



FANTASY SUPREME COURT LEAGUE: 2013 EDITION

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Sean Carter is the founder of *Lawpsided Seminars*, a company devoted to solid legal continuing education with a healthy dose of laughter.

Mr. Carter graduated from Harvard Law School in 1992. His ten years of legal practice focused on corporate securities and mergers and acquisitions. During this time, he represented such clients as GNC, Experian, The Boston Beer Company, Homeside Lending, Safelite Auto Glass, J. Crew and many others, before eventually serving as in-house counsel to a publicly-traded finance company.

In 2002, Mr. Carter left the practice of law to pursue a career as the country's foremost Humorist at Law. Since then, Mr. Carter has crisscrossed the country delivering his Lawpsided Seminars for state and local bar associations, law firms, in-house corporate legal departments and law schools. Each year, he presents more than 100 humorous programs on such topics as legal ethics, stress management, constitutional law, legal marketing and much more.

Mr. Carter is the author of the first-ever comedic legal treatise -- *If It Does Not Fit, Must You Acquit?: Your Humorous Guide to the Law*. His syndicated legal humor column has appeared in general circulation newspapers in more than 30 states and his weekly humor column for lawyers appeared in the *ABA e-Report* from 2003 to 2006.

Finally, Sean lives in Mesa, Arizona with his wife and four sons.

CASE #1: KIOBEL v. ROYAL DUTCH PETROLEUM

(Alien Tort Statute; International Law)

Hearing Date: October 1, 2012

Opinion Date: April 17, 2013

In September 2002, Esther Kiobel, a Nigerian national, filed a lawsuit in federal court on behalf of herself, her late husband and other Nigerians against three international oil companies. In the lawsuit, Kiobel claims that these companies arranged for the Nigerian government to use its military forces to put down resistance to the companies' drilling for oil in the Ogoni region of the Niger Delta in Nigeria.

This action was brought under the Alien Tort Statute ("ATS"). This law, originally passed in 1789, allows foreign nationals to bring actions in U.S. federal courts for torts committed outside the U.S. if such torts are a violation of either international law or a treaty that the U.S. has signed.

In September 2010, the 2nd Circuit Court of Appeals ruled for the defendants, concluding that international law had not made it clear that corporations could be sued for human rights violations, even if they were serious atrocities. As a result, the torts alleged in this case were not clear violations of "either international law or a treaty that the U.S. signed." The plaintiffs appealed to the U.S. Supreme Court.

Did the Supreme Court agree with the 2nd Circuit?

- Yes, the Supreme Court affirmed, ruling that this action can not be brought under the ATS.
- No, the Supreme Court reversed, concluding that the action can be brought under the ATS.

Vote Spread: _____

Points: _____

Total: _____

CASE #2: ARKANSAS GAME & FISH COMMISSION v. U.S.

(Takings; Fifth Amendment)

Hearing Date: October 3, 2012

Opinion Date: December 4, 2012

In the 1940s, the federal government built the Clearwater Dam on the Black River that flows from Missouri into Arkansas. It was built expressly to control the Black's water flows to reduce downstream flooding. The Corps of Engineers has adopted a water control plan for the dam with a schedule of releases.

From 1993 through 1998, these releases caused lowland flooding in the Dave Donaldson Black River Wildlife Management Area, destroying timber that Arkansas harvests and sells for general revenues. In 2005, the Arkansas Game & Fish Commission filed a lawsuit against the Corps of Engineers contending that the government knew the releases would cause flooding and the resulting damage, but went ahead heedless of the consequences. As a result, it had affected a "taking" requiring just compensation under the Fifth Amendment.

The Court of Federal Claims agreed with Arkansas that the releases were a taking and awarded it \$5.8 million for the losses caused by the flooding. However, the Court of Appeals for the Federal Circuit, overturned the award because the flooding was only temporary and therefore, it did not rise to the level of a taking requiring compensation.

Did the Supreme Court agree with the Court of Appeals?

- Yes, the Supreme Court affirmed, ruling that temporary flooding is not a taking.
- No, the Supreme Court reversed, ruling that even temporary flooding is a taking requiring compensation.

