Constitutional law I
Spring Semester 2009
Final Exam Instructions
Professor P. Gulasekaram

You have seven (7) hours to complete this examination. The exam consists of 2 sections: multiple choice and essay. Each section is worth 50% of your total exam score. Specific instructions for each section will be listed again preceding each section.

You will have up to 2 in-class hours to complete the multiple choice section. You will not receive the essay portion of the exam until you turn-in your multiple choice exam and answers to the in-class proctors. Correct answers are worth 3 points each. Incorrect answers will deduct 0.75 points from your score (a ration of 4:1). You may leave questions unanswered without incurring a penalty.

You will have from the time you turn-in your multiple choice section until 3:30 p.m. to complete the essay section. There is no classroom assigned for the essay portion; you may take the exam anywhere you are comfortable.

This is a limited open-book examination. You may use your casebook (Sullivan & Gunther), the prescribed treatise for the course (Chemerinsky), written transcriptions of my class slides, your notes, your outlines for this or any other class, and any other materials created and authored at least in part by you. You may NOT use commercial outlines or any other aids, including outlines and notes, which you did not create. You may NOT access the internet during the examination. You may NOT use your phone except for emergencies or in the event you receive a phone call from the Faculty Support Office of the Law School (408-554-4000). You may NOT discuss any aspect of the examination, whether procedural or substantive, with any other person (at SCU or otherwise) during the examination. I will consider the writing of your Blind Grading ID number (below) an affirmation that you have acted honorably and observed the preceding limitations.

Please note that the consequences of violating these rules are serious and beyond my discretion. It will affect your fitness for the bar exam, your job prospects, and your credibility as an attorney. The dubious benefits of acting outside these boundaries are far outweighed by the costs.

You may write a maximum of 2200 words for the essay portion. Specify your word count on the space provided with the instructions. You will be penalized, at my discretion, depending on the quality and quantity of the transgression, for exceeding the word limit or not including a word count. You are wholly responsible for turning in the essay portion at the due date and time and should account for circumstances that might hinder that objective. You may turn in your examination before the time limit.
If you feel that multiple choice exam information is in error, you may note your concern on the back of the scantron sheet. Please note the question number and your objection/concern briefly. As time is of the essence, please be judicious in the time you spend challenging questions.

If you feel that the essay exam information is in error or that you must make certain assumptions to adequately answer a question, please state your assumptions clearly and continue answering the question. The information contained in any question with a fact-pattern may or may not be relevant. You should provide a specific resolution to every question/issue. However, your conclusion on any given question/issue is far less important than the reasoning process you use to get to that result.

Although you have been allotted at least 5 hours to complete the essay examination, it was written so that it could be completed in well-under that limit. The purpose of the additional time is to allow for reflection, reconsideration, and improvements in presentation, organization, and efficient editing.

You may use CAPITALIZED abbreviations for names or concepts provided that the first usage of that name or concept is written in full and the abbreviation is parenthetically identified (e.g., “...due process (DP)...” or .... “privileges and immunities clause (P & I/C)...”). Please use discretion when employing abbreviations; permitting use of abbreviations is primarily intended as a time-saving measure NOT a word-saving measure.

You may, at all times, without full citation, use one-name abbreviations for cases, provided that the name is bolded or underlined (e.g., “Marbury” or “Marbury”). You may, if you choose, append a parenthetical explanation after the citation if you feel it will enhance your point (e.g., “...Marbury (declaring an act of Congress unconstitutional)...”)

Make sure your BGID number is written on the exam itself, your multiple choice answer form, and on each page of your essay answer.

DO NOT IDENTIFY YOURSELF BY NAME ON YOUR ANSWER OR THE EXAM.

BY WRITING MY BLIND GRADING ID NUMBER ON THE LINE BELOW I CERTIFY AND AFFIRM THAT I HAVE BEHAVED ETHICALLY AND PROFESSIONALLY DURING THIS EXAMINATION. I HAVE ACTED HONORABLY AND HAVE NEITHER RECEIVED NOR GIVEN ASSISTANCE. IN ADDITION, I HAVE OBSERVED THE LIMITATIONS SET FORTH ABOVE.

4-DIGIT BGID NUMBER FOR HONOR CODE AFFIRMATION: _____

Best of Luck!
Santa Clara University School of Law-Spring 2009

4-DIGIT EXAM ID: ______ COURSE: ________________ PROFESSOR: ________________

THESE EXAMINATION QUESTIONS MUST BE RETURNED AT THE END OF THE EXAMINATION. THE STANDARD EXAMINATION RULES GOVERN THIS EXAMINATION.

