

**The Supreme Court in United States History:
PSC 212
Joel Seligman**

SYLLABUS

In this syllabus, Ronald D. Rotunda, *Modern Constitutional Law: Cases and Notes* (10th ed. 2012) is termed Casebook; materials in the additional packet of materials are termed Handout.

Jan. 27 READING A CASE: *Brown v. Board of Education*, Casebook 670-674, Handout 1-7.

WRITING ASSIGNMENT ONE: Pass/Fail – Due Jan. 27, beginning of class. Maximum length two pages.

Write a brief for the *Brown* - 9; Excerpt from Federalist Paper No. 78, Casebook 10-11; Using the Parts of a Judicial Decision, Handout 12-13.

WRITING ASSIGNMENT TWO: Pass/Fail: Due February 3, beginning of class.

Read the material in the Packet entitled, *Using the Parts of a Judicial Opinion*, Handout 12-13, before preparing your response to the following problem.

You are Counsel to President Jefferson. The President is unsure of the significance of a recent U.S. Supreme Court decision, *Marbury v. Madison*, and seeks your advice. You are to brief the case in 1-2 pages, and prepare a one page memorandum advising the President on two concerns he has raised (3 pages for the total assignment).

First, the President wants to know if he can publicly dismiss what the Court said about his and Madison's actions as mere *dicta*. Please clarify

what is holding and what is *dicta* in the opinion, and advise the President whether the language about the Jefferson Administration's actions is *dicta*. Second, while the President feels that he "won" this time, he is concerned about the possibility that the Supreme Court might declare unconstitutional the Repeal Act of 1802, which abolished the jobs of the new circuit judges appointed by the outgoing Federalists. Please formulate the rule applicable to future cases on judicial constitutional review of legislation that you formulate from *Marbury v. Madison*. Finally, briefly advise the President on whether in your opinion *Marbury* would support the Court ruling that it had the power to declare the Repeal Act of 1802 unconstitutional, or is too narrow a holding to justify such a ruling.

Feb. 10 The Supreme Court Before the Civil War. Casebook 70-77, 82-89, Handout 14-23.

Feb. 17 Presidential War Powers. Casebook 305-307; *Boumediene v. Bush*, Casebook 325-337; Handout 24-50.

WRITING ASSIGNMENT THREE: Graded; due on February 17, beginning of class.

Write in no more than 3 pages a closing argument to the Senate grounded on Lincoln's suspension of the writ of habeas corpus. Although other legal issues are raised, this is the only issue you are to address.

As sources use: *Marbury* and *Merryman* as your only case precedents; the text of the Constitution before the 13th, 14th, and 15th amendments; and the relevant facts you gleaned from the transcript of "The Impeachment Trial of President Abraham Lincoln." Include in your discussion of *Ex Parte Merryman*: 1) whether the legal issues are the same or analogous in *Merryman* and the impeachment trial; 2) any relevant *Merryman* facts and those from the impeachment trial transcript; and the general classifications under which you determine the facts are or are not relevant; and 3) whether the reasoning in *Merryman* is likely to lead to a similar result in the Senate trial of President Lincoln.

Unlike Writing Assignment Two, you are writing not to report the law to a member of your team, but to *persuade* an outside decisionmaker that your client's position is sound and should be adopted. In persuasive legal argumentation, the conclusion urged should appear in the first paragraph. The argument should be as simple and easy to follow as possible, with a clear organization evident in the topic sentences of the paragraphs. The best arguments should be first, and should be the most fully developed. Emphasize the favorable law and facts; deal with the unfavorable, but in affirmative ways if possible.

To be a complete legal argument, this assignment should include both statement and explanation of the law and also an application of the law to the facts. Statement and explanation of the governing rules of law precedes its application in legal writing. In this portion, one would specify the textual provisions of the Constitution that are relevant, the rule to formulate from the precedent of *Ex Parte Merryman*, and other principles that may or should determine the outcome.

Application of these rules to the facts of the Lincoln impeachment case should follow discussion of the law. Here one would state what Lincoln did and why/why not that violated the governing constitutional rules on suspension of the writ of habeas corpus. For this portion of the argument, read the material in the Handout at 51-53, Using the Parts of a Judicial Opinion, III-IV, about reasoning by analogy and applying precedent to a new fact problem.

Feb. 24 Economic Regulation After the Civil War. *Lochner v. New York*; *Muller v. Oregon*; *Bunting v. Oregon*; *Adkins v. Children's Hospital*; *Nebbia v. New York*, Casebook 487-497; *Carolene Products*, Casebook 235-237; *United States v. Dar*

March 17 The 13th and 14th Amendments. The Slaughter-House Cases, Casebook 479-484; the Civil Rights Cases, Casebook 596-602

point she links in part due to past legal discrimination – not only in access to higher education, but in property and contract rights, voting, access and participation in the legal system, and guardianship of children. This discrimination reflected deep seated beliefs that persist and inhibit the development of women, even if barriers today are more informal than in previous eras. She also links service to young women’s needs to the fact that women differ from men in developmental needs; biological functions, such as pregnancy and childbirth; and social roles, such as child-raising.

President Greenhaw says attending a women’s college has been shown to be positively associated with numerous factors, including baccalaureate completion, satisfaction with faculty and overall quality of instruction, leadership measures, writing skills, analytical and problem-solving skills and critical thinking ability. Indeed, women’s colleges are more effective than coeducational colleges in improving their students’ academic ability and social self-confidence. Greenhaw agrees with scholars who suggest that “a partial reason for the positive impact of women-only colleges is that their women students are surrounded by peers having high intellectual self-

Casebook 996-1000; International Society for Krishna Consciousness, Inc. v. Lee, Casebook 1018-1024; Texas v. Johnson, Casebook 1208-1215.

April 7 To be assigned.

April 14 The Religion Clauses. School District of Abington Township v. Schempp, Casebook 1331-1335; Gobitis and West Va. State Bd. of Educ. V. Banette, Casebook 1335-1337; Eppenson v. Arkansas, Casebook 1341-1345; Wisconsin v. Yoder, Casebook 1387-1390; Employment Div. v. Smith, Casebook 1401-1407; Cox v. Miller, 296 F-3d 89 (2d Cir. 2002), Handout 123-136.

WRITING ASSIGNMENT FIVE. Graded.

By **April 10**, Sasha Tulgan will let you know which proposed amendment to advocate and the student who will be opposing the amendment.

Due April 17, by 5:00 pm.

Page limit: 5 pages

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GRADING INFORMATION

Your final grade for the course will be determined on the basis of three graded writing assignments and the oral presentation/defense an amendment to the Constitution that you propose. Each writing assignment is weighted as 25% of your final grade, and collectively, the writing assignments will account for 75% of your final grade.