

Chapter 02

Business and the Constitution

Fill in the Blank Questions

1. The legal authority that a court must have to hear a case is called _____.

2. The right of a state to protect its citizenry is called its _____.

3. The government's system of checks and balances is called the _____.

4. Powers granted in the Constitution to the three branches of the federal government are known as _____ powers.

5. Veto power is a power granted to the _____ branch of government.

6. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act is commonly called the _____ Act.

7. The case of *Marbury v. Madison* established the federal courts' power of _____.

8. Government acts that affect semi-suspect or quasi-suspect classifications require that the court apply _____ scrutiny to determine the act's validity.

9. Commerce that is wholly contained within a state and has no effect on other states or foreign countries is called _____ commerce.

10. A question put to voters during a state election to decide a particular issue may be called a ballot initiative, a referendum, or a _____.

True / False Questions

11. Amendments to the Constitution function as a protection of the citizenry from unlawful or repressive acts of the government.

True False

12. In *U.S. v. Lopez*, the Supreme Court agreed with Congress, saying that gun possession in schools made it more difficult for a student to obtain an education and was therefore an interstate commerce issue.

True False

13. Congress's broadest powers are derived from the Commerce Clause.

True False

According to the decision in *Brown v. Entertainment Merchants Association*, the court applied an intermediate-level scrutiny standard because the state's action was related to a fundamental right—freedom of speech.

True False

15. Fifth Amendment protections against self-incrimination apply to corporate entities.

True False

16. Punitive damages are intended to punish wrongdoers in civil actions.

True False

17. Most privacy rights afforded in the Constitution do not extend to the workplace.

True False

18. Strict scrutiny requires that a state prove that it is acting to promote an important government objective and that the proposed act is substantially related to the government's objective.

True False

19. Growing marijuana for purely personal medical use while possessing a valid prescription in a state that has approved medical use of marijuana has been found to be interstate commerce.

True False

20. The inherent right of the federal government to protect its citizenry's health, safety, and welfare is referred to as the federal government's police powers.

True False

21. States may never regulate commerce that crosses state borders as this is an exclusive federal power.

True False

22. Federal legislation or regulation must be authorized by a specific enumerated power in the Constitution.

True False

23. In *U.S. v. Morrison*, the Supreme Court found that commerce power was a legitimate justification to validate the right of women to sue their attackers for monetary damages under the Violence Against Women Act.

True False

24. Congress may tax activities and property that it might not be authorized to regulate under any of the enumerated regulated powers.

True False

25. Congress may place limits on the use of federal money by states as long as the limit does not affect or infringe on a citizen's constitutional rights.

True False

26. Both commercial speech and corporate political speech are subject to intermediate scrutiny.

True False

27. The standard for issuance of a warrant for a search in a noncriminal administrative violation investigation is lower than that for investigating a criminal offense.

True False

28. States were not subject to Bill of Rights restrictions until after the Civil War.

True False

29. Substantive due process requires that a state statute must be published for public inspection and be clear and specific.

True False

30. Enumerated powers are those rights and powers granted in the Constitution to the individual states.

True False

31. Placing conditions on the use of federal money given to states is most often accomplished by interpreting the Commerce Clause.

True False

32. The right to privacy is a specifically named right established in the Bill of Rights.

True False

33. Obscenity regulation of commercial speech is subject to the same scrutiny as any other government regulation of commercial speech.

True False

34. Professor Jones accuses Kim, one of his students, of cheating on an exam. Professor Jones arranges a hearing to be held in front of the university's Academic Honesty Board, and Kim is informed that she must prove her innocence before Professor Jones must prove her guilt. Kim is being denied her substantive due process rights.

True False

35. Typically, political speech by corporations is fully protected by the First Amendment.

True False

36. Commercial speech has always been afforded protection under the First Amendment.

True False

37. *Marbury v. Madison*, decided in 1803, is no longer considered valid precedent and has been preempted by statute.

True False

38. The First Amendment prohibits individuals from encroaching on or prohibiting another person's freedom of speech.

True False

39. Under the Constitution, Congress has the enumerated power to appoint federal officers and judges.

True False

40. Under the federal system used by the United States, the federal government has only limited power to regulate individuals and businesses.

True False

Multiple Choice Questions

41. The preamble of the Constitution:

- A. sets out the structure of the government.
- B. lays out the procedures by which the government will operate.
- C. establishes boundaries of jurisdiction.
- D. states the broad objectives of the Constitution.

42. Which of the following is not a coequal branch of the U.S. government as specified in the Constitution?

- A. the legislative branch
- B. the executive branch
- C. the administrative branch
- D. the judicial branch

43. Judicial review is the:

- A. power or right of a court to hear a case.
- B. power of a state or federal court to declare a statute unconstitutional.
- C. power of an appellate court to reverse a decision made in a lower court.
- D. power of a federal court to declare a state or federal statute invalid if inconsistent with the Constitution.

44. The power to impeach and remove is a check and balance power:

- A. of the executive branch.
- B. of the legislative branch.
- C. of the judicial branch.
- D. that is shared by all three government branches.

45. Assume that the state of Georgia has just raised the fee for registration of motor vehicles \$5 per year. If challenged, this new statute would be reviewed using:

- A. rational basis scrutiny.
- B. intermediate scrutiny.
- C. strict scrutiny.
- D. no particular form of scrutiny (none is required in this situation).

46. The primary authorization of constitutional powers is given to Congress under:

- A. the Preamble to the Constitution.
- B. Article I of the Constitution.
- C. Article VI of the Constitution.
- D. the Bill of Rights.

47. The power to carry out foreign policy is an enumerated power granted to:

- A. the executive branch.
- B. the legislative branch.
- C. the judicial branch.
- D. all three branches.

48. The state of Kansas has enacted a new law requiring all commercial trucks driving on Kansas roads to have special mud flaps installed. These mud flaps have been proved to make driving in the rain significantly safer as they reduce mist created by trucks in the rain, although data regarding accidents and injuries have not yet been determined. Any truck entering Kansas must have these flaps installed or will be subject to a significant fine and delay. The cost for purchase and installation of these flaps is \$1,000 per truck. In short, trucks must have these flaps or go around the state. This Kansas law:

- A. is valid because it applies only to Kansas roads and such a law is entirely intrastate.
- B. is valid because Kansas' right to protect its citizens under its police powers will override any outside challenges to this law.
- C. is invalid because this law is intended to regulate interstate commerce, an enumerated federal power.
- D. is invalid because, although on its face it's an intrastate law, this statute will have a significant economic effect on interstate commerce, causing an undue burden.

