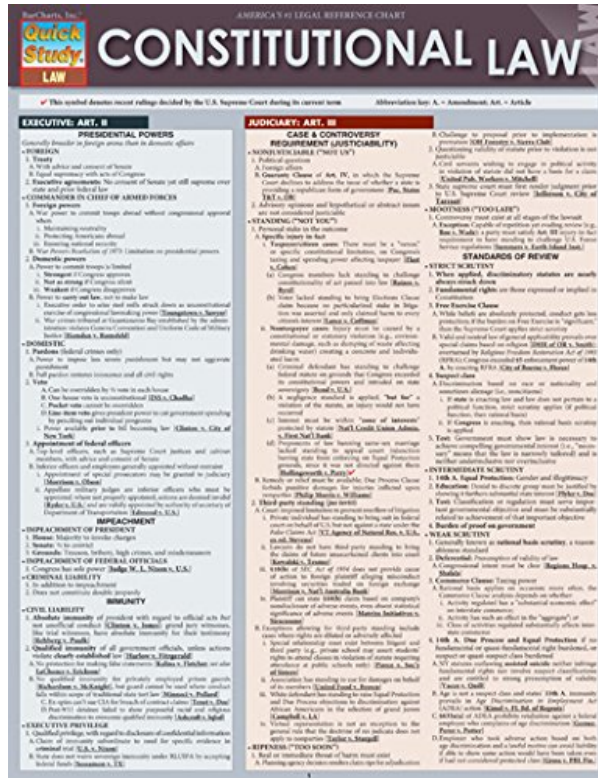


CONSTITUTIONAL LAW (QUICK STUDY: LAW) BY INC. BARCHARTS



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CONSTITUTIONAL LAW

✓ This updated document recent rulings decided by the U.S. Supreme Court during its current term. Abbreviation key: A. = Amendment; Art. = Article

EXECUTIVE: ART. II

PRESIDENTIAL POWERS

Generally broader in foreign areas than in domestic affairs

•TREATY

- Treaty
- With advice and consent of Senate
- Equal ratification with acts of Congress
- Executive agreements: No consent of Senate but still supreme over state and prior federal law

•COMMANDER IN CHIEF OF ARMED FORCES

- Foreign powers
 - War power to control troops abroad without congressional approval when
 - Maintaining neutrality
 - Protecting interests abroad
 - Protecting national security
- War Powers Resolution of 1973 (Limitation on presidential powers)

•DOMESTIC POWERS

- Power to control troops is limited
 - Strongest if Congress approves
 - Not as strong if Congress objects
 - Weakens if Congress disagrees
- Power to enact law, not to make law
 - Executive order to veto and veto struck down as unconstitutional exercise of congressional/lawmaking power (*Youngstown, Steel*)
 - War crimes tribunal at Guantanamo Bay established by the administration (Justice Center Committee and Uniform Code of Military Justice (*Hamdan v. Rumsfeld*))

•PARDONS (federal crimes only)

- Power to impose law, some presidential but may not approve constitutionality
- Full pardon restores innocence and all civil rights

•VETO

- Can be overridden by 2/3 vote in each house
- One house veto is unconstitutional (*INS, Chafetz*)
- Pocket veto cannot be overridden
- Line item veto gives president power to cut government spending by vetoing out individual programs
- Power available prior to bill becoming law (*Clinton v. City of New York*)

•Appointment of federal officers

- Top-level officers, such as Supreme Court Justice and cabinet members, with advice and consent of Senate
- Lower officers and employees generally appointed without consent
 - Appointment of special prosecutors may be granted to judiciary (*Morrison v. Olson*)
 - Appellate military judges are inferior officers who must be appointed when not properly appointed, actions are deemed voided (*Hughes v. U.S.*, and are validly appointed by authority of secretary of Department of Transportation (*Johnson v. U.S.*))

•IMPEACHMENT

- Impeachment of President
 - House: Majority to resolve charges
 - Senate: 2/3 to convict
 - Grounds: Treason, bribery, high crimes, and misdemeanors
- Impeachment of federal officials
 - Congress has sole power (*Judge W. L. Nixon v. U.S.*)

