Business Law A Storytelling Approach 1st edition Fricke Test Bank

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Business Law: A Storytelling Approach, 1e **(Fricke)**
Chapter 2 The Constitution and Governmental Powers

1) The U.S. Constitution divides power between the federal government and the people.
Answer: FALSE
Explanation: The U.S. Constitution divides power among the federal government, the state government, and the people.
Learning Objective: 2.1
Skill: Comprehension
AACSB: Application of Knowledge

2) The federal Congress is given the power to regulate interstate commerce under the U.S. Constitution.
Answer: TRUE
Explanation: The Commerce Clause, in Article I, Section 8, gives Congress the authority "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The "among the several States" part is key, because if Congress can show that an issue impacts business across state lines (known as *interstate commerce*), then Congress may regulate that part of the economy; any conflicting state regulations are unenforceable.
Learning Objective: 2.1
Skill: Comprehension
AACSB: Application of Knowledge

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3) Due to the push for state rights, any federal law that conflicts with a valid state law is ineffective.
Answer: FALSE
Explanation: The Supremacy Clause, found in Article 6, provides that the Constitution and all federal laws "shall be the supreme Law of the Land" (yes, it's capitalized like that in the original). Therefore, any state law that conflicts with a valid federal law is ineffective.
Learning Objective: 2.1
Skill: Comprehension
AACSB: Application of Knowledge

4) Judicial review is the primary check the judicial branch has over the executive and legislative branches.
Answer: TRUE
Explanation: The judicial branch's primary check on the other two branches is judicial review. Whether it's a statute enacted by Congress, an executive order signed by the president, or any other action of the legislative or executive branches, federal courts have the power to determine the constitutionality of those actions. If the court finds an action unconstitutional, it is ineffective and unenforceable.
Learning Objective: 2.1
Skill: Comprehension
AACSB: Application of Knowledge

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5) If the president vetoes a bill from Congress, then the law cannot be enacted.
Answer: FALSE
Explanation: Refusing to sign, or vetoing, a new law is the president's power to keep Congress from passing laws with which the executive branch disagrees. Once the president vetoes a bill, it is dead and does not become law; however, Congress does have the power to override a presidential veto if two-thirds of the members of each house of Congress vote to do so. A vote to override a presidential veto allows the bill to become law.
Learning Objective: 2.1
Skill: Comprehension
AACSB: Application of Knowledge

6) Administrative agencies are governed by the legislative branch.
Answer: FALSE
Explanation: Because of its role in running the entire federal government, the other branches of government are very tiny compared to the executive branch. The president is tasked with the operations of the military, massive federal programs like Social Security and Medicare, and every federal agency, like the EPA, DEA, CFPB, SEC, FTC, and many others. Put three or four randomly chosen letters together, and there's a pretty good chance you've just named an executive branch agency!
Learning Objective: 2.1
Skill: Comprehension
AACSB: Application of Knowledge

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7) Power in the federal government is split using the separation of powers.
Answer: TRUE
Explanation: Although federalism separates powers between the national and state governments, the constitutional doctrine of separation of powers further delineates the federal government's powers by granting specific spheres of authority to each of the three branches of government.
Learning Objective: 2.1
Skill: Comprehension
AACSB: Application of Knowledge

8) The decision as to whether a law or action complies with the Constitution rests with the judicial branch.
Answer: TRUE
Explanation: Using the power of judicial review, the judicial branch serves as a check on the legislative and executive branches by evaluating laws and actions to determine constitutionality.
Learning Objective: 2.1
Skill: Comprehension
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9) Laws and judgments of other states are treated equally by the Supreme Court with respect to the Full Faith and Credit clause.
Answer: FALSE
Explanation: The Supreme Court has long held that states have different obligations when it comes to recognizing the *laws* of other states versus recognizing the *judgments* of other states' courts. One of the reasons we have separate states is because each state desired the independence to pass its own laws in accordance with its public policies that might differ from those of its neighboring states. Requiring all states to respect the same laws would defeat this concept.
Learning Objective: 2.2
Skill: Comprehension
AACSB: Application of Knowledge

10) The Privileges and Immunities Clause prohibits one state from unreasonably discriminating against the residents of other states on matters concerning basic rights.
Answer: TRUE
Explanation: Related to the Full Faith and Credit Clause is the Privileges and Immunities Clause, which prohibits one state from unreasonably discriminating against the residents of other states on matters concerning basic rights. Matters other than basic rights are not protected from discrimination under the clause.
Learning Objective: 2.2
Skill: Comprehension
AACSB: Application of Knowledge

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11) The Constitution prohibits the government from regulating all (or every aspect of) speech and religion.
Answer: TRUE
Explanation: Although the First Amendment's protections for speech and religion are broad, it does not mean the government has no authority to regulate speech or religion at all.
Learning Objective: 2.2
Skill: Comprehension
AACSB: Application of Knowledge

12) The Bill of Rights is the first 10 amendments to the U.S. Constitution.
Answer: TRUE
Explanation: These rights were not included in the original Constitution but were added shortly after passage.
Learning Objective: 2.2
Skill: Comprehension
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13) Actions cannot be considered speech under the First Amendment.
Answer: FALSE
Explanation: Each of the following is a type of speech:
• Talking to someone else
• Sending an email
• Burning a flag in protest
• Broadcasting a television advertisement
• Publishing a photograph on a website
• Filing a document with the government
• Publishing a video game
• Donating money to a political campaign
Learning Objective: 2.2
Skill: Comprehension
AACSB: Application of Knowledge

14) Most commercial speech is considered partially protected speech.
Answer: TRUE
Explanation: Most forms of commercial speech are also considered to be partially protected. When businesses communicate with consumers and others about their products, society cares that these communications are truthful and not misleading.
Learning Objective: 2.2
Skill: Comprehension
AACSB: Application of Knowledge

