

Constitutional Law

NOTE: The terms "Constitution," "constitutional," and "unconstitutional" refer to the federal Constitution unless indicated otherwise.

- I. The nature of judicial review
 - A. Organization and relationship of state and federal courts in a federal system
 - B. Jurisdiction
 - 1. Constitutional basis
 - 2. Congressional power to define and limit
 - C. Judicial review in operation
 - 1. The "case or controversy" requirement including standing, ripeness, and mootness
 - 2. Political questions and justiciability
 - 3. The "adequate and independent state ground"
- II. The separation of powers
 - A. The powers of Congress
 - 1. Commerce, taxing, and spending
 - 2. Power over federal property
 - 3. War and defense powers
 - 4. Power to enforce the 13th, 14th, and 15th Amendments
 - B. The powers of the President
 - 1. As chief executive
 - 2. As commander-in-chief
 - 3. Treaty and foreign affairs powers
 - 4. Appointment and removal of officials
 - C. Federal interbranch relationships
 - 1. Congressional limits on the executive
 - 2. The Presentment requirement and the President's power to veto or to withhold action
 - 3. Delegation doctrine
 - 4. Executive, legislative, and judicial immunities
- III. The relations of nation and states in a federal system
 - A. Intergovernmental immunities
 - 1. Federal immunity from state law
 - 2. State immunity from federal law
 - B. The authority reserved to the states
 - 1. Negative implications of the commerce clause
 - 2. Tenth Amendment
 - 3. Other
 - C. National power to override or extend state authority
 - 1. Preemption
 - 2. Authorization of otherwise invalid state action
 - D. Relations among states
 - 1. Interstate compacts
 - 2. Full faith and credit
- IV. Individual rights
 - A. "State action" and the role of the courts
 - B. Due Process
 - 1. Substantive due process
 - a. Fundamental rights
 - b. Other rights
 - 2. Takings
 - 3. Procedural due process
 - C. Equal protection
 - 1. Fundamental rights
 - 2. Other rights
 - 3. Suspect classifications
 - 4. Other classifications
 - D. Privileges and immunities clauses
 - E. Obligation of contracts, bills of attainder, ex post facto laws
 - F. First Amendment freedoms
 - 1. Freedom of religion and separation of church and state
 - a. Free exercise
 - b. Establishment
 - 2. Freedom of expression and association
 - a. Regulation of content of expression
 - b. Regulation of time, manner, and place of expression
 - c. Regulation of unprotected expression
 - i. Obscenity
 - ii. Other
 - d. Regulation of commercial speech
 - e. Regulation of, or impositions upon, public employment, licenses, or benefits based upon

- exercise of expressive or associational rights
- f. Regulation of association
- g. Regulation of defamation and invasions of privacy

Approximately half of the Constitutional Law questions for each MBE will be based on category IV, and approximately half will be based on the remaining categories, I, II, and III. All of the major topics (designated by Roman numerals) will be represented in each examination, but not necessarily all of the subtopics.