

CONSTITUTIONAL LAW I
SECTION M
PROFESSOR KOBIL
FINAL EXAMINATION
FALL 1989

TIME: THREE HOURS

GENERAL INSTRUCTIONS:

1. Be sure that your examination number appears on all bluebooks, which you use.
2. Please do not use pencil to write the examination. If you use a felt-tip or fountain pen, please write only on one side of each sheet of paper in the bluebook.
3. Leave a margin on the left-hand side of each page for me to use in grading.
4. Do not take the bluebooks or the examination copy out of the room in which you are writing.
5. When you are finished with the examination, please place your bluebooks on the instructor's table at the front of the room announced at the beginning of the examination. If you use more than one bluebook, place one inside the other and number each bluebook. Sign the sheet provided indicating you have turned in your examination.

SPECIFIC INSTRUCTIONS:

1. Do not assume facts not given, and do not change the facts. For example, do not assume the existence of statutes unless they are referred to in the question. However, if you are convinced that a question cannot be answered completely without making certain assumptions, please state clearly the nature of any assumptions on which you are relying.
2. There are three questions on the examination, which are weighted unequally. You therefore are advised to budget your time according to the weight given to each question.
3. Discuss each issue fairly raised by a fact pattern, even if your conclusion on one issue within the fact pattern seems to make discussion of another issue unnecessary. For example, if you conclude that the Supreme Court lacks jurisdiction to hear a case, it would nevertheless be prudent to discuss the merits of the substantive issue raised by the fact pattern.

4. In answering all of the questions, please discuss each issue raised by the question separately. Complete in full your discussion of one issue before discussing another issue.
5. Adhere to the page limitation established at the beginning of each question. A “page” as I define that term, is one side of a leaf of a blue book, leaving customary margins at the left and top of each page. Number the pages of your bluebook before beginning to answer each question to assure that you do not exceed the limitation. I will read no further than the stated page limit.
6. Once the ordeal of exams is behind you, have a great holiday!

Question 1 (40 points) (1 hour and 15 minutes)

Page Limit: 6 Bluebook, 4 typewriter, double spaced

[You are a judicial clerk for Justice Wilma B. Fare, a recent appointee to the United States Supreme Court. The Justice has sent you the memo reproduced below requesting that you draft an opinion for her.]

Recently the Court heard arguments in a very difficult case involving the termination of medical treatment for John Payne, who for the past year has been languishing in a vegetative state in a hospital located in the state of Angst. Payne is a citizen of England and has been legally residing in Angst for the past three years while engaging in medical research at the Angst State University.

The trial court found the following facts. It seems that on December 11, 1988, Payne was found by the highway patrol face down and apparently lifeless beside the roadway where his automobile had been involved in a one-car accident. A rescue team dispatched to the scene managed to revive Payne’s vital functions and he was rushed to the hospital. There, a gastrostomy tube was inserted with the consent of Payne’s wife, an American citizen called Elaine, to provide nutrition and hydration to the patient. The attending physician diagnosed Payne as having suffered permanent brain damage as the result of oxygen deprivation.

Payne now lies in a vegetative state, which medical experts agree is permanent. Payne cannot speak or move any of his limbs, and does not respond to any outside stimulus, except for a “grimace response” when he is subjected to pain. However, so long as the feeding and hydration tube is in place, he will probably continue to live an additional 25 to 30 years.

There is no possible hope of Payne recovering his mental faculties. Consequently, his wife, in consultation with Payne’s physician, Dr. Zorba, decided that Payne’s express intentions regarding life-prolonging medical treatment and sound medical practice dictated withdrawing the tube. Elaine recounted several specific

occasions on which John had indicated that he would not want to continue his life if he couldn't live "halfway normally." Payne had also executed a "living will" in which he stated that, in the event that he suffered from an irreversible medical condition which precluded him from living a meaningful life, he wished to terminate "all life-prolonging medical treatment, including any procedure to provide nutrition or hydration."

However, although the state of Angst has passed a statute which recognizes the validity of "living wills," that statute precludes "any person, including attending physicians," from removing feeding or hydration tubes from any person, unless they have either recovered or died. The statute's preamble states that the Angst legislature "respects the sanctity of human life and has an overriding interest in protecting life in its myriad manifestations." The Angst attorney general has indicated that she will prosecute any physician or other person who violates the statute for murder.