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15) The First Amendment protects you from your employer regulating your speech.
Answer: FALSE
Explanation: *One very, very important note about free speech rights that cannot be emphasized enough*: The First Amendment only protects you from *government* regulation of your speech! It is *not* a protection from the consequences of your words and actions. Your employer, customers, friends, neighbors, and society are free to act against you when you say or do things they don't like.
Learning Objective: 2.2
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16) Religious freedom has two components: the Establishment Clause and the Free Exercise Clause.
Answer: TRUE
Explanation: The First Amendment's provisions pertaining to religion are twofold. First, the Establishment Clause prohibits the government from sponsoring one religion or creating an official religion of a state or of the United States. If you've ever heard the phrase "separation of church and state," the Establishment Clause is the origin of that idea.
The second part of the First Amendment's religion section is called the Free Exercise Clause. Just as Congress cannot establish a national religion, it also cannot interfere with anyone's participation in the religion of their own choosing. One's exercise of their own religious practice *can* be regulated to prevent it from interfering with someone else's rights (i.e., human sacrifice is a no-no), but if no illegal activity is involved, Americans are generally free to practice their religions as they see fit.
Learning Objective: 2.2
Skill: Comprehension
AACSB: Application of Knowledge

17) Which of the following is NOT a branch of the federal government?
A) Legislative
B) Agencies
C) Judicial
D) Executive
Answer: B
Explanation: The three branches of government are the legislative, executive, and judicial branches. Agencies fall under the authority of the executive branch.
Learning Objective: 2.1
Skill: Comprehension
AACSB: Application of Knowledge

18) Federal agencies fall under which branch of government?
A) Legislative
B) Commercial
C) Judicial
D) Executive
Answer: D
Explanation: The three branches of government are the legislative, executive, and judicial branches. Agencies fall under the authority of the executive branch.
Learning Objective: 2.1
Skill: Comprehension
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19) Which branch of government is empowered solely to interpret rather than to create?
A) Legislative
B) Agencies
C) Judicial
D) Executive
Answer: C
Explanation: The judicial branch has the power to interpret actions and laws but not to create them.
Learning Objective: 2.1
Skill: Comprehension
AACSB: Application of Knowledge

20) The U.S. Constitution divides powers, rights, and responsibilities among all the following *except*:
A) Federal agencies
B) Federal government
C) Individuals
D) State government
Answer: A
Explanation: The U.S. Constitution divides powers, rights, and responsibilities among the federal government, state governments, and the people of the United States. Understanding these powers, rights, and responsibilities is the foundation to understanding the government's means of regulating business.
Learning Objective: 2.1
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Skill: Comprehension
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21) Which of the following branches of government is given authority to regulate interstate commerce?
A) Legislative
B) Agencies
C) Judicial
D) Executive
Answer: A
Explanation: Article I, Section 8 of the Constitution gives Congress the authority to regulate commerce (i.e., business) "among the several states." Congress is not given the power to regulate commerce *within* one individual state. Therefore, the regulation of business that does not impact more than one state is the job of the state, and not the national government.
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22) In general, which of the following controls intrastate commerce?
A) Federal agencies
B) Federal government
C) Individuals
D) State government
Answer: D
Explanation: Authority over purely intrastate commerce is generally reserved to the states.
Learning Objective: 2.1
Skill: Comprehension
AACSB: Application of Knowledge

23) The guiding document for states before the U.S. Constitution was called the:
A) Magna Carta
B) League of States
C) Articles of Confederation
D) Mayflower Compact
Answer: C
Explanation: For the first 12 years after the United States declared its independence from England, the country didn't have the Constitution that we know today. Instead, in 1777 during the Revolutionary War, the Second Continental Congress adopted a document known as the Articles of Confederation (which has nothing to do with the Civil War, despite sharing a similar name with the Confederate States of America). The document was then ratified by the 13 original states and became effective in 1781, shortly before the British surrender that ended the fighting.
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Learning Objective: 2.1
Skill: Comprehension
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24) The branch of government that appoints federal judges and justices is the:
A) Legislative
B) Agencies
C) Judicial
D) Executive
Answer: D
Explanation: The president appoints federal judges and justices, but they are confirmed by the Senate (legislative branch).
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25) The branch of government responsible for confirming federal judges and justices is the:
A) Legislative
B) Agencies
C) Judicial
D) Executive
Answer: A
Explanation: The president appoints federal judges and justices, but they are confirmed by the Senate (legislative branch).
Learning Objective: 2.1
Skill: Comprehension
AACSB: Application of Knowledge

26) The party responsible for confirming federal judges and justices is the:
A) Supreme Court
B) Senate
C) House of Representatives
D) President
Answer: B
Explanation: The president appoints federal judges and justices, but they are confirmed by the Senate (legislative branch).
Learning Objective: 2.1
Skill: Comprehension
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27) Which branch of government calls for some of its members to have lifetime appointments?
A) Legislative
B) Agencies
C) Judicial
D) Executive
Answer: C
Explanation: Federal judges have lifetime appointments.
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28) After a presidential veto, which of the following is true?
A) The bill cannot become a law.
B) The bill can become law if the House of Representatives overrides the veto.
C) The bill can become law if the Senate overrides the veto.
D) The bill can become law if both the House of Representatives and the Senate override the veto.
Answer: D
Explanation: Once the president vetoes a bill, it is dead and does not become law; however, Congress does have the power to override a presidential veto if two-thirds of the members of each house of Congress vote to do so. A vote to override a presidential veto allows the bill to become law.
Learning Objective: 2.1
Skill: Comprehension
AACSB: Application of Knowledge

29) Which branch of government enforces the law?
A) Legislative
B) Agencies
C) Judicial
D) Executive
Answer: D
Explanation: Article II of the Constitution provides for an executive branch, of which the president is the head. You may have learned in elementary school that the executive branch enforces the law, and that is true, but the executive branch has many roles besides law enforcement. All governmental programs, departments, and agencies are administered by the executive branch.
Learning Objective: 2.1
Skill: Comprehension
AACSB: Application of Knowledge

