

Student Exam Number: _____
(Last four digits of your PeopleSoft ID)

Midterm Exam

STATUTORY INTERPRETATION AND REGULATORY PRACTICE (COURSE #5397)

Prof. Hester – Spring 2015

EXAM INSTRUCTIONS

YOU MUST RETURN THESE QUESTIONS AT THE END OF THE EXAM.

This exam has five multiple choice questions, and one separate essay question.

Please write your *exam number* in the blank on the top of this page.

If you are *handwriting* your exam, write your exam number on the cover of *each* of your bluebooks. Also number the bluebooks to indicate how many in total you turn in and the correct order. For example, if you use four bluebooks, they should be labeled “1 of 4”, “2 of 4”, “3 of 4”, and “4 of 4”. Use **ONE SIDE** of a page only and endeavor to write legibly. Also, remember to leave yourself some space in between answers so that you can come back to an answer if you desire.

If you are using a *computer* to take the exam, you must use the Law Center’s exam software.

This exam is open-book and you may use any written materials assigned for this class or prepared by you (either individually or with others). You may not use any materials stored on computer or disk or any electronic materials. You are bound by the Law Center’s Honor Code and must sign the Pledge with your exam number at the end of these instructions. We also will ask you to affirm your attendance at the end of these instructions.

Below is the percentage each section will count towards your final exam grade and the time we estimate you should allow to answer each section. You will have **three hours** to complete the examination.

Section Number	Question Type	Number of Questions	Estimated Total Points Value	Estimated Minutes to Spend on Section
I	Multiple Choice	5	30 (6 points per question)	10 (2 minutes per question)
II	Essay Questions	1	60	50
Total			90	1 hour

For the multiple choice answer questions in Part I, provide or choose the best answer to the questions presented.

For Part II, the issue-spotting essay, your job is to analyze the facts of the question. Do not make up facts or law or fight the facts given. If you need more information to resolve a difficult question, state what information you would need and how it would affect your answer. Read carefully. Think before you write. Good organization, clear statement, and avoidance of irrelevancies are all appreciated. A longer test answer will not necessarily translate to a better score. In fact, sometimes the opposite is the case.

Please take time to answer all sections of the test. You are much better off answering all sections of the test with less attention than you might desire instead of failing to answer all the questions asked. I can't help you if there's nothing for me to grade, so don't leave a blank section.

At the end of the exam, you **MUST** turn in the exam questions, your answer sheet, any scrap paper, and your flash drive or bluebooks.

HONOR CODE. It is a violation of the Honor Code to use any **UNAUTHORIZED** aid in connection with this exam; to fail to report any such conduct on the part of any other student that you observe; to retain, copy, or otherwise memorialize any portion of the exam; or to discuss its contents with any student in this class who has not yet taken it. ***Do not discuss this exam with anyone that is not a member of this class. Do not discuss this exam with any student in the class without first asking such student whether he or she has taken the exam.***

Part I: Multiple Choice Questions

10 minutes

**33% of exam grade
(30 points)**

Please provide a short answer to each question below or select the correct response for each multiple choice question.

(Six points per question, 30 points total for all questions collectively)

1. The textual canon *ejusdem generis* is best described as:
 - a. A tool to clarify the meaning of a broad catch-all term at the end of a list of more specific terms.
 - b. Latin for “a thing is known by its companions.”
 - c. A maxim that draws on the common or shared aspects of other words listed in proximity with an unclear statutory term to help clarify that term’s meaning.
 - d. Latin for “of the same kind.”
 - e. A and D.
 - f. B and C.

2. Which of the following rules are specific iterations of the general maxim *expressio unis est exclusion alterius*?
 - a. When Congress specifies the particular method of compliance with a statutory command, it excludes other possible ways to comply.
 - b. When Congress does not specify a mode of preemption for a statute, the courts can imply areas of preemption based on the substantive provisions of the statute.
 - c. If Congress expressly requires proof of knowing conduct for one portion of a criminal offense, the court will extend that requirement to other portions of the same criminal offense because Congress expressly required it in the prior portion.
 - d. A and C.
 - e. All of the above.

