Con Law I
2025 Mock Exam Analysis

Prof. Pi

Question #	a	b	c	d	e	f
1	4	7	6	8	3	6
2	7	4	6	8	5	4
3	7	6	5	4	3	8
4	5	6	2	8	7	3
5	5	7	9	6	5	7
6	8	7	5	6	4	–

1. **Question 1: Alabama's $500 inspection fee.**

   (a) *Market-participant theory (4 pts).* The answer tries to relabel Alabama's activity as a proprietary purchase of rodent-removal services. But the fee is imposed *as a condition of entry on every interstate carrier*; that is canonical regulation, not a voluntary state purchase like buying cement in *Reeves*. Courts therefore treat it under Dormant-Commerce scrutiny, where the market-participant shield does not apply. Calling the charge a "purchase price" does not overcome its tariff-like structure.

   (b) *Tariff/strict-scrutiny argument (7 pts).* Correctly spots facial discrimination—only movements originating outside Alabama trigger the fee—and marshals *Philadelphia v. New Jersey*. It also anticipates Alabama's "empty-truck" rebuttal and shows why that is legally irrelevant. What keeps it from a higher score is that, once IFTA's express preemption is recognized, Dormant-Commerce analysis becomes unnecessary.

   (c) *Maine v. Taylor necessity defense (6 pts).* Properly explains how a state may carry the heavy burden of proof when genuinely no nondiscriminatory alternative exists, and connects the facts (hidden nutria). Still weaker than (b) because the record does not yet eliminate less-discriminatory

federal checkpoints, and preemption would defeat the fee even if Taylor were met.

(d) *Express preemption (8 pts — best).* Goes straight to IFTA §3's flat prohibition of "any state fee." Under *Arizona v. United States* an express bar plus a detailed federal scheme leaves no regulatory space. Because the conflict is textual and immediate, Dormant-Commerce questions are moot.

(e) *Extraterritoriality (3 pts).* Correct that some modern *dicta* disfavor laws projecting costs across borders, but see *National Pork*. The fee is triggered once the truck physically enters Alabama, so regulation is not purely out-of-state. Argument is therefore doctrinally marginal.

(f) *User-fee theory (6 pts).* This is well-reasoned, however the charge is imposed whether or not the carrier actually avails itself of an inspection "service," and IFTA's statutory bar still overrides.

2. **Question 2: Nutria-carcass bounty—*as applied*.**

(a) *Residency discrimination (7 pts).* Paying only Alabama-licensed hunters burdens interstate participation. Strong DCC analysis, but defeated if the market-participant shield applies.

(b) *Offset theory (4 pts).* Invokes the *West Lynn Creamery* idea that equal taxes and equal subsidies might cancel, yet that case *struck* a tax-subsidy combination precisely because it altered competitive balance. Here the subsidy goes exclusively to locals and the underlying fee is itself discriminatory, making the offset argument weak.

(c) *Pike balancing (6 pts).* A sound alternative route—economic distortion versus administrative convenience—but *Pike* applies only after we conclude the scheme is nondiscriminatory or market-participant. Thus less potent than (a) or (d).

(d) *Market-participant purchase (8 pts — best).* Alabama is literally buying a commodity (dead nutria). Under *Reeves* a state buyer may prefer residents. Because the limit attaches to the very market in which the state is participating, the Dormant-Commerce Clause drops out, and the argument squarely fits the precedent.

(e) *IFTA frustration preemption (5 pts).* Correctly spots a possible conflict with the "no additional cost" policy but overstates how a *subsidy* "adds

cost" to interstate movement; Congress focused on *fees*, not payments to hunters. Ambiguous statutory fit keeps the score mid-range.

(f) *Foreign-commerce theory (4 pts).* Relies on speculative French fashion market impact. There is no evident risk of trade retaliation stated in the facts, so the claim is weak.

3. **Question 3: IFTA vs. NDSA—preemption.**

   (a) *Field-preemption analysis (7 pts).* Identifies comprehensive federal regime and sweeping "no state fee" language—good, but option (f) couples that point with explicit statutory text and therefore edges ahead.

