

TIME LIMIT: FIFTY MINUTES

INSTRUCTIONS:

1. Please do not use pencil to write this examination. If you use a felt-tip or fountain pen, make sure that your answer does not "bleed" on to the next sheet of paper.
2. WRITE ONLY ON THE LINES AND IN THE SPACE PROVIDED. WRITE ONLY ONE LINE OF SCRIPT ON EACH LINE. DO NOT WRITE IN THE MARGINS. DO NOT WRITE ON THE REVERSE SIDE OF THE PAGE. DO NOT WRITE IN A BELOW AVERAGE SIZE OF SCRIPT.
3. Do not take the examination from the room in which you are writing.
4. When you are finished with this examination early, place it on the instructor's table at the front of the room announced at the beginning of the examination.
5. Do not assume facts not given, and do not change the facts. In particular, do not assume the existence of statutes unless referred to in the question.
6. Discuss each issue fairly raised by a fact pattern, even if your answer on one issue makes discussion of another issue unnecessary. Complete in full your discussion of one issue before discussing another issue.

A. In 1985, the State of Colorado enacted a statute imposing a maximum speed limit of 55 miles per hour on all two-lane highways. Alan Albert's, a long distance freight hauler employed by Ace Trucking Co., a Delaware corporation, was cited, convicted, and fined for speeding while traveling through Colorado on a journey from Chicago to Los Angeles. Alberta and Ace Trucking argued that the state had no power to regulate this matter. Evidence at trial proved conclusively that compliance with the Colorado speed limit would make it impossible for truckers to make the journey in fewer than 48 hours. The speeding conviction was reviewed by the United States Supreme Court. What result, and why?

BEST ANSWER

The issue in this case is whether the state of Colorado had the power to regulate the speed limit on its highways, which it does in most instances. However, this instance effects interstate commerce, so it would require review by the courts to see if it impedes on federal power. The courts in this case would use the Cooley Doctrine to decide if this case called for national uniformity or local diversity in the issue. Since congress probably hasn't spoken to the issue, it would first have to determine if this was an issue that admits local diversity. In this case with Colorado highways it does. Highway maintenance and regulation is something that would more than likely, be handled on a more local level. The next step to follow after applying the Cooley Doctrine is to use a balancing test to see if the safety claimed by the state regulation discriminates against interstate commerce or a burden upon it. In this case the speed limit does not discriminate against commerce, because everyone in the state has to travel at the same speed. So it comes down to the question of undue burden. In this case it is likely that the court will find in favor of the state due to police statutes. Although it does place some burden on interstate commerce, the state's safety concerns on its highways far outweigh the burden on commerce. The state is better equipped to judge the speed on highways vs. the federal government. Also since this speed limit is only on two lane highways, truckers would only be subject to the limit if they took a two lane highway vs. a larger one. The court will likely find in favor of the statute and uphold conviction because although it does place a burden it is not.

B. Assume, irrespective of your answer above, that the United States Supreme Court upheld the conviction of Alan Alberta and Ace Trucking Co. Thereafter, in 1987, a Colorado court convicted and fined Chuck Carter, a federal post office employee, for speeding in Colorado while delivering mail. Carter also was fined for driving a vehicle not equipped with seat belts, as required by Colorado law. Both convictions were reviewed by the United States Supreme Courts. What results, and why?

BEST ANSWER

In the case of Mr. Carter is important to view both convictions separately. In his first conviction of speeding while delivering the mail is likely that the court will uphold this conviction on the grounds that the state law is incidental. The state is not trying to regulate a function of the government. A speed limit law is slight and will not be received as an attempt at regulation of the federal government. The state's power to regulate speed is one of the state's police powers that is in pursuit of safety for its citizens. It doesn't discriminate against the federal government with any specificity. On the other hand, the seat belt conviction would be harder to uphold. This conviction is not on an incidental regulation that doesn't largely effect the government's business. This conviction of the seat belt law opens up a can of worms / slippery slope argument against state regulation. If the court allows the conviction to be upheld along with the statute, the states could have the possibility of trying to further regulate the federal government and quite possibly impede its function. Although seatbelts on the face may not seem to be a big deal, the state could parlay this regulation if upheld into larger attempts at regulation. Basically in the scope of this case, the first conviction of speeding will be upheld because it is an incidental law that doesn't effect federal functions, but the seat belt regulation will be thrown out as an attempt at federal regulation. No matter the law if non-discriminatory, once regulation is allowed there is no stopping it.

