



The University of New Mexico

School of Law Library
MSC11 6080
1 University of New Mexico
Albuquerque, NM 87131-0001
Telephone (505) 277-0939
FAX (505) 277-0068

This document was scanned pursuant to the express permission of its author and rights holder.

The purpose of scanning this document was to make it available to University of New Mexico law students to assist them in their preparation and study for Law School exams.

This document is the property of the University of New Mexico School of Law. Downloading and printing is restricted to UNM Law School students. Printing and file sharing outside of the UNM Law School is strictly prohibited.

NOTICE: WARNING CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is no to be "used for any purpose other that private study, scholarship, or research." If the user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

501 INTRODUCTION TO CONSTITUTIONAL LAW

Semester I, 2005-2006

Final Examination
UNM School of Law
Three Credits

Professors Browde & Bay
May 5, 2006
1:30 : pm – 5:00 pm

INSTRUCTIONS

**Examination Format
Essay Answers**

1. **Laptops:** Start the Secureexam program entering your examination number, course name, professor's name, and date of examination. Click "proceed" to enter the program. Type START in the next window that is displayed but do NOT press the enter key until the proctor says to begin the exam. Use 12 point or larger type face and double space (but not triple space) your answer.
2. **Bluebooks:** Write in ink, on only one side of the page, and skip lines. On the front of bluebook record the class name, professor's name, date of exam, and your examination number. Be sure to number your bluebooks in consecutive order. DO NOT WRITE YOUR NAME ON BLUEBOOKS.

A five-minute warning will be given prior to the conclusion of the examination. When time is called, stop immediately. If you are handwriting, lay down your pen and close the bluebook immediately. If using a laptop, save and exit the program.

Go to the exam check-in table at the conclusion of the exam and fill out an examination receipt.

Professor's Instructions

1. This is a 3 ½ hour exam; however, during the first half hour you may only read the examination and make notes on the examination itself. You may not start writing (either in blue books or on your computer) until 2:00 p.m. The exam consists of two parts that are not equally weighted. The points ascribed will be in relation to the time assigned to each part.
2. This is an open book exam, except that you may not bring any commercial materials, including commercial outlines, hornbooks, or treatises. You may bring your casebook, class notes, the Constitution, and any outline you helped prepare.

[EXAMINATION BEGINS ON PAGE 2]

Part I
(2 hours)

Two years ago, famed slugger Ted Wilson, the “Beantown Bomber,” died at the age of 84. At the time of his death he resided in the State of Ames. His son, Fred, had Ted’s head removed and cryogenically preserved in hopes that advances in biotechnology would someday allow the head to be re-attached to a body and Ted (more or less) brought back to life. Ames law did not prevent Fred from doing this. Indeed, no State has criminalized cryogenics and sixteen affirmatively allow it. The *Beantown Globe* quoted Earl J. Hickey, the karmically challenged but oddly likeable Governor of the State of Ames, as observing, “I’m not sure I’d want to end up like that, but maybe Ted’s got a head start on the rest of us.”

A national furor ensues over the treatment of Ted’s head, even though it represents the only known instance in which a head alone has been cryogenically preserved. Congress hastily passed the following statute which was signed into law by the President with much fanfare:

Head-On Protection & Enforcement (HOPE) Act

Section 1. Congressional Findings.

- (a) Since the Founding, a common saying in the United States has been that an individual has a good head on her or his shoulders, and it is most emphatically the sense of Congress that that is where a head belongs.
- (b) The publicity surrounding “Ted’s head” may lead to trafficking in false hopes and profiteering from tragedy. No science supports the wild hope that underlies cryogenics, and therefore putting an end to even the possibility of such traffic must be brought to a head.
- (c) Cryogenic practices deprive individuals of rights involving human privacy, personal choice and human intimacy with respect to individual questions of life and death.
- (d) Cryogenic practices must be inhibited in order to protect the general welfare of the people of the United States.

Section 2. Prohibitions.