Vote Spread: _____

Points: _____

Total: _____

CASE #3: RYAN v. GONZALES / TIBBALS v. CARTER

(Federal Habeas Corpus; Competence; Capital Punishment)

Hearing Date: October 9, 2012

Opinion Date: January 8, 2013

The Supreme Court heard consolidated arguments for two cases involving criminal defendants seeking federal habeas corpus challenges.

In the first case, Ernesto Valencia Gonzales was convicted in 1990 for murder and sentenced to death. After exhausting his appeals in the Arizona state courts, he began a federal habeas challenge. His lawyers sought a ruling that he was mentally incompetent and asked for a stay of the habeas case. A federal district judge denied this request, ruling that since all of Gonzales' legal claims were based on the state court record or were legal in nature, his cooperation was not necessary. However, the 9th Circuit Court disagreed, ruling that the habeas case could benefit from Gonzales's participation and stayed the habeas case until such time as Gonzales is mentally competent to proceed.

In the second case, Sean Carter was convicted of the 1997 rape and murder of his 68 year-old adoptive grandmother and given a death sentence. After all of his appeals failed in Arizona state courts, he began a federal habeas challenge, claiming that his lawyer had been deficient in failing adequately to raise the issue of his mental competence. His habeas challenge was denied in the federal district court, but granted by 6th Circuit Court, which ruled that the habeas petition should be delayed until he had regained his competency.

In these cases, the 6th and 9th Circuit Courts based their rulings on the 1967 case of *Rees v. Peyton*, in which the Supreme Court indefinitely stayed the habeas petition (and therefore, the execution) of a Virginia death row inmate who was found to be mentally incompetent. The 9th Circuit also based its ruling on the federal right-to-counsel law for state inmates facing death sentences and pursuing habeas, concluding that an mentally incompetent defendant can not sufficiently avail himself of his right to counsel.

Did the Supreme Court agree with the 6th and 9th Circuits?

- Yes, the Supreme Court affirmed, ruling that mental incompetence is a ground for an indefinite habeas stay.
- No, the Supreme Court reversed, ruling that mental competence is not required for habeas challenges to proceed.

Vote Spread: _____

Points: _____

Total: _____

CASE #4: FISHER v. UNIVERSITY OF TEXAS AT AUSTIN

(Affirmative Action; Equal Protection)

Hearing Date: October 10, 2012

Opinion Date: June 24, 2013

The University of Texas at Austin admits undergraduate students using the following process: Under its Ten Percent Plan, any Texas student who finishes in the top 10% of his/her high school graduating class is automatically admitted into the university. This accounts for 85% of its annual admissions. Students who do not qualify for admission under the Ten Percent Plan may still be admitted to the college and are judged on a number of criteria, one of which is race.

In 2007, Abigail Noel Fisher, a young white woman from Sugarland, Texas, applied to the college. She did not qualify under the Ten Percent Plan and was subsequently denied admission. In response, Fisher filed a lawsuit in federal court claiming that she had been discriminated against on the basis of her race because minority students with less impressive credentials had been admitted instead of her.

The district court denied Fisher's claim citing the Supreme Court's 2003 decision in *Grutter v. Bollinger*. In *Grutter*, the Court affirmed the University of Michigan Law School's admissions program, which also included race as one of many factors to be considered, because it is a "narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body." The 5th Circuit Court of Appeals affirmed this ruling.

On appeal, Fisher argues that the Ten Percent Plan has already resulted in a "critical mass" of diversity at the college and therefore, using race as a factor with respect to the remaining applicant pool is impermissible.

Did the Supreme Court agree with the 5th Circuit?

- Yes, the Supreme Court affirmed, concluding that the University of Texas at Austin may continue to use race as a factor in admissions.
- No, the Supreme Court reversed, ruling that once a critical mass of diversity has been achieved, race may no longer be considered.

Vote Spread: _____

Points: _____

Total: _____

CASE #5: KIRRTSAENG v. JOHN WILEY & SONS, INC.

