Table of Contents

Chapter 1 The Origins of Judicial Review
§ 1.1 The Constitutional Convention of 1787
§ 1.1(a) Introduction

Chapter 2 Federal Jurisdiction
§ 2.1 Overview of the Present Jurisdictional Framework of the Supreme Court
§ 2.1(b) Article I Courts
§ 2.2 The Historical Development of the Jurisdictional Framework of the Supreme Court
§ 2.2(a) The Statutory Development
§ 2.2(a)(viii) Later Revisions
§ 2.3 The Supreme Court’s Statutory Original Jurisdiction
§ 2.4 Appellate and Certiorari Jurisdiction
§ 2.4(c) Certiorari and Appeal
§ 2.4(c)(i) Introduction
§ 2.10 Ex Parte McCardle—The Opinion, Its Historical Setting, and the Limitations of Its Holding
§ 2.10(a) Historical Background and Analysis
§ 2.11 Due Process Limitations on Congress’s Jurisdictional Powers and a Survey of the Major Statutory Restrictions on Jurisdiction
§ 2.11(b) Due Process and Major Statutory Restrictions on Federal Court Jurisdiction
§ 2.11(b)(i) Introduction
§ 2.11(b)(iii) The Anti-Injunction Provisions of the Internal Revenue Code
§ 2.11(b)(vi) Pending Cases Versus Final Judgments
§ 2.11(b)(xi) Congressional Efforts to Limit Judicial Review to Particular Tribunals
§ 2.12 The Eleventh Amendment
§ 2.12(b) An Outline of the Current Rules
§ 2.12(b)(ii) Suits Brought in the Courts of Another State
§ 2.12(b)(xxii) Section 5 of Fourteenth Amendment
§ 2.13 Case or Controversy and Related Doctrines
§ 2.13(a) Introduction
§ 2.13(c) Mootness and Collusiveness
§ 2.13(c)(ii) Mootness Because Law Changed, or Wrongful Behavior Has Passed and Unlikely to Reoccur or Similar Reasons

§ 2.13(c)(iii) Voluntary Cessation of Challenged Practices

§ 2.13(c)(iv) Vacating Lower Court Judgments when They Become Moot on Appeal

§ 2.13(c)(v) Case Moot if Court Cannot Fashion Any Effectual Relief

§ 2.13(c)(vii) Actions Capable of Repetition Yet Evading Review—General Principles

§ 2.13(c)(vii)(8) Mootness and Class Actions

§ 2.13(c)(x) Mootness Because of Res Judicata or Collateral estoppel—of claim preclusion and of issue preclusion

[New]

§ 2.13(f) Standing

§ 2.13(f)(ii) Personal Standing, Nontaxpayer Suits and the Requirement of Injury in Fact