49. In *Gonzalez v. Raich*, patients who were prescribed medical marijuana sought to prevent enforcement of the federal Controlled Substances Act (CSA) in medical marijuana cases. They claimed enforcement violated the Commerce Clause because the medical marijuana was cultivated and possessed within state borders and did not enter the stream of commerce. The U.S. Supreme Court decided:

- A. the government had a rational basis for believing that locally cultivated marijuana would end up in interstate commerce.
- B. the intrastate, noncommercial cultivation and possession of marijuana was not intended to enter interstate commerce.
- C. California's medical marijuana law was unconstitutional.
- D. enforcement unreasonably burdened interstate commerce.

50. In *Pagan v. Fruchey and Village of Glendale*, Pagan sued, questioning a village ordinance prohibiting the parking of a car on a public street for the purpose of displaying it for sale. Pagan won because:

- A. Glendale's law violated Pagan's commercial speech rights, which are absolute.
- B. Glendale was unable to prove that Pagan's speech was unlawful.
- C. Glendale's ordinance was broader than necessary to accomplish the village's government interest.
- D. Glendale did not prove that the ordinance directly advanced the village's claimed government interest because Glendale based its argument on opinion rather than data.

51. In the cases of *Heart of Atlanta Motel v. U.S.* and *Katzenbach v. McClung*, the Supreme Court found illegal discrimination under the Civil Rights Act of 1964 by applying:

- A. the Commerce Clause.
- B. the Supremacy Clause.
- C. the Necessary and Proper Clause.
- D. the Equal Protection Clause.

52. When Bad Frog Brewery Inc., placed a label on its product showing a frog with unwebbed fingers with its middle finger extended, New York State sued to prohibit the use of the label, claiming it to be obscene and claiming an interest in protecting the state's children. The court found:

- A. for Bad Frog because children cannot purchase beer, so any exposure would be incidental.
- B. for Bad Frog because the label did not concern an unlawful activity and the state did not prove its interest in protecting children from vulgarity.
- C. for New York State because once the product was purchased, the labels would be exposed in refrigerators or in rooms while children were present.
- D. for New York State because it proved a substantial effort to advance a valid state interest amounting to more than "not merely the removal of a few grains of sand from the beach of vulgarity."

53. If Alabama passes a statute specifically permitting high school girls to try out for and play on varsity high school football teams if qualified, that statute would be reviewed using:

- A. rational basis scrutiny.
- B. intermediate scrutiny.
- C. strict scrutiny.
- D. no particular form of scrutiny (none is required in this situation).

54. Treaties:

- A. may be entered into by the president without oversight or approval.
- B. are entered into by the president subject to House approval.
- C. are entered into by the president subject to Senate approval.
- D. are entered into by the president subject to joint House and Senate approval.

55. The power of preemption is derived from:

- A. the power of judicial review.
- B. the Commerce Clause.
- C. the Necessary and Proper Clause.
- D. the Supremacy Clause.

56. In *Cipollone v. Liggett Group Inc., et al.*, Cipollone sued based on state laws regulating advertising and promotional activities in the tobacco industry.

- A. Cipollone won because the state laws were specific and were violated by the defendant.
- B. Cipollone won because although there were federal laws regulating promotion and advertising activities regarding tobacco products, they specifically authorized supplemental state laws negating preemption.
- C. Cipollone lost because the federal and state laws conflicted, negating both, so the court had no basis to make its decision.
- D. Cipollone lost because he relied on state law, which was preempted by federal law.

57. The Equal Protection Clause is contained in the:

- A. First Amendment.
- B. Fifth Amendment.
- C. Sixth Amendment.
- D. Fourteenth Amendment.

58. When a state action is found to be based on a semi-suspect (or quasi-suspect) classification, the courts will employ:

- A. rational basis scrutiny.
- B. intermediate scrutiny.
- C. strict scrutiny.
- D. no particular form of scrutiny (none is required in this situation).

59. Protections under the Bill of Rights were extended to include restrictions and actions by state governments under the:

- A. Twelfth Amendment.
- B. Thirteenth Amendment.
- C. Fourteenth Amendment.
- D. Fifteenth Amendment.

60. One criticism of the U.S.A Patriot Act is that:

- A. adequate safeguards are not in place to prevent the government from using the act to invade citizen's privacy.
- B. too much due process is being given to alleged terrorists under the act's provisions.
- C. penalties for those found guilty under the act are not harsh enough.
- D. penalties for those found guilty under the act are too harsh and constitute cruel and unusual punishment.

61. Assume that Iowa has just passed a statute requiring all noncitizens to sit in the back of public buses. That statute would be reviewed using:
- A. rational basis scrutiny.
 - B. intermediate scrutiny.
 - C. strict scrutiny.
 - D. no particular form of scrutiny (none is required in this situation).
62. Which of the following is not a procedural due process issue?
- A. Police must obtain a search warrant to enter and search a citizen's home for drugs.
 - B. The state of Massachusetts has raised the drinking age to 25 years old.
 - C. The state of Oklahoma passes a statute prohibiting citizens from presenting evidence in drunk-driving trials.
 - D. The state of California passes a statute allowing relatives of victims of violent crimes to sit on the jury in the general trial court.
63. After more than 100 years, the Chicago Cubs have won baseball's World Series. They want a parade down Michigan Street at 10 a.m. on Friday, but the city tells them that the parade will be down Rush Street at noon on Saturday. The city claims that Rush Street on Saturday will provide more safety and convenience for the city's citizens. The Cubs claim a violation of their freedom of speech. If a lawsuit ensues, what standard of review will the court use to resolve the issue?
- A. rational basis scrutiny
 - B. intermediate-level scrutiny
 - C. strict scrutiny
 - D. no particular form of scrutiny (none is required in this situation)

64. In *State Farm Mutual v. Campbell*, the court laid out a three-part analysis for determining the constitutionality of a statute regulating punitive damages. Which of the following is not one of the three criteria specified by the court?
- A. the degree of reprehensibility of the defendant's misconduct
 - B. the disparity between the actual or potential harm suffered by the plaintiff and the punitive - damage award
 - C. whether the harm resulted from a criminal act or a civil act
 - D. the difference between the punitive damages awarded and the civil penalties authorized or imposed in similar or comparable cases
65. Generally, constitutional protections do not apply to:
- A. acts of the federal government.
 - B. acts of state governments.
 - C. acts of administrative agencies.
 - D. acts of privately owned businesses.
66. Protections for the citizenry from unlawful or reprehensive acts by the government are contained primarily in:
- A. the Preamble to the Constitution.
 - B. Article I of the Constitution.
 - C. Article V of the Constitution.
 - D. the Bill of Rights.