(Copyright; First Sale Doctrine)

Hearing Date: October 29, 2012

Opinion Date: March 19, 2013

In 2007, Supap Kirtsaeng, a Thai national, came to the U.S. to study at Cornell and U.S.C. To subsidize his educational expenses, he resold textbooks purchased by his family at bookstores in Thailand. As the books were much cheaper in Thailand, he could sell them in the U.S. at a much higher price through commercial websites like eBay and net a profit. In fact, over a two-year period, Kirtsaeng earned about \$100,000 from such resales.

Eventually, one of the publishers, John Wiley & Sons, Inc., became aware of Kirtsaeng's activities and sued him for copyright infringement. Kirtsaeng defended this action by claiming the right to resale these works under the "first sale doctrine," as codified by 17 U.S.C. 109(a), which reads in part:

“(a) Notwithstanding the provisions of section 106(3), the owner of a particular copy or phonorecord lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord.”

However, the district court concluded that the first sale doctrine did not apply in this case because the books in question were not "lawfully made under this title" because books manufactured in Thailand are not subject to U.S. copyright law. In doing so, it awarded Wiley \$600,000 in damages. The 2nd Circuit affirmed this decision.

Did the Supreme Court agree with the 2nd Circuit?

- Yes, the Supreme Court affirmed, ruling that the first sale doctrine only applies to works manufactured domestically.
- No, the Supreme Court reversed, ruling that first sale doctrine applies to all works regardless of where they are made.

Vote Spread: _____

Points: _____

Total: _____

CASE #6: FLORIDA v. JARDINES

(Fourth Amendment; Drug-sniffing Dogs)

Hearing Date: October 31, 2012

Opinion Date: March 26, 2013

On November 3, 2006, the Miami-Dade Police Department received an unverified "crime stoppers" tip that the home of Joelis Jardines was being used to grow marijuana. One month later, a detective and his drug detection dog, Franky, approached the residence. After circling for a few minutes, Franky sat down, near the front door. That indicated to his police handler that the dog had detected an odor of marijuana coming from under the front door. The detective went up to the front door for the first time, and smelled marijuana. He also observed that the air conditioning unit had been running constantly for fifteen minutes or so, without ever switching off, something that often occurs in hydroponics labs where marijuana growers use high-intensity light bulbs to cultivate the plants.

The detective prepared an affidavit and applied for a search warrant, which was issued. A search was then conducted, confirming that marijuana was indeed being grown inside the home. The defendant was arrested. However, at trial, the defendant moved to suppress the evidence as the result of an unlawful search under the Fourth Amendment. After an evidentiary hearing, the trial judge agreed and suppressed the evidence.

Florida appealed this ruling to the state district court, which reserved. In doing so, it concluded that the use of a drug-sniffing dog to detect drugs from *outside* of the home was not a "search" under the Fourth Amendment.

However, the Florida Supreme Court disagreed, once again suppressing the evidence. In its ruling, the state high court cited the Supreme Court's 2001 decision in *Kyllo v. U.S.* In *Kyllo*, the high court ruled that it was unconstitutional for police to use a heat-sensing device aimed at the outside walls of a house to detect the use of high-intensity lamps. The Florida Supreme Court concluded that using a drug-sniffing dog to explore the details of Jardine's home was similarly unconstitutional.

Did the Supreme Court agree with the Florida Supreme Court?

- Yes, the Supreme Court affirmed, ruling that drug-sniffing dogs can not be used to detect drugs inside a citizen's home in the absence of a search warrant.
- No, the Supreme Court reversed, ruling that the use of a drug-sniffing dog outside of a home is not a "search" under the Fourth Amendment.

Vote Spread: _____

Points: _____

Total: _____

CASE #7: FLORIDA v. HARRIS

(Fourth Amendment; Drug-sniffing Dogs)

Hearing Date: October 31, 2012

Opinion Date: February 19, 2013

On June 24, 2006, a Liberty County sheriff and his drug-detection dog, Aldo, were on patrol. The officer conducted a traffic stop of Clayton Harris' truck after noticing that Harris' tag was expired. Upon approaching the truck, the officer noticed that Harris was shaking, breathing rapidly, and could not sit still. He also noticed an open beer can in the cup holder. The officer then asked for consent to search the truck. Harris refused. The officer then deployed Aldo, who sniffed around the exterior of the truck and alerted the officer to the door handle of the driver's side of the car.

