

MBE One-Sheet Sample

The JD Advising One Up package comes with 7 MBE One-Sheets (Civil Procedure, Constitutional Law, Contracts & Sales, Criminal Law & Procedure, Evidence, Real Property, Torts)

CONSTITUTIONAL LAW



POWERS OF THE THREE BRANCHES

POWER OF THE JUDICIARY

Federal courts have the power to hear cases and controversies that are based on a federal question, diversity cases, and admiralty and maritime cases.

- **Standing:** An individual needs an injury in fact, causation, and redressability in order to file a lawsuit. The case must be ripe and cannot be moot. A court will not render advisory opinions!
- **Organization:** For an organization to have standing, it must show: a member has standing, the member's injury is related to the purpose of the organization, and individual members are not required to participate in the lawsuit.
- **Adequate and independent state grounds:** The Supreme Court can review decisions of the federal courts of appeals and federal decisions made by state courts. The Supreme Court can hear the latter type of case if the case involves a matter of federal law, it is a final judgment from the highest state court authorized to hear the case, and there are no adequate and independent nonfederal (state) grounds on which the state court decision is based. **Tip: if a state court decision rests on two grounds (a state ground and a federal ground) and the Supreme Court's reversal of the federal decision would not change the outcome, the Supreme Court cannot hear the case.**
- **Political question:** Federal courts will not hear political questions (those given to another branch of government by the Constitution). **Tip: Examples include: "republican form of government" clause challenges, military or foreign affairs decisions, or impeachment.**
- **Pending state court proceedings:** federal courts should not enjoin pending state court proceedings unless the case is brought in bad faith or for harassment purposes.

POWERS OF CONGRESS

Congress makes the laws but needs bicameralism (approval by both houses) and presentment (approval by the president) in order to pass a law.

Congress gets its power from the Constitution. These powers include:

- **Necessary and proper power:** **Tip: this must be combined with another power.**
- **Taxing and spending power:** Congress may tax and spend for the general welfare. **Tip: it cannot "act" for the general welfare.**
- **Commerce power:** This is very broad. Congress can regulate anything economic and anything noneconomic that substantially affects interstate commerce.
- **War and defense power:** Congress has the power to declare war.
- **Enforcement power:** Congress may enact legislation that is "congruent and proportional" to the Thirteenth Amendment (which outlaws slavery and badges of slavery), the Fourteenth Amendment (which contains the Equal Protection and Due Process Clause) and Fifteenth Amendment (which prohibits states from enacting racially discriminatory voting laws).
- **Other powers:** admiral and maritime power, property power, investigatory power, postal power, copyright and patent power, power to coin money, power to impeach, and the power to delegate powers.

Note: Congress can delegate legislative power to executive agencies or the judiciary. However, the power cannot be uniquely delegated to Congress by the Constitution (e.g., the power to declare war). **Tip: Congress does not have police powers except over (MILD) military bases, Indian territories, federal lands, and D.C.**

A legislative veto is unconstitutional. This occurs when Congress tries to overturn action by the executive branch without bicameralism and presentment.

POWERS OF THE PRESIDENT

The President executes the laws and must enforce laws that are passed even if the President disagrees with them.

The President has the following powers:

- **Veto power:** The President can veto a law (but this can be overridden by a 2/3 majority vote by Congress). A **line item veto** (crossing out certain portions of the bill that the President does not approve of) is not permitted.
- **Appointment and removal power:** The President has the power to appoint federal judges, ambassadors, and other principal officers of the United States, with the advice and consent of the Senate. The President may also remove executive officials without cause, at will unless Congress limits removal for "good cause."
- **Pardons:** the President may grant pardons for federal crimes.
- **War power:** The President can respond to attacks or emergency situations. The President cannot declare war.
- **Foreign affairs:** the President has broad foreign affairs powers.
- **Treaties and executive agreements:** The President may enter into treaties with 2/3 Senate approval. The President may enter into executive agreements with the heads of foreign countries.
- **Immunity:** the President is absolutely immune from civil suits for damages for any official acts as President (but not purely personal or pre-presidential acts).

