

Con Law I

October 6, 2009

Class Notes and Discussion Questions

1. What is sovereign immunity? Can you imagine public policy reasons why governments would want to avoid immunity from suit? Or more particularly, why they would want to *limit* their immunity to suit in certain courts, in certain kinds of cases, and to limit their liability?
2. What is the so-called *Ex parte Young* doctrine?
3. Read the Eleventh Amendment. What does it say *exactly*?
4. Where does state sovereign immunity originate, if not the Eleventh Amendment?
5. What authority does Congress normally have under the Interstate Commerce Clause? Did the outcome in *Seminole Tribe* surprise you considering the broad authority Congress has under the Commerce Clause? What is different here than from, for example, *Wickard*? Or *Jones & Laughlin Steel*?
6. Does it matter that Congress probably enacted the Indian Gaming Regulatory Act under the Indian Commerce Clause? Why or why not?
7. In *Seminole Tribe* and *Alden*, what historical evidence does the majority rely upon to reach the conclusion that Congress does not have authority under the Commerce Clause to subject states to suit in federal court?
8. Could Congress subject states to suit in state courts?