

Chapter 02 - Business and the Constitution

**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 states to protect its citizenry is called its \_\_\_\_\_.  
\_\_\_\_\_
3. The government's system of checks and balances is called the \_\_\_\_\_.  
\_\_\_\_\_
4. Powers granted to the three branches of the federal government in the Constitution 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 court's 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 which is wholly contained within a state and which 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

14. According to the decision in *Cavel International, Inc. v. Madigan*, the clearest case of a state law that violates the commerce clause is a law that discriminates in favor of foreign or international firms.

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 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 upon 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 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 she 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 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 United States 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:

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

- A. executive branch
- B. legislative branch
- C. judicial branch
- D. it is a power shared by all three governmental branches

45. Assume that the state of Georgia has just raised the fee for registration of motor vehicles \$5.00 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 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 may carry out foreign policy

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 proven to make driving in the rain significantly safer due to reduced mist created by trucks driving in the rain although data regarding accidents and injuries has 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 only applies to Kansas roads and such a law is entirely intrastate
- B. is valid because Kansas's 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 *Cavel International, Inc. v. Madigan*, Cavel, the only exporter of horsemeat to Europe for human consumption fought an Illinois state law prohibiting the slaughter of horses if the primary reason for slaughter was to produce horsemeat for sale. The court decided:

- A. Illinois had a legitimate interest in prolonging the lives of certain animals and there was only a minimal effect on interstate or foreign commerce
- B. Illinois could enforce the law intrastate but if the meat was exported the law interfered with foreign commerce and was therefore invalid
- C. Illinois could enforce the law if it extended to all animals but they could not protect some and ignore others
- D. Illinois could not enforce the law because Cavel was the sole company in the state exporting meat and the law targeted them unfairly



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 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 governmental interest
- D. Glendale did not prove that the ordinance directly advanced their claimed governmental interest because they based their 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 their 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 labels 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 purchased, the labels would be exposed in refrigerators or drunk in rooms while children were present
- D. for New York State because they 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 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 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 (a/k/a quasi-suspect) classification the courts will employ:

- A. rational basis scrutiny
- B. intermediate scrutiny
- C. strict scrutiny
- D. no particular form of scrutiny 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 USA 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 non-citizens to sit in the back of public busses. That statute would be reviewed using:

- A. rational basis scrutiny
- B. intermediate scrutiny
- C. strict scrutiny
- D. no particular form of scrutiny is required in this situation

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

- A. that police must obtain a search warrant to enter and search a citizens 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 over 100 years, the Chicago Cubs have won baseball's World Series. They want a parade down Michigan Street at 10:00 am on Friday and 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 law suit 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 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 damages 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 policeman. Although no crimes have been reported in the area and Mike has done nothing suspicious, the policeman doesn't like the looks of Mike so he conducts a pat down search and finds a tiny bag of marijuana.

- A. under these circumstances this is an illegal search under Fourth Amendment protections
- B. under these circumstances this is an illegal search under Fifth Amendment protections
- C. under these circumstances this is a legal search because illegal drugs were found, justifying the policemen's actions
- D. under these circumstances this is a legal search because police are given broad discretion to use their experience to fight crime and obviously the policeman 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 or Fourteenth Amendment
- D. both the Fifth and Fourteenth Amendments
- E. Scrambling Locked

69. In *Cavel International, Inc. v. Madigan*, when Illinois passed the statute barring the slaughter of horses primarily for human consumption, *Cavel* presented each of the following arguments except:

- A. that they would suffer \$20M in losses
- B. that dozens of jobs would be lost in the local economy
- C. that they were a foreign corporation not subject to US commerce laws
- D. that the Act effectively banned the export of horsemeat to Europe affecting foreign 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

**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 and discuss these three standards in terms of how they relate 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 saying that shorter trains are safer but their evidence is not persuasive. They also claim 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 where they may again re-couple and proceed. Discuss the validity or invalidity of this law.

74. Congress has provided the state of Ohio \$50M for highway construction and renovation. As a condition, Ohio must award 30% 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 will make it difficult to seek the best quality companies and that how they allocate the money is purely a state function as long as they use 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 the corporations.