JURISDICTION OF COURTS

- **Eleventh Amendment:** A private individual cannot sue a state for money damages in federal court. **Tip: this is usually the wrong answer on the MBE.**
- Congress cannot eliminate the Supreme Court or divide it. However, Congress may establish lower federal courts and give those courts jurisdiction to hear the same types of cases that go to the Supreme Court (and it has done so for all cases besides cases between states).

SUPREME COURT'S JURISDICTION

- **Original and exclusive jurisdiction** for cases between states. **Tip: remember that only the Supreme Court can hear cases between states.**
- **Original jurisdiction** over any case that involves (APS) ambassadors, public ministers and consuls, or where the state is a party.
- **Appellate jurisdiction** over a final judgment from the highest state court if the case has a federal issue and there are no adequate and independent state grounds. (There is also rare mandatory appellate jurisdiction.)

FEDERALISM AND STATE POWERS

Federal government vs. states—federal government wins

- **Supremacy Clause:** Pursuant to the Supremacy Clause, federal law is supreme and prevails over state law. States may not pass laws (1) that conflict with federal law, (2) that interfere with a federal objective, or (3) in areas where Congress has intended to "occupy the field."
- **Federal immunity from state law:** A state cannot regulate or tax the federal government. However, a state may tax federal employees the same that they tax everyone else. **Tip: This is a bar exam favorite. E.g., the federal government does not have to abide by state environmental regulation because of federal immunity.**
- **Tenth Amendment:** Any powers not given to the federal government are given to the states. **Tip: This means the federal government cannot compel states to enforce federal statutes. (However, the federal government is permitted to "incentivize" states to enforce such statutes by offering money to the states.)**