§ 2.13(f)(ii)(1) General Principles

§ 2.13(f)(ii)(4) The Role of Congress in Creating Standing

§ 2.13(f)(ii)(5) Standing and Nonconstitutional Cases

§ 2.13(f)(ii)(7) Standing and Constitutional Cases

§ 2.13(f)(ii)(8) Official Capacity, Individual Capacity, and Standing

§ 2.13(f)(ii)(12) Standing in Racial Gerrymandering Cases

§ 2.13(f)(iii) Third Party Standing

§ 2.13(f)(iii)(3) Applying Third-Party Standing Rules

§ 2.13(f)(iii)(4) Challenging the Racial or Sexual Composition of Juries

§ 2.13(f)(iii)(4)(II) Three-Step Procedure for Litigants Who Raise Batson Claims


§ 2.13(f)(iii)(5)(II) Land Use and Property Takings

§ 2.13(f)(iii)(5)(X) The Treaty Power and Third-Party Standing

§ 2.13(f)(iv) Standing by State Governments, Associations, and Congressmen

§ 2.13(f)(iv)(1) State Governments

§ 2.13(f)(iv)(3) Associations

§ 2.13(f)(v) Standing and Equal Protection
Table of Contents

§ 2.14 Adequate State Grounds and Federal Questions
§ 2.14(b) Applications of the Rule
§ 2.14(b)(i) General Principles
§ 2.14(b)(ii) The Problem of Ambiguity
§ 2.14(b)(iv) Habeas Cases
§ 2.14(b)(vi) State Procedural Law
§ 2.14(b)(vi)(1) Basic Principles
§ 2.15 The Abstention Doctrine
§ 2.15(f) Abstention, Comity, and Federal Court Injunctions of State Court Proceedings—The Doctrine of “Our Federalism”
§ 2.15(f)(vi) State Civil Proceedings
§ 2.16 Political Questions
§ 2.16(c) A Few Decided Areas
§ 2.16(c)(ii) Foreign Affairs [Retitled]
§ 2.16(c)(ii)(1) Foreign Affairs and the War Making Power [New]
§ 2.16(c)(ii)(2) Foreign Affairs and Recognizing Foreign Governments [New]
§ 2.16(c)(vi) Impeachment
§ 2.16(c)(vi)(1) The Legal Principles

Chapter 3 Sources of National Authority
§ 3.3 Judicial Review and Federal Powers After McCulloch
§ 3.3(b) The Modern Expansion of the Necessary and Proper Clause
§ 3.3(b)(3) The Affordable Care Act
§ 3.3(d) The Regulation of the Armed Forces, Including State Militia
§ 3.6 Sources of Federal Power—Admission of States—Equality of the States
§ 3.6(a) Introduction
§ 3.6(c) Washington, D.C., Representation and Statehood
§ 3.8 Sources of Federal Power—Copyrights and Patents
§ 3.8(c) Extending the Time of Copyright
§ 3.12 The Separation of Powers Principle
§ 3.12(a) Introduction

Chapter 4 The Federal Commerce Power
§ 4.2 The Power to Regulate Commerce with Foreign Nations and Indian Tribes
§ 4.2(d) The Application of the Bill of Rights to Indians
§ 4.2(e) State Laws and Indian Tribes
§ 4.8 Summary of 1937 to Present
§ 4.8(b) The Modern Delegation of Power Doctrine—
“Delegations” to States or the Executive Branch
§ 4.9 Development of New Standards
  § 4.9(d)(ii) The Commerce Power after National Federation of
              Independent Business v. Sebelius [New]
§ 4.10 Refinement and Application of the New Standards
  § 4.10(d) Regulation of State and Local Government
            Entities
  § 4.10(d)(ii) State and Local Government Immunity from
                 Federal Commerce Regulations
  § 4.10(d)(ii)(4) The Overruling of the National League of
                    Cities Decision
  § 4.10(d)(ii)(6) Conclusion

Chapter 5 Federal Fiscal Powers
§ 5.2 General Scope of the Taxing Power
§ 5.3 Direct Versus Indirect Taxes
  § 5.3(b) Current Status of Direct Versus Indirect Taxes
§ 5.7 The Power to Spend
  § 5.7(a) The Legal Principles
  § 5.7(a)(ii) The Multi-Part Test to Determine the
              Constitutionality of Spending Restrictions
  § 5.7(a)(ii)(4) Twenty-First Amendment No “Independent
                  Constitutional Bar”
  § 5.7(a)(ii)(5) First Amendment as an “Independent
                  Constitutional Bar”
  § 5.7(a)(ii)(6) Coercive Federal Spending
  § 5.7(a)(iv) The Appropriations Clause

Chapter 6 International Affairs
§ 6.2 The Role of Congress in International Affairs
  § 6.2(d) Other Congressional Powers
§ 6.3 The Role of the Court in International Affairs
  § 6.3(e) Federal Common Law and the Act of State Doctrine
§ 6.4 The Treaty-Making Power: Introduction
  § 6.4(c) Interpreting Treaties
§ 6.5 Limitations on the Treaty Power
  § 6.5(a) Treaties Subject to Constitutional Limitations
  § 6.5(d) The President’s Power to Terminate Treaties
§ 6.10 Historical Development of the War Power
  § 6.10(f) Libya
§ 6.12 The War Powers Resolution
  § 6.12(b) Legislative Veto
§ 6.13 Military Courts
§ 6.13(b) Martial Law and the Law of War
§ 6.13(b)(i) Introduction
§ 6.13(b)(iii) The Detainee Case of 2006—Hamdan v. Rumsfeld
§ 6.13(b)(iii)(5) New Legislation or Rule-Making

