

EXAM ID: _____

**FINAL EXAMINATION
LEGISLATION AND REGULATION
LAW 6209 – Section 15 (Brandeis) – Siegel
Spring 2025**

INSTRUCTIONS

1. This is an open book examination. You may use any written materials that you have brought with you to the exam. “Written” materials include materials that are handwritten, typewritten, printed, or published, and, to the extent permitted by the school’s examination procedures, materials stored on your electronic device prior to the start of the exam. You may retype text from written materials into your exam answer (including by cutting and pasting, if the exam software permits it). However, during the exam, it is forbidden to access the Internet, to consult any other person directly or indirectly, or to make use of an artificial intelligence program.
2. You have **THREE HOURS** to complete the exam. The exam consists of **two** instructions pages and **four** exam pages. Make sure you have all the pages.
3. There are **THREE QUESTIONS**. All students must answer all questions. Recommended times for the questions are:

Question 1: 45 minutes
Question 2: 75 minutes
Question 3: 60 minutes
4. **WORD LIMIT:** For exams prepared using exam software, you must turn on the software’s “word count” feature. **Your answers are limited to a total of 4200 words for the entire exam.** A penalty will be applied to exams that exceed the word limit.
5. Do not put your name anywhere on your answers. Use your Exam ID. Do not write “Thank you for a great class” or anything similar on your exam. If you are writing your answers by hand, remember to *write legibly*.
6. If, with regard to any question, you think additional facts are needed to answer the question, state clearly what facts you think are missing, make a reasonable assumption about the missing facts, and answer the question based on your assumption. Do not change the given facts.
7. Using good judgment, address all the issues presented and assigned by the questions, even if your answers to some issues would, in real life, eliminate the need to address other issues.

8. Unless otherwise specified, assume all events described in the questions occurred in the United States and answer all questions on the basis of current law. Unless otherwise specified, explain your answers to all essay questions.
9. Good luck.

QUESTION ONE

As you will recall from *Caminetti v. United States* (casebook p. 73), the Mann Act, a federal statute originally passed in 1913, provides that:

[A]ny person who shall knowingly transport or cause to be transported . . . in interstate or foreign commerce . . . any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose . . . shall be deemed guilty of a felony.

The House committee that considered the Act issued a report on it that stated that:

The legislation is needed to put a stop to a villainous interstate and international traffic in women and girls. The legislation . . . does not attempt to regulate the practice of voluntary prostitution, but aims solely to prevent panderers and procurers from compelling thousands of women and girls against their will and desire to enter and continue in a life of prostitution.

The Mann Act is still in effect. (It now has different wording, but for exam purposes assume the original wording is still in place.)

David, a citizen of Virginia, is indicted in a criminal case in federal court. The indictment alleges that David agreed with Susan, a woman who is also a citizen of Virginia, that the two of them would rob a bank in Maryland. It further alleges that on the day of the robbery, David drove himself and Susan from Virginia to the bank in Maryland in a car, and that David and Susan robbed the bank and made off with \$20,000.

In addition to charging David and Susan with bank robbery, the indictment charges David with violating the Mann Act. David moves to dismiss the Mann Act charge on the ground that even assuming he engaged in the conduct alleged in the indictment, that conduct would not violate the Mann Act. The prosecution opposes the motion. Both sides make all appropriate arguments.

You are the law clerk to the federal district judge considering the case. Your judge asks for a memorandum thoughtfully discussing the issues raised by David's motion to dismiss the Mann Act charge. Your judge asks you to conclude the memorandum with a recommendation as to whether the motion should be *granted* or *denied*.

Write the requested memorandum.

QUESTION TWO

Prior to the creation of the Internet, someone who wanted to watch a movie at home could not do so online or using “on demand” television. Movie studios released physical videotapes of movies, which could be purchased or rented and viewed at home.

In 1987, President Ronald Reagan nominated Judge Robert Bork to the Supreme Court. While the nomination was pending, a journalist obtained and published a list of over 100 videos that Judge Bork and his family had rented from a video store. Senators criticized this publication as an invasion of privacy.

In 1988, Congress passed the Video Privacy Protection Act (“VPPA” or “Act”). The Act provides:

§ 1. Wrongful disclosure of video tape rental or sale records

(a) Definitions. For purposes of this section—

(1) the term “consumer” means any renter, purchaser, or subscriber of goods or services from a video tape service provider;

(2) the term “personally identifiable information” includes information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider; and

(3) the term “video tape service provider” means any person engaged in the business of rental, sale, or delivery of prerecorded video cassette tapes or similar audio visual materials.

