**Read the case briefs and answer the “Issues” questions based on the rulings in the court. Look up words you don’t know. Answer the follow up questions. Answer on the back of these pages.**

***Marbury v Madison (1803)***

**Facts**

On his last day in office, President John Adams named forty-two justices of the peace and sixteen new circuit court justices for the District of Columbia under the Organic Act. The Organic Act was an attempt by the Federalists to take control of the federal judiciary before Thomas Jefferson took office.

The commissions were signed by President Adams and sealed by acting Secretary of State John Marshall (who later became Chief Justice of the Supreme Court and author of this opinion), but they were not delivered before the expiration of Adams’s term as president. Thomas Jefferson refused to honor the commissions, claiming that they were invalid because they had not been delivered by the end of Adams’s term.

William Marbury (P) was an intended recipient of an appointment as justice of the peace. Marbury applied directly to the Supreme Court of the United States for a writ of mandamus to compel Jefferson’s Secretary of State, James Madison (D), to deliver the commissions. The Judiciary Act of 1789 had granted the Supreme Court original jurisdiction to issue writs of mandamus “…to any courts appointed, or persons holding office, under the authority of the United States.”

**Issues**

1. Does Marbury have a right to the commission?
2. Does the law grant Marbury a remedy?
3. Does the Supreme Court have the authority to review acts of Congress and determine whether they are unconstitutional and therefore void?

The order granting the commission takes effect when the Executive’s constitutional power of appointment has been exercised, and the power has been exercised when the last act required from the person possessing the power has been performed. The grant of the commission to Marbury became effective when signed by President Adams.

The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury. One of the first duties of government is to afford that protection.  
  
Where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, the individual who considers himself injured has a right to resort to the law for a remedy. The President, by signing the commission, appointed Marbury a justice of the peace in the District of Columbia. The seal of the United States, affixed thereto by the Secretary of State, is conclusive testimony [...] of the completion of the appointment [...] The Supreme Court has the authority to review acts of Congress and determine whether they are unconstitutional and therefore void.  
  
It is emphatically the duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret the rule. If two laws conflict with each other, the Court must decide on the operation of each. If courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution [...] must govern the case to which they both apply.

**Follow up**

1. Why does SCOTUS have the power of judicial review?
2. How does this establish national superiority?

***Barron v Baltimore (1833)***

**Facts:**

Barron believed that municipal street construction by the City had diverted the flow of streams which caused silt deposits in front of his warf. This made the water too shallow for boats to moor up which caused his business to cease. This is the language from the original brief:

This case was instituted by the plaintiff against the city of Baltimore to recover damages for injuries to the wharf- property of the plaintiff, arising from the acts of the corporation. Craig & Barron were owners of an extensive and highly productive wharf, in the eastern section of Baltimore, enjoying, at the period of their purchase of it, the deepest water in the harbor. The city, in the asserted exercise of its corporate authority over the harbor, the paving of streets, and regulating grades for paving, and over the health of Baltimore, diverted from their accustomed and natural course, certain streams of water which flow from the range of hills bordering the city, and diverted them purposely adapted to bend the course of the water to the wharf in question. These streams becoming very full and violent in rains, carried down with them from the hills and the soil over which they ran, large masses of sand and earth, which they deposited along, and widely in front of the wharf of the plaintiff. The alleged consequence was, that the water was rendered so shallow that it ceased to be useful for vessels of an important burden, lost its income, and became of little or no value as a wharf. This injury was asserted to have been inflicted by a series of ordinances of the corporation, between the years 1815 and 1821; and that the evil was progressive; and that it was active and increasing even at the institution of this suit in 1822

**Issue:**

1. Do the protections of 5th Amendment of the U.S. Constitution apply to the citizens against the actions of state government?

The plaintiff in error contends, that it comes within that clause in the fifth amendment to the constitution, which inhibits the taking of private property for public use, without just compensation. He insists, that this amendment being in favor of the liberty of the citizen, ought to be so construed as to restrain the legislative power of a state, as well as that of the United States. If this proposition be untrue, the court can take no jurisdiction of the cause.

The U.S. Constitution was established by the people of the U.S. for themselves, for their government, and not for the government of the individual states. Each state enacted their own constitution to provide specific limitations and restrictions on its own governments.  The powers conferred under the federal constitution were to be exercised by that government.  Any limitations granted therein are not limitation on distinct state governments.  The 5th Amendment must be understood as a general limit on the power of the general government, and not applicable to the states.  Had the framers intended such a result, they would have included that intention.

**Follow up:**

1. What does the “taking clause” of the 5th Amendment say?
2. This case establishes that the Bill of Rights does not apply to the states…why?