•CRIMINAL LIABILITY

- In addition to impeachment
- Does not constitute double jeopardy

•IMMUNITY

- Absolute immunity of president with regard to official acts but not unofficial conduct (*Clipton v. Jones*); grand jury witnesses, the trial witnesses, have absolute immunity for their testimony (*Hughes v. Post*)
- Qualified immunity of all government officials, unless actions violate clearly established law (*Harlow v. Fitzgerald*)
 - No protection for making false statements (*Bukhari v. Holder*); see also (*Clinton v. Jones*)
 - No qualified immunity for privately employed prison guards (*Richardson v. McKnight*), but grand cannot be used where conduct falls within scope of traditional state tort law (*Minnick v. Pollard*)
 - Ex-officio can't sue CIA for breach of contract claim (*Tamara, Dow*)
 - Post-9/11 detainees held to show preponderant need and religious discrimination to ensure qualified immunity (*Alsharif v. Iqbal*)

•EXECUTIVE PRIVILEGE

- Qualified privilege, with regard to disclosure of confidential information
 - Claim of immunity subordinate to need for specific evidence to criminal trial (*U.S. v. Nixon*)
 - State does not waive sovereign immunity under RLUIPA by accepting federal funds (*Shannon v. U.S.*)

JUDICIARY: ART. III

CASE & CONTROVERSY REQUIREMENT (JUSTICIABILITY)

•NON-ADVERSARIAL ("NOT US")

- Political question
 - Foreign affairs
 - Executive Clause of Art. IV, in which the Supreme Court declines to address the issue of whether a state is providing a sufficient form of government (*Foo, State v. U.S.*)
- Adversity: opinions and hypothetical or abstract issues are not considered justiciable

•STANDING ("NOT YOU")

- Personal stake in the outcome
 - Specific injury to feel
 - Empowerment issue: There must be a "threat" or specific constitutional limitation, no Congress taxing and spending power affecting taxpayer (*Shut v. Callan*)
 - Congress members lack standing to challenge constitutionality of an passed law (*Raines v. Byrum*)
 - Vote lacked standing to bring Executive Clause claim because no particularized stake in litigation was asserted and only claimed harm to every citizen (*Shut v. Callan*)
 - Non-taxpayer citizen injury must be caused by a constitutional or statutory violation (e.g., environmental damage, such as dumping of waste affecting drinking water) creating a concrete and individualized harm
 - Civilized Advocate has standing to challenge federal statute on grounds that Congress exceeded its constitutional power and intruded on state sovereignty (*Shut v. U.S.*)
 - A negligence standard is applied, "but for" a violation of the statute, an injury would not have occurred
 - Injury must be within "zone of interest" protected by statute (*Shut v. Civil Union Admin., v. First Nat'l Bank*)
 - Proponents of law having same-sex marriage lacked standing to appeal court injunction barring state from collecting on federal Protection grounds, since it was not directed against them (*Shut v. U.S. v. Patsy*)
- Kennedy or relief must be available: Due Process Clause forbids punitive damages for injuries inflicted upon respondent (*Phillip Morris v. Williams*)
- Third party standing (see below)
 - Court imposed limitations to prevent overreach of litigation
 - Private individual has standing to bring suit to federal court on behalf of U.S. but not against a state under the *Fido* Clause Art. III, Agency of Natural Res., v. U.S., U.S. v. *Shut*
 - Parents do not have third party standing to bring the claim of future unarticulated claims into court (*Kenneth v. Zeman*)
 - VERB or SEC. Act of 1974 does not provide cause of action to foreign plaintiff alleging misconduct resulting services traded on foreign exchange (*Shut v. Nat'l Institute Bank*)
 - Plaintiff not state trustee claim based on company's manufacture of adverse events, even absent statistical significance of adverse events (*Martin Industries v. Strickland*)
 - Employees alleging for third party standing include cases where rights are diluted or adversely affected
 - Special relationship must exist between injured and third party (e.g., private school may assert students' rights to attend classes in violation of state reporting requirements at public schools only (*Shut v. U.S. v. Shut*))
 - Association has standing to sue for damages on behalf of its members (*United Food v. Bureau*)
 - White defendants has standing to sue legal Protection and Due Process objections to discrimination against African Americans in the selection of grand jurors (*Hammond v. LA*)
 - Virtual representation is not an exception to the general rule that the doctrine of no impleader does not apply to companies (*Shut v. Strickland*)