- (a) It shall be unlawful to willfully remove and cryogenically preserve the head or any part of a deceased person who, during lifetime, engaged in interstate or foreign travel.

(b) Any individual who violates this statute shall be imprisoned for up to five years, and fined up to \$250,000, or both.

Section 3. National Cryogenic Commission

(a) There is created a National Cryogenic Commission (NCC) which shall be responsible for the administration of this Act. It shall have the power to enact rules and regulations governing cryogenic practices in the public interest, as well as more specific duties imposed on it by this Act.

(b) The NCC shall be composed of 6 members: Four of whom shall come from the executive branch and be appointed by the President with the advice and consent of the Senate, and the remaining two shall come from the judicial branch and be appointed by the Chief Justice of the United States. The members of the NCC may only be removed by Congress, and only for cause.

Section 4. Funding.

States that establish “cold case” squads to investigate cryogenic-related crimes are entitled to receive a one-time federal grant of \$3,000,000, provided that such grants are utilized to report data concerning national security implications of cryogenic-related crime with sufficient detail and usefulness to both the State’s Homeland Security Office and the NCC.

Section 5. Compliance

(a) States which receive federal grants as denominated in the previous section and fail to meet their responsibilities with respect to such funding shall be required to reimburse the federal government for the whole amount of the grant.

(b) Any private citizen may sue to challenge or enforce any provision of the Act in federal court.

Immediately upon the HOPE Act becoming law, the President appointed the Board, and at its first meeting the Board enacted the following regulations:

NCC Reg. 1: States shall make best efforts to pass laws that regulate and criminalize certain forms of cryogenic activity. Each State is also instructed to provide training, if possible, to their law enforcement officers on the investigation and prosecution of cryogenic-related crimes and to establish a “cold-case” squad that focuses on such crimes.

NCC Reg. 2: States are hereby empowered to enter into individual, enforceable treaties with the European Commission on Cryogenics, established by the European Union (EU) to share information, training and enforcement tools, provided that the President certifies that such an agreement is consistent with the national security interests of the United States, and the President's certification is agreed to by a 2/3 vote of the Senate.

Governor Hickey established the Ames Cold Case Squad. The Governor then flew off to Brussels, negotiated a treaty to bring the EU police to Ames to enforce his Anti-Cryogenic Program, and at a stop-over in Washington garnered the requisite Presidential and Senate approval. Upon arriving at home, he immediately applied for the three million dollar grant. The grant was awarded by the NCC, and in a urgently called press conference Governor Hickey pledged to use the funds to run a public campaign against cryogenics—fully enforced by the EU police, whom he deputized on the spot as Ames State Police. He also pledged to turn over to the United States Attorney for prosecution under the HOPE Act anyone who takes steps to engage in cryogenics in the State.

Meanwhile, back on Wisteria Lane, in the capitol city of Ames, life hurtles forward in its improbable and headlong fashion. Alas, poor Bree! Distraught over the sudden and unexpected death of her husband, Rex, she reads about Ted's head and decides to have Rex's head cryogenically preserved as well. Rex died the day before the HOPE Act became law, and the procedure must be performed within one week. She intends to store his head at her home. All the materials needed to cryogenically preserve the head – the liquid nitrogen, the special container (dare we say head case?), and freezer – are manufactured in the State of Ames as well as in other states, but Bree has purchased everything from a local manufacturer.

Then there's Bree's friend, Edie, a self-absorbed and headstrong individual. Edie has decided that in the event of her untimely demise she might like to have her head cryogenically preserved. Before Congress passed the HOPE Act, she had researched her options on the internet and bought a book on cryogenics from Amazon.com.

Given their plans, and the Governor's press conference statement, Bree and Edie both fear federal prosecution if they proceed any further. They sue in federal court to invalidate the federal Act. The parties stipulated to the facts and law as outlined above. **You are the law clerk to the federal judge assigned to the case, and she asks you to prepare a memorandum in which you identify all federal constitutional issues presented, state how each should be resolved and why. Write the memorandum.¹**

¹ Please do not waste your time writing a "statement of facts" section of the memo; rather, use the facts in your analysis of the issues presented.

