

Chapter 16 – The Judiciary Key Terms Check

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| ___ 1. A pattern of voting behavior of two or more justices. | a. activist approach |
| ___ 2. Agreed to block filibusters unless there were “extraordinary circumstances.” | b. <i>amicus curiae</i> |
| ___ 3. rules defining relationships among private citizens. | c. appellate jurisdiction |
| ___ 4. A signed opinion which agrees with the majority view but for different reasons. | d. bloc voting |
| ___ 5. The party that initiates a law suit. | e. civil law |
| ___ 6. A ruling that declared that Negroes could not be federal citizens. | f. class action suit |
| ___ 7. An examination of the political ideology of a nominated judge. | g. concurring opinion |
| ___ 8. An individual who represents the federal government before the Supreme Court. | h. constitutional court |
| ___ 9. An unsigned and typically brief court opinion. | i. criminal law |
| ___ 10. The practice, authorized by statutes, under which the plaintiff is enabled to collect costs from the defendant if the latter loses. | j. diversity case |
| ___ 11. The meeting at which the justices vote on cases that they have recently heard. | k. <i>Dred Scott v. Sandford</i> (1857) |
| ___ 12. A means by which one who has an interest in a case but is not directly involved can present arguments in favor of one side. | l. fee shifting |
| ___ 13. A judicial order enforcing a right or redressing a wrong. | m. Friday conference |
| ___ 14. A means by which one who has been injured can bring action on behalf of all similarly situated. | n. Gang of Fourteen |
| ___ 15. A method whereby a poor person can have his or her case heard in federal court without charge. | o. <i>In forma pauperis</i> |
| ___ 16. The power of the courts to determine the constitutionality of legislative and executive acts. | p. judicial restraint |
| | q. judicial review |
| | r. litmus test |
| | s. <i>per curiam</i> opinion |
| | t. plaintiff |
| | u. political question |

- ___ 17. The scope of authority by which a higher court reviews a case from a lower court.
- ___ 18. An issue the Court refuses to consider, believing the Constitution intends another branch to make the decision.
- ___ 19. The rule that a citizen cannot sue the government without the government's consent.
- ___ 20. A requirement that must be satisfied before a plaintiff can have a case heard on its merits.
- ___ 21. A tradition under which the Senate will defer to the judgement of a senator of the president's party when determining the suitability of candidates for federal judgeships from the senator's state.
- ___ 22. The body of rules defining offenses that are considered to be offenses against society as a whole.
- ___ 23. Litigation in which a citizen of one state sues a citizen of another state and the amount of money in dispute is more than \$50,000.
- ___ 24. A court established under Article III of the Constitution.
- ___ 25. A decision that permits a case to be heard by the Supreme Court when four justices approve.
- ___ 26. The rule of precedent.
- ___ 27. The idea that judges should amplify the vague language of the Constitution on the basis of their moral or economic philosophy and apply it to the case before them.
- ___ 28. The idea that judges should confine themselves to applying those rules stated in or clearly implied by the language of the Constitution.
- v. remedy
- w. senatorial courtesy
- x. solicitor general
- y. sovereign immunity
- z. standing
- aa. *stare decisis*
- bb. *writ of certiorari*

DATA CHECK

Figure 16.1 (Page 442): Female and Minority Judicial Appointments, 1963–2004

1. Did the highest total percentage of female and black judicial appointments take place during a Democratic or Republican presidency, and who was that president?

2. Did the highest total percentage of Hispanic judicial appointments take place during a Democratic or Republican presidency, and who was that president?

3. Did the lowest total percentage of female and Hispanic judicial appointments take place during a Democratic or Republican presidency, and who was that president?

4. Did the lowest total percentage of black judicial appointments take place during a Democratic or Republican presidency, and who was that president?

Table 16.2 (Page 449): Supreme Court Justices in Order of Seniority, 2004

5. What is the most commonly represented prior experience of the nine justices of the Court?

6. How many justices were appointed by Republican presidents?

7. Which justices have come to the Court without previous judicial experience?

8. If age is a reasonable predictor of who will retire/resign from the Court next, who should we expect to retire / resign next?

9. Who is the youngest member of the Court?

PRACTICING FOR EXAMS

TRUE/FALSE QUESTIONS

Read each statement carefully. Mark true statements *T*. If any part of the statement is false, mark it *F*, and write in the space provided a concise explanation of why the statement is false.

