

Constitutional Law Midterm – Fall 2017 – A+ Answer

1. The federal court can hear Frederick's suit brought under the federal emancipation proclamation act with diversity jurisdiction. The constitution states diversity exists between a plaintiff and a defendant of two separate states where no one from plaintiff is a citizen of the same state as defendants. Here Frederick is a citizen of GA and his slave owner has moved to Virginia. The framers intended the federal government be an allowable channel for recourse between citizens of two different states to decrease the likelihood of state partiality. In *Prigg v. PA*, the defendant was a citizen of a slave state hired to recapture a slave in the free state of Pennsylvania and the SC found there was jurisdiction to hear the case due to diversity of citizenship. Justice Taney's concurrence in the *Prigg* case upheld the states should be allowed to recover fugitive slaves. while this case is not about fugitive slaves, it shows justice Taney's willingness to hear the case because of the existence of diversity of citizenship. The public policy behind this would be to allow citizens of diverse citizenship to seek redress in a court. seeing as how the suit in question is pursuant to a federal law passed by congress and signed into law by the president (tier 1) entitles the plaintiff to emancipation by this suit, it should be heard.
2. The federal emancipation act is constitutional. The exercise of power over commerce is an enumerated power vested in the congress. The congress has defined slave ownership as an economic activity that has a substantial effect on interstate commerce. Since we have the congress and the president working in concert on the passage of the Act scrutiny of its purpose and constitutionality should be light. Since the president has the power to veto laws he believes are unconstitutional and the laws sent by congress to the president for approval must be given the benefit of the doubt regarding constitutionality, there has been two checks on constitutionality prior to SC judicial review. This is the way the framers intended the three branches to work in balance to check the others power and minimize overreach. in *Gibbons v. Ogden*, the SC held the states have no independent control over interstate commerce. also, where state law conflicts with a valid federal statute, the state law will violate the Supremacy Clause and be deemed void. here the federal law to emancipate slaves is in direct contradiction with state law allowing slavery in Georgia (or Virginia). Further the Necessary and Proper clause in conjunction with the commerce clause would allow the fed to use convenient means to achieve a solution proportional to the problem.
3. No. The court cannot hear Kay's suit against the Maryland Act due to federal question bc no federal question exists. In *Chisolm*, it was settled that a citizen of one state could bring suit against another state but not his own. two years following the decision the 11th amendment was quickly ratified which said no citizen can sue any state. This idea has its roots in Sovereign Immunity taken from the king by "we the people" (J. Wilson). Because the states have sovereign immunity from suit by their own citizens, the case should be barred from entry to the SC.
4. Yes the Maryland emancipation act is constitutional. The state of Maryland has a general police power to make the laws as it sees fit concerning issues not enumerated to any of the three branches by the constitution. Maryland's law is not in conflict with any fed law so there is no supremacy clause issue. the states have the right to designate their own laws regarding property and that includes whether or not the state chooses to include a due process clause similar to the 5th amendment to the US Constitution. In *Baron v. Baltimore*, the plaintiff brought suit against Baltimore under the violation of the 5th amend. here the Marshall court

ruled the bill of rights is a limitation on fed power and is inapplicable to state legislation. The court cited that the const. provides limits on (listed) state govt. (art. 1, sec 10) without specifically stating the amendments applied to states. Further, the amendment too lacked words to allow the interpretation that it applied to the states. since the conflict is between the state and its citizen, the SC had no jurisdiction. The case at hand has facts strikingly similar and the SC should hold the same.

5. The Court should decide there is lack of jurisdiction and dismiss the case for the reasons stated above and for the following. just as in Ex Parte Merryman an exercise of judicial power would only serve to make the court appear weak as it lacks the power to enforce. in Ex Parte M an enforcement would surely have led to a skirmish at best and a massacre at worst for those given charge to execute the habeas corpus order. the case illustrated how naked the courts really are when a person defies an order. since in the present case the militia is absent fighting a war and could not assist in enforcement (even if we assume it a good idea), and kay has asserted he would not comply with any judgment or act to enforce, this court should refrain from exposing itself to acts that would only serve to weaken the perception of its power.