



Florida Constitutional Law

Florida Bar Exam

Essay Testing

GENERAL

☐ Frequency

- 40-50%.

☐ Crossovers with other subjects

- Has been tested with 1-2 other subjects on most recent exams.
- Tested with a variety of subjects including Federal Con Law, Ethics, Property, Family Law, and more.
- Look out for homestead issues in Property and Family Law questions.

☐ Call of the question

- Usually very open-ended but some questions provide guidance.
 - Open: “you have been asked to draft a memo identifying and analyzing any Florida Constitutional issues presented by the text of this bill.”
 - Open: “Prepare a memo for the County Attorney that analyzes the potential challenges to the proposed ordinance under the Florida Constitution.”
 - Guidance: “Discuss the issues relating to the availability of the medical records, board minutes, and personnel file arising under the Florida Constitution. Also, discuss the constitutionality of the law recently passed by the Florida Legislature.”

☐ Common Testing Patterns

- Two frequently tested topics (Dec of Rights and Homestead).
- Several additional occasionally tested topics.

TESTING HISTORY | M=Main Focus of Question | S=Small Part of Question

	JULY-25	FEB-25	JULY-24	JULY-22	FEB-22	FEB-20	JULY-19	FEB-18	JUL-17	FEB-17	FEB-14	JULY-13	JULY-12	JULY-12	FEB-12	FEB-11	JUL-10	FEB-10	JUL-09	FEB-09	FEB-08	JULY-07	JULY-06	FEB-06
FL CON LAW	S	M	S	S	M	M	M	M	M	M	M	M	S	S	S	S	M	S	M	M	M	M	M	M
FED CON LAW	M			M	S	S	S	S	S	S	S													
CONTRACTS														M										
PROPERTY													M			S	S		S					
FAMILY LAW			M													M		M		S				
FED CRIM PRO		S									S				M									
TORTS										S			S											
ETHICS	S	S	S		S	S	S		S			S		S					S					



MOST COMMONLY TESTED ESSAY TOPICS

FLORIDA CONSTITUTIONAL LAW

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TIER 1

- ☐ Declaration of Rights —
 - Several subtopics including free speech, equal protection, due process, access to course, Florida Sunshine Law, right to bear arms, right to work, etc.
- ☐ Homestead —
 - What qualifies?
 - How is it protected?
 - Limitations on devise or bequest.

TIER 2

- ☐ Legislature: Lawmaking —
- ☐ Legislature: Vagueness and Overbreadth —
- ☐ Legislature: Sessions —
- ☐ Local Government —
- ☐ Takings/Eminent Domain —
- ☐ Separation of Powers` —

TIER 3

- ☐ Finance and Taxation —
- ☐ Executive Branch —
- ☐ Judicial Branch —
- ☐ Everything Else is Fair Game —

ISSUE TESTING HISTORY

Rule	J 2 5	F 2 5	J 2 4	J 2 2	F 2 2	F 2 0	J 1 9	F 1 8	F 1 8	J 1 7	F 1 7	F 1 4	F 1 4	J 1 3	J 1 2	F 1 2	F 1 1	J 1 0	F 1 0	J 0 9	F 0 9	F 0 8	J 0 7	J 0 7	J 0 6
Homestead								X				X			X	X	X	X	X	X	X		X		
Dec of Rights (Any)	X	X	X	X	X	X	X		X	X	X		X	X			X					X		X	X
Dec-Privacy		X	X				X		X	X	X		X				X								
Dec-Access Courts					X		X		X					X								X			X
Dec-Search/Seizure		X			X				X	X			X												
Dec-Standing	X				X					X															X
Dec-Religion	X								X																
Dec-1st		X					X			X	X														
Dec-EP	X					X	X		X	X			X	X								X			
Dec-SDP		X				X	X		X				X	X											
Dec-Double Jeop					X	X																			
Dec-Contracts							X			X															
Dec-Bear Arms									X																
Dec-Right to Work																								X	
Dec-PDP					X	X			X				X	x			X								
Dec-Sunshine/Open			X	X			X			X	X						X								
Leg-Sessions														X											
Leg-Vague and OB						X			X	X	X		X				X								
Leg-Lawmaking		X			X	X			X					X			X					X		X	X
Local Government					X						X		X											X	
Finance and Tax														X										X	
Judiciary																						X			X
Sep of Powers					X						X											X			
Takings/Emin Dom						X			X				X												



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★★★DECLARATION OF RIGHTS★★★

OVERVIEW

The Declaration of Rights is contained in Article I of the Florida Constitution. It provides several express protections similar to those set forth in the Bill of Rights found in the Federal Constitution.