The officer then searched the car, discovering 200 pseudoephedrine pills under the driver's seat as well as other paraphernalia used in the production of methamphetamine. Harris was arrested and charged with intent to distribute meth.

At trial, Harris filed a motion to suppress the evidence because Aldo's detection of drugs was not enough, in and of itself, to establish probable cause for the search of the vehicle unless the state also introduced evidence demonstrating the dog's reliability. However, the trial judge denied the motion, prompting Harris to enter a plea of no contest, reserving the right to appeal the denial of the motion. He was sentenced to 24 months incarceration and 5 years of probation. The state district court affirmed the lower court.

On appeal, the Florida Supreme Court reversed, concluding that the state has the burden of establishing the dog's reliability. In doing so, it set forth a very detailed list of supporting evidence that must be presented by the state, including but not limited to training and certification records and field performance reviews.

Did the Supreme Court agree with Florida Supreme Court?

- Yes, the Supreme Court affirmed, ruling that the state must produce the evidence required by the Florida Supreme Court to establish probable cause.
- No, the Supreme Court reversed, ruling that the state must only demonstrate that it is reasonably prudent to trust the dog's reliability.

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CASE #8: EVANS v. MICHIGAN

(Double Jeopardy; Eighth Amendment)

Hearing Date: November 6, 2012

Opinion Date: February 20, 2013

On September 22, 2008, two Detroit police officers were on patrol when they observed a house on fire. After hearing an explosion at the burning house, they observed Lamar Evans running away from the side of the house with a gasoline can. One officer got out of the patrol car and chased Evans on foot, eventually catching him and detaining him. Evans was arrested and later, tried for “burning other real property” for starting fire in a vacant house.

At the close of the prosecution’s case, Evans’ lawyer moved for a directed verdict, arguing that the prosecution had failed to prove an element of this particular crime -- that the burned property was not a dwelling house. As the property in question was clearly a dwelling house (even if a vacant one at the time of the fire), the defendant should be acquitted as a matter of law. Despite the prosecution’s strenuous objections, the trial judge granted the defense’s motion and acquitted Evans.

On appeal, the state was able to demonstrate that the trial judge had clearly misread the statute and had added an extraneous element to the crime. Evans argued that notwithstanding the trial judge’s error, he could not be retried under the Double Jeopardy clauses of the state and federal constitutions. The Michigan Court of Appeals disagreed with Evans, ruling that a directed verdict on the basis of an error of law does not constitute an acquittal for the purposes of double jeopardy and therefore, retrial was not barred. The Michigan Supreme Court affirmed.

Did the Supreme Court agree with the Michigan Supreme Court?

- Yes, the Supreme Court affirmed, ruling that this kind of procedural error is not an acquittal for double jeopardy purposes.
- No, the Supreme Court reversed, ruling that Evans had been acquitted for double jeopardy purposes and can not be tried again.

Vote Spread: _____

Points: _____

Total: _____

CASE #9: VANCE v. BALL STATE UNIVERSITY

(Title VII; Employment Discrimination)

Hearing Date: November 26, 2012

Opinion Date: June 24, 2013

In 1989, Maetta Vance began working in Ball State University's dining and catering department. Over the years, she gained several promotions and some modest pay raises. She was the only African-American in the department. However, beginning in 2001, things started to change as her co-workers began harassing her with repeated racial epithets and, at times, threatening words or actions. Finally, in 2005, Vance complained to the university, which began an investigation and warned other employees that racial discrimination would not be tolerated. As a result of this investigation, one employee was disciplined for using the "N-word" and bragging about her ties to the Ku Klux Klan.

Nevertheless, according to Vance, the slurs and threats continued. Shortly thereafter, she filed a charge with the EEOC under Title VII alleging race, gender and age discrimination. Finally, in October 2006, Vance filed a lawsuit in federal district court alleging that she was being subjected to a hostile work environment.