Constitutional Law I
Professor Gulasekaram

Part II: Essay

EXAM PASSWORD cdx3

May 14, 2009
Due: 3:30 P.M.
Limited Open Book

PROFESSOR'S INSTRUCTIONS

INSTRUCTIONS: ESSAY QUESTIONS

1) You will have until 3:30 to turn-in this portion of the exam. You may turn-in this portion prior to the time limit. All examinations must be uploaded to ExamSoft/Softest by 3:30 p.m. May 14th, 2009, or if it is not possible for you to use ExamSoft/Softest typed into a word processor, printed and turned into the Faculty Support Office, no later than 3:30 p.m. May 14th, 2009.

2) You may write a total of 2200 words for the exam. Include your word count at the end of your answer. Exceeding the word limit or not including a word count will result in a deduction. You may divide the words as you see fit.

3) The essay portion of the exam is limited open-book. You may not use commercial outlines, borrowed outlines, or the internet. The allowed materials are:

   a. Class Casebook (Sullivan/Gunther);
   b. Prescribed Treatise (Chemerinsky);
   c. Constitution of the United States (without annotations or other attached materials; note—a copy of the Constitution is provided in the Casebook);
   d. Transcriptions of slides used in class;
   e. Any materials authored, at least in part, by you.

4) You must put your BGRID on EACH PAGE of your answer. DO NOT WRITE YOUR NAME ON ANY PORTION OF THE EXAM or ANSWER. Softest will automatically do this for you.

5) There are 3 questions on this portion of the examination. The first question is worth 50 points; the second question is worth 35 points; the third question is worth 15 points (it has 2 prompts, of which you will choose 1 to answer).

6) You may use abbreviations and case citations as specified in the pages included above.

Please type or highlight, drag and drop the following bolded paragraph into ExamSoft at the beginning of your examination, and sign it with your BGRID:

BY WRITING MY BLIND GRADING ID NUMBER ON THE LINE BELOW I CERTIFY AND AFFIRM THAT I HAVE BEHAVED ETHICALLY AND PROFESSIONALLY DURING THIS EXAMINATION. I HAVE ACTED HONORABLY AND HAVE NEITHER RECEIVED NOR GIVEN ASSISTANCE. IN ADDITION, I HAVE OBSERVED THE LIMITATIONS SET FORTH ABOVE.

4-DIGIT BGRID NUMBER FOR HONOR CODE AFFIRMATION: ______

This affirmation contains 55 words (when signed) and will NOT count against your word limit.
Instructions to use Softest on a Take-Home Exam

(If you have any questions about these instructions please contact Lisa Willett, lwillett@scu.edu or 554-5494)

Using Softest in this format allows you to open and close as you would a word processor and saves you the drive time in turning in a hard copy.

1. You can type your answers directly into Softest as you write it (Best Option)
   Or
2. You can highlight drag/drop your entire answer from a word document into Softest.

Are you ready to begin?

Launch Softest.
Select Exam File
Enter your password (shown on your exam)
Click Begin (your computer will NOT reboot)
Begin Screen opens.
Type begin.
Click Begin.
Exam will commence. (Further Instructions will be within the question content.)

Start Typing your exam or highlight drag/drop the entire completed document.

If you need a break at any time while typing in Softest you can save and exit out of your Softest session and come back later. This is called “SUSPEND”.

TO SUSPEND EXAM:

Go to upper left corner,
Select File option
Select Suspend Exam
A Popup appears “Would you like to save and suspend this exam? This exam will resume automatically the next time you launch softest.”

Click “YES” (your exam is saved and waiting for your return)
Are you ready to return to your exam? All you need to do is “RESUME”

TO RESUME EXAM:

Launch Softest:

You will resume your exam at the point of your suspension.

You can SUSPEND and RESUME as many times as you need.

Finished and Ready to submit your exam to the Faculty Support Office?

Exit normally as you would any other exam.

1. On the top bar of your screen, click “Exit Exam”. Click on “Close Exam”. On the yellow window, click the “Exit” button.

2. Softest will reboot your computer and then automatically upload your exam. Once it is uploaded, you will get a message on your screen. You must now check your email for confirmation that your exam has been uploaded. If you do not receive an email confirmation within two hours please contact tech support at 554-5508.