- ___ 1. The Supreme Court has declared thousands of federal laws to be unconstitutional since 1789.

- ___ 2. Judicial review is not mentioned in the Constitution.
- ___ 3. John Marshall and the Supreme Court struck down a license the State of New York gave to Robert Fulton to navigate waterways.
- ___ 4. In the immediate aftermath of the *Marbury* decision, the Court began exercising judicial review with great frequency.
- ___ 5. Franklin Roosevelt was unable to alter the composition of the Supreme Court in his first term as president.
- ___ 6. If implemented, Roosevelt's reorganization plan for the Court would have allowed him to make two new appointments.
- ___ 7. Roosevelt actually left the presidency without ever having the opportunity to make a Supreme Court appointment.
- ___ 8. The only federal court the Constitution requires is the Supreme Court.
- ___ 9. The Constitution sets the number of justices on the Court at nine.
- ___ 10. As judges, Democrats are more likely to make conservative decisions than Republican ones.
- ___ 11. The tradition of senatorial courtesy gives great weight to the preferences of the senators from the states where judges on the U.S. Courts of Appeals are to serve.
- ___ 12. The litmus test issue is not as important when selecting Supreme Court justices.
- ___ 13. In recent years, Supreme Court nominations have usually been confirmed by the Senate.
- ___ 14. Defendants may not be tried in both state and federal courts for the same offense.
- ___ 15. Under some circumstances, a criminal case involving only a violation of state law can be appealed to the United States Supreme Court.
- ___ 16. The text suggests that the typical district court case holds marvelous potential for broad policy-making.
- ___ 17. The Supreme Court does not have to hear any appeal it does not want to hear.
- ___ 18. In a typical year, the Supreme Court may consider over seven thousand petitions.

- ___ 19. The influence of law clerks on the selection of the Supreme Court's cases and the rendering of its decisions is considerable.
- ___ 20. In this country, each party to a lawsuit must pay its own costs.
- ___ 21. Taxpayers automatically have standing and can challenge the constitutionality of a federal government action.
- ___ 22. If the government kills your cow while testing a new cannon, you automatically have standing to sue the government.
- ___ 23. A taxpayer brought a lawsuit in order to require the CIA to make its budget public and won.
- ___ 24. The Supreme Court has made the rules governing class actions suits more lenient in recent years.
- ___ 25. The Supreme Court begins each term in the month of August.
- ___ 26. Interest groups politely "lobby" the Supreme Court through the use of *amicus* briefs.
- ___ 27. In conference, the Chief Justice speaks first, followed by the other justices in order of seniority.
- ___ 28. If a tie vote occurs on the Supreme Court, the case is held over for the next term.
- ___ 29. The Court tends to overturn its own precedents more frequently than it exercises judicial review of federal legislation.
- ___ 30. One valid explanation for increasing judicial activism is the dramatic increase in the number of lawyers in the United States.
- ___ 31. The vague language in congressional statutes provide additional opportunities for courts to exercise power.
- ___ 32. One president has gone on to become a Supreme Court justice.
- ___ 33. The text suggests that schools all over the country were allowing prayers long after the Supreme Court ruled such activities were not allowed in public schools.
- ___ 34. No federal judge has ever been impeached.
- ___ 35. Congress can change the number of members who are allowed to sit on the Supreme Court.

- ___ 36. Judicial review can be exercised in France, but only on the request of a government official.
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- ___ 37. Congress cannot alter the jurisdiction of district courts and appellate jurisdiction of the Supreme Court.
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- ___ 38. The most activist periods of the Court's history have coincided with time when the political system was calm and, by all measures, stable.
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- ___ 39. The conservative Court of Chief Justice Rehnquist has overturned most of the critical decisions that came out of the more liberal Court, headed by Chief Justice Warren.
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- ___ 40. Courts have come to play a larger role in our lives because Congress, the bureaucracy and the president have come to play a larger ones.
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- ___ 41. The text suggests that there has been an increase in politically conservative judges who accept the activist view of the function of courts.
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MULTIPLE CHOICE QUESTIONS