30) In an impeachment of the president, which of the following is true?
A) The House of Representative holds a trial.
B) The House of Representatives impeaches, and the Supreme Court holds a trial.
C) The House of Representatives impeaches, and the Senate holds a trial.
D) The Senate impeaches, and the Supreme Court holds a trial.
Answer: C
Explanation: Congress possesses important checks on the power of both the president and the Supreme Court. If the president commits "treason, bribery, or other high crimes and misdemeanors," the Constitution gives Congress the power to remove the president from office via impeachment by the House of Representatives and conviction by the Senate. In this process, the House brings charges against the president and votes on impeachment, which is analogous to an indictment in a criminal case. The Senate then holds a trial on the charges in the impeachment, which is analogous to a criminal trial. If the president is impeached by the House *and* convicted by a two-thirds vote of the Senate, the president is removed from office.
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31) Adrian is a U.S. Senator. Adrian works for which branch of the federal government?
A) Legislative
B) Agencies
C) Judicial
D) Executive
Answer: A
Explanation: The legislative branch consists of the House of Representatives and the Senate.
Learning Objective: 2.1
Skill: Application
AACSB: Application of Knowledge

32) Beckett works for the Environmental Protection Agency and Carter works as a Secret Service Agent. Which of the following is true?
A) Beckett works for the legislative branch.
B) Carter works for the legislative branch.
C) Beckett works for the legislative branch and Carter works for the executive branch.
D) Both Beckett and Carter work for the executive branch.
Answer: D
Explanation: Agencies of the federal government fall under the executive branch.
Learning Objective: 2.1
Skill: Application
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33) Ezra works for an advocacy group that supports education reform. Ezra wants a new bill passed into law. Which of the following statements is true?
A) The bill cannot become law if the president vetoes it.
B) The bill must be approved by the House, Senate, and president to become law.
C) The bill must be approved only by the Senate to become law.
D) The bill must be approved by the House and Senate to become law.
Answer: D
Explanation: While a bill normally requires approval of the House, Senate, and president, a vetoed bill can become law through a legislative override.
Learning Objective: 2.1
Skill: Application
AACSB: Application of Knowledge

34) Harper and Reese are selling goods within their state. The sale of these goods is most likely regulated by:
A) The federal legislative branch
B) The state
C) The federal executive branch
D) Neither the state nor federal government because this is intrastate commerce.
Answer: B
Explanation: Intrastate commerce is generally regulated by state law.
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35) Gerrie and Marley sell their goods throughout the United States. The sale of these goods is most likely regulated by:
A) The federal legislative branch
B) The state
C) The federal executive branch
D) Neither the state nor federal government because this is intrastate commerce.
Answer: A
Explanation: The Commerce Clause, in Article I, Section 8, gives Congress the authority "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The "among the several States" part is key, because if Congress can show that an issue impacts business across state lines (known as *interstate commerce*), then Congress may regulate that part of the economy; any conflicting state regulations are unenforceable.
Learning Objective: 2.1
Skill: Application
AACSB: Application of Knowledge

36) Aden and Harper are excited because they just passed a state law that addresses the sale of out-of-state goods into their state. There is an existing federal law that contradicts the state law. Which of the following is true?
A) The federal law automatically invalidates the state law.
B) Because this law is only applicable inside the state, it is intrastate commerce.
C) The court will determine which law controls.
D) Federal law cannot govern commerce in a state.
Answer: C
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Explanation: The issue of whether this is interstate commerce must be addressed by the court. If it is interstate commerce, then the state law will likely be invalid.
Learning Objective: 2.1
Skill: Application
AACSB: Application of Knowledge

37) Ivy is a judge sitting on the bench of the highest court in her state. She is likely to be chosen for a federal judgeship. Which of the following is false?
A) She will be confirmed by the president.
B) Her appointment will be for life.
C) She will be nominated by the president.
D) She will be confirmed by the Senate.
Answer: A
Explanation: Federal judges are nominated by the president and confirmed by the Senate. They receive lifetime appointments.
Learning Objective: 2.1
Skill: Application
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38) Karl is the president. He is accused of a "high crime." Which of the following is true?
A) If he is impeached by the House, he is removed from office.
B) If a majority of the House and Senate vote for their respective part, he will be removed from office.
C) If the Senate convicts him, he will be removed from office.
D) If the House convicts him, he will be removed from office.
Answer: C
Explanation: The House must vote to impeach and the Senate must hold a trial and convict by a two-thirds majority to remove the president.
Learning Objective: 2.1
Skill: Application
AACSB: Application of Knowledge

39) Taylor and Mackenzie, who are both in the House of Representatives, determine that a law that regulates some intrastate commerce is needed in order for the federal government to effectively regulate commerce. The clause in the Constitution that provides for this is the:
A) Supremacy Clause
B) Full Faith and Credit Clause
C) Necessary and Proper Clause
D) Commerce Clause
Answer: C
Explanation: Congress has used its Commerce Clause powers to expand the scope of federal authority; however, the Necessary and Proper Clause has also been a major factor in this process. Also located in Article I, Section 8, the Necessary and Proper Clause gives Congress the power to pass laws "which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States."
Basically, if Congress has the power to regulate something, it also has the power to make "helper" laws that are necessary to carry out those regulations, even if those helper laws would otherwise fall outside the scope of Congressional power. Therefore, if Congress needs to pass a law restricting *intra*state commerce in order to effectively regulate *inter*state commerce, it may do so, even though intrastate commerce is outside the scope of federal authority.
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40) Quinn and Jesse have a product regulated by the Food and Drug Administration. The branch of government responsible for these regulations is the:
A) Executive branch
B) Legislative branch
C) Cabinet
D) Judicial branch
Answer: A
Explanation: Most regulating agencies of the federal government are under the control of the executive branch.
Learning Objective: 2.1
Skill: Application
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41) Blair is following the impeachment of the president. The House voted 305 out of 435 to impeach. The Senate voted 55 out of 100 to convict. Which of the following statements is true?
A) The president was impeached, but will not be removed from office.
B) The president was impeached and will be removed from office.
C) The president was convicted because of a majority vote in the Senate.
D) The president was acquitted because a conviction required 60 votes.
Answer: A
Explanation: The president was impeached by the House, but 67 votes were needed in the Senate; therefore, the president was not convicted and will not be removed from office.
Learning Objective: 2.1
Skill: Application
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42) Alex and Addison helped to draft and negotiate a treaty on behalf of the president. Which of the following statements is true?
A) The president has the power to enact a treaty.
B) The House must consent to a treaty.
C) The Senate must consent to a treaty.
D) Both the House and Senate must consent to a treaty.
Answer: C
Explanation: The president negotiates a treaty, but the Senate must consent to it before it is enacted.
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43) The clause of the Constitution that requires one state to honor the judgments of another state is:
A) Privileges and Immunities
B) Full Faith and Credit
C) Due Process
D) Free Exercise
Answer: B
Explanation: The Full Faith and Credit Clause is found in Article IV, Section 1 of the Constitution. This clause requires each state to give full faith and credit to "the public Acts, Records, and judicial Proceedings of every other State."
The Supreme Court has long held that states have different obligations when it comes to recognizing the *laws* of other states versus recognizing the *judgments* of other states' courts. One of the reasons we have separate states is because each state desired the independence to pass its own laws in accordance with its public policies that might differ from those of its neighboring states. Requiring all states to respect the same laws would defeat this concept.
Learning Objective: 2.2
Skill: Comprehension
AACSB: Application of Knowledge

