

Law School Survival Guide

VOLUME II of II

Outlines and Case Summaries for:

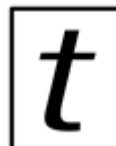
Evidence • Constitutional Law
Criminal Law • Constitutional
Criminal Procedure

Law School Survival Guide

VOLUME II of II

Outlines and Case Summaries for:

- Evidence • Constitutional Law
- Criminal Law • Constitutional Criminal Procedure



LAW SCHOOL SURVIVAL GUIDE
Outlines and Case Summaries
Volume II of II
2016 Edition

© 2010-2016 by TellerBooks. All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, including photocopying, recording, or copying to any storage and retrieval system.

Published by Teller Books
Manufactured in the U.S.A.

ISBN (13) (paperback): 978-1-68109-076-4
ISBN (10) (paperback): 1-68109-076-7
ISBN (13) (ePub): 978-1-68109-077-1
ISBN (10) (ePub): 1-68109-077-5



www.TellerBooks.com

DISCLAIMER: Although this book is designed to provide readers with rigorously researched information, it is not intended to constitute legal advice. Rather, it aims to serve as a general overview of the law that will help readers to understand basic legal principles and find further information, if necessary. It does not lay out all of the legal nuances and details that may make the difference in any potential case.

Some judicial decisions discussed in this book, due to their ambiguity, are subject to different interpretations. Other authors may come to conclusions different from those presented herein. No representation is therefore made that these materials reflect a definitive statement of the state of the law or of the views that will be applied by any court in any particular case or jurisdiction.

The law changes with remarkable swiftness as new statutes are passed and innovative judicial decisions are handed down. The information in this volume could therefore become obsolete with remarkable speed. For up-to-date legal advice, readers are encouraged to seek the counsel of a qualified attorney or other professional.

SUMMARY OF CONTENTS

TABLE OF CONTENTS	5
CHAPTER 1. CONSTITUTIONAL LAW.....	9
CHAPTER 2. CONSTITUTIONAL CRIMINAL PROCEDURE.....	101
CHAPTER 3. CRIMINAL LAW	167
CHAPTER 4. EVIDENCE.....	227
APPENDICES	311

Look for all of these titles in the
TellerBooks
Law School Survival Guides Series
(Outlines and Case Summaries)*:

TORTS

PROPERTY

CIVIL PROCEDURE

INTERNATIONAL LAW

CONTRACTS AND SALES

CONST. CRIMINAL PROCEDURE

BUSINESS ORGANIZATIONS

CONSTITUTIONAL LAW

CRIMINAL LAW

FAMILY LAW

EVIDENCE

*Available in paperback,
ePub, Kindle,
Nook and pdf formats.

TABLE OF CONTENTS

ABBREVIATIONS	7
CHAPTER 1. CONSTITUTIONAL LAW.....	9
I. SEPARATION OF POWERS	11
II. A GOVERNMENT OF LIMITED AND ENUMERATED POWERS	26
III. FEDERALISM, TERM LIMITS AND TRADITIONAL STATE FUNCTIONS	34
IV. THE PROTECTION OF CONTRACTS AND PROPERTY	46
V. ECONOMIC LIBERTY	50
VI. RELIGIOUS FREEDOM.....	55
VII. FIRST AMENDMENT SPEECH	66
VIII. DUE PROCESS	75
IX. EQUAL PROTECTION	88
APPENDIX: GUIDELINE CHART FOR DETERMINING STANDARDS OF SCRUTINY.....	99
CHAPTER 2. CONSTITUTIONAL CRIMINAL PROCEDURE	101
I. THE EXCLUSIONARY RULE IN SEARCHES AND SEIZURES.....	104
II. OBTAINING, CHALLENGING, AND EXECUTING SEARCH WARRANTS	110
III. EXCEPTIONS TO THE INVALIDITY OF WARRANTLESS SEARCHES AND SEIZURES	114
IV. THE FIFTH AMENDMENT DOUBLE JEOPARDY CLAUSE	123
V. THE FIFTH AMENDMENT SELF-INCRIMINATION CLAUSE	129
VI. FIFTH AMENDMENT GRAND JURIES, DUE PROCESS, AND CHARGING	140
VII. SIXTH AMENDMENT TRIAL RIGHTS	141
VIII. THE SIXTH AMENDMENT CONFRONTATION CLAUSE	149
IX. THE SIXTH AMENDMENT RIGHT TO COUNSEL	153
APPENDICES	163
CHAPTER 3. CRIMINAL LAW	167
I. THE ELEMENTS OF A CRIME.....	169
II. JUSTIFICATION AND EXCUSE.....	178
III. COMPLICITY	193
IV. INCHOATE CRIMES.....	196
V. CRIMES AGAINST THE PERSON	206
VI. CRIMES AGAINST PROPERTY	221
VII. CRIMES AGAINST THE HABITATION	223
APPENDICES	224
CHAPTER 4. EVIDENCE.....	227
ARTICLE I. GENERAL PROVISIONS	229
ARTICLE II. JUDICIAL NOTICE	235
ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS	236
ARTICLE IV. RELEVANCY AND ITS LIMITS	239
ARTICLE V. PRIVILEGES	258
ARTICLE VI. WITNESSES	261
ARTICLE VII. OPINIONS AND EXPERT TESTIMONY	274
ARTICLE VIII. HEARSAY	279

