

Con Law-Harpaz-04-Exam No. _____ Raw Score _____ Final Grade _____

Question I (GATES Apprentice Program in Northeast (NE)) (50 points)

EP-classif- gender-intermediate scrutiny-benign discrim/affirm action-but same test----- (3) _____
imp gov int-help women start businesses-higher success rate-help women vs. help state-- (3) _____
substantial relationship-tight fit between special consid of women & program goal----- (3) _____
only plus factor-no specific weight-holistic approach-like Mich law not undergrad; must have
good business idea-essential to NE purpose; does it reinforce overbd generalizations?---- (3) _____
are there less discrim alts?-encourage women to apply, etc., but would they be effective? (3) _____
Article IV Priv and Imm Cl-dif treatment of res and nonres; flesh and blood person----- (3) _____
rt essential to interstate harmony-business opportunity, but state prog not private sector-- (3) _____
substantial reason for dif in treatmt-encourage businesses in state; state funding program (3) _____
degree of discrim subst'ly related to end? why residents? any alts? locate business in NE (4) _____
But if nonresident, is it more likely may move business after 5 years as MM says she will (3) _____
EP-res v. nonres; nonsuspect class; not immutable, not stigma-min rationality----- (3) _____
rat'l rel betw use of classif & goal of encouraging new instate businesses that stay in state (3) _____
Dorm Com Cl - an additional basis for claim of discrimination - Eco Protectionism-program
designed to protect state's own economy at expense of other states and their citizens----- (3) _____
Discrim ag non residents-but is there discrim ag IC-are noncitizens trying to engage in commerce
in NE?, but they are forced to locate business in NE like Dean Milk, nondiscrim alts?---- (4) _____
Market Participant Exception-not regulating private programs just state's own program-- (3) _____
Miscellaneous _____ (3) _____

Question II (Federal Cosmetic Surgery Protection Act) (50 points)

Commerce Power-power to reg local commerce bec has subl eco effect on IC----- (2) _____
is CSPA a reg of eco or noneco activity-Lopez vs. Heart of Atlanta----- (1) _____
cosmetic surgery (CS) is an eco activity-profit making, sale of service----- (2) _____
gov't reg. of decision to get surgery-that's a personal choice not eco activity----- (2) _____
if eco-could Cong have rat'ly concluded surgery decision in agg has subl eco IC effect IC (2) _____
big interst business-patients travel, drugs, implants, etc; but gov reg limits surgery - effect of
depressing eco, but still eco effect; frees up \$; avoids eco effects of unnec'y/failed CS---- (3) _____
if noneco activity-use Lopez factors to analyze whether w/in scope of Commerce Power- (1) _____
jurisdictional element- no jur'l element CSPA-no need to show effect on IC in indiv case (2) _____
some findings made by Congress, but do they show connection between surgery & IC---- (2) _____
area trad'ly reg'd by states or fed?-no regs on CS; health care-fed'l role, but also states--- (2) _____
direct & subst'l effect on IC?-AA traveled interst-nexus to IC; CS is a major eco activity; effects
of CSs; frees up \$, but reg. of decision so long series of links in chain-limitless arg---- (4) _____
Due Process-right to change appearance by cosmetic surgery-fund'l or nonfund'l right--- (2) _____
fund'l rt-precedent, history, tradition, personal choice central to identity, life altering---- (4) _____
nonfundamental right-precedent, history, tradition, not central to identity----- (4) _____
strict scrut-compg end?-avoid unnecy CS;necy means?-panel not flat ban; alts available? (5) _____
undue burden test-med procedure like abortion-not ban, just add'l hurdle to discourage-- (3) _____
but operates as flat ban to AA who is turned down-look at impact on those most effected (3) _____
min scrut-ratl means to unnecy CS, is end legit-morality, disagree w/emphasis on looks- (3) _____
Miscellaneous _____ (3) _____

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Question III (Humane Trapping Law) (50 points)

Dorm Com Cl-any evidence of eco protectionism?-avoid animal cruelty or hoard animals(3) _____

Discrim against IC-regs all trapping w/in state-no matter where ship or trapper resides---(3) _____

Burden vs. benefit - harder to trap, but other traps available vs. avoidance of cruelty----- (4) _____

Market Participant Exception-CA law regs all trapping in CA not just by CA employees-under DCC JJ is suing as private trapper and thus no MPE (if as state employee-CA argues reg'g its own employees not private sector)-also impacts on int'l commerce, restricts access to natural resources and regulates a downstream activity and not a market state is participating in---(3) _____

Preemption - is the federal law valid? - FEMBA in general - Commerce Power to reg. Migratory Endangered Birds(MEBs) since birds travel in IC- regulation of IC itself----- (4) _____

reg trap'g-local eco activity-findings by Congress-affects future commerce; new products(4) _____

Express preemption-most effective trapping method-means body-gripping traps (BGTs) must be used; but federal law doesn't say that it intends to preempt state standards----- (5) _____

Conflict-possible to comply w/both?-if state says no BGTs & fed says must use BGTs then can't do both; but if fed says use trap that is effective & state allows then can comply w/both--(5) _____

Conflict in purpose-purpose of state law-stop animal cruelty by not using BGTs; purpose of fed law-protect MEBs by trapping predators-argue conflict in purpose or different purposes--(5) _____

Occupation of Field-what field?-feds not fully occupying trapping field, but are feds occupying trapping by state to protect MEBs; which gov't has traditionally occupied the field?----- (5) _____

Tenth Amendment-Cong can't make state enforce fed reg scheme-Printz-can't force state to hire trappers & tell them how to do job-part of FEMBA that preempts invalid or, in the alt, fed govt is not telling state to reg, but only how to conduct its own activities as in Reno v. Condon-(6) _____

Miscellaneous _____ (3) _____