

Study Guide: The Judiciary

1. After reading Hamilton's *Federalist No. 78*, summarize what he says about the strength of the judiciary and the relationship between the judicial and legislative branches. Why is it so important that the judicial branch be independent? How is it best to maintain the Judiciary's independence?
2. Explain what the text says about why the judicial nomination process has changed since 1985.
3. Define judicial review. Make sure you memorize the case, *Marbury v. Madison*, and can explain the process.
4. Summarize the two approaches to using the Constitution to decide case law.
5. The book discusses three main stages in the evolution of today's Supreme Court. Give brief generalizations that summarize each of these three stages.
6. Summarize the impact of the Warren, Burger, and Rehnquist courts.
7. Define: district court, courts of appeals, senatorial courtesy, blue slips, and litmus tests. Explain why litmus tests have grown in importance.
8. What does it mean to say that our system is a dual court system? Explain how our dual court system works.
9. Explain the path that a case takes to get to the Supreme Court. Define writ of *certiorari* and summarize when the Supreme Court is likely to grant cert.
10. List and understand the reasons why the modern selection process for justices has changed.
11. You will need a comprehensive answer for this question. After having read about Judicial Selection and the nominations and confirmations of recent Supreme Court nominees, do the following:
 - a) Summarize the role of politics and interest groups in judicial nominations.
 - b) Compare the confirmation battles of the justices presently on the Court.
 - c) Are there differences over time in what has happened during the confirmation battles?
 - d) Are there differences in the how the nominations proceeded given the party of the president making the nomination?
 - e) Give specific examples.
12. Summarize rules governing standing.
13. Explain what a class action suit is. What are the pros and cons of having class action suits?
14. Explain how the Supreme Court makes policy and the relationship of the Supreme Court with public opinion.
15. Discuss the history of tension between the Supreme Court and the presidency.
16. Define brief, *amicus curiae*, Solicitor General, *per curiam* opinion, opinion of the Court, concurring opinion, dissenting opinion.
17. Define *stare decisis*. Bring 3 cases to class from the Civil Rights and Liberties unit when the Supreme Court overturned itself.
18. The book discusses four indicators/measures of how courts have become more powerful. Explain.
19. What arguments does the book present in favor of and against judicial activism?
20. What explanations does the book give for why we have activist courts?
21. List and explain the checks on judicial power from both the other branches of government and public opinion.

Judicial Branch Terms to Know

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|---------------------------|-------------------------|-----------------------|
| 1. Judicial review | 19. Clarence Thomas | 37. Standing |
| 2. Strict constructionist | 20. David Souter | 38. Class action suit |
| 3. Judicial activist | 21. Ruth Bader Ginsburg | 39. Law clerks |

4. Federalist No. 78, Brutus essays	22. Sonia Sotomayor	40. Briefs
5. <i>Marbury v. Madison</i> (1803)	23. Elena Kagan	41. <i>Amicus curiae</i>
6. John Marshall	24. Warren Court	42. Solicitor General
7. <i>McCulloch v. Maryland</i> (1819)	25. Burger Court	43. <i>per curiam</i> opinion
8. <i>Gibbons v. Ogden</i> (1824)	26. Rehnquist Court	44. Opinion of the Court
9. <i>Dred Scott v. Sanford</i> (1857)	27. Dual Court System	45. Concurring opinion
10. Court packing plan	28. Federal-question cases	46. Dissenting opinion
11. Constitutional court	29. Civil law	47. <i>Stare decisis</i>
12. District court	30. Criminal law	48. Political question
13. Courts of Appeals	31. Dual sovereignty	49. Remedy
14. Senatorial courtesy	32. Writ of <i>certiorari</i>	50. Court order
15. Blue Slips	33. <i>In forma pauperis</i>	51. Appellate jurisdiction
16. Litmus test	34. Fee shifting	52. Concurrent jurisdiction
17. Robert Bork	35. Plaintiff	53. Exclusive jurisdiction
18. Antonin Scalia	36. Defendant	54. Original jurisdiction

“Civil liberties and Public Policy”

“The Bill of Rights—Then and Now” & “Freedom of Religion”

