Table of Contents

PART A. EQUAL PROTECTION STANDARDS: IN GENERAL

Volume 1

CHAPTER 1. OVERVIEW

§ 1:1 Nature of discrimination
§ 1:2 On equality
§ 1:3 The Fourteenth Amendment
§ 1:4 Historical background
§ 1:5 Overview and models of equal protection
§ 1:6 Federal obligation for equal protection: Fifth Amendment
§ 1:7 State constitutional standards

CHAPTER 2. STATE ACTION

I. INTRODUCTION

§ 2:1 Overview

II. PUBLIC FUNCTION

§ 2:2 Generally
§ 2:3 *Marsh*
§ 2:4 Private communities
§ 2:5 Parks
§ 2:6 Public function—Police and fire protection
§ 2:7 Voting
§ 2:8 Dispute resolution
§ 2:9 Public utilities
§ 2:10 Eminent domain
§ 2:11 Education
§ 2:12 Other public function situations

III. ENTANGLEMENT

§ 2:13 Generally
§ 2:14 *Burton*
§ 2:15 Facially discriminatory law

§ 2:16 Discriminatory application of law
§ 2:17 State actor
§ 2:18 State facilities
§ 2:19 Grants
§ 2:20 —Primary subsidies—In general
§ 2:21 — —*Rendell-Baker*
§ 2:22 —Secondary subsidies
§ 2:23 Licensing
§ 2:24 —*Moose Lodge*
§ 2:25 —*Jackson*
§ 2:26 —Broadcast media
§ 2:27 Partnership
§ 2:28 Multiple contacts
§ 2:29 State power
§ 2:30 —Consumer protection
§ 2:31 State authorization
§ 2:32 State encouragement
§ 2:33 *Reitman v. Mulkey*
§ 2:34 State enforcement
§ 2:35 Private facilities
§ 2:36 —Restrictive covenants
§ 2:37 —Administration of estates
§ 2:38 —Shopping malls
§ 2:39 —Residential and commercial sites
§ 2:40 —Farmlands
§ 2:41 —Private organizations
§ 2:42 Disentanglement
§ 2:43 Tax exemption
§ 2:44 Exemptions under civil rights statutes

IV. REVERSE INCORPORATION

§ 2:45 Application to federal government action by incorporation into due process clause

CHAPTER 3. EQUAL PROTECTION VIOLATIONS: CHALLENGER'S PRIMA FACIE CASE

I. INTRODUCTION

§ 3:1 Overview
§ 3:2 Facially discriminatory law prima facie case
§ 3:3 Discriminatory application of law prima facie case

II. INTENT

A. IN GENERAL

§ 3:4 Generally

§ 3:5 Intent as the standard under *Washington v. Davis*

B. PROOF OF INTENT

§ 3:6 Generally
§ 3:7 *Arlington Heights*
§ 3:8 —Extreme disproportionate impact
§ 3:9 Disproportionate impact
§ 3:10 Absence of justification
§ 3:11 Historical background
§ 3:12 Procedural departure
§ 3:13 Substantive departure
§ 3:14 Device with potential for abuse
§ 3:15 Discretionary administrative system
§ 3:16 Awareness of discrimination
§ 3:17 Retention of law with discriminatory effect

C. MIXED MOTIVES

§ 3:18 Generally

PART B. EQUAL PROTECTION STANDARDS IN SPECIFIC CASES

CHAPTER 4. DISCRIMINATION JUSTIFICATIONS: THE DEFENDER'S CASE

I. INTRODUCTION

§ 4:1 Overview

II. TIER I: THE RATIONAL BASIS TEST

§ 4:2 Generally
§ 4:3 *McGowan*
§ 4:4 Social and economic legislation
§ 4:5 *New Orleans v. Dukes*
§ 4:6 Business regulation
§ 4:7 —Natural resources
§ 4:8 —Taxation
§ 4:9 —Property
§ 4:10 —Land regulation
§ 4:11 —Practice of law
§ 4:12 —Labor regulation
§ 4:13 —Sunday closing laws
§ 4:14 —Business licensing
§ 4:15 —Grandfathering

§ 4:16 Government classification

Volume 2

§ 4:17 Social welfare legislation
§ 4:18 Health legislation
§ 4:19 Consumer safety
§ 4:20 Remedial legislation
§ 4:21 —One step at a time
§ 4:22 Prophylactic laws to abate fraud and sharp practices
§ 4:23 Aesthetic considerations
§ 4:24 Community development

III. OTHER LEVELS OF SCRUTINY

§ 4:25 Tier II: mid-range scrutiny: the important government interest test
§ 4:26 A four-tier model: a rationality plus tier requiring interests articulated by the state or assumed by the court—toward substantive equal protection
§ 4:27 Tier III: strict scrutiny: the compelling state interest test
§ 4:28 —The least discriminatory alternative

IV. INVALIDATION

§ 4:29 Generally
§ 4:30 Irrationality and arbitrariness
§ 4:31 Standardlessness
§ 4:32 Effects of invalidation

CHAPTER 5. CLASSIFICATIONS—OVERVIEW AND RACE

§ 5:1 Overview
§ 5:2 Race
§ 5:3 —Facially discriminatory law
§ 5:4 —Discriminatory application of law