ARTICLE IX. AUTHENTICATION AND IDENTIFICATION.....	299
ARTICLE X. CONTENTS OF WRITINGS, RECORDINGS, AND PHOTOGRAPHS	304
ARTICLE XI. MISCELLANEOUS RULES.....	307
APPENDICES	311
TABLE OF CASES	313
THEMATIC INDEX	317
GLOSSARY.....	321

ABBREVIATIONS

3PP.....	Third-party plaintiff	JNOV.....	Judgment <i>non obstante veredicto</i>
3PD.....	Third-party defendant	J/SL.....	Joint and several liability, or jointly and severally liable
A.....	The grantee of a present estate or future interest	JT.....	Joint tenant/tenancy
AP.....	Adverse possession	K.....	Knowledge (criminal law) or Contract (all other law)
A/R.....	Assumption of the risk	KSC.....	Knowledge to a substantial certainty
B.....	Buyer	L.....	Loss in value
BFP.....	<i>Bona fide</i> purchaser or <i>bona fide</i> purchase	L1.....	First landlord
C.....	Constitution	Lat.....	Latin
CIF.....	Cause-in-fact	LE.....	Life estate
Cl.....	Clause	LED.....	Life estate determinable
CLEO.....	State Chief Law Enforcement Officer	LLC.....	Limited liability company
Court (cap.).....	The United States Supreme Court	LLP.....	Limited liability partnership
CR.....	Contingent remainder	LRM.....	Least restrictive means
CSD.....	Common Scheme of Development	MPC.....	Model Penal Code
CSI.....	Compelling state interest	MSAJ.....	Motion to set aside the judgment
Ct.....	Court	N.....	Negligence
ED.....	Emotional distress	<i>N.B.</i>	<i>Nota bene</i>
EI.....	Executory interest	NIED.....	Negligent infliction of emotional distress
ES.....	Equitable Servitude	O.....	Original owner, or grantor (in present estates and future interests)
FI.....	false imprisonment	OLQ.....	Owner of the <i>locus in quo</i>
FLSA.....	Fair Labor Standards Act	OO.....	Original owner
FMLA.....	Family and Medical Leave Act	P.....	Purpose or purchaser
FQJ.....	Federal question jurisdiction	PE.....	Privity of Estate
FRAP.....	Federal Rules of Appellate Procedure	PJ.....	Personal jurisdiction
FRCP.....	Federal Rules of Civil Procedure	PJI.....	Pattern Criminal Jury Instruction
FRCrP.....	Federal Rules of Criminal Procedure	PK.....	Privity of Contract
FRE.....	Federal Rules of Evidence	R.....	Recklessness
FS.....	Fee simple absolute (fee simple)	RAP.....	Rule against perpetuities
FSCS.....	Fee simple on condition subsequent	RC.....	Real Covenant
FSD.....	Fee simple determinable	Restatement.....	Restatement (of Contracts, Torts, Judgments, etc.)
FS EL.....	Fee simple on executory limitation	RFRA.....	Religious Freedom Restoration Act of 1993
FT.....	Fee tail	RIL.....	<i>Res ipsa loquitur</i>
IIED.....	Intentional infliction of emotional distress	RPP.....	Reasonable prudent person
IT.....	Intentional tort	Rule.....	Federal Rule of Evidence or Federal Rule of Civil Procedure
JMOL.....	Judgment as a matter of law	§.....	Section

