

Parents generally are entitled to raise a child as they see fit. *Wisconsin v. Yoder*, 406 U.S. 205 (1972). However, the right of a parent to control a child's upbringing is not absolute. Under the state's *parens patriae* authority, the state can regulate the family unit to protect the well being of a child. *Prince v. Massachusetts*, 321 U.S. 158 (1944). The state can limit parents' control by requiring that children receive education until they attain a specified age, prohibiting or regulating child labor, or intervening to protect a child when parents deny the child needed medical care. *Id.*; *Wisconsin v. Yoder*.

The right to family integrity means that family members are entitled to maintain autonomy and connections as a family unit. Parents have the right, which is not absolute, to keep a family together without state interference. *Griswold v. Connecticut*, 381 U.S. 479 (1965). The state can limit the right to family integrity when warranted by a compelling state interest, such as the necessity of protecting a child from significant harm. For example, the state may remove a child from a parent's custody to protect the child from abuse and/or neglect. If the state seeks to take a child from the custody of the child's parent, then the state must prove its allegations by "clear and convincing evidence."

(2) Rational Basis Review

A deprivation of rights that are not fundamental must be rationally related to a legitimate government interest. Thus, the applicable standard of judicial review is rational basis analysis. Under that standard, a court will inquire: 1) if a contested law is rationally related to; 2) achieving a legitimate or hypothetically conceivable government interest.

TEST TIP

A law subject to rational basis review rarely will be invalidated. On the other hand, a law subject to strict scrutiny rarely will be upheld.

• Burden of Proof

A challenger of the law possesses the burden of proving its invalidity under rational basis review.

(a) Other Rights

The non-fundamental rights include matters of economic regulations and entitlements to government benefits. On the exam, they often are referred to as "economic rights." These rights are not fundamental rights and, therefore, are rarely a basis for invalidating a law. Examples of those types of rights include:

- tax laws;
- welfare benefits;
- right to loiter or panhandle;
- practicing a trade or profession; and
- participating in physician-assisted suicide.

3) TAKINGS

a) Just Compensation

The Fifth Amendment provides, in the Takings Clause, that private property shall not "be taken for public use, without just compensation." U.S. Const. amend. V.

b) Obtaining Compensation

Just compensation generally is defined as the reasonable market value of a landowner's real property. Often, the government provides just compensation to a landowner pursuant to a mutual agreement. If no such agreement is reached, and the landowner seeks to obtain just compensation through litigation with a government, a trier of fact will determine what amount of compensation is just. A landowner may bring a "reverse condemnation" action alleging that a government has effectively taken his property and, as such, the landowner is seeking compensation for it. If, on the other hand, a government initiates legal proceedings against a landowner to obtain real property, the

action is considered a “condemnation” action. In that action, a government seeks to assert its power of eminent domain against the landowner. Usually, the rational basis standard of review applies to such cases.

The government also may relinquish the taken property and pay damages.

c) Public Use Requirement

The *Constitution* provides that private property shall “not be taken for public use, without just compensation.” The public use requirement is satisfied if the government’s action is rationally related to a legitimate public purpose (such as providing for public safety, welfare, health, or other public reasons).

(1) Public Purpose of Economic Development

In *Kelo v. City of New London*, the Supreme Court broadly interpreted the words “public use” in the Takings Clause as meaning a public purpose. The Court held that “[p]romoting economic development is a traditional and long accepted function of government” in terms of its public purpose. Accordingly, pursuant to a public development plan not adopted “to benefit a particular class of identifiable individuals,” a government may take private property, contrary to the property owner’s wishes, for the purpose of economic development.

d) Types of Takings

A government must pay a landowner just compensation for all real property that it takes from the landowner. There are two types of compensable takings: 1) a possessory taking; and 2) a regulatory taking.

(1) Possessory Taking

A possessory taking involves a government’s physical confiscation or occupation of real property. For example, a permanent physical occupation by the government of any private property is a possessory taking. Another example of a possessory taking is when the government takes property to expand a highway from four to six lanes.

(2) Regulatory Taking

A regulatory taking occurs when a government’s regulation eliminates the investment-backed expectation and economic value of an individual’s property. Such action constitutes a taking within the meaning of the Fifth Amendment (or as applied to the states by the Fourteenth Amendment). If a regulation constitutes a regulatory taking, the government must provide just compensation.

If the investment-backed expectation and economic value is merely limited, but not eliminated, a taking will not exist (so long as some economically viable interest remains).



4) PROCEDURAL DUE PROCESS

a) Nature of Due Process

Question Key 16,25,48,71,72, 127,140,153
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The goal of due process is to afford fairness, accuracy, security, and autonomy to each person. A fundamental feature of due process is the provision of notice and a hearing to a person whose legally protected interest in life, liberty, or property is subject to impairment, infringement, deprivation, or denial by a government agency. Even in the absence of a statutory provision for notice and hearing, a due process right under the *Constitution* may afford a person a right to notice and hearing from an agency. *Goldberg v. Kelly*, 397 U.S. 254 (1970) (case involving cancellation of government benefits).

b) General Considerations

A government must utilize adequate and fair procedures when its action results in an intentional or reckless deprivation of a person’s life, liberty, or property. It is important to understand how procedural due process differs

from substantive due process. Substantive due process analysis is concerned with the actual individual right that is impaired, and whether the government possesses the authority to impair that right. Procedural due process analysis, by contrast, is concerned with what procedural mechanisms the state must provide to an individual before taking a person's protected rights (life, liberty, or property).

c) Due Process Test

The two-part test for procedural due process includes: 1) determining whether a deprivation of life, liberty, or property occurred; and 2) determining what process is due.

(1) Did a deprivation of life, liberty, or property occur?

- Life

A deprivation of life occurs when a person dies as a result of state action.

- Liberty

A deprivation of liberty results from a person's incarceration or other denial of a person's physical freedom of mobility. Examples of deprivation of liberty include losses of the right to:

- drive a motorized vehicle for which an operator's license is required;
- engage in a profession for the purpose of earning a living; or
- raise one's own children in a manner that one deems appropriate.

The state may not deprive a child or adult of liberty by means of physical restraint (i.e., confinement) without due process. The due process protections apply to restrictions upon physical liberty inflicted through the state processes of criminal procedure as well as those inflicted through other noncriminal state processes (e.g., civil commitment or juvenile proceedings). Although each of those processes may require distinct procedures, the state may not subject a child or adult to significant physical restraint without having a procedure to determine the legality and factual grounds of such processes.

- Property

A deprivation of a personal property interest occurs when a government takes an individual's occupational license, a public employee's job, or a citizen's entitlement to a public benefit. For example, a professor at a public institution who is employed at will possesses no entitlement to continued employment. Therefore, the interest is not subject to due process protections, and the person can be terminated without due process considerations. However, if the professor has tenure, the tenure may create an entitlement to the benefit (i.e., continued employment), such that the state must provide procedural due process safeguards for any potential termination of the professor's employment.

(a) Law Defines Property Rights

The Supreme Court has permitted a state's local government to delineate the scope and nature of the interest(s) that this government created in an ordinance regarding public employment. Accordingly, a state or local government may describe a benefit by law or contract in a manner that does not confer any property or liberty interest. When a government does this, then an individual recipient of the benefit may not be entitled to judicial relief on claims of a deprivation of an interest.

(2) What procedures are due under the circumstances?

The Supreme Court, in *Mathews v. Eldridge*, declared that a government must utilize certain procedures of due process in order to deny a person life, liberty, or property. Determining those procedures involves a balancing of the following considerations: