

<header>

Topic: Business and the Constitution

Subtopic: Commerce Clause

Content Nathan Hurwitz:

Creation Date: November 19, 2018

</header>

### Multiple-Choice Question Type

<question type="mc">

1. As originally drafted, Article I, Section 8 of the U.S. Constitution explicitly permits the U.S. Congress to regulate commerce with and among all of the following except \_\_\_\_\_.

- a. foreign nations
- b. intrastate commerce
- c. native Americans
- d. intrastate commerce

Analysis:

- a. Incorrect. The Commerce Clause does not have the right to regulate commerce between native American tribes and foreign nations.
- b. Correct. The Commerce Clause does not have the right to regulate commerce between native American tribes and foreign nations.
- c. Incorrect. The Commerce Clause does not have the right to regulate commerce between native American tribes and foreign nations.
- d. Incorrect. The Commerce Clause does not have the right to regulate commerce between native American tribes and foreign nations.

<metadata>

Level of difficulty: Easy

</metadata>

<question type="mc">

2. Where in the Constitution is the Commerce Clause found?

- a. Article IV, section 2
- b. Article VI, clause 2
- c. Article I, section 8
- d. Article IV, section 1

Analysis:

- a. Incorrect. The Comity Clause states that the “citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.”

b. Incorrect. This is the Supremacy Clause, which states that “This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.”

c. Correct. Here the Constitution states that Congress shall have the power to “regulate commerce with foreign nations, and among the several states, and with the Indian tribes.”

d. Incorrect. This is the Full Faith and Credit Clause, which requires the states to respect the “acts, records, and judicial proceedings of every other state.”

<metadata>

Level of difficulty: Medium

</metadata>

<question type="mc">

3. What is the effect of the Dormant Commerce Clause?

a. The states may regulate interstate commerce where federal law does not conflict.

b. The states have no power to regulate interstate commerce.

c. A state may regulate any interstate commerce which crosses its borders.

d. The states have power to regulate interstate commerce equal to the federal government.

Analysis:

a. Correct. Where federal and state law conflict, the Supremacy Clause renders the state law void through preemption. The Dormant Commerce Clause has long been thought to be implied by Article I, section 8, clause 3 and Article I, section 10, clause 2 as prohibiting the states from regulating interstate commerce. However, the states may regulate some interstate commercial activity provided that it does not prejudice or unduly burden interstate commerce.

b. Incorrect. The Dormant Commerce Clause, has long been thought to be implied by Article I, section 8, clause 3 and Article I, section 10, clause 2 as prohibiting the states from regulating interstate commerce.

c. Incorrect. The Dormant Commerce Clause, has long been thought to be implied by Article I, section 8, clause 3 and Article I, section 10, clause 2 as prohibiting the states from regulating interstate commerce. However, the states may regulate some interstate commercial activity provided that it does not prejudice or unduly burden interstate commerce.

d. Incorrect. The Dormant Commerce Clause, has long been thought to be implied by Article I, section 8, clause 3 and Article I, section 10, clause 2 as prohibiting the states from regulating interstate commerce. Moreover, this would likely create a conflict between federal and state

law, and where federal and state law conflict, the Supremacy Clause renders the state law void through preemption.

<metadata>

Level of difficulty: Medium

</metadata>

<question type="mc">

4. Vis a vis the Commerce Clause, what is the Supreme Court's ruling in *Eickasrd v. Filburn* (1942) regarding the growth of crops which are not sold across state lines?

- a. Intrastate commerce is completely the responsibility of the individual states, the federal government has no jurisdiction.
- b. Congress has the right to regulate crops grown for immediate consumption or local sales.
- c. Farmers are required to make their products available wherever the market will bear them and may not restrict themselves to local markets.
- d. The Commerce Clause can be extended to intrastate commerce, but only when accompanied by an appropriate statute.

Analysis:

- a. Incorrect. The Supreme Court ruled that Filburn's wheat, although it was only grown for consumption on his own farm and local sale, affected interstate commerce, and as such fell under the Commerce Clause of the Constitution.
- b. Correct. The Supreme Court ruled that Filburn's wheat, although it was only grown for consumption on his own farm and local sale, affected interstate commerce, and as such fell under the Commerce Clause of the Constitution.
- c. Incorrect. The Supreme Court ruled that Filburn's wheat, although it was only grown for consumption on his own farm and local sale, affected interstate commerce, and as such fell under the Commerce Clause of the Constitution.
- d. Incorrect.[The Supreme Court ruled that Filburn's wheat, although it was only grown for consumption on his own farm and local sale, affected interstate commerce, and as such fell under the Commerce Clause of the Constitution.

<metadata>

Level of difficulty: Difficult

</metadata>

<question type="mc">

5. What is meant by the term "police power" in terms of regulating interstate commerce?

- a. "Police power" empowers state and local police to investigate and implement both state and federal commerce laws.

- b. "Police power" empowers state and local authorities to implement state and local laws, but not federal commerce laws.
- c. "Police powers" cannot be defined by the U.S. Constitution, as they must be defined by the state and localities.
- d. If interstate commerce impinges on the public order, safety, health or welfare of the public, the states' "police powers" are called into play.

