

CONSTITUTIONAL LAW (333 LMBE Qs)

I. Judicial Power – Article III (1516% of questions Qs = 5 of 31 MBE Qs)

A. Requirement for Cases and Controversies – Justice Ability/Justiciability Doctrine

1. Standing – whether the plaintiff is the proper party to bring the matter to the court for adjudication

a. Injury: P must allege & prove that he has been injured in fact or imminently will be injured

(i) Types of injuries –

(a) violation of common-law rights; (c) constitutional rights;

(b) statutory rights; (d) any other harm court finds substantial, including aesthetic or environmental

(ii) P only may assert injuries that he personally suffered

(iii) P seeking injunctive or declaratory relief must show a likelihood of future harm – monetary interests are the strongest form of injury

TIP: If Q asks which has the best standing, look to a P who has personally suffered an injury. Then choose the one who has suffered an economic/monetary loss (though the factual injury need not be economic).

b. Causation & Redressability – P must allege & prove that D caused the injury, so that a favorable court decision is likely to redress the injury (NO “advisory opinions”)

c. NO 3rd party standing – P cannot assert claims of others (3rd parties) who are not before the court (e.g. divorced father does not have standing to sue on behalf of child if mother & daughter do not wish to sue and mother has final authority over decisions regarding child's health, education, and welfare)

– EXCEPTIONS:

(a) Close relationship between P & the injured 3rd party (e.g., abortion cases brought by doctors on behalf of their patients)

(b) Injured If an injured 3rd party is unlikely to be able to assert his own rights (e.g., criminal D's can raise the rights of prospective juror in racial discrimination claim during jury selection)

(c) “Associational” standing – an organization may sue for its members, provided

; Members would have standing to sue

; ~~Interests~~ Claims are germane to the organization's purpose

; Neither the claim nor relief requires participation of individual members

(d) Assignee standing – assignee of a legal claim has standing even if the assignee has agreed to remit any recovered proceeds back to the assignor (assignment must have been in good faith).

d. NO generalized grievances – P must not be suing solely as a citizen or as a taxpayer interested in having the government follow the law (e.g. sued to disclose CIA budget – no standing b/c suing only as a citizen)

TIP: Exam will say “P is suing as a taxpayer”

(i) EXCEPTION – taxpayers have standing to challenge government expenditures as violating the Establishment Clause

(ii) BUT, taxpayers lack standing to challenge government granting of property to religious institutions/ parochial schools; ALSO no standing to challenge expenditures of executive branch general funds that allegedly violated the Establishment Clause

2. Ripeness – can you get declaratory judgment that a law is unconstitutional? ~~pre~~Pre-enforcement review of a statute or regulation?

TIP: If Q talks about declaratory judgment, this is likely a ripeness issue.

a. Hardship will be suffered without pre-enforcement review: the greater the hardship, the more likely the court will allow declaratory judgment

b. Fitness of the issues & the record for judicial review – does the fed court have all it needs to decide the issue, or should it wait for more factual development? Is anything to be gained by waiting for ~~an~~ actual

prosecution/litigation?

3. Mootness – must be an ongoing injury (if events after the filing of the lawsuit ~~end~~remove P's injury, it's moot)

– EXCEPTIONS:

(i) Wrong capable of repetition but evading review – e.g., an abortion case was decided after P had her abortion because P could seek an abortion in the future (Roe v Wade)

(ii) Voluntary cessation of offending practice, but D is legally free to resume it at any time

(iii) Class action suits won't be dismissed as long as 1 member of the class has an ongoing injury

4. Political Question Doctrine – refers to allegations of constitutional violations that the federal courts (and level) will not adjudicate (matters left to political branch or inherently incapable of judicial resolution); e.g.:

a. Cases under the “republican form of government clause”

b. Challenges to the President's conduct of foreign policy

- c. Challenges to the impeachment & removal process
- d. Challenges to ~~partisan~~ purely political gerrymandering

But these are not purely political challenges:

- a. Legislative apportionment
- b. Arbitrary exclusion of a Congressional delegate
- c. Production of Presidential documents

B. Supreme Court Review

1. Appellate Jurisdiction
 - a. Writ of Certiorari – all cases from (i) state courts, & (ii) U.S. federal court of appeals. 4 justices must agree to grant Certiorari in order for the case to be heard (completely discretionary)
 - b. Appeal – for decisions of 3-judge federal district courts (appeals skip the U.S. federal court of appeals). Supreme Court is obligated to take the case.
 - c. The Supreme Court has original and exclusive jurisdiction for suits between state governments. (Congress may grant concurrent jurisdiction to lower courts)
2. Original Jurisdiction – suits between states ~~& cases involving~~ public ministers and counsels, ambassadors
3. Exclusive jurisdiction – suits between states
4. Final Judgment Rule - NO *interlocutory review* by Supreme Court – may hear cases only after there has been a final judgment.
5. For Supreme Court to review a state court decision, there must NOT be an *independent & adequate state law ground of decision* – Supreme Court will not hear a case only if the independent state ground is adequate by itself to support the decision, so that Supreme Court’s review on federal ground for the decision would have no effect on the outcome of the case.

TIP: Rodney King sues in state court – state law battery claim and federal law civil rights claim and each claim will result in the same amount of damages. P wins. D sues all the way up to Supreme Court. No good, because same judgment would occur from the state law ground even if the federal ground was overturned.

C. Lower Federal Court Review: “Strict Necessity”

1. Federal courts may not hear suits against state governments ← barred by the 11th Amendment from hearing the action (11th Amm. protects state govts – doesn’t apply to local govts such as cities or counties)
2. Sovereign immunity bars suits against states in state courts or federal agencies.
 - EXCEPT
 - a. Waiver is permitted (i.e., the state consents)
 - b. States may be sued pursuant to federal laws adopted under § 5 of the 14th Amendment – Congress may adopt laws “to enforce” the 14th Amendment, limiting state sovereignty (like Title VII (1974 Civil Rights Act) cases)
 - c. Where a government is acting in a quasi-properietary capacity
 - d. ~~e.~~ Federal government may sue state governments – sovereign immunity doesn’t bar this
 - e. ~~f.~~ Suits against state officers are allowed;
 - (i) State officers may be sued for *injunctive relief*;
 - (ii) State officers may be sued for *money damages* to be paid out of their own pockets
 - (iii) BUT, state officers may *not* be sued if it is the state treasury that will be paying retroactive damages
 - f. proceedings arising under federal bankruptcy laws that have a direct impact on state finances
 - Sovereign immunity bars suits against states in state court, even on federal claims, unless state consents
3. Abstention – federal courts may not enjoin pending state court proceedings
4. NOTE: Congress has *exclusive control* over the jurisdiction except the Supreme Court

II. Legislative Power (10% ~~if questions~~ of Qs = 3 of 31 MBE Qs)

A. Enumerated & Implied Powers

1. Must be *express or implied* Congressional power
 - No *general fed police power* – there is, however, police power for MILD:
- (i) Military; (ii) Indian reservations; (iii) Fed Lands and territories; (iv) D.C.
2. Necessary & proper clause – Congress can use any means not prohibited by the Constitution to carry out its authority (this clause standing alone cannot support law, thus must work in conjunction with other power)
3. Taxing / Spending Power & the Commerce Clause
- a. Congress may tax & spend for the general welfare as it sees fit – Congress may condition grants under spending power even where it cannot directly regulate

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