

CONSTITUTIONAL LAW ISSUE CHECKLIST

JUSTICIABILITY

- Standing
 - Injury in fact
 - Causation
 - Redressability
 - Third party standing
 - Organizational standing
 - Taxpayer standing
- Ripeness
- Adequate and independent state grounds
- Absention
 - Unsettled state law
 - Pending state criminal proceedings
 - Civil cases with important state interest
- Mootness – live controversy/ongoing injury
- Political question
- Eleventh amendment limit
 - Exceptions

FEDERAL JUDICIAL POWERS

- Article III
- Original jurisdiction
- Appellate jurisdiction
 - Writ of certiorari
 - Mandatory review
- Final judgement rule

FEDERAL EXECUTIVE POWERS

- Foreign affairs
 - Treaty power
 - Executive agreements
 - Foreign relations
 - War
- Domestic powers
 - Appointment power
 - Removal power
 - Executive orders
 - Veto power
 - Presidential pardon
 - Impeachment and removal
 - Absolute immunity
 - Executive privilege

LEGISLATIVE POWERS

- Necessary and proper clause
- Commerce clause
- Taxing and spending power
- Delegation of powers
- Property power
- Citizenship power
- War
- Postal service
- 10th Amendment limitation
 - Exceptions – federal restrictions on states

FEDERALISM

- Supremacy clause
 - Express preemption
 - Implied preemption
 - Taxation
- State regulation of local aspects of interstate commerce
 - Dormant commerce clause
 - Discrimination against out-of-state interests
 - Important state interests
 - Market participating exception
 - Congressional approval
 - Discrimination against non-residents
 - Privileges and Immunities Clause Article IV
 - Privileges and Immunities Clause 14th Amendment
 - Contracts clause
- State taxation and interstate commerce
- Full faith and credit clause

INDIVIDUAL RIGHTS

- State action
 - Application of bill of rights to the states
 - Freedom of speech
 - Reasonableness of regulation
 - Vagueness
 - Overbreadth
 - Licenses/permits
 - Unfettered discretion
 - Prior restraints – strict scrutiny
 - Freedom of the press
 - Truth reporting
 - Access to trials
 - Commercial speech
 - Content-based regulations
 - Exceptions
 - Incitement of illegal activity
 - Defamation
 - Obscenity and sexually oriented speech
 - Content-neutral regulations
 - Time, place and manner regulations
 - Public forums and designated public forums
 - Non-public forums
 - Private property
 - Symbolic speech
 - Freedom of association
 - Prohibiting group punishment
 - Disclosure of group membership
 - Prohibiting group from discriminating
 - Punishing membership
 - Freedom of religion
 - Free exercise clause
 - Establishment clause
 - Lemon test
- Takings clause
 - Public use
 - Possessory taking
 - Use restrictions/regulatory taking
 - Just compensation
- Retroactive legislation
 - Contracts clause
 - Private contracts
 - Government contracts
 - Ex post facto laws
 - Bills of attainder
- Equal protection
 - Fundamental interests = SS
 - 1st Amendment Rights
 - Suspect classes = SS
 - Race
 - Alienage
 - Quasi=suspect classes = IS
 - Gender
 - Illegitimacy
 - Other = RBR
- Procedural due process
 - Deprivation of life, liberty, property
 - Process required
- Substantive due process
 - Fundamental right = SS
 - Marriage
 - Procreation
 - Right to custody of children
 - Childrearing
 - Right to keep family together
 - Contraceptives
 - Homosexual activity
 - Other = RBR
 - Abortion
 - Undue burden test
 - Pre-viability rule
 - Post-viability rule