INTERPRETATION

Florida case law interprets these rights more expansively than those in the Federal Bill of Rights. Therefore, the protections under the Florida Constitution are broader than those under the Federal Constitution. For example, the right to privacy is expressly protected in the Florida Constitution and often subject to strict scrutiny, whereas under the Federal Constitution, the right to privacy is implied, and not always subject to the same level of scrutiny.

This expansive interpretation has potential implications when analyzing constitutional issues. It's important to consider both the federal and state constitutional protections when analyzing a potential issue, and highlight when the Florida Constitution's protections are different than those in the Bill of Rights.

MOST FREQUENTLY TESTED PROVISIONS

SECTION 1. Political power.—All political power is inherent in the people.

★**SECTION 2. Basic rights (Equal Protection).** All natural persons, female and male alike, are equal before the law and have inalienable rights. No person may be deprived of any right because of race, religion, national origin, or **physical disability**.

★**SECTION 3. Religious freedom.**—There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof.

★**SECTION 4. Freedom of speech and press.**—Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press.

★**SECTION 5. Right to assemble.**—The people shall have the right peaceably to assemble, to instruct their representatives, and to petition for redress of grievances.

SECTION 6. Right to work.—The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization.

★**SECTION 8. Right to bear arms.**—The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be **regulated** by law.

★**SECTION 9. Due process.**—No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself.

★**SECTION 10. Prohibited laws.**—No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.



★**SECTION 12. Searches and seizures.**—The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated.

SECTION 17. Excessive punishments.—Excessive fines, cruel and unusual punishment, forfeiture of estate, and indefinite imprisonment are forbidden.

★**SECTION 21. Access to courts.**—The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

SECTION 22. Trial by jury.—The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.

★★**SECTION 23. Right of privacy.**—Express right of privacy established in Florida Constitution. Every person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein.

★**SECTION 24. Access to public records and meetings.**— Every person has the right to inspect any public record made in connection with official business of any public body. All meetings of any public body (executive, county, municipality, etc), at which official acts are to be taken or discussed, shall be open and noticed to the public.

★★★HOMESTEAD★★★

Most frequently tested Florida Constitutional Law individual issue in last 20 years.

Key Concepts

★★ - 1. What Qualifies as Homestead?

- ★★ - Homestead consists of up to one-half acre of land in a municipality, or up to 160 contiguous acres of land outside of a municipality.
- ★★ - The property must be the primary residence of the owner (a natural person).
- ★ - A mobile home *annexed* to real property qualifies (must not be titled separately).

★★2. How is Homestead Protected?

- ★★ Homestead property is generally protected from forced sale by creditors.
- ★ Florida law is extremely protective, shielding homesteads from almost all claims and judgments, except those explicitly mentioned in the constitution.
- ★ There is no limitation on the value protected.
- ★★ Exceptions: This protection does not apply to liens and judgments for taxes, assessments, mortgages, and mechanic's liens on the property.
- ★ Protection may be lost if the homestead is abandoned as primary residence.

★★3. Sale and Conveyance When Married

- ★★ Both spouses must consent to a conveyance of homestead property.
- ★★ Homestead owner cannot devise it by will if leaving a spouse or minor child.

Practical Tips

- Scope of Homestead Protection: Remember the exceptions to homestead protection like geographic scope, taxes, assessments, and liens.
- Attention to Details: The property's size, location, and the owner's primary residence can affect homestead status.
- Spousal Consent: If a question involves a married couple, consider spousal consent.

Florida Constitution: "Homestead; exemptions.—

(a) There shall be **exempt from forced sale** under process of any court, and **no judgment**, decree or execution shall be a lien thereon, **except for the payment of taxes and assessments** thereon, **obligations contracted for the purchase, improvement or repair** thereof, or obligations contracted for house, field or other **labor performed on the realty**, the following **property owned by a natural person**:

(1) **a homestead**, if located **outside a municipality**, to the extent **of one hundred sixty acres**...; or if located **within a municipality**, to the extent of **one-half acre** of contiguous land...;

(b) These exemptions shall inure to the surviving spouse or heirs of the owner.

