Due Process and Equal Protection
What is Substantive Due Process?
Due process under the 5th and 14th Amendments stands for the principle that the government must respect the fundamental rights owed to citizens according to the law.

Some rights are so important and fundamental that to take them away by some action of the government would warrant the strict standard of review and explanation, if it were to be allowed at all.
Fundamental rights include the following:

- privacy rights, such as the right to marry, the right to live together as a family unit, and the right to refuse medical care;
- the right to travel;
- the right to vote; and
- access to the courts.
In what ways do fundamental rights differ from other rights? How do you define “human rights?” Are those the same as fundamental rights, or different?
Fundamental rights under the Due Process Clauses require the highest standard of review, which is called strict scrutiny. Under that standard, the government must prove a compelling state interest, and the law must be narrowly tailored to the goals sought to be achieved.

This means that, in order for the government to limit one of the rights which is considered “fundamental,” the government must be protecting an interest which is of utmost importance—for example, the safety or security of its citizens.

Also, whatever limits are imposed by the government must be “narrowly tailored,” meaning that the limits must present the least possible infringement upon citizens’ rights.
That case involved an ordinance (a local law) by the city of East Cleveland which held that only members of a close family unit could live together. The ordinance defined family very narrowly, including, for the most part, husbands, wives, and children. Ms. Moore was a grandmother was living with her son and her two grandsons, who were cousins. The City tried to compel Ms. Moore to remove the occupants from her house. When she refused, she was charged with a criminal violation. Ms. Moore sued the city, claiming that the ordinance violated her fundamental privacy right in living together with her extended family.
“[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural. Ours is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family. The tradition of uncles, aunts, cousins, and especially grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of constitutional recognition.”
What is Equal Protection?
Equal Protection

- The Fifth Amendment provides citizens with the equal protection of the law.
- Equal protection, essentially, protects us from discrimination by the government.
- It becomes an issue anytime you see a governmental regulation which involves a particular class of persons being treated differently from others.
In many cases, the Federal government (through the protections offered by the Fifth Amendment) may take action against those who discriminate.

In some other cases, the state governments may do the same, under the governance of the Fourteenth Amendment. In essence, the Fourteenth Amendment serves to apply the provisions of due process and equal protection to the state governments.
Equal Protection
There are three standards of review that apply to equal protection problems: strict scrutiny, intermediate scrutiny, and rational basis.

Which standard of review applies depends upon which class of persons is being discriminated against or treated differently from others.
If the protected class involves race, alienage, or national origin, the court will apply the strict scrutiny standard of review. To issues involving gender or legitimacy, the Court will apply an intermediate scrutiny standard of review. Under the intermediate scrutiny standard of review, the government must prove that the regulation is substantially related to important governmental interests. This is not as difficult to prove as the strict scrutiny standard. However, it is still a significant issue. All other classifications require you to apply the rational basis standard of review (including juveniles, age, education, public housing, welfare, unrelated people living together, and disability.) Under the rational basis standard of review, the plaintiff must prove that the regulation is not rationally related to a conceivable governmental interest. This is a significantly lesser burden for the government, and it is much more difficult for a plaintiff in these classifications who claims discrimination to win his or her case.
Discussion Question

- Should the number of “protected classes” be increased? Why or why not? If yes, what other classes should be added to the list of “protected classes?”
Equal Protection
Thirteen parents from Topeka, Kansas, filed suit against the Topeka Board of Education. The parents argued that state laws which had established separate public schools for black and white students were unconstitutional and unequal.
The Court in this landmark case held that separate educational facilities were, in fact, inherently unequal. To separate students on the basis of race, the Court said, would serve to create "a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." After all, education, the Court noted, is perhaps the most important right that a society might bestow, and it includes both tangible and intangible benefits, such as being able to learn a profession.
What is Procedural Due Process?
The Constitution protects against a deprivation of life, liberty, or property without due process of law. To put simply, questions of procedural due process involve a situation where someone had something, which was then taken away through some government action.
If a citizen is being deprived of an entitlement (a right), then some form of notice and a hearing is due. How much notice and how formal a hearing are due? Well, that depends on the type of entitlement involved. Typically, the greater the right, the more is required.
Some of the examples of “process” that may be due to the citizen might include the following:

- A formal hearing
- Notice to the citizen regarding the right being taken away
- The opportunity to present witnesses and evidence in support of one’s case
- The opportunity to confront the government’s evidence and witnesses against one’s self
- A written final decision
- The right to appeal the final decision
Should the government ever have the right to take people’s land away for public purposes?
The End