44) In interpreting the Full Faith and Credit Clause of the Constitution, the U.S. Supreme Court:
A) Treats state laws and judgments the same
B) Favors state laws
C) Favors state judgments
D) Respects state laws, but not judgments
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Answer: C
Explanation: The Supreme Court has long held that states have different obligations when it comes to recognizing the *laws* of other states versus recognizing the *judgments* of other states' courts. One of the reasons we have separate states is because each state desired the independence to pass its own laws in accordance with its public policies that might differ from those of its neighboring states. Requiring all states to respect the same laws would defeat this concept.
Learning Objective: 2.2
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45) The Privileges and Immunities Clause of the U.S. Constitution:
A) Provides for one state to respect the judgments of another state
B) Prohibits one state from unreasonably discriminating against the residents of other states on matters concerning all rights
C) Provides matters of basic rights are not protected
D) Prohibits one state from unreasonably discriminating against the residents of other states on matters concerning basic rights
Answer: D
Explanation: Related to the Full Faith and Credit Clause is the Privileges and Immunities Clause, which prohibits one state from unreasonably discriminating against the residents of other states on matters concerning basic rights. Matters other than basic rights are not protected from discrimination under the clause.
Learning Objective: 2.2
Skill: Comprehension
AACSB: Application of Knowledge

46) All of the following are rights listed under the First Amendment *except*:
A) Due process
B) Assembly
C) Speech
D) Press
Answer: A
Explanation: Due process is covered by the 5th and 14th Amendments.
Learning Objective: 2.2
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Skill: Comprehension
AACSB: Application of Knowledge

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47) Which of the following is NOT one of the three types of speech?
A) Protected
B) Obscene
C) Unprotected
D) Partially protected
Answer: B
Explanation: Obscene speech is classified under unprotected speech and is difficult to determine.
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48) All of the following are examples of protected speech *except*:
A) Burning the flag
B) Publishing a photograph
C) Donating money to a political campaign
D) Lying
Answer: D
Explanation: When businesses communicate with consumers and others about their products, society cares that these communications are truthful and not misleading.
Learning Objective: 2.2
Skill: Comprehension
AACSB: Application of Knowledge

49) All of the following are unprotected speech *except*:
A) Nudity
B) Disparaging speech
C) Speech inciting violence
D) Lying
Answer: A
Explanation: Nudity is free speech, usually falling into the category of partially protected speech.
Learning Objective: 2.2
Skill: Comprehension
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50) Free speech rights provide protection against all of the following *except*:
A) Federal government
B) Employers
C) State government
D) Police
Answer: B
Explanation: *One very, very important note about free speech rights that cannot be emphasized enough*: The First Amendment only protects you from *government* regulation of your speech! It is *not* a protection from the consequences of your words and actions. Your employer, customers, friends, neighbors, and society are free to act against you when you say or do things they don't like.
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51) "Separation of church and state" originates from which right?
A) Free Exercise Clause
B) Due Process Clause
C) Establishment Clause
D) Free Assembly Clause
Answer: C
Explanation: The First Amendment's provisions pertaining to religion are twofold. First, the Establishment Clause prohibits the government from sponsoring one religion or creating an official religion of a state or of the United States. If you've ever heard the phrase "separation of church and state," the Establishment Clause is the origin of that idea.
Learning Objective: 2.2
Skill: Comprehension
AACSB: Application of Knowledge

52) Which of the following is protected under the Free Exercise Clause?
A) Cannibalism
B) Illegal religious activity
C) Interfering with another's rights
D) Practicing religious rites
Answer: D
Explanation: The second part of the First Amendment's religion section is called the Free Exercise Clause. Just as Congress cannot establish a national religion, it also cannot interfere with anyone's participation in the religion of their own choosing. One's exercise of their own religious practice *can* be regulated to prevent it from interfering with someone else's rights (i.e., human sacrifice is a no-no), but if no illegal activity is involved, Americans are generally free to practice their religions as they see fit.
Learning Objective: 2.2
Skill: Comprehension
AACSB: Application of Knowledge

53) The 14th Amendment is particularly important for all of the following *except*:
A) Incorporation
B) Immunities
C) Due process
D) Equal protection
Answer: B
Explanation: The 14th Amendment is a true workhorse in the field of constitutional law. You have probably already encountered it several times in other chapters, and it will pop up again. With regard to *this* chapter's topics, however, the 14th Amendment is particularly important because of its importance in the doctrines of incorporation, due process, and equal protection.
Learning Objective: 2.2
Skill: Comprehension
AACSB: Application of Knowledge