   (b) *Savings-clause harmony (6 pts).* Fair reading that Alabama's fee might "speed" commerce, but difficult to square with the literal ban in §3 on *any* state fee.

   (c) *Prematurity/ripeness (5 pts).* Suggests preemption waits until checkpoints open. The textual prohibition is self-executing, so timing of construction is irrelevant—argument underestimates express language.

   (d) *Presumption against preemption (4 pts).* Traditional police-power realm point is right, yet the presumption yields to clear congressional command, which is present here.

   (e) *Presidential pause (3 pts).* Executive non-enforcement does not erase a statute's preemptive force under the Supremacy Clause.

   (f) *Express field preemption (8 pts — best).* Marries the comprehensive scheme with the clause banning "any state fee," tracking *Arizona v. U.S.* Leaves no doubt that NDSA's charge is foreclosed.

4. **Question 4: Congress's power to enact IFTA.**

   (a) *Noneconomic-environmental critique (5 pts).* After *Raich*, Congress can aggregate local environmental effects that threaten billions in commerce; the answer understates that precedent.

   (b) *Spending-clause severability (6 pts).* Correct about conditional grants but only salvages a slice of the statute, not the checkpoint mandate—solid but limited.

   (c) *Federal-commandeering of federal officers (2 pts). Printz* bars commandeering *state* officials, not federal ones; Congress may assign tasks to its own agencies, so the theory is off-point.

(d) *Channels / substantial-effects commerce (8 pts — best).* Combines levee damage, port trade, and cross-border rodent movement to satisfy both prongs of modern commerce doctrine. Squarely within Court precedents.

(e) *Necessity & foreign-commerce (7 pts).* Persuasive supplemental rationale, though one logical step further removed than the direct channels approach in (d).

(f) *Regional-target objection (3 pts).* No constitutional uniformity rule in the Commerce Clause. *NFIB* dealt with Spending coercion, not geographic tailoring of commerce regulation. Weak.

5. **Question 5: President Tweed's funding "pause."**

(a) *Execution logistics (5 pts).* True that Congress may not micromanage details, but Tweed froze *all* spending indefinitely, effectively nullifying the program—beyond ordinary logistics.

(b) *Youngstown Cat-3 nullification (7 pts).* Strong separation-of-powers critique.

(c) *Impoundment / Cat-3 violation (9 pts — best).* Cites both *Youngstown* framework and Impoundment Act principles (discussed in class—though the relevant cases were not assigned).

(d) *Managerial discretion (6 pts).* Accurately notes §5's "discretion," but a blanket freeze contravenes the statute's object and timetable; discretion is for *how*, not *whether*.

(e) *Constitutional-doubt hold (5 pts).* Presidents may refuse to enforce in narrow circumstances, yet after *Zivotofsky* such claims get minimal deference and cannot override clear statutes.

(f) *Ultra-vires override (7 pts).* Good administrative-law angle: Tweed supplants the Secretary's discretion. Still secondary to the larger impoundment defect captured in (c).

6. **Question 6: Alabama's suit for mandamus/funding.**

(a) *No concrete injury (8 pts — best).* Standing and ripeness doctrines require a finalized denial or at least unavoidable financial loss; here funding could still be released. Under *Lujan/Clapper* the injury is speculative.

(b) *Pocketbook standing (7 pts).* Strong traceability/redressability showing, but still contingent on future agency action, making it weaker than (a).

(c) *Political-question label (5 pts).* Allocation of appropriations is not textually committed; courts routinely review impoundment suits. Doctrine misapplied.

(d) *Special-solicitude standing (6 pts).* Helpful sovereign gloss from *Massachusetts v. EPA*, yet the Court there still demanded a concrete injury—which is missing until funds are formally withheld.

(e) *Tenth-Amendment coercion (4 pts).* Interesting, but coercion cases involve federal *threats* to withdraw existing funds—here no money ever flowed. Argument premature.