

Constitutional Law

Constitutional law - the fundamental law of a nation or state which establishes the character, form and structure of its government and provides and limits the power and authority of that government.

Statutory law – acts adopted by local, state or federal legislative bodies. Judicial decisions (case law) may have a significant effect on statutory law. For example:

OVERVIEW OF THE U.S. CONSTITUTION

Article I – Legislative Power (Congress).

1. Congress consists of:
 - a. House of Representatives.
 - b. Senate.

2. Congressional powers include:
 - a. Making all federal laws.
 - b. Establishing and maintaining courts.
 - c. Taxing.
 - d. Coining money.

Article II – Executive Power (President).

1. Presidential term of office.
2. President's powers include:
 - a. Appointing Supreme Court judges and other federal judges and ambassadors (subject to Senate confirmation).

- b. Power to pardon.
- c. Commander-in-chief of the armed forces.
- d. Power to make treaties.

Article III – Judicial Power.

1. Constitution creates one (1) Supreme Court and other inferior courts as Congress chooses.

2. Judicial tenure is life on good behavior.

3. Supreme Court renders the final opinion on questions regarding the interpretation of the U.S. Constitution.

Article IV – Interstate Relations – full faith and credit.

Article V – Amending Power.

Article VI – Supremacy Clause.

This clause in the Constitution provides that the Constitution, treaties and laws of the U.S. shall be the supreme law of the land.

Article VII – Ratification of the Constitution.

- 1. First 10 Amendments – Bill of Rights.
- 2. History – to secure passage of the Constitution and provides safeguards against the federal government.
- 3. Review

Amendment 1:

Freedom of religion.

Freedom of speech.

Freedom of the press.

Right to peaceably assemble.
Right to petition the government; redress grievances.

Amendment 2:

Right to bear arms.

The 2nd Amendment has been interpreted as assuring the states of their right to maintain a militia,
But not to restrict in any manner the government's control of guns.

Amendment 4:

No unreasonable search and seizure.
Search warrant requirement.

First Amendment Overview

FREEDOM OF RELIGION

Found in the 1st Amendment:

Protects both the right to the religion of one's choice and the right to be free from religion.

- This Amendment has been interpreted as acting to separate church and state.
- "Establishment clause" and "free exercise" clause:
- The state may neither establish a religion (no "state" religion),
- Nor may it interfere with the free exercise of religion.

FREEDOM OF SPEECH

Not an absolute right; examples of unprotected speech include:

- Libel and slander – truth is defense.
- Obscene speech.
 - 3 part test
- Decision should be made with a prosecution.
- Fighting words.
 - A person can be prosecuted for yelling “fire” in a crowded theater, or
 - For telling people at a demonstration, “Go get your guns, we’re gonna kill those traitors.”
- Dangerous speech.
 - Chambers v. Florida 309 U.S. 227
 - Bridges v. State of California 314 U.S. 252
 - R.A.V. v. City of St. Paul, MN 505 U.S. 377
- Speech plus – refers to situations in which a person’s conduct is expressive and intended to communicate an idea.
 - Burning a flag or carrying a picket sign.
 - Residential picketing
 - Such “speech” is also protected.

The less “speech” is involved and the more conduct is involved, the more the government can regulate the speech (i.e., parades on major streets). The regulation must be both specific and narrowly tailored to the interests of the governmental entity that is trying to regulate the speech.

FREEDOM OF THE PRESS

This phrase is read along with the freedom of speech as a single guarantee.

The press enjoys no privileges beyond those enjoyed by a private person.

FREEDOM OF PEACEFUL ASSEMBLY

-This right guarantees the right to “peacefully” assemble in a public forum to petition the government.

-This right applies only to public forums, not private property. Generally, the government cannot bar public access to places which were historically available for expressive activities, such as parks, sidewalks and streets.

-Denying the right to hold a demonstration in the middle of a busy street at rush hour would be an acceptable time, place and manner restriction.

-The government may regulate the time, place and manner of the assembly, so long as the laws or regulations are applied in a manner that is content-neutral, narrowly serve a significant government interest and leave open alternative forms of communication.

RIGHT TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES

Fourth Amendment Overview

FREEDOM FROM UNREASONABLE SEARCHES AND SEIZURES

-Applies only to those places in which a person has a reasonable expectation of privacy.

-Applies only to searches and seizures, not to consensual encounters. Therefore, a police officer may simply stop to chat with someone without raising any 4th Amendment issues. Similarly, a dog may sniff the air without that sniff being considered a 4th Amendment search.

-Applies only to state actors – people acting on behalf of the government. Does not apply to private citizens.

-If a state actor violates the 4th Amendment, the evidence revealed by the search and/or the things seized may be suppressed by the court. Suppression means that the evidence cannot be used in the government's case in chief. This is known as the exclusionary rule.

-Rule #1 – if there is doubt about whether to get a warrant, get one.

Follow statutory process to get the warrant.

Exceptions to the warrant requirement:

Consent.

Incident to arrest.

Plain view (not a search).

Inventory (not a search).

Open fields/curtilage (not a search).

Vehicles.

Exigent/emergency circumstances.

Abandoned property (not a search).

-Seizures – a seizure occurs whenever a police officer interferes with a person's right to go on about their business.

-Consensual contact: An officer may have a consensual contact with a person without implicating the 4th Amendment. The person is free to leave.

-Stop/temporary detention: An officer must have reasonable suspicion that criminal activity has occurred and that the person stopped is involved in that criminal activity before stopping or detaining a person.

-Arrest: An officer must have probable cause before arresting a person.

-Pat-down/frisk: An officer may pat a person down only if the officer has reasonable suspicion that the person is presently armed and dangerous.