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54) The term that describes the states' obligation to abide by constitutional restrictions is:
A) Incorporation
B) Immunities
C) Due process
D) Equal protection
Answer: A
Explanation: Incorporation has nothing to do with business entities, but rather refers to the Supreme Court's process of requiring states to abide by constitutional restrictions that were originally only applicable to the federal government.
Learning Objective: 2.2
Skill: Comprehension
AACSB: Application of Knowledge

55) Which of the following is true about the 14th Amendment Equal Protection Clause?
A) It was passed in the aftermath of the War of 1812.
B) It prohibits the government from passing laws that discriminate in any way.
C) Laws that discriminate are sometimes evaluated using strict scrutiny.
D) Discrimination never uses an evaluation less than strict scrutiny.
Answer: C
Explanation: The Equal Protection Clause of the 14th Amendment was originally adopted in the aftermath of the Civil War to advance the rights of African Americans. The government is sometimes permitted to pass laws that discriminate against one group of people or businesses, but the law must pass the scrutiny of a court in order to be enforceable. The more egregious the discrimination, the more scrutiny a court will apply to the law. For example, laws that produce discriminatory results based on race or that involve fundamental rights will be upheld by a court only if the government can show that it has an extraordinarily important justification for needing to implement the law. Less egregious forms of discrimination result in lesser degrees of scrutiny from courts when they are asked to rule on the constitutionality of the law.
Learning Objective: 2.2
Skill: Comprehension
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56) All of the following are true about privacy *except*:
A) It covers a married couple's use of contraceptives
B) Privacy is mentioned in the Constitution
C) It covers legalized abortion
D) It covers same-sex intercourse
Answer: B
Explanation: We all have a constitutional right to privacy, right? This fundamental right has been the basis for such landmark Supreme Court decisions as those that have upheld legalized abortion, prohibited prosecution for same-sex intercourse, and given married couples the right to obtain contraceptives.
You might be surprised to learn that the word "privacy" is never mentioned in the Constitution, and the basic constitutional right to privacy has been largely a creation of the Supreme Court based on reasonable inferences made from reading the text of the Constitution.
Learning Objective: 2.2
Skill: Comprehension
AACSB: Application of Knowledge

57) Charlie and Ainsley sued and won in a case against Peyon and Chandler. Peyton and Chandler have no property in the state. Which of the following clauses will allow Charlie and Ainsley to collect property in another state to honor their judgment?
A) Privileges and Immunities
B) Full Faith and Credit
C) Due Process
D) Free Exercise
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Answer: B
Explanation: The Full Faith and Credit Clause requires states to honor the judgments of other states.
Learning Objective: 2.2
Skill: Application
AACSB: Application of Knowledge

58) Kennedy and Cameron live in a state that passed a favorable law for their business. They moved to another state. Which is true?
A) The new state always must follow the other state's law.
B) The Privileges and Immunities Clause governs one state respecting the law of another state.
C) The Supreme Court may require the new state to honor the old state's law.
D) The Full Faith and Credit Clause applies solely to judgments.
Answer: C
Explanation: The Supreme Court has long held that states have different obligations when it comes to recognizing the *laws* of other states versus recognizing the *judgments* of other states' courts. One of the reasons we have separate states is because each state desired the independence to pass its own laws in accordance with its public policies that might differ from those of its neighboring states. Requiring all states to respect the same laws would defeat this concept.
Learning Objective: 2.2
Skill: Application
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59) Devon and Quentin live in a state that provides for them to live the lifestyle they have chosen. They go on vacation in another state and get into trouble for this lifestyle. Which is true about the Privileges and Immunities Clause of the U.S. Constitution?
A) It requires one state to respect the judgments of another state.
B) It prohibits one state from unreasonably discriminating against the residents of other states on matters concerning all rights.
C) Matters of basic rights are not protected.
D) It prohibits one state from unreasonably discriminating against the residents of other states on matters concerning basic rights.
Answer: D
Explanation: Related to the Full Faith and Credit Clause is the Privileges and Immunities Clause, which prohibits one state from unreasonably discriminating against the residents of other states on matters concerning basic rights. Matters other than basic rights are not protected from discrimination under the clause.
Learning Objective: 2.2
Skill: Application
AACSB: Application of Knowledge

60) Dakota and Taylor are having a disagreement. Dakota says that freedom of assembly and due process are in the First Amendment, while Taylor argues that free speech and freedom of religion are in the First Amendment. Which is true?
A) Dakota is correct.
B) Taylor is correct.
C) Both Dakota and Taylor are correct. TBEXAM.COM
D) Neither Dakota nor Taylor is correct.
Answer: B
Explanation: While not a complete list, Taylor is correct about the two rights listed. Dakota is incorrect because due process is not covered in the First Amendment.
Learning Objective: 2.2
Skill: Application
AACSB: Application of Knowledge

61) Sidney and Brook took a picture and posted it on their website. This is likely:
A) Protected speech
B) Not speech
C) Unprotected speech
D) Partially protected speech
Answer: A
Explanation: Publishing a photograph is typically regarded as speech and would likely be protected speech.
Learning Objective: 2.2
Skill: Application
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62) Bellamy and Blair are at a protest and burn the American flag. Which is true?
A) Their actions are not speech.
B) Their actions are speech, but unprotected speech, because they include fire.
C) Their actions are speech and are likely protected speech.
D) Their actions are unprotected speech.
Answer: C
Explanation: Unless it is determined that their actions are inciting violence, their actions are likely to be viewed as protected speech.
Learning Objective: 2.2
Skill: Application
AACSB: Application of Knowledge

63) Glynnis makes a gesture at a rally. Which is false?
A) The gesture is speech.
B) If obscene, the gesture is speech, and it is protected.
C) If obscene, the gesture is speech, but it is unprotected.
D) It is difficult to determine if speech is obscene.
Answer: B
Explanation: A gesture can be speech. Obscene speech is generally regarded as unprotected speech.
Learning Objective: 2.2
Skill: Application
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64) Jaden is making a speech that contains numerous lies. Jaden's speech is likely:
A) Protected
B) Obscene
C) Unprotected
D) Partially protected
Answer: C
Explanation: Lies are unprotected speech.
Learning Objective: 2.2
Skill: Application
AACSB: Application of Knowledge

