STANDING – CL 1

I. General Principles

A. Constitutional (p. 37)
   1. Actual injury (concrete, personalized, can be non-economic)
   2. Causal relation between injury and defendant AND
   3. Likely to be redressed by court decision.

B. Prudential (p. 48)
   1. No third party plaintiff (except obstacle and close relationship)
   2. No generalized grievances
   3. Plaintiff in zone of interests (usually statute)

II. Application of Generalized Grievances

A. Taxpayer
   1. Frothingham is general rule – no standing
      a. Flast exception
         1. Must be challenging legislation – Art. I, section 8 (Congressional appropriations)
            a. Valley Forge, Schlesinger, Hein And
         2. Must be claiming a specific Constitutional guarantee (maybe only Establishment Clause)
            a. Richardson, Hein
   B. Citizenship status – No standing allowed on this basis
   C. No possible P not grounds for standing

III. Congressional grant of standing

A. Allowed if recipient is personally entitled – Congress can’t delegate power to enforce laws or permit a general citizen interest in laws of procedures being enforced. Must be a specific interest (see page 35 in Lujan), but can be widely shared (see Akins page 45).

B. USSC can’t invalidate Congressional grant of standing on prudential grounds, only Constitutional.

IV. 2013 Cases

A. Future injury = certainly impeding (Clapper)

B. Executive refuses = Do third parties have standing to defend?
   1. No standing to defend on state law (Hollingsworth – 5/4)
   2. Standing to defend in federal law-need authorization? (Windsor – 6/3)
A. Source of Power — Const. Art. III. Sec. 2
   1. Subject matter limit

   2. Must be case or controversy
      a. Advisory Opinion
      b. Standing (handout CL 1)
      c. Ripeness
      d. Mootness

B. Judicial Power over other branches
   1. Judicial Review — availability to declare CONFLICT with Const. — Marbury

   2. Power over executive — Marbury
      a. No immunity for any office — all subject to mandamus or injunction
      b. Judiciary won’t do some things — Political Question
         1. Won’t order acts within political discretion
         2. Won’t fill office — Confid. Agent
         3. See Baker v. Carr — p. 57

C. Congressional control over Judiciary
   1. Congressional Exceptions Power over appeals to USSC = creation power over lower Federal Courts. Congress may grant jurisdiction (positive) or remove jurisdiction (negative). To be in any federal court must have Article III type of case and congressional statute authorizing case. McCardle.

   2. Congressional Power in C1 restrained by:
      a. Other limits in the Const.
      b. Can’t exercise judicial power — dictate result
      c. Can’t interfere in continuing jurisdiction — on-going case

   3. USSC
      a. Congress can’t remove original jurisdiction in Const.
      b. Practical problems
         1. Freeze USSC precedent
         2. Freeze lower cts. and state cts.
      c. Control number USSC Justices

   4. Lower federal Courts
      a. Total control except for C2 above
      b. If abolish all, state courts still hear

D. Executive control over judiciary
   1. Power to appoint, subject to Senate confirmation
   2. Enforcement
CONSTITUTIONAL LAW – CL 3

I. CONGRESS

A. Legislative in character & effect = Present. & Bicameralism

B. Excessive delegation not violated if Congress provides an intelligible principle. If not excessive delegation, call in rulemaking.

C. Rulemaking, if appropriate & no interference with another branch ≠ Legislating

D. Once given discretion or power to exec., supervision or control = Legislating

E. Congressional discretion to give incidental power to other branches under App. Cl.

II. EXECUTIVE

A. President
   1. C-in-C — military & foreign – limited domestic
   2. No general power to solve national emergencies
   3. Executive laws — must have Congressional grant

B. Executive Office – Appointment
   1. Principal – President with Senate
   2. Inferior – Congress vest in President, Judicial, Heads of Dept.
   3. Interbranch OK if appropriate

C. Executive Office - Removal
   1. At Will of President is rule
   2. Congress can’t remove executive officer — JR = Cong. Removal
   3. Congress can list reasons if President ultimately removes
   4. H. Ex. – not pure exec. vs. quasi, but, does limited removal of this office substantially interfere W/Pres. Running exec.

III. JUDICIAL

A. Federal Judges generally hear cases – controversies, but can have other service if appropriate

B. Judiciary can make rules.

IV. MARBURY & McCRADLE

NO BRANCH CAN PERFORM SUBSTANTIAL FUNCTIONS OF ANOTHER BRANCH

USSC can’t act like executive — can’t order appointment of certain officers or order certain things.

A. Congress can’t act like court – can’t prescribe decision or interfere in continuing jurisdiction.
I. If Control is legislative –

A. If Legislative function, then CHADA problems if no Presentment and Bicameralism in the function.

B. If Executive function, then BOWSHER problems because legislature can’t control an executive function on general separation of powers principles even if the control satisfies Presentment and Bicameralism.

II. If Control is executive -

A. If Legislative function, then the issue is excessive delegation of legislative power and the intelligible guidelines of Mistretta or separation of powers under Bowsher.

