

**TEST BANK**

CONTEMPORARY  
BUSINESS  
and ONLINE COMMERCE  
LAW

SIXTH EDITION



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## CHAPTER 2

### CONSTITUTIONAL LAW FOR BUSINESS AND E-COMMERCE

#### TRUE/FALSE QUESTIONS

##### Constitution of the United States of America

1. The Articles of Confederation did not grant the federal government the right to levy and collect taxes.  
**T (moderate) C.O. 1**
2. One of the two major functions of the U.S. Constitution is to limit the government's ability to interfere with individual rights.  
**T (easy) C.O. 1**
3. The concept of federalism is that the states are more powerful than the central government.  
**F (moderate) C.O. 1**
4. Any powers not delegated to either the federal government or the states are shared by the federal and state governments.  
**F (easy) C.O. 1**
5. Federal enumerated powers are also called reserved powers.  
**F (hard) C.O. 1**
6. The judicial branch has authority to examine the propriety of actions by the both the legislative branch and the executive branch.  
**T (easy) C.O. 1**
7. The legislative branch of the U.S. Government can change laws that have been interpreted by the Supreme Court.  
**T (moderate) C.O.1**

##### Supremacy Clause

8. The preemption doctrine refers to the concept of federal law taking precedence over state or local law.  
**T (easy) C.O. 2**
9. The preemption doctrine prevents states from regulating in any area that the federal government regulates.  
**F (moderate) C.O. 2**

### Commerce Clause

10. The Commerce Clause of the U.S. Constitution gives Congress the power to regulate interstate commerce, as well as commerce with foreign nations and with Indian tribes.  
**T (moderate) C.O. 3**
11. Because a state has a duty to protect its citizens and a right to regulate intrastate commerce, a law prohibiting the direct sale of goods to its citizens by out of state retailers is constitutionally valid as long as the sale can be made to in state wholesalers who then sell to the state's citizens.  
**F (moderate) C.O. 3**
12. Congress has the authority to regulate an activity that does not itself involve interstate commerce if the activity does have an effect on interstate commerce.  
**T (moderate) C.O. 3**
13. Treaties entered into by the federal government with Native American Nations became void when the specific territory became a state and the treaty had to be renegotiated due to the land governance.  
**F (moderate) C.O. 3**
14. The police power permits states to enact laws to protect or promote the public health, safety, morals, and general welfare.  
**T (easy) C.O. 3**
15. A state can regulate in areas affecting interstate commerce where the federal government has chosen not to regulate if the state law does not place an undue burden on interstate commerce.  
**T (moderate) C.O. 3**
16. Laws broken on Indian land are resolved in the state court of the state within which the land is located.  
**F (moderate) C.O. 3**

### Bill of Rights

17. The fundamental rights granted in the Constitution and its amendments protecting citizens from intrusive governmental actions, apply to natural persons and do not apply to artificial persons such as corporations.  
**F (moderate) C.O. 5**
18. Since their creation, the protections in the Bill of Rights have generally been applicable to state and local governments as well as the federal government.  
**F (moderate) C.O. 5**
19. Because individuals and businesses have the option to shut off their fax machines, prohibitions on junk faxes are an unconstitutional limitation on commercial free speech.  
**F (moderate) C.O. 4**
20. Offensive speech is generally considered to be another name for obscene speech.  
**F (moderate) C.O. 4**

21. Commercial speech and offensive speech both receive only limited protection under the U.S. Constitution.  
**T (moderate) C.O. 4**
22. The U.S. Supreme Court has ruled that the Internet must be given the highest possible level of First Amendment free-speech protection.  
**T (moderate) C.O. 4**
23. The establishment clause of the U.S. Constitution allows the federal government to establish which religions are entitled to protection.  
**F (moderate) C.O. 4**