65) Havier and Una have a business and it contributes money to a political campaign. Which is true?
A) This is not speech.
B) This is unprotected speech.
C) This is partially protected speech.
D) This is protected speech.
Answer: D
Explanation: Political contributions have been determined to be speech and protected.
Learning Objective: 2.2
Skill: Application
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66) At a rally, Finley and Frankie encourage the people near them to break store windows and loot the stores. This is:
A) Protected speech
B) Unprotected speech
C) Partially protected speech
D) Unprotected if they told them which stores to attack
Answer: B
Explanation: Speech inciting violence is not protected. They would not need to name specific stores.
Learning Objective: 2.2
Skill: Application
AACSB: Application of Knowledge

67) Victoria shares her political beliefs at work during business hours. Which is true?
A) The First Amendment does not provide protection against employers.
B) The First Amendment does not provide protection against state governments.
C) This is protected speech.
D) The First Amendment only applies to protection against the federal government.
Answer: A
Explanation: *One very, very important note about free speech rights that cannot be emphasized enough*: The First Amendment only protects you from *government* regulation of your speech! It is *not* a protection from the consequences of your words and actions. Your employer, customers, friends, neighbors, and society are free to act against you when you say or do things they don't like.
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Learning Objective: 2.2
Skill: Application
AACSB: Application of Knowledge

68) Jonah & Waverly, Inc. is closed on Wednesday evenings to respect Wednesday prayer night. This is:
A) Covered by the Establishment Clause
B) Not protected because it is not Sunday
C) Covered by the Free Exercise Clause
D) Not protected against state government action
Answer: C
Explanation: The second part of the First Amendment's religion section is called the Free Exercise Clause. Just as Congress cannot establish a national religion, it also cannot interfere with anyone's participation in the religion of their own choosing. One's exercise of their own religious practice *can* be regulated to prevent it from interfering with someone else's rights (i.e., human sacrifice is a no-no), but if no illegal activity is involved, Americans are generally free to practice their religions as they see fit.
Learning Objective: 2.2
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69) Jonah & Waverly, Inc. is closed on Wednesday evenings to respect Wednesday prayer night. This is:
A) Covered by the Establishment Clause
B) Not protected because it is not Sunday
C) Not covered by the Free Exercise Clause
D) Protected against state government action by incorporation
Answer: D
Explanation: Incorporation has nothing to do with business entities, but rather refers to the Supreme Court's process of requiring states to abide by constitutional restrictions that were originally only applicable to the federal government.
Learning Objective: 2.2
Skill: Application
AACSB: Application of Knowledge

70) Kai argues that there is no right to privacy. Kai is:
A) Incorrect : The Constitution clearly addresses privacy, by name.
B) Correct: The Constitution does not use the word *privacy*; there is no right to privacy.
C) Incorrect: The U.S. Supreme Court has inferred a right to privacy under the Constitution.
D) Correct: The Congress has not enacted the 26th Amendment Right to Privacy.
Answer: C
Explanation: We all have a constitutional right to privacy, right? This fundamental right has been the basis for such landmark Supreme Court decisions as those that have upheld legalized abortion, prohibited prosecution for same-sex intercourse, and given married couples the right to obtain contraceptives.
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You might be surprised to learn that the word *privacy* is never mentioned in the Constitution, and the basic constitutional right to privacy has been largely a creation of the Supreme Court based on reasonable inferences made from reading the text of the Constitution.
Learning Objective: 2.2
Skill: Application
AACSB: Application of Knowledge

71) Briefly describe the concept of a bicameral legislature.
Answer: To allay concerns that more states with larger populations could dominate smaller states, as well as competing worries that states with smaller populations could exert disproportionate influence, the Constitution's drafters created Congress as a bicameral legislature, with two separate houses that must both pass all new statutes. Members of the House of Representatives (which is commonly called "Congress," even though the term technically refers to both houses) are allocated based on population, so more populous states get more votes. The Senate, however, is composed of two members from each state, giving small states equal footing with large ones. Together, the balance of power is kept from shifting too far in favor of either large or small states. The concept of the bicameral legislature is key to understanding how laws are passed.
Learning Objective: 2.1
Skill: Comprehension
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72) Briefly describe the concept of separation of powers.
Answer: Although federalism separates powers between the national and state governments, the constitutional doctrine of separation of powers further delineates the federal government's powers by granting specific spheres of authority to each of the three branches of government. The framers of the Constitution were very concerned by the threat of one person or entity having too much power (thank the King of England for that), so they divided federal authority among Congress, the president, and the Supreme Court. The separation of powers is also viewed through the idea of checks and balances.
Learning Objective: 2.1
Skill: Comprehension
AACSB: Application of Knowledge

73) Briefly describe the concept of judicial review.
Answer: The judicial branch, as a way to check the legislative and executive branches, has the power to review laws and actions of those branches to evaluate whether or not they comply with the U.S. Constitution. Judicial review is critical to understanding business law and the place of business in society.
Learning Objective: 2.1
Skill: Comprehension
AACSB: Application of Knowledge

74) Briefly describe the concept of the enumerated powers and list at least three of them.
Answer: The Constitution grants many powers to the federal government, many of which are found in Article I, Section 8. These include the power to levy taxes, maintain a military force, regulate commerce, form a postal service, and other important powers. The federal government's scope of authority is known as the enumerated powers. Under the Constitution, the federal government has *no authority* to regulate any matters outside its enumerated powers. In order to understand the shared authority of the federal and state governments, it is critical to understand the enumerated powers.
Learning Objective: 2.1
Skill: Comprehension
AACSB: Application of Knowledge

75) List four items contained in the First Amendment to the Constitution.
Answer: Ratified by the states as part of the Bill of Rights in 1791, the First Amendment to the Constitution prohibits Congress from passing any laws "respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." In business law the freedom of speech and religion will be the focus, but it is important to understand the entire First Amendment.
Learning Objective: 2.2
Skill: Comprehension
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76) State the three types of speech under the First Amendment.
Answer: Fully protected, partially protected, and unprotected speech. It is important to know the three classifications of speech and their differences.
Learning Objective: 2.2
Skill: Comprehension
AACSB: Application of Knowledge