ABBREVIATIONS

S Sub-lessee or seller
SF Statute of Frauds
SJ Summary judgment
SL Strict liability, or statute of
 limitations
SMJ Subject matter jurisdiction
SP Specific performance
T1 First tenant

TE Tenant/tenancy by the
 entireties
TO True owner
UCC Uniform Commercial Code
USC United States Code
VR Vested remainder
VR SD Vested remainder subject to
 divestment

CHAPTER 1.
CONSTITUTIONAL LAW

I.	SEPARATION OF POWERS	11
A.	JUSTICIABILITY IN THE FEDERAL COURTS	11
B.	THE JUDICIAL POWER	14
C.	THE LEGISLATIVE POWER.....	17
D.	THE EXECUTIVE POWER	19
E.	THE PRESIDENT AND FOREIGN POLICY	23
II.	A GOVERNMENT OF LIMITED AND ENUMERATED POWERS	26
A.	BACKGROUND	26
B.	ENUMERATED POWERS OF THE FEDERAL GOVERNMENT	26
C.	IMPLIED POWERS OF THE FEDERAL GOVERNMENT	27
D.	THE POWER TO REGULATE INTERSTATE COMMERCE	28
E.	NEGATIVE COMMERCE POWER	32
III.	FEDERALISM, TERM LIMITS AND TRADITIONAL STATE FUNCTIONS	34
A.	FEDERALISM AND “COMMANDEERING”	34
B.	FEDERALISM AND THE SPENDING POWER	35
C.	STATE LAW AND FEDERAL TERM LIMITS	36
D.	THE RISE AND FALL OF TRADITIONAL STATE FUNCTIONS	37
E.	INDIVIDUAL RIGHTS LIMITATIONS ON STATE POWER	38
F.	STATE SOVEREIGN IMMUNITY	42
IV.	THE PROTECTION OF CONTRACTS AND PROPERTY	46
A.	THE PROTECTION OF CONTRACTS AGAINST STATE IMPAIRMENT	46
B.	THE PROTECTION OF PROPERTY UNDER THE TAKINGS CLAUSE	47
V.	ECONOMIC LIBERTY.....	50
A.	THE PROTECTION OF ECONOMIC LIBERTY	50
B.	SUBSTANTIVE ECONOMIC DUE PROCESS	50
C.	PRIVILEGES AND IMMUNITIES CLAUSE (ARTICLE IV)	52
D.	PRIVILEGES OR IMMUNITIES CLAUSE (FOURTEENTH AMENDMENT)	53
VI.	RELIGIOUS FREEDOM	55
A.	THE PUBLIC AFFIRMATION OF GOD AND THE IMPORTANCE OF RELIGION.....	55
B.	THE ESTABLISHMENT CLAUSE.....	56
C.	THE FREE EXERCISE CLAUSE.....	62
D.	THE DECLINE IN THE PROTECTION OF THE FREE EXERCISE CLAUSE.....	64
E.	LEGISLATIVE ACTION IN RESPONSE TO <i>SMITH</i>	65
F.	APPLYING FREE EXERCISE TODAY	66
VII.	FIRST AMENDMENT SPEECH.....	66
A.	PRIOR RESTRAINT AND CRITICISM OF THE GOVERNMENT	66

CHAPTER 1
CONSTITUTIONAL LAW

B.	PUBLIC FORUMS: THE THREE CATEGORIES OF GOVERNMENT-OWNED PROPERTY	67
C.	GOVERNMENT SPEECH.....	68
D.	TERMINATION OF PUBLIC EMPLOYEES AS A RESULT OF SPEECH	69
E.	THE IMPERMISSIBILITY OF GOVERNMENT CONTENT AND VIEWPOINT DISCRIMINATION	70
F.	COMMERCIAL SPEECH	70
G.	WORDS VERSUS CONDUCT.....	71
H.	ADULT ENTERTAINMENT	72
I.	EXPRESSIONS OF HATE	72
J.	FREE SPEECH RIGHTS IN PUBLIC SCHOOLS	73
K.	FREEDOM OF SPEECH AND THE PRESS.....	74
L.	SPEECH WITHIN PRIVATE ASSOCIATIONS.....	74
VIII.	DUE PROCESS	75
A.	INTRODUCTION	75
B.	PROCEDURAL DUE PROCESS.....	76
C.	SUBSTANTIVE DUE PROCESS: THE PROTECTION OF UNENUMERATED RIGHTS	79
IX.	EQUAL PROTECTION	88
A.	INTRODUCTION	88
B.	STRICT SCRUTINY	90
C.	INTERMEDIATE SCRUTINY	95
D.	RATIONAL BASIS SCRUTINY	97
	APPENDIX: GUIDELINE CHART FOR DETERMINING STANDARDS OF SCRUTINY	99

