

Con Law Fall 2011 Harpaz Exam No. _____ Raw Score ____ Final Grade ____

Question I (fishing and vessel fees) (60 points)

Preemption—expressly authorizes state to regulate- does it permit state to discriminate?(6)____
If not express, implied-comply w/both; undermine purpose or consistent w/purpose?---(7)____
Dorm CC - unreasonable burden on interstate commerce, Discrim on face so strict test-(4)____
strict test - legit int or eco protectionism? and are there alt means that don't discriminate(8)____
Is State acting as market participant (to get exception) or regulator? Regulator------(4)____
P & I-BB is flesh/blood non-res, rt essential to interst harmony (comm'l vs. rec'l license)(6)____
test - substantial reason for dif in treatmt- e.g. extra costs born by taxpayers------(4)____
degree of discrim sub'lly related-is amt of fee justified-2 to 3 times as much as residents(6)____
Due Process-nonfund'l rt-minimum scrutiny-applied to facts------(6)____
Equal Pro-resident vs. non-res; non-suspect based on criteria, rat'l basis-applied to facts-(6)____
Miscellaneous_____ (3)____

Question II (Safety of Older Drivers Act) (48 points)

Commerce Cl; which category?; local activity or IC? What is regulated activity?------(5)____
If category 3, is the regulated activity an economic or noneconomic activity?------(5)____
If eco or cat 1/2-does local activity have sub'l eco effect on IC in aggregate-apply to facts(5)____
if noneco - Lopez factors-no juris'al element, findings?, area traditionally reg'd by state?(5)____
Is connection to IC too attenuated? (too many links in chain) (no aggregation)------(5)____
State Autonomy/10th A-spending power—not forcing state to reg-ask for grant, not req'd--(5)____
DP-nonfun'l rt-rt to drive, any other rt?, standard of rev (rat'l basis), apply test to facts---(5)____
EP- classification scheme - above 79 vs. 79 or below-age classif; classif against the aged (2)____
Age not suspect, what about the very old? Suspect Traits-history, unrelated to ability, etc.(4)____
Standard of Review applied to the facts (rat'l basis or intermediate?)------(4)____
Miscellaneous_____ (3)____

Question III (Marriage Stability Law) (36 points)

DP- fund'l rt?-fund'al right not to marry? Analogy (rt to marry), history, intimate choices(6)____
undue burden on exercise of rt - right taken away completely so an undue burden------(2)____
if fund'l - strict scrutiny standard of rev - applied to facts------(6)____
if not fund'l - rational basis - applied to facts------(4)____
EP-classif-couples live together < 7 years vs. 7 years or more; lived in Stone?, live apart?(4)____
Traits for suspectness applied to facts – history, pol power, immutable, etc.------(6)____
Standard of Review applied to the facts (rat'l basis and/or rigorous)------(5)____
Miscellaneous_____ (3)____