67. Mike is walking down the street minding his own business when he is stopped by a police officer. Although no crimes have been reported in the area and Mike has done nothing suspicious, the police officer doesn't like the looks of Mike so he conducts a pat-down search and finds a tiny bag of marijuana. Under these circumstances, this is:

- A. an illegal search under Fourth Amendment protections.
- B. an illegal search under Fifth Amendment protections.
- C. a legal search because illegal drugs were found, justifying the police officer's actions.
- D. a legal search because police are given broad discretion to use their experience to fight crime and obviously the police officer was right in this case.

68. The Due Process Clause is found in:

- A. the Fifth Amendment only.
- B. the Fourteenth Amendment only.
- C. neither the Fifth nor Fourteenth Amendment.
- D. both the Fifth and Fourteenth Amendments.

69. In *Gonzalez v. Raich*, when federal law enforcement confiscated and destroyed medicinal marijuana plants, Raich presented each of the following arguments except:

- A. the plants were cultivated and possessed within state borders.
- B. the plants did not enter the stream of commerce.
- C. there are no enforcement difficulties in distinguishing between marijuana cultivated locally and marijuana grown elsewhere.
- D. the plants were for personal use, not for commercial use.

70. Kathy was returning to the United States after a vacation when the Customs Service confiscated some goods she had purchased abroad and brought back with her. The determination of whether the government acted properly and the type of hearing that she must be provided is an analysis of:

- A. procedural due process.
- B. substantial due process.
- C. the Equal Protection Clause.
- D. the Commerce Clause.

Essay Questions

71. Explain the origin and justification of judicial review.

72. The U.S. Supreme Court has established three standards of review used when applying constitutional law. Name these three standards and discuss each in terms of how it relates to state objectives.

73. The state of Colorado has enacted a statute limiting the size of freight trains entering the state to no more than 80 cars other than the locomotive(s) and the caboose. Assume that there is no federal law mandating a maximum limit of cars, and further assume that freight trains frequently consist of over 100 cars. Colorado has justified the law by saying that shorter trains are safer, but the state's evidence is not persuasive. Colorado also claims that very long trains inconvenience drivers and can cause major traffic jams. Trains longer than 80 cars must stop and reduce their size, employing additional locomotives to transport the cars through the state to the border, where they may again recouple and proceed. Discuss the validity or invalidity of this law.

74. Congress has provided the state of Ohio \$50 million for highway construction and renovation. As a condition, Ohio must award 30 percent of the contracts to firms that are owned by women or minorities. Ohio sues, claiming that such a condition is an intrusion on Ohio's right to seek competitive bids and make the best use of the money. Ohio also asserts that this condition will make it difficult to seek the best-quality companies and that how it allocates the money is purely a state function as long as it uses the money for the purposes intended. How will the court likely decide this dispute?

75. Name the four-part test established by the court in *Central Hudson Gas v. Public Service Commission* that subjects government restrictions on commercial speech to a form of intermediate-level scrutiny.

76. In what manner was a citizen's right to privacy initially established? Explain.

77. Mike has moved into a privately owned apartment complex. The stated rules of the complex prohibit unmarried men and women from living together in the same apartment. When Mike's girlfriend Kathy moves into his apartment, he is served with eviction papers. Mike claims that the apartment complex is violating his constitutional rights since it allows only married people to live together. Is he correct?

78. Explain how the Fifth Amendment right against self-incrimination applies to corporations and the individuals working for corporations.

79. Explain the structure of the U.S. government and how the checks and balances system operates to maintain equalization of power between the different parts of the government.

80. Kathy runs a business from her home. Not only is she the sole employee, but she never leaves her home, performing all business functions in her pajamas in front of her computer. Her business consists of buying and then reselling various goods over the Internet. She is very successful, with thousands of customers. In terms of regulation of commerce, how would you characterize her business?

Chapter 02 Business and the Constitution Answer Key

Fill in the Blank Questions

1. The legal authority that a court must have to hear a case is called _____.

jurisdiction

AACSB: Analytic

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-05 Recognize the role of judicial review in interpreting the Constitution.

Topic: Article III-Judicial Powers

2. The right of a state to protect its citizenry is called its _____.

police powers

AACSB: Analytic

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-01 Explain the federal system in the context of the U.S. Constitution.

Topic: Structure and Nature of the Constitution: Federal Powers

3. The government's system of checks and balances is called the _____.

separation of powers

AACSB: Analytic

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-04 Identify the powers of Congress that impact individuals and businesses.

4. Powers granted in the Constitution to the three branches of the federal government are known as _____ powers.

enumerated

AACSB: Analytic

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-04 Identify the powers of Congress that impact individuals and businesses.

Topic: Overview of Federal Powers

5. Veto power is a power granted to the _____ branch of government.

executive

AACSB: Analytic

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-04 Identify the powers of Congress that impact individuals and businesses.

Topic: Overview of Federal Powers

6. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act is commonly called the _____ Act.

U.S.A Patriot

AACSB: Analytic

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-12 Explain the right of privacy that has been recognized by the U.S. Supreme Court and Congress.

Topic: Federal Statutes

7. The case of *Marbury v. Madison* established the federal courts' power of _____.

judicial review

AACSB: Analytic

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-05 Recognize the role of judicial review in interpreting the Constitution.

Topic: Article III-Judicial Powers

8. Government acts that affect semi-suspect or quasi-suspect classifications require that the court apply _____ scrutiny to determine the act's validity.

intermediate-level

AACSB: Analytic

AACSB: Reflective Thinking

Blooms: Apply

Difficulty: 3 Hard

Learning Objective: 02-06 Recognize the three standards of constitutional review and their application.

Topic: Applying the Constitution: Standards of Review

9. Commerce that is wholly contained within a state and has no effect on other states or foreign countries is called _____ commerce.

intrastate

AACSB: Analytic

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-07 Understand the various applications and limits of congressional power under the Commerce Clause.

Topic: Commerce Powers

10. A question put to voters during a state election to decide a particular issue may be called a ballot initiative, a referendum, or a _____.

ballot proposition

AACSB: Analytic

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-07 Understand the various applications and limits of congressional power under the Commerce Clause.

Topic: Commerce Powers

True / False Questions

11. Amendments to the Constitution function as a protection of the citizenry from unlawful or repressive acts of the government.

TRUE

Amendments to the Constitution protect citizens from government tyranny.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-03 List the major provisions of the first three articles of the Constitution and explain the underlying assumptions of coequal branches of government.

Topic: Amendments

12. In *U.S. v. Lopez*, the Supreme Court agreed with Congress, saying that gun possession in schools made it more difficult for a student to obtain an education and was therefore an interstate commerce issue.