The district court dismissed her case. While an employer is held strictly liable for a hostile work environment created by a supervisor, it is only liable for a hostile work environment created by co-workers if the employer has been negligent either in discovering or remedying the harassment. The district court concluded that if any harassment had occurred, it had been conducted by Vance's co-workers and that the university had not been negligent in its handling of her complaints. As a result, the university was not liable for the hostile work environment.

On appeal, Vance argued that one of her tormentors was, in fact, her supervisor because she assigned Vance various tasks throughout the day. Therefore, Ball State should be held strictly liable. However, the 7th Circuit Court of Appeals disagreed. It ruled that the definition of "supervisor" is limited to those who have the power to hire, fire, discipline, promote, or transfer another worker. In doing so, it affirmed the lower court dismissal.

Did the Supreme Court agree with the 7th Circuit?

- Yes, the Supreme Court affirmed, ruling that supervisors are only those who have the power to hire, fire, discipline or promote.
- No, the Supreme Court reversed, expanding the definition of supervisor to include those who assign tasks as well.

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CASE #10: MARACICH v. SPEARS

(Driver's Privacy Protection Act)

Hearing Date: January 9, 2013

Opinion Date: June 17, 2013

In 2006, a group of South Carolina lawyers (the "Original Plaintiffs' Lawyers") filed a putative class action lawsuit against hundreds of state car dealerships, alleging that they had charged unlawful fees to customers. In the course of the case, they obtained from the South Carolina DMV the names and contact information of thousands of other state residents who had also paid the challenged fee. They then wrote to these consumers, seeking to add them as plaintiffs in the lawsuit.

Feeling that turnabout is fair play, one of the lawyers for the car dealers rounded up some consumer clients of his own and sued the Original Plaintiffs' Lawyers for more than \$200 million, alleging that their solicitation of clients violated the federal Driver's Privacy Protection Act (the "DPPA"), which generally prohibits the use of any such information that is obtained from the DMV.

In response to this lawsuit, the Original Plaintiffs' Lawyers argued that their use of this data was permissible under the DPPA, which sets forth several permissible uses, including:

"(4) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court."

The district court agreed with the Original Plaintiffs' Lawyers and dismissed the case. On appeal, the plaintiff's argued that this "litigation exception" to the DPPA should only apply to activities that are part of the actual litigation process and not the solicitation of clients. However, the 4th Circuit Court of Appeals disagreed and affirmed the dismissal of the lawsuit.

Did the Supreme Court agree with the 4th Circuit?

- Yes, the Supreme Court affirmed, ruling that client solicitations qualify for the litigation exception to the DPPA.
- No, the Supreme Court reversed, ruling that the litigation exception is limited to actions taken as part of the actual resolution of a lawsuit.

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Points: _____

Total: _____

CASE #11: BOYER v. LOUISIANA
(Sixth Amendment; Speedy Trials)
Hearing Date: January 14, 2013
Opinion Date: April 29, 2013

Jonathan Boyer was indicted in 2002 for capital murder. Although he had one court-appointed lawyer, Louisiana law required two lawyers for a death penalty prosecution. For five years, the state was unable to acquire funding for this second lawyer, at which point, they reduced the charges to second-degree (non-capital) murder in order to avoid the second counsel requirement. Finally, in 2009, Boyer was tried and convicted of second-degree murder and sentenced to life in prison.

In 2005, Boyer filed a motion to quash his indictment based on the denial of his Sixth Amendment right to a speedy trial. The trial court denied this motion, ruling that the delay was not caused by the D.A.'s office but rather by the state's failure to provide funding for the second lawyer. By a vote of two to one, the intermediate state appellate court affirmed the trial court.

Did the Supreme Court agree with the Louisiana appellate court?

- Yes, the Supreme Court affirmed, ruling that a delay caused by a lack of funding will not be counted against the state for speedy trial purposes.
- No, the Supreme Court reversed, ruling that such a delay will be counted against the state.

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Total: _____

CASE #12: MARYLAND v. KING

(Fourth Amendment; DNA Sampling)

Hearing Date: February 26, 2013

Opinion Date: June 3, 2013

On April 10, 2009, Alonzo Jay King, Jr., was arrested for pointing a shotgun at a group of individuals. After he was arrested, police took a sample of his DNA, as authorized by a state law permitting the police to take a DNA sample from every individual accused of a serious crime.

