and print your name in the blanks above. Put the exam number, course title and instructor name on the examination envelope. Indicate whether you are submitting this exam electronically. Submit these examination questions at the conclusion of the examination; do not put the examination questions in the examination envelope.

3. **Time.** Submit your examination answers within the announced time for the examination. If you submit your answers late, you likely will be penalized.

4. **Computer Exams.** Computers may be used on this exam. This is Option 2 - Open Mode – access to Exam4 and student computer-based notes - no Internet access

If you use a computer on this examination, you must use the Exam4 examination-taking software provided by the law school. You must provide your own computer and must have downloaded a copy of the Spring 2009 version of the Exam4 software to your computer. You should have completed this download, tested the software, and be sure the computer is in working order well before the date of this exam.

At the end of the examination, choose the "Submit Electronically" function on the Exam4 software. The software will request your Exam ID (Examination Number). Put the course name on your answer as instructed in the handout, but do not put your name anywhere on your answer. Submit your answer within the time limits for the

examination; no allowance for additional time will be given for equipment failure. After submitting your answer electronically, return to the examination room promptly and turn in (but do not seal) the envelope provided, with a notation on the envelope stating "Submitted Electronically." (The administration will print your Exam4 answers and insert them in the exam envelope.) At the same time turn in your examination questions to the proctor.

*Technological Problems:* If you experience a technological problem during the examination period, consider the amount of time remaining and decide whether you should continue (or restart) the examination in blue books. No additional time will be provided for technological problems. Responsibility for submitting your answers on time electronically lies entirely with you. The Information Technology (IT) Department will assist in retrieving examination files from your computer, and the Office of Registration & Enrollment will accept an IT-certified copy of an examination file retrieved from your computer as a timely submission, as long as there is no evidence of tampering with either your computer or the examination file.

**5. Handwritten Exams.** If you submit handwritten answers to the examination, put the number found above on each of your blue book answers to the examination. Both the envelope and your answers should contain your examination number, the course name, and the instructor's name. Do not put your name anywhere on the envelope or on the blue book answers.

Upon completion of the examination, put your answers in the envelope, fasten the flap, and hand in the envelope to the examination proctor. Be sure to enclose all of your answers in the envelope—you will be graded on only what is inside the envelope. Do not put the examination questions in the envelope. Hand in the questions separately to the examination proctor. You are responsible for ensuring that all of your completed answers and questions are handed in to the examination proctor.

**6. Specific Instructions and Examination Materials.** You will have three hours to complete this examination, which consists of four questions, two with subparts. For grading purposes, each question will be weighted in accordance with the time allotted to its answer. This is an **OPEN-BOOK** examination. You may have with you your Casebook, Supplement, class-notes, and any other materials you choose to bring. If the facts of a question are unclear, or a question does not give sufficient facts for you to formulate an answer, assume whatever additional facts are necessary and state clearly what you are assuming. Give your reasoning in all cases.

I  
(60 Minutes)

The Embargo on All Trade with Cuba Act (“Embargo Act”) was passed overwhelmingly by Congress in 1962 and signed by President John Kennedy. The Act prohibits most commerce between the United States and Cuba. The prohibition includes tourism and other non-official (and non-family) travel between the United States and Cuba. Over the past decade, there have been several efforts in Congress to modify or repeal the Embargo Act. For example, in 2007, both the House and Senate passed a bill that would have loosened the Act’s travel restrictions, but that bill was vetoed by President Bush.

Following up on a promise made during his presidential campaign, President Obama recently announced a change in administration policy toward Cuba. Obama described his new policy as one of “constructive engagement” and contrasted it with the Bush administration’s reliance on economic sanctions such as those imposed under the Embargo Act. Pursuant to this change of policy, the President recently issued an Executive Order announcing that the Department of State would no longer enforce the Embargo Act’s prohibition on travel to Cuba. The Executive Order also provided that, starting July 1, 2009, the federal government would permit unlimited travel between the United States and Cuba.

- A. Senator Robert Menendez is a staunch opponent of the communist regime in Cuba and a strong supporter of economic sanctions against that country. Recently, Menendez held a press conference in which he questioned both the wisdom and the constitutionality of the President’s decision to authorize travel between the U.S. and Cuba. You are a new attorney at the Department of Justice. Knowing of your expertise in constitutional law, your supervisor has asked you to draft a memo assessing the constitutionality of the President’s Executive Order. Another attorney is researching ways to avoid judicial consideration of the President’s Order, so you need not address these issues in your memo. **(30 Minutes)**
- B. Juan Alvarez is a United States citizen who owns a travel agency in Cancun, Mexico. A substantial portion of Alvarez’ business is arranging tours from Mexico to Cuba. Until recently, many of the customers on Alvarez’ Cuba tours were U.S. citizens seeking to avoid the ban on direct travel between the U.S. and Cuba. Since the first of the year, Alvarez’ business has dropped 25% -- a decline that he attributes in part to the Obama administration’s change in policy. Alvarez is considering filing suit in federal district court to challenge the constitutionality of the President’s actions. If he files such a suit, is a federal court likely to reach the merits of his constitutional claim(s)? Why or why not? Please explain thoroughly. **(30 Minutes)**

II.  
(75 Minutes)

Concerned about recent, highly publicized instances of animal cruelty, including the discovery of several interstate dog fighting rings, Congress recently passed the Protection and Animal Welfare Statute of 2008 (PAWS). Among other provisions, PAWS makes it a federal crime for any individual to “intentionally or recklessly torture, maim, torment, abuse or starve any animal.” To effectuate this criminal prohibition, PAWS requires all licensed veterinarians to report suspected instances of animal abuse or cruelty to federal authorities, using a secure, web-based reporting form. A veterinarian who “unreasonably fails to report” is subject to a substantial civil fine.