Part II
(1 hour)

The hue and cry over the passage and attempted enforcement of the HOPE Act so overwhelmed last year's national election that the National Party Favoring Cryogenics (NPFC) was swept into office, and now has control of the White House and Congress. Governor Hickey, who had an epiphany on the issue of cryogenics switched to the NPFC and won election as President, and the new Congress has a solid NPFC majority. The first action of the new Congress (well after the resolution of the lawsuit dealt with in Part I) was to pass the HOPEFUL Act, which repealed the HOPE Act and which also states: "Cryogenics represents both a small step for man, and a giant leap for mankind." President Hickey signed the new law with a flourish.

Moreover, during the past year, the scientists at the Ames Cryogenic "Cold Case" Office discovered a new element under the Central Mountains of Ames—Super Liquid Nitrogen (SLN)—which can be cooled to temperatures twice as cold as the traditional form of Liquid Nitrogen used to freeze bodies and heads cryogenically. Cryogenic specialists are overjoyed because they have long believed that the freezing levels provided by Liquid Nitrogen (LN) were not sufficient to guarantee cryogenic success, but this new element will, in their judgment, make the process absolutely foolproof. LN is manufactured from generally available nitrogen, but SLN is a natural element, and cannot be produced by use of commonly available elements. Ames appears to be the sole source of this new element, and some of it is found on state-owned land and some on private lands within Ames.

With the discovery of SLN, Ames has implemented a state plan to maximize the benefit of this new discovery to the economic health of the state.

First, the State built a facility to capture the SLN from state-owned land. The facility comprises an inexpensive shed covering the SLN well-head, which has a flow valve attached, allowing for the easy, and inexpensive transfer of SLN to bottle-type containers. The fee schedule for sale of SLN from the state facility is as follows:

- a) In-state commercial enterprises pay 50% of the market rate; and
- b) Out-of-state commercial enterprises pay the full market rate, unless they build and maintain cryogenic storage facilities in Ames, in which case they pay at the same rate as in-state commercial enterprises. Any commercial enterprise desiring to take advantage of this "build and maintain" reduced rate, must do so on property owned by an Ames resident.²

Second, the State had previously been heavily engaged in the sale of LN, and had numerous contracts with cryogenic facilities in Ames and around the country. In light of

² The State adopts a "compassionate use" policy under which in-state and out-of state individuals who wish to use SLN for a close family member, may obtain SLN at no charge.

the SLN discovery, those facilities no longer want to continue to buy LN. As a result, state law requires that the state SLN facility not sell to any in-state or out-of-state enterprise that fails to honor its preexisting LN contract, even though the contracts contain an escape clause which would otherwise apply.

Third, the State also established an SLN Agency which has authority to regulate all private property on which SLN is found. Extraction of the SLN will cause serious subsidence, and enhance the risk of flooding in this area of Ames which is adjacent to a flood plain. As a result, the state Agency adopts the following two regulations:

State Reg. A: For every 10 acres from which SLN is mined, the owner must set aside 3 acres dedicated to the flood plain or some other use found by the Agency to be of value to the public.

State Reg. B: Because underground sources of SLN have the capacity to replenish over time, drilling and sales may only occur every third year.

Needless to say, the state plan prompts the following lawsuits:

1. An out-of-state commercial enterprise sues to invalidate the pricing scheme.
2. An in-state commercial enterprise with an existing LN contract, but wishing to purchase SLN as a substitute, sues to allow enforcement of the escape clause; and
3. The major private land owner on whose land SLN was discovered, sues to invalidate both SLN Agency regulations controlling the development of SLN on his land.

You are the federal district judge to whom these three consolidated cases have been assigned. All pre-trial motions, including those involving justiciability doctrines were previously resolved, and the cases are before you only on the merits of the substantive constitutional challenges. **Write the opinion resolving all three cases, fully explaining your reasoning.**

[End of Head Trip/Examination]