Four months later, King's DNA was matched with the DNA of the perpetrator of a 2003 sexual assault. As a result, King was charged with first-degree rape and other crimes. At trial, King sought to block the evidence of the DNA match, contending that taking his DNA after his initial arrest was an unreasonable "search" under the Fourth Amendment. Nevertheless, the judge allowed the DNA evidence to be introduced at trial. King was found guilty of first-degree rape and sentenced to life in prison without parole.

However, on appeal, the Maryland Court of Appeals reversed the trial court because King had only been arrested (as opposed to convicted) at the time of the DNA sampling. As a result, it voided King's conviction.

Did the Supreme Court agree with the Maryland Court of Appeals

- Yes, the Supreme Court affirmed, ruling that taking DNA samples from those merely *accused* of crime is an unreasonable search under the Fourth Amendment.
- No, the Supreme Court reversed, ruling that, DNA sampling of arrestees is permissible.

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CASE #13: SHELBY COUNTY v. HOLDER

(Voting Rights Act; Pre-Clearance)

Hearing Date: February 27, 2013

Opinion Date: June 25, 2013

In 1965, Congress passed the Voting Rights Act (the “VRA”) to counter efforts by states and local governments, especially in the South, to prevent blacks from voting. Section 5 of the VRA imposes a “preclearance” requirement. It prohibits specified jurisdictions (mostly, in the southern states) from changing their election procedures unless they first receive permission from either a special three-judge panel of a federal district court in Washington, D.C., or the Department of Justice. In 2006, Congress voted to extend this preclearance requirement through the year 2031.

Shelby County, Alabama is one of the covered jurisdictions under Section 5. In 2010, it filed a lawsuit in federal court challenging the validity of the preclearance requirement. It argued that current burdens of Section 5 are not justified by the current need for it. Southern states should no longer be targeted for special treatment as most of the discriminatory practices of the past have been remedied. And even if some isolated problems do remain, there are less draconian remedies to combat them, such as filing a lawsuit under another provision of the VRA to challenge the discriminatory practice or procedure.

The federal district court and the D.C. Circuit disagreed, upholding the validity of Section 5 of the VRA.

Did the Supreme Court agree with the D.C. Circuit?

- Yes, the Supreme Court affirmed, upholding the validity of the Section 5 of the VRA.
- No, the Supreme Court reversed, ruling that the preclearance requirement is no longer necessary.

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CASE #14: HOLLINGSWORTH v. PERRY

(Equal Protection; Gay Marriage; Prop 8)

Hearing Date: March 26, 2013

Opinion Date: June 26, 2013

In 2000, the voters of California passed Proposition 22, which added the following language to the California Family Code: “Only marriage between a man and a woman is valid or recognized in California.” Almost immediately, the law was challenged in the courts. In May 2008, the California Supreme Court struck down Proposition 22 as a violation of the right to equal protection under the law guaranteed by the state constitution.

In response, the proponents of the original measure put Proposition 8 on the ballot in the 2008 election. The language of Proposition 8 was identical to that of Proposition 22. However, Proposition 8 amended the state constitution as opposed to state statute, giving it supremacy over the May ruling by the state supreme court. Proposition 8 passed by a narrow margin and was immediately challenged in federal court.

In August 2010, a federal district court judge struck down Proposition 8 as a violation of the federal constitution’s guarantees of Equal Protection and Due Process. In May 2012, a three-judge panel of the Ninth Circuit Court of Appeals affirmed the lower court in a 2-1 decision.

Did the Supreme Court agree with the 9th Circuit?

- Yes, the Supreme Court affirmed, striking down California’s Proposition 8 as unconstitutional.
- No, the Supreme Court reversed, ruling that it is constitutionally permissible for a state to restrict marriage to opposite-gender couples.

Vote Spread: _____

Points: _____

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CASE #15: U.S. v. WINDSOR
(Equal Protection; Gay Marriage; DOMA)
Hearing Date: March 27, 2013
Opinion Date: June 26, 2013

In 1996, Congress passed the Defense of Marriage Act (“DOMA”), which allows states to only recognize opposite-gender marriages and restricts federal marriage benefits to such marriages. In recent years, DOMA has been under constant attack in the courts and has been found unconstitutional in eight cases. In this case, the surviving spouse in a lesbian marriage sued the federal government to recoup the additional estate tax payments required because her marriage was not recognized for federal tax purposes under DOMA.