FALSE

The Court rejected this argument, saying that extending such power to noncommercial activities would grant virtually unlimited power to Congress and was contrary to the express limitations imposed by the Constitution.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-07 Understand the various applications and limits of congressional power under the Commerce Clause.

Topic: Commerce Powers

13. Congress's broadest powers are derived from the Commerce Clause.

TRUE

Courts are highly deferential to congressional action in areas affecting interstate commerce.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-07 Understand the various applications and limits of congressional power under the Commerce Clause.

Topic: Commerce Powers

14. According to the decision in *Brown v. Entertainment Merchants Association*, the court applied an intermediate-level scrutiny standard because the state's action was related to a fundamental right—freedom of speech.

FALSE

The court applied a strict scrutiny standard.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-06 Recognize the three standards of constitutional review and their application.

Topic: Applying the Constitution: Standards of Review

15. Fifth Amendment protections against self-incrimination apply to corporate entities.

FALSE

Fifth Amendment self-incrimination protections apply to individuals but not corporate entities.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-10 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.

Topic: Constitutional Protections

16. Punitive damages are intended to punish wrongdoers in civil actions.

TRUE

Punitive damages punish wrongdoers and deter unlawful action in the future by creating an additional penalty.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-11 Identify limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.

Topic: Due Process Protections

17. Most privacy rights afforded in the Constitution do not extend to the workplace.

TRUE

Most privacy rights afforded in the Constitution do not extend to the workplace; however, Congress and the states are currently seeking to clarify and define workplace privacy rights.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-12 Explain the right of privacy that has been recognized by the U.S. Supreme Court and Congress.

Topic: Workplace Privacy

18. Strict scrutiny requires that a state prove that it is acting to promote an important government objective and that the proposed act is substantially related to the government's objective.

FALSE

Strict scrutiny requires that a state prove that it is acting to promote a compelling government objective and that the proposed act is necessary to achieve the government's objective.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Apply

Difficulty: 3 Hard

Learning Objective: 02-06 Recognize the three standards of constitutional review and their application.

Topic: Applying the Constitution: Standards of Review

19. Growing marijuana for purely personal medical use while possessing a valid prescription in a state that has approved medical use of marijuana has been found to be interstate commerce.

TRUE

The court reasoned that Congress could rationally believe that noncommercially grown marijuana could be drawn into interstate commerce, allowing congressional regulation.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-07 Understand the various applications and limits of congressional power under the Commerce Clause.

Topic: Commerce Powers

20. The inherent right of the federal government to protect its citizenry's health, safety, and welfare is referred to as the federal government's police powers.

FALSE

Police powers are a state's power to protect its citizenry's health, safety, and general welfare. There are no inherent federal police powers.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-01 Explain the federal system in the context of the U.S. Constitution.

Topic: Structure and Nature of the Constitution: Federal Powers

21. States may never regulate commerce that crosses state borders as this is an exclusive federal power.

FALSE

States may regulate commerce across state borders if doing so is nondiscriminatory regarding other states and is a legitimate effort to regulate health, safety, and welfare.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-08 Describe Constitutional restrictions on state regulation of commerce in the business environment.

Topic: Constitutional Restrictions on State Regulation of Commerce

22. Federal legislation or regulation must be authorized by a specific enumerated power in the Constitution.

TRUE

Congress must be authorized by the Constitution in order to enact laws.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-04 Identify the powers of Congress that impact individuals and businesses.

Topic: Overview of Federal Powers

23. In *U.S. v. Morrison*, the Supreme Court found that commerce power was a legitimate justification to validate the right of women to sue their attackers for monetary damages under the Violence Against Women Act.

FALSE

The Court found such an application of the commerce power to be too broad and invalidated the damages portion of the law.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Analyze

Difficulty: 3 Hard

Learning Objective: 02-07 Understand the various applications and limits of congressional power under the Commerce Clause.

Topic: Commerce Powers

24. Congress may tax activities and property that it might not be authorized to regulate under any of the enumerated regulated powers.

TRUE

The power to tax is an independent source of federal authority, not dependent on an enumerated power.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-09 Explain how the tax and spend powers impact business.

Topic: Tax and Spend Power

25. Congress may place limits on the use of federal money by states as long as the limit does not affect or infringe on a citizen's constitutional rights.

TRUE

The courts have found that Congress may place restrictions on federal money unless a constitutional right is violated.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Analyze

Difficulty: 3 Hard

Learning Objective: 02-09 Explain how the tax and spend powers impact business.

Topic: Necessary and Proper Clause

26. Both commercial speech and corporate political speech are subject to intermediate scrutiny.

FALSE

Commercial speech is subject to intermediate scrutiny, while corporate political speech is subject to strict scrutiny.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-10 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.

Topic: Constitutional Protections

27. The standard for issuance of a warrant for a search in a noncriminal administrative violation investigation is lower than that for investigating a criminal offense.

TRUE

Administrative warrants for noncriminal enforcement of regulations require a lower standard than do warrants for criminal investigations.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-10 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.

Topic: Other Amendments

28. States were not subject to Bill of Rights restrictions until after the Civil War.

TRUE

The Fourteenth Amendment extending Bill of Rights restrictions was not passed until after the Civil War.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Analyze

Difficulty: 3 Hard

Learning Objective: 02-11 Identify limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.

Topic: Constitutional Protections

Topic: Fourteenth Amendment

29. Substantive due process requires that a state statute must be published for public inspection and be clear and specific.

TRUE

Since statutes affect citizens' rights, substantive due process requires publication and clarity.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-11 Identify limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.

Topic: Due Process Protections

Topic: Fourteenth Amendment

30. Enumerated powers are those rights and powers granted in the Constitution to the individual states.

FALSE

Enumerated powers are powers granted to the federal government under the Constitution.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-04 Identify the powers of Congress that impact individuals and businesses.

Topic: Overview of Federal Powers

31. Placing conditions on the use of federal money given to states is most often accomplished by interpreting the Commerce Clause.

FALSE

Placing conditions on the use of federal money given to states is most often accomplished by interpreting the Necessary and Proper Clause.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-09 Explain how the tax and spend powers impact business.

Topic: Tax and Spend Power

32. The right to privacy is a specifically named right established in the Bill of Rights.

FALSE

Privacy is not explicitly mentioned in the Constitution.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-12 Explain the right of privacy that has been recognized by the U.S. Supreme Court and Congress.

Topic: Privacy

33. Obscenity regulation of commercial speech is subject to the same scrutiny as any other government regulation of commercial speech.

TRUE

All commercial speech is evaluated under the same scrutiny standards.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-10 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.

