

PREEMPTION DOCTRINES

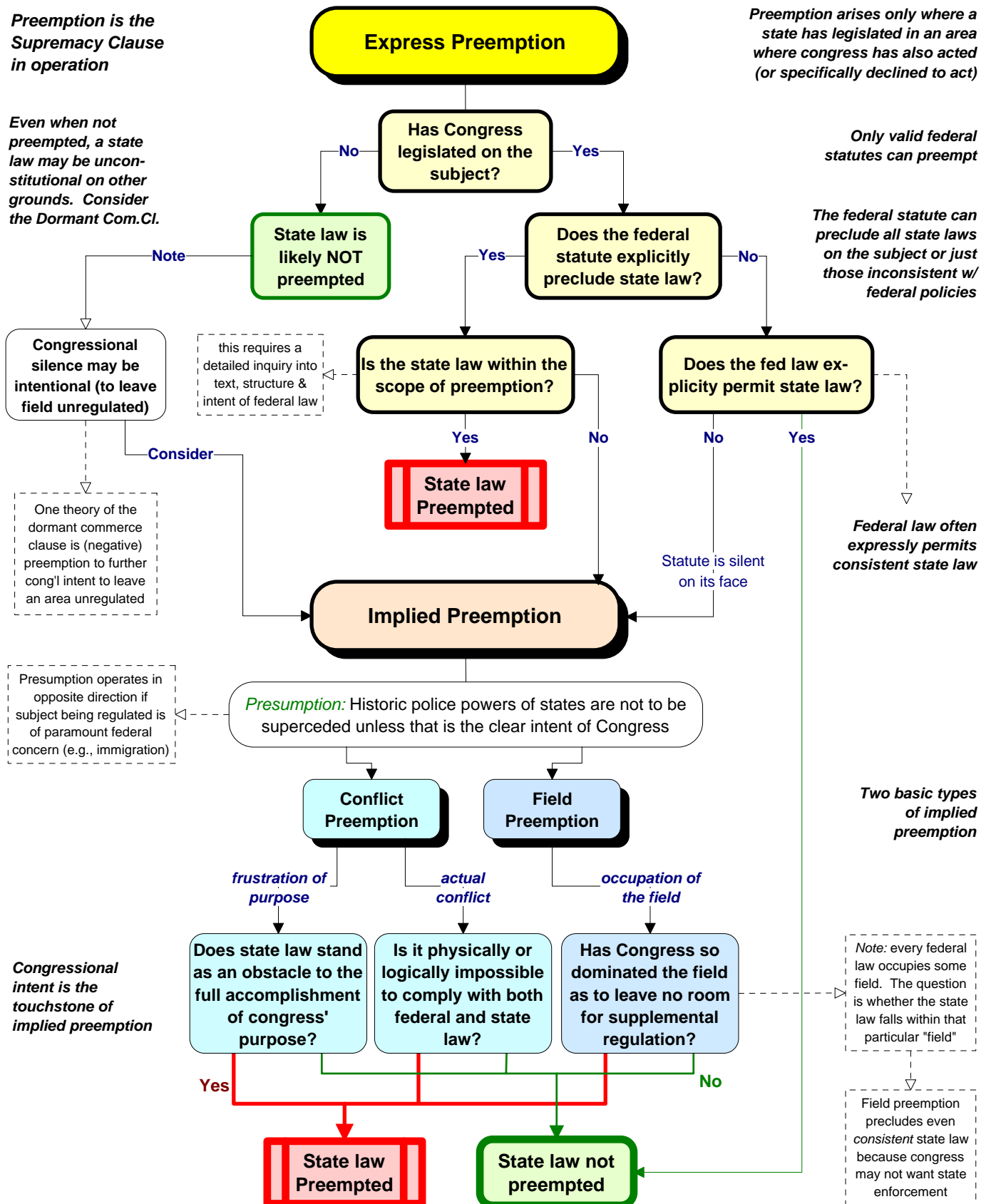
Preemption is the Supremacy Clause in operation

Preemption arises only where a state has legislated in an area where congress has also acted (or specifically declined to act)

Even when not preempted, a state law may be unconstitutional on other grounds. Consider the Dormant Com.Cl.

Only valid federal statutes can preempt

The federal statute can preclude all state laws on the subject or just those inconsistent w/ federal policies



Congressional intent is the touchstone of implied preemption

Two basic types of implied preemption

Note: every federal law occupies some field. The question is whether the state law falls within that particular "field"

Field preemption precludes even consistent state law because congress may not want state enforcement