3. After a string of particularly heinous and high-profile elder abuse incidents, Congress passes a law that bars any individual or corporation from obtaining a federal contract, license, or certification supported by federal funds (including Medicare) if they have any prior criminal convictions under federal or state law for mistreatment or abuse of elders in their care. Your client, a nursing home that entered into a plea agreement 10 years ago for an alleged abuse incident, finds itself facing shutdown immediately after the statute passes. What interpretative canon(s) would best apply to the statute to benefit your client?
- a. The presumption against preemption.
 - b. The presumption against retroactivity.
 - c. The rule of lenity.
 - d. The federalism clear statement rule.
 - e. A and D.
 - f. All of the above.

4. A state statute, long forgotten and unused for over a century, states that “[i]t shall be lawful for the owner of any slave to manumit such slave by last will and testament, or by any such instrument in writing under his hand. . .” The statute was never repealed, and it simply defines a “slave” as “a person owned by another person.”

When the owner of a pet chimpanzee sought to emancipate his animal through a formal personal written proclamation of manumission, the state court refused to enforce the instrument. Which doctrine of statutory construction best supports the judge’s ruling?

- a. The term “person” is a common law term with dynamic meanings, and recent advances in science and law have demonstrated that chimpanzees have mental faculties and experiences that can equal humans with brain defects whom the law nonetheless treats as “persons” with a corresponding fundamental right to freedom.
- b. Construing the term “person” to include primates would lead to a facially obvious absurd result.
- c. While the plain language of the statute might support manumission of primates, the common law meaning of “person” and current federal and state laws and policies have not yet evolved a clear consensus that such animals should enjoy rights as a legally cognizable person.
- d. While the statute’s language is arguably unclear, the original state legislature would not have authorized the manumission of primates – a

fundamental and sweeping change in law – through such a simple ambiguity.

- e. C and D.
 - f. None of the above.
5. The Dictionary Act of 1871:
- a. was struck down by the U.S. Supreme Court in 1938 as an unconstitutional incursion by Congress into the exercise of judicial power by Article III federal courts.
 - b. offers general definitions of terms commonly used by Congress in federal statutes, such as “oath”, “vessel”, “company” and “marriage.”
 - c. is a Texas statute designed to guide interpretation by Texas courts in both civil and criminal cases.
 - d. expressly rejects the use of the rule of lenity in criminal cases.
 - e. none of the above.

ESSAY QUESTION

(50 minutes)
(66% of grade)

Answer **ALL** of the following question. Please provide concise legal opinions supported by relevant case law, statutes, regulations, and examples discussed in class or in the readings.

Question 1 (60 points):

On April 30, 2015, the State of Texazona passed a new statute to address the growing tide of abuse of home-fabricated drugs. In particular, the Legislature enacted the following statute:

Section 1001: Short Title. This statute will be called the “Stop Abuse of Home Manufactured Drugs Act.”

Section 1002: Purpose. The Legislature finds that:

- (a) Increasing numbers of individuals within the state manufacture illegal drugs in their own homes or premises after purchasing the precursors or ingredients for those illegal drugs from other sources;
- (b) These precursors or ingredients are otherwise sold frequently by legitimate vendors for legal purposes; and
- (c) The growing practice of illegal personal drug manufacturing has directly contributed to rising illegal drug use, increased crime, and damage and destruction to private property and state resources.

Section 1003: Liability. The following actions shall constitute a Class 1 felony:

- (a) the purchase, exchange, collection, possession, acquisition, or any other action to obtain drugs or precursors listed in Annex 1 with the intent to use them to formulate drugs or chemicals that constitute controlled substances under federal or state law.
- (b) Liability for violations of subsection (a) shall attach without regard to the legality of the underlying purchase, exchange, collection, acquisition, or any other action to obtain the Annex 1 drugs or chemicals.

Annex 1 of the Act then lists hundreds of over-the-counter medications that could be used to manufacture illegal methamphetamines, hallucinogens, and tranquilizers which either

require prescriptions for use or are illegal outright under federal and state law. The Act does not provide an explicit effective date.

You are Texazona's Attorney General. A legislator has asked you for an opinion on whether one of her constituents, Melinda Bontemps, might now be liable under the Act. Bontemps has routinely travelled into Mexico to purchase cheap precursors in bulk that now appear on Annex 1, and she brings them back to Texazona to create home remedies and homemade drugs for alternative therapies and traditional folk medicines. She has consolidated a stockpile of these precursors in a commercial storage unit to support her altruistic health outreach program, and that program serves numerous poor and politically disadvantaged communities along the Texazona and Mexico border. Some of her home remedies arguably qualify as controlled substances under federal law, although the federal government has never prosecuted her.

Does the Act apply to Bontemps?