I. SEPARATION OF POWERS

A. JUSTICIABILITY IN THE FEDERAL COURTS

1. Overview

- a. A case is justiciable when it is properly brought before a court with subject matter jurisdiction and *is capable of being disposed of judicially*.
- b. This requires that distinct questions of nonjusticiability of political questions, standing to sue, ripeness, and mootness.

2. Nonjusticiable Political Questions

- a. A nonjusticiable political question is thus one that involves the exercise of *discretionary power* by either the Legislative or the Executive Branch; it does not involve a *judicial* question to be decided by the judiciary.
- b. A question is a nonjusticiable political question when there is “a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it.” *Baker v. Carr* (1962).
- c. Nonjusticiable political questions include, for example, claims that the President’s is mishandling foreign affairs.

3. Standing

- a. To be justiciable, the parties to a case must have standing (*standing to sue*) before the court.
 - i. This refers to a party’s judicial right to make a claim or enforce a duty or right before a court.
 - ii. There are two kinds—constitutional standing and prudential standing, both of which are necessary in any case in federal court (state courts have established their own standing rules).
- b. Constitutional Standing
 - i. Constitutional standing is based on the Article III Case or Controversy requirement. It is therefore not subject to congressional modification.
 - ii. In order to have constitutional standing, the following elements must be met:
 - 1) **Injury**: the plaintiff must have been directly injured in the past or in the imminent future.
 - a) The injury may be economically or otherwise, but may not be excessively indeterminate; it must be more substantial on the plaintiff than on citizens at large.

- b) However, a court may hear a case even if the plaintiff himself has not been injured if: (i) the party that is injured is unable to represent himself; and (ii) the plaintiff has a close relationship or substantial contact with the injured party, who has allowed the plaintiff to represent him.
 - c) In addition, actual injury need not be shown in cases involving the Establishment Clause, since the protection of fundamental freedoms is too important to limit to injured parties;
- 2) **Causation**: the injury must be traceable to the defendant's conduct; and
 - 3) **Remedy**: a favorable court outcome must be able to redress the plaintiff's injury.
- c. Prudential Standing
- i. The common law rules are discretionary and are not dictated by article III of the Constitution. Congress may therefore change them by statute.
 - ii. A plaintiff has prudential standing when he does *not*:
 - 1) Assert the claims of a **third party**. Exceptions:
 - a) When the injured party lacks competence or faces exceptional obstacles and the party bringing the action will effectively represent him; or
 - b) The party bringing the action bears a close relationship to the affected party (*e.g.*, a liquor seller sues on behalf of women wanting to be able to purchase alcohol).
 - 2) Sue as a **taxpayer** with a common grievance with all other taxpayers;
 - a) Rationale: the injury is deemed to be too remote.
 - b) Exception: the plaintiff may bring a tax action if it involves the First Amendment Establishment Clause.
 - c) The Commerce Clause is *not* a part of this exception.
 - i) *See Daimler-Chrysler Corp. v. Cuno* (plaintiff) (1854), where the plaintiff and other taxpayers sued when City of Toledo offered the defendant tax benefits. The plaintiffs claimed that the tax breaks increased their own tax burdens. Held: the alleged injury is indefinite and general. If the plaintiffs were granted standing, the separation of powers guaranteed by the Constitution would be eroded as courts begin to redress political and policy questions such as this one. The plaintiffs argue that the

Establishment Clause exception to this rule should be extended to the Commerce clause. The Court refuses to extend this exception.

- 3) Raise a claim *outside of the zone of interests* meant to be regulated by the statutory or constitutional guarantee in question.

