

ASP – Con Law I (Prof. Steinman)
Spring 2007 – Session #4
Santa Clara University School of Law
Bannan Engineering Room 106
Thursday, 29 March 2007 4:10 – 6:10 PM

1. Introduction

- a. Session Leader: Sriranga Veeraraghavan
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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. What is good time/place for Office Hours?

3. Warm-Up Exercise – Mandatory Pro Bono [30 Mins]

- a. Relevant Case Law
 - i. In *New Hampshire v. Piper* the Supreme Court stated that a “bar member ... could be required to represent indigents and perhaps to participate in formal legal-aid work,”¹ i.e. a state could require its bar members to perform mandatory pro bono [for free] work.
 - ii. The Court reiterated that pro bono requirement could be made mandatory in *Virginia v. Friedman*.²
- b. Problem
 - i. The California State Bar decides to adopt require all bar members to handle at least two divorce cases for indigents each year on a pro bono basis.
 - ii. Supposing that a 13th amendment challenge to his requirement were not possible, what other constitutional challenge could be brought against this mandatory pro bono plan?

¹ *New Hampshire v. Piper*, 470 U.S. 274, 287 (1985).

² *Virginia v. Friedman*, 487 U.S. 59, 69 (1988) (citing to *Piper*, 470 U.S. at 287).

1. Group 1
 - a. You represent attorneys who do not want to handle two indigent divorce cases for free every year.
 - b. What constitutional challenge could your bring?
2. Group 2
 - a. You represent the California State Bar.
 - b. How would you respond to a constitutional challenge?
3. HINT: Could *Kelo v. New London*³ be relevant?
4. Contracts Clause Hypo [1 Hour, 20 mins] – Modified from the Fall 2001 Final
 - a. Outlining [15 mins]
 - i. Where does the Contracts Clause come from, i.e. what part of the Constitution?
 - ii. When a law alleged to violate the Contracts Clause
 1. What are the relevant cases?
 2. How are these cases applied?
 3. Are there any relevant policies re the Contract Clause?
 - b. Writing/outlining answer to Hypo below [50 mins]
 - i. What does the question ask for specifically?
 - ii. Think about what FACTS are relevant, don't just concentrate on the cases.
 - iii. Are there any related issues that you might want to mention before starting your analysis?
 - c. Groups discussion of answers [15 mins]
5. Wrap-up/Final Questions/Concerns [5 mins]
6. Next Session
 - a. Thursday, 12 April 2007 4:10 – 6:10 PM, Location TBD

³ *Kelo v. City of New London*, 545 U.S. 469 (2005).

Contracts Clause Hypo [Modified from Question #2 on the Fall 2001 Final Exam]

For the past ten years, researchers at a public university operated by the State of Flux have been working on finding an efficient process to treat toxic wastes. The culmination of this effort was the discovery of Queriam, a naturally occurring mineral that has the extraordinary property of neutralizing a broad range of highly toxic wastes.

As it happens, approximately 95% of the known world supply of Queriam is found in certain lime deposits in the State of Flux. The state happens to own the properties on which these deposits are found. The state granted various mining enterprises the right to mine all the minerals in these properties via long-term contracts. Until Queriam was discovered, the mining operations were exclusively directed at extracting lime. Since lime is an inexpensive product, the contract prices paid for the mineral rights were modest. With the discovery of Queriam, the value of these mineral rights increased to more than 50 times their original worth.

The State of Flux recently passed the “Queriam Windfall Profits Tax,” [QWFT] which imposes a heavy tax on the extraction of Queriam from anywhere in the state. The amount of the tax is related directly to the quantity of Queriam extracted, but the net result is that the tax amounts to about half the profit that the mining enterprises were realizing from sales of Queriam.

Miss Appropriation, a partner at the firm where you work, informs you that two major enterprises whose mining rights in Flux are affected by the new law retained your firm in hopes of bringing a lawsuit to challenge the QWFT. She asks you to write a memorandum discussing and analyzing whether the QWFT violates the Contracts Clause of the U.S. Constitution. She also asks you to include the responses that you anticipate will be made by the attorneys for the State of Flux. Please write the requested memorandum.