

Abortion

(Balancing test between the mother's right to privacy and the fetus' right to life)

Important: The Supreme Court has never decided whether abortions should be legal or illegal; just whether the states have the power to regulate them

➤ Prior to *Roe v. Wade*: A State could regulate abortion in whatever way it saw fit

➤ After *Roe v. Wade*:

- The right to have an abortion is a fundamental right; thus

- Trimester framework:

- 1st trimester: No state interference at all with the right to an abortion

- 2nd trimester: Interference by the state allowed to protect the health of the mother

- 3rd trimester: Regulation allowed except where abortion is necessary to protect the life or health of the mother

Abortion (cont.)

- Under **Casey** case (*Planned Parenthood of Southeast Pennsylvania v. Casey*, 1992) :
 - Abortion is not a fundamental right; trimester framework eliminated!
- **New Rule:**
 - **Post-viability** (outside the womb), states may regulate abortions, except where necessary to protect the life or health of the mother
 - **Pre-viability:** States may regulate abortions but may not place an “undue burden” on the right to have an abortion!
- ***Dobbs v. Jackson Women’s Health Org.* (2022):**
 - Overturned *Roe v. Wade* completely; states fully regulate or prohibit abortions.

Abortion (cont.)

Under *Planned Parenthood of Southeast Pennsylvania v. Casey* (1992)

Undue burden	Not undue burden
Prohibition	24 hour waiting period
Spousal notification requirement	Licensing requirement for performing physician
Parental consent requirement without judicial bypass	Parental consent requirement with judicial bypass
	“Fully informed” consent requirement

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QUIZ TIME!

Procedural Due Process

- Also based on the “due process” clauses, these rules dictate that the government must allow the victim (of a taking of life, liberty or property) an adequate opportunity to be heard and to contest the taking.
- Applies only to deprivation of rights not privileges; whether something is a right or a privilege and what level of due process is required depends on the nature of the right, the state’s interest in regulating it and the person’s interest in protecting that right.

Determined by analysis of each individual case.

Procedural Due Process (cont.)

General rules are difficult to come up with; some specific rules are:

Deprivation of Right	Due Process Required
Adult being committed to a mental institution	Notice and an adversarial hearing
Minor child being confined in an institution for medical treatment	Screening by a “neutral fact finder”
Expulsion or long suspension from public school	Notice and opportunity to explain
Stopping of welfare benefits	Notice and evidentiary hearing prior to stopping benefits
Stopping of disability benefits	Notice and evidentiary hearing after the benefits are cut off
Firing of a public employee who can only be removed for “cause”	Notice, opportunity to respond before firing and evidentiary hearing after firing
Suspension of driver’s license	Notice and a hearing; except in cases of refusal to take a breathalyzer
Civil forfeiture of property	Notice and a hearing
Putting prison inmates into solitary confinement	None
Subjecting prison inmates to medical procedures against their will	Notice and a hearing