Chapter 7 Presidential Domestic Power
§ 7.1 Executive Privilege: Presidents and Ex-Presidents as Witnesses—An Historical Perspective
§ 7.1(a) Introduction
§ 7.1(c) Involuntary Appearances
§ 7.1(c)(viii) President Bill Clinton
§ 7.2 Executive Privilege in the Case Law
§ 7.2(a) The Early Cases
§ 7.5 The Pardoning Power
§ 7.5(b) Moving Beyond the Common Law
§ 7.6 The Duty to “Faithfully Execute the Laws” [New]

Chapter 8 Congressional Powers and Privileges
§ 8.10 The Impeachment Power of Congress: Introduction
§ 8.10(c) Immunities from the Criminal Process Prior to Impeachment
§ 8.10(c)(ii) Examples from History
§ 8.10(c)(ii)(4) President Clinton
§ 8.10(c)(iii) The Commentators
§ 8.12 Sanctions for Impeachment
Table of Contents

Chapter 9 Constitutional Limitations on the Assumption of Public Office

§ 9.1 Qualifications for Membership in Congress
§ 9.1(b) The Incompatibility and Ineligibility Clauses
§ 9.1(b)(i) The Incompatibility Clause
§ 9.5 Constitutional Restrictions on Congressional Appointment of Executive Officials
§ 9.5(a) General Principles
§ 9.5(c) Congress’ Decision to Authorize Private Citizens to Sue on Behalf of the United States
§ 9.5(c)(iii) Qui Tam Actions and the Appointments Clause
§ 9.6 Appointment Powers of the “Courts of Law”
§ 9.6(e) The Constitutionality of the Independent Counsel Provisions of the Ethics in Government Act
§ 9.6(e)(viii) Separation of Powers and Limitations on the President’s Power to Remove the Independent Counsel
§ 9.7 The Three-Stage Appointment Process
§ 9.7(b) Nomination
§ 9.7(b)(iv) Filibusters
§ 9.8 Recess Appointments
§ 9.8(a) In General
§ 9.9 The Rule-Making Power of Federal Judges and the United States Sentencing Commission
§ 9.9(d) The Official End of the Federal Sentencing Guidelines: The Booker Decision
§ 9.12 State Law and the Electoral College
§ 9.12(d) The Redistricting Power of the State Legislature and the Elections Clause [New]
§ 9.18 Titles of Nobility and the Foreign Emoluments Clause [Retitled]
§ 9.19 The Qualifications Clauses of Article I and the Seventeenth Amendment
§ 9.19(d) Term Limits
§ 9.19(d)(ii) State Office Holders
§ 9.22 Congressional Power to Impose Qualifications on the President [New]
Chapter 10 How a Bill Becomes a Law
§ 10.4 Scheduling Floor Action
  § 10.4(b) Scheduling Floor Action for Bills in the House
  § 10.4(b)(vii) Self-Executing Rules and the “Deemed to Pass” Maneuver
§ 10.10 Amending the Constitution
  § 10.10(a) Introduction

Chapter 11 The Commerce Clause and Restrictions on State Regulatory Powers
§ 11.1 State Regulation Affecting Interstate Commerce—Introduction
§ 11.8 Incoming Commerce
  § 11.8(f) State Reciprocity Requirements
§ 11.9 Outgoing Commerce
  § 11.9(c) Embargoes of Natural Resources and Wild Game and Fish
  § 11.9(e) The State as a Market Participant

Chapter 12 Federal Regulation and State Authority
§ 12.1 Federal Preemption: Introduction
§ 12.2 Federal Preemption: The Traditional Test
  § 12.2(b) The Three-Part Test of Pennsylvania v. Nelson
§ 12.3 Federal Preemption: Comparison of Preemption Cases with Commerce Power Cases
  § 12.4 Federal Preemption: Modern Developments
    § 12.4(c) Has Congress or the Relevant Agency Evidenced An Intent to Preempt?
    § 12.4(c)(i) The Existence of Concurrent Regulation
    § 12.4(c)(i)(1) The General Rule
    § 12.4(d) Does State Law “Actually Conflict” with Federal Law?
§ 12.5 Interstate Compacts
  § 12.5(c) Supreme Court Interpretation of Interstate Compacts
  § 12.5(c)(i) General Principles
§ 12.7 Interstate Comity
  § 12.7(d) The Privileges and Immunities Clause of Article IV
    § 12.7(d)(i) General Principles
    § 12.7(d)(x) State Freedom of Information Requests and Access to Public Information