(c) The **homestead shall not be subject to devise** if the owner is **survived by spouse or minor child**, except the homestead may be devised to the owner's spouse if there be no minor child. The **owner of homestead**..., joined by the **spouse if married**, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse..."



FLORIDA ESSAY TESTING

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LEGISLATURE: COMPOSITION AND POWERS

Importance in Essay Testing: Most frequently tested Tier 2 topic.

KEY RULES

Composition of Legislature

- Senate and a house of representatives.
- House must have 80 to 120 members; Senate must have 30 to 40 members.

Legislative Sessions

- Regular: Cannot exceed 60 consecutive days.
- Special: Limited to business within the governor's proclamation or by two-thirds consent.

★★★ Lawmaking by the Legislature

- Single Subject: Law may embrace only one subject, stated in title with an enacting clause.
- Vagueness: Law must be clear in prohibiting acts to avoid being void for vagueness.
- Overbreadth: Law should not restrict more expression than necessary.

★ Passage of Bills

- Bill may originate in either house, read on 3 separate days unless waived by 2/3 vote.
- Passage requires a majority vote in each house.

Executive Approval and Veto

- Governor must approve and sign bills within 7 or 15 consecutive days after presentation.
- Governor may veto specific appropriations in a general appropriation bill.

★ General and Special Laws

- General laws apply uniformly throughout state.
- Special laws are specific to certain people or places.
- Notice required for special laws unless conditioned on electors' approval.
- Prohibited special laws cover various subject matters.

Apportionment of Legislative Districts

- Redrawn every decade to ensure "one person – one vote" principle.
- Apportionment based on census data into senatorial and representative districts.
- Governor must call 30-day special session if final resolution not adopted in regular session.

★★★ MOST FREQUENTLY TESTED ISSUES ★★★

1. Single Subject Rule
2. Vague Laws and Overbroad Laws
3. General and Special Laws

LOCAL GOVERNMENT

Importance in Essay Testing: Has been tested occasionally in recent years.

KEY RULES

Types of Local Government: Florida local government consists of counties and municipalities.

Counties: Florida is divided into political subdivisions called counties. Each county is administered by a governing body known as the board of county commissioners, composed of 5 or 7 members serving staggered terms of 4 years.

Elected Officers: The operations of county governments are conducted by elected officers. These include a sheriff, a tax collector, a property appraiser, a supervisor of elections, and a clerk of the circuit court, all elected for terms of 4 years.

★**Home Rule:** Grants local municipalities and counties the authority to enact ordinances that impact their communities.

Types of Counties: Counties are either chartered or non-chartered.

Non-Charter Government: Counties not operating under county charters have the power of self-government as provided by general or special law. The power to act for non-charter counties must be derived by state law.

Charter Government: Counties operating under county charters have all powers of local self-government that are not inconsistent with general law or special law. The power to act for charter counties is presumed, absent a conflicting state law.

Types of Florida Laws: There are three types of Florida laws: state law, county law, and municipal law. These laws are subject to a hierarchy of application.

★★**Hierarchy of Laws:** If state law conflicts with municipal or county law, state law is supreme. If county law conflicts with municipal law, supremacy depends upon whether the county is chartered or non-chartered. In charter counties, the charter provides the rule. In non-charter counties, the municipal law governs within the municipality.

Municipalities: Municipalities may be established or abolished and their charters amended pursuant to general or special law. They possess governmental, corporate, and proprietary powers to conduct municipal government, perform municipal functions and render municipal services.

“(f) NON-CHARTER GOVERNMENT. Counties not operating under county charters shall have such power of self-government as is provided by general or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.

(g) CHARTER GOVERNMENT. Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.”

FINANCE AND TAXATION

Has been tested infrequently in recent years.

KEY RULES

State Taxation and Revenues

- Any tax must be authorized by law.
- The State of Florida may not collect ad valorem taxes upon real estate or tangible personal property but can tax certain types of intangible personal property.
- Local governments can collect ad valorem taxes and other types of taxes, except ad valorem taxes on intangible personal property.
- State revenue collected for any fiscal year is limited to state revenue collected for the prior fiscal year plus an adjustment for growth.