- ___ 1. With respect to a recent controversy regarding judicial appointments, the "nuclear option" focused on the possibility of
- requiring all judicial nominees to have federal experience.
 - forcing all Supreme Court nominees to appear before the Senate Judiciary Committee.
 - revising Senate rules to block filibusters.
 - allowing "voice votes" on judicial nominations.
 - requiring 60 votes of support to confirm judicial nominations.
- ___ 2. The dramatic and sometimes bitter conflict surrounding some Supreme Court nominations can only be explained by the fact that
- there are only nine people on the Court at any given point in time.
 - the Court plays such a large role in making public policy.
 - the partisan balance of the Court is quite skewed.
 - Presidents rarely seek the "advice" of the Senate.
 - nominees are rarely qualified for the job.
- ___ 3. In theory, restraint oriented judges differ from activist judges in that they are more likely to
- adopt a liberal viewpoint on such issues as states' rights and birth control.
 - apply rules that are clearly stated in the Constitution.
 - see, and take advantage of, opportunities in the law for the exercise of discretion.
 - believe in the application of judicial review to criminal matters.
 - look for and apply the general principles underlying the Constitution.

- ___ 4. Seventy years ago judicial activists tended to be
a. strict constructionists. b. liberals. c. conservatives.
d. moderates. e. radicals.
- ___ 5. In *Federalist 78*, Alexander Hamilton described the judicial branch as the _____
branch.
a. most corrupt b. least political c. reliable
d. existential e. least dangerous
- ___ 6. Which of the following statements about *McCulloch v. Maryland* is correct?
a. It established judicial review.
b. It ruled a national bank unconstitutional.
c. It restricted the scope of congressional power.
d. It allowed states to tax federal agencies.
e. It established the supremacy of national laws over state laws.
- ___ 7. Who was defiant of Supreme Court rulings and supposedly taunted the Chief Justice to go
and “enforce” one of its decisions?
a. The Mayor of New York City. b. The Governor of New York.
c. The Cherokee Indians of Georgia. d. Robert Fulton.
e. President Andrew Jackson.
- ___ 8. Roger B. Taney was deliberately chosen for the Supreme Court because he
a. opposed the invention of the steamboat.
b. opposed the creation of a national bank.
c. favored a strong national government.
d. was an advocate of states’ rights.
e. opposed slavery.
- ___ 9. During the period from the end of the Civil War to the beginning of the New Deal, the
dominant issue that the Supreme Court faced was that of
a. government regulation of the economy. b. rights of privacy.
c. states’ rights versus federal supremacy. d. slavery.
e. government regulation of interstate commerce.
- ___ 10. The text suggests “judicial activism” was born in the
a. 1970s. b. 1960s. c. 1950s. d. 1930s. e. 1890s.
- ___ 11. From 1937 to 1974, the Supreme Court did not declare a single federal law dealing with
_____ unconstitutional.
a. freedom of speech b. communists c. regulation of business
d. citizenship e. government benefits

- ___ 12. FDR's court-packing bill is an example of a presidential action designed to
- help the Court reduce its backlog.
 - influence the way in which the Court decided its cases.
 - make the Court more impartial.
 - discourage the Court from rendering decisions on major economic questions.
 - allow the Court to grow with society.
- ___ 13. Franklin Roosevelt's plan to reorganize the Supreme Court called for
- the Court to meet once every other year.
 - the total number of justices to be increased according to the age of sitting justices.
 - the president to select justices without senatorial confirmation.
 - the Senate to have the power to remove justices from the Court at will.
 - all New Deal legislation to be removed from the Court's jurisdiction.
- ___ 14. Owen Roberts' change of view was a clear concession to
- established precedent.
 - public opinion.
 - his legal training.
 - Roosevelt's court-packing plan.
 - the Chief Justice.
- ___ 15. A dramatic change in a long standing trends began in the early 1990s, when the Court struck down a congressional statute on the premise that _____ did not affect interstate commerce.
- nude dancing
 - racial discrimination
 - carrying a gun
 - commercial advertising
 - the trucking industry
- ___ 16. The two kinds of lower federal courts created to handle cases that need not be decided by the Supreme Court are
- constitutional and district.
 - appeals and limited jurisdiction.
 - district and appeals.
 - appeals and legislative.
 - constitutional and legislative.
- ___ 17. There are ___ U.S. District Courts.
- 11
 - 12
 - 13
 - 50
 - 94
- ___ 18. The Court of Military Appeals is an example of a(n) _____ court.
- district
 - appellate
 - legislative
 - general jurisdiction
 - second level appellate
- ___ 19. Which of the following statements about the selection of federal judges is *correct*?
- The principle of senatorial courtesy applies to the selection of Supreme Court justices.
 - Presidents generally appoint judges whose political views reflect their own.
 - Since personal attitudes and opinions have little impact in judicial decision-making, presidents are usually not too concerned about who they nominate.
 - Nominees for district judgeships often face tough confirmation battles in the Senate.
 - The application of political litmus tests to Supreme Court nominees is no longer legal.