### **Other Constitutional Clauses**

24. The Fourteenth Amendment contains Equal Protection, Due Process, and Privileges and Immunities Clauses.  
**T (moderate) C.O. 5**
25. The Equal Protection Clause generally requires that businesses, both private and public, treat similarly situated persons similarly.  
**F (moderate) C.O. 5**
26. The level of scrutiny in equal protection cases refers to how difficult it is for alleged equal protection violations to be justified.  
**T (moderate) C.O. 5**
27. The lawfulness of government classifications based on sex are examined using an intermediate scrutiny test.  
**T (moderate) C.O. 5**
28. Just compensation paid to citizens due to a seizure of land based on the exercise of eminent domain is a substantive due process matter.  
**F (moderate) C.O. 5**
29. The lawfulness of government classifications that do not involve suspect or protected classes is examined using an intermediate scrutiny test.  
**F (moderate) C.O. 5**
30. Enforcement of affirmative action through the use of a quota system is lawful if it is done to accomplish a legitimate state or federal purpose.  
**F (hard) C.O. 5**
31. Procedural due process requires that the government must give a person proper notice and hearing of the legal action before that person is deprived of his or her life, liberty, or property.  
**T (easy) C.O. 5**

## MULTIPLE CHOICE QUESTIONS—LEGAL CONCEPTS

### Constitution of the United States of America

32. What was the first document to set out the operation of the United States government?
- The Declaration of Independence
  - The Colonial Government Manifest
  - The Articles of Confederation (easy) C.O. 1**
  - The Gettysburg Address
  - The U.S. Constitution
33. The Constitution reserves the right of the federal government to regulate interstate commerce. This is an example of:
- federalism
  - an enumerated power (moderate) C.O. 1**
  - a supremacy clause application
  - equal protection
  - nationalism
34. In what year was the U.S. Constitution written?
- 1776
  - 1782
  - 1787 (easy) C.O. 1**
  - 1812
  - 1865
35. The two main functions of the U.S. Constitution are to:
- create the three branches of government and create the individual states.
  - create the three branches of government and promote a strong economy.
  - protect individual rights and establish the electoral college.
  - create the three branches of government and protect individual rights. (moderate) C.O. 1**
  - provide all citizens with a right to vote and allow for judicial review of laws.
36. Powers that are not mentioned in the U.S. Constitution:
- are held both by the states and by the federal government.
  - are reserved to the states. (moderate) C.O. 1**
  - are reserved to the federal government.
  - can be delegated by the U.S. Supreme Court to either the states or the federal government.
  - cannot be exercised by either the states or the federal government.
37. For which of the following in the U.S. Congress can the number to which a state is entitled change over time?
- Senators.
  - Representatives. (easy) C.O. 1**
  - Both Senators and representatives.
  - Neither senators nor representatives.
  - all members of the U.S. Congress.

38. In order to enter into a treaty with a foreign nation, the executive branch needs:
- no further approval.
  - the approval of the Senate. (easy) C.O. 1**
  - the approval of the House of Representatives.
  - the approval of the Senate and the House of Representatives.
  - the approval of the Senate and the Supreme Court.
39. The term “checks and balances” when used in reference to the U.S. Constitution means that:
- Congress has the power to issue checks and balance the budget.
  - Congress has the power to check and balance the power of individual states.
  - the Constitution ensures that Congress has power to check and balance the power of federal agencies.
  - certain checks and balances are built into the Constitution to ensure that no one branch of the federal government becomes too powerful. (easy) C.O. 1.**
  - banks are required to offer checking accounts to customers.

### Supremacy Clause

40. Under the Supremacy Clause of the U.S. Constitution, when Congress chooses to regulate in an area:
- it will automatically have exclusive jurisdiction to regulate in that area.
  - states will always remain able to freely regulate in that area.
  - states will always be able to regulate in that area so long as the state law does not directly and substantially conflict with the federal law.
  - whether the state has any authority to regulate in the area will depend on whether Congress provides that the federal government has exclusive authority to regulate in that area. (moderate) C.O. 2**
  - the state will be able to regulate in that area only with prior permission of the U.S. Supreme Court.
41. In *Engine Manufacturers Association v. South Coast Air Quality Management District*:
- South Coast created air quality standards because the federal government had not yet set standards regarding fleet emissions.
  - South Coast created air quality standards that were stricter than the federal standards and South Coast’s standards were preempted by the federal standards. (moderate) C.O. 2**
  - South Coast created air quality standards that were laxer than the federal standards and South Coast’s standards were required to be changed to mirror the federal standards
  - because the federal government had enacted standards, state and local governments were barred from enacting their own standards regardless of what they said or did.
  - the court declared the federal standard too broad and ordered that the standards created by South Coast be followed.

