

# Memorandum

To: Constitutional Law Students  
From: Professor Grady  
Date: Monday, December 10, 2018  
Re: Midterm Examination

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This is a closed book exam. Please abide by all that this implies.

Your exam consists of two essay questions. The total test time is **Three (3) Hours**. It is recommended that you allocate 90 minutes per question however, you may allocate your time however you see fit.

Your answer should demonstrate your ability to analyze the facts presented by the problem, to select the material from the immaterial facts, and to discern the points upon which the problem turns. It should show your knowledge and understanding of the pertinent principles of the law, their relationship to each other and their qualifications and limitations. It should evidence your ability to apply the law to the facts given and to reason logically in a lawyer-like manner to a sound conclusion from the premises adopted. Try to demonstrate your proficiency in using and applying legal principles rather than a mere recitation of your memory of them.

An answer containing only a statement of your conclusions will receive very little credit. State fully the reasons that support your conclusion. All issues within the call of the question should be fully and thoroughly discussed. You should not discuss legal doctrines that are not relevant to any issues in the problem or not responsive to the call of the question.

Good luck!

**QUESTION 1**  
**(90 Minutes)**

Members of a caravan of thousands of Central Americans loudly proclaimed their intent to enter the U.S. by storming the wall, fences and gateways if necessary.

Federal law required that anyone attempting to cross the border from another country present proof of lawful residence in the U.S., or a passport, or qualify for asylum on the grounds that they face significant threat to their health and safety in their home country. Federal law also allowed the government to provide an administrative process when it opted to expel someone from the country.

President Ronald Rump declared that he would deploy the army and repel the “invasion” by force if necessary. He appointed his son-in-law Gerund to lead the effort to stop the “invaders.” Many members of Congress spoke out in the President’s favor, but some denounced him for his hostility to “migrants.”

When the caravan arrived at the border, its members were not allowed in. Gerund had a bull-horn and was yelling at the caravan to stay out. Many of the caravan’s members tried to climb border fences, but were knocked down by U.S. soldiers before they made it onto U.S. soil. At one point tear gas was shot over the fences into Mexico to disperse a crowd of thousands of people attempting to cross the border illegally, some of whom were throwing rocks. In the confusion, about 300 male members of the caravan charged the border. At Gerund’s command, the U.S. soldiers moved to stop them. With the aid of a number of civilians, including Jerry, the soldiers fought it out with the border rushers. Fifty of the “invaders” made it across the border but all were apprehended and most were roughly escorted back to Mexico by Border Patrol Agents accompanied by Jerry.

After the brawl on the border, President Rump held a press conference at the White House. He called on a reporter named Jim. Jim asked the President if it was fair to call the caravan an “invasion” and then proceeded to lecture the President on policy. He wouldn’t be quiet, kept speaking as the President called on other reporters and wouldn’t give up the press room microphone even when a White House intern tried to take it from him. The next day, when he attempted to reenter the White House to do his job, Jim was told to hand over his security clearance and press pass. When he refused, three Secret Service Agents took the items from him by force. Later that day, President Rump tweeted that Jim was “a horrible reporter who hugely helped the invaders. Treason!”

Jim sued the Secret Service and the three Agents for violation of his Due Process and First Amendment rights. He also sued the President for defamation and violation of his right to pursue his calling.

One of the migrants, named Beto, who had been roughly thrown back over the border, sued the President, Gerund, the U.S. Army, the Border Patrol Agents, and Jerry for violation of the law and Constitution.

After a joint resolution by both Houses of Congress expressing support for the President failed, the House of Representatives debated whether or not to impeach the President. Before a vote in the House could occur, the President pardoned himself.

Discuss *only* 5 of the following issues:

1. Did the President have legal and constitutional authority to mobilize the U.S. military?
2. Can Jim be charged and convicted of treason?
3. What are the merits and demerits of Jim's suit against the Secret Service Agents?
4. What are the merits and demerits of Jim's suit against President Rump for defamation and the right to pursue his calling?
5. What rights can Beto claim were violated by Gerund and Jerry, and what are the merits and demerits of his suit?
6. Has the President committed any impeachable offences, and can he be impeached and removed from office?

**QUESTION 2  
(90 Minutes)**

California and other States passed laws legalizing the cultivation, distribution, sale, possession and use of marijuana. In California, in order to cultivate, distribute and sell marijuana, one was required to obtain a license through the local municipality (i.e. city or county government). If the local municipality opted not create a licensing ordinance, a person could not cultivate, distribute or sell marijuana in that municipality, though possession and use of marijuana was permissible.

Despite the changes in State law, the Federal Government continued to view marijuana as a controlled substance. Cultivation, distribution, sale and possession of marijuana all continued to be subject to criminal arrest, prosecution and punishment by the Federal Government. One new exception to the Federal prohibition was an allowance for the cultivation, sale, and distribution of marijuana for strictly medicinal purposes, so long as the cultivator, seller and distributor was licensed by a State government to cultivate, distribute or sell it.

California law allowed for the cultivation, distribution and sale of marijuana within the State. However, in November, the Legislature passed a law prohibiting the importation and subsequent sale of the imported marijuana. The law would take effect on New Year's Day.

Both California and the United States had laws on the books that allowed for the immediate forfeiture of any property used in the commission of a crime, including violation of laws regulating marijuana. California's forfeiture law specifically stated that "persons found with controlled substances on their person are a grave threat to the health and safety of the people of this State, and must be made a harsh example of in order to deter others from engaging in similar conduct."

Punishment for violating California's marijuana laws included loss of the right to own an otherwise legal firearm.

California's Legislature also enacted a law that declared any contracts that entailed the violation of State or Federal law were void and unenforceable.

Vince was licensed by the State of Nevada to sell and distribute marijuana. He shipped 100 pounds of marijuana into California to companies that used it in a variety of health related products, including mouth wash, face wash, shampoo, tea, and herbal supplements.

Three days before New Year's Day, Vince flew his gulfstream jet into California. He spent a week in California delivering marijuana to various companies that had ordered it. At the end of the week, as he was preparing to board his jet and return home, a small quantity of marijuana was found on his person by State officials. He admitted what he had done and was promptly arrested and charged with importing and selling marijuana in California. His plane was seized by State authorities and immediately declared to be forfeit.

Federal authorities were alerted to Vince's activities. The Feds charged Vince with distributing medicinal marijuana in California without a license.

After he paid a million dollar bail, Vince received word from all of the companies to whom he had delivered his product that they would not be paying him due to the fact that the contracts at issue were void and unenforceable.

Discuss *only* the 4 of the following issues:

1. Is the Federal Law prohibiting the sale and distribution of marijuana within the scope of Congress's power to enact and otherwise valid?
2. Does California's law prohibiting the commercial importation of marijuana violate either the Supremacy Clause or the so-called Dormant Commerce Clause?
3. Does California's law prohibiting the importation of marijuana violate Vince's rights under Article IV's Privileges & Immunities Clause?
4. Have any of California's laws caused injury to Vince through violation of any rights protected by Article I, Section 10 of the Constitution?
5. What rights protected by the Bill of Rights can Vince argue have been violated by the various laws described in the fact pattern, and what might be argued in response?