Analysis:

- a. Incorrect. "Police powers" are those state powers to protect, promote the public order, health, safety, morals, and general welfare. Building codes, zoning restrictions, licensing requirements, and particularly highway safety regulations are used heavily by states to regulate interstate commerce.
- b. Incorrect. "Police powers" are those state powers to protect, promote the public order, health, safety, morals, and general welfare. Building codes, zoning restrictions, licensing requirements, and particularly highway safety regulations are used heavily by states to regulate interstate commerce.
- c. Incorrect. "Police powers" are those state powers to protect, promote the public order, health, safety, morals, and general welfare. Building codes, zoning restrictions, licensing requirements, and particularly highway safety regulations are used heavily by states to regulate interstate commerce.
- d. Correct. "Police powers" are those state powers to protect, promote the public order, health, safety, morals, and general welfare. Building codes, zoning restrictions, licensing requirements, and particularly highway safety regulations are used heavily by states to regulate interstate commerce.

<metadata>

Level of difficulty: Medium

</metadata>

<question type="mc">

6. There are two primary factors in determining how much the states can regulate commerce. These two factors are \_\_\_\_\_?

- a. historical trends of state regulation and precedent of state control over commerce regulations
- b. conflicting federal regulations and benefit versus burden on interstate commerce
- c. level of intrastate versus interstate commercial activity and geographical location of headquarters and outlets
- d. precedent and location of business

Analysis:

- a. Incorrect. The two primary factors considered when determining how much states can regulate commerce are: 1) Whether federal regulation supersedes state involvement, 2) whether the benefits achieved by those regulations outweigh the burdens on interstate commerce.
- b. Correct. The two primary factors considered when determining how much states can regulate commerce are: 1) Whether federal regulation supersedes state involvement, 2) whether the benefits achieved by those regulations outweigh the burdens on interstate commerce.

c. Incorrect. The two primary factors considered when determining how much states can regulate commerce are: 1) Whether federal regulation supersedes state involvement, 2) whether the benefits achieved by those regulations outweigh the burdens on interstate commerce.

d. Incorrect. The two primary factors considered when determining how much states can regulate commerce are: 1) Whether federal regulation supersedes state involvement, 2) whether the benefits achieved by those regulations outweigh the burdens on interstate commerce.

<metadata>

Level of difficulty: Difficult

</metadata>

<question type="mc">

7. The Supreme Court has found that the owner and operator of a public accommodation is subject to the Civil Rights Act, and therefore may not discriminate as to whom it will serve if

\_\_\_\_\_.

a. the business regularly is engaged in interstate commerce by purchasing goods from other states, and served travelers who regularly moved between states.

b. the business regularly is engaged in interstate commerce by purchasing goods from other states, and the 14<sup>th</sup> Amendment extended the Civil Rights Acts to entities incorporated by a state.

c. the business regularly engaged in interstate commerce by purchasing goods from other states, and this commerce created minimum contacts with other states.

d. the business regularly is engaged in interstate commerce by purchasing goods from other states which prohibited discrimination, and therefore the Full Faith and Credit Clause applied.

Analysis:

a. Correct. Katzenbach v. McClung, 379 U.S. 294 (1964) the Supreme Court held: "We think, in so doing, that Congress acted well within its power to protect and foster commerce in extending the coverage of Title II only to those restaurants offering to serve interstate travelers or serving food, a substantial portion of which has moved in interstate commerce."

b. Incorrect. In Katzenbach v. McClung, 379 U.S. 294 (1964) the Supreme Court held: "We think, in so doing, that Congress acted well within its power to protect and foster commerce in extending the coverage of Title II only to those restaurants offering to serve interstate travelers or serving food, a substantial portion of which has moved in interstate commerce."

c. Incorrect. In Katzenbach v. McClung, 379 U.S. 294 (1964) the Supreme Court held: "We think, in so doing, that Congress acted well within its power to protect and foster commerce in extending the coverage of Title II only to those restaurants offering to serve interstate travelers or serving food, a substantial portion of which has moved in interstate commerce."

d. Incorrect. In Katzenbach v. McClung, 379 U.S. 294 (1964) the Supreme Court held: “We think, in so doing, that Congress acted well within its power to protect and foster commerce in extending the coverage of Title II only to those restaurants offering to serve interstate travelers or serving food, a substantial portion of which has moved in interstate commerce.”

<metadata>

Level of difficulty: Challenging

</metadata>

<question type="true-false">

8. In determining the extent of states’ police power in regulating interstate commerce, another question that courts ask is if the state could accomplish its health, welfare, or safety goal in any other way with less of a burden on interstate commerce.

T

Correct. This statement is true. Courts will determine if the state can accomplish its goals in a way that offers less of a burden to interstate commerce..

F

Incorrect. This statement is true. Courts will determine if the state can accomplish its goals in a way that offers less of a burden to interstate commerce..

<metadata>

Level of difficulty: Medium

<metadata>

Level of difficulty:

</metadata>

<question type="true-false">

9. States may use their police powers, reserved under the Tenth Amendment, to regulate interstate commerce in order to promote the public welfare, health, and safety.

T

Correct. This statement is true. Exercise of state police power may impact interstate commerce, provided the state’s interests do not prejudice or unduly burden interstate commerce. This a function of the Tenth Amendment and the Dormant Commerce Clause, which has long been thought to be implied by Article I, section 8, clause 3 and Article I, section 10, clause 2 as prohibiting the states from regulating interstate commerce.

F

Incorrect. This statement is true. Exercise of state Police power may impact interstate commerce, provided the state’s interests do not prejudice or unduly burden interstate commerce. This a function of the Tenth Amendment and the Dormant Commerce Clause, which

has long been thought to be implied by Article I, section 8, clause 3 and Article I, section 10, clause 2 as prohibiting the states from regulating interstate commerce.

<metadata>

Level of difficulty: Medium