Chapter 13 State Taxation
TABLE OF CONTENTS

§ 13.6 License, Gross Receipts, Sales, Use, and “Value Added” Taxes
§ 13.6(a) License Taxes
§ 13.6(a)(v) Gross Receipts Taxes—Jurisdiction and Discrimination Issues
§ 13.6(a)(v)(1) General Principles
§ 13.6(b) Sales and Use Taxes
§ 13.6(b)(i) Introduction

Chapter 14 Individual Liberties—An Overview
§ 14.2 The Bill of Rights and Their Incorporation in the Fourteenth Amendment
§ 14.2(a) Selective Incorporation
§ 14.2(b) The Second Amendment
§ 14.6 The Due Process Clauses
§ 14.6(a) Introduction—Overview
§ 14.6(a)(ii) Substantive Review
§ 14.6(c) Separating Procedural & Substantive Issues in Prisoners’ Rights Cases

Chapter 15 Substantive Due Process
§ 15.4 Substantive Due Process Since 1937
§ 15.4(a) Introduction
§ 15.5 Note on the Meaning of “Liberty,” Fundamental Constitutional Rights, and the Incorporation of the Bill of Rights
§ 15.6 Incorporation of the Bill of Rights
§ 15.6(b) The Provisions of the Bill of Rights Which Are Incorporated
§ 15.7 Fundamental Rights
§ 15.9 Other Forms of Restrictions on Retroactive Legislation
§ 15.9(a) Due Process Limitations
§ 15.9(b) The Ex Post Facto Clauses
§ 15.9(b)(ii) When Is a Law Penal for Ex Post Facto Purposes?
§ 15.9(b)(iii) Procedural Changes
§ 15.12 The “Taking” Issue
§ 15.12(a) Introduction
§ 15.12(a)(i) Overview
§ 15.12(b) Property Use Regulations
§ 15.12(b)(v) Physical Occupations—A Per Se Taking
§ 15.12(b)(vii) Conditional Development Permits—A Special Type of “Spot Regulation”
§ 15.12(d) Impairment of Use
§ 15.12(e) Summary
§ 15.12(e)(i) Factors to Consider

Chapter 16 State Action
§ 16.1 Introduction
  § 16.1(a) Central Theory
  § 16.1(c) State Action and the Federal Government [New]
§ 16.2 The Public Function Concept
§ 16.4 Mutual Contacts—Licensing, Symbiotic Relationships, Subsidies, and Other Entanglements
  § 16.4(b) Multiple Contacts—Symbiotic Relationships
# Table of Contents

Chapter 17 Procedural Due Process—The Requirement of Fair Adjudicative Procedures

I Introduction

§ 17.1 Overview

II Deprivations of “Life, Liberty, or Property” for Which Some Process Is Due

§ 17.2 Life Liberty or Property

§ 17.3 Life

§ 17.3(c) Relationship of Death Penalty Cases to Due Process Analysis

§ 17.3(d) Death Penalty and Mental Status

§ 17.3(e) Death Penalty, Length of Prison Term, and Age [Retitled]