Tax Rates

- Local governmental units may impose ad valorem taxes upon real property and tangible personal property at a uniform rate within each taxing unit.
- The state may levy taxes on intangible personal property.

Ad Valorem Tax Exemptions

- All property owned by a municipality and used for municipal or public purposes is exempt.
- Household goods and personal effects of at least \$1,000 for each household are exempt.
- \$25,000 of value for a qualified homestead (residing on the property and in good faith making it a permanent home) is exempt.

Tax Assessments

- A homestead should be valued at a “just” value.
- Annual increases in a homestead valuation may not exceed the lesser of 3 percent or the percent change in the Consumer Price Index.

Millage Limitations

- One mill is \$1 of tax per \$1000 of assessed value.
- Ad valorem taxes cannot be levied in excess of specified millages upon the assessed value of real estate and tangible personal property.
- For all county, municipal, and school purposes – 10 mills is the limitation.
- For all other special districts – the millage limitation is the millage authorized by law.
- The electors of a taxing district may vote to permit a higher millage rate for a period not to exceed 2 years. The electors must be owners of freehold estates located within the taxing district.

State Bonds

- State bonds pledging the full faith and credit of the state may be issued only to finance the cost of state fixed capital outlay projects authorized by law upon approval by a vote of the electors. They are not permitted to finance usual expenses, only fixed capital outlay projects.



Revenue Bonds

- Revenue bonds may be issued by the state without a vote of the electors to finance the cost of state fixed capital outlay projects authorized by law.
- Revenue bonds must be paid solely from funds derived directly from sources other than state tax revenues.

Local Bonds

- Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds payable from ad valorem taxation and maturing more than 12 months after issuance only:
 - to finance capital projects authorized by law if approved by vote of the electors who are owners of freeholds therein; or
 - to refund outstanding bonds at a lower net average interest rate.

Laws Requiring Local Government to Spend Funds

- No county or municipality is bound by a general law requiring the county or municipality to spend funds or to take an action requiring the expenditure of funds unless:
 - the legislature has determined that the law fulfills an important state interest; and
 - sufficient funds have been appropriated.



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MISCELLANEOUS PROVISIONS

Importance in Essay Testing: Separation of powers is occasionally tested. Not much else.

KEY RULES

Seat of Government: The seat of state government is Tallahassee, located in Leon County. The offices of the governor, lieutenant governor, cabinet members, and the supreme court must be maintained there. The legislature must also hold its sessions there. In times of invasion or grave emergency, the governor may temporarily transfer the seat of government to another location.

★★**Separation of Powers:** The powers of the state government are divided into the legislative, executive, and judicial branches. No person belonging to one branch can exercise any powers belonging to either of the other branches unless expressly provided in the Florida Constitution. The separation of powers doctrine is strictly enforced in Florida.

Public Education: The education of children is a fundamental value. Adequate provision must be made for a uniform, efficient, safe, secure, and high-quality system of free public schools. The Florida Constitution mandates that by the beginning of the 2010 school year, there are a sufficient number of classrooms and certain teacher to student ratios. The Florida Supreme Court has held that the State of Florida is prohibited from using public funds for student vouchers to enable students to obtain a private school education from kindergarten through grade 12.

★**Eminent Domain:** No private property can be taken except for a public purpose and with full compensation paid to each owner. Florida's eminent domain law provides for "full" compensation, which is interpreted to amount to a greater amount of compensation than "just" compensation under federal law. An owner can recover certain types of damages for a taking by eminent domain, including severance damages and business damages. Florida law provides for 12 jurors in a jury trial on this issue.

Ethics in Government: A public office is a public trust. All elected constitutional officers and candidates for office must file full and public disclosure of their financial interests and campaign finances.

Official Language: English is the official language of the State of Florida under the Florida Constitution.

Limiting Marine Net Fishing: The marine resources of the State of Florida belong to all of the people of the state and are conserved and managed for the benefit of this state, its people, and future generations. The Florida Constitution provides limitations on marine net fishing in Florida waters to protect saltwater finfish, shellfish, and other marine animals from unnecessary killing, over-fishing, and waste.

No Smoking: Tobacco smoking is constitutionally prohibited in enclosed indoor workplaces in Florida.