- ___ 20. When politicians complain about the use of “litmus tests” in judicial nominations, they are probably
a. Democrats. b. Republicans. c. Liberals.
d. Conservatives. e. not part of the group that is currently in power.
- ___ 21. The increasing importance of a political litmus test is evident in the dramatic drop in the confirmation rates of nominees to
a. the U.S. District Courts. b. the U.S. Courts of Appeal.
c. the Supreme Court. d. the trial courts of limited jurisdiction in the federal system.
e. all of the above.
- ___ 22. If citizens of different states wish to sue one another in a matter involving more than \$75,000, they can do so in
a. either a federal or a state court. b. a court in the plaintiff’s state only.
c. an intermediate court of appeals. d. a court in the defendant’s state only.
e. a federal court only.
- ___ 23. If you wish to declare bankruptcy, you must do so in
a. a court in the state in which you reside. b. a state appellate court.
c. a federal appellate court. d. the U.S. Supreme Court.
e. a federal district court.
- ___ 24. *Certiorari* is a Latin word meaning, roughly,
a. “certified.” b. “made more certain.” c. “without certainty.”
d. “appealed.” e. “judicial.”
- ___ 25. *Cert* is issued and a case is scheduled for a hearing if _____ justices agree to hear it.
a. 2 b. 3 c. 4 d. 8 e. all nine of the
- ___ 26. What percentage of appeals court cases are rejected by the Supreme Court?
a. 1 or 2 percent b. 20 percent c. 30 percent d. 50 percent e. 99 percent
- ___ 27. Fee shifting enables the plaintiff to
a. get paid by the Department of Justice. b. split costs with the court.
c. have taxpayers pay his or her costs. d. split the costs with the defendant.
e. collect costs from the defendant if the defendant loses.
- ___ 28. To bring suit in a court, a plaintiff must first show that
a. there is a defendant. b. the defendant is a real person.
c. there is no true case and controversy. d. the defendant is a citizen of the United States.
e. he/she has standing.

- ___ 29. The doctrine of sovereign immunity prevents citizens from suing the government unless the government
- a. consents to be sued.
 - b. has violated a state law.
 - c. has violated both a state and federal law.
 - d. is exempt from having to pay fees.
 - e. has clearly been involved in manipulation of evidence.
- ___ 30. In 1974, the Supreme Court discouraged class action suits by requiring
- a. lawyers to provide at least 20 *amicus* briefs supporting their claims.
 - b. a special panel of judges to review all such suits.
 - c. such suits to impact at least 300,000 persons.
 - d. all fees in such suits be initially shifted to plaintiffs.
 - e. every ascertainable member of a class be individually notified of a suit.
- ___ 31. In a typical term, the federal government is party to _____ the cases that the Supreme Court hears.
- a. very few of
 - b. thirty percent of
 - c. about half of
 - d. almost all of
 - e. a limit of two of
- ___ 32. The solicitor general has the job of
- a. serving as liaison between the Department of Justice and the president.
 - b. deciding whether to sue large corporations.
 - c. deciding who is eligible for the Supreme Court.
 - d. deciding which cases the government will appeal from the lower courts.
 - e. deciding which cases the Supreme Court will hear.
- ___ 33. *Amicus curiae* is generally translated as meaning
- a. “friend of the court.”
 - b. “amicable but curious.”
 - c. “let the decision stand.”
 - d. “to reveal.”
 - e. none of the above.
- ___ 34. Which type of opinion is typically brief and unsigned?
- a. Opinion of the Court.
 - b. Majority opinion.
 - c. Plurality opinion.
 - d. *Per curiam* opinion.
 - e. Dissenting opinion.
- ___ 35. If a justice agrees with the conclusion of the Court’s decision, but disagrees with the logic of the opinion of the Court, he/she would probably write a
- a. concurring opinion.
 - b. majority opinion.
 - c. plurality opinion.
 - d. *per curiam* opinion.
 - e. dissenting opinion.
- ___ 36. *Stare decisis* is generally translated as meaning
- a. “friend of the court.”
 - b. “amicable but curious.”
 - c. “let the decision stand.”
 - d. “to reveal.”
 - e. none of the above.