On June 6, 2012, a federal district judge declared DOMA unconstitutional under a rational basis review and ordered the requested tax refund be paid to Windsor. On October 18, 2012, the 2nd Circuit Court of Appeals upheld the lower court's decision, but this time, under the intermediate scrutiny standard of review.

Did the Supreme Court agree with the 2nd Circuit?

- Yes, the Supreme Court affirmed, striking down DOMA as unconstitutional.
- No, the Supreme Court reversed, ruling that DOMA is valid under the federal constitution.

Vote Spread: _____

Points: _____

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**CASE #16: ASSOCIATION FOR MOLECULAR PATHOLOGY v.
MYRIAD GENETICS**

(Patents; Genes)

Hearing Date: April 15, 2013

Opinion Date: June 13, 2013

The federal Patent Act grants a limited-time monopoly to an inventor for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement” of any of those inventions. Myriad Genetics has obtained patents on isolated forms of two genes -- BRCA1 and BRCA2 – that help doctors determine a patient’s risk of breast cancer and ovarian cancer.

Several groups challenged the patentability of BRCA1 and BRCA2 in a lawsuit brought in federal district court against Myriad. The challengers claimed that Myriad’s claims are no more than an attempt to get a monopoly over natural phenomena. Furthermore, they contended that Myriad’s claims were so broad that they included “every single natural variation of the [two] genes, including those that have not yet been isolated.” A federal district court agreed and invalidated Myriad’s patents.

On appeal to the Federal Circuit, Myriad argued that the process of isolating the DNA molecules in the DNA embodied in the two genes is a “product of human ingenuity” that is unique, with a distinctive name, character, and use. The Federal Circuit agreed and reversed the lower court ruling.

Did the Supreme Court agree with the Federal Circuit?

- Yes, the Supreme Court affirmed, ruling that genes are patentable.
- No, the Supreme Court reversed, ruling that genes are not patentable.

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Total: _____

CASE #17: SALINAS v. TEXAS

(Fifth Amendment; Right to Remain Silent)

Hearing Date: April 17, 2013

Opinion Date: June 17, 2013

In December 1992, the Garza brothers were murdered in a Houston apartment. At the scene, officers found discarded shotgun shell casings. After interviewing neighbors, the police began to suspect that Genovevo Salinas might be involved and went to his house, where Salinas' father turned over a shotgun. Salinas then *voluntarily* accompanied the officers to the police station to take fingerprints so that he could be "eliminated as a suspect."

At the station, the officers questioned Salinas about others at the party, and he answered those questions. However, when asked if the shotgun retrieved at his house would match the shell casings at the crime scene, Salinas looked down and would not answer. Notwithstanding, the police delayed filing charges at that time and only later charged Salinas with two counts of murder. However, by then, Salinas had left town and was not found until 14 years later, living under a new name elsewhere in Texas.

At the trial, prosecutors made mention of Salinas's refusal to answer the question about what the ballistics test would show. The defense objected, arguing that making mention of Salinas silence violated his constitutional right against self-incrimination under the Fifth Amendment. The judge rejected this protest. In closing arguments, the prosecutor argued that an innocent person would have protested that the gun was not his, and that he was not at the scene. The jury convicted Salinas, and he was sentenced to 20 years in prison.

On appeal, the Texas Court of Criminal Appeals rejected Salinas' contention that mention of his silence in the police interview constituted a violation of his right against self-incrimination. This decision is in line with decisions handed down in some jurisdictions, yet in opposition to those delivered in other jurisdictions.

Did the Supreme Court agree with the Texas Court of Criminal Appeals?

- Yes, the Supreme Court affirmed, ruling that prosecutors may make mention of a defendant's silence in a pre-arrest interview.
- No, the Supreme Court reversed, ruling that making mention of a defendant's silence in this case is unconstitutional.

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Points: _____

Total: _____