

LAW DAY
CONSTITUTIONAL LAW OUTLINE

I. Powers of the Federal Government

1. The federal government has limited powers. Every exercise of federal power must have its basis in the Constitution.
2. Federal judicial power extends to cases involving interpretation of the Constitution, federal treaties, and admiralty and maritime laws, as well as to disputes between states, states and foreign citizens, and citizens of diverse citizenship.
3. Federal judicial power also includes the power of judicial review, pursuant to which the Supreme Court may review the constitutionality of acts of other branches of the federal government. It may also review state acts pursuant to the Supremacy Clause.
4. The Supreme Court will not exercise jurisdiction if the state court judgment is based on adequate and independent state law grounds, even if federal issues are involved.
5. Congress has the power to make all laws necessary and proper for executing any power granted to any branch of the federal government. Congress has the power to tax, and most taxes will be upheld if they bear some reasonable relationship to revenue production or if Congress has the power to regulate the activity taxed. Congress may also spend to provide for the common defense and general welfare.≡ Spending may be for any public purpose.
6. Congress has the exclusive power to regulate all foreign and interstate commerce. Interstate commerce includes transportation or traffic, even if not commercial, including both goods that are moved in interstate commerce and the vehicles that move between states. Any activity, even if carried on entirely intrastate, that, taken cumulatively, might have a substantial effect on interstate commerce is subject to regulation by Congress. The actual purpose of the regulation need not be related to either commerce or transportation as long as the subject matter regulated might have the required effect. Congress has used the Commerce Clause to uphold federal civil rights legislation because of the effect discrimination might have on interstate commerce.
7. The Constitution gives Congress the power to declare war, raise and support armies, and provide for and maintain a navy. Congress may enact economic regulations during war and in the postwar period to remedy wartime disruptions. Congress is also authorized to make rules for the government and regulation of the armed forces. Regular federal or state courts, however, have no general power of review over court-martial proceedings, and military courts have jurisdiction over all offenses committed by persons who are members of the armed services both at the time of the offense and when charged. American civilians may be tried by military courts only if actual warfare forces the federal courts to shut down.

8. Congress has no general police power. However, Congress has police power type powers over the District of Columbia, federal lands, military bases, and Indian reservations.
9. Under the postal power, Congress may validly classify and place reasonable restrictions on the use of mails, but may not deprive any citizen or group of citizens of the general mail privilege.
10. Congress may establish uniform rules of naturalization. Congress may not take away the citizenship of any citizen B naturalized or native born B without his consent.
11. Congress also has power over maritime matters, patents and copyrights, and the power to coin money and to fix standards for weights and measures.
12. The Executive Powers include the power to appoint all ambassadors, public ministers and counsels, justices of the Supreme Court, and all other officers of the United States whose appointments are not otherwise provided for, with the advice and consent of the Senate.
13. Congress may remove executive officers only through the impeachment process.
14. The president may grant pardons for all federal offenses but not for impeachment or civil contempt. The pardon power cannot be limited by Congress.
15. The president has the power to veto legislation passed by Congress, but the act may still become law if overridden by a 2/3 vote of each house.
16. The president has no power to declare war but may act militarily in active hostilities against the U.S. without a congressional declaration of war, such as President Bush did during the Gulf War.
17. The president has the power to enter into treaties with the consent of 2/3 vote of the Senate. Treaties are on the same hierarchical level as acts of congress, and state laws that are in conflict with a treaty are invalid. A conflict between a congressional act and a valid treaty is resolved by the order of adoption: the last in time prevails.
18. The president has the power to keep certain communications secret. National security secrets are given great deference by the courts. In criminal proceedings, however, presidential communiques will be available to the prosecution where a need for such information is demonstrated.
19. The president, the vice president, and all civil officers of the U.S. are subject to impeachment (the bringing of charges). Grounds include treason, bribery, high crimes, and misdemeanors. A majority vote is needed in the House to invoke the charges of impeachment, and a 2/3 vote in the Senate is necessary to convict and remove from office.