79. Explain the structure of the U.S. government and how the checks and balance 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, 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. (p. 28) The legal authority that a court must have to hear a case is called \_\_\_\_\_.  
**Jurisdiction**

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty: 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*

2. (p. 28) The right of states to protect its citizenry is called its \_\_\_\_\_.  
**Police powers**

*AACSB: Analytic*

*Bloom's: Understand*

*Difficulty: 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. (p. 30) The government's system of checks and balances is called the \_\_\_\_\_.  
**separation of powers**

AACSB: Analytic

Bloom's: Understand

Difficulty: Medium

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

Topic: Separation of Powers

4. (p. 29) Powers granted to the three branches of the federal government in the Constitution are known as \_\_\_\_\_ powers.

**Enumerated**

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: Overview of Federal Powers

5. (p. 30) Veto power is a power granted to the \_\_\_\_\_ branch of government.

**Executive**

AACSB: Analytic

Bloom's: Understand

Difficulty: Medium

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

Topic: Table 2.2, Example of Constitutional Checks and Balance

6. (p. 46) The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act is commonly called the \_\_\_\_\_ Act.

**USA Patriot**

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

Learning Objective: 02-11 Explain the right of privacy that has been recognized by the U.S. Supreme Court and Congress.

Topic: Federal Statutes

7. (p. 30) The case of *Marbury v. Madison* established the federal court's power of \_\_\_\_\_.

**Judicial Review**

AACSB: Analytic

Bloom's: Remember

Difficulty: Easy

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

Topic: Judicial Review

8. (p. 45) 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

Bloom's: Apply

Difficulty: Hard

Learning Objective: 02-10 Understand limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.

Topic: Equal Protection

9. (p. 32) Commerce which is wholly contained within a state and which has no effect on other states or foreign countries is called \_\_\_\_\_ commerce.

**Intrastate**

AACSB: Analytic

Bloom's: Understand

Difficulty: Medium

Learning Objective: 02-06 Understand the various applications and limits of congressional power under the Commerce Clause.

Topic: Commerce Powers

10. (p. 34) 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

Bloom's: Understand

Difficulty: Medium

Learning Objective: 02-06 Understand the various applications and limits of congressional power under the Commerce Clause.

Topic: Commerce Powers

**True / False Questions**

11. (p. 28) 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*

*Bloom's: Understand*

*Difficulty: 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. (p. 35) 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*

*Bloom's: Understand*

*Difficulty: Medium*

*Learning Objective: 02-06 Understand the various applications and limits of congressional power under the Commerce Clause.*

*Topic: Noncommercial Activity*

13. (p. 35) Congress's broadest powers are derived from the Commerce Clause.

**TRUE**

Courts are highly differential to Congressional action in areas affecting interstate commerce.

*AACSB: Reflective Thinking*

*Bloom's: Evaluate*

*Difficulty: Hard*

*Learning Objective: 02-06 Understand the various applications and limits of congressional power under the Commerce Clause.*

*Topic: Key Point Feature*

14. (p. 36) According to the decision in *Cavel International, Inc. v. Madigan*, the clearest case of a state law that violates the commerce clause is a law that discriminates in favor of foreign or international firms.

**FALSE**

The clearest case of a state law that violates the commerce clause is a law that discriminates in favor of local firms.

*AACSB: Reflective Thinking*

*Bloom's: Understand*

*Difficulty: Medium*

*Learning Objective: 02-07 Apply Constitutional restrictions on state regulation of commerce in the business environment.*

*Topic: Case 2.2*

15. (p. 42) 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*

*Bloom's: Understand*

*Difficulty: Medium*

*Learning Objective: 02-09 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.*

*Topic: Other Amendments*

16. (p. 45) 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*

*Bloom's: Remember*

*Difficulty: Easy*

*Learning Objective: 02-10 Understand limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.*

*Topic: Equal Protection*

17. (p. 46) 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*

*Bloom's: Understand*

*Difficulty: Medium*

*Learning Objective: 02-11 Explain the right of privacy that has been recognized by the U.S. Supreme Court and Congress.*

*Topic: Workplace Privacy*

18. (p. 31) 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*

*Bloom's: Apply*

*Difficulty: Hard*

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

*Topic: Applying the Constitution: Standards of Review*

19. (p. 34) 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*

*Bloom's: Evaluate*

*Difficulty: Hard*

*Learning Objective: 02-06 Understand the various applications and limits of congressional power under the Commerce Clause.*

*Topic: Interstate v. Intrastate Commercial Activity*



20. (p. 28) 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*

*Bloom's: Understand*

*Difficulty: 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. (p. 35) 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 it is nondiscriminatory regarding other states and if it is a legitimate effort to regulate health, safety and welfare.