1. Bill of Rights---
2. Civil liberties---
3. First Amendment---
4. *Baron v Baltimore*---
5. Incorporation Doctrine (selective incorporation) ---
6. *Gitlow v New York*---
7. Fourteenth Amendment---
8. Freedom of Religion/establishment/free exercise clauses---
9. *Lemon v Kurtzman*/3-pronged test---
10. *Engel v Vitale*---

“Freedom of Expression”

1. prior restraint---
2. Symbolic speech/*Texas v Johnson*---
3. *Schenck v United States*/"falsely shouting fire in a crowded theater"---
4. Smith Act, 1941---
5. *New York Times v Sullivan*---
6. "Gag orders"---
7. Shield laws---
8. *Roth v United States*---
9. *Miller v California*/classifying obscenity---
10. libel---

“Commercial Speech”

1. commercial speech---
2. Federal Communications Commission---
3. Freedom to Assemble (read "You are Judge"—Nazis march in Skokie) ---

4. Right to Associate/NAACP v Alabama---

“Defendant’s Rights”

1. probable cause---
2. search warrant/unreasonable searches & seizures---
3. exclusionary rule/Mapp v Ohio---
4. Gregg v Georgia/the death penalty---
5. Fifth Amendment/self-incrimination---
6. Miranda v Arizona---
7. Right to council/6th Amendment/Gideon v Wainwright---
8. plea bargaining---
9. Eighth Amendment/cruel & unusual punishment---

“The Right to Privacy”

1. Griswold v Connecticut/right to privacy---
2. penumbras --- (“shadows” of unstated liberties)
3. Roe v Wade/Blackmun/trimester doctrine---
4. Planned Parenthood v Casey (Pennsylvania) ---

Important Supreme Court Cases to KNOW:

- Barron v. Baltimore (1833)---
- Engel v. Vitale (1962)---
- Gideon v. Wainwright (1963)---
- Gitlow v. New York (1925)---
- Gregg v. Georgia (1976)---
- Lemon v. Kurtzman (1971)---
- Mapp v. Ohio (1961)---
- Miranda v. Arizona (1966)---
- Roe v. Wade (1973)---
- Schneck v. United States (1919)---
- Texas v. Johnson (1989)---

“Civil Rights & Public Policy”

1. civil rights---
2. Racial discrimination---
3. Gender discrimination---
4. Discrimination based on age, disability, sexual orientation---

“Racial Equality: Two Centuries of Struggle”

5. equality of opportunity---
6. equality of results---
7. Fourteenth Amendment/expansion of equality---
8. equal protection of the laws---
9. Cesar Chavez---
10. intermediate standard---
11. reasonableness standard--- “Race, the Constitution, & Public Policy”
12. Korematsu v. United States---
13. Civil War Amendments: • 13th— • 14th— • 15th—

14. Jim Crow Laws---
15. Plessey v. Ferguson---
16. NAACP---
17. Brown v. Board of Education---
18. de jure segregation---
19. de facto segregation---
20. Civil Rights Act of 1964---
21. suffrage---
22. poll taxes---
23. AIM---
24. Twenty-fourth Amendment---
25. Voting Rights Act of 1965---
26. Shaw v. Reno---
27. Regent's of the University of California v. Bakke---
28. affirmative action---
29. 30. Nineteenth Amendment---
31. coverture---
32. Seneca Falls Declaration---
33. Equal Rights Amendment (ERA)---
34. Betty Friedan/"The Feminine Mystique"---
35. American with Disabilities Act, 1990 (ADA)---
36. Title IX of the Education Act of 1972---
37. comparable worth---
38. 1964 Civil Rights Act/Sexual Harassment---
39. "graying of America"---
40. reverse discrimination---
41. Bowers v. Hardwick---
42. Mathew Shepard---

Important Supreme Court Cases to Know

1. Brown v. Board of Education (1954)
2. Dred Scott v. Sanford (1857)
3. Korematsu v. United States (1944)
4. Plessy v. Ferguson (1896)
5. Regents of the University of California v. Bakke (1978)
6. Minersville School District v. Gobitis (1940)
7. Sweatt v. Painter (1950)
8. Betts v. Brady (1942)
9. Gideon v. Wainwright (1963)