

# Course Review

# In-Class Exercise

Arguments and theory of the case?

# Final Exam Format

- Four hours, in-class, open-book exam
- First pages of the exam will include provisions of the Loyola Constitution and notes on Loyola jurisprudence.
- One fact pattern. Three essay questions, 8,000 character limit on each.
- Cumulative exam, questions may address any topic from the course.

# Recurring themes

The nature of state power versus federal power

Roles and responsibilities of state supreme courts interpreting state constitutions compared to the U.S. Supreme Court interpreting the federal constitution

Methods of interpretation: role of text, history, purpose, federal caselaw, other states' caselaw

# Recurring questions

When is a right a positive right instead of a negative right? How does that change things?

When does judging cross the line into policymaking?

When is a rule a slippery slope?

When do other branches of government deserve deference or deserve scrutiny?

When does the arbitrariness of government action become a constitutional violation? How should intent factor into this conclusion?

# Topics

- State and Federal Power
- Theories for Interpreting State Constitutions
- Equality
- Due Process
- Criminal Procedure
- School Funding

# Topics

- Voting Rights
- Unique State Rights
- Justiciability
- Environmental Rights
- Administrative Law
- Local Government

# State and Federal Power

# **Major powers of federal government?**

**Exclusive state powers?**

# Interpreting State Constitutions

What are some reasons to follow the U.S. Supreme Court's interpretation of a similar provision?

What are some reasons *not* to follow the U.S. Supreme Court's interpretation of a similar provision?

# Approaches for addressing both federal and state constitutional claims

1. Resolve state constitutional claims first, resolve federal constitutional claims only if necessary.
2. Resolve federal constitutional claims first; resolve state constitutional claims only if necessary.
3. Resolve both state and federal constitutional claims.

# Equality

What can “equality” mean?

# Tiers of scrutiny

# Rational basis

Applies when no suspect classification is at issue.

To survive judicial review, the law must serve a *legitimate* government interest and there must be a *rational connection* between the law's means and that interest.

# Intermediate scrutiny

Applies to quasi-suspect classifications such as gender.

To survive judicial review, the law must further an *important* government interest and must do so by means that are *substantially related* to that interest.

# Strict scrutiny

Applies to suspect classifications such as race, national origin, and religion.

To survive judicial review, the law must further a *compelling* government interest and law must be *narrowly tailored* to achieve that interest.

# Bases for equality considered:

- Sex
- Race
- Age
- Sexual orientation
- Wealth
- Mental impairment

# Procedural Due Process

Is this a legally protected interest?

If so, what process is due?

# Substantive Due Process

1. Rights specified within the constitutional text
2. “Fundamental” rights that are not specified within the text but are “deeply rooted in our history and tradition” and “essential to the nation’s concept of ordered liberty.”

# Criminal Procedure

## *Search and Seizure*

### Topics

- Probable cause
- Good faith exception
- Warrant requirement

# Questions for search and seizure

If search warrants require probable cause, what is probable cause?

When is a warrantless search still reasonable?

What constitutes a search?

What is the nature of a right “against unreasonable searches and seizures”? How should that right be protected?

How should stare decisis factor into constitutional interpretation, particularly when federal and state precedents are intertwined?

# When is a search constitutional?

A search is constitutional

IF the police have a warrant AND the warrant is valid (probable cause)

OR IF a warrant exception applies

OR IF it's not a search

# Reasonable expectation of privacy

1. Defendant had an expectation of privacy
2. This expectation of privacy is one that society finds reasonable

# School Funding

Basis for school funding litigation:

- Equality
- Adequacy

# Questions for school funding cases

Does the state constitution provide a fundamental right to education?  
Or are public education clauses only a duty imposed on the legislature?

What are the differences between equality and adequacy?

How should a court determine whether school funding laws are unequal or inadequate?

How should the language of the constitutional text guide judicial review?

# Voting Rights

- Drawing electoral districts
- Regulating elections (Voter ID Laws)

# Questions for voting rights cases

At what point do electoral maps become unconstitutional?

How can the constitutional text provide a standard for the judiciary?

When are voting laws permissible regulations and when are they imposing unconstitutional eligibility requirements?

# Unique State Rights

- Privacy
- Free speech
- Crime victims' rights
- Right to hunt and fish

# Justiciability

- Standing
- Advisory Opinions

# Environmental Rights

Very unique language creates interpretive challenges.

Claims can be framed in a variety of ways:

- violation of a duty (textual, rooted in property law principles)
- infringement of individual rights

# Administrative Law

- Nondelegation
- Judicial deference

# Local Government

A Russian nesting doll of federalism.

What powers do local governments have?

When are local governments preempted by state law?

When is state law an unconstitutional infringement on local government home rule?