

# CONSTITUTIONAL LAW

## 1. Standing

Before a plaintiff may sue in federal court, she must show that she has a sufficient stake in the controversy and will suffer an injury in fact that will be remedied by a decision in her favor.

**Exception1:** close relationship (e.g. doctor-patient, 解雇された者の妻は×)

**Exception2:** the third party is unlikely to be able to assert his rights. (囚人)

+P's injury adversely affects the relationship with the third party.

**Exception3:** An **organization** may sue for its **members**, if: (e.g. **Tax Payer**団体)

(a) The individual **members** would have **standing** to sue;

(b) The interests are **germane** to the organization's **purpose**; **AND**

(c) **Neither** the **claim** nor **relief** requires **participation** of individual members.

## 2. Ripeness (法律がenactされていれば、未だ適用対象行為が無くてもripeness OK.)

A federal court will not hear a case unless a real, live controversy exists. at all stages of review, not merely when the complaint is filed.

## 3. Mootness

A real, live controversy must exist at all stages of review, not merely when the complaint is filed. However, where there is a reasonable expectation that the same complaining party will be subjected to the same action and would again be unable to resolve the issue because of the short duration of the action, the controversy will not be deemed moot. (妊娠パターン)

## 4. Political Question Doctrine

Allegations of constitutional violations that the federal courts will not adjudicate

## 5. State Action

The Fourteenth Amendment applies only if there is action by a state or local government officer or private individual whose behavior meets the requirements for state action.

State action exists where the state is involved in providing a public function or there is a significant state involvement.

## 6. The Eleventh Amendment

The Eleventh Amendment is a jurisdictional bar which prohibits a federal court from hearing a claim by a party against a state government. While the Eleventh Amendment applies to actions against state governments for injunctive relief, it does not apply to local governments.

## (Dormant) Commerce Clause

State local laws are UNCONSTITUTIONAL, if they place **undue burden** on **interstate commerce**.

If the law **DOES NOT** discriminate.

- The privileges and immunities clause of Article IV does **NOT** apply.
- If the law burdens interstate commerce, it violates the dormant commerce clause, provided that **its burdens exceed its benefits**.

If the law **DOES** discriminates against out-of-staters.

- If the law burdens interstate commerce, it violates **the dormant commerce clause**, UNLESS it is necessary to achieve an **important government purpose**.

i. **Exception: Congressional approval.**

ii. **Exception: Market participant exception.**

A state may prefer its own citizens when the state is acting as a market participant.

## LEVELS OF SCRUTINY

### 1. Rational basis test

if it is **rationally related** to a **legitimate government purpose** (interest).

### 2. Intermediate scrutiny

if it is **substantially related** to an **important government purpose** (interest).

### 3. Strict scrutiny

if it is **necessary** to achieve a **compelling government purpose** (interest).

## DUE PROCESS

### A. **PROCEDURAL DUE PROCESS**

#### 1. Has there been a "deprivation of life, liberty, or property"?

**Liberty:** A deprivation of liberty occurs, if there is the **loss of a significant freedom** provided by the Constitution or a statute.

**Property:** A deprivation of property occurs, if there is an **entitlement** and that entitlement is **not fulfilled**.

#### 2. What procedures are required? Balance test

- i) The **importance of the interest** to the individual.
- ii) The ability of **additional procedures** to **increase the accuracy** of the fact-finding.
- iii) The government interest in **administrative efficiency**.

### B. **SUBSTANTIVE DUE PROCESS**

- a. Only a **rational basis test** is used for laws affecting economic rights.
- b. **Takings Clause** The government may take private property for public use if it provides just compensation.
- c. **Contracts Clause** No state shall impair the obligations of contracts.  
**Intermediate scrutiny.** \*The test is different from traditional intermediate scrutiny.
  - (a) Does the legislation **substantially impair** a party's rights under an **existing contract**?
  - (b) If so, is the law a **reasonably** and **narrowly tailored means** of promoting an important and legitimate public interest?
- g. **Right to Abortion** \*Strict scrutiny is not used for abortion.  
**Prior to viability**, states may NOT prohibit abortions, but may regulate abortions, so long as they do not create an **undue burden** on the ability to obtain abortions.  
**After viability**, states may prohibit abortions unless necessary to protect the woman's life or health.

## VII. **EQUAL PROTECTION**

1. What is the **classification**? \*How people are distinguished/differentiated?
2. What **level of scrutiny** should be applied? \*Rational basis, intermediate scrutiny, strict scrutiny
3. Does this law **meet** the level of scrutiny?

## VIII. **FIRST AMENDMENT** (<Overbroad/Vagueness>は、常に問題となる!!...chilling effect) (Symbolic Speech) **Content-neutral Laws** ⇒ **Intermediate scrutiny** ("Prior Restraint" と set)

**Prior Restraint** is any governmental action that would prevent a communication from reaching the public. ⇒ **Strict scrutiny**.

The government can require a **license** for speech, ONLY IF there is an **important reason** for licensing, and **clear criteria** leaving almost no discretion to the licensing authority.

Licensing schemes must contain **procedural safeguards**, such as prompt determination of requests for licenses and judicial review

**Symbolic Speech:** The government can regulate conduct that communicates, if  
(a) It has an **important interest unrelated** to suppression of the message; AND,  
(b) The **impact** on the communication is **no greater than necessary** to achieve the government purpose.

