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Topic: Business and the Constitution

Subtopic: Preemption and the Supremacy Clause

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Creation Date:

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Multiple-Choice Question Type

<question type="mc">

1. What does the Supremacy Clause, article VI of the U.S. Constitution, provide?

- a. In a conflict between executive, legislative, and judicial branches of government, the executive branch overrules the judicial branch, which overrules the legislative branch.
- b. All rulings of the Supreme Court overrule all lower court rulings.
- c. When there is a conflict between the executive and legislative branches, the executive branch is granted supremacy.
- d. When there is a conflict between federal and state law, the state law is rendered invalid.

Analysis:

- a. Incorrect. The Supremacy Clause provides that when federal and state laws are in conflict, the state law is rendered invalid.
- b. Incorrect. The Supremacy Clause provides that when federal and state laws are in conflict, the state law is rendered invalid.
- c. Incorrect. The Supremacy Clause provides that when federal and state laws are in conflict, the state law is rendered invalid.
- d. Correct. The Supremacy Clause provides that when federal and state laws are in conflict, the state law is rendered invalid.

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2. Under which condition can a federal law and a state law exist concurrently without the Supremacy Clause rendering the state law invalid?

- a. in cases where the state law establishes a set of minimal regulations while the federal law establishes more extensive and detailed regulations.
- b. in cases where the federal and state laws are not in conflict and do not contradict each other
- c. in cases where the state law has been in place before the federal law
- d. in cases where the judicial branch offers an exemption

Analysis:

- a. Incorrect. In a situation when the federal and state laws are not in direct conflict and do not contradict each other, both laws can exist and apply at the same time.
- b. Correct. In a situation when the federal and state laws are not in direct conflict and do not contradict each other, both laws can exist and apply at the same time.
- c. Incorrect. In a situation when the federal and state laws are not in direct conflict and do not contradict each other, both laws can exist and apply at the same time.
- d. Incorrect. In a situation when the federal and state laws are not in direct conflict and do not contradict each other, both laws can exist and apply at the same time.

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Level of difficulty: Difficult

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3. When the federal government has passed a statutory and or regulatory scheme, what (if any) power remains to the states to regulate the same subject?

- a. the states may ignore federal law and pass statutes and regulations on the subject, even when they conflict with federal law
- b. the states are preempted from any regulation on the same subject(s), whether or not there is a conflict with federal law
- c. the states may only copy federal law and regulations, so as to eliminate the possibility of conflict with federal law
- d. the states may expand the rights and/or protections through their own statutes and regulations, provided state law doesn't conflict with federal law

Analysis:

- a. Incorrect. Federal law preempts state law when they are in conflict. The states may expand rights and protections provided that such expansions do no conflict with federal law. Article VI, clause 2 says: "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." The key language here is "laws of any State to the contrary notwithstanding."
- b. Incorrect. Federal law preempts state law when they are in conflict. The states may expand rights and protections provided that such expansions do no conflict with federal law. Article VI, clause 2 says: "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be

bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.” The key language here is “laws of any State to the contrary notwithstanding.”

c. Incorrect. Federal law preempts state law when they are in conflict. The states may expand rights and protections provided that such expansions do no conflict with federal law. Article VI, clause 2 says: “This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary

notwithstanding.” The key language here is “laws of any State to the contrary notwithstanding.”

d. Correct. Federal law preempts state law when they are in conflict. The states may expand rights and protections provided that such expansions do no conflict with federal law. Article VI, clause 2 says: “This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.” The key language here is “laws of any State to the contrary notwithstanding.”

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Level of difficulty: Challenging

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4. When it is not clear whether Congress intended to preempt state law, the courts will consider several factors. In so doing, what is considered in determining the Congressional intent?

- a. the interpretations of state appellate courts
- b. the pervasiveness, detail, and scope of the federal law
- c. the date on which the laws were signed into law
- d. the existence of prior, comprehensive state regulation

Analysis:

- a. Incorrect. The state appellate courts may weigh in on such matters. However, the preemption doctrine applies to state statutes, regulations, and case law.
- b. Correct. If the federal statute addresses much, if not all, aspects of a subject, the courts will find that Congress intended to preempt state law.
- c. Incorrect. The respective dates of enactment are almost entirely irrelevant to a preemption analysis.

d. Incorrect. The existence of prior state regulation, no matter how pervasive, doesn't negate the preemption of federal law.

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5. Which of the following is NOT an example of a concurrent power, shared by the states and the federal government?

- a. the power to tax, spend, and borrow
- b. the power to negotiate treaties
- c. the power to establish courts
- d. the power to hold and regulate elections

Analysis:

- a. Incorrect. Article 2, section 2, clause 2 of the Constitution says in relevant part: "He (sic)the President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur".
- b. Correct. Article 2, section 2, clause 2 of the Constitution says in relevant part: "He (sic)the President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur".
- c. Incorrect. Article 2, section 2, clause 2 of the Constitution says in relevant part: "He (sic)the President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur".
- d. Incorrect. Article 2, section 2, clause 2 of the Constitution says in relevant part: "He (sic)the President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur".

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6. What is the effect of new federal law upon an existing, and conflicting, state law?

- a. There is no effect if the state nullifies the federal law.
- b. The state law is reconciled with federal law by the courts.
- c. The state law is void, and has no legal effect.

d. The state law is void, even where it doesn't conflict with federal law.

Analysis:

a. Incorrect. The U.S. Supreme Court in Cooper v. Aaron, 358 U.S. 1, 18–19, 78 S. Ct. 1401, 1410, 3 L. Ed. 2d 5 (1958) held that states and state officials must uphold federal law, even if they disagree with same.

b. Incorrect. No conflict with state law can be reconciled. If there is no conflict, a state law might remain in effect absent a clear preemption statement in the federal law. Otherwise the federal law renders the state law void.

c. Correct. The U.S. Supreme Court in Cooper v. Aaron, 358 U.S. 1, 18–19, 78 S. Ct. 1401, 1410, 3 L. Ed. 2d 5 (1958) held that states and state officials must uphold federal law, even if they disagree with same.

d. Incorrect. The states may expand rights and protections provided that such expansions do not conflict with federal law.

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Level of difficulty: Difficult

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<question type="true-false">

7. Federal preemption of state law can be either express or implied.

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Correct. Preemption can be stated expressly in the language of the statute, or the courts may find that it is implied by the pervasiveness, detail, and scope of the federal law.

F

Incorrect. Preemption can be stated expressly in the language of the statute, or the courts may find that it is implied by the pervasiveness, detail, and scope of the federal law.

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Level of difficulty: Moderate

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<question type="true-false">

8. States can pass laws which preempt existing federal law.

T

Incorrect. This statement is false. While state law can coexist with federal laws, and can offer more extensive or detailed regulations while not conflicting with federal laws, they cannot preempt federal law.

F

Correct. This statement is false. While state law can coexist with federal laws, and can offers more extensive or detailed regulations while not conflicting with federal laws, they cannot preempt federal law.

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Level of difficulty: Moderate

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