§ 17.4 Liberty

§ 17.4(a) Introduction

§ 17.4(b) Physical Liberty

§ 17.4(b)(i) Overview of Due Process and Criminal Prosecutions

§ 17.4(b)(ii) Loss of Liberty Apart From a Criminal Conviction

§ 17.4(c) Fundamental Constitutional Rights

§ 17.4(c)(i) Overview—Summary

§ 17.4(c)(ii) Termination of Family Relationships

§ 17.4(d)(iv) Driver Licenses

§ 17.5 Property

§ 17.5(b) Debt Actions

§ 17.6 Irrebuttable Presumptions

III What Process Is Due? The Procedures Required by the Due Process Clause

§ 17.7 Introduction

§ 17.8 General Principles

§ 17.8(b) Need for Resolution of a Factual Dispute

§ 17.8(c) Rulemaking-Legislative “Process”
§ 17.8(d) Constitutional Limitations on the Adjudicatory Process
§ 17.8(f) The Seventh Amendment—Overview
§ 17.8(g) Right to a Fair Decisional Process and an Impartial Decision-Maker
§ 17.8(h) Notice
§ 17.8(i) Form of the Hearing or Process: The “Balancing” Test
§ 17.9 A Summary of the Major Decisional Areas
§ 17.9(a) Loss of Physical Liberty
§ 17.9(a)(i) Overview of the Restrictions on the Criminal Process—When is a Case a “Criminal” Case?
§ 17.9(a)(ii) Appellate Process
§ 17.9(a)(vii) Commitment for Mental Care
§ 17.9(c) Deprivations of Government Benefits
§ 17.9(c)(i) General Principles

Chapter 18 Equal Protection

I Introduction to Equal Protection
§ 18.1 Introduction—Application to State and Federal Acts
§ 18.2 Government Classifications and the Concept of Equal Protection
§ 18.2(a) Introduction
§ 18.3 An Introduction to Standards of Review Under the Equal Protection Guarantee
§ 18.3(a) Overview of the Equal Protection & Substantive Due Process Standards of Review
§ 18.3(a)(ii) The Rational Relationship Test—Minimal Judicial Scrutiny
§ 18.3(a)(iv) The Intermediate Test
§ 18.3(a)(v) Summary
§ 18.3(c) Mandatory Retirement Laws—An Example of Rationality Review
§ 18.3(d) Tax Classifications & the Rationality Rest

II Classifications Based on Race or National Origin
§ 18.7 The Civil War Amendments and Racial Discrimination—An Introductory Note
§ 18.7(b) A Capsule History
§ 18.7(b)(i) Introduction
§ 18.9 Implementation of The Desegregation Decisions
### Table of Contents

§ 18.9(a) Desegregation of the Schools  
§ 18.9(a)(iii)(6) Modification of State Remedies  
§ 18.10 “Benign” Racial Classifications—Affirmative Action Programs  
  § 18.10(a) Overview  
  § 18.10(a)(i) Introduction  
  § 18.10(b) Supreme Court Decisions  
  § 18.10(b)(ii) Race Conscious Government Policies Designed to Promote Educational Diversity  
  § 18.10(b)(ii)(3)(A) Diversity in Higher Education—The University of Michigan Cases [Retitled]  
  § 18.10(b)(ii)(3)(B) The 2013 University of Texas Case—Clarifying or Narrowing The Standard to be used in Educational Diversity Cases? [New]  
  § 18.10(b)(iv) Race Conscious Legislative Districting  
  § 18.10(b)(iv)(1) Developing the Standards [New]  
  § 18.10(b)(iv)(2) Applying the Standards: A Tentative Synthesis [New]  

### III Classifications Based on Alienage

§ 18.11 General Status of Aliens—Citizenship, Immigration, Deportation, Naturalization and Expatriation  
§ 18.12 The Classification Problem  
  § 18.12(a) Overview
Table of Contents

Chapter 18 Equal Protection (Continued)

VII The Right to Privacy
§ 18.28 Marriage, Family Rights and Sexual Activity as a Part of the Right to Privacy
  § 18.28(a) Marriage and Family Relationships
  § 18.28(b) Sexual Activity
  § 18.28(c) Which Relationships Are Part of the Right to Privacy?
  § 18.28(c)(i) The Road to Gay Marriage
  § 18.28(c)(ii) The Right to Gay Marriage
§ 18.29 Abortion
  § 18.29(a) An Introductory Note
  § 18.29(a)(ii) “Facial Challenges” vs. “As Applied Challenges”
  § 18.29(c) Regulations of Abortion Procedures
  § 18.29(c)(i) Summary
§ 18.30 Emerging Issues Regarding the Right to Privacy
  § 18.30(a) Accumulation and Distribution of Data Concerning Individual Citizens

VIII The Right to Vote
§ 18.31 The Electoral Franchise as a Fundamental Right
  § 18.31(a) Introduction

IX The Reapportionment Cases and the Rule of One Person, One Vote
§ 18.35 The Origins of One Person, One Vote
§ 18.36 The Application of One Person, One Vote
  § 18.36(c) Mathematical Precision
  § 18.36(c)(i) In Federal Elections
  § 18.36(c)(iii) Who Counts?

