

Legislative: makes laws

Executive: enforces laws

Judicial: declares actions or laws unconstitutional

Business Law Today - Chapter 2

Tuesday, September 2nd, 2013

### \* Learning objectives:

- What is the basic structure of the U.S. Government?
- What constitutional clause gives the federal government the power to regulate commercial activities among the various states?
- What constitutional clause allows laws enacted by the federal government to take priority over conflicting states laws?
- What is the Bill of Rights? What freedoms are guaranteed by the First Amendment?
- Where in the Constitution can the due process clause be found?

### \* The Constitutional Powers of Government

- The federal constitution was a political compromise between advocates of state sovereignty & central government.
- Separation of powers
  - Executive, Legislative, & Judicial, provides checks & balances

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### - The Commerce Clause

- U.S. Constitution gives Congress the power to: "regulate Commerce with foreign Nations, & among the several states, & with the Indian Tribes." (Art. I § 8)
- Greatest impact on business than any other Constitutional provision
- Gibbons v. Ogden (1824). To Chief Justice Marshall, commerce meant all business dealings that substantially affected more than one state. The national government had the exclusive power to regulate interstate commerce.
- Commerce Clause & the Expansion of National Powers
  1. Wickard v. Filburn (1942). Purely local production, sale, & consumption of wheat was subject to federal regulation.

2. Classic Case 2.1 *Heart of Atlanta Motel v. United States (1964)*.  
Owner of HOA motel unconstitutionally refused to rent to blacks. The Civil Rights Act of 1964 did not violate the Interstate Commerce clause.

#### • Commerce Clause Today

1. Theoretically the commerce clause applies to virtually all commercial transactions.
2. The commerce clause applies to e-commerce internet transactions.

#### • Regulatory Powers of the States

1. 10th Amendment reserves all powers to the states that have not been expressly delegated to the national government.
2. States have inherent "police powers": including right to regulate health, safety, morals, & general welfare, licensing, building codes, parking regulations & zoning restrictions.
3. "Dormant" power clause: National government has exclusive power to regulate interstate commerce. States only have a "dormant" (negative) power to regulate interstate commerce. Courts balance state's interest vs. national interest.

#### — The Supremacy Clause

- Article VI of the Constitution provides that constitution, laws & treaties of the United States are the "supreme law of the land"

Concurrent: in few areas, both states & federal government share power

Preemption: when Congress chooses to act in a concurrent area, federal law preempts state law.

- 2008: *Riegel v. Medtronic*. Plaintiff's claims under state common law were preempted.

## ★ Business & the Bill of Rights

- 1791: 10 written guarantees of protection of individual liberties from government interference.
- limits on Federal & state Governmental Actions.
  - Originally, Bill of Rights only applied to the Federal government
  - Later, the Bill of Rights was "incorporated" & applied to the states as well.
  - Some protections also apply to businesses
- The First Amendment - Freedom of Speech
  - Right to Free Speech is the basis for our democratic government.
  - Free speech also includes symbolic speech, including gestures, movements, articles of clothing.
  - Reasonable Restrictions
    1. Balance between government's obligation to protect, & citizens exercise of rights:
    2. Content-Neutral Laws
    3. Aimed at combating some social problem (such as crime)
  - Corporate Political Speech
    1. Political speech by corporations is protected by the First Amendment.
    2. In *Citizens United v. Federal Election Commission* (2010) the Supreme Court ruled that corporations can spend freely to support or oppose candidates for President & Congress (advertising)
    3. Courts give substantial protection to commercial speech
      - Restrictions must: Implement substantial government interest; and go no further than necessary
    4. *Bad Frog Brewery, Inc. v. New York State Liquor Authority* (2008). Did the State unconstitutionally restrict commercial speech when it prohibited an inappropriate label.