

Business Law

Text & Exercises *6th Ed.*

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Chapter 4: Constitutional Law

Learning Outcomes

- LO1** • Define the basic structure of the U.S. Government.
- LO2** • State the constitutional clause that gives the federal government the power to regulate commercial activities among the states.

Learning Outcomes

LO3

- **Identify the constitutional clause that allows federal laws to take priority over conflicting state laws.**

LO4

- **Describe the Bill of Rights.**

LO5

- **Identify the freedoms that the First Amendment guarantees.**

Constitutional Powers of Government

- **A Federal Form of Government: the federal constitution was a political compromise between advocates of state sovereignty and central government.**

Constitutional Powers of Government

- **Separation of Powers:** Executive, Legislative and Judicial. Provides checks and balances.
 - Legislative: enacts laws
 - Executive: enforces laws
 - Judicial: declares laws/actions unconstitutional.

The Commerce Clause

- **U.S. Constitution gives Congress the power to “*regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes.*” (Art. 1 § 8)**
- **Under the Commerce Clause, the federal government has the power to regulate virtually all commercial enterprises in the United States.**

Regulatory Powers of the States

- **Tenth Amendment** reserves all powers to the states that have not been expressly delegated to the national government.
- **State have inherent “police powers.”**
 - Police powers include right to regulate health, safety, morals and general welfare.
 - Includes licensing, building codes, parking regulations and zoning restrictions.

The “Dormant” Commerce Clause

- U.S. Supreme Court has interpreted commerce clause to give national government *exclusive* power to regulate.
- States only have a “dormant” (negative) power to regulate interstate commerce.
- Dormant power comes into play when courts balance state’s interest vs. national interest, *e.g.*, internet transactions.

The Supremacy Clause

- **Supremacy Clause:** Article VI of the Constitution provides that Constitution, laws and treaties of the United States are the “supreme law of the land.”
- **Preemption:** when Congress chooses to act in a concurrent area, federal law preempts state law.

The Taxing and Spending Powers

- **The power of Congress to tax is found in Article 1, Section 8 “to lay and collect Taxes, Duties, Imposts, and Excises” which shall be “uniform” throughout the United States.**
- **Revenues from taxes are spent by Congress for the debts, “common Defense, and general welfare of the United States.”**

- Constitution's first ten amendments are referred to as the **Bill of Rights**.
- Originally, the Bill of Rights were protection from interference by the federal government. Now they are “incorporated” and applied to the States as well.
- Some of these protections apply to businesses.

Summary of the Bill of Rights

1. First Amendment: rights to religion, speech, the press, right to assemble peaceably and to petition the government.
2. Second Amendment: right to keep and bear arms.
3. Third Amendment: prohibits lodging of soldiers in any house without the owner's consent.
4. Fourth Amendment: prohibits unreasonable searches and seizures of persons or property.

Summary of the Bill of Rights

5. Fifth Amendment: guarantees right to indictment, due process of law, fair payment when private property is taken for public use, and prohibits compulsory self-incrimination and double jeopardy (trial for the same crime twice).
6. Sixth Amendment: right to a speedy and public trial by an impartial jury and with counsel.

Summary of the Bill of Rights

7. Seventh Amendment: right to a trial by jury in a civil case involving at least twenty dollars.
8. Eighth Amendment: prohibits excessive bail and fines, as well as cruel and unusual punishment.

Summary of the Bill of Rights

9. Ninth Amendment: establishes that the people have rights in addition to those specified in the Constitution.
10. Tenth Amendment: those powers neither delegated to the federal government nor denied to the states are reserved for the states or to the people.

First Amendment: Freedom of Speech

- **Right to Free Speech** is the basis for our democratic government. Also protected is **symbolic speech**, including gestures, movements, articles of clothing.
- **Corporate Political Speech:** businesses also have protected political speech (although not to the degree of a natural person).

First Amendment: Freedom of Speech

- **Commercial Speech:** given substantial protection. Generally, government restrictions must:
 - Seek to implement substantial government interest,
 - Directly advance that interest, and
 - Must go no further than necessary to accomplish.

First Amendment: Freedom of Speech

- **Unprotected Speech:** U.S. Supreme Court has held that certain speech is NOT protected:
 - Defamatory speech.
 - Threatening speech that violates criminal laws.
 - Fighting Words.
 - Obscene Speech is patently offensive, violates community standards and has no literary, artistic, political or scientific merit.

First Amendment: Freedom of Speech

- **Online Obscenity:** Some of Congress' attempts to protect children from online pornography have been ruled unconstitutional restrictions on free speech.
 - Children's Internet Protection Act (2000) which requires filters for computers in public libraries and public schools). Challenged in court.
- **Other Forms of Online Speech.**

First Amendment: Freedom of Religion

- **First Amendment** guarantees that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”
- **Establishment clause:** no state-sponsored religion or preference for one religion over another.

First Amendment: Freedom of Speech

- **Free Exercise:** person can believe what he wants, but actions may be unconstitutional.
- **What about freedom of religion and illegal drug use?** Or what about a Muslim woman's scarf (hijab) over her head?

Due Process

- **Due Process** clauses of the 5th and 14th Amendment has two aspects: procedural and substantive.
- **Procedural Due Process** requires that any government decision to take life, liberty or property must be fair. Requires Notice and Fair Hearing.

Due Process

- **Substantive Due Process:** focuses on the content or the legislation (the right itself).
 - A law limiting a fundamental right (e.g., travel, speech, privacy) will violate due process, unless it promotes a compelling state interest.
 - A law limiting a non-fundamental right (e.g., insurance, finance, trade) need only show a rational relationship to state interest.

Equal Protection

- **14th Amendment:** A state may not “deny to any person within its jurisdiction the equal protection of the laws.”
- **Equal Protection** means the government must treat similarly situated individuals (or businesses) in the same manner.

Equal Protection

- When a law distinguishes between or among individuals, the basis for the distinction – the “suspect classification” – is examined using different tests:
 - Economic rights (‘rational basis’ - legitimate government interest).
 - Gender or legitimacy (important government objectives).
 - Fundamental rights (strict scrutiny – compelling government interest).