XI The Guarantees of the Bill of Rights As Fundamental Rights for Equal Protection Analysis
§ 18.40 First Amendment Guarantees
§ 18.41 Right to Fairness in the Criminal Justice System
Chapter 19 Congressional Enforcement of Civil Rights

§ 19.3 Section 5 of the Fourteenth Amendment: Morgan as Restricted by Oregon v. Mitchell and Subsequent Cases in its Wake

§ 19.3(b) RFRA as Applied to Federal Statutes

§ 19.11 Enforcing the Fifteenth Amendment: The Early Law

§ 19.12 Enforcing the Fifteenth Amendment: The Modern Era

§ 19.12(a) The Voting Rights Act of 1965, the Katzenbach Case, and its Progeny

§ 19.12(b) Racial Gerrymandering and Affirmative Action

§ 19.15 Jurisdiction Under Section 1983: Generally

§ 19.15(a) Introduction

§ 19.17 The Basic Elements of the Section 1983 Cause of Action: Under Color of Law

§ 19.17(b) Federal Common Law


§ 19.28(a) The Basic Principles

§ 19.29 Qualified Immunities Under Section 1983: The Two-Part Test of Harlow v. Fitzgerald for Qualified Immunity in Damage Actions

§ 19.29(a) The Development of the Objective Test

§ 19.29(c) Prior Judicial Decisions Not Limited to Decisions of the U.S. Supreme Court

§ 19.29(e) Collateral Appeals

§ 19.29(g) Appeals, Mootness, and Similar Issues Relating to Qualified Immunity

§ 19.30 Qualified Immunities Under Section 1983: Burden of Proof

§ 19.32 The Immunities of Governmental Units Under Section 1983: Municipalities and Local Governmental Units

§ 19.32(b) Rules of Pleading

§ 19.36 Attorney’s Fees Under Section 1983

§ 19.36(f) The “Prevailing” Party

§ 19.36(f)(i) Introduction
# Table of Contents

## Chapter 20 Freedom of Speech

$ \S $ 20.1 Introduction

$ \S $ 20.4 Colonial Background

$ \S $ 20.4(b) Colonial Legislative Practice

$ \S $ 20.5 Enactment of the First Amendment

$ \S $ 20.5(b) The Alien and Sedition Acts

$ \S $ 20.9 The Void-For-Vagueness Doctrine

$ \S $ 20.9(a) Introduction

$ \S $ 20.9(c) Vagueness and the First Amendment

$ \S $ 20.11 Government Prescribed Speech, Government Subsidies for Speech, Unconstitutional Conditions, and Equal Protection Analysis

$ \S $ 20.11(b) Government Speech and Propaganda

$ \S $ 20.11(f) Subsidization and Unconstitutional Conditions

$ \S $ 20.11(i) Equal Protection

$ \S $ 20.15 Current Status of the “Clear and Present Danger” Doctrine

$ \S $ 20.15(d) The *Brandenburg* Test

$ \S $ 20.15(f) Speech Integral to Criminal Conduct

$ \S $ 20.16 The Distinction Between Prior Restraint and Subsequent Punishment of Speech

$ \S $ 20.16(a) The Common Law Background

$ \S $ 20.25 Judicial Protective Orders and the Press

$ \S $ 20.25(c) Free Press and Fair Trials

$ \S $ 20.25(c)(ix) Voir Dire Proceedings: The *Press-Enterprise* Test

$ \S $ 20.31 The Modern Commercial Speech Doctrine

$ \S $ 20.31(b)(iii) Advertising Legal Activities

$ \S $ 20.31(b)(iii)(4) Truthful Advertising of Harmful or Risky Products

$ \S $ 20.31(b)(iii)(4)(IX) Price Regulation [New]

$ \S $ 20.33 *New York Times v. Sullivan* and Libel of a Public Official

$ \S $ 20.33(e) Actual Damages, Punitive Damages, Right of Reply, and Injunctive Relief

