

Chapter 02 Business and the Constitution

SHORT ANSWER QUESTIONS

- 1) The legal authority that a court must have to decide a case is called _____.
- 2) The right of a state to protect its citizenry is called its _____.
- 3) The government's system of checks and balances is called _____.
- 4) Powers granted in the Constitution to the three branches of the federal government are known as _____ powers.
- 5) Veto power is a power granted to the _____ branch of government.
- 6) The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act is commonly called the _____ Act.
- 7) The case of *Marbury v. Madison* established the federal courts' power of _____.
- 8) Government acts that affect semi-suspect or quasi-suspect classifications require that a court apply _____ scrutiny to determine the act's validity.
- 9) Commerce that is wholly contained within a state and has no effect on other states or foreign countries is called _____ commerce.
- 10) A question put to voters during a state election to decide a particular issue may be called a ballot initiative, a referendum, or a[n] _____.

MULTIPLE CHOICE QUESTIONS

- 11) The Bill of Rights recognizes fundamental constitutional rights of citizens.
 - A) True
 - B) False
- 12) In *U.S. v. Lopez*, the Supreme Court found a legitimate economic interest in making it a federal crime to possess a gun within a certain distance from schools.
 - A) True
 - B) False

- 13) Congress's broadest powers are derived from the Commerce Clause.
- A) True
 - B) False
- 14) According to the decision in *Brown v. Entertainment Merchants Association*, the Court applied an intermediate-level scrutiny standard because the state's action was related to a fundamental right—freedom of speech.
- A) True
 - B) False
- 15) Corporations and other business entities receive the same level of constitutional protection as individuals.
- A) True
 - B) False
- 16) The Equal Protection Clause requires the government to treat all people the same, regardless of whether they are similarly situated.
- A) True
 - B) False
- 17) Most privacy rights afforded in the Constitution do not extend to the workplace.
- A) True
 - B) False
- 18) Strict scrutiny requires that a state prove that it is acting to promote an important government objective and that the proposed act is substantially related to the government's objective.
- A) True
 - B) False
- 19) Growing marijuana for purely personal medical use while possessing a valid prescription in a state that has approved medical use of marijuana has been found to be interstate commerce.
- A) True
 - B) False
- 20) The inherent right of the federal government to protect its citizenry's health, safety, and welfare is referred to as the federal government's police powers.
- A) True
 - B) False

- 21) States may never regulate commerce that crosses state borders as this is an exclusive federal power.
- A) True
 - B) False
- 22) Federal legislation or regulation must be authorized by a specific enumerated power in the Constitution.
- A) True
 - B) False
- 23) In *U.S. v. Morrison*, the Supreme Court found that commerce power was a legitimate justification to validate the right of women to sue their attackers for monetary damages under the Violence Against Women Act.
- A) True
 - B) False
- 24) Congress may tax activities and property that it might not be authorized to regulate under any of the enumerated regulated powers.
- A) True
 - B) False
- 25) Congress may place limits on the use of federal money by states as long as the limit does not affect or infringe on a citizen's constitutional rights.
- A) True
 - B) False
- 26) Both commercial speech and corporate political speech are subject to intermediate scrutiny.
- A) True
 - B) False
- 27) A business owner's expectation of privacy in commercial property is the same as the privacy interest afforded to a private homeowner.
- A) True
 - B) False
- 28) The Fourth Amendment protects against all searches or seizures by the government when the government's actions are not supported by a warrant.
- A) True
 - B) False

- 29) Substantive due process requires that a state statute must be published for public inspection and be clear and specific.
A) True
B) False
- 30) Enumerated powers are those rights and powers granted in the Constitution to the individual states.
A) True
B) False
- 31) Placing conditions on the use of federal money given to states is most often accomplished by interpreting the Commerce Clause.
A) True
B) False
- 32) The right to privacy is a specifically named right established in the Bill of Rights.
A) True
B) False
- 33) Obscenity regulation of commercial speech is subject to the same scrutiny as any other government regulation of commercial speech.
A) True
B) False
- 34) Professor Jones accuses Kim, one of his students, of cheating on an exam. Professor Jones arranges a hearing to be held in front of the university's Academic Honesty Board, and Kim is informed that she must prove her innocence before Professor Jones must prove her guilt. Kim is being denied her substantive due process rights.
A) True
B) False
- 35) Typically, political speech by corporations is fully protected by the First Amendment.
A) True
B) False
- 36) Commercial speech has always been afforded protection under the First Amendment.
A) True
B) False