4. Ripeness

- a. A case is ripe, or ready to be heard, when a claimant can make a showing of a *direct injury* resulting from the challenged action.
- b. However, courts do not always impose this rule strictly; a case may be considered ripe, even if actual injury has not occurred, when the following two elements are met:
 - i. Great *hardship* would result if it denied judicial review; and
 - ii. The *issues* and *record* are ready for judicial review (*i.e.*, they have been sufficiently developed to allow the court a thorough review).
- c. Generally, a claimant must be prosecuted for the violation of a law before he may challenge it.
- d. However, in the following situations, because waiting for ripeness would incur a great hardship, pre-enforcement review is considered justified:
 - i. When the enforcement of a statute against the plaintiff has not actually begun but is imminent;
 - ii. When the plaintiff wishes to act, but does not want to risk violating the law; and
 - iii. When collateral injury is possible (*e.g.*, plaintiffs may challenge a statute limiting the liability of nuclear power plants in the event of a nuclear accident, even though it has not occurred).

5. Mootness

- a. The mootness doctrine requires the plaintiff to have a personal interest from the beginning to the end of the litigation.
- b. If an intervening event removes the plaintiff's interest in the case (*e.g.*, a statute being challenged is repealed), the case becomes moot and is no longer justiciable.
- c. Exceptions:
 - i. Wrongs "capable of repetition yet evading review" (*e.g.*, a pregnant woman claims that an anti-abortion statute is unconstitutional, but before the litigation is completed, she gives birth).
 - ii. The defendant ceases the challenged conduct but can resume it at anytime (*e.g.*, the government repeals a problematic statute, but can reinstate it at any time);

- iii. Collateral injuries (*e.g.*, a criminal who completes a prison sentence can challenge his conviction for collateral injuries, such as lost voting rights).
- iv. Class actions: even if the plaintiff's case becomes moot, the action may go forward for the rest of the class.

B. THE JUDICIAL POWER

1. The Question of Lower Federal Courts

- a. After much controversy, the Constitutional Convention decided to leave the question of establishing lower federal courts (the district and circuit courts) to Congress: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."
- b. The federal district and circuit courts are thus creatures of Congress, not of the Constitution, that can be abolished at the will of Congress.

2. Subject Matter Jurisdiction of the Federal Courts

- a. Article III § 2 of the Constitution establishes federal subject matter jurisdiction (SMJ) over:
 - i. Cases arising under the Constitution and the laws and treaties of the U.S.;
 - ii. Cases affecting ambassadors, other public ministers and consuls;
 - iii. Cases of admiralty or maritime jurisdiction;
 - iv. Cases in which the U.S. is a party;
 - v. Cases in which a state is a party;
 - vi. Cases between citizens of different states;
 - 1) This is known as "diversity jurisdiction";
 - 2) Congress has limited diversity jurisdiction to those cases involving amounts in controversy of more than \$75,000 (28 USC § 1332).
 - 3) Diversity jurisdiction has further been limited to only those cases in which *all of the plaintiffs* are diverse from *all of the defendants* (*Strawbridge v. Curtis*).
 - vii. Cases between citizens of the same state claiming lands under grants of different states;
 - viii. Cases between a state, or the citizens thereof, and foreign states or citizens.

3. Jurisdiction of the Supreme Court

- a. Original Jurisdiction

- i. Under the Constitution, the Supreme Court has *original jurisdiction* over cases involving ambassadors, other public ministers and consuls, or states.¹
 - ii. Congress has added by statute the following provisions:
 - 1) The Supreme Court’s original jurisdiction is *exclusive* in cases involving two or more states;² and
 - 2) The Supreme Court’s original jurisdiction is *concurrent* in cases involving:
 - a) An ambassador, consul, or public minister of a foreign state; or
 - b) A state against the U.S., citizens of another state, or aliens.³
 - iii. Congress *may not restrict* the Supreme Court’s original jurisdiction.
 - iv. Furthermore, according to a majority of sources, Congress also *may not expand* the Supreme Court’s original jurisdiction (there is some disagreement on this rule; *see Marbury v. Madison, infra.*).
- b. Appellate Jurisdiction
- i. Article III of the Constitution states that, “In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, *with such Exceptions, and under such Regulations as the Congress shall make.*”⁴
 - ii. Accordingly, the Supreme Court’s appellate jurisdiction, unlike its original jurisdiction, *may be restricted by Congress.*
 - 1) *See Ex Parte McCardle* (1868), where McCardle, a southerner opposed to the presence of union troops in control of southern states, was arrested and locked up by a military court. When his writ for *habeas corpus* was denied, he appealed to the United States Supreme Court. While the case was pending, Congress abrogated the Supreme Court’s appellate jurisdiction over the case, and the Supreme Court held that it was obligated to dismiss the case, regardless of the merits of McCardle’s case, because it lacked jurisdiction.
4. Judicial Review
- a. According to *Federalist* No. 78, written by Alexander Hamilton, the judiciary, not controlling the nation’s purse or military, is best suited to interpret the Constitution.