Topic: First Amendment

34. Professor Jones accuses Kim, one of his students, of cheating on an exam. Professor Jones arranges a hearing to be held in front of the university's Academic Honesty Board, and Kim is informed that she must prove her innocence before Professor Jones must prove her guilt. Kim is being denied her substantive due process rights.

FALSE

The right to have a fair hearing and to be innocent until proved guilty is a procedural due process issue.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-11 Identify limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.

Topic: Constitutional Protections

Topic: Fourteenth Amendment

35. Typically, political speech by corporations is fully protected by the First Amendment.

TRUE

The form and content may be considered, but, typically, political speech by corporations is fully protected by the First Amendment.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-10 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.

Topic: First Amendment

36. Commercial speech has always been afforded protection under the First Amendment.

FALSE

Traditionally, advertising (commercial speech) had little or no First Amendment protection, but the Supreme Court has gradually increased protections related to advertising (commercial speech).

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-10 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.

Topic: First Amendment

37. *Marbury v. Madison*, decided in 1803, is no longer considered valid precedent and has been preempted by statute.

FALSE

Marbury v. Madison has been defined by new authority but is still considered valid precedent.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-05 Recognize the role of judicial review in interpreting the Constitution.

Topic: Article III-Judicial Powers

38. The First Amendment prohibits individuals from encroaching on or prohibiting another person's freedom of speech.

FALSE

The First Amendment prohibits Congress from encroaching on or prohibiting another person's freedom of speech.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-10 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.

Topic: First Amendment

39. Under the Constitution, Congress has the enumerated power to appoint federal officers and judges.

FALSE

The executive branch is granted the power to appoint federal officers and judges subject to confirmation by the Senate.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-04 Identify the powers of Congress that impact individuals and businesses.

Topic: Overview of Federal Powers

40. Under the federal system used by the United States, the federal government has only limited power to regulate individuals and businesses.

TRUE

States are granted more power than the federal government to regulate individuals and businesses.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-01 Explain the federal system in the context of the U.S. Constitution.

Topic: Structure and Nature of the Constitution: Federal Powers

Multiple Choice Questions

41. The preamble of the Constitution:
- A. sets out the structure of the government.
 - B. lays out the procedures by which the government will operate.
 - C. establishes boundaries of jurisdiction.
 - D.** states the broad objectives of the Constitution.

The preamble begins the Constitution by stating the Constitution's broad objectives of justice, liberty, tranquility, common defense, and so on.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-03 List the major provisions of the first three articles of the Constitution and explain the underlying assumptions of coequal branches of government.

Topic: Structure of the Constitution

42. Which of the following is not a coequal branch of the U.S. government as specified in the Constitution?

- A. the legislative branch
- B. the executive branch
- C. the administrative branch
- D. the judicial branch

There is not a branch of government called the administrative branch.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-03 List the major provisions of the first three articles of the Constitution and explain the underlying assumptions of coequal branches of government.

Topic: Structure of the Constitution

43. Judicial review is the:

- A. power or right of a court to hear a case.
- B. power of a state or federal court to declare a statute unconstitutional.
- C. power of an appellate court to reverse a decision made in a lower court.
- D.** power of a federal court to declare a state or federal statute invalid if inconsistent with the Constitution.

Judicial review, established in the case of *Marbury v. Madison*, gave federal courts the right to declare a state or federal statute invalid if inconsistent with the Constitution.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-05 Recognize the role of judicial review in interpreting the Constitution.

Topic: Article III-Judicial Powers

44. The power to impeach and remove is a check and balance power:

- A. of the executive branch.
- B.** of the legislative branch.
- C. of the judicial branch.
- D. that is shared by all three government branches.

Impeachment and removal is a legislative check and balance over executive and federal judiciary general powers.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Evaluate

Difficulty: 3 Hard

45. Assume that the state of Georgia has just raised the fee for registration of motor vehicles \$5 per year. If challenged, this new statute would be reviewed using:

- A. rational basis scrutiny.
- B. intermediate scrutiny.
- C. strict scrutiny.
- D. no particular form of scrutiny (none is required in this situation).

Social and economic state matters are generally reviewed using rational basis scrutiny.

AACSB: Analytic

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-05 Recognize the role of judicial review in interpreting the Constitution.

Topic: Applying the Constitution: Standards of Review

46. The primary authorization of constitutional powers is given to Congress under:

- A. the Preamble to the Constitution.
- B. Article I of the Constitution.
- C. Article VI of the Constitution.
- D. the Bill of Rights.

The primary authorization of constitutional powers is given to Congress under Article I, with enumerated powers listed in 18 clauses.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-04 Identify the powers of Congress that impact individuals and businesses.

Topic: Overview of Federal Powers

47. The power to carry out foreign policy is an enumerated power granted to:

- A. the executive branch.
- B. the legislative branch.
- C. the judicial branch.
- D. all three branches.

The president enters into treaties, subject to Senate approval, and carries out foreign policy.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-04 Identify the powers of Congress that impact individuals and businesses.

Topic: Article II-Executive Powers

48. The state of Kansas has enacted a new law requiring all commercial trucks driving on Kansas roads to have special mud flaps installed. These mud flaps have been proved to make driving in the rain significantly safer as they reduce mist created by trucks in the rain, although data regarding accidents and injuries have not yet been determined. Any truck entering Kansas must have these flaps installed or will be subject to a significant fine and delay. The cost for purchase and installation of these flaps is \$1,000 per truck. In short, trucks must have these flaps or go around the state. This Kansas law:

- A. is valid because it applies only to Kansas roads and such a law is entirely intrastate.
- B. is valid because Kansas' right to protect its citizens under its police powers will override any outside challenges to this law.
- C. is invalid because this law is intended to regulate interstate commerce, an enumerated federal power.
- D. is invalid because, although on its face it's an intrastate law, this statute will have a significant economic effect on interstate commerce, causing an undue burden.

Intrastate laws that place a significant burden on interstate commerce may be regulated by Congress and are subject to preemption.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-07 Understand the various applications and limits of congressional power under the Commerce Clause.

Topic: Application of Commerce Powers

49. In *Gonzalez v. Raich*, patients who were prescribed medical marijuana sought to prevent enforcement of the federal Controlled Substances Act (CSA) in medical marijuana cases. They claimed enforcement violated the Commerce Clause because the medical marijuana was cultivated and possessed within state borders and did not enter the stream of commerce. The U.S. Supreme Court decided:

- A. the government had a rational basis for believing that locally cultivated marijuana would end up in interstate commerce.
- B. the intrastate, noncommercial cultivation and possession of marijuana was not intended to enter interstate commerce.
- C. California's medical marijuana law was unconstitutional.
- D. enforcement unreasonably burdened interstate commerce.

