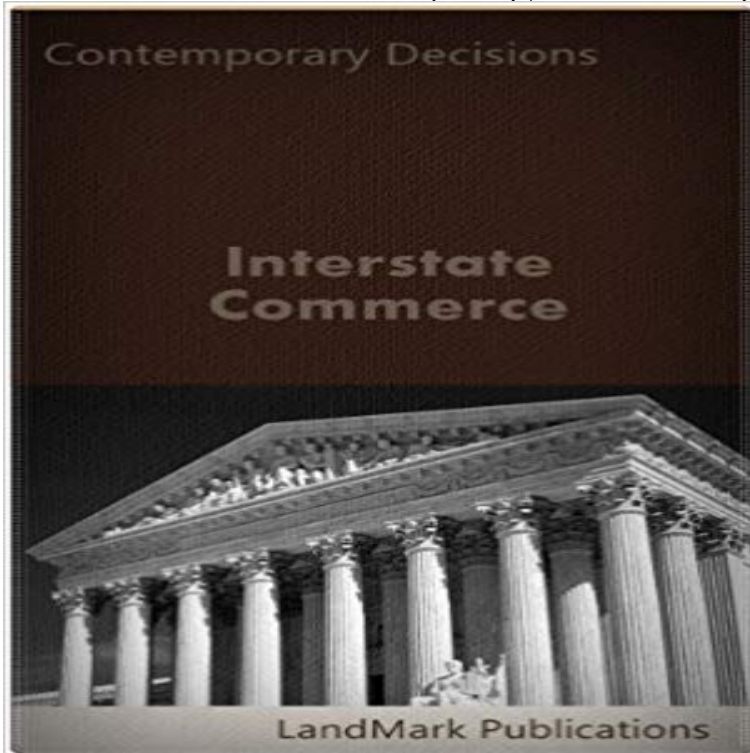


## Interstate Commerce (Litigator Series)



THIS CASEBOOK contains a selection of 86 U. S. Court of Appeals decisions and four U. S. Supreme Court decisions that apply Commerce Clause jurisprudence to regulations that affect interstate commerce. The selection of decisions spans from 2008 to the date of publication. Congress has the power to make all Laws which shall be necessary and proper to regulate Commerce . . . among the several States. (U.S. Const., Art. I, 8). The Supreme Court has identified three forms of regulation that are authorized by the Commerce Clause: (1) Congress can regulate the channels of interstate commerce; (2) Congress has authority to regulate and protect the instrumentalities of interstate commerce; and (3) Congress has the power to regulate activities that substantially affect interstate commerce. Moreover, when Congress enacts a general statutory framework regulating economic activity, its power is not limited to the regulation only of interstate economic activity, but extends to the regulation of purely intrastate economic activity as well. *Brzonkala v. Va. Polytechnic Inst. & State Univ.*, 169 F.3d 820, 835 (4th Cir. 1999) (en banc) (emphasis omitted), *affd sub nom. United States v. Morrison*, 529 U.S. 598 (2000). *Montgomery County v. Federal National Mortgage Association*, (4th Cir. 2014) [The Commerce Clause] has an implied requirementthe Dormant Commerce Clause that the states not mandate differential treatment of in-state and out-of-state economic interests that benefit the former and burdens the latter. *Keystone Redev. Partners, LLC v. Decker*, 631 F.3d 89, 107 (3d Cir. 2011) (quoting *Granholm v. Heald*, 544 U.S. 460, 472 (2005)). Accordingly, it is [a]xiomatic . . . that a state cannot impede free market forces to shield in-state businesses from out of state competition. *Cloverland-Green Spring Dairies, Inc. v. Pa. Milk Mktg. Bd.*, 298 F.3d 201, 210 (3d Cir. 2002)

(Cloverland I). *Heffner v. Murphy*, (3rd Cir. 2014) [A courts] dormant Commerce Clause inquiry begins with determining whether the [state statute] discriminates against interstate commerce in either purpose or effect. See *Am. Trucking Assn, Inc. v. Whitman*, 437 F.3d 313, 319 (3d Cir. 2006). If so, the discriminatory restrictions must then survive heightened scrutiny to survive the Plaintiffs Commerce Clause challenge. *Am. Exp. Travel Related Servs., Inc. v. Sidamon-Eristoff*, 669 F.3d 359, 372 (3d Cir. 2012). Heightened scrutiny requires the State to demonstrate (1) that the statute serves a legitimate local interest, and (2) that this purpose could not be served as well by available nondiscriminatory means. *Freeman v. Corzine*, 629 F.3d 146, 158 (3d Cir. 2010) (quoting *Am. Trucking Assn, Inc.*, 437 F.3d at 319). *Heffner v. Murphy*, *ibid.* If [the court] determine[s] that heightened scrutiny is inappropriate because the [statute]s provisions do not discriminate in favor of in-state interests, [the court] then must balance interests pursuant to *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). Pike balancing is necessary because [s]tates may not impose regulations that place an undue burden on interstate commerce, even where those regulations do not discriminate between in-state and out-of-state businesses. *United States v. Lopez*, 514 U.S. 549, 579-80 (1995). The Pike balancing inquiry requires that [the court] determine whether the [laws] burdens on interstate commerce substantially outweigh the putative local benefits. *Freeman*, 629 F.3d at 158 (quoting *Cloverland-Green Spring Dairies, Inc. v. Pa. Milk Mktg. Bd.*, 462 F.3d 249, 258 (3d Cir. 2006) (alterations omitted) (Cloverland II)). *Heffner v. Murphy*, (3rd Cir. 2014)

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