# Introduction to Due Process

# Learning Objectives for this Module

## Learn the difference between substantive and procedural due process.

## Learn the history of procedural due process.

# Reading Assignment

# Issues to be addressed

## Substantive Due Process

### Substantive Due Process refers to the limits on what government can regulate

### Federal - commerce clause, national security powers, foreign affairs,

### State - police powers v. privacy (abortion)

### Important in the early days of the court before the modern expansive reading of the commerce clause

### Substantive due process is studied in constitutional law.

## Procedural Due Process

### Procedural due process refers to the procedures by which government may affect the rights of an individual in a specific situation

### Procedural due process is required in adjudications and other proceeding that affect individuals or a small group of persons based on the specific factual determinations

## Rule or Adjudication?

### What do Londoner v. City and County of Denver, 210 U.S. 373 (1908) and Bi-Metallic Investment Co. v. Colorado, 239 U.S. 441 (1915) tell us about the difference between the due process for an adjudication versus a rule?

## History of Procedural Due Process

### Real Property Takings Review

#### This is an administrative due process requirement that is the constitution.

#### What is a traditional property "taking"?

#### What due process is involved?

#### What about compensation?

#### How is compensation measured?

## Do you get any due process at all?

### Accidental Deprivations

#### Assume the postman runs over your dog or the forest service accidentally burns down your home

##### Have you suffered a taking?

##### Are these due process deprivations?

##### If so, how could the government provide due process?

##### (We cover these in the tort claims act section.)

#### What if the government repeatedly “forgets” to give mental patients a hearing before committing them?

##### How is this different?

### Rights v. Privileges - History

#### In 1940 a city fires a policeman because the police chief heard a rumor that the policeman had accepted free coffee and doughnuts from a shop on his beat.

##### Was a job a right or a privilege?

##### Was this a due process violation?

#### Government privileges were construed broadly - going to a state college, for example.

##### You could condition these with restrictions that would otherwise be impermissible

##### Bitter with the Sweet Doctrine

## Predicates to a Hearing

### Who is constitutionally eligible for a hearing?

#### Due process only applies to actions by the government.

#### Only government employees have a constitutional right to a hearing and due process.

#### The US Constitution does not apply to private employers.

# Evaluation Questions

## What is substantive due process?

### What is an example of a substantive due process question from a United States Supreme Court case?

### How does it differ from procedural due process?

## What was the bitter with the sweet doctrine?

## What employers or actors are subject to constitutional due process claims?