## Commerce Clause

42. What is the result of the “effects on interstate commerce” test?
- The federal government can regulate all interstate commerce that actually crosses state lines.
  - Prior to enacting laws, states are required to identify any effects that the law might have on interstate commerce.
  - The federal government can regulate a business activity that takes place within a single state if the activity has an effect on interstate commerce even though the regulated activity does not, itself, involve interstate commerce. (difficult) C.O. 3**
  - Commercial speech protections apply only to speech that has an effect on interstate commerce.
  - The federal government can regulate transportation.
43. The power of the federal government to make treaties with Native American Nations regarding land and land use is derived from the:
- Commerce Clause. (moderate) C.O. 3**
  - Privileges and Immunities Clause.
  - Equal Protection Clause.
  - First Amendment.
  - Supremacy Clause.
44. In *Reno v. Condon, Attorney General of South Carolina*, the case in the book addressing whether Congress could prohibit states from selling personal information of citizens without consent, the U.S. Supreme Court ruled that:
- The Driver’s Privacy Protection Act was a proper exercise of the authority of Congress to regulate interstate commerce under the Commerce Clause. (difficult) C.O. 3**
  - The Driver’s Privacy Protection Act was not a proper exercise of the authority of Congress to regulate interstate commerce under the Commerce Clause.
  - The Driver’s Privacy Protection Act was a proper exercise of the authority of Congress to regulate interstate commerce under the due process clause of the U.S. Constitution.
  - The Driver’s Privacy Protection Act was a proper exercise of the authority of Congress to regulate interstate commerce under the Regulatory Clause of the U.S. Constitution.
  - The Driver’s Privacy Protection Act was a proper exercise of the authority of Congress to regulate interstate commerce under the First Amendment.
45. Which of the following is true?
- Because of the commerce clause, states do not have any power to regulate commerce.
  - In order for the federal government to have power to regulate commerce, the commerce in question must actually cross state lines.
  - The states’ police power gives states the power to regulate intrastate and much interstate business within their borders. (difficult) C.O. 3**
  - Although a state cannot regulate interstate commerce within its borders, it has full power to prevent interstate business activities within its borders.
  - Cases involving interstate commerce are decided under strict scrutiny.

46. If there is an area of interstate commerce that the federal government has chosen not to regulate, the states can:
- regulate without restriction in that area.
  - regulate in that area so long as the state law does not unduly burden interstate commerce. (difficult) C.O. 3**
  - regulate in that area so long as it first gets the requisite approval from Congress.
  - not regulate in that area because states cannot pass laws affecting interstate commerce.
  - not regulate in that area because the federal government's decision to not regulate in an area implies that there is to be no regulation in that area at any level.
47. Under what circumstances can a state impose a tax on goods that are imported from other nations?
- In any circumstance.
  - If the tax does not conflict with any valid federal law.
  - If the amount of the tax is reasonable.
  - If the tax also applied equally to the same type(s) of goods produced domestically. (moderate) C.O. 3**
  - In no circumstance.

### Bill of Rights

48. The Bill of Rights is another name for:
- the Articles of Confederation.
  - the U.S. Constitution.
  - the document that explains the U.S. Constitution.
  - the first ten amendments to the U.S. Constitution. (easy) C.O. 4**
  - the first seven articles of the U.S. Constitution.
49. The individual protections in the Bill of Rights apply to the actions of:
- the federal government only.
  - the state governments only.
  - the federal, state, and local governments. (moderate) C.O. 4**
  - the legislative and executive branches of the federal government, but not to state and local governments.
  - the federal government and businesses that operate across state lines.
50. Under the Fourteenth Amendment of the U.S. Constitution:
- prohibition was established.
  - the power to regulate interstate commerce was granted to Congress.
  - Congress was given the power to put reasonable restrictions on commercial speech.
  - the protections in the Bill of Rights were specifically made applicable to state governments. (moderate) C.O. 5**
  - Congress was given power to put reasonable restrictions on religious freedom.
51. When television personalities make fun of the President, they are engaging in:
- protected speech. (moderate) C.O. 5**
  - limited protected speech.
  - unprotected speech.