(If your computer does not automatically connect to the internet, you will receive a message asking if you would like to try to connect again. If you get this message, please go to your desktop and open your web browser. Once you have a web page, go back to the Softest message and click on “Yes”.)

Congratulations! You have now submitted your Take Home Final to the Faculty Support Office. Your Exam will be automatically time stamped by Softest.
A newly enacted Oklahoma law — “The Freedom of Conscience Act” — reads, in relevant part, as follows:

SECTION 1.

A. Any private office, freestanding outpatient clinic, or other facility or clinic in which abortions, other than abortions necessary to prevent the death of the pregnant female, are performed, induced, prescribed for, or where the means for an abortion are provided shall conspicuously post a sign in a location defined in subsection C of this section so as to be clearly visible to patients, which reads:

Notice: It is against the law for anyone, regardless of his or her relationship to you, to force you to have an abortion. By law, we cannot perform, induce, prescribe for, or provide you with the means for an abortion unless we have your freely given and voluntary consent. It is against the law to perform, induce, prescribe for, or provide you with the means for an abortion against your will. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened physical abuse or violence.

B. The sign required pursuant to subsection A of this section shall be printed with lettering that is legible and shall be at least three-quarters-of-an-inch boldfaced type.

SECTION 2.

A. If the pregnant female is a minor, the attending physician shall orally inform the female that no one can force her to have an abortion and that an abortion cannot be performed, induced, prescribed for, or that the means for an abortion cannot be provided unless she provides her freely given, voluntary, and informed consent.

B. The minor female shall certify in writing, prior to the performance of, induction of, receiving the prescription for, or provision of the means for the abortion, that she was informed by the attending physician of the required information in subsection A of this section. A copy of the written certification shall be placed in the minor’s file and kept for at least seven (7) years or for five (5) years after the minor reaches the age of majority, whichever is greater.
SECTION 3.

A. Any abortion provider who knowingly performs any abortion shall comply with the requirements of this section.

B. In order for the woman to make an informed decision, at least one (1) hour prior to a woman having any part of an abortion performed or induced, and prior to the administration of any anesthesia or medication in preparation for the abortion on the woman, the physician who is to perform or induce the abortion, or the certified technician working in conjunction with the physician, shall:

1. Perform an obstetric ultrasound on the pregnant woman, using either a vaginal transducer or an abdominal transducer, whichever would display the embryo or fetus more clearly;

2. Provide a simultaneous explanation of what the ultrasound is depicting;

3. Display the ultrasound images so that the pregnant woman may view them;

4. Provide a medical description of the ultrasound images, which shall include the dimensions of the embryo or fetus, the presence of cardiac activity, if present and viewable, and the presence of external members and internal organs, if present and viewable; and

5. Obtain a written certification from the woman, prior to the abortion, that the requirements of subsection B have been complied with; and

C. Nothing in this section shall be construed to prevent a pregnant woman from averting her eyes from the ultrasound images required to be provided to and reviewed with her. Neither the physician nor the pregnant woman shall be subject to any penalty if she refuses to look at the presented ultrasound images.

Jane Roe, a 17 year-old pregnant woman, visited an abortion clinic in Oklahoma to terminate her 9 week pregnancy. However, she refused to have the physician conduct the ultrasound as required by the law. The physician then informed her that she could not continue with the procedure.

Some medical information regarding ultrasounds during pregnancy from the American Pregnancy Association is included on the following pages. Ultrasounds generally cost approximately $200 – $300. It is not clear if Roe’s health insurance (from her parents) would have covered the procedure. If her insurance did not, her only other choices would be to find a clinic that absorbed the cost of the procedure or pay for it herself.
An excerpt from a NY Times article regarding the Oklahoma statute stated, in relevant part:
Backers of the lawsuit say Oklahoma is the only state to require that the ultrasound screen be turned toward the woman during the procedure and that the doctor describe what is on the screen, including various dimensions of the fetus.
Elizabeth Nash, public policy associate with the Guttmacher Institute, said the Oklahoma law appeared unique in that its intent was that the woman seeking an abortion view the ultrasound images.
Lawmakers overrode Gov. Brad Henry’s veto to pass the anti-abortion legislation in April. Mr. Henry, a Democrat, said he vetoed the bill because it did not exempt victims of rape or incest from the ultrasound requirement.
State Senator Todd Lamb, a Republican, said supporters of the law hoped that it would curtail abortions in the state.
“I introduced the bill because I wanted to encourage life in society,” Mr. Lamb said.
“In Oklahoma, society is on the side of life.” Mr. Lamb said he believed the lawsuit would stand a constitutional test. He disagreed with arguments that it forces a woman to view the ultrasound. The law says women may avert their eyes during the ultrasound.
“This bill provides more information to a mother,” he said.

