

CH 3 Constitution

- Constitution: -amendments (1-10): - what the government shouldn't do. 1,2,3, are checks and balances for gov. -fundamental rights that cant be changed.
- Power: states have police power. -Federal: -regulate interstate commerce. -coin money, tax, patent law, spend for general welfare. -intrastate commerce can affect interstate commerce.
- Commercial Speech Test- speech that proposes a commercial transaction. Not fully protected by 1st. No protection if it is misleading speech.
- Contract Clause: -article 1: states cant pass laws that impair contracts.
- Incorporation: 5th Amendment prevents federal gov from restricting life liberty without due process of law. 14th does the same with the states. State and Federal government have to abide by same principles.
- TSSA example: TSSA was a state actor for the 14th when it forced an association rule against a school
- Means-Ends Test: determines how courts strike balance between individual rights and social needs. Ends: how significant the social purpose must be. Means: how effectively the challenged law promotes the purpose. 3 types of tests: 1) Rational Basis Test – government action need only s reasonable relation for a legitimate government purpose. 2) Intermediate Scrutiny – Ex: sex discrimination. 3) Full strict scrutiny – challenge law must be necessary for a compelling purpose, government action that is subjected to this rigorous test is usually struck down.
- Due Process: when someone is deprived of life, liberty, or property.
- Procedural Due Process: the procedures when taking life lib....
- Substantive Due Process: - Challenge substance of law in constitution -Ex: State X makes adultery illegal, should it be a law?-Substantive. The procedure of trial-procedure.
- Equal Protection: -wont deny protection. -rational test. 1. Race and national origin-almost never constitutional. 2. Alienage- some strict scrutiny but not full. 3. Sex-rigorous form of intermediate scrutiny. Exceptions: draft and criminal rape. 4. Illegitimacy-children born to unmarried parents receive intermediate scrutiny.
- Federal Supremacy: -federal law is supreme.
- Takings Clause (5th) -private party wont be taken for public use without just compensation. - only a taking if you if you deprive someone of all economic value. -Public Use=Public Purpose.

14 Capacity

- Emancipation: parents dont have control over kid -doesnt make minor obligated to contract
- Disaffirmance: minors can disaffirm but must return consideration.

- Exceptions: marriage, child support, loans, insurance.
- Necessaries: minors must pay reasonable value if disaffirm.
- Misrepresentation of Age: -traditional: does not hinder minors right to disaffirm.
- Mentally incapable: can disaffirm based on a cognitive test.

CH 15 Illegality

- Illegal contract: -1) Violate Statute. 2) Violate public policy. 3) unconscionable agreements.
- Violation of Statutes: Ex: surrogate birth contracts are void by law. Law on gambling. Interest rates.
- Violate Public Policy: Ex: agreements to commit crimes. Promote illegal activities. Not licensed.
- Violation of public Policy: -enforce noncompete clause if: 1) serves legitimate business. 2) reasonable in time, area, and scope. 3) should not impose a undue hardship.
- Exculpatory Clause: relieves a party from tort liability. Against public policy.
- Unconscionability: uniform commercial code, courts can refuse to enforce contract for the sale of goods or modify it if it is found to be unconscionable.
- Contracts of Adhesion: “take-it-or-leave-it”. One party has no power over the terms. Seen as a form of procedural unconscionability.
- Effect of Illegality: General Rule-no remedy for breach of illegal contract. Exceptions: ignorant of facts or legislature. Party not equally in the wrong.
- Divisible Contracts: can enforce one legal part and not one illegal part.

Cases:

- Raich: 2005, California residents were growing weed for medical use federal gov went in and destroyed their plants. They claimed that it violated the commerce clause and 5th. Lower courts denied, appeals granted, supreme court hear a writ of certiora. Court of appeals decision vacated. Case will hear further proceeding.
- Granholm: 2005, Michigan’s law made it so alcohol producers could sell directly to the consumers. Michigan residents who wanted shipment from out of state wineries sued but lost at the district courts. US court of Appeals reversed ruling. Sixth circuit held up the law. New York does the same thing as Michigan. New York, California and VA were plaintiffs. Argued that it violated the commerce clause. Lower courts granted the plaintiffs summary judgement, but appeals reversed it. Struck down by supreme court.
- Mathews: 1976, Plaintiff wanted due process for being put off disability payments. District courts agreed with plaintiff. Court of Appeals affirmed. Supreme court reversed.
- Kelo: 2005, Taking. Connecticut was doing bad government made a taking to help it out. The court upheld that it classified as a taking.