- d. commercial speech.
  - e. freedom of speech is not an issue when it is considered satire..
52. In relation to freedom of speech:
- a. all speech receives the same degree of Constitutional protection.
  - b. it is not an absolute right. (difficult) C.O. 4**
  - c. commercial speech receives no protection due to its profit motive.
  - d. most speech critical of the government can be restricted because such speech can be destabilizing.
  - e. commercial speech receives the same protection as any other speech or any person.
53. With respect to commercial speech, the government can:
- a. not regulate because commercial speech is fully protected.
  - b. subject it to time, place or manner restrictions, but not prevent it. (moderate) C.O. 4**
  - c. entirely restrict or prevent it, so long as the speech does not have political content.
  - d. prevent it if the Congress and the President agree.
  - e. prevent it entirely only upon the consent of two-thirds of the Senate.
54. Which of the following is true regarding obscene speech?
- a. It cannot be prevented, but can be subject to time, place or manner restrictions.
  - b. Because the definition of obscene is so subjective, it cannot be restricted or prevented.
  - c. Even though the definition of obscene speech is subjective, if speech is determined to be obscene, it loses all constitutional protection. (moderate) C.O. 4**
  - d. Obscene speech and offensive speech receive the same degree of protection.
  - e. The U.S. Supreme Court has set out a clear definition of what speech is defined as obscene and therefore unprotected.
55. Which of the following is considered to be fully protected speech under the U.S. Constitution?
- a. Political speech only. (moderate) C.O. 4**
  - b. Political speech and commercial speech.
  - c. Offensive speech and commercial speech.
  - d. Commercial speech only.
  - e. Political speech, commercial speech and offensive speech
56. Which of the following receives at least some protection under the U.S. Constitution?
- a. Political speech only
  - b. Political speech and commercial speech
  - c. Offensive speech and commercial speech
  - d. Commercial speech only
  - e. Political speech, commercial speech and offensive speech (easy) C.O. 4**

57. Which of the following was not a consideration when deciding that the do-not-call registry is consistent with First Amendment rights?
- only commercial speech may be restricted.
  - it targets speech which invades the privacy of the home which is considered a personal sanctuary.
  - consumers have the right to opt out or stay in so the option is in their hands.
  - the callers are often rude and discourteous so such speech can be interpreted to be a form of obscene speech. (moderate) C.O. 4**
  - all of the above were part of the reasoning to justify the do-not-call registry as being declared Constitutional.
58. What did the Court of Appeals in *Fax.Com, Inc. v. United States of America* rule regarding the Telephone Consumer Protection Act of 1991 outlawing junk faxes?
- That the federal government's enactment of the law violated the free speech rights of Fax.Com.
  - That the federal government had a substantial governmental interest in protecting the public but that the law would only be enforced in part because of the free speech rights of Fax.Com.
  - That the federal government had a substantial governmental interest in protecting the public but that the law would only be enforced in part because of the equal protection rights of Fax.Com.
  - That the federal government's enactment of the law was a constitutional regulation of commercial speech and did not violate Fax.com's free speech rights. (moderate) C.O. 4**
  - That the federal government's enactment of the law violated the rights of individual states because the individual states had exclusive jurisdiction.
59. Which of the following types of speech are unprotected meaning that they are not protected by the First Amendment and may be totally forbidden by the government?
- Dangerous speech (including such things as yelling "fire" in a crowded theater when there is no fire).
  - Fighting words that are likely to provoke a hostile or violent response from an average person.
  - Speech that incites the violent or revolutionary overthrow of the government.
  - All the above are unprotected speech. (moderate) C.O. 4**
  - None of the above are unprotected speech.
60. Freedom of religion under the U.S. Constitution:
- comes from the Establishment Clause as well as the Free Exercise Clause. (moderate) C.O. 5**
  - applies only to those religions in existence on the date the Constitution became effective.
  - gives practitioners absolute rights to take part in actions which are religious-based.
  - allows the government to establish an official religion or religions so long as citizens remain free to practice any other religion they choose.
  - comes only from the Establishment clause.

