Constitutional Law Final Outline

Basics of Federalism:
$ The Constitution is the supreme law of the land & the judiciary can interpret its meaning to determine whether a law is valid (Marbury v. Madison)
$ USSC can review StSC opinions when they: (Martin v. Hunter’s Lessee)
  $ declare a nat law unconst
  $ uphold a st law that contradicts a nat law
  $ deny a right given to either party by nat law
$ Lower nat cts only have J over cases cong decides they do (SMJ)
$ USSC has original J over cases where sts are parties & where ambassadors are involved
  $ has appellate J over as many types of cases within Art 3.2.1 as cong sees fit to confer
$ Basic precepts of federalism (5):
  $ the nat gvt is one of enumerated powers
  $ sts retain all those powers not given to the nat gvt
  $ the nat gvt’s pwr is not derived from an issue’s national scope
  $ for a nat law to be constitutional, it must:
    $ be a direct exercise of an enumerated power, or
    $ authorized by the NPC as needed to exercise an enumerated power
      $ NPC use is invalid if it uses the enumerated pwr as a pretext, or
      $ if the means-ends relationship is too tenuous
        $ a J hook will not be enough on its own to render a law constitutional
  $ main powers of Congress (3):
    $ commerce power
    $ taxing power
    $ spending power

Composition of the USSC:
$ States rights - Thomas, Rehnquist, O’Connor, Scalia & Kennedy
$ National rights - Stevens, Souter, Ginsberg & Breyer
The Commerce Power

Theories of the commerce power (4):

- Direct exercise - direct regulation of IC
- Prohibition of interst movement - flip side of direct exercise
- Affecting commerce - regulation of local activities allowed if it affects IC

- four questions:
  - What is the local activity?
  - What is that activity's relationship to IC?
  - What is the regulatory means employed?
  - What is the IC related end cong had in mind & how is the regulation a means to achieving that end?

- law is valid if it substantially affects IC

- other considerations:
  - is there a close & substantial relationship?
  - aggregate burden - many small effects = a substantial effect
  - class of activities - entire class is regulated even though some individual actors don't affect IC
    - too hard to prove which ones don't affect IC
  - the ct will generally give deference to cong's determination that there is an effect (esp for civil rts cases)

- Bootstrap Approach - regulate a local activity as a means of making effective a prohibition against interst movement
  - activity doesn't have to have anything to do w/ IC
  - never officially endorsed (dicta in Darby, not addressed in Lopez)

Many criminal laws are passed using the comm pwr

- there's little political incentive for Cong to restrain itself in this area

US v. Lopez - the law as it stands

- Majority - a law is valid under the comm pwr if it (3):
  - regulates the channels of IC
  - protects an instrumentality of IC or a thing in IC by regulation of a local activity
  - economic activities that substantially affect IC (this is the rationale actually used in the case)
    - jurisdictional hook - can include a requirement of proof of affect on IC in the statute to ensure validity

- Dissent - deference is appropriate b/c the st & nat gvts wl be restrained by the political check
  - besides, the economic/non-economic distinction doesn't work
  - to be valid, it must be an economic activity that has a substantial relationship to IC,
  - also considers a jurisdictional hook
The Dormant Commerce Power

Previous tests:
$ st regs allowed as long as there's no conflict w/ nat laws
$ character of the activity regulated (national v. local)
$ impact on commerce (direct v. indirect)

Current rule - balancing test (in four parts):
$ ends - protectivist ends are not allow
$ means-ends - an illusory means-ends relationship (a pretext) carries no weight
  $ no deference is given to st legis determinations if burdens fall oost
$ compare st's interest w/ burdens on IC
  $ Pike balancing - ct weighs both sides evenly if the law isn't discriminatory
  $ Hunt balancing - if the law is discriminatory, the st has the burden of proof
  $ St laws meant to protect health/safety are more likely to be valid
  $ St laws meant to protect economic interests are more likely to be invalid
  $ Scalia doesn't like the balancing test
$ determine if there are any adequate less burdensome alternatives

A State law that discriminates against IC on its face & has an economic purpose is virtually per se invalid - Philadelphia v. NJ

A St law is more likely to be invalid if it requires inconsistent standards
Sts can't protect a natural resource at the expense of IC
The cts have to be careful not to ban st & nat gvt regulation in a given area
Discrimination is less likely if inst & some oost businesses are protected
$ look at the market, not the individual players
$ consider whether the political check will work (are the interests the same?)
Sts acting as Market Participants are exempt from dorm comm cl restrictions
$ the ct will closely scrutinize whether the St is a MP or a MRegulator
$ the ct will narrowly define the realm in which the St is a MP
Cong can authorize a St to act in a way that wld otherwise be invalid under the dorm comm cl
**State Laws Preempted**
National laws trump St laws (Supremacy Cl - Art. 6 cl. 2) when:
$ there is a direct conflict, or
$ the nat gvt has so occupied a regulatory field that there isn’t any room left for St regulation, or
$ the St regulation frustrates Cong’s purposes
Preemption claims are usually decided before comm pwr claims
A preemption/saving clause will be given great deference
$ but the ct still has to decide which portions of the law it applies to

**Privileges & Immunities Clause**
A law is constitutional under the P&IC when:
$ it treats inst & oost citizens differently regarding a P&I
  $ the rt may have to be a fundamental or may just have to be a rt given by the St
  $ either way, the rt to earn a living is a P&I
$ and there is a substantial reason for the difference in treatment
$ and the discrimination against oost citizens bears a close/substantial relationship to the St’s purpose
$ (also consider less restrictive alternatives)
The political check won’t stop P&I discrimination

**State Immunity from National Laws**
Concerns for intergovernmental immunity (6):
$ what is the source of the limits?
$ whose role is it to enforce the limits?
$ what st activities are protected from the comm pwr?
$ what is the interference w/ integral st functions?
$ what is the national interest?
$ is the imposing legislation an exercise of the commerce pwr?
Types of national statutes (3):
$ regulation of private activity
$ regulation of states directly
$ requirement that sts exercise their authority in a particular way
Previous tests:
$ governmental v. proprietary distinction
$ balancing (need for national reg v. imposition on st sovereignty)
Requiring sts to act ministerially to implement nat regs may be ok
Current rule (Garcia) - the political process provides an adequate check on national regulation of the sts directly (type 2)
$ nat gvt can’t force sts to act (type 3)
$ nat gvt can heavily (but not coercively) incentivize the sts to act (type 3)
  $ incentives are rarely coercive s/t they are unconst
  $ the conditions of the spending must be unambiguous & related to a nat interest & can’t make a st act unconstitutionally
$ nat gvt can give sts a choice (even if it’s unpopular/unrealistic)
$ but the political check only works on nondiscriminatory laws
The Taxing & Spending Powers
Nondiscriminatory taxation is restrained by the political process
$ spending usually isn’t
A tax cannot be imposed primarily as a penalty (means-ends inquiry)
$ can’t be a pretext for Cong to exercise a non-enumerated pwr
$ but any tax will have a discouraging effect
Any non-revenue provisions in a tax law must be related to collection
Spending pwr can be used to promote the (national) general welfare
$ Cong will be given deference - no limits on ends
$ any conditions must be imposed on the recipient
$ any NPC provisions in a spending act cannot be pretexts (means-ends inquiry)

The War & Treaty Powers
War pwr can justify laws that correct the problems of war after war is over
A law is const if the treaty that requires it is const
$ the treaty is const unless it allows Cong to go beyond its enumerated pwr