The court held that the government provided a rational basis in claiming that an exemption to enforcement would undermine the orderly enforcement of the entire regulatory scheme, and enforcement of the CSA did not violate the Commerce Clause.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Apply

Difficulty: 3 Hard

Learning Objective: 02-08 Describe Constitutional restrictions on state regulation of commerce in the business environment.

Topic: Case 2.3: Gonzalez v. Raich

50. In *Pagan v. Fruchey and Village of Glendale*, Pagan sued, questioning a village ordinance prohibiting the parking of a car on a public street for the purpose of displaying it for sale. Pagan won because:

- A. Glendale's law violated Pagan's commercial speech rights, which are absolute.
- B. Glendale was unable to prove that Pagan's speech was unlawful.
- C. Glendale's ordinance was broader than necessary to accomplish the village's government interest.
- D. Glendale did not prove that the ordinance directly advanced the village's claimed government interest because Glendale based its argument on opinion rather than data.

The presentation by the village failed to meet its burden of showing that the ordinance actually advanced its claimed interest in public safety.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Analyze

Difficulty: 3 Hard

Learning Objective: 02-10 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.

Topic: Constitutional Protections

51. In the cases of *Heart of Atlanta Motel v. U.S.* and *Katzenbach v. McClung*, the Supreme Court found illegal discrimination under the Civil Rights Act of 1964 by applying:

- A. the Commerce Clause.
- B. the Supremacy Clause.
- C. the Necessary and Proper Clause.
- D. the Equal Protection Clause.

Since the motel was limiting lodging opportunities for black travelers and the restaurant in *Katzenbach* purchased food and supplies from out of state, interstate commerce was found and Congress was authorized to act.

AACSB: Diversity

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-07 Understand the various applications and limits of congressional power under the Commerce Clause.

Topic: Commerce Powers

52. When Bad Frog Brewery Inc., placed a label on its product showing a frog with unwebbed fingers with its middle finger extended, New York State sued to prohibit the use of the label, claiming it to be obscene and claiming an interest in protecting the state's children. The court found:
- A. for Bad Frog because children cannot purchase beer, so any exposure would be incidental.
 - B.** for Bad Frog because the label did not concern an unlawful activity and the state did not prove its interest in protecting children from vulgarity.
 - C. for New York State because once the product was purchased, the labels would be exposed in refrigerators or in rooms while children were present.
 - D. for New York State because it proved a substantial effort to advance a valid state interest amounting to more than "not merely the removal of a few grains of sand from the beach of vulgarity."

The court did not find a substantial effort to advance a valid state interest, so the *Central Hudson* test was not met.

AACSB: Analytic

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-10 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.

Topic: Constitutional Protections

53. If Alabama passes a statute specifically permitting high school girls to try out for and play on varsity high school football teams if qualified, that statute would be reviewed using:

- A. rational basis scrutiny.
- B.** intermediate scrutiny.
- C. strict scrutiny.
- D. no particular form of scrutiny (none is required in this situation).

Maintaining sexual equality is an action important to a government objective and would be reviewed using intermediate scrutiny.

AACSB: Analytic

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-05 Recognize the role of judicial review in interpreting the Constitution.

Topic: Applying the Constitution: Standards of Review

54. Treaties:

- A. may be entered into by the president without oversight or approval.
- B. are entered into by the president subject to House approval.
- C.** are entered into by the president subject to Senate approval.
- D. are entered into by the president subject to joint House and Senate approval.

The president negotiates and signs treaties subject to approval by the Senate only.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

55. The power of preemption is derived from:

- A. the power of judicial review.
- B. the Commerce Clause.
- C. the Necessary and Proper Clause.
- D. the Supremacy Clause.

The Supremacy Clause makes constitutional and federal law supreme over state law, creating the power of preemption.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Analyze

Difficulty: 3 Hard

Learning Objective: 02-05 Recognize the role of judicial review in interpreting the Constitution.

Topic: The Supremacy Clause and Preemption

56. In *Cipollone v. Liggett Group Inc., et al.*, Cipollone sued based on state laws regulating advertising and promotional activities in the tobacco industry.
- A. Cipollone won because the state laws were specific and were violated by the defendant.
 - B. Cipollone won because although there were federal laws regulating promotion and advertising activities regarding tobacco products, they specifically authorized supplemental state laws negating preemption.
 - C. Cipollone lost because the federal and state laws conflicted, negating both, so the court had no basis to make its decision.
 - D. Cipollone lost because he relied on state law, which was preempted by federal law.

When federal law is passed and it clearly intends to preempt state law in a particular area, the state law will be overruled and null.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Apply

Difficulty: 3 Hard

Learning Objective: 02-07 Understand the various applications and limits of congressional power under the Commerce Clause.

Topic: Commerce Powers

57. The Equal Protection Clause is contained in the:

- A. First Amendment.
- B. Fifth Amendment.
- C. Sixth Amendment.
- D. Fourteenth Amendment.

The Equal Protection Clause is contained in the Fourteenth Amendment.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-11 Identify limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.

Topic: Constitutional Protections

58. When a state action is found to be based on a semi-suspect (or quasi-suspect) classification, the courts will employ:

- A. rational basis scrutiny.
- B.** intermediate scrutiny.
- C. strict scrutiny.
- D. no particular form of scrutiny (none is required in this situation).

When dealing with a semi-suspect (or quasi-suspect) classification such as gender or illegitimacy, the courts will employ intermediate scrutiny.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-11 Identify limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.

Topic: Constitutional Protections

59. Protections under the Bill of Rights were extended to include restrictions and actions by state governments under the:

- A. Twelfth Amendment.
- B. Thirteenth Amendment.
- C. Fourteenth Amendment.
- D. Fifteenth Amendment.

Passed after the Civil War, the Fourteenth Amendment extended Bill of Rights protections to include state actions.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-11 Identify limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.

Topic: Due Process Protections

60. One criticism of the U.S.A Patriot Act is that:

- A. adequate safeguards are not in place to prevent the government from using the act to invade citizen's privacy.
- B. too much due process is being given to alleged terrorists under the act's provisions.
- C. penalties for those found guilty under the act are not harsh enough.
- D. penalties for those found guilty under the act are too harsh and constitute cruel and unusual punishment.

Although there is an infrastructure regulating government searches, many believe it to be inadequate and not as protective as needed.

AACSB: Analytic

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-12 Explain the right of privacy that has been recognized by the U.S. Supreme Court and Congress.