- 37) *Marbury v. Madison*, decided in 1803, is no longer considered valid precedent and has been preempted by statute.
- A) True
 - B) False
- 38) The First Amendment prohibits individuals from encroaching on or prohibiting another person's freedom of speech.
- A) True
 - B) False
- 39) Under the Constitution, Congress has the enumerated power to appoint federal officers and judges.
- A) True
 - B) False
- 40) Under the federal system used by the United States, the federal government has only limited power to regulate individuals and businesses.
- A) True
 - B) False
- 41) The preamble of the Constitution
- A) sets out the structure of the government.
 - B) lays out the procedures by which the government will operate.
 - C) establishes boundaries of jurisdiction.
 - D) states the broad objectives of the Constitution.
- 42) Which of the following is not a coequal branch of the U.S. government as specified in the Constitution?
- A) the legislative branch
 - B) the executive branch
 - C) the administrative branch
 - D) the judicial branch
- 43) Judicial review is the
- A) power or right of a court to hear a case.
 - B) power of a state or federal court to declare a statute unconstitutional.
 - C) power of an appellate court to reverse a decision made in a lower court.
 - D) power of a federal court to declare a state or federal statute invalid if inconsistent with the Constitution.

- 44) The power to impeach and remove is a check and balance power
- A) of the executive branch.
 - B) of the legislative branch.
 - C) of the judicial branch.
 - D) that is shared by all three government branches.
- 45) Assume that the state of Georgia raised the fee for registration of motor vehicles to \$5 per year. If challenged, this new statute would be reviewed using
- A) rational basis scrutiny.
 - B) intermediate scrutiny.
 - C) strict scrutiny.
 - D) no particular form of scrutiny (none is required in this situation).
- 46) The primary authorization of constitutional powers is given to Congress under
- A) the Preamble to the Constitution.
 - B) Article I of the Constitution.
 - C) Article VI of the Constitution.
 - D) the Bill of Rights.
- 47) The power to carry out foreign policy is an enumerated power granted to
- A) the executive branch.
 - B) the legislative branch.
 - C) the judicial branch.
 - D) all three branches.
- 48) The state of Kansas has enacted a new law requiring all commercial trucks driving on Kansas roads to have special mud flaps installed. These mud flaps have been proved to make driving in the rain significantly safer as they reduce mist created by trucks in the rain, although data regarding accidents and injuries have not yet been determined. Any truck entering Kansas must have these flaps installed or will be subject to a significant fine and delay. The cost for purchase and installation of these flaps is \$1,000 per truck. In short, trucks must have these flaps or go around the state. This Kansas law
- A) is valid because it applies only to Kansas roads and such a law is entirely intrastate.
 - B) is valid because Kansas's right to protect its citizens under its police powers will override any outside challenges to this law.
 - C) is invalid because this law is intended to regulate interstate commerce, an enumerated federal power.
 - D) is invalid because, although on its face it's an intrastate law, this statute will have a significant economic effect on interstate commerce, causing an undue burden.

- 49) In *Gonzalez v. Raich*, patients who were prescribed medical marijuana sought to prevent enforcement of the federal Controlled Substances Act (CSA) in medical marijuana cases. They claimed enforcement violated the Commerce Clause because the medical marijuana was cultivated and possessed within state borders and did not enter the stream of commerce. The U.S. Supreme Court decided
- A) the government had a rational basis for believing that locally cultivated marijuana would end up in interstate commerce.
 - B) the intrastate, noncommercial cultivation and possession of marijuana was not intended to enter interstate commerce.
 - C) California's medical marijuana law was unconstitutional.
 - D) enforcement unreasonably burdened interstate commerce.
- 50) In *Pagan v. Fruchey and Village of Glendale*, Pagan sued, questioning a village ordinance prohibiting the parking of a car on a public street for the purpose of displaying it for sale. Pagan won because
- A) Glendale's law violated Pagan's commercial speech rights, which are absolute.
 - B) Glendale was unable to prove that Pagan's speech was unlawful.
 - C) Glendale's ordinance was broader than necessary to accomplish the village's government interest.
 - D) Glendale did not prove that the ordinance directly advanced the village's claimed government interest because Glendale based its argument on opinion rather than data.
- 51) In the cases of *Heart of Atlanta Motel v. U.S.* and *Katzenbach v. McClung*, the Supreme Court found illegal discrimination under the Civil Rights Act of 1964 by applying
- A) the Commerce Clause.
 - B) the Supremacy Clause.
 - C) the Necessary and Proper Clause.
 - D) the Equal Protection Clause.
- 52) When Bad Frog Brewery, Inc., placed a label on its product showing a frog with unwebbed fingers with its middle finger extended, New York State sued to prohibit the use of the label, claiming it to be obscene and claiming an interest in protecting the state's children. The court found
- A) for Bad Frog because children cannot purchase beer, so any exposure would be incidental.
 - B) for Bad Frog because the label did not concern an unlawful activity and the state did not prove its interest in protecting children from vulgarity.
 - C) for New York State because once the product was purchased, the labels would be exposed in refrigerators or in rooms while children were present.
 - D) for New York State because it proved a substantial effort to advance a valid state interest amounting to more than "not merely the removal of a few grains of sand from the beach of vulgarity."