61. Which of the following would be a violation of the freedom of religion protections in the U.S. Constitution?
- a. The government promoting a religion as better than other religions.
  - b. The government preventing the practice of unpopular or fringe religions.
  - c. The government establishing a time in school for persons to practice the religion of their choice.
  - d. A and B only
  - e. **A, B and C (moderate) C.O. 4**

### Other Constitutional Clauses

62. The test to determine whether substantive due process is met is whether a \_\_\_\_\_ could understand the law to be able to comply with it.
- a. educated person
  - b. adult person
  - c. mature person
  - d. **reasonable person. (difficult) C.O. 5**
  - e. common person
63. An equal protection challenge to a statute that treats adults of different ages differently would be decided under:
- a. **intermediate scrutiny. (difficult) C.O. 5**
  - b. majority scrutiny.
  - c. strict scrutiny.
  - d. rational basis.
  - e. limited scrutiny.
64. Which is true about how courts address equal protection cases?
- a. **If a law treats different groups differently, the court determines whether the difference in treatment is justified using one of three different levels of scrutiny. (difficult) C.O. 5**
  - b. If a law treats different groups differently, the law will be invalidated.
  - c. If a law treats different groups differently, it will be acceptable so long as there is adequate notice to the persons affected.
  - d. Laws that affect persons differently based on race, gender, or age will be invalidated; laws that affect persons differently based on other factors will be deemed acceptable.
  - e. If a law treats a particular group more favorably than others, it will be acceptable, but if a law treats a particular group less favorably than others, it will be invalidated.
65. Substantive due process requires that:
- a. a notice and hearing be given before one is deprived of life, liberty or property.
  - b. a criminal defendant have an attorney present at all times.
  - c. a law treat all persons the same.
  - d. **government statutes, ordinances and regulations be clear and not overly broad. (moderate) C.O. 5**
  - e. a defendant not be tried twice for the same crime

66. The privileges and immunities clause provides that:
- a. it is a privilege to be granted immunity from a criminal prosecution.
  - b. states must generally treat nonresidents as favorably as residents. (easy) C.O. 5**
  - c. corporations receive most of the same constitutional protections as individuals.
  - d. the government is not subject to being sued unless the constitutional matter is a right rather than a privilege.
  - e. an individual has the privilege of practicing any religion, and is immune from any government interference with that right.

## MULTIPLE CHOICE QUESTION—FACTUAL APPLICATION

### Supremacy Clause

67. There are extensive federal regulations covering airplanes and pilots. Assume that the state of Missouri passes a statute containing numerous requirements, some conflicting with the federal rules, covering the licensing of airplane pilots and the operation of aircraft. A pilot's constitutional challenge to this state statute would most likely succeed on the basis of:
- a. the preemption doctrine. (moderate) C.O. 2**
  - b. the Equal Protection Clause.
  - c. substantive due process.
  - d. the state police power.
  - e. the exclusive doctrine.

### Commerce Clause

68. Assume that the State of Michigan passes a statute that grants all residents who purchase a brand new automobile made in Michigan a \$2,000 credit on state sales tax. It is most likely true that:
- a. an equal protection claim would be evaluated using strict scrutiny.
  - b. because the statute gives the tax credit only to Michigan residents who purchase a car made in Michigan, and this is a purely intrastate issue, there is no violation of the commerce clause.
  - c. there is a procedural due process violation.
  - d. this statute probably violates the commerce clause. (difficult) C.O. 3**
  - e. there is a First Amendment violation.
69. Assume that the state of Kansas passes a law requiring all automobiles sold in Kansas to have built-in child restraint systems. Assume federal regulations covering automobiles have no such requirement and do not reference the subject. Assume also, that the required restraint systems would make automobiles safer for children, but that they would add considerably to the cost of the automobiles and require extensive changes in design to meet the Kansas requirements. Which of the following is most likely true?
- a. The Kansas statute would probably be considered a burden on interstate commerce and thus unconstitutional. (easy) C.O. 3**
  - b. Because the required modification is a better design, the law would be constitutional.