¹ U.S. Const. art. III, § 2, cl. 2.

² 28 USC § 1251(a). Original Jurisdiction.

³ 28 USC § 1251(b). Original Jurisdiction.

⁴ U.S. Const. art. III, § 2, cl. 2

- b. Passively waiting for parties to bring their cases before them, the courts have *neither force nor will* and are therefore less biased than the other branches of government in interpreting the Constitution.
- c. However, when the text of the Constitution contradicts any branch's actions, the former trumps. The Supreme Court thus has a duty to not apply congressional statutes when it believes they violate the Constitution.
 - i. *See Marbury v. Madison* (1803) (Marshall, C.J.), where John Marshall, while Secretary of State, failed to deliver to the plaintiff Marbury his commission to become a justice of the peace in D.C. At the time, Congress passed the Judiciary Act of 1789, which allowed parties to go to the Supreme Court to demand writs of mandamus that order a government official to fulfill his duty. Marbury went to the Supreme Court to demand the writ, but the Court refused, holding that the Act *impermissibly expanded the original jurisdiction of the Court*, which was constitutionally limited to cases involving ambassadors, other public ministers and consuls, and states.
 - ii. *N.B.: Marbury* has been the object of much criticism. Many have argued the following against the decision:
 - 1) The Constitution, article III, § 2, cl. 2, was misread as stating that the Supreme Court *only* had original jurisdiction in the enumerated cases (ambassadors, consuls, ministers, states). However, the “exceptions” mentioned in the second sentence may be referring to exceptions to the rule that the Supreme Court has appellate jurisdiction—Congress may instead grant the Court original jurisdiction in those cases.
 - 2) The Judiciary Act did not actually grant original jurisdiction to the Supreme Court. Rather, it allowed Supreme Court to grant a mandamus remedy to cases already falling within the Supreme Court's original jurisdiction.
- d. The Scope of *Marbury*
 - i. *Marbury* held that the Supreme Court must go to the Constitution on its own when interpreting it, and not rely on interpretations of other branches of government.
 - ii. When the Supreme Court finds contradictions between what the Constitution and other branches of government say, the Court is obliged by the text itself.
 - iii. However, the meaning of *Marbury* has come to be interpreted in modern times as stating that the Supreme Court is the ultimate authority on what the Constitution says.
 - iv. Yet nothing in *Marbury* suggests that the Judicial Branch can do any better a job than any of the other branches in interpreting the Constitution.

- v. One may similarly argue that each branch of government is obligated to read and abide by the Constitution. If the President reads the Constitution and concludes that it means something different than what the Supreme Court says, he is obliged to follow his own thinking.
- vi. The Court has disagreed, holding that the President and state courts and governors are obliged to follow the Court's interpretations of the Constitution over their own:
 - 1) ***The President.*** Many Presidents, including Lincoln, Franklin D. Roosevelt, and Reagan, have disagreed that the Supreme Court's reading of the Constitution trumps their own.
 - 2) ***State courts.*** See *Martin v. Hunter's Lessee* (1816), where the Virginia Supreme Court refused to comply with a U.S. Supreme Court order to enter a judgment pursuant to the federal Judiciary Act of 1789. The Court held that the Article VI Supremacy Clause binds all state courts to the U.S. Constitution, federal laws and treaties, and that the Supreme Court is the *ultimate arbiter of constitutional questions* under article III. This ensures uniformity of decisions across the United States.
 - 3) ***State Governors.*** See, e.g., *Cooper v. Aaron* (1958), where the Court held that an Arkansas Governor was bound by a federal court order to desegregate Arkansas public schools. The Governor argued that the state was not bound by the Court's interpretation of the Fourteenth Amendment. Held: every state officer is bound by the Supremacy Clause of the U.S. Constitution, and *the Supreme Court is the sole and ultimate arbiter of the same.*