77) Briefly describe the concept of incorporation as it relates to the U.S. Constitution.
Answer: In a business context, incorporation is the process of forming a new business corporation. In a constitutional sense, however, incorporation has nothing to do with business entities, but rather refers to the Supreme Court's process of requiring states to abide by constitutional restrictions that were originally only applicable to the federal government. Most of the constitutional protections for individual rights (unreasonable search and seizure, freedom from self-incrimination, right to keep and bear arms, etc.) have been incorporated and now apply to the states as well as the federal government.
Learning Objective: 2.2
Skill: Comprehension
AACSB: Application of Knowledge

78) Describe the origin of the Equal Protection Clause and briefly describe the tests used to evaluate it.
Answer: Although the Equal Protection Clause of the 14th Amendment was originally adopted in the aftermath of the Civil War to advance the rights of African Americans, it applies to all Americans and requires laws to protect all people equally, without discrimination. Therefore, as you move on to other chapters, notice that consumers and manufacturers receive equal protection of the law, as do giant companies who obtain monopoly power and small "mom and pop" local businesses.
The government is sometimes permitted to pass laws that discriminate against one group of people or businesses, but the law must pass the scrutiny of a court in order to be enforceable. The more egregious the discrimination, the more scrutiny a court will apply to the law. For example, laws that produce discriminatory results based on race or that involve fundamental rights will be upheld by a court only if the government can show that it has an extraordinarily important justification for needing to implement the law. Less egregious forms of discrimination result in lesser degrees of scrutiny from courts when they are asked to rule on the constitutionality of the law. This is an important concept found in the 14th Amendment.
Learning Objective: 2.2
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Chapter 2
The Constitution and Governmental Powers

I. Learning Objectives

2.1 Outline the structure of the U.S. Constitution and its methods for allocating government powers.
2.2 List some of the most important constitutional rights and duties pertaining to states and individuals.

II. Key Questions

1. How does the U.S. Constitution allocate power between federal and state governments?
2. How does the U.S. Constitution allocate power within the different branches of the federal government?
3. What does the U.S. Constitution require with respect to how states interact with one another?
4. What rights are provided for by the U.S. Constitution?

III. Chapter Summary

In this chapter, we examine the foundation of governmental power in the United States: the Constitution. As we proceed through the subsequent chapters, all discussion of the government's authority to regulate businesses will flow from the foundation set forth in this chapter.

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L.O. 2.1 lays out the basic structure and powers of the government. We discuss federalism and the specific powers given to the federal government. The branches of the federal government are described, as well as the system of checks and balances that keeps any one branch from becoming too powerful.

In L.O. 2.2, we examine some of the more important rights and duties found in the Constitution. We look at the responsibilities that states owe to one another through the Full Faith and Credit Clause and the Privileges and Immunities Clause. Then we highlight some of the more important individual rights granted by the Constitution, including the First Amendment, due process, and equal protection rights.

IV. Summary of Cases

National Federation of Independent Business v. Sebelius (567 U.S. 519) (2012).

L.O. 2.1: Federalism
Issue: How Far Is the Reach of Congressional Power?
Brief Summary: When Congress passed the Patient Protection and Affordable Care Act, also known as Obamacare, in 2010, it contained a controversial provision requiring individuals to obtain health insurance or else pay a fine. This requirement became known as the individual

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mandate, and opponents of the law claimed it was unconstitutional to force Americans to buy insurance or pay a fine.
Holding: The U.S. Supreme Court held that the individual mandate would not be a constitutional exercise of Congress's power under the Commerce Clause or the Necessary and Proper Clause. However, under Congress's power to levy taxes, the individual mandate was permissible, because it functioned as a tax on people without health insurance.

Mutual Pharmaceutical Company, Inc. v. Bartlett (570 U.S. 472) (2013).

L.O. 2.1: Supremacy Clause
Issue: How Does the Supremacy Clause Treat State Laws That Conflict with Federal Laws?
Brief Summary: When a drug patent expires, any pharmaceutical company may begin making generic versions of the medication. When it does, the federal Food and Drug Administration (FDA) prohibits the generic manufacturer from altering the warning label on the drug as it was originally approved in its nongeneric form. After being given a generic drug made by Mutual Pharmaceutical Company, Karen Bartlett suffered severe side effects, leaving her permanently disfigured and nearly blind. She sued Mutual in New Hampshire state court for failing to adequately warn her of the potential risks. The case was then removed to federal court.
Holding: The U.S. Supreme Court held that the constitution's Supremacy Clause applied to Bartlett's claims. Federal law prohibited Mutual from changing the warning label, so any claims under state law relating to the warning label were preempted.

Burwell v. Hobby Lobby Stores, Inc., 573 U.S. 682 (2014) (video case).

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L.O. 2.2: Freedom of religion
Issue: Can a corporation be religious?
Brief Summary: The Affordable Care Act mandated that employer-provided health insurance must cover contraceptives. Hobby Lobby objected to coverage of several types of contraceptives, claiming that they violated the sincerely held religious beliefs of the company's owners.
Holding: The Supreme Court held that a closely-held corporation can take on the religious beliefs of its owners.

V. Teaching Ideas

Although reading this textbook is an excellent tool for teaching about the Constitution, it is immensely helpful to view the actual text of the document. Students can often be intimidated by the idea of reading a 200+ year-old founding document, but the Constitution is a great teaching tool because it's short and easy to digest. For example, when discussing checks and balances, the constitutional provisions about the veto power (Article I, Section 7) or impeachment (Article II, Section 4) are both very short and can easily fit on a lecture slide. This allows students to engage with the primary source and can open a discussion on the challenges of interpreting the original document and applying it to a 21st century context.