- 53) If a city refuses to issue a permit for a political demonstration because it would block traffic in the area's largest intersection, that decision would be reviewed using
- A) rational basis scrutiny.
 - B) intermediate scrutiny.
 - C) strict scrutiny.
 - D) no particular form of scrutiny (none is required in this situation).
- 54) Treaties
- A) may be entered into by the president without oversight or approval.
 - B) are entered into by the president subject to House approval.
 - C) are entered into by the president subject to Senate approval.
 - D) are entered into by the president subject to joint House and Senate approval.
- 55) The power of preemption is derived from
- A) the power of judicial review.
 - B) the Commerce Clause.
 - C) the Necessary and Proper Clause.
 - D) the Supremacy Clause.
- 56) In *Cipollone v. Liggett Group Inc., et al.*, Cipollone sued based on state consumer protection laws. What did cigarette makers argue?
- A) The court should consider state laws only.
 - B) Federal laws regulating promotion and advertising activities regarding tobacco products should be considered supplemental to state laws.
 - C) Federal and state laws conflicted, negating both, so the court had no basis to make its decision.
 - D) The claims were preempted by federal laws regulating cigarettes and tobacco products.
- 57) The Equal Protection Clause is contained in the
- A) First Amendment.
 - B) Fifth Amendment.
 - C) Sixth Amendment.
 - D) Fourteenth Amendment.
- 58) When a state action is found to be based on a semi-suspect (or quasi-suspect) classification, the courts will employ
- A) rational basis scrutiny.
 - B) intermediate scrutiny.
 - C) strict scrutiny.
 - D) no particular form of scrutiny (none is required in this situation).
- 59) When due process limits the power of the states to regulate certain areas related to individual liberty, this is called
- A) state due process.
 - B) federal due process.
 - C) substantive due process.
 - D) procedural due process.

- 60) One criticism of the USA Patriot Act is that
- A) adequate safeguards are not in place to prevent the government from using the act to invade citizens' privacy.
 - B) too much due process is being given to alleged terrorists under the act's provisions.
 - C) penalties for those found guilty under the act are not harsh enough.
 - D) penalties for those found guilty under the act are too harsh and constitute cruel and unusual punishment.
- 61) Assume that Iowa has passed a statute requiring all noncitizens to sit in the back of public buses. That statute would be reviewed using
- A) rational basis scrutiny.
 - B) intermediate scrutiny.
 - C) strict scrutiny.
 - D) no particular form of scrutiny (none is required in this situation).
- 62) Which of the following is not a procedural due process issue?
- A) Police must obtain a search warrant to enter and search a citizen's home for drugs.
 - B) The state of Massachusetts raised the drinking age to 25 years old.
 - C) The state of Oklahoma passes a statute prohibiting citizens from presenting evidence in drunk-driving trials.
 - D) The state of California passes a statute allowing relatives of victims of violent crimes to sit on the jury in the general trial court.
- 63) After more than 100 years, the Chicago Cubs have won baseball's World Series. They want a parade down Michigan Avenue at 10 a.m. on Friday, but the city tells them that the parade will be down Rush Street at noon on Saturday. The city claims that Rush Street on Saturday will provide more safety and convenience for the city's citizens. The Cubs claim a violation of their freedom of speech. If a lawsuit ensues, what standard of review will the court use to resolve the issue?
- A) rational basis scrutiny
 - B) intermediate-level scrutiny
 - C) strict scrutiny
 - D) no particular form of scrutiny (none is required in this situation)
- 64) In *State Farm Mutual v. Campbell*, the appellate court reinstated the punitive-damage award due to
- A) the defendant's actions being criminal in nature.
 - B) the disparity between the actual or potential harm suffered by the plaintiff and the punitive-damage award.
 - C) the degree of reprehensibility of the defendant's misconduct.
 - D) the state's law being preempted by federal statute.