C. Assume, irrespective of your answers above, that the Supreme Court upheld Carter's convictions. Thereafter, in 1989, Congress enacted a statute imposing a national speed limit of 60 miles an hour on all roads that served as an artery of interstate commerce or that connected with a road that served as such an artery. Several months later, David Davidson was convicted and fined for violations of both the federal statute and the state statute for traveling at 70 miles per hour on a two-lane gravel road that, four miles from the site of the violations, connected with a two-lane paved highway that, in turn, connected with United States Route 24. Davidson's federal and state convictions were reviewed by the United States Supreme Court. What results, and why?

Assume that there is no double jeopardy problem.

BEST ANSWER

The issues here are two fold. First, whether the federal government can enforce this as a regulation of interstate commerce, even on the gravel road. The second involves the validity of the state statute in an area where congress has spoken. First, the federal government can regulate virtually any activity that it deems has an effect on interstate commerce. Here because roadways are the very channels of interstate commerce, congress may certainly regulate a speed limit. As to Davidson's conviction on this federal regulation, although he was on a "side" road, because it does have a connection to the main interstate artery, the conviction would be valid. The court shows great deference to congress in the area of interstate commerce regulation. Thus if congress intended that all roads be subject to the federal speed limit based on the fact that all roads have an effect on interstate commerce, the conviction would be valid based on the court's deference to congress. As to the conviction on the state speed limit, one must ask the threshold question as to whether the state may regulate in this area when congress has also regulated. First, it is clear that congress did not intend to dominate the field here. Thus, there is no federal preemption of the state regulation. This is evidenced by the fact that

1. Congress did not specifically state that it's speed limit preempted any state action and
2. The language is vague enough as to imply that state regulation is not prohibited.

Thus, because the federal regulation does not preempt state regulation and the subject admits of local diversity, for the above mentioned reasons, the state does have concurrent power to regulate the speed limit. This concurrent power to regulate is valid so long as

1. It is non-discriminatory
2. There is no undue burden and
3. The state regulation does not undermine the existing federal regulation.

For reasons mentioned in question A. the state speed limit is neither discriminatory nor places an undue burden on interstate commerce. Therefore because it is possible to comply with both the state and federal regulations together, the state regulation is valid. That is, because the state limit (55) does not supercede, therefore undermine, the federal statute (60) it is possible to comply with both regulations. In all both state and federal convictions should be upheld as both regulations are valid.

Assume, irrespective of your answer above, that both of Davidson's convictions were affirmed. Thereafter, in 1991, Congress repealed the national speed limit. In its place, Congress amended the federal income tax law to provide for a 10 percent surtax of any person who exceeded the speed of 60 miles per hour on any road that served as an artery of interstate commerce or that connected with a road that served as such an artery. Thereafter, Edna Edwards was convicted in state court for violating the state's speed limit after she was cited at exactly the location as Davidson's earlier violation. Edna did not contest this conviction, but filed suit against the federal government to enjoin it from imposing the surtax upon her. The case was decided by the United States Supreme Court. What result, and why?

BEST ANSWER

The issue here is whether the statute provides for a penalty or a tax. The rules to be applied here is that if Congress can tax and regulate a subject matter, then a penalty may be imposed. If, however, congress may tax but not regulate, no penalty will be imposed because a penalty is a form of regulation. The threshold question is whether the tax is tax on its face and is a good faith revenue raiser or is there a regulation in the tax. If it a regulation in the guise of a tax, it may not be upheld. Applying this rule to the facts above, the tax would be considered a penalty because it regulates a speed limit. It would not be struck down, however, because Congress, through the exercise of its commerce power, can regulate the words that effect interstate commerce. By being able to do so, the penalty imposed here is a valid exercise of Congress's power to regulate. The court would order the injunction. However, since this is a valid exercise of Congress's taxing power, the court would not order the injunction against the federal government from imposing the surtax on her.