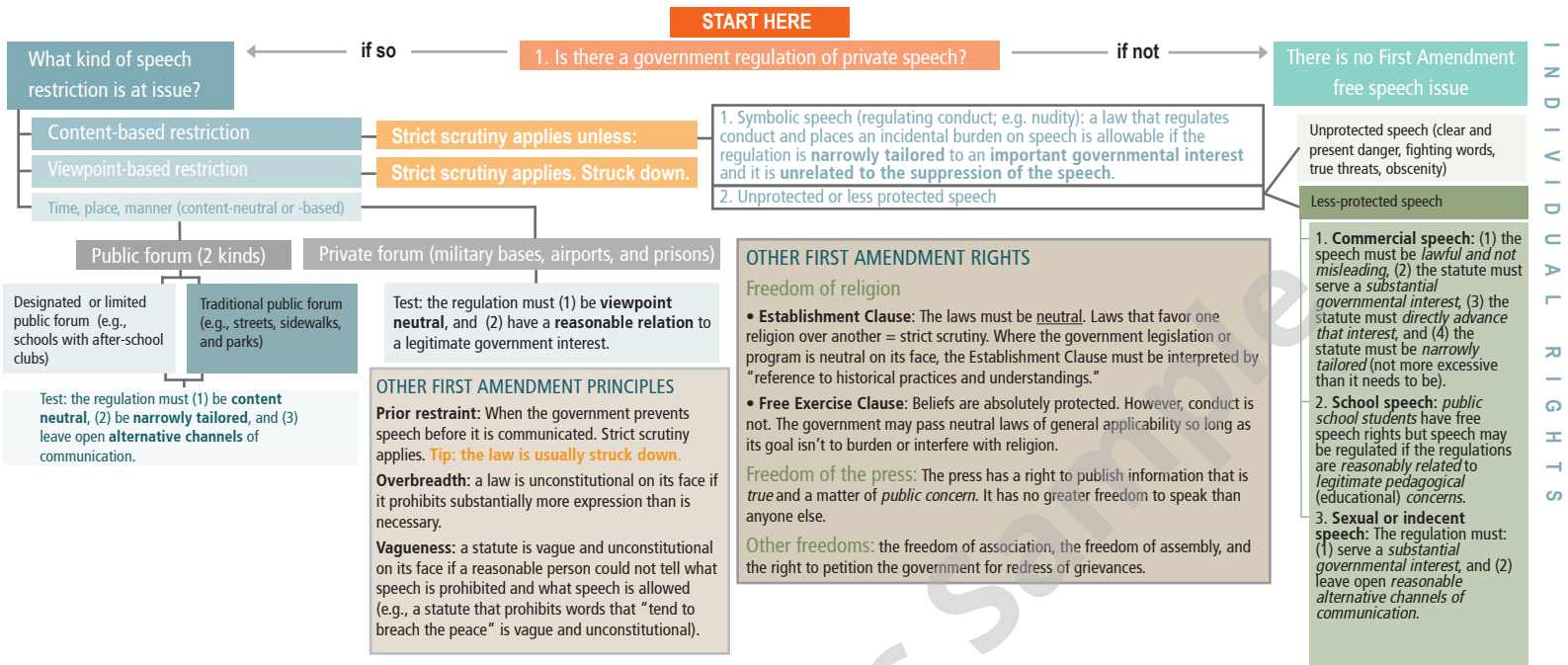
Restriction on state powers

- **The Article IV Privileges and Immunities Clause:** States may not discriminate against out-of-state citizens with respect to fundamental rights unless there is a substantial justification and no less restrictive means. **Tip: This is usually the issue when a state gives a hiring preference to its own citizens and discriminates against out-of-state citizens. Employment is only a fundamental right for purposes of Article IV.**
- **The Fourteenth Amendment Privileges or Immunities Clause:** States are not allowed to pass laws that would restrict access to vital governmental services (e.g., welfare benefits) to newcomers because such laws would interfere with a citizen's fundamental right to travel from state to state. **Tip: this is usually the wrong answer on the MBE.**
- **Dormant Commerce Clause**
 - ▶ There are two kinds of discrimination: (1) Laws that expressly discriminate for the purpose of favoring in-state commerce. These are automatically struck down. (E.g., state law imposes high taxes on out-of-state goods and low taxes on in-state goods.) (2) Laws that discriminate against interstate commerce but are supposedly passed to promote the health, safety, or welfare of the state's citizens. These are almost always invalid unless the state can show the law was necessary to serve a compelling state interest and there is no reasonable non-discriminatory alternative (strict scrutiny).
 - ▶ If a state passes a non-discriminatory on its face law that is a burden on commerce (in-state and out-of-state parties are treated the same, e.g., "everyone driving through the state must have a certain kind of tire"), a balancing test is used (weigh the effects of the law on interstate commerce against the state's interest served by the law). The law is more likely to be upheld.

Note: A commonly tested exception is where the state acts as a market participant—that is, where a state acts as a business rather than a regulator. **Tip: Remember that these rules apply to the states. Congress can pass laws that discriminate against commerce.**

Full Faith and Credit Clause: states must enforce judgments of other states if the court that rendered the judgment had jurisdiction and the judgment was a final judgment on the merits.

FREE SPEECH AND THE FIRST AMENDMENT



DUE PROCESS

The focus is on the **right** that is being **burdened**.

The Due Process Clause is found in the Fifth Amendment and applies to the states through the Fourteenth Amendment.

Procedural due process

The government may not intentionally deprive someone of **life, liberty, or property** without **notice** and an **opportunity** to be heard. **Tip: property includes public education and public employment that is not at-will employment.**

Substantive due process

Strict scrutiny for fundamental rights: burden is on the **government** to show the law is **necessary** for a **compelling interest**.

- ▶ E.g., **privacy rights** (MOPPS = **m**arriage, **o**bscenity in the home, **p**arental and family rights, **p**rocreation and contraception, and **s**exual relations), **right to vote**, right to **interstate travel**, and right to **refuse medical treatment**.

Rational basis for everything else: burden is on the plaintiff to show the law is not rationally related to a legitimate government interest.

- ▶ E.g., Right to education, welfare benefits, and all economic regulations. **Tip: remember the right to education is not a fundamental right and undergoes rational basis scrutiny.**

EQUAL PROTECTION

The focus is on the **class** that is being **discriminated against**.

The Equal Protection Clause applies to the states through the Fourteenth Amendment and the federal government through the Due Process Clause of the Fifth Amendment.

Strict scrutiny: the burden is on the **government** to show the law is **necessary** for a **compelling government interest**.

- ▶ E.g., (FAR) **fundamental rights** when a class is involved, **alienage** if a **state** is discriminating (unless the **public function** doctrine applies, in which case the standard is **rational basis**), and **race**. **Tip: the public function doctrine allows states to exclude noncitizens from certain government jobs (e.g., public school teachers and police officers).**

Intermediate scrutiny: the burden is on the **government** to show the regulation is **substantially related** to an **important government interest**.

