

ASP – Con Law I (Prof. Steinman)
Spring 2007 - Session #2
Santa Clara University School of Law
Bannan Engineering Room 106
Thursday, 1 March 2007 4:10 – 6:10 PM

1. Introduction

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2. General Q&A and Pointers re Law School, Con Law and Steinman [5 mins]

- a. Any new problems/concerns re Con Law/Steinman/Law School?
- b. Ideas for Spring Break [in case you have nothing better planned :-)]
 - i. Spend 1 day trying to make a high level outline of each topic that has been covered in class
 - 1. Don't worry about each little case and rule
 - 2. Just try to get the big picture for each topic
 - ii. Spend a few hours working on one or two exam questions that test topics already covered in class – JX Stripping, Commerce Clause, Spending Clause, External Limits on Congress, *Youngstown*, Dormant Commerce
 - 1. Give Steinman a copy of your answer, so he can discuss problems and strategies to make it better.
 - 2. Alternative – Give me a copy of your answer so I can give you comments [but Steinman knows the law FAR BETTER than me].

3. Warm-Up Exercises – Con Law in the News

- a. Issue 1 [10 mins] – *Boumediene v. Bush*, No. 05-5062 (D.C. Cir. Feb. 20, 2007), available at <http://pacer.cadc.uscourts.gov/docs/common/opinions/200702/05-5062b.pdf>.
 - i. Overview – The Court of Appeals dismissed the π 's habeas claim b/c Congress had amended the law re what habeas claims could be heard.

- ii. What Con Law issue does this sound like and what rule should the court use?
- b. Issue 2 [20 mins] – Ireland On-Line, *Rice: Bush will not abide by legislation to limit Iraq war*, <http://breakingnews.iol.ie/news/story.asp?j=211539486&p=zzy54xy9z> (last visited February 28, 2007).
 - i. Overview – According to Sec. of State Rice, the Pres. will refuse to comply with any limitation Congress puts on his ability to deploy add'l troops to Iraq.
 - ii. What Con Law issue does this sound like?
 - iii. Hypo
 - 1. Suppose that Congress does pass such a resolution but the Pres. refuses to honor it and deploys add'l troops in Iraq.
 - 2. A nat'l guardsman who is called to serve in Iraq brings a case challenging the Pres. action as unconstitutional.
 - 3. What case/rule should a court hearing the guardsman's case apply in deciding whether the Pres. has acted constitutionally?
 - a. What is the guardsman's best argument?
 - b. What is the Pres.'s best argument in defense of his actions?
- 4. Dormant Commerce Hypo [1 Hour, 15 mins] – Modified from the Fall 2005 Final
 - a. Outlining [15 mins]
 - i. What does Dormant Commerce mean?
 - ii. When a law is challenged as violating Dormant Commerce
 - 1. Who passed the law in question, Congress or a State?
 - 2. What rules are used to decide if Dormant Commerce was violated?
 - b. Writing/outlining answer to Hypo below [50 mins]
 - i. Think about what FACTS are relevant, don't just concentrate on the cases.
 - ii. Are there any related issues that you might want to mention before starting your Dormant Commerce analysis?
 - c. Groups discussion of answers [15 mins]
- 5. Wrap-up/Final Questions/Concerns [5 mins]
- 6. Next Session
 - a. Bannan Engineering Room 105 (not 106!), Thursday, 15 March 2007 4:10 – 6:10 PM
 - b. Have a GREAT SPRING BREAK!

Dormant Commerce Hypo [Modified from the Fall 2005 Final Exam]

Semiware, a Delaware corporation with offices all over the world, is the leading seller of the compound Pyranine. Since its discovery in 2000, Pyranine has played a major role in the computer industry because it can be adapted to increase the speed and capacity of computers. Semiware both sells Pyranine and uses it in the computers it sells throughout the world.

Due to its unique properties, Pyranine is widely used by the most up-to-date computer companies, including two other major manufacturers as well as Semiware. The three companies have been extremely effective in the marketplace, capturing considerable business formerly done by more traditional companies. Indeed, a fierce struggle is now being waged for control of the computer industry.

The problem with Pyranine is that it may be quite dangerous. The principal risk is that under certain conditions – primarily excessive heating – devices using Pyranine (including computers) may explode. The precise extent and nature of the danger are currently unknown, but laboratory experiments indicate that the danger is a real one. Semiware over the years has developed a number of safeguards to deal with this problem, and no accident has occurred – yet. Notwithstanding its immaculate safety record, Semiware now finds itself under attack by both state and national governments.

Semiware has done considerable business with state governments, selling its computers for office automation. Six months ago, Semiware signed an agreement with the State of California, in which California agreed to purchase Semiware computers for the next five years.

The agreement produced a storm of protest from two groups. The first consists of private individuals concerned about the dangers of the production of computers with Pyranine. The

second group includes a number of other computer companies in California, which fear that Semiware will eventually dominate the California market for computers.

During the past six months, the two groups have grown in political power. They recently obtained legislation from the California state legislature, which states that “it shall be unlawful for any person or corporation to sell Pyranine-based computers in California.” At all relevant times, Semiware has been the only computer-selling company in California that uses Pyranine in its computers.

You are an associate at the firm of Dewey, Cheatum and Howe LLP. A senior partner, Huey Dewey, tells you the foregoing story and adds:

Semiware has just retained the firm to represent it in connection with its Pyranine related activities. Semiware believes that the state and federal governments have no business interfering with its operations, and strongly objects to the intrusions into its affairs. Please write a memorandum discussing any possible challenge to California’s actions under Dormant Commerce. The memorandum should include the responses you anticipate will be made by the State of California, as well as your reasoned opinion about how the constitutional issues will be resolved.

Please write the memorandum Huey Dewey has requested.