

Constitutional Law Template

I. Preliminary Matters:

A. Federalism: How does it apply to government entity?

B. Limitation Doctrines

1. Ripeness
2. Mootness
3. Standing

II. Tax & Spend Power

III. Commerce Clause

A. Lopez Restrictions

1. Regulate instrumentalities, channels
2. Economic Regulation—Aggregate Effects
3. Traditional Federalism (Lopez—criminal)

B. Dormant Commerce Clause (federal supremacy)

--Discriminatory vs. Non-discriminatory

C. Federal Pre-emption

IV. Due Process Clause

A. Procedural Due Process

1. Life, Liberty, or Property being taken?
2. Notice & Opportunity to be heard at Meaningful time.

B. Substantive Due Process (5th Feds, 14th State)

(Fundamental Right—implicit in concept of ordered liberty):

- Privacy (Marriage, contraception, abortion)
- Vote
- Travel
- 1st Amendment Rights

Apply Strict Scrutiny

C. Equal Protection (Due Process applied through 5th Amend to Feds)

Decide Classification, Apply the Standard:

1. Strict Scrutiny: Race/National Origin or Fundamental Rights
 - a. Necessary (can't do it less onerously)
 - b. Achieve a compelling government purpose
2. Intermediate Scrutiny: Gender/legitimacy
 - a. Substantially related
 - b. To Important Gov't purpose
3. Rational Basis: Any classification or Non-fundamental
 - a. Rationally related
 - b. To Legitimate gov't purpose.

IV. First Amendment Freedoms

A. Speech

1. Forum
2. Time, Place, Manner (content neutral)
3. Content v. Conduct
4. Unprotected—fighting, defame, obscenity
5. Commercial (less protection)
6. Minors (more protection)

B. Press (prior restraint).

C. Association (Unions, Churches)

D. Religion

1. Free Exercise (criminal—as long as neutral)

Amish: not to educate in public schools

2. Establishment

- a. secular purpose
- b. primary effect neither advances nor inhibits rel.
- c. does not produce excessive entanglement.

V. Executive Power

A. Appointments

B. Veto

VI. Ex Post Facto Law

VII. Bills of Attainder

VIII. Impairment of Contract Clause