



## CALIFORNIA BAR EXAMINATION CONTENT MAP CONSTITUTIONAL LAW

The topics listed below are illustrative of those covered in Constitutional Law, but are not exhaustive.

### I. Legislative Branch

- A. Taxing and spending power
- B. War power
- C. Commerce power
  - 1. Interstate and foreign commerce
  - 2. Dormant commerce clause
  - 3. Activities subject to regulation
  - 4. Methods of regulation
  - 5. State taxation
- D. “Necessary and proper” clause power

### II. Executive Branch

- A. Commander-in-chief
- B. Chief executive
- C. Treaties and foreign affairs
- D. Appointment and removal

### III. Judicial Branch

- A. Jurisdiction
  - 1. Constitutional basis
  - 2. Constitutional limitations
  - 3. Congressional limitations
- B. Scope of Judicial Review
  - 1. Justiciability
  - 2. Cases and controversies
  - 3. Standing, ripeness, mootness
  - 4. Adequate and independent state grounds
  - 5. Abstention
  - 6. Political questions
  - 7. Advisory opinions

#### **IV. Interbranch Checks and Balances**

- A. Impeachment and other Congressional limits on executive
- B. Veto and similar powers
- C. Executive, congressional and judicial privileges and immunities

#### **V. The Federal-State Relationship**

- A. Preemption and consent
- B. Intergovernmental Immunities
- C. Supremacy Clause
- D. Tenth Amendment and the Scope of State Authority

#### **VI. Bill of Rights**

- A. First Amendment
  - 1. Freedom of religion
    - a. Prohibition against the establishment of religion
    - b. Free exercise of religion
  - 2. Freedom of speech and expression
    - a. Content-based/content-neutral
    - b. Public forum/non-public forum
    - c. Time, place and manner regulation
    - d. Vagueness/overbreadth
    - e. Prior restraint
    - f. Subsequent punishment
    - g. Symbolic expression
    - h. Political speech
    - i. Regulation of commercial speech
    - j. Regulation of unprotected speech
      - (1) Obscenity
      - (2) Incitement to illegal activity
      - (3) Fighting words
      - (4) Defamation
      - (5) Fraud and perjury
      - (6) Speech integral to criminal conduct
    - k. Regulation of defamation and invasions of privacy
    - l. Regulation as a condition of government employment or benefit
    - m. Regulation of media/communications industry
  - 3. Freedom of the Press
  - 4. Freedom of Association
    - a. Regulation of the electoral process
  - 5. Freedom to petition
- B. Second Amendment
  - 1. Right to keep and bear arms
- C. Third Amendment

- 1. Prohibition of involuntary quartering of soldiers in private homes
- D. Fourth Amendment
  - 1. Prohibition against unreasonable searches and seizures
- E. Fifth Amendment
  - 1. Prohibition against forced self-incrimination or double jeopardy
  - 2. Prohibition against deprivation of life, liberty or property without due process
  - 3. Prohibition against taking of private property for public use without just compensation
- F. Sixth Amendment
  - 1. Speedy and public trial
  - 2. Impartial jury
  - 3. Notice of charges
  - 4. Assistance of counsel
  - 5. Notice and confrontation of witnesses
- G. Seventh Amendment
  - 1. Right to a jury trial in a civil matter
  - 2. Judge may not re-examine jury factual findings
- H. Eighth Amendment
  - 1. Prohibition against excessive bail
  - 2. Prohibition against excessive fines
  - 3. Prohibition against cruel and unusual punishment
- I. Ninth Amendment
  - 1. Unenumerated rights of the people not mentioned in the Constitution are protected
- J. Tenth Amendment
  - 1. Federal government has only those powers delegated to it by the Constitution

## **VII. Amendments Eleven Through Fifteen**

- A. Eleventh Amendment
  - 1. Federal courts prohibited from hearing lawsuits against a state by individuals from another state or country
- B. Twelfth Amendment
  - 1. Separate votes for president and vice president by state electors
- C. Thirteenth Amendment
  - 1. Slavery and involuntary servitude abolished except as punishment for a crime
- D. Fourteenth Amendment
  - 1. Citizenship clause
  - 2. Privileges and immunities clause
  - 3. Due process clause
    - a. Substantive due process
    - b. Procedural due process
  - 4. Equal protection clause

- a. Classification
- b. Economic, social welfare and police power regulations
- c. Suspect classifications - strict scrutiny
- d. Quasi-suspect classifications - intermediate scrutiny
- e. Other classifications - rational basis review
- f. Fundamental rights and interests
- g. Other interests

E. Fifteenth Amendment

- 1. Right to vote of citizens cannot be denied on the basis of race, color or previous servitude

**VIII. Article 1, Section 10**

- A. Contract clause
- B. Ex post facto laws
- C. Bills of attainder