Topic: Federal Statutes

61. Assume that Iowa has just passed a statute requiring all noncitizens to sit in the back of public buses. That statute would be reviewed using:

- A. rational basis scrutiny.
- B. intermediate scrutiny.
- C. strict scrutiny.
- D. no particular form of scrutiny (none is required in this situation).

This law affects a fundamental right and is based on a suspect classification, so it will be reviewed using strict scrutiny.

AACSB: Analytic

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-05 Recognize the role of judicial review in interpreting the Constitution.

Topic: Applying the Constitution: Standards of Review

62. Which of the following is not a procedural due process issue?

- A. Police must obtain a search warrant to enter and search a citizen's home for drugs.
- B. The state of Massachusetts has raised the drinking age to 25 years old.
- C. The state of Oklahoma passes a statute prohibiting citizens from presenting evidence in drunk-driving trials.
- D. The state of California passes a statute allowing relatives of victims of violent crimes to sit on the jury in the general trial court.

A change in the drinking age affects a personal right and is a substantive issue.

AACSB: Analytic

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Analyze

Difficulty: 3 Hard

Learning Objective: 02-11 Identify limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.

Topic: Fourteenth Amendment

63. After more than 100 years, the Chicago Cubs have won baseball's World Series. They want a parade down Michigan Street at 10 a.m. on Friday, but the city tells them that the parade will be down Rush Street at noon on Saturday. The city claims that Rush Street on Saturday will provide more safety and convenience for the city's citizens. The Cubs claim a violation of their freedom of speech. If a lawsuit ensues, what standard of review will the court use to resolve the issue?
- A. rational basis scrutiny
 - B. intermediate-level scrutiny**
 - C. strict scrutiny
 - D. no particular form of scrutiny (none is required in this situation)

Courts will uphold government actions as constitutional so long as the government can prove that its action advanced an important government objective and that the action is substantially related to the government's objective.

AACSB: Analytic

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-05 Recognize the role of judicial review in interpreting the Constitution.

Topic: Applying the Constitution: Standards of Review

64. In *State Farm Mutual v. Campbell*, the court laid out a three-part analysis for determining the constitutionality of a statute regulating punitive damages. Which of the following is not one of the three criteria specified by the court?

- A. the degree of reprehensibility of the defendant's misconduct
- B. the disparity between the actual or potential harm suffered by the plaintiff and the punitive-damage award
- C. whether the harm resulted from a criminal act or a civil act
- D. the difference between the punitive damages awarded and the civil penalties authorized or imposed in similar or comparable cases

Punitive damages are money damages awarded only in civil cases.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-11 Identify limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.

Topic: Due Process Protections

65. Generally, constitutional protections do not apply to:

- A. acts of the federal government.
- B. acts of state governments.
- C. acts of administrative agencies.
- D. acts of privately owned businesses.

Constitutional protections apply to government but not private acts.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-10 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.

Learning Objective: 02-11 Identify limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.

Topic: Constitutional Protections

Topic: Due Process Protections

66. Protections for the citizenry from unlawful or reprehensive acts by the government are contained primarily in:

- A. the Preamble to the Constitution.
- B. Article I of the Constitution.
- C. Article V of the Constitution.
- D. the Bill of Rights.

The Bill of Rights was passed to add protections for the citizenry soon after the Constitution was adopted.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-10 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.

Topic: Constitutional Protections

67. Mike is walking down the street minding his own business when he is stopped by a police officer. Although no crimes have been reported in the area and Mike has done nothing suspicious, the police officer doesn't like the looks of Mike so he conducts a pat-down search and finds a tiny bag of marijuana. Under these circumstances, this is:

- A. an illegal search under Fourth Amendment protections.
- B. an illegal search under Fifth Amendment protections.
- C. a legal search because illegal drugs were found, justifying the police officer's actions.
- D. a legal search because police are given broad discretion to use their experience to fight crime and obviously the police officer was right in this case.

Police, under the Fourth Amendment, must have just cause or a warrant to conduct searches.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-10 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.

Topic: Constitutional Protections

68. The Due Process Clause is found in:

- A. the Fifth Amendment only.
- B. the Fourteenth Amendment only.
- C. neither the Fifth nor Fourteenth Amendment.
- D. both the Fifth and Fourteenth Amendments.

Both the Fifth and Fourteenth Amendments contain a Due Process Clause.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-11 Identify limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.

Topic: Due Process Protections

69. In *Gonzalez v. Raich*, when federal law enforcement confiscated and destroyed medicinal marijuana plants, Raich presented each of the following arguments except:

- A. the plants were cultivated and possessed within state borders.
- B. the plants did not enter the stream of commerce.
- C. there are no enforcement difficulties in distinguishing between marijuana cultivated locally and marijuana grown elsewhere.
- D. the plants were for personal use, not for commercial use.

Enforcement issues such as distinguishing local marijuana from plants grown elsewhere and concerns for diversion into illicit channels were major arguments for enforcing the Controlled Substances Act.

AACSB: Analytic

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-08 Describe Constitutional restrictions on state regulation of commerce in the business environment.

Topic: Constitutional Restrictions on State Regulation of Commerce

70. Kathy was returning to the United States after a vacation when the Customs Service confiscated some goods she had purchased abroad and brought back with her. The determination of whether the government acted properly and the type of hearing that she must be provided is an analysis of:

- A. procedural due process.
- B. substantial due process.
- C. the Equal Protection Clause.
- D. the Commerce Clause.

What the government must do to seize private property and the type of hearing required are procedural due process issues.

AACSB: Reflective Thinking

Accessibility: Keyboard Navigation

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-11 Identify limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.

Topic: Fourteenth Amendment

Essay Questions

71. Explain the origin and justification of judicial review.

Judicial review is the concept that the federal courts have the power to declare federal or state statutes unconstitutional, and therefore invalid, if they are inconsistent with the U.S. Constitution. This power is not specifically mentioned or granted in the Constitution but was first recognized in the 1803 case of *Marbury v. Madison*. Judicial review was not considered in any preconstitutional debates nor mentioned in the *Federal Register*. Nevertheless, it remains valid precedent to this day.

AACSB: Reflective Thinking

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-05 Recognize the role of judicial review in interpreting the Constitution.

Topic: Article III-Judicial Powers

72. The U.S. Supreme Court has established three standards of review used when applying constitutional law. Name these three standards and discuss each in terms of how it relates to state objectives.

When a state action or statute advances a legitimate state objective such as an economic or social issue that is solely intrastate, the state need only prove a rational basis for the law. When an important state objective is at issue and the state can prove that its law or action is substantially related to that objective, the law or action is reviewed using intermediate-level scrutiny. When a state action or law relates to a fundamental right or a suspect classification, the state action or law is subject to strict scrutiny and the state must prove a compelling state interest to be successful.