*AACSB: Reflective Thinking*

*Bloom's: Evaluate*

*Difficulty: Hard*

*Learning Objective: 02-07 Apply Constitutional restrictions on state regulation of commerce in the business environment.*

*Topic: Constitutional Restrictions on State Regulation of Commerce*

22. (p. 29) 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*

*Bloom's: Understand*

*Difficulty: Medium*

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

*Topic: Overview of Federal Powers*

23. (p. 35) In *U.S. v. Morrison*, the 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*

*Bloom's: Analyze*

*Difficulty: Hard*

*Learning Objective: 02-06 Understand the various applications and limits of congressional power under the Commerce Clause.*

*Topic: Noncommercial Activity*

24. (p. 37) 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*

*Bloom's: Understand*

*Difficulty: Medium*

*Learning Objective: 02-08 Explain how the tax and spend powers impact business.*

*Topic: Tax and Spend Power*

25. (p. 37) Congress may place limits on the use of federal money by states as long as the limit does not affect or infringe upon 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*

*Bloom's: Analyze*

*Difficulty: Hard*

*Learning Objective: 02-08 Explain how the tax and spend powers impact business.*

*Topic: Necessary and Proper Clause*

26. (p. 41) 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*

*Bloom's: Understand*

*Difficulty: Medium*

*Learning Objective: 02-09 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.*

*Topic: Political Spending and Corporations; Key Point Feature*

27. (p. 42) The standard for issuance of a warrant for a search in a noncriminal administrative violation investigation is lower than for investigating a criminal offense.

**TRUE**

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

*AACSB: Analytic*

*Bloom's: Understand*

*Difficulty: Medium*

*Learning Objective: 02-09 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.*

*Topic: Other Amendments*

28. (p. 43) 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*

*Bloom's: Analyze*

*Difficulty: Hard*

*Learning Objective: 02-10 Understand limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.*

*Topic: Constitutional Protections Fourteenth Amendment*

29. (p. 43) 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*

*Bloom's: Remember*

*Difficulty: Easy*

*Learning Objective: 02-10 Understand limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.*

*Topic: Constitutional Protections Fourteenth Amendment*

30. (p. 29) 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*

*Bloom's: Remember*

*Difficulty: Easy*

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

*Topic: Overview of Federal Powers*

31. (p. 37) 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*

*Bloom's: Remember*

*Difficulty: Easy*

*Learning Objective: 02-08 Explain how the tax and spend powers impact business.*

*Topic: Necessary and Proper Clause*

32. (p. 45) 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*

*Bloom's: Understand*

*Difficulty: Medium*

*Learning Objective: 02-11 Explain the right of privacy that has been recognized by the U.S. Supreme Court and Congress.*

*Topic: Privacy*

33. (p. 40) 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*

*Bloom's: Remember*

*Difficulty: Easy*

*Learning Objective: 02-09 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.*

*Topic: Advertising and Obscenity Regulation*

34. (p. 43) 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 she 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 a fair hearing and to be innocent until proven guilty is a Procedural Due Process issue.

*AACSB: Reflective Thinking*

*Bloom's: Understand*

*Difficulty: Medium*

*Learning Objective: 02-10 Understand limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.*

*Topic: Constitutional Protections Fourteenth Amendment*

35. (p. 41) 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*

*Bloom's: Remember*

*Difficulty: Easy*

*Learning Objective: 02-09 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.*

*Topic: Political Speech by Corporations*

36. (p. 39) 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*

*Bloom's: Understand*

*Difficulty: Medium*

*Learning Objective: 02-09 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.*

*Topic: Commercial Speech*

37. (p. 30) *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*

*Bloom's: Evaluate*

*Difficulty: Hard*

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

*Topic: Judicial Review*

38. (p. 39) The First Amendment prohibits individuals from encroaching or prohibiting another person's freedom of speech.

**FALSE**

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

*AACSB: Reflective Thinking*

*Bloom's: Understand*

*Difficulty: Medium*

*Learning Objective: 02-09 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.*

*Topic: First Amendment*

39. (p. 30) 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*

*Bloom's: Understand*

*Difficulty: Medium*

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

*Topic: Separation of Powers*

40. (p. 28) 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*

*Bloom's: Understand*

*Difficulty: 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. (p. 28) 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, etc.