- c. Because the statute does not conflict with a federal statute or regulation, it could not be found to be unconstitutional.
  - d. If all manufacturers of automobiles stopped selling them in Kansas, there could be no constitutional violation because interstate commerce would not be involved.
  - e. The Kansas statute would likely be a violation of due process rights under the U.S. Constitution.
70. Assume that Congress passes a statute that bans the use of personal watercraft on any body of water before 8:00 a.m. and after 9:00 p.m. Congress based its passage of the law on its authority to regulate interstate commerce because it believed that fewer persons would buy personal watercraft because of this law. In a constitutional challenge, most likely:
- a. the law would be found constitutional only if it did not conflict with a valid state law.
  - b. the law would be found to violate the Equal Protection Clause because it applied on water, but not on land.
  - c. the law would be constitutional because of the federal government's police power.
  - d. **the law would be found unconstitutional because any effect on interstate commerce is too remote for this to be a valid exercise of federal power. (difficult) C.O. 3**
  - e. the laws would likely be a violation of equal protection rights under the U.S. Constitution.

### **Bill of Rights**

71. Assume that a state passes a statute that prevents the disclosure of the horsepower of automobile engines. The purpose of this law is to prevent the car companies from trying to market cars with more horsepower than those of their competitors. This statute would most likely be found:
- a. constitutional under the state police power.
  - b. **an unconstitutional restriction of commercial speech. (difficult) C.O. 3**
  - c. to violate the Equal Protection Clause under intermediate scrutiny.
  - d. to violate substantive due process.
  - e. to violate procedural due process.

### **Other Constitutional Clauses**

72. A city ordinance prohibits any advertising of fur coats within the city limits. This ordinance:
- a. is constitutional because the U.S. Constitution provides no right to advertise.
  - b. would be analyzed under strict scrutiny if challenged on equal protection grounds.
  - c. **would be challenged on the grounds of either equal protection or freedom of speech. (difficult) C.O. 5**
  - d. is not constitutional because commercial speech cannot be restricted.
  - e. would be analyzed under the intermediate level of scrutiny and challenged on equal protection grounds.

73. Assume that a law is passed that establishes airline security screening requirements for male passengers that differ from the requirements for female passengers. In evaluating an equal protection challenge to this law, a court would use:
- strict scrutiny.
  - intermediate scrutiny. (moderate) C.O. 5**
  - limited scrutiny.
  - the rational basis test.
  - utmost scrutiny.
74. Assume that the state of Colorado institutes a law requiring that persons from outside the state of Colorado take a skiing exam and obtain a skiing license before being allowed to ski at a downhill resort on runs other than the beginner runs. The fee for this license is \$75. Colorado residents are not required to get a license because most resident skiers learn to ski properly at an early age. This statute could be challenged under:
- the Equal Protection Clause.
  - the Privileges and Immunities Clause.
  - the Interstate Commerce Clause.
  - none of the above because this is an intrastate commerce issue that does not unduly burden interstate commerce.
  - A, B and C. (difficult) C.O. 5**

### **ESSAY QUESTIONS—ETHICS AND POLICY**

75. To what extent should “speech” over the Internet be regulated? Should the Internet be treated like television, or should different standards apply? Or is the Internet more like print media such as books or newspapers? Give reasons for your positions.

**There are many opinions possible on this issue. Compared to regulating broadcast media, the Internet raises many additional issues. For example, unlike television, the Internet can be used for two-way communication. Furthermore, communications on the Internet can not only be aimed at a mass market, but can be directed to a focused group or single individual. Perhaps different rules, if any, should apply to these individualized communications. On the other hand, it is less likely for someone to be accidentally exposed to material on the Internet compared to television, although this is changing as the Internet evolves. It should be noted that the U.S. Supreme Court struck down the Computer decency act enacted in 1996 ruling stating that “As the most participatory form of mass speech yet developed, the Internet deserves the highest protection from government intrusion.” The Court ruled that the Internet must be given the highest possible level of First Amendment free speech protection. (moderate) C.O. 4**

76. Following the events of September 11, 2001, the government took many actions directed at preventing acts of terrorism. One of the first and most visible was increased intensity of searches at airports. When government personnel do the screening, the Equal Protection Clause applies. Should government screeners be able to search members of certain groups more rigorously than others? Is it constitutional to do so?

