

Constitutional Law

- I. Steps In Con Law analysis
 - a. **Threshold Issues**
 - i. Standing, mootness, ripeness, state action (abstention)
 - b. **Applicable Amendment**
 - i. Look for issue pairings
 - ii. If this a property right or an liberty right?
 - c. **Applicable Elements for Claim**
 - i. If element missing, facial challenge
 - ii. If all elements addressed in statute, as applied challenge
 - d. **Level of Judicial Review**
 - i. Strict scrutiny, intermediate scrutiny, rational basis, or a special test
 - e. **Closing Issues (sometimes)**
 - i. Vagueness, overbreadth, excessive discretion
- II. THRESHOLD ISSUES
 - a. Standing
 - i. Associational Standing
 - ii. Third-party standing
 - iii. zone of interests
 - iv. Abstention
 - b. Mootness
 - c. Ripeness
 - d. State Action
- III. LEVELS OF JUDICIAL REVIEW
 - a. **Rational Basis (RBR)**
 - b. **Intermediate Scrutiny (IS)**
 - c. **Strict Scrutiny (SS)**
- IV. PROPERTY RIGHTS GUARANTEES: TAKINGS & CONTRACT CLAUSE
 - a. Takings: 5th amend (feds) and 14th Amend (states)
 - b. Contracts Clause
 - i. Judicial Review
 - 1. private contracts: intermediate scrutiny
 - 2. public contracts: strict scrutiny
- V. PROPERTY/LIBERTY RIGHTS: SUBSTANTIVE AND PROCEDURAL DP
 - a. Substantive DP
 - i. Abortion
 - 1. Undue Burden Test
 - ii. Right to Interstate Travel
 - iii. Fundamental Right to Vote
 - iv. Economic Activities
 - b. Procedural DP
 - i. Property
 - ii. Liberty
 - 1. intentional govt action req
 - iii. What process is due?

- iv. Use *Mathews* balancing test for type and timing:
- VI. EQUAL PROTECTION (5th and 14th Amends)
 - a. For all claims, must prove **intentional** discrimination. Test?
 - b. Race or National Origin: Suspect
 - i. Affirmative Action Cases:
 - c. Alienage: Sometimes suspect
 - i. Federal vs. State Govt
 - d. Gender: Quasi-Suspect
 - e. Illegitimacy: Quasi-suspect
 - f. Fundamental Rights Restrictions: Suspect
 - g. Non-Suspect
- VII. EXPRESSIVE FREEDOMS: SPEECH, PRESS, ASSOCIATION, RELIGION
 - a. Analytical Steps
 - b. Content-based vs. content-neutral
 - i. Content-based restrictions on subject matter or viewpoint
 - ii. Content-neutral laws that burden expressive conduct
 - c. Prior restraints
 - d. Vague, Overbroad, Unduly Discretionary
- VIII. UNPROTECTED/LESS PROTECTED SPEECH
 - a. Incitement of Illegal Conduct
 - b. Fighting Words
 - c. True Threat
 - d. Obscenity and Sexually-oriented speech
 - i. Miller test
 - ii. Child porn
 - iii. Zoning adult businesses
 - e. Defamation
 - f. Commercial Speech
- IX. FREEDOM OF SPEECH: TIME, PLACE, MANNER
 - a. Forum Rules
 - i. Public or limited forums
 - ii. Nonpublic forums
 - iii. Private property
- X. OTHER EXPRESSIVE ACTIVITIES
 - a. Freedom of Press
 - i. Publication of Unlawfully Obtained Information
 - b. Freedom of Association
 - i. Association for political activities is a fundamental right:
 - ii. Association for Illegal Activities
 - iii. Anonymous Association
 - iv. Discriminatory Membership
 - v. Govt Employees
 - vi. Loyalty oaths
 - c. Freedom of Religion
 - i. Free Exercise Clause
 - ii. Establishment Clause

1. *Lemon* test:

- XI. FEDERAL EXECUTIVE POWERS; Article II
 - a. Conflict of laws hierarchy
 - b. Warmaking Power
 - c. Appointment and Removal of Officers
 - d. Impeachment, conviction, removal:
 - e. Executive Immunity and Privilege
 - f. Pardon power
- XII. FEDERAL LEGISLATIVE POWERS: Article I
 - a. Enumerated Powers and Necessary and Proper
 - b. Commerce Power
 - c. Taxing and Spending Power
 - d. Civil Rights Enforcement (14th Amend, sec 5)
 - e. TENTH AMEND
 - f. ELEVENTH AMEND limits on Congressional Powers
 - g. Legislative and Line item veto
- XIII. PREEMPTION, DORMANT COMMERCE CLAUSE, P&I DOCTRINES
 - a. Preemption (from Supremacy Clause)
 - b. Dormant Commerce Clause
 - c. Privileges & Immunities Clause (Article IV, sec2)