

**Constitutional Law - Midterm**

**October 3, 2017**

**2:00-3:30**

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**Instructions:**

You will have **ninety minutes** to complete the midterm examination. There is one essay question, with a 1,000-word limit. Anything you write past 1,000 words will not be read. Please use the word-count feature to check the length of each answer. You can access it by clicking Tools > Word Count. Do not use the character count feature. If you hand-write the exam, please do a manual word count.

The exam is completely open-book. You can use anything you wish, so long as it was printed *before* the distribution of this exam. Obtaining any new information from anyone or anything *after* the exam is prohibited.

**Please don't turn the page until the proctor signals that the exam has begun.**

Good luck!

**Instructions:** In November 1860, Abraham Lincoln was elected President of the United States. Over the following months, eleven states seceded from the Union. Starting in 1862, the federal government and the state of Maryland each enact a statute concerning slavery. You are a law clerk to Chief Justice Roger Taney. During a recess of the Supreme Court, you travel with Taney to his hometown of Baltimore, Maryland. One evening, several lawyers show up at Taney's home, and hand him a series of legal pleadings. Chief Justice Taney asks you to prepare a memorandum of no more than 1,000 words addressing five issues raised by the pleadings.

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Congress enacts the Emancipation Act, and President Lincoln promptly signs it into law. The statute has three sections:

**Section 1:** Whereas Congress finds that the ownership of slaves is an economic activity that has a substantial effect on interstate commerce;

**Section 2:** Whereas Congress finds that all slavery must be eliminated in any State or designated part of a State, the people whereof shall then be in rebellion against the United States;

**Section 3:** To obtain emancipation, the judicial power shall be construed to extend to any suit commenced against the owner of a slave, by that person held as a slave.

Frederick is a slave held in Georgia. His owner, Ashley, recently moved to Virginia, the capital of the Confederacy. Attorneys representing Frederick deliver to Chief Justice Taney in Baltimore pleadings seeking Frederick's freedom. The suit is brought under Section 3 of the Emancipation Act against Ashley. Ashley, through counsel, asserts that the court lacks jurisdiction, and alternatively, the Federal Emancipation Act is unconstitutional.

The federal Emancipation Act only affected slaves and their owners in territories that joined the Confederate States of America, such as Georgia and Virginia. It did not affect the slaves in the border states. Therefore, the Maryland legislature enacts, and the Governor signs into law, the Maryland Emancipation Act. The statute has four sections:

**Section 1:** Whereas the state of Maryland finds that the ownership of slaves is morally unacceptable.

**Section 2:** Whereas the state of Maryland finds that all slavery must be eliminated within its borders.

**Section 3:** Therefore, under this Act, persons held as slaves within the State of Maryland shall be then, thenceforward, and forever free.

**Section 4:** The state of Maryland shall have the appropriate power to enforce the provisions of this Act.

Key, a slave-owner in Maryland, delivers pleadings to Chief Justice Taney in Baltimore challenging the constitutionality of the Maryland Emancipation Act. Specifically, he sues the

State of Maryland, asserting that the law is unconstitutional because it amounts to a taking of property without just compensation.

The militia of Maryland, already stretched thin due to bloody battles in the Civil War, has announced that it cannot enforce the Maryland Emancipation Act. Key knows this fact, and writes in his pleading that even if the court rules against him, he will refuse to free his slaves.

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Chief Justice Taney asks you to prepare a memorandum of no more than 1,000 words addressing five issues raised by the pleadings.

1. Can a federal court hear Frederick's suit brought under the Federal Emancipation Act with diversity jurisdiction (assume the amount in controversy is satisfied)?
2. Assuming a federal court does have jurisdiction to consider Frederick's suit, is the Federal Emancipation Act constitutional?
3. Can a federal court hear Key's suit brought against the Maryland Emancipation Act with federal question jurisdiction (assume the amount in controversy is satisfied)?
4. Assuming a federal court does have jurisdiction to consider Key's suit, is the Maryland Emancipation Act constitutional?
5. Chief Justice Taney recognizes that the Maryland militia will not enforce a judgment against Key, who stated he would refuse to free his slave. What should the court do?