When teaching about the constitutional protection for speech, I find that American students are often well-aware of the First Amendment, but also often unaware of how other countries treat freedom of speech. A fun and interesting in-class exercise I like to have them do is to split up

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into pairs and then I assign each pair a non-U.S. country. They then quickly perform an internet search to see if they can determine what that country's stance on free speech is.

Any list of countries can work for this exercise, but I like to use a variety of Western and non-Western countries. Students are often surprised by the laws of other nations, even those we consider similar to our own. For example, in Germany speech denying the Holocaust is not permitted. And in France, it is illegal to speak positively about illicit drugs or advocate for reform of drug laws.

I ask students to report back and as a class we discuss the ways that American freedom of speech differs from that found in other countries around the world.

VI. Discussion Questions

Ethics Discussion Question: The ethics discussion question for this chapter, which is found in L.O. 2.1, asks: "Does California have a moral obligation to consider the needs of other states if it passes legislation like this that will have an impact outside of California? Why or why not? If a small business can't afford to comply with a regulation like this, is it unethical for California to essentially give an advantage to big businesses that have the resources to comply? Why or why not? What recourse does a person or business have if they believe a state's regulations are overbroad?"

Student responses to this question will likely vary widely. In facilitating discussion, it may be helpful to prepare hypotheticals that would highlight the extreme outcomes on either side of the issue.

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L.O. 2.1 Critical Thinking Activity: The legislative, executive, and judicial branches of the federal government each have checks on the power of the other two branches. Are any of these checks more or less effective than the others? Why?

Sample Answer: It seems as though the checks on the judicial branch are not as strong or immediate as those on the other branches of government. Yes, the legislature can pass laws that override some court decisions, but questions of constitutionality are final and cannot be changed by the legislature at all. And although the president has the power to appoint judges, federal judges have lifetime appointments, so it takes many, many years to remake the judiciary.

L.O. 2.2 Critical Thinking Activity: Why is the government permitted to regulate corporate speech when it is promoting products for sale, but not when it is advocating for a political candidate?

Sample Answer: An important part of U.S. history is the desire to be free from societies that do not allow political expression. The fact that all persons should be free to advocate for their political beliefs is so ingrained in American law and culture that courts protect it to the utmost extent. Speech that only serves to make profit for a business does not hold a similar place in our laws and culture, so courts and legislatures feel much more comfortable placing limits on it.

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VII. Chapter Outline

I. Introduction
II. Constitutional Structure and Powers
  a. Federalism
  b. Separation of Powers
  c. Checks and Balances
    i. Legislative Branch Checks
    ii. Executive Branch Checks
    iii. Judicial Branch Checks
  d. Supremacy (and Commerce)
  e. Necessary and Proper Powers
  f. Tax and Spend Powers
III. Constitutional Rights and Requirements
  a. Full Faith and Credit
  b. Privileges and Immunities
  c. First Amendment Rights
    i. Speech
    ii. Religion
  d. The 14th Amendment
    i. Incorporation
    ii. Due Process
    iii. Equal Protection
  e. Privacy Rights
IV. Wrapping Up
V. Chapter Summary

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VIII. Key Terms

Articles of Confederation The first document granting power to the federal government of the United States; precursor to the Constitution.

bicameral legislature A legislature divided into two separate houses.

Bill of Rights The first 10 amendments to the Constitution.

checks and balances Constitutional provisions granting each branch the power to curtail the authority of the other two branches.

Commerce Clause The constitutional provision granting Congress the power to regulate interstate commerce, international commerce, and commerce with Indian tribes.

Due Process Clause The provision found in the Fifth and 14th Amendments requiring the government ensure laws are clear and understandable, and to provide notice and a hearing before depriving anyone of life, liberty, or property.

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enumerated powers Powers specifically granted to the federal government by the Constitution.

Equal Protection Clause The provision found in the 14th Amendment requiring laws to protect all people equally.

Establishment Clause A provision of the First Amendment prohibiting the government from sponsoring any religion.

executive branch The branch of the federal government that enforces laws and administers the various programs of the federal government.

federal government The national government of the United States.

federalism A governmental structure in which a national government and several regional governments share governing power.

First Amendment An amendment to the U.S. Constitution that provides for freedom of religion, speech, the press, and peaceable assembly, and to petition the government.

Free Exercise Clause A provision of the First Amendment prohibiting the government from interfering with the right to freely practice the religion of one's choosing.

Full Faith and Credit Clause A constitutional provision requiring each state to recognize the laws and judicial proceedings of other states.

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fully protected speech Speech that may not be regulated by the government at all.

House of Representatives The house of Congress in which members are allocated based on population.

impeachment An affirmative vote by the House of Representatives accusing the president of "treason, bribery, or other high crimes and misdemeanors."

incorporation The process by which the Supreme Court has held that many limits on federal authority also limit state authority.

judicial branch The branch of the federal government that reviews laws for constitutionality and interprets laws as they apply to specific situations.

legislative branch The branch of the federal government that drafts and passes new statutes.

Necessary and Proper Clause The constitutional provision granting Congress the authority to pass laws outside the scope of its authority if they are required in order to appropriately regulate matters within Congress's authority.

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override A two-thirds vote of both houses of Congress in favor of a bill that was vetoed by the president, resulting in the bill becoming law.

partially protected speech Speech that may only be regulated by the government with respect to time, place, and manner of communication.

Privileges and Immunities Clause A constitutional provision prohibiting states from unreasonably discriminating against residents of other states.

procedural due process The requirement that the government provide notice and a hearing before depriving anyone of life, liberty, or property.

reserved powers Governmental powers not specifically granted to the federal government.

Senate The house of Congress in which each state is allocated two members.

separation of powers The doctrine that divides federal government powers among the legislative, executive, and judicial branches.

speech The dissemination of information or opinions via any medium.

substantive due process The requirement that laws be clear and understandable.

Supremacy Clause The constitutional provision that makes federal laws superior to state or local laws.

U.S. Constitution The document that delegates powers between the federal and state governments and outlines the structure of the federal government.

unprotected speech Speech that may be completely prohibited by the government.

veto A president's refusal to sign a bill passed by Congress, thereby preventing it from becoming law.

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