- ___ 37. The principle of precedent is not always so clear because
- lawyers are gifted at showing cases are different in some relevant way.
 - records of judicial decisions are not particularly well organized.
 - most appellate decisions are not accompanied by written decisions.
 - the Court rarely gets a case that is at all similar to a previous case.
 - Justices are notable for insisting that their work be original.
- ___ 38. A political question is a matter
- involving voters.
 - that the Constitution has left to another branch of government.
 - that an elected state judge has dealt with.
 - that causes conflict among average voters.
 - that must first be acted on by Congress.
- ___ 39. According to the text, the most powerful indicator of judicial power is probably
- the use of judicial review.
 - the extent to which precedent is followed.
 - the types of political questions courts are willing to handle.
 - the kinds of remedies that courts will impose.
 - the use of *per curiam* opinions.
- ___ 40. Common criticisms of judicial activism include all of the following *except*
- judicial activism only works when laws are devoid of ambiguous language.
 - judges usually have no expertise in designing complex institutions.
 - judges are not elected and are therefore immune to popular control.
 - judicial activism often fails to account for the costs of implementing activist rulings.
 - judges usually have no expertise in managing complex institutions.
- ___ 41. Which of the following is a major restraint on the influence of federal judges?
- Politics, especially the results of recent elections.
 - Rule 17.
 - The lack of effective enforcement power.
 - The veto power of the president.
 - International law.
- ___ 42. Which of the following statements regarding judicial impeachments is *incorrect*?
- Fifteen federal judges have been impeached.
 - Some judges have resigned in the face of probable impeachment.
 - Seven impeached judges were acquitted.
 - The most recent conviction of a federal judge occurred in 1989.
 - The possibility of impeachment is an important influence on judicial policy making.

- ___ 43. The 1868, case of Mississippi newspaper editor William McCardle was extraordinary because
- a. the Supreme Court accepted his appeal before it was formally filed.
 - b. it seems almost certain that he would have remained in jail for the rest of his natural life despite having committed the most trivial of offenses.
 - c. a federal district court insisted that he be released from jail after Congress issued a proclamation demanding such.
 - d. Congress took away the Court's power to consider the case in the middle of his appeal.
 - e. a unanimous Court declared Reconstruction policy (under which he was convicted) unconstitutional.
- ___ 44. A major reason that the courts play a greater role in American society today than they did earlier in the century is that
- a. government plays a greater role generally.
 - b. lawyers are more influential than ever.
 - c. public opinion is less focused.
 - d. judges are better trained.
 - e. the courts are more representative of American society.

ESSAY QUESTIONS

Practice writing extended answers to the following questions. These test your ability to integrate and express the ideas that you have been studying in this chapter.

1. Explain the difference between judicial activism and restraint.
2. Summarize the point of view of the Founders with respect to courts.
3. Summarize the facts which led up to the case *Marbury v. Madison* and the Supreme Court's ruling in that landmark case.
4. Describe Franklin D. Roosevelt's so-called "court packing" plan.
5. Provide some examples of recent Supreme Court decisions which suggest there is something of a revival of state sovereignty in that institution.
6. Explain the difference between a constitutional and legislative court.
7. Explain how "senatorial courtesy" affects federal court nominations.
8. Generalize about the number of successful and unsuccessful nominations to the United States Supreme Court and provide some explanations for why some nominations have failed.
9. What are two circumstances where the Supreme Court will often grant *certiorari*?
10. Summarize the requirements for standing.

11. Identify and explain the difference between the types of opinions that Supreme Court justices can write and sign.
12. Discuss four manifestations of judicial power. Which is identified by the authors as “the most powerful indicator” of the power of courts to shape policy?
13. Write an essay on judicial activism in which you present arguments for and against this approach and provide an explanation for why we have activist courts.
14. Identify some ways in which Congress can check the judicial branch and identify those which appear to be the most practical and effective.