C. THE LEGISLATIVE POWER

- 1. In order for a bill to become a law, article I § 7 of the Constitution requires:
 - a. The bill to be passed by both Houses; and
 - b. The bill to be presented to the President and:
 - i. Approved and signed; or
 - ii. Opposed and returned to the House from which it originated and reconsidered by that House and the other House and approved by 2/3 of both Houses.
- 2. Congress may not depart from this process of ***bicameral approval*** and ***presentation***, even in processes by which Congress oversees the execution of authority that Congress constitutionally delegated to other parties.
 - a. See *Immigration and Naturalization Service v. Chadha* (1983), where Congress passed legislation delegating its power to decide deportation cases to the Executive Branch for the sake of efficiency. In the law, Congress reserved for itself the right to review the Executive

decisions through a veto that did not go through the normal legislative process (bicameral ratification and presentation to the President). When the U.S. Attorney General upheld an immigration court's suspension of the deportation of the defendant Chadha, an alien, the House cancelled the suspension while consulting neither the Senate nor the President, as permitted by the resolution. When the defendant challenged this resolution, the Court held that when Congress takes action that alters the rights and relations of those outside of the legislative branch, since such action is legislation and must therefore be passed according to the Constitutional requirements of *bicameralism* and *presentation to the President*. A law may not permit one House to unilaterally decide on an issue. Judgment for the plaintiff affirmed.

- i. Dissent (White, J.): Congress *was* acting in accordance with the constitutional requirements of *bicameralism and presentation to the President* when it passed the deportation legislation. It simply set up a system that delegated to the executive a question it had authority to act on while reserving a veto power to itself. The legislation was established through the normal legislative process, even if the actual veto was not.
 - ii. *N.B.:* *Chadha* invalidated some 200 statutes, more statutes in one day than all others combined.
- b. Compare *Nixon v. United States*, where the Court held that the Senate has the *authority to delegate the impeachment trial of a federal judge to a committee*, since under the Constitution, the Senate has the "sole Power to try all Impeachments." The issue as to whether the Senate's actions were right or wrong is a *nonjusticiable political question*: the Senate is free on the political question as to how it will handle its constitutional authority over impeachment trials. The word "sole" simply commits the issue to the Senate and the word "try" is not a judicially manageable term on which the Court can impose its own definition.
3. Not only is Congress prohibited from directly assuming an executive function, but it is also prohibited from delegating an executive function to an officer under its control.
 - a. See *Bowsher v. Synar* (1986), where Congress delegated deficit reduction legislation enforcement powers to a Comptroller General who exercises executive powers and tells the President to act. Held: this act violates the separation of powers, since the Comptroller is controlled by and removable by Congress.
 4. The President has the constitutional authority to sign bills into law *as they come directly from Congress*. The president may not therefore approve some parts of a bill while rejecting others.

- a. *See Clinton v. New York* (1998), where the Court held that the Line Item Veto Act of 1996, which permits the President to approve parts of a bill presented by Congress while rejecting others, is unconstitutional because it permits the President to “create” a new law that was never voted on by either House.
5. However, the Supreme Court may declare some parts of a law to be unconstitutional and uphold other parts under the following circumstances, which define when the law is severable:
- a. ***Congress includes a severability provision*** in the statute, which states that if any particular provision of the Act is invalid, the entire Act is not to be affected; or
 - b. When the Court determines that Congress would have passed the Act in the absence of the invalid provision.

D. THE EXECUTIVE POWER

- 1. The Source of Domestic Authority
 - a. The president’s powers must come from the Constitution or from Congress. He may not independently create laws, even in the interests of national security.
 - b. *See Youngstown Sheet & Tube Co. v. Sawyer* (1952) (Black, J.), where President Truman seized and gave control of the steel mills to Sawyer, his Secretary of Commerce who was the defendant in the case. The plaintiff challenged the constitutionality of the seizure. Held: the President is not a law maker, but he took actions that Congress specifically debated and decided not to grant to him. The defendant’s actions are therefore unconstitutional.
 - i. Concurrent opinion (Jackson, J.): a President’s actions may fall into one of the three following categories:
 - 1) Cases in which the President’s acts are *supported by Congress*. In this situation, his acts will come under the least amount of scrutiny by this Court;
 - 2) Cases in which Congress has *neither authorized nor denied the power of the President to undertake a certain action*. In cases where the President is acting by his own power alone, his actions will be subject to more scrutiny.
 - 3) Cases in which the President acts in *direct opposition of Congress*. Cautious scrutiny applies, as in this case, which Truman does not pass.
 - ii. Concurrent opinion (Frankfurter, J.): since past Presidents have not used this kind of power in the past, the defendant’s actions were unconstitutional.
- 2. The President’s Appointment and Removal Powers
 - a. Power of Appointment