

Constitutional Law: Principles and Practice

Due Process

Chapter 9

Constitutional Law: Principles and Practice

Due Process—An Overview

- Contains two types of protections:
 - Substantive due process
 - Procedural due process
- Rights are granted to “persons.”
- Applies only to government actions
- Protect interests included in “life, liberty, or property”

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Who is Considered a Person?

- Both substantive and procedural due process rights are granted to “persons.”
- The Supreme Court decides if it includes:
 - Corporations
 - Noncitizens
 - States

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How Liberty and Property are Interpreted

- The Supreme Court held that *liberty* and *property* include many different interests.
- Liberty of contract = the right to enter into contracts or agreements
- Property = more than traditional real and personal property

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Substantive Due Process

- Prevents federal and state governments from making laws depriving people of due process
 - Unless those laws meet due process requirements
- The Supreme Court developed standards for determining substantive due process violations.
 - Substantive due process and liberty
 - Substantive due process and property

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Procedural Due Process

- Assumes that the government has the right to enact laws
- But questions how the right is exercised in a particular case

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Standards for Determining Procedural Due Process Violations

- Procedural due process and criminal cases
- Procedural due process and civil lawsuits
- Procedural due process and government agencies

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Procedural Due Process and Criminal Cases

- All aspects of a criminal case must comply with procedural due process.
- Due process in criminal cases is not limited to the rights in the Bill of Rights.
- Procedures interfering with a criminal defendant's fair trial create a potential violation of procedural due process.
- Considerations for juvenile proceedings

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Procedural Due Process and Civil Lawsuits

- Notice
- Jurisdiction over nonresident defendants
- Prejudgment attachment of property
- Burden of proof
- Rights of indigent parties

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Procedural Due Process and Government Agencies

- Due process applies *any time* the government deprives a person of liberty or property.
- Situations requiring due process:
 - Termination of employment
 - Termination of government benefits
 - Suspension of driving privileges
 - School suspension and corporal punishment
 - Interruption of utility service
 - Injury to reputation
 - Injuries caused by negligent conduct of government officials