Roe filed suit in federal court challenging the validity of the Oklahoma law. By the time the court hears the case six months later, she had given birth to a child and no longer needs an abortion. Discuss her claims under the U.S. Constitution.

QUESTION 2
(35 points)

Both Planned Parenthood v. Casey (in relation to Roe v. Wade) and Lawrence v. Texas (in relation to Bowers v. Hardwick), discuss the principle of stare decisis. Casey declines to overrule Roe, whereas Lawrence squarely overrules Bowers. What justifies these respective movements? Or, if you believe one is unjustified, explain and defend your position. You may also consider how the 3 other major doctrinal shifts we studied – Commerce clause jurisprudence pre-1937 v. post -1937; Lochner to Lee Optical; and National League of Cities to Garcia – factor (or do not factor) into your analysis.
QUESTION 3
(15 points)

Choose one (1) of the following two (2) prompts and answer:

a. Justice Scalia has argued that the Court’s “dormant” commerce clause doctrine is dubious because the commerce clause only provides an affirmative basis for Congressional action; negative inferences from the commerce clause are unsupportable as a basis for invalidating certain types of state laws. Agree or disagree and discuss.

b. Assuming a court could ever hear a case presenting the issue, it should understand the Constitution to mean that the President’s powers on September 12, 2001 were different than the President’s powers on May 14, 2009. Agree or disagree and discuss.

WORD COUNT ____________ (include at end of your answer)

END OF EXAMINATION

PLEASE READ THE FOLLOWING
POST-EXAM INSTRUCTIONS & REMINDERS:
PLEASE ENSURE YOU SIGNED THE AFFIRMATION WITH YOUR BGID NUMBER
PLEASE INCLUDE A WORD COUNT
PLEASE ENSURE YOUR BGID NUMBER IS ON EACH PAGE OF YOUR ANSWER
PLEASE ENSURE YOUR NAME DOES NOT APPEAR ANYWHERE
Ultrasound: Sonogram

An ultrasound exam is a procedure that uses high-frequency sound waves to scan a woman's abdomen and pelvic cavity, creating a picture (sonogram) of the baby and placenta. Although the terms ultrasound and sonogram are technically different, they are used interchangeably and reference the same exam.

What types of ultrasound are there?
There are basically seven different ultrasound exams, but the principle process is the same. The different types of procedures include:

Transvaginal Scans: Specially designed probe transducers are used inside the vagina to generate sonogram images. Most often used during the early stages of pregnancy.

Standard Ultrasound: Traditional ultrasound exam which uses a transducer over the abdomen to generate 2-D images of the developing fetus.

Advanced Ultrasound: This exam is similar to the standard ultrasound, but the exam targets a suspected problem and uses more sophisticated equipment.

Doppler Ultrasound: This imaging procedure measures slight changes in the frequency of the ultrasound waves as they bounce off moving objects, such as blood cells.

3-D Ultrasound: Uses specially designed probes and software to generate 3-D images of the developing fetus.

4-D or Dynamic 3-D Ultrasound: Uses specially designed scanners to look at the face and movements of the baby prior to delivery.
Fetal Echocardiography: Uses ultrasound waves to assess the baby's heart anatomy and function. This is used to help assess suspected congenital heart defects.

**How is an ultrasound performed?**
The traditional ultrasound procedure involves placing gel on your abdomen to work as a conductor for the sound waves. Your healthcare provider uses a transducer to produce sound waves into the uterus. The sound waves bounce off bones and tissue returning back to the transducer to generate black and white images of the fetus.

**When are ultrasounds performed?**
Ultrasounds may be performed at any point during pregnancy, and the results are seen immediately on a monitor during the procedure. Transvaginal scans may be used early in pregnancy to diagnose potential ectopic or molar pregnancies.

There is not a recommended number of ultrasounds that should be performed during routine prenatal care. Because ultrasound should only be used when medically indicated, many healthy pregnancies will not require ultrasound. The average number of ultrasounds varies with each healthcare provider. Additional ultrasounds might be ordered separately if your healthcare provider suspects a complication or problem related to your pregnancy.