$ \S $ 20.33(e)(iv) Rights of Reply

$ \S $ 20.36 Rights of Publicity and Rights of Privacy

$ \S $ 20.36(d) Copyright Protection for a *Limited* Time

$ \S $ 20.39 Subsequent Modifications in the Fighting Words and Hostile Audience Doctrines
§ 20.39(a) Limiting Chaplinksy
§ 20.39(e) Intent to Intimidate and Threaten: Pickets at Military Funerals
§ 20.41 The Freedom to Associate and not to Associate
§ 20.41(p) The Right Not to Associate
§ 20.42 Public Employment Restrictions and the Freedom of Association
§ 20.42(a) Political affiliation
§ 20.42(a)(ii)(1) Basic Principles
§ 20.42(e) Restrictions on a Judge's Judicial Speech and Judicial Campaign Speech
§ 20.42(e)(ii) Judicial Speech While Campaigning for Judicial Office
§ 20.47 Reasonable Time, Place, and Manner Restrictions on Speech, Without Regard to Content
§ 20.47(d) Applying the Perry Analysis
§ 20.47(d)(v) Public Street Posts
§ 20.47(d)(xvii) License Plates [New]
§ 20.47(d)(xviii) Trade Marks [New]
§ 20.47(f) Injunctions of Protests in the Public Forum: Abortion Clinics
§ 20.47(f)(xiii) Statutes Regulating Abortion Protests
§ 20.49 Fashioning a Test for First Amendment Protection for Symbolic Speech and the Role of Improper Legislative and Administrative Motivation
§ 20.49(c) License Plate Desecration
§ 20.51 Regulation of Campaign Financing
§ 20.51(d)(x)(7) Contribution Limits to Multiple Candidates [New]
§ 20.52 Regulation of Political Activity of Government Employees
§ 20.52(a) Introduction
§ 20.52(c) The Burden of Proof and the Employer's Duty to Act Reasonably
§ 20.54 Assembly and Petition: The Basic Legal Principles
§ 20.54(e) The Noerr-Pennington Doctrine
§ 20.54(e)(ii) Sham Actions
§ 20.61 Special Considerations in Light of the Miller Case
§ 20.61(b) Protection of Minors
§ 20.61(b)(ii) Child Abuse and Child Pornography
§ 20.61(n) Sexually Oriented Material on the Internet
Table of Contents

Chapter 21 Freedom of Religion

I Introduction
§ 21.1 The Natural Antagonism Between the Two Clauses
§ 21.1(c) “Play in the Joints” Between the Clauses

II The Establishment Clause
§ 21.3 Introduction
§ 21.3(e) Religious Displays and Public Prayer
§ 21.5 Religion and the Public Schools
§ 21.5(c) Prayers or Bible Reading

III The Free Exercise Clause
§ 21.8 The Modern Cases
§ 21.8(a) Overview and Summary

IV Other Establishment—Free Exercise Problems
§ 21.17 Excluding Churches from Otherwise Neutral Government Aid Programs [New]

Chapter 22 Naturalization and Citizenship
§ 22.1 Introduction
§ 22.2 Admission of Aliens into the United States
§ 22.2(c) Admission, Free Speech and Religion [Retitled]
§ 22.2(d) Admission and the Rights of Illegitimates
§ 22.3 Immigration and Acquisition of Citizenship
§ 22.3(c) The Distinction Between Naturalization Inside of the United States and Naturalization Outside of the United States
§ 22.5 Involuntary Expatriation of One Born or Naturalized in the United States
§ 22.6 Involuntary Expatriation of One Born and Naturalized Outside of the United States

Chapter 23 Theories and Methods of Constitutional Construction and Interpretation in the Case Law and the Literature
§ 23.1 Introduction
§ 23.2 The Movement Away From Natural Law and Contractual Theorists
§ 23.10 Principles of Interpretation: The Duty to Avoid Constitutional Issues
  § 23.10(a) Techniques to Avoid Deciding
  § 23.10(c) Constitutional Doubt
§ 23.16 Principles of Interpretation: Adaptability to New Conditions
§ 23.24 The Caselaw on Construing Words and Phrases
§ 23.32 Contemporaneous Construction of the Constitution
§ 23.33 Congressional Interpretation and the Uses of History

Appendices

Appendix G The Justices of the Supreme Court in Historical Perspective

Appendix K The Presidents and Vice Presidents of the United States in Historical Perspective (as of Jan. 1, 2017)

Table of Cases