CHAPTER 6. CLASSIFICATIONS: ILLEGITIMACY; ALIENAGE AND NATIONAL ORIGIN

§ 6:1 Illegitimacy
§ 6:2 Alienage
§ 6:3 —Federal legislation
§ 6:4 —Protection of vital state interests
§ 6:5 —Other state legislation
§ 6:6 National origin

PART C. REMEDIES

CHAPTER 7. CLASSIFICATIONS: GENDER

§ 7:1 Gender
§ 7:2 —Equal rights amendments
§ 7:3 Transgender discrimination

CHAPTER 8. CLASSIFICATIONS: NATIVE AMERICANS; AGE, CHILDREN; DISABILITY AND WEALTH

§ 8:1 Native Americans
§ 8:2 Age
§ 8:3 Children
§ 8:4 Disabled persons
§ 8:5 Wealth

Volume 3

CHAPTER 9. CLASSIFICATIONS: SEXUAL ORIENTATION, MARITAL STATUS, OCCUPATION, RELIGION, AND OTHER CLASSIFICATIONS

§ 9:1 Gays, lesbians, and sexual orientation
§ 9:2 Marital status
§ 9:3 Occupation
§ 9:4 Religion
§ 9:5 Other classifications

CHAPTER 10. FUNDAMENTAL RIGHTS: VOTING

§ 10:1 Overview
§ 10:2 Voting
§ 10:3 —Enfranchisement
§ 10:4 —Ballot access
§ 10:5 —Reapportionment
§ 10:6 —Race dilution

CHAPTER 11. FUNDAMENTAL RIGHTS: ACCESS TO JUSTICE; TRAVEL AND RESIDENCY, AND FREEDOM OF EXPRESSION AND ASSOCIATION

§ 11:1 Access to justice

§ 11:2 Residency and travel
§ 11:3 —Residency
§ 11:4 —International travel
§ 11:5 —Durational residency
§ 11:6 —Privileges and immunities clause
§ 11:7 Freedom of expression and association
§ 11:8 Freedom of expression—Speech
§ 11:9 Social Media
§ 11:10 Freedom of expression—Association
§ 11:11 —Commercial speech
§ 11:12 —Obscenity
§ 11:13 —Adult entertainment zoning

Volume 4

CHAPTER 12. FUNDAMENTAL RIGHTS: EDUCATION, PRIVACY, AND OTHER RIGHTS

§ 12:1 Education
§ 12:2 Privacy and family
§ 12:3 —Family size and relationships
§ 12:4 —Procreation
§ 12:5 —Abortion regulation
§ 12:6 —Marriage and children
§ 12:7 Other rights

CHAPTER 13. FEDERAL CIVIL RIGHTS LEGISLATION

§ 13:1 Overview
§ 13:2 Power to enact
§ 13:3 Voting rights
§ 13:4 Employment
§ 13:5 "Reverse" discrimination
§ 13:6 Housing
§ 13:7 Public accommodations
§ 13:8 Education
§ 13:9 Rights of the disabled
§ 13:10 Other civil rights legislation

CHAPTER 14. AFFIRMATIVE ACTION

I. OVERVIEW

§ 14:1 Generally

II. GENDER PREFERENCES

§ 14:2 Generally
§ 14:3 *Kahn*
§ 14:4 *Mississippi University for Women*
§ 14:5 *Johnson*

III. RACIAL PREFERENCES

§ 14:6 Generally
§ 14:7 *Bakke*
§ 14:8 *Weber*
§ 14:9 *Fullilove*
§ 14:10 *Johnson*
§ 14:11 *Richmond*
§ 14:12 *Metro Broadcasting*
§ 14:13 *Adarand*
§ 14:14 *Grutter* and *Gratz*
§ 14:15 *Fisher*
§ 14:16 *Parents Involved*
§ 14:17 Schuette v. Coalition to Defend Affirmative Action

IV. OTHER CONTEXTS

§ 14:18 Employment cases
§ 14:19 Housing cases
§ 14:20 Voting cases

CHAPTER 15. DESEGREGATION

I. OVERVIEW

§ 15:1 Segregation: In general
§ 15:2 Neighborhood segregation
§ 15:3 Proof of a violation
§ 15:4 —*Brown I*
§ 15:5 —*Keyes*
§ 15:6 —*Dayton I*
§ 15:7 —*Dayton II* and *Columbus*
§ 15:8 De facto segregation

II. DESEGREGATION REMEDIES

§ 15:9 Generally
§ 15:10 *Brown II*
§ 15:11 *Green*
§ 15:12 *Swann*
§ 15:13 Remedial limitations
§ 15:14 —*Pasadena* and *Oklahoma City*

§ 15:15 —State and local initiatives
§ 15:16 Interdistrict remedies
§ 15:17 —*Milliken I*
§ 15:18 —Interdistrict violations
§ 15:19 —Interdistrict effect
§ 15:20 Compensatory enrichment remedies: *Milliken II*
§ 15:21 Housing components

III. OTHER CONSIDERATIONS

§ 15:22 Gender segregation

Table of Laws and Rules

Table of Cases

Index