*AACSB: Analytic*

*Bloom's: Understand*

*Difficulty: 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. (p. 28) Which of the following is not a coequal branch of the United States 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*

*Bloom's: Remember*

*Difficulty: 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 government*



43. (p. 30) Judicial review:

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

*Bloom's: Evaluate*

*Difficulty: Hard*

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

*Topic: Judicial Review*

44. (p. 30) The power to impeach and remove is a check and balance power of the:

- A. executive branch
- B. legislative branch**
- C. judicial branch
- D. it is a power shared by all three governmental branches

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

*AACSB: Reflective Thinking*

*Bloom's: Evaluate*

*Difficulty: Hard*

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

*Topic: Table 2.2, Example of Constitutional Checks and Balance*

45. (p. 31) Assume that the state of Georgia has just raised the fee for registration of motor vehicles \$5.00 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 is required in this situation

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

*AACSB: Analytic*

*AACSB: Reflective Thinking*

*Bloom's: Evaluate*

*Difficulty: Hard*

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

*Topic: Rational Basis*

46. (p. 29) 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*

*Bloom's: Remember*

*Difficulty: Easy*

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

*Topic: Overview of Federal Powers*

47. (p. 29) 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 may carry out foreign policy

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

*AACSB: Reflective Thinking*

*Bloom's: Understand*

*Difficulty: Medium*

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

*Topic: Separation of Powers*

48. (p. 32) 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 proven to make driving in the rain significantly safer due to reduced mist created by trucks driving in the rain although data regarding accidents and injuries has 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 only applies to Kansas roads and such a law is entirely intrastate
- B. is valid because Kansas's 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*

*Bloom's: Evaluate*

*Difficulty: Hard*

*Learning Objective: 02-06 Understand the various applications and limits of congressional power under the Commerce Clause.*

*Topic: Application of Commerce Powers*

49. (p. 36) In *Cavel International, Inc. v. Madigan*, Cavel, the only exporter of horsemeat to Europe for human consumption fought an Illinois state law prohibiting the slaughter of horses if the primary reason for slaughter was to produce horsemeat for sale. The court decided:

- A. Illinois had a legitimate interest in prolonging the lives of certain animals and there was only a minimal effect on interstate or foreign commerce
- B. Illinois could enforce the law intrastate but if the meat was exported the law interfered with foreign commerce and was therefore invalid
- C. Illinois could enforce the law if it extended to all animals but they could not protect some and ignore others
- D. Illinois could not enforce the law because Cavel was the sole company in the state exporting meat and the law targeted them unfairly

States may regulate commerce outside of their borders if it is nondiscriminatory regarding other states or nations and if it is a legitimate effort to regulate health, safety and welfare.

AACSB: Reflective Thinking

Bloom's: Apply

Difficulty: Hard

Learning Objective: 02-07 Apply Constitutional restrictions on state regulation of commerce in the business environment.

Topic: Case 2.2

50. (p. 40) In *Pagan v. Fruchey and Village of Glendale*, Pagan sued questioning a village ordinance prohibiting the parking of a car on a public street 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 governmental interest
- D. Glendale did not prove that the ordinance directly advanced their claimed governmental interest because they based their argument on opinion rather than data

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

AACSB: Reflective Thinking

Bloom's: Analyze

Difficulty: Hard

Learning Objective: 02-09 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.

Topic: Case 2.3

51. (p. 34) 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

Bloom's: Evaluate

Difficulty: Hard

Learning Objective: 02-06 Understand the various applications and limits of congressional power under the Commerce Clause.

Topic: Civil Rights Legislation

52. (p. 40-41) When Bad Frog Brewery, Inc., placed a label on their 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 labels 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 purchased, the labels would be exposed in refrigerators or drunk in rooms while children were present
  - D. for New York State because they 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

Bloom's: Evaluate

Difficulty: Hard

Learning Objective: 02-09 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.

Topic: Advertising and Obscenity Regulation

53. (p. 31, 45) If Alabama passes a statute specifically permitting high school girls to try out 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 is required in this situation

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

*AACSB: Analytic*

*AACSB: Reflective Thinking*

*Bloom's: Evaluate*

*Difficulty: Hard*

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

*Topic: Intermediate-Level Scrutiny*

54. (p. 30) 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*

*Bloom's: Understand*

*Difficulty: Medium*

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

*Topic: Separation of Powers*

55. (p. 32) 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*

*Bloom's: Analyze*

*Difficulty: Hard*

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

*Topic: The Supremacy Clause and Preemption*

56. (p. 33) 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*

*Bloom's: Apply*

*Difficulty: Hard*

*Learning Objective: 02-06 Understand the various applications and limits of congressional power under the Commerce Clause.*

