

This document contains copies of the grading guides that I used in grading final examinations in Constitutional Law I (Course No. 6214) given on the following dates:

April 22, 2014
April 23, 2013
April 24, 2012
April 20, 2010
April 22, 2008
April 27, 2006
April 28, 2005
May 6, 2003
May 5, 2000
May 4, 1999

I did not teach Constitutional Law I in any other years.

In accordance with the examination instructions, I grade answers based on how well they: (a) identify the governing constitutional doctrines; (b) apply these doctrines to the specific facts of the problems; (c) compare the facts of the problems to precedents considered in the course; and (d) provide other arguments, explanations, and examples as required by the questions.

Answers that do all of these things receive higher grades than those that have not. The most common mistakes usually are failing to discuss the application of legal rules to the facts of the problem and devoting too much attention to irrelevant legal doctrines at the expense of discussing more pertinent matters.

All of the problems contain facts quoted (with minor editing) from actual cases. You can look up these cases using the citations given in the examinations or the grading guides.

Gregory E. Maggs
Professor of Law

Grading Guide for Final Examination In

CONSTITUTIONAL LAW I

(Course No. 6214-13; 3 credits)

Each problem in the examination included three questions, and each question was worth six points. In accordance with the examination instructions, I graded your answers to the questions based on how well they: (1) identified the governing constitutional doctrines; (2) applied these doctrines to the specific facts of the problems; (3) compared the facts of the problems to precedents considered in the course; and (4) provided supporting arguments, explanations, and examples as appropriate. An intelligent and thorough discussion of these matters based on what we discussed in class was more important than a specific conclusion. A summary of the principal constitutional doctrines covered in the course appears in the Syllabus Appendix. This guide will refer to them without repeating all of the applicable rules and their elements.

The edited excerpts in the problems came from the following cases: I. Janes v. Triborough Bridge and Tunnel Authority, 977 F. Supp.2d 320 (S.D.N.Y. 2013); II. Kirkwood Florist, Inc. v. Hi-Float, Inc., 812 F. Supp.2d 1000 (E.D. Mo. 2011); III. Eric M. Berman, P.C. v. City of New York, 895 F. Supp.2d 453(E.D.N.Y. 2012); IV. Rangel v. Boehner, 2013 WL 6487502 (D.D.C.); V. Murphree v. Tides Condominium At Sweetwater, 2014 WL 1293863 (M.D. Fla.).

PROBLEM I.

- A. Would it be correct to conclude that the tolls charged to Janes were constitutional because New York residents who did not live on Staten Island also had to pay the higher rates?**

Analysis of the Question. The best answers recognized that the conclusion would be correct if the tolls are constitutional for the reason stated. They further recognized that the conclusion would be incorrect if (1) the tolls are unconstitutional or (2) the tolls are constitutional but for a different reason from the one stated. These answers then considered the constitutionality of the tolls under the Privileges and Immunities Clause and the Dormant Commerce Clause Doctrine.

Privileges and Immunities Clause. The best answers recognized that the tolls potentially implicate the Privileges and Immunities clause because they treat people differently based on their residence. Addressing key elements of the Privileges and Immunities Clause rules, these answers considered: (1) whether charging lower rates to residents of Staten Island amounts to discrimination against citizens of other states even if some New York residents were charged higher rates (perhaps comparing this case to Dean Milk v. Madison); and (2) whether this would be the kind of discrimination that would be likely to jeopardize interstate harmony (perhaps comparing this case to Baldwin v. Fish & Game).

Dormant Commerce Clause Doctrine. The best answers recognized that the tolls also potentially implicate the Dormant Commerce Clause doctrine because major bridges are channels of interstate commerce. Addressing key elements of the Dormant Commerce Clause doctrine, these answers considered whether the difference in tolls is discrimination against interstate commerce as opposed to discrimination against citizens of other states (perhaps comparing this problem to Hughes v. Oklahoma and Camps Newfound v. Town of Harrison).

B. Suppose Janes called her representative in Congress to complain about the different toll rates. Would it be accurate for the representative to tell her, "This is a state government matter; there is nothing Congress can do about it"?

Analysis of the Question. The best answers recognized that the statement would be accurate if Congress could do "nothing" about the tolls, and would be inaccurate if Congress had the power to address the tolls, either directly or indirectly. These answers then considered Congress's Commerce, Spending, and Tax powers.

Commerce Power. The best answers considered whether Congress might address the bridge tolls using its power to regulate the channels of interstate commerce. They provided hypothetical examples (e.g., a uniform federal toll charge) and considered whether such federal regulation would preempt the state regulation and compared this case to precedent (like Gibbons v. Ogden).

Spending Power. The best answers considered whether Congress could use its conditional spending power to induce New York to eliminate the disparate treatment in the tolls. They also provided hypothetical examples (e.g., conditional highway/bridge funding) and compared this case to precedent (like Dole v. South Dakota).

Taxing Power. The best answers considered whether Congress could use its taxing power to induce the state to eliminate the disparate treatment. Some answers suggested the federal government might threaten to tax residents of Staten Island for using the bridge if the state did not equalize the tolls for everyone.

C. May New York constitutionally impose tolls on federal government vehicles, such as Postal Service trucks, when they cross the Verrazano Bridge?