**Obscenity (and Sexually-oriented) Speech** (Obscenityの基準)

- i. The material must **appeal** to the **prurient interest**.
- ii. The material must be **patently offensive** under the law prohibiting obscenity.
- iii. **Taken as a whole**, the material must **lack serious redeeming literary, artistic, political or scientific value**. (LAPS test)

**Commercial Speech** (弁護士の"direct solicitation") ⇒ 方法制限 (手紙) なら、**Content-Neutral**  
**False and deceptive advertisements** are NOT protected by the 1<sup>st</sup> Amendment.  
**True** commercial speech that **inherently risks deception** may be prohibited.  
**intermediate scrutiny**

Government regulation of commercial speech must be **narrowly tailored**, but it does NOT need to be the **least restrictive alternative**.

**\*Constitutional Defamation** (Torts参照) **\*Constitutional invasion** も **malice** が必要  
**Privacy**

Liability is NOT allowed if the media broadcasts a tape of an **illegally intercepted call**, if (i) **the media did not participate** in the illegality, and (ii) it involves a matter of **public importance**.

1. **Public Forums** – Government properties that the government is **required** to make available for speech.
  - a. Regulations must be **subject matter-neutral** and **viewpoint-neutral**; AND
  - b. Regulations must be a **time, place, or manner regulation** that
    - (i) serves an **important government purpose**, and
    - (ii) leaves open **adequate alternative places** for communication.
2. **Limited Public Forums** – Government properties that the government could close to speech, but (**voluntarily**) **chooses to open** to speech.
3. **Non-public Forums** – Government properties that the government constitutionally **can and does close** to speech.  
Regulation must be **reasonable** and **viewpoint neutral**.

## **FREEDOM OF ASSOCIATION**

- (1) The person is actually **affiliated** with the group;
- (2) The person has **knowledge** of the group's **illegal activity**; AND
- (3) The person **specifically intends** to **further** those illegal activities.

## **FREEDOM OF RELIGION**

**Free Exercise Clause:**

**Establishment Clause:** The (**Lemon**) test

- i. There must be a **secular purpose** for the law.
- ii. The **effect** must be **NEITHER to advance** nor **inhibit** religion.
- iii. There must NOT be **excessive entanglement** with religion.

**\*Criminal Procedure**の**5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup>, 8<sup>th</sup> Amendment**も検討する。

Constitution ~ 根拠条文

- P6 { 14th A  
Sovereign immunity / 州に対する訴訟権、federal court での hearing 不可  
Police Power (federal) ~ state court での " "  
General welfare ~ Tax & Spending の時  
Necessary and proper clause ~ Congress は立法権、行政権、司法権に必要に応じて行使できる  
10th A ~ Congress は、State は、立憲を義務付けられている。 (州は全権限を行使する権利を有する)  
Supremacy Clause ~ 法律の優位、州の憲法は無効になる  
P12 (Dormant) Commerce clause ~ undue burden on interstate commerce  
P13 Privileges and immunities clause of Article IV ~ 他州の市民権を認め、州の権利を制限する  
P16 Privileges and immunities clause of 14th A ~ "travel" の自由  
P17 13th A ~ 奴隷制を禁止する  
P19 §5 of the 14th A は、State の規制権を制限する (Congress は必要)  
P22 Procedural due process ~ (life, liberty, property の侵害の時) notice of hearing の必要  
Substantive due process ~ 経済的権利は rational basis test  
P25 Taking clause (特権と補償)  
Contracts clause ~ intermediate scrutiny  
(ex post facto clause は、民事では適用しない)  
Privacy ~ strict scrutiny  
Privacy 憲法 14th A  
Federal 憲法 5th A  
P29 Equal protection ~ Content-based restriction V. Content-neutral laws  
P34 First Amendment → Free speech ~ Content-based restriction V. Content-neutral laws  
Prior restraints  
Vagueness  
Overbreadth  
Fighting words  
Symbolic speech  
Obscenity of sexually-oriented speech  
Commercial speech  
Defamation  
P40 Freedom of association  
P41 Freedom of religion ~ { Free exercise clause  
Establishment clause

CONSTITUTIONAL LAW

I. JUSTICIABLE CASE OR CONTROVERSY (RAMSEY)

- A. Ripeness
- B. Abstention
- C. Mootness
- D. Political Question
- E. Standing
- F. 11th Amendment

II. GOVERNMENTAL POWER

- A. Separation of Powers
- B. Federal Power
  - 1. Enumerated Powers
  - 2. 10th Amendment
- C. State Police Power
- D. State interference with Federal system
  - 1. Preemption
  - 2. Dormant Commerce Clause
  - 3. Privileges & Immunities

III. INDIVIDUAL RIGHTS (SSTREPS)

- A. State Action
- B. Speech
  - 1. Prior restraint
  - 2. Vagueness or Overbreadth
  - 3. Content Regulation
  - 4. Indirect Regulation
- C. Taking (5th Amendment)
  - 1. Taking for public use
  - 2. Just compensation
- D. Religion
  - 1. Establishment Clause
  - 2. Free Exercise Clause
- E. Retroactive legislation
  - 1. Impairment of contract
  - 2. Ex post facto
  - 3. Bills of attainder
- F. Equal Protection
  - 1. Classification or Fundamental right
  - 2. Scrutiny
    - a. Strict scrutiny
    - b. Middle tier
    - c. Rational basis
- G. Procedural Due Process
  - 1. Life, Liberty or Property interest
  - 2. What process is due?
- H. Substantive Due Process
  - 1. Marriage, Procreation, Privacy