- ▶ E.g., (GI) **gender** and **illegitimacy**.

Rational basis: The burden is on the **plaintiff** to show the law is not **rationally related** to a **legitimate government interest**. **Tip: the plaintiff usually loses!**

- ▶ E.g., classifications based on age, education, and wealth.

OTHER RIGHTS

The Contracts Clause: A state may not pass legislation that substantially impairs preexisting contracts unless the law serves an **important** and **legitimate public interest** and it is reasonable and **narrowly tailored** to promoting that interest. **Tip: this is usually the wrong answer on the MBE.**

Ex post facto laws: neither states nor the federal government may pass legislation that **retroactively** alters a **criminal law** in a substantially prejudicial manner for the **purpose of punishing** a person for some past activity.

Bill of attainder: neither the state nor the federal government may pass legislation that specifically identifies people to be punished (civilly or criminally) and imposes punishment **without a judicial trial**.

Unconstitutional conditions: the government cannot condition a person's receipt of a **governmental benefit** on the **waiver** of a constitutionally protected right.

Takings: The government may not take private property for **public use** without **just compensation**. A taking can be physical or regulatory. A taking is regulatory if a regulation deprives one of **all** economic value. An unconstitutional exaction is also a regulatory taking.

State action requirement: If a plaintiff sues under the **First, Fourteenth, or Fifteenth Amendments** (e.g., for free speech, due process, equal protection issues, or voting rights), the plaintiff must show state action. State action is present if the state passes a law, if a private actor performs a "traditional and exclusive" government function (e.g., a company town), or if private action is closely controlled by the state.

MEE One-Sheet Sample

The JD Advising One Up package comes with the MEE One-Sheets for each of the subjects tested on the MEE. This is the highly tested law for ALL MEE subjects condensed into 28 pages.

Agency and Partnership

Agency

- » • **Key principle #1: When determining whether an agency relationship exists, see if *consent* and *control* are present. However, remember that even if an agency relationship exists, it can terminate.**

 - **Requirements for an agency relationship** include (1) ***consent*** by both the principal and the agent that the agent will act for the principal's benefit and (2) that the agent is subject to the principal's ***control***. Authority to act for the principal can terminate in several ways, including the principal manifesting a desire to the agent to discontinue the relationship. (J2022, S2020, F2015, F2006, J2004, J2002, F1996)
- » • **Key principle #2: The principal is bound on a contract entered into by an agent if the agent had authority to enter into the contract. Note that actual and apparent authority are heavily tested in Agency and Partnership questions. Remember that partners in a general partnership generally have actual and apparent authority to bind the partnership in contracts entered into in the ordinary course of business. The same applies to members in an LLC.**

 - **Actual authority:** Actual authority can be ***express***, where the agent is expressly given authority to act for the principal. It can also be ***implied***. Implied authority is present when the principal's conduct leads the agent to believe it has authority. This authority can be implied by custom, past course of conduct by the principal, necessity, or an emergency circumstance. This authority terminates after a reasonable time or following a change in circumstances, death, or incapacity of the principal, etc. (J2022, F2022, O2020, S2020, F2020, F2017, F2009, J2007, J2006, F2005, J2004, J2003, J2002, J2001, F1997, F1996)
 - **Apparent authority:** the elements of apparent authority are as follows: (1) the person dealing with the agent must do so with a ***reasonable belief in the agent's authority*** and (2) the belief must be generated by some act or neglect on the part of the ***principal***. (J2022, F2022, O2020, S2020, F2020, F2017, F2016, J2013, F2013, F2009, J2007, J2006, F2005, J2004, F2004, J2003, J2002, J2001, J1997, F1997, J1996)
 - **Ratification:** even if the agent did not have authority to enter into a transaction, the principal can ***ratify*** the acts (and thus become liable) by expressly or impliedly ***affirming or accepting*** the benefit of the acts, so long as the principal ***knew*** the material facts and had ***capacity***. (J2022, F2022, F2017, F2013)
- » • **Key principle #3: The agent is bound to a third party on a contract he enters into with the third party if the agent had no actual or apparent authority to enter into the contract. The agent is also liable if the principal is undisclosed (i.e., the third party does not know the agent is acting on another's behalf) or if the principal is "partially disclosed" (i.e., the third party knows the agent is acting on behalf of another but does not know the identity of the principal). The agent is bound to the principal for breach of contract if the agent acts beyond his authority. (F2022, F2017, F2013, J2002, J2001, F1997, F1996)**
- » • **Key principle #4: A principal can be vicariously or directly liable for the torts committed by his agent. The agent is always liable for his own torts.**