AACSB: Reflective Thinking

Blooms: Evaluate

Difficulty: 3 Hard

73. The state of Colorado has enacted a statute limiting the size of freight trains entering the state to no more than 80 cars other than the locomotive(s) and the caboose. Assume that there is no federal law mandating a maximum limit of cars, and further assume that freight trains frequently consist of over 100 cars. Colorado has justified the law by saying that shorter trains are safer, but the state's evidence is not persuasive. Colorado also claims that very long trains inconvenience drivers and can cause major traffic jams. Trains longer than 80 cars must stop and reduce their size, employing additional locomotives to transport the cars through the state to the border, where they may again recouple and proceed. Discuss the validity or invalidity of this law.

Colorado is asserting its police powers, claiming to justify the law as protecting its citizens. Since the law applies only within the state's borders, it is also being justified as a purely intrastate law. In reality, the law creates a significant economic burden on interstate commerce. The time delay in coupling and uncoupling cars, as well as the time spent procuring additional locomotives, would make shipping by train much less efficient, and the additional costs would likely have a pass-through effect on customers of the shipped cargo. Going around the state is likely a very poor option. Congress has the power to regulate interstate freight train shipping and can preempt this intrastate Colorado law because of the significant and undue burden it creates on interstate commerce, making it invalid.

AACSB: Analytic

AACSB: Reflective Thinking

Blooms: Evaluate

Difficulty: 3 Hard

Learning Objective: 02-07 Understand the various applications and limits of congressional power under the Commerce Clause.

Topic: Application of Commerce Powers

74. Congress has provided the state of Ohio \$50 million for highway construction and renovation. As a condition, Ohio must award 30 percent of the contracts to firms that are owned by women or minorities. Ohio sues, claiming that such a condition is an intrusion on Ohio's right to seek competitive bids and make the best use of the money. Ohio also asserts that this condition will make it difficult to seek the best-quality companies and that how it allocates the money is purely a state function as long as it uses the money for the purposes intended. How will the court likely decide this dispute?

Congress's taxing and spending powers allow Congress to place conditions and restrictions on how federal money may be spent by the states. Asserting the Necessary and Proper Clause, Congress may require that money be used to achieve some public policy objective. The advocacy and support of women and minorities is an established public policy objective, so the courts will likely support Congress and uphold the conditions. Ohio's arguments, while logical and reasonable, will not be persuasive enough to overcome the public policy Congress is targeting. Only when individual constitutional rights are violated will the conditions be invalidated, and that is not evident here.

AACSB: Diversity

AACSB: Reflective Thinking

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-09 Explain how the tax and spend powers impact business.

Topic: Tax and Spend Power

75. Name the four-part test established by the court in *Central Hudson Gas v. Public Service Commission* that subjects government restrictions on commercial speech to a form of intermediate-level scrutiny.

The four part test requires that (1) the commercial speech must concern a lawful activity and be truthful; (2) a substantial government interest in regulating the speech must exist; (3) the government must prove that the restriction directly advances the claimed government interest; and (4) the government's restriction must not be more extensive than is necessary to achieve the government's interest.

AACSB: Analytic

AACSB: Reflective Thinking

Blooms: Apply

Difficulty: 3 Hard

Learning Objective: 02-10 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.

Topic: First Amendment

76. In what manner was a citizen's right to privacy initially established? Explain.

Not specifically cited in the Constitution, a citizen's right to privacy was first formally recognized in the case of *Griswold v. Connecticut* when the court used language implied from the First, Third, Fourth, Fifth, and Ninth Amendments to establish a protected zone of privacy. The case resulted from the arrest of counselors who provided contraceptive advice to clients. The arrests were invalidated by the courts, which cited the rights of citizens to obtain information.

AACSB: Reflective Thinking

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-12 Explain the right of privacy that has been recognized by the U.S. Supreme Court and Congress.

Topic: Privacy

77. Mike has moved into a privately owned apartment complex. The stated rules of the complex prohibit unmarried men and women from living together in the same apartment. When Mike's girlfriend Kathy moves into his apartment, he is served with eviction papers. Mike claims that the apartment complex is violating his constitutional rights since it allows only married people to live together. Is he correct?

No, Mike is incorrect. Constitutional rights may not be restricted by the federal government under the Constitution or restricted by states under the Fourteenth Amendment. This apartment complex is privately owned, so most constitutional protections will not apply.

AACSB: Reflective Thinking

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-10 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.

Learning Objective: 02-11 Identify limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.

Topic: Fourteenth Amendment

78. Explain how the Fifth Amendment right against self-incrimination applies to corporations and the individuals working for corporations.

It is clear that the right against self-incrimination does not apply to corporate entities when the government is seeking to obtain certain business records. Individual corporate officers and employees of the corporation are, however, entitled to exercise their right against self-incrimination when confronted with a criminal investigation.

AACSB: Analytic

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-10 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.

Topic: Other Amendments

79. Explain the structure of the U.S. government and how the checks and balances system operates to maintain equalization of power between the different parts of the government.

The U.S. government consists of three independent parts. The executive branch (the president) enforces federal law, and the president enters into treaties, appoints judges and federal officials, and functions as the commander in chief of the armed forces. The president may exercise veto power over acts of the legislature. The legislature (Congress) enacts federal law and maintains impeachment and removal power over the president and judiciary. Should the judiciary establish a common law precedent, Congress may pass a statute that would preempt the common law decision. The judiciary (the federal courts) interprets the law and through judicial review may declare a federal or state law unconstitutional and thus invalid.

AACSB: Analytic

Blooms: Remember

Difficulty: 1 Easy

Learning Objective: 02-04 Identify the powers of Congress that impact individuals and businesses.

Learning Objective: 02-05 Recognize the role of judicial review in interpreting the Constitution.

Topic: Overview of Federal Powers

80. Kathy runs a business from her home. Not only is she the sole employee, but she never leaves her home, performing all business functions in her pajamas in front of her computer. Her business consists of buying and then reselling various goods over the Internet. She is very successful, with thousands of customers. In terms of regulation of commerce, how would you characterize her business?

At first look she would appear to be intrastate due to her lack of mobility and single-site setting, but because the Internet reaches the entire world, she would be classified as dealing in interstate commerce and most likely in foreign commerce and would, therefore, be subject to federal regulation.

AACSB: Analytic

AACSB: Reflective Thinking

Blooms: Understand

Difficulty: 2 Medium

Learning Objective: 02-07 Understand the various applications and limits of congressional power under the Commerce Clause.

Topic: Commerce Powers