*Topic: Case 2.1*

57. (p. 43) 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*

*Bloom's: Understand*

*Difficulty: Medium*

*Learning Objective: 02-10 Understand limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.*

*Topic: Equal Protection*

58. (p. 45) When a state action is found to be based on a semi-suspect (a/k/a quasi-suspect) classification the courts will employ:

- A. rational basis scrutiny
- B.** intermediate scrutiny
- C. strict scrutiny
- D. no particular form of scrutiny is required in this situation

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

*AACSB: Analytic*

*Bloom's: Understand*

*Difficulty: Medium*

*Learning Objective: 02-10 Understand limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.*

*Topic: Equal Protection*



59. (p. 43) 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 14<sup>th</sup> Amendment extended Bill of Rights protections to include state actions.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty: Easy*

*Learning Objective: 02-10 Understand limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.*

*Topic: Constitutional Protections Due Process Protections*

60. (p. 46) One criticism of the USA 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 the government searches, many believe it to be inadequate and not as protective as needed.

*AACSB: Analytic*

*AACSB: Reflective Thinking*

*Bloom's: Evaluate*

*Difficulty: Hard*

*Learning Objective: 02-11 Explain the right of privacy that has been recognized by the U.S. Supreme Court and Congress.*

*Topic: Federal Statutes*

61. (p. 31, 45) Assume that Iowa has just passed a statute requiring all non-citizens to sit in the back of public busses. That statute would be reviewed using:

- A. rational basis scrutiny
- B. intermediate scrutiny
- C. strict scrutiny**
- D. no particular form of scrutiny 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*

*Bloom's: Evaluate*

*Difficulty: Hard*

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

*Topic: Strict Scrutiny*

62. (p. 43) Which of the following is not a procedural due process issue?

- A. that police must obtain a search warrant to enter and search a citizens 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*

*Bloom's: Analyze*

*Difficulty: Hard*

*Learning Objective: 02-10 Understand limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.*

*Topic: Constitutional Protections Fourteenth Amendment*

63. (p. 31) After over 100 years, the Chicago Cubs have won baseball's World Series. They want a parade down Michigan Street at 10:00 am on Friday and 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 law suit 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 is required in this situation

The protection of citizens is an important governmental objective substantially related to the government's objectives.

*AACSB: Analytic*

*AACSB: Reflective Thinking*

*Bloom's: Evaluate*

*Difficulty: Hard*

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

*Topic: Intermediate-Level Scrutiny*

64. (p. 44) 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 damages 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 in only civil cases.

*AACSB: Analytic*

*Bloom's: Understand*

*Difficulty: Medium*

*Learning Objective: 02-10 Understand limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.*

*Topic: Case 2.4*

## Chapter 02 - Business and the Constitution

65. (p. 38, 43) 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*

*Bloom's: Remember*

*Difficulty: Easy*

*Learning Objective: 02-09 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.*

*Learning Objective: 02-10 Understand limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.*

*Topic: Constitutional Protections Due Process Protections*

66. (p. 38) 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*

*Bloom's: Remember*

*Difficulty: Easy*

*Learning Objective: 02-09 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.*

*Topic: Constitutional Protections*

67. (p. 38) Mike is walking down the street minding his own business when he is stopped by a policeman. Although no crimes have been reported in the area and Mike has done nothing suspicious, the policeman doesn't like the looks of Mike so he conducts a pat down search and finds a tiny bag of marijuana.

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

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

*AACSB: Reflective Thinking*

*Bloom's: Evaluate*

*Difficulty: Hard*

*Learning Objective: 02-09 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.*

*Topic: The Bill of Rights and Business*

68. (p. 43) The Due Process Clause is found in:

- A. the Fifth Amendment only
- B. the Fourteenth Amendment only
- C. neither the Fifth or Fourteenth Amendment
- D. both the Fifth and Fourteenth Amendments
- E. Scrambling Locked

Both the Fifth and Fourteenth Amendments contain Due Process Clauses.