Prior to passing PAWS, Congress held hearings on the prevalence and economic impact of animal abuse, as well as its link to other forms of violence. For example, researchers testified that individuals who commit acts of cruelty against animals are often involved in crimes of violence against people, particularly spousal and child abuse. Congress also learned that dog fighting and other forms of animal abuse were often linked to multi-state gambling and organized crime. More generally, Congress noted that six in ten U.S. households own pets, and that spending by Americans on their pets more than doubled from \$17 billion in 1994 to \$41 billion in 2007. Congress also found that while most states had laws against animal cruelty, those laws generally were not vigorously enforced.

A.

Jerry Smith is a veterinarian who operates a private, solo practice in Baltimore, Maryland. The majority of her clients (and their pets) live in Baltimore and the surrounding suburbs, but she occasionally sees animals from Pennsylvania and Washington, D.C. Dr. Smith also purchases about 25% of her supplies and equipment from out of state, and she uses the internet extensively to communicate with her clients and her suppliers.

Smith is troubled by the reporting requirement contained in PAWS. In particular, she believes that it may violate her confidentiality obligations to clients -- whom she regards as the owners of the animals (as opposed to the animals themselves). Smith is also opposed to the additional paperwork and other resources that compliance with the reporting requirement is likely to entail.

Smith is considering filing suit in federal court to challenge the legality of the veterinarian reporting requirement contained in PAWS. She wants to know if there are any viable constitutional grounds on which she can challenge the requirement and what defenses the government is likely to raise in response to any such constitutional challenge. **(30 Minutes)**

B.

Title II of PAWS creates an independent federal agency, the Animal Welfare Commission (Commission). The Commission consists of 6 members, who are to be appointed by the Supreme Court. Once appointed, Commission members may be removed only for cause by the Supreme Court. Title II of PAWS also authorizes the Commission to issue “all appropriate regulations to improve the treatment and well-being of animals.” Such regulations take effect 60 days after their promulgation, unless disapproved by the Vice President.

Pursuant to its statutory authority, the Commission recently issued a regulation mandating that all teachers in public and private schools complete an on-line tutorial designed to educate them about the warning signs of animal abuse. The Maryland State Teachers’ Union is unhappy about this tutorial requirement. Union officials would like to know if there are any constitutional grounds – **other than those discussed in Part A** – on which they can challenge the tutorial requirement and whether those grounds are likely to succeed. Please advise them. Please do not discuss any justiciability doctrines in your answer. **(30 Minutes)**

C.

The federal government currently provides substantial education funding to states. For example, in Maryland, approximately 25% of the money spent on public school education comes from the federal government. How, if at all, would it affect your analysis of the tutorial requirement described in Part B above if the requirement applied only to teachers in states that accepted these federal education funds? **(15 Minutes)**

III

(10 Minutes)

One of the former Bush administration officials who signed the Justice Department memo that authorized the use of water-boarding and other harsh interrogation techniques is now a federal Court of Appeals judge. Imagine that President Obama wanted to remove him from office. Could the President do so? Why or why not? How, if at all, would it affect your analysis if Congress passed a statute that authorized the removal?

IV

(35 Minutes)

In his concurring opinion in *Hamdan v Rumsfeld*, Justice Kennedy characterized the case as one of extraordinary importance that could be resolved by ordinary principles. Using at least two of the cases that we have studied this semester, explain the “ordinary principles” to which Justice Kennedy might be referring and discuss the extent to which those principles justify the results in *Hamdan* and *Boumediene*.

Filename: Exam Draft 4-28-09.doc  
Directory: U:\Fall2009\Clinic  
Template: C:\Documents and Settings\jsmith\Application  
Data\Microsoft\Templates\Normal.dotm  
Title: In his concurring opinion in Hamdan v Rumsfeld, Justice Kennedy  
characterizes the case as one of extraordinary importance that can be resolved by  
ordinary principles  
Subject:  
Author: Jana  
Keywords:  
Comments:  
Creation Date: 4/28/2009 4:28:00 PM  
Change Number: 3  
Last Saved On: 4/28/2009 4:29:00 PM  
Last Saved By: JSinger  
Total Editing Time: 3 Minutes  
Last Printed On: 11/23/2009 3:20:00 PM  
As of Last Complete Printing  
Number of Pages: 5  
Number of Words: 1,864 (approx.)  
Number of Characters: 10,630 (approx.)