**There has been considerable controversy over elderly women and young mothers being randomly selected for more intensive searches and screening. One might argue that if it is known that terrorists most often come from certain groups, it might be reasonable to subject members of these groups to more thorough searches.**

**Such conduct might or might not be constitutional because unequal treatment is balanced against the purpose of the law. It might be fairly easy to justify such a policy constitutionally given that the consequence of the unequal treatment (a few more minutes to get through security screening) is relatively minor compared to the purposes advanced by the law. (difficult) C.O. 5**

## **ESSAY QUESTIONS—FACTUAL APPLICATION**

### **Supremacy Clause**

77. Assume that Congress has passed a statute ordering that the national minimum wage shall be \$7.50 per hour. California, bowing to protests by employers claiming certain financial ruin, passes a state statute authorizing a minimum wage for California businesses at \$7.00 an hour. At the same time, New York, with its employers also claiming certain financial ruin, never-the-less passes a state statute creating a state minimum wage of \$8.00 per hour. Assume that both laws apply to employer employee relationships wholly within the respective states. If a worker in California and an employer in New York brought suit challenging the state laws, how should the courts decide?

**Since the federal government has enacted a valid law, their \$7.50 minimum wage requirement would preempt the California law regardless of the intrastate nature of the employment relationship. California employers would be required to pay the \$7.50 per hour mandated by the federal law so the California employee would prevail. The New York employer would likely lose however. New York may choose to make their minimum wage in excess of the \$7.50 mandated by federal law. The federal law is violated if less than the minimum is paid so preemption will not apply. It is only if it can be shown that the New York law creates an undue burden on interstate commerce that the state law could be challenged as unconstitutional. Since the law only applies to New York employers, no interstate burden appears to exist. (hard) C.O. 3**

### **Bill of Rights**

78. Assume that there are numerous Internet service providers in a large city. Because of fierce competition, these businesses advertise heavily. One of the features that some of them provide and advertise is streamlined access to pornography sites as well as proprietary pornography sites that can be accessed only by those who subscribe with that particular service provider. This city passes an ordinance that prohibits any advertising about being able to access pornography over the Internet. One of the service providers challenges the constitutionality of this statute. Discuss how the case would turn out.

**The most likely challenge would be on the basis of freedom of speech. The speech in question is commercial speech. Commercial speech can be subjected to reasonable time, place, and manner restrictions, but cannot be prohibited. This ordinance is probably an impermissible prohibition of this advertising. Note that the speech in question is the advertising of the access to the pornography, not the pornography itself. Assuming that accessing the pornography is legal, the city is limited in how it can restrict the advertising. Also note that not all pornography is considered to be unprotected obscene speech. The city would have much greater latitude in regulating advertising of an illegal activity, such as child pornography. (moderate) C.O. 4**

79. Assume that a city passes an ordinance that prohibits all smoking in restaurants and bars, except in outdoor seating areas. Evaluate an equal protection challenge to this ordinance.

**Although this ordinance might seem to treat “smokers” differently than “nonsmokers,” individuals are not inherently smokers or nonsmokers. This ordinance prohibits anyone from smoking regardless of whether that person is a smoker or nonsmoker. Restaurant and bar owners, however, might be able to raise an equal protection challenge because those two kinds of businesses are being singled out under the ordinance. Because the distinction is based on the type of business (and not race, age or gender) the validity of the distinction would be evaluated under rational basis, and thus likely to be constitutional.**

**(difficult) C.O.5**

80. The Klu Klux Klan has announced that it wishes to conduct a parade through “Anytown”, USA. Despite assurances that the intent of the parade is to conduct a peaceful march and passive demonstration, the majority of citizens in “Anytown” don’t want the parade to take place. Can the governing body in “Anytown” prohibit the parade? What are the constitutional ramifications that must be considered with regard to freedom of speech?

**Although most people would consider the Klu Klux Klan and their message to be offensive in nature, their message is never-the-less political in nature and is therefore protected. However, since their intent is to conduct a parade and demonstration, their speech becomes limited protected and the governing body of “Anytown” has the right to place reasonable restrictions on them relating to time, place and duration of the Klan’s actions. This is justified based on the duty of the governing body to provide facilities, police and other services for the protection and convenience of all. Parades and demonstrations, even if protected speech, still cause a disruption to the lives of citizens within a city and the government has a duty to recognize and minimize such disruptions. Should the speech turn from “merely” offensive to dangerous, or should it result in speech constituting fighting words, it becomes unprotected and the government may then step in to stop and prohibit the speech. (hard) C.O. 5**