

Chapter 5
The Constitution and
The Regulation of Business

1 Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Introduction

- Legal principles contained in U.S. Constitution
 - Articles
 - Separation of powers
 - Judicial review
 - Commerce
 - Taxing & Spending power
 - Supremacy
 - Federalism
 - Privileges
 - Immunities

2 Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Articles of the Constitution

- Seven articles
 - Create the government
 - Define relationship between individuals & government

3 Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Articles of the Constitution

- Separation of powers
 - Article 1—Legislative Branch
 - Article 2—Executive Branch
 - Article 3—Judicial Branch

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Other Articles

- Article IV—State and Federal Government Relationship
 - Full Faith and Credit Clause
 - Supremacy Clause
 - Privileges and Immunities Clause
- Article V—Method to Amend the Constitution
- Article VI—Ranks the Order of Laws
- Article VII provides for ratification

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Marbury v. Madison

Landmark Case

- Established the doctrine of judicial review
- Held unconstitutional the provision of the Judiciary Act of 1789 that gave original jurisdiction to the United States Supreme Court to issue writs of *mandamus*

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Commerce Clause

- Federal commerce is regulated through the Commerce Clause
- State commerce is regulated through police powers

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Taxing and Spending Power

- The Constitution gives Congress taxing power
- It also gives Congress spending power
- Both of these powers can be vetoed by the President

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Supremacy Clause

- Concurrent jurisdiction
- Preemption doctrine
- Federalism

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Full Faith and Credit Clause

- Requires a state to recognize the judgments or public acts of another state

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Privileges and Immunities Clause

- One state cannot discriminate against the citizens of another state based solely upon residency

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

First Amendment

- Freedom of religion
 - Government cannot establish a religion
 - Government cannot prevent the free exercise of religion
- Free speech
 - Fully protected speech
 - Partially protected speech
 - Commercial speech
 - Unprotected speech

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Fourth Amendment

- Searches and seizures
- Right of privacy

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Fifth Amendment

- Double jeopardy
- Self-incrimination
- Due process
 - Procedural
 - Substantive

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Sixth Amendment

- Criminal cases
 - Speedy trial
 - Trial by jury
 - Right to an attorney
 - Right to confront witnesses
 - Right to cross examination

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Seventh Amendment

- Civil cases
 - Right to a jury trial

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Source: Bohlman/Dundas, The Legal, Ethical,
& International Environment of Business

Eighth Amendment

- Provides for bail
- Prohibits cruel and unusual punishment

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Source: Bohlman/Dundas, The Legal, Ethical,
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Tenth Amendment

- Enumerated powers

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Source: Bohlman/Dundas, The Legal, Ethical,
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Fourteenth Amendment

- Applies portions of the Bill of Rights (first 10 Amendments) to the States

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

International Considerations

- Comity
- Act of State Doctrine
- Expropriation
- Confiscation
- Sovereign immunity

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Source: Bohlman/Dundas, The Legal, Ethical, & International Environment of Business

Summary

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|------------------------------------|--------------------------------|
| • Articles of the Constitution | • First Amendment |
| • Other Articles | • Fourth Amendment |
| • Marbury v. Madison | • Fifth Amendment |
| • Commerce Clause | • Sixth Amendment |
| • Taxing and Spending Power | • Seventh Amendment |
| • Supremacy Clause | • Eighth Amendment |
| • Full Faith and Credit Clause | • Tenth Amendment |
| • Privileges and Immunities Clause | • Fourteenth Amendment |
| | • International Considerations |

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