**What does the ultrasound look for?**
Ultrasounds are diagnostic procedures that detect or aid in the detection of abnormalities and conditions related to pregnancy. Ultrasounds are usually combined with other tests, such as triple tests, amniocentesis, or chorionic villus sampling, to validate a diagnosis. An ultrasound exam is medically indicated throughout pregnancy for the following reasons:

- **First Trimester:**
  - Confirm viable pregnancy
  - Confirm heartbeat
  - Measure the crown–rump length or gestational age
  - Confirm molar or ectopic pregnancies
  - Assess abnormal gestation

- **Second Trimester:**
  - Diagnose fetal malformation
    - Weeks 13–14 for characteristics of potential Down syndrome
    - Weeks 18–20 for congenital malformations
  - Structural abnormalities
  - Confirm multiples pregnancy
  - Verify dates and growth
  - Confirm intrauterine death
  - Identify hydramnios or oligohydramnios – excessive or reduced levels of
amniotic fluid
- Evaluation of fetal well-being

**Third Trimester:**
- Identify placental location
- Confirm intrauterine death
- Observe fetal presentation
- Observe fetal movements
- Identify uterine and pelvic abnormalities of the mother

**What are the risks and side effects to the mother or baby?**
The ultrasound is a noninvasive procedure that, when used properly, has not demonstrated fetal harm. The long term effects of repeated ultrasound exposures on the fetus are not fully known. It is recommended that ultrasound only be used if medically indicated.

**Answers to common questions related to an ultrasound exam:**
If an ultrasound is done at 6 to 7 weeks and a heartbeat is not detected, does that mean there is a problem? No it does not mean there is a problem. The heartbeat may not be detected for reasons that include: tipped uterus, larger abdomen, or inaccurate dating with last menstrual period. Heartbeats are best detected with transvaginal ultrasounds early in pregnancy. Concern typically develops if there is no fetal heart activity in an embryo with a crown-rump length greater than 5mm. If you receive an ultrasound exam after week 6, your healthcare provider will begin to be concerned if there is no gestational sac.

How accurate are ultrasounds in calculating gestational age? Your healthcare provider will use hormone levels in your blood, the date of your last menstrual period and, in some cases, results from an ultrasound to generate an estimated gestational age. However, variations in each woman's cycle and each pregnancy may hinder the accuracy of the gestational age calculation. If your healthcare provider uses an ultrasound to get an estimated delivery date to base the timing of your prenatal care, the original estimated gestational age will not be changed.

Why do some healthcare providers schedule ultrasounds differently? If there are any questions regarding gestational age, placenta location, or possible complications then more ultrasounds may be scheduled. Because ultrasound should only be used when medically indicated, many healthy pregnancies will not require ultrasound. The average number of ultrasounds varies with each healthcare provider.

How accurate are ultrasounds in determining the conception date to determine paternity? Your healthcare provider will use hormone levels in your blood, the date of your last menstrual period and, in some cases, results from an ultrasound to generate an expected date of conception. However, many differences in each woman's cycle may hinder the accuracy of the conception date calculation. The viability of sperm varies as well, which means that intercourse three to five days prior to ovulation may result in conception. Ultrasound dating of conception is not reliable for determining paternity because the
ultrasound can be off by at least 5–7 days in early pregnancy.

When can an ultrasound determine the sex of the baby? You may have an ultrasound between 18 to 20 weeks to evaluate dates, a multiples pregnancy, placenta location or complications. It may also be possible to determine the gender of your baby during this ultrasound. Several factors, such as the stage of pregnancy and position of fetus, will influence the accuracy of the gender prediction. To be 100% sure you will have an anxious wait until the birth!

Are ultrasounds a necessary part of prenatal care? Ultrasounds are only necessary if there is a medical concern. As noted above, ultrasounds enable your healthcare provider to evaluate the baby's well being as well as diagnose potential problems. For women with an uncomplicated pregnancy, an ultrasound is not a necessary part of prenatal care.

Compiled using information from the following sources:

Williams Obstetrics Twenty-Second Ed. Cunningham, F. Gary, et al, Ch. 16.

American Institute of Ultrasound in Medicine, http://www.aium.org/

The information contained herein is for educational purposes only and is not meant for diagnosis or treatment. Any information found herein should be discussed with a health care professional. Use of this information should be done in accordance with the health care plan outlined by your health care professional. For specific medical advice, diagnosis, and treatment, consult your doctor. All content is copyrighted by the American Pregnancy Association unless otherwise noted.