 - **Vicarious liability of employer (*respondeat superior*):** The employer is liable in tort for the acts of an agent or employee if the agent or employee (mnemonic=SML)
 - was acting in the ***scope of employment***;
 - made a ***minor deviation*** (a detour) from employment (rather than a frolic); or
 - committed an ***intentional tort*** only if it was (mnemonic=BAN) for the principal's ***benefit***, because the principal ***authorized*** it, or one that arose ***naturally*** due to the nature of employment. The agent is liable too under a theory of joint and several liability. (F2021, F2020, F2015, J2013, F2006, F2003)
 - **Indemnification:** the principal can recover against the agent for indemnification if the agent acts beyond his authority. (F2015, F2006, F2003)
 - **Direct liability of principal:** the principal is directly liable for his own negligence if he negligently hired the agent, failed to fire the agent, or failed to properly supervise the agent. (F2020)
- » • **Key principle #5: The agent owes a duty of care and a duty of loyalty (not to engage in self-dealing, not to profit without disclosure, and a duty to follow instructions). The principal may recover losses from and profits made by the breaching agent. (F2006, J2003)**

Partnership

- » • **Key principle #1: Formation of a general partnership does not require much. When an MEE question asks if a general partnership is formed, the answer is usually yes!**

 - Start your essay by stating: “A partnership is ‘the association of two or more persons to carry on as **co-owners, a business for profit** . . . whether or not the persons intended to form the partnership.’” (F2019)
 - **Profit sharing = presumption:** Profit sharing creates a **presumption that a person is a partner** unless the profits were received in payment of a debt, rent to a landlord, wages, etc. Other indicia of a partnership include capital contributions and mutual agency. Neither a writing nor a certificate needs to be filed for a general partnership to be formed. Note that a general partnership is the default form; sometimes a general partnership is formed because a limited partnership was improperly formed (e.g., the paperwork was not filed correctly). (F2021, J2010, J2009, J2007, J2006, J1999, J1997)
 - Note: A partner is not entitled to separate payment for services because a partner is compensated by the profits. (There are some exceptions—e.g., if agreed-upon, or a partner may be reimbursed reasonable compensation if it assists in winding up the business of the partnership.) (O2020, F2001)
- » • **Key principle #2: partners are agents and comanagers of the partnership.**

 - Partners have equal rights to comanage ordinary affairs (e.g., signing a lease) (even if profits are not shared equally). A majority vote wins if there's disagreement. (O2020, F2019, F2001, F1995)
 - Extraordinary matters require a unanimous vote (e.g., admitting a new partner or selling land). (O2020)
- » • **Key principle #3: in a general partnership, partners are jointly and severally liable for partnership debts.**

 - An incoming partner is not personally liable for prior debts of the partnership (although his capital contributions can be used to satisfy such debts). Outgoing partners are personally liable for debts incurred during their time at the partnership. (F2014, J2009, J2006, J1997)
- » • **Key principle #4: partners have fiduciary duties.**

 - Partners are in a fiduciary relationship with one another and must act in good faith. They are charged with the duty of **loyalty** (i.e., they may not usurp corporate opportunities for a personal advantage, engage in self-dealing, or compete with the partnership), the duty of **care**, and the duty to **account** (they must account for any profits). (F2018, F2016, F2000, F1999, F1998, F1995)
- » • **Key principle #5: dissolution does not end a partnership—it ends once winding up is complete. (F2019, F2018, J2011, F2004, F2000, J1999, J1998, J1997, F1995)**