•RIPENESS ("TOO SOON")

- Real or immediate threat of harm must exist
 - Planning agency decision makes claim ripe for adjudication

•CHALLENGE TO PROPOSAL PRIOR TO IMPLEMENTATION

- permissible (*INS, Janette v. Strickland*)
- Questioning validity of statute prior to violation is not justiciable
 - Civil actions wishing to engage in political activity in violation of statute did not have a basis for a claim (*United Pub. Workers v. Mitchell*)
 - State supreme court must first render judgment prior to U.S. Supreme Court review (*Johnson v. City of Lansing*)
- MOOTNESS ("TOO LATE")
 - Controversy must exist at all stages of the lawsuit
 - Exception: Capable of repetition yet evading review (e.g., *Roe v. Wade*) a party must satisfy Art. III requirements to have standing to challenge U.S. laws before regulations (*Shannon v. Earth Island Inst.*)

•STANDARDS OF REVIEW

•STRICT SCRUTINY

- When applied, discriminatory statutes are nearly always struck down
- Fundamental rights are those expressed or implied in Constitution
 - Free Exercise Clause
 - While beliefs are absolutely protected, conduct gets less protection if the burden on Free Exercise is "significant," then the Supreme Court applies strict scrutiny
 - Valid and neutral law of general applicability prescribes even special claims based on religion (*SHUT v. O.K., Seattle*, overturned by Religious Freedom Restoration Act of 1993 (RFRA); Congress enacted 48 enforcement power of 1993 A. by creating RFRA (*City of Bozeman v. Shuts*))
 - Speech/press
 - Discrimination based on race or nationality and association always (i.e., unconstitutional)
 - If state is enacting law and law does not pertain to a political function, strict scrutiny applies (if political function, then rational basis)
 - If Congress is enacting, then rational basis scrutiny is applied
- Test: Government must show law is necessary to achieve compelling governmental interest (i.e., "necessary" means that the law is narrowly tailored and is neither underinclusive nor overinclusive)

•INTERMEDIATE SCRUTINY

- 14th A. Equal Protection: Gender and legitimacy
- Education: Denial to diverse group must be justified by showing a burden substantial state interest (*Shut v. Doe*)
- Test: Classification or regulation must serve important governmental objective and must be substantially related to achievement of that important objective
- Burden of proof on government

•WEAK SCRUTINY

- Generally known as rational basis scrutiny, a reasonableness standard
 - Defendants: Presumption of validity of law
 - Congressional intent must be clear (*Shut v. Hong v. Shuts*)
- Commerce Clause: Trading power
 - Rational basis applies on economic issue after, the Commerce Clause analysis depends on whether
 - Activity regulated has a "substantial economic effect" on interstate commerce
 - Activity has such an effect on the "aggregate" or
 - Class of activities regulated substantially affects interstate commerce
- 14th A. Due Process and Equal Protection: If no fundamental or quasi-fundamental right implicated, or suspect or quasi-suspect class implicated
 - ACT means conferring unneeded outside parties having fundamental rights are involved suspect classifications and are entitled to strong presumption of validity (*Yasuda v. Osh*)
 - Age is not a suspect class and state's 14th A. interests prevail in Age Discrimination or Employment Act (ADEA) action (*Kaneda, H. Ind. of Eugene*)
 - ADEA of ADEA prohibits retaliation against a federal employee who complains of age discrimination (*Grimes, Patsy v. Potter*)
 - Employee who took adverse action based on both age discrimination and a lawful motive can avoid liability of state to show same action would have been taken even if not for unconstitutional protected class (*Shut v. FBI, Inc.*)

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With the rights of citizens becoming more complex each day, it is important for attorneys in this field to have the latest information at their fingertips?that's where our updated, 3-panel guide comes in. Every aspect of constitutional law is analyzed, and cases and statutes are highlighted for easy reference.

- Sales Rank: #24115 in Books
- Published on: 2013-12-31
- Released on: 2013-12-31
- Original language: English
- Number of items: 1
- Dimensions: .6" h x 11.00" w x 8.50" l, .15 pounds
- Binding: Pamphlet
- 6 pages

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