II. Federal Powers vs. State Powers

20. Exclusive federal powers: Some powers are exclusively federal because the Constitution limits or prohibits the use of the power by the states (e.g., treaty power, coinage of money).
21. Inherent federal powers: Other powers are exclusively federal because the nature of the power itself is such that it can be exercised only by the federal government (e.g., declaration of war, federal citizenship).
22. All powers not delegated to the federal government are reserved to the states. Because of the Supremacy Clause, a federal law may supercede or preempt local laws. For example, if a state law conflicts with a federal law, the state law will be invalidated. If a state or local law prevents achievement of a local objective, the state law will be invalidated. A valid federal statute may expressly or impliedly occupy the entire field, thus precluding any state or local regulation even if the state or local regulation is nonconflicting.
23. A state may not discriminate against nonresidents: Such discrimination is prohibited by the Interstate Privileges and Immunities Clause of the Constitution. Only fundamental rights those involving important commercial activities and important civil liberties are protected.
24. The state law may be valid if the state has a substantial justification for the different treatment. In effect, the state must show that the non-residents either cause or are part of the problem that the state is attempting to solve and there are no less restrictive means to solve the problem.
25. State or local regulations that discriminate against interstate commerce to protect local economic interests are almost always invalid (e.g., New York cannot ban California wines or tax them at a higher rate than local wines).
26. A discriminatory state or local law may be valid if it furthers an important, non-economic state interest and there are no reasonable nondiscriminatory alternatives available. Example: state could prohibit importation of live bait fish because parasites could have detrimental effect on its own fish population.

III. Bill of Rights

27. Bill of Rights: By its terms, the Bill of Rights (the first ten amendments) limits federal power. However, the 14th Amendment Due Process Clause applies almost all provisions of the Bill of Rights to the states. Exceptions: the 5th Amendment's prohibition of criminal trials without a grand jury indictment and the 7th Amendment's right to a jury trial in civil cases.

28. Since the Constitution generally applies only to governmental action, to show a constitutional violation Astate action≡ must be involved.
29. The Contract Clause prohibits states from enacting any laws that retroactively impairs contract rights. It does not affect contracts not yet entered into.
30. Regulations affecting fundamental rights, such as interstate travel, privacy, voting, and free speech, or involving suspect classifications, such as race, national origin, and alienage, are reviewed under the strict scrutiny standard: The law is upheld if it is necessary to achieve a compelling governmental purpose. this is a difficult test to meet, and so a law examined under a strict scrutiny standard will often be invalidated -- especially where there is a less burdensome alternative to achieve the government=s goal.
31. Certain fundamental rights are protected under the Constitution. If they are denied to everyone, it is a substantive due process problem. If they are denied to some individuals but not others, it is an equal protection problem. The applicable standard in either case is strict scrutiny. Thus, government action must be necessary to protect a compelling governmental interest, and there must be no less restrictive means to achieve this goal
32. The right to vote is a fundamental right. Thus, restrictions on that right, other than on the basis of age, residence, and citizenship, are invalid unless they can pass strict scrutiny. For example, poll taxes are unconstitutional, as is conditioning the right to vote or hold office on ownership of property.
33. The Aone person, one vote≡ principle applies whenever any level of government, state or local, decides to select representatives to a governmental body by popular election from individual districts. States must use almost mathematical equality when creating congressional districts within the state.
34. Gerrymandering: Race (and presumably other suspect classifications) cannot be the predominant factor in drawing the boundaries of voting districts unless the district plan can pass muster under strict scrutiny.
35. Right to travel: An individual has a fundamental right to migrate from state to state, but not every restriction on the right to cross state lines is an impairment on the right to travel (e.g., increased penalties for a father abandoning his children and leaving the state are valid). A one- year residency requirement to receive welfare has been held invalid, while a one-year residency requirement in order to get divorced in a particular state has been upheld.
36. International travel is not a fundamental right: Americans are currently prohibited from travel to Iraq, Libya, and Cuba, except under certain very limited circumstances (such as journalists doing a story). For more information on which countries Americans may not visit, go to the U.S. State Department website at www.state.gov and click on Atravel warnings.≡

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