*AACSB: Analytic*

*Bloom's: Remember*

*Difficulty: Easy*

*Learning Objective: 02-10 Understand limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.*

*Topic: Constitutional Protections Due Process Protections*

69. (p. 36) In *Cavel International, Inc. v. Madigan*, when Illinois passed the statute barring the slaughter of horses primarily for human consumption, *Cavel* presented each of the following arguments except:

- A. that they would suffer \$20M in losses
- B. that dozens of jobs would be lost in the local economy
- C. that they were a foreign corporation not subject to US commerce laws
- D. that the Act effectively banned the export of horsemeat to Europe affecting foreign commerce

Cavel knew that foreign corporations operating within the United States are subject to US law and did not raise the issue.

AACSB: Analytic

Bloom's: Understand

Difficulty: Medium

Learning Objective: 02-07 Apply Constitutional restrictions on state regulation of commerce in the business environment.

Topic: Case 2.2

70. (p. 43) 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

Bloom's: Understand

Difficulty: Medium

Learning Objective: 02-10 Understand limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.

Topic: Constitutional Protections Fourteenth Amendment

**Essay Questions**

71. (p. 30) 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 United States 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 pre-constitutional debates nor mentioned in the Federal Register. Never-the-less, it remains valid precedent to this day.

*AACSB: Reflective Thinking*

*Bloom's: Evaluate*

*Difficulty: Hard*

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

*Topic: Judicial Review*

72. (p. 31) The U.S. Supreme Court has established three standards of review used when applying Constitutional law. Name and discuss these three standards in terms of how they relate to state objectives.

When a state action or statute advances a legitimate state objective such as an economic or social issue which 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, they are 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*

*Bloom's: Evaluate*

*Difficulty: Hard*

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

*Topic: Applying the Constitution: Standards of Review*

73. (p. 32) 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 saying that shorter trains are safer but their evidence is not persuasive. They also claim 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 where they may again re-couple and proceed. Discuss the validity or invalidity of this law.

Colorado is asserting its police powers claiming to justify the law to protect its citizens. Since the law only applies 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*

*Bloom's: Evaluate*

*Difficulty: Hard*

*Learning Objective: 02-06 Understand the various applications and limits of congressional power under the Commerce Clause.*

*Topic: Application of Commerce Powers*



74. (p. 37) Congress has provided the state of Ohio \$50M for highway construction and renovation. As a condition, Ohio must award 30% 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 will make it difficult to seek the best quality companies and that how they allocate the money is purely a state function as long as they use 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*

*Bloom's: Understand*

*Difficulty: Medium*

*Learning Objective: 02-08 Explain how the tax and spend powers impact business.*

*Topic: Necessary and Proper Clause*

75. (p. 39) 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 governmental interest in regulating the speech must exist; (3) the government must prove that the restriction directly advances the claimed government interest; and (4) the governments restriction must not be more extensive than is necessary to achieve the government's interest.

*AACSB: Analytic*

*AACSB: Reflective Thinking*

*Bloom's: Apply*

*Difficulty: Hard*

*Learning Objective: 02-09 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.*

*Topic: Commercial Speech*

76. (p. 45) 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 citing the rights of citizens to obtain information.

AACSB: Reflective Thinking

Bloom's: Understand

Difficulty: Medium

Learning Objective: 02-11 Explain the right of privacy that has been recognized by the U.S. Supreme Court and Congress.

Topic: Privacy

77. (p. 38, 43) 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 as in this situation.

AACSB: Reflective Thinking

Bloom's: Understand

Difficulty: Medium

Learning Objective: 02-09 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.

Learning Objective: 02-10 Understand limits imposed on government overreaching by virtue of the Due Process Clause and Equal Protection Clause.

Topic: Constitutional Protections Fourteenth Amendment

78. (p. 42) Explain how the Fifth Amendment right against self-incrimination applies to corporations and the individuals working for the 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*

*Bloom's: Understand*

*Difficulty: Medium*

*Learning Objective: 02-09 List the major protections in the Constitution's Bill of Rights and explain how they apply in the business environment.*

*Topic: Other Amendments*

79. (p. 29-30) Explain the structure of the U.S. government and how the checks and balance 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 treaties, appoints judges and federal officials and functions as the Commander-in-Chief of the Armed Forces. The president may exercise veto power over act 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 which 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*

*Bloom's: Remember*

*Difficulty: 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*

Chapter 02 - Business and the Constitution

80. (p. 32) Kathy runs a business from her home. Not only is she the sole employee, 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*

*Bloom's: Understand*

*Difficulty: Medium*

*Learning Objective: 02-06 Understand the various applications and limits of congressional power under the Commerce Clause.*

*Topic: Commerce Powers*