(b) Video tape rental and sale records. A video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider, without that consumer’s informed, written consent, shall be liable to the aggrieved person for actual damages but not less than liquidated damages in an amount of \$2,500.

The Act contains no definitions other than those shown above, but 1 U.S.C. § 1 (the “Dictionary Act”) provides: “In determining the meaning of any Act of Congress, unless the context indicates otherwise, . . . the word ‘person’ includes corporations, companies, associations, firms, and partnerships, as well as individuals.”

The report of the Senate committee that considered the VPPA stated that the Act’s purpose was “to preserve personal privacy with respect to the rental, purchase, or delivery of video tapes or similar audio visual materials.” The report also stated that the Act’s definition of “personally identifiable information” was drafted “to make clear that simply because a business is engaged in the sale or rental of video materials or services does not mean that all of its products or services are within the scope of the bill. For example, a department store that sells video tapes would be required

to extend privacy protection to only those transactions involving the purchase of video tapes and not other products.”

In 2025, Gerald is using Facebook at his home in New York when he sees an ad on Facebook for the website NBA.com. The website is owned by the National Basketball Association (“NBA”), a professional sports league. Gerald clicks on the ad and is taken to NBA.com. While there, Gerald signs up for the NBA’s “online newsletter,” which consists of a daily email containing the results of the previous day’s NBA games and other NBA news. The newsletter contains no videos, but only text and still photos. To sign up for this newsletter, Gerald provides his email address and checks a box indicating that he wants to receive the newsletter. The newsletter is free.

Over the next few weeks, in addition to reading the NBA’s online newsletter, Gerald frequently visits NBA.com and clicks on and watches numerous basketball-related videos which are available for free viewing on the website. No sign-up is required to watch these videos, and Gerald could have watched them without signing up for the NBA’s online newsletter.

Later, Gerald sues the NBA in federal district court for violation of the VPPA. Gerald alleges the above facts. He also alleges that the NBA, without his consent, provided Facebook with a list of all the videos he watched on NBA.com. Facebook, Gerald alleges, paid the NBA for this information and used it to target ads to Gerald on Facebook. Gerald seeks liquidated damages of \$2,500, as provided in § 1(b) of the VPPA.

The NBA moves to dismiss Gerald’s suit. Even taking all facts alleged in Gerald’s complaint as true, the NBA argues, no violation of the VPPA occurred, because Gerald is not a “consumer” of the NBA’s and the NBA is not a “video tape service provider” within the meaning of the Act. The NBA offers no other reason why the case should be dismissed. Gerald opposes the motion. Both sides make all appropriate arguments on the issues raised by the motion.

You are the law clerk to the federal district judge considering the case. Your judge asks you for a memorandum discussing and evaluating the arguments put forward by the parties. Your judge asks that you conclude your memorandum with a clear recommendation as to the correct interpretation of the VPPA.

Write the requested memorandum.

QUESTION THREE

Surveillance cameras have become common in society. The use of video obtained from such cameras as evidence in court raises many questions. In 2026, a Vermont state court holds that in certain circumstances, Vermont state law prohibits the admission of evidence obtained from a surveillance camera unless the camera and the property upon which the camera is placed have the same owner. Members of Congress express concern that this ruling might cause problems for evidence obtained by federal law enforcement agencies, particularly the Federal Bureau of Investigation (FBI).

Thereafter, Congress passes the Surveillance Video Evidence Act (“SVEA” or “Act”), which provides:

- § 1. The Federal Bureau of Investigation (“FBI”) is authorized to place a surveillance camera on property owned by a state, a private corporation, or an individual with the consent of the owner.**
- § 2. Video obtained from a camera placed in accordance with § 1 of this Act shall not be excluded as evidence in any case in state or federal court on the ground that the camera and the property upon which the camera was placed did not have the same owner.**

After the SVEA takes effect, the FBI issues a regulation asserting that the Act authorizes the FBI to place a surveillance camera on property owned by a state or private corporation *without* the consent of the owner. The FBI then notifies Meta (the private corporation that owns Facebook) that the FBI will be placing surveillance cameras at specified locations in Meta’s offices. Meta brings a lawsuit against the FBI in federal district court seeking an injunction against the placement of these cameras. Both parties make all appropriate arguments as to whether the SVEA authorizes the FBI to place the cameras on Meta’s property without Meta’s consent.

You are the law clerk to the federal district judge considering the case. Your judge asks you for a memorandum discussing and evaluating the arguments put forward by the parties. Your judge asks that you conclude your memorandum with a clear recommendation as to how the SVEA should be interpreted.

Write the requested memorandum.

END OF EXAM