

LAW 222 - FEDERAL COURTS
Instructor in Charge: Professor W. Fletcher

TIME ALLOWED: 3 HOURS AND 15 MINUTES

INSTRUCTIONS:

This is a 3 hour and 15 minute exam. I repeat — 3 hours and 15 minutes. There are four questions. I suggest that you allocate your time as follows:

- Question 1: 1 hour
- Question 2: 45 minutes
- Question 3: 45 minutes
- Question 4: 30 minutes

This time allocation leaves an extra 15 minutes to allocate as you see fit. I will weight the questions in proportion to the times suggested.

The examination is designed to be completed in the time provided, but you will have to move right along to do so. Please keep careful track of your time.

The examination is open book. You may bring into the examination room with you any materials assigned in this course, plus any notes. No commercial outlines or other outside reading.

Question 1

(suggested time: one hour)

LifeGen is a medical research company in Emeryville, California. According to Sharon and Tom, LifeGen keeps a number of chimpanzees in small cages, one chimpanzee per cage, at the lab. They are never caged together. LifeGen employees draw blood from the chimpanzees every few weeks in order to perform DNA-related research.

Sharon is an attorney in a large law firm in San Francisco. She has had a life-long interest in primates. When she was in grade-school, her parents arranged a special behind-the-scenes tour of the zoo where she was able to see and interact with the chimpanzees. Now, as an adult, Sharon consistently contributes to organizations that work to improve primate welfare.

Tom does research on primate intelligence. The two chimpanzees in his laboratory are treated in accordance with the strict ethical guidelines of the university where he works. The two chimpanzees in Tom's laboratory are kept in a single large outdoor enclosure that has grass and trees. Tom is a recognized expert on the ethical treatment of chimpanzees. He sometimes provides free consultations with other researchers on proper treatment of chimpanzees. June Goodall, the famed chimpanzee-rights advocate, has praised his treatment of the two chimpanzees in Tom's laboratory.

Sharon and Tom bring suit against LifeGen in federal district court in San Francisco. (Sharon has persuaded her law firm to take on the case as part of its pro bono program.) They contend that LifeGen's treatment of its chimpanzees violates both federal and state law.

The federal Animal Welfare Act requires all research laboratories "to consult" with animal experts for the relevant species. After this consultation, the laboratories are required "to consider the views" of the experts with whom they have consulted in order to determine what treatment they will provide to their laboratory animals. The federal Act requires nothing beyond this "consultation" and "consideration." It imposes no substantive standards of ethical treatment. The federal Act authorizes persons "injured or aggrieved within the meaning of the Act" to bring suit in federal district court to enforce it.

The California Animal Rights Law requires all research laboratories to comply with substantive standards established by the California Animal Rights Committee. The standards applicable to chimpanzees require that "where feasible" chimpanzees must be provided opportunities for sustained social and physical contact with other chimpanzees. The state Law allows any citizen of California who is "injured or aggrieved within the meaning of the Law" to bring suit to enforce it. California courts have no analogue to the federal "case or controversy" standing requirement. Nor do California courts have a "prudential standing" doctrine.

LifeGen challenges Sharon and Tom's standing to bring suit. How should the federal district court rule? Please discuss.

Question 2

(suggested time: 45 minutes)

In *Rasul v. Bush*, 542 U.S. 466 (2004), the Supreme Court held that it has jurisdiction under 28 U.S.C. section 2241 to grant writs of habeas corpus for alien “enemy combatants” held as prisoners of the United States at the naval base at Guantanamo Bay, Cuba. The Court did not address the substantive standards to be applied on habeas to these alien enemy combatants.

You are employed as staff counsel to a United States Senator who is a member of the Judiciary Committee. She is considering proposing a Bill that would provide: “No federal court, justice, or judge shall have jurisdiction to consider an application for a writ of habeas corpus filed by or on behalf of an alien who is held as a prisoner of the United States as an enemy combatant.” The Bill would further provide that the state courts of the State of Virginia shall have jurisdiction over habeas applications by alien enemy combatants held as United States prisoners “to the extent consistent with law.”

The Senator asks your opinion about the constitutionality of her Bill, assuming it is enacted into law. You may assume, for purposes of this question, that it is uncertain whether elimination of the writ of habeas corpus for an alien held at Guantanamo would be an unconstitutional “suspension” of the writ. How will you advise the Senator? Please discuss.

After the examination, you may wish to consult S. 1042, a Bill passed in the United States Senate in November 2005 by a vote of 49 to 42. This Bill, introduced by Senator Lindsey Graham of South Carolina, would strip the federal courts of habeas jurisdiction for alien enemy combatants held at Guantanamo. Unlike the hypothetical Bill in the question, however, Senator Graham’s Bill does not contain a provision authorizing habeas jurisdiction in a state court.

Question 3

(suggested time: 45 minutes)

George is a student at the University of California, Berkeley. He suffers from bi-polar disease. When untreated, the disease causes a person to suffer extreme swings in mood. When “high,” a bi-polar person can be extremely energetic, irrational and paranoid. George had not taken his medication for several weeks, and was suffering the symptoms of his disease. At the beginning of fall semester, George was walking across the campus accompanied by a friend who knew of George’s condition and who had been trying to get George to take his medication.

As George and his friend approached Officer Jones, a member of the University of California police force, George shouted, “Stand back! I have a bomb.” Officer Jones responded by pulling out his gun and pointing it at George. George’s friend told Officer Jones that George was suffering from bi-polar disease, and that he did not have a bomb. Still pointing his gun at George, Officer Jones told him, “Put your hands out where I can see them.” George responded by putting his right hand in his pocket. As he did so, Officer Jones shot him. After the shooting, Officer Jones explained that he thought George might have been reaching for a weapon. In fact, George had not had a bomb and had not been reaching for a weapon. At the time of the shooting, George had been carrying nothing, not even a backpack.

George was taken to the hospital, where he remained for two months. After his release from the hospital, George contacted the Registrar’s Office at the University asking that his fall tuition be returned to him. The Registrar refused, pointing to a University regulation providing that once tuition has been paid for the semester, it will not be returned unless the student becomes ill and cannot finish the term. In the Registrar’s view, George had not been “ill” within the meaning of the regulation.

George filed suit in federal district court under 42 U.S.C. section 1983 against Officer Jones and the Registrar. In this claim against Officer Jones, he alleged excessive force in violation of the due process clause of the Fourteenth Amendment. He sought damages against Officer Jones. In his claim against the Registrar, George alleged, first, that he had suffered an “illness” within the meaning of the regulation, and, second, that he missed the semester because of the excessive force used by Officer Jones. Under the first theory, George contended that the Registrar violated section 1983 directly. Under the second theory, George contended that the Registrar violated section 1983 indirectly by refusing to compensate him for the harm caused by Officer Jones’s 1983 violation. George sought an injunction requiring the Registrar to return his tuition.

What success do you predict for George in his suit? Please discuss.

Question 4

(suggested time: 30 minutes)

The central question in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), was whether *Pennsylvania v. Union Gas*, 491 U.S. 1 (1989), should be overruled. If you had been a Justice on the Supreme Court *Seminole Tribe* was argued, how would you have voted on that question? Why? Please discuss.