Payne's wife, acting as legal guardian, filed suit on Payne's behalf in state court seeking a declaratory judgment that the statute was unconstitutional. Dr. Zorba was also a party to that action. However, the Angst Supreme Court upheld the statute. The Paynes and Zorba have appealed to this court.

In their briefs and at oral argument, attorneys for the appellants make several arguments. First, attorneys for Zorba contend that the statute impermissibly deprives him of his liberty to practice medicine in the manner, which his profession and his conscience dictate. Zorba contends that he has suffered and will continue to suffer economic harm because patients like Payne be taken for treatment to states in which physicians can provide their patients with the full panoply of medical care that is necessary, including removal of a gastrosotomy tube when life has, in any meaningful sense, ended. He also so seeks to argue that the statute impermissibly interferes with Mr. Payne's privacy rights.

Attorneys for the Paynes also contend that the statute violates Mr. Payne's constitutional right to refuse any and all medical care if he so desires. They argue that Payne's body is rendered inviolate by the U.S. Constitution, as interpreted in prior decisions of this court.

I would like you to draft for my signature an opinion addressing all of the issues raised by this case. I am unsure exactly how this case should be resolved, but since it will be my first statement on the doctrine of privacy, I would also like you to speak to the issue of how rights, which are not expressly found in the constitution should be treated by this court. In other words, in the context of the opinion, I would like you to propose a theory of constitutional interpretation for me to utilize.

In your draft opinion, I am particularly interested in your analysis of the issues. You need not include a "Statement of the case" section, though obviously you will want to discuss the facts insofar as they are necessary to your application of the appropriate rules of law. I look forward to reading your draft opinion.

Question 2 (40 points) (1 hour and 15 minutes)

Page Limit: 5 Bluebook, 3 and ½ typewritten, double-spaced

Last month, a series of tragic events in the state of Reason prompted the legislature of that state to enact a comprehensive statute (hereinafter, “the state Act”) prohibiting the sale, manufacture, and possession of “firearms.” The legislature found that the private ownership and possession of firearms to be detrimental to the public welfare, and that in the interest of enhancing public safety, it was necessary to eliminate such weapons within the state. The term “firearms” is defined under the statute to include any “pistol, handgun, rifle, artillery, or other weapon which is capable of, or can be made capable of, firing any projectile by means of a chemical reaction or explosion.” The state Act also contains the following provisions:

- A. All persons (except for state and federal law enforcement personnel) are required to turn in their firearms at designated police facilities;
- B. All persons who have purchased firearms within the past year are authorized to return their purchases to the seller, rescind the sale, and receive an immediate and full refund of their purchase price; and
- C. Although the state act does not ban the sale of ammunition for firearms, it does impose a sales tax of \$1 for each \$1 spent on ammunition.

Just last week, the United States Congress also enacted gun control legislation. The Federal Handgun Control Act (hereinafter, “the federal Act”) provides that the sale of all handguns is subject to a “cooling off” period. The federal Act states in part that “all prospective purchasers of handguns must file an application to purchase such weapon with the appropriate local law enforcement agency at least seven days before receiving the handgun.” The purposes of the federal Act, as stated in the introductory section of the statute, are to regulate the sale of handguns to persons who may be in a temporarily unstable emotional state, and to permit law enforcement agencies to review the criminal records of prospective handgun purchasers.

The federal Act makes no mention of any state or local laws regulating the sale of firearms. However, several representatives who were influential in promoting the legislation are quoted in the Congressional Record as saying prior to passage that the federal Act would not preclude the enactment of more stringent state or local laws “regulating the sale of handguns.”

PLEASE ANALYZE, IN THE TIME AND SPACE PROVIDED, THE CONSTITUTIONALITY OF BOTH THE STATE ACT AND THE FEDERAL ACT.

Question 3 (20 Points) (30 minutes)

Page Limit: 2 Bluebooks, 1 1/4 typewritten, double-spaced

In Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), a sharply divided Court held that the Congress could constitutionally apply federal wage and hour regulations to state and local governments. The dissent argued that the majority had ignored the basic principles of federalism, which permeate our constitutional system. Since the case was decided, several justices have indicated their desire to overrule Garcia and return to an approach that would prohibit Congress from regulating states in areas of traditional governmental functions. Please indicate whether you agree with the majority of dissenting justices in Garcia. Please support your position through reasoned analysis, including citation to any cases which lend credence to your argument.