- 65) Generally, constitutional protections do not apply to
- A) acts of the federal government.
 - B) acts of state governments.
 - C) acts of administrative agencies.
 - D) acts of privately owned businesses.
- 66) Protections for the citizenry from unlawful or repressive acts by the government are contained primarily in
- A) the Preamble to the Constitution.
 - B) Article I of the Constitution.
 - C) Article V of the Constitution.
 - D) the Bill of Rights.
- 67) Mike is walking down the street minding his own business when he is stopped by a police officer. Although no crimes have been reported in the area and Mike has done nothing suspicious, the police officer does not like Mike's appearance so he conducts a pat-down search and finds a tiny bag of marijuana. Under these circumstances, this is
- A) an illegal search under Fourth Amendment protections.
 - B) an illegal search under Fifth Amendment protections.
 - C) a legal search because illegal drugs were found, justifying the police officer's actions.
 - D) a legal search because police are given broad discretion to use their experience to fight crime and obviously the police officer was right in this case.
- 68) The Due Process Clause is found in
- A) the Fifth Amendment only.
 - B) the Fourteenth Amendment only.
 - C) neither the Fifth nor Fourteenth Amendment.
 - D) both the Fifth and Fourteenth Amendments.
- 69) In *Gonzalez v. Raich*, when federal law enforcement confiscated and destroyed medicinal marijuana plants, Raich presented each of the following arguments except
- A) the plants were cultivated and possessed within state borders.
 - B) the plants did not enter the stream of commerce.
 - C) there are no enforcement difficulties in distinguishing between marijuana cultivated locally and marijuana grown elsewhere.
 - D) the plants were for personal use, not for commercial use.
- 70) Kathy was returning to the United States after a vacation when the Customs Service confiscated some goods she had purchased abroad and brought back with her. The determination of whether the government acted properly and the type of hearing that she must be provided is an analysis of
- A) procedural due process.
 - B) substantial due process.
 - C) the Equal Protection Clause.
 - D) the Commerce Clause.

ESSAY QUESTIONS

- 71) Explain the origin and justification of judicial review.
- 72) The U.S. Supreme Court has established three standards of review used when applying constitutional law. Name these three standards and discuss each in terms of how it relates to state objectives.
- 73) The state of Colorado has enacted a statute limiting the size of freight trains entering the state to no more than 80 cars other than the locomotive(s) and the caboose. Assume that there is no federal law mandating a maximum limit of cars, and further assume that freight trains frequently consist of over 100 cars. Colorado has justified the law by saying that shorter trains are safer, but the state's evidence is not persuasive. Colorado also claims that very long trains inconvenience drivers and can cause major traffic jams. Trains longer than 80 cars must stop and reduce their size, employing additional locomotives to transport the cars through the state to the border, where they may again recouple and proceed. Discuss whether this law is valid.
- 74) Congress has provided the state of Ohio \$50 million for highway construction and renovation. As a condition, Ohio must award 30 percent of the contracts to firms that are owned by women or minorities. Ohio sues, claiming that such a condition is an intrusion on Ohio's right to seek competitive bids and make the best use of the money. Ohio also asserts that this condition will make it difficult to seek the best-quality companies and that how it allocates the money is purely a state function as long as it uses the money for the purposes intended. How will a court likely decide this dispute?
- 75) Name the four-part test established by the Court in *Central Hudson Gas v. Public Service Commission* that subjects government restrictions on commercial speech to a form of intermediate-level scrutiny.
- 76) In what manner was a citizen's right to privacy initially established? Explain.
- 77) Mike has moved into a privately owned apartment complex. The stated rules of the complex prohibit unmarried men and women from living together in the same apartment. When Mike's girlfriend Kathy moves into his apartment, he is served with eviction papers. Mike claims that the apartment complex is violating his constitutional rights since it allows only married people to live together. Is he correct?
- 78) Describe Congress's authority to regulate under the Commerce Clause.
- 79) Explain the structure of the U.S. government and how the checks and balances system operates to maintain equalization of power between the different parts of the government.

80) Kathy runs a business from her home. Not only is she the sole employee, but she never leaves her home, performing all business functions in her pajamas in front of her computer. Her business consists of buying and reselling various goods over the Internet. She is very successful, with thousands of customers. In terms of regulation of commerce, how would you characterize her business?