

Chapter 4—Constitutional Law

Judicial Review

Describes the process by which the courts examine governmental actions to determine whether they conform to the US Constitution. It extends to legislation, acts of the executive branch, and the decisions of the inferior courts. It includes the actions of both the federal and state governments and applies the same standards of constitutionality to both governments. The US Supreme Court is the final authority as to the constitutionality of any federal or state law.

Separation of Powers

The allocation of powers among the legislative, executive, and judicial branches of government to prevent any branch of government from gaining too much power. It also permits each branch to function without interference from any other branch.

Powers of Government

Exclusive federal powers include the power to establish laws regarding bankruptcy, to establish post offices, to grant patents and copyrights, to coin currency, to wage war, and to enter into treaties. Concurrent powers, which may be exercised by both the Federal government and the States, include taxation, spending, and the regulation of the public health, safety, and welfare.

State Regulation of Commerce

In general, where a State statute regulates even-handedly to accomplish a legitimate state interest and its effects on interstate commerce are only incidental, the statute will be upheld unless the burden imposed on interstate commerce is excessive compared to the local benefits. Where, however, the regulation is discriminatory, there must be no other reasonable method of achieving a legitimate local interest.

Federal Fiscal Powers

Borrowing and Coining Money—The US Constitution also grants Congress the power to borrow money on the credit of the US and to coin money. These two powers have enabled the federal government to establish a national banking system, the Federal Reserve, and specialized federal lending programs such as the Federal Land Bank.

Eminent Domain—is the power of the government to take private property for a public purpose upon payment of fair compensation. Although this power applies only to the federal government, the Supreme Court has held that the takings clause is incorporated through the 14th Amendment and is applicable to the states.

First Amendment

Commercial Speech—an expression related to the economic interests of the speaker and his audience, such as advertisements of products and services. Speech that does no more than propose a commercial transaction is entitled to extensive protection but less protection than that accorded to political speech.

Defamation—a civil wrong or tort consisting of a false communication that injures a person's reputation. Because defamation involves a communication, the protection generally extended to speech by the 1st Amendment becomes an issue. Public figures who pursue a cause of action for defamation must prove actual malice or proof of reckless disregard of the facts or proof the defendant had knowledge of the falsity of the communication.

Procedural Due Process—requires that governmental action depriving a person of life, liberty, or property be done through a fair procedure. Liberty generally includes the ability of individuals to engage in freedom of action and choice regarding their personal lives. Property includes all forms of real and personal property and also certain benefits (entitlements) conferred by government, such as social security payments and food stamps.