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DORMANT CLAUSE

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Even though the Federal government has a well established and broad power by the sup. crts interpretation of Article I Section 8 clause 3 to regulate interstate commerce (ISC), this formal grant does not prohibit the states from regulating commerce. However, the supreme court has interpreted that the state sovereignty to regulate commerce is greatly limited by the DORMANT COMMERCE CLAUSE. (DC). The state regulation will fall into one of three categories. 1. if the regulation is protectionist on its face, that is it favors intrastate commerce or attempts to conserve state resource or any other regulation that is intended to treat in state commerce differently from out of state commerce will be presumed to be invalid. In this type the court will strike down the law with little compunction. 2. if the regulation does discriminate against interstate commerce ISC but for a valid reason, though still presumed to be invalid the sup. court will give this type of regulation more consideration. In this event the burden will be on the state to show that the regulation is substantially related to a compelling government need and that there is no less restrictive means to accomplish the legitimate objective. , STRICT SCRUTINY. 3. If the state regulation is non discriminatory, that is neutral on its fact but still affects interstate commerce, the court will apply a balancing test. The court in this third category will balance the nature and extent of the burden on ISC against the purpose and merits of the regulation. The burden is on the challenger of the law to show that the law was not reasonably related to a legitimate governmental objective.

Here we have a law that prevents non citizens from purchasing real estate. The sup crt has interpreted this type of conduct as protectionist because it attempts to preserve state resources, specifically real estate, to favor intrastate commerce to the detriment of ISC(THE MILK CASES, DEAN MILK ). Because the crossing of state boundaries and is commercial in nature, the state will assert that even though it effects interstate commerce, there is a valid reason. Specifically under the states inherent powers, it can regulate for the purpose of exercising its POLICE POWERS. The state will attempt to justify the regulation as a means to prevent fraud and thus protect citizens from scandal and financial loss. A legitimate state objective under its police powers.

Since this regulation falls under the protectionist yet for a valid reason category, the court will require the state that the regulation is SUBSTANTIALLY RELATED TO A COMPELLING GOVERNMENTAL NEED. A large part of this analysis is whether the state could have adopted less restrictive means to accomplish the objective.

The state will argue that the means to accomplish this objective are substantially related and do not actually discriminate unless there is a showing that the out of state purchaser has been known to be in involved in shady dealings. The state will argue that it is reasonable to check a person record before allowing them to purchase property.

However, this impairs a person ability to travel and could be viewed as a deprivation of a fundamental liberty. Never the less, since federal powers in the area of commerce are so broad and presumptively valid, there is a probability that the supreme court will find that the law is invalid because it discriminates and created unreasonably burdens on ISC. Not to mention that it could be viewed as a ex post facto law.

### EX POST FACTO

Ex post facto law is a law that imposes criminal like punishment retroactively, by depriving a person of life liberty or property. It makes conduct that was legal and the time it was performed to later be held illegal retroactively. Here we have a law that has the effect of depriving Vince World of property and imposes a fine. Since Vince World conduct was conducted before the law was enacted, it has been retroactively applied. However, ex post facto apply to criminal statutes, here we have a civil fine. Though Vince World could argue that if he had a vested right in the property the law did in fact deprive him of this property and thus created a criminal like penalty from conduct performed prior to the law being passed. There is a possibility that Vince world will prevail under this challenge.

### THIRD PARTY STANDING

A third party may have standing if their rights are closely intertwined with the actual litigant and there is a genuine obstacle from preventing the actual litigant from pursuing the case. Here it is

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unlikely that third party standing will be granted to suzy. However, she can have her own

JUSTICIABLE CASE AND CONTROVERSY.

### SUBSTANTIVE DUE PROCESS

As mentioned earlier in this exam, SDP as incorporated in the fourteenth amendment prevent states from depriving a person of Fundamental liberties or economic liberties. Here we have an economic liberty that has been deprived. Namely the right to pursue a livelihood this liberty has been recognized by the sup. crt to be a valid fundamental liberty. Since it is a fundamental liberty the state will be required to show that the regulation and the deprivation that it imposes is substantially related to a compelling governmental need.

However, because it involves an intercourse over state boundaries it clearly falls within federal commerce powers. These powers are plenary and have been interpreted to PREEMPT any state interest as mentioned in DC analysis above.

However, the state will argue that the liberties were merely commercial or economic liberties. If this is accepted, the court will place the burden on Suzie to show a lack for rationality to the regulation and the impairment. However, because the court has suggested that there is a presumed validity in the area of commerce regulation it is unlikely that Suzy will prevail.

### PROCEDURAL DUE PROCESS (PDP)

Procedural due process requires the state to provide, notice, meaningful opportunity to be heard prior to a deprivation of a vested liberty, property right or deprivation of life. Here Suzy is being deprived of her license to sell real estate. The supreme court has determined that a license is a legitimate property interest that does require due process prior to deprivation. Here Suzy is not afforded Notice or even an opportunity to rebut the charges. Clearly she has been deprived of due process right.

#### WHAT PROCESS IS DUE

In determining what process is due, the court will balance the burden and extent of the deprivation of liberties against the benefit to the government in avoiding increased fiscal or administrative burden of elaborate procedural process. The court will look to the possibility of error in the current method as well as the probability of increased accuracy in a more elaborate system. If the court determined that Suzy was deprived of a fundamental liberty she will be entitled to the fundamental essentials of procedural due process - notice, time to respond, and an opportunity to be heard. However, if the court determined that her liberties are merely economic in nature, she will still be entitled to due process yet a much more stream lined and limited version of such as a written statement.

Here we have a loss of a brokers license. Though economic in nature it could be argued that it goes to the essence of Suzie's occupation and thus amount to a fundamental liberty. Non the less

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the facts do not indicate that Suzy has been afforded any type of PDP before depriving her of her brokers license. Clearly Suzy is entitled to Due process here she has not been granted any. Suzie was deprived of her procedural rights.