B. If Executive function, Constitution should be satisfied and what is being done is either executing the laws, part of explicit or inherent executive power of rulemaking.
HABEUS AND GUANTANAMO

1). Is Habeus available?
   A. Yes if US citizen or anyone inside the United States unless Writ has been suspended.
      1. Congress can clearly suspend. President? 
      2. Is suspension only for invasion or rebellion?
   B. No if foreign citizen in foreign country. Eisentrager.
   C. Yes in Guantanamo – unique, US in control, Constitution in effect. Rasul

2) If Habeus, what kind of hearing are you due?
   A. District Court if in US and courts are open. Mlligan. Unless rules for Military Tribunal apply.
   B. Military Tribunal if
      1. Against Law of War (eg Spies) – Quirin. Are you an enemy belligerent (no uniform)?
      2. Martial Law declared (by whom ?) – Hamdan
      3. Occupied enemy territory – Hamdan
      4. Battlefield – Hamdan
   C. If US citizen accused of being enemy belligerent, Due Process minimum hearing. Can be
   C. At Guantanamo, some form of Due Process minimum hearing - can be Military Tribunal -
      Boumediene

All confused by War on Terror where battlefield is everywhere and everyone is a spy or enemy
belligerent.
COMMERCE CLAUSE CL5

I. DEFINITION OF COMMERCE ITSELF

A. Gibbons - Commerce = buying, selling and transporting, not manufacturing or agriculture.

B. Gibbons - "among" - points of origin and destination matter (two different states), don't break journey into intrastate parts.

C. Jones and L - no labels; realistic assessment; national economy.

II REGULATION OF INTERSTATE AND INTRASTATE

A. Channels of interstate commerce.

B. Any aspect or instrumentality of transportation (e.g., plans, railroads, interstate highway) or communication (e.g., phone, mail) including links that are intrastate.

C. CLOSE RELATION TO, OR SUBSTANTIAL AFFECT ON, INTERSTATE COMMERCE
   1. Substantial = Wickard - aggregation (hypothetical multiplier).
   2. Affects quantity, quality, identity, etc. of goods or people moving in interstate commerce.

III. PROHIBITION (???)

A. Darby - Congress may prohibit the movement of anything in interstate commerce (regulate = prohibit).

B. In exercise of power to prohibit, Congress can control conditions of manufacture or regulate manufacture, production, or possession as a means to the end of prohibition (Ames, Darby).

IV. MODERN RETHINKING - LOPEZ, MORRISON, RAICH AND SEBELIUS

A. No federal power based on substantially affects test regarding non-economic matters in traditional areas of state concern.

B. Federal power more likely if challenged action is part of a larger, concededly valid statutory scheme.

C. Failure to enter the market is not an economic event that can be regulated.

D. Are we too entrenched in the commerce clause precedents to change?

V. OTHER CLAUSES IN CONSTITUTION AS LIMITS ON FEDERAL GOVERNMENT'S COMMERCE CLAUSE POWER (e.g., 1st A)
I. Discrimination against out of state (Protectionism)

A. On face – per se invalid (Phil. V. NJ – garbage, Hughes – minnows)

B. Purpose – invalid (Hood – Boston milk, NY source) – legislative history

C. Effect – some say invalid (Hunt – North Carolina apples) – usually if believe there is a purpose but no good evidence. If not, then balancing burden on interstate commerce v local interests or benefits (although some justices question whether balancing is still valid – Scalia in CTS). If advances a real or "important" state purpose, burden on interstates commerce probably declared incidental unless special need for national uniformity (Kassell – Iowa trucks). If burden on interstate commerce is incidental, state statute upheld unless burden is clearly excessive in relation to putative local benefits. Question of degree (Pike – Arizona cantaloupes).

II. Exceptions

A. Health or Safety – usually quarantine

B. Market Participant -- State not as regulating, but either

1. State itself producing or running a business OR

2. State providing subsidies or other incentives to aid in-state business.
PREEMPTION (CONGRESSIONAL INTENT)

I. COMPLETE
   A. Explicit
   B. Implicit
      1. So pervasive
      2. Dominate federal interest
      3. Object and character of obligations

II. PARTIAL
   A. Explicit
   B. Implicit
      1. Compliance with both impossible
      2. State regulatory provision is an obstacle to federal goal

I. If federal statute
   A. Power – see handout CL5 for Commerce Clause basis and limits
   B. 10th Amendment additional limitation
      1. García – National League currently dead – generally applicable federal laws can be applied to state Governments.
      2. NY v US – federal can’t commandeer state legislature
      3. Printz v US – cannot commandeer state executive
      4. Alden v Maine – can’t commandeer state judicial system

II. If state statute
   A. Preemption (with federal state)
   B. Dormant Commerce Clause CL 6 (with no federal statute)
I. 11th Amendment – Can’t sue a state in federal court unless:

1. Plaintiff = United States government OR

2. Cause of action grounded in statute based on Amendment later than 11 OR

3. Defendant is politically and financially independent subdivision of state (e.g. some cities, counties)

4. Ex parte Young – relief is a prospective injunction, named defendant is individual state officer

I. Article I, Section 8 – taxing power as a basis for federal legislation (NOT INCLUDE TAX – AMEND 16)

A. TAX (source of revenue – valid) v PENALTY (punishing wrongful conduct – invalid)

B. FACTORS

1. Extent of financial burden (more money, more likely to be penalty)

2. Scienter requirement (more statute requires intent, more likely to be penalty)

3. Who collects? (any agency other than IRS, more likely to be penalty)

I. Article I, Section 9 – power to spend for General Welfare as a basis for federal legislation

A. General Welfare not limited to enumerated powers in 1.8 (US v Butler)

B. CONDITIONAL GRANT (purpose of the $$ - valid) V DISGUISED REGULATION
   (ultra vires-invalid)

C. FACTORS – South Dakota v Dole (p. 169).

   1. Pursuit of the General Welfare
   2. Unambiguous
   3. Related to the federal interest in particular national project or program
   4. Not barred by other Constitutional provisions

D. Sebelius – acceptance of condition by state must be truly VOLUNTARY – invalid if condition is cost prohibitive to state