

ASP – Con Law I (Prof. Steinman)
Spring 2007 – Session #5 (Last One!)
Santa Clara University School of Law
Heafey Law Library – Warburton Room
Thursday, 12 April 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 a final exam review session?

3. Warm-Up Exercise – Preemption [30 Mins]

- a. Facts/Background (vastly simplified)
 - i. Cal. Bus. & Prof. Code § 6068(e)(1) states that the only reason that an attorney can reveal a confidential client communication is to prevent death or substantial bodily harm. An attorney who reveals a confidential client communication for any other reason can be disbarred or disciplined.
 - ii. The Sarbanes-Oxley Act (SOX) gives the Securities and Exchange Commission (SEC) broad powers to regulate attorneys who practice in banking, finance, securities, &c..
 - 1. The SEC recently adopted the following regulations:
 - a. Attorneys who discover material violations of federal securities regulations can report the violations to the SEC, even if it means revealing a confidential client communication.
 - b. States may not disbar attorneys who report material violations.
 - 2. The SEC adopted these rules b/c out of concern that state rules regarding client confidentiality were forcing attorneys to ignore serious violations of the securities laws.

- b. Problem
 - i. Ban Kerr, an attorney for a large California bank, while reviewing some of the bank's confidential documents, discovered that the bank had materially violated federal securities regulations.
 - ii. Kerr, who barely remembers the concept of preemption from Con Law I, contacted you, a Constitutional Law expert, for advice on whether California's client confidentiality rule is preempted by the SEC's regulations. Specifically Kerr wants to know
 - 1. What the Constitutional source for preemption is?
 - 2. What types of preemption there are?
 - 3. What the differences between the types of preemption are?
 - 4. Which type(s) of preemption might be implicated in his case?
- 4. Abortion Hypo [1 Hour, 20 mins] – Modified from the Fall 2001 Final
 - a. Outlining [15 mins]
 - i. What is the constitutional basis for the "abortion" rights?
 - ii. What are the relevant "abortion" cases?
 - iii. When does a law violate an "abortion" right?
 - b. Writing/outlining answer to Hypo below [50 mins]
 - i. What does the question ask you to do?
 - 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]

Abortion Hypo [Modified from Question #1 on the Fall 2001 Final Exam]

After learning about recent medical discoveries that purported to be able to se human fetal tissues to cure or ameliorate the effects of certain diseases of adult individuals, Congress held a series of hearings on the use of fetal tissues. After the hearings, Congress passed, and the President signed, the “No Tissue From Issue Act.” The act, in relevant part, provides that:

- (2) Any person who undergoes an abortion in order to provide fetal tissue for experimental or therapeutic purposes shall be guilty of a felony.
- (3) Any person who performs an abortion in order to obtain fetal tissue for experimental or therapeutic purposes shall be guilty of a felony.

Dr. Diz Claimer of the State of Disarray’s School of Medicine placed an advertisement in a national medical journal offering \$5,000.00 to any woman who would undergo second trimester abortions at the college hospital and allow the fetal tissue to be used in certain medical experiments. Dot Matrix saw the advertisement and contacted Dr. Claimer about his offer. She told Dr. Claimer that was pregnant and wanted to accept his offer. Dr. Claimer performed the abortion on Ms. Matrix the next day and used the tissue from the fetus for experimental purposes.

When Mercy Less, the United States Attorney for Disarray, learned about the aforementioned facts, she filed charges against Dr. Claimer and Ms. Matrix for violating the “No Tissue From Issue Act.” The case was assigned to United States District Court Judge Ment. Last week Judge Ment ruled that Congress had the power to regulate abortions performed in order to obtain or provide fetal tissues.

Despite this ruling, the Judge believes that the law may violate personal liberties protected by the Constitution. The Judge has asked you, one of his law clerks, to prepare a

memorandum that discusses and analyzes the most significant personal liberties issues posed in these matters. He would like the memorandum include the responses to these challenges that you anticipate will be made Ms. Less. He also wants your reasoned opinion about how these issues should be resolved. Please write the memorandum requested by the judge.