 - **Step one—dissociation:** The dissolution of a partnership is the change in the relation of the partners. Prior creditors are entitled to personal notice of the dissolution of the partnership. Others who knew of the partnership are entitled to newspaper notice. Note that a partner can withdraw from a partnership by giving notice at any time. This will trigger dissolution in an at will partnership.
 - **Step two—winding up:** This is where partnership assets are liquidated and creditors are paid. Note that partners are still liable for any liabilities that occur during the winding up phase.
 - **Step three—termination:** this is the true end of the partnership!
- » • **Key principle #6: If a creditor has a claim against a partner, the creditor can obtain an interest in the partnership. This includes profits but not management or voting rights. If a creditor has a claim against the partnership, the creditor can try to collect from the individual partners. These principles are heavily tested! (J2010, J2009, J2008, J2007, F2002)**

 - Partners are **jointly and severally** liable for the obligations of the partnership. Even if a partner enters a contract without actual authority to do so, the partnership and partners are bound (so long as the partner had apparent authority). The creditor must obtain a judgment against the partners personally to go after each partner's personal assets. The creditor should try to collect from the *partnership* before seeking partners' personal assets. (O2020, F2014, F2012, J2009, F2001, J1997)
- » • **Key principle #7: Partnerships other than general partnerships must file a certificate with the state to be properly formed. Liability is limited.**

 - **Limited liability partnership (LLP):** no partner is personally liable for the obligations of the partnership (but partners are liable for their personal torts). (F2016, F2014, F2012)
 - **Limited partnership (LP):** At least one general partner must be listed on the certificate filed with the state. Limited partners have limited liability (limited to their capital contributions). General partners are liable for all partnership obligations and manage control of the business. If a general partnership converts into an LLP, then partners remain jointly and severally liable for actions that took place before the conversion. (J2009, F2002, F2000, J1999, F1999)

Warm-Up Questions PDF & Video Sample

The JD Advising One Up Package comes with the 2022 MBE NCBE exam and answer explanations, PLUS you get access to 10 bonus MBE questions + video explanations to do as a warm-up before you take the 2022 exam!

See a video of this question here:



Sample Question

Subject: Criminal Procedure

A man was arrested for burglary. When he was brought to the station, the police began to fingerprint him. The man unequivocally requested an attorney be present for the fingerprinting process. The police ignored his request and continued to fingerprint the man.

Can the man successfully challenge the fingerprinting procedure and get the fingerprints excluded from evidence?







- (A) Yes, because he was not given his right to counsel.
- (B) Yes, because the man unequivocally requested an attorney.
- (C) No, because even though the police improperly withheld his right to counsel, the fingerprints will not be excluded.
- (D) No, because the man did not have a right to counsel for fingerprinting.


Subject: Criminal Procedure

Legal Issue: Is a defendant entitled to counsel when the defendant is getting fingerprints taken?

Legal Rule and Analysis: There are two ways to challenge a pretrial identification procedure: (1) the Sixth Amendment right to counsel and (2) a Due Process violation. This question focuses on the right to counsel. The Sixth Amendment right to counsel exists for post-charge lineups and showups but not photo identifications or fingerprinting.

The Sixth Amendment applies to all “critical stages” of prosecution.

Critical stages: ✓	Non-critical stages: ✗
 <ul style="list-style-type: none"> • Arraignments • Probable cause hearings • Sentencing 	 <ul style="list-style-type: none"> • Blood sampling
 <ul style="list-style-type: none"> • Plea bargaining • Police interrogation 	 <ul style="list-style-type: none"> • Fingerprinting
 <ul style="list-style-type: none"> • Post-charge lineups 	 <ul style="list-style-type: none"> • Taking of handwriting • Taking voice or hair exemplars

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Conclusion: therefore, the man does not have a right to counsel for fingerprinting.

Choose an answer choice that most closely matches your conclusion and explain why the others are incorrect.

Answer to Question 7

(D) is the correct answer. Fingerprinting is a type of pretrial identification procedure. There are two ways to challenge a pretrial identification procedure: (1) the Sixth Amendment right to counsel and (2) a Due Process violation. This question focuses on the right to counsel.

The Sixth Amendment right to counsel exists for post-charge lineups and showups but not photo identifications or fingerprinting. Therefore, the man does not have a right to counsel for fingerprinting. Thus, (D) is the best answer.

(A) is incorrect because the man does not have a right to counsel for the fingerprinting.

REMAINING ANSWER DELETED FROM THIS SAMPLE.