



The Judiciary Flashcards

Part of the AP U.S. Government collection

Overview

This resource contains a collection of 39 flashcards that will help students master key Judiciary concepts that may be covered on the AP U.S. Government exam.

These are not actual test questions, nor do they involve much “application” of knowledge. Instead, they focus on the basic factual and conceptual knowledge that students must first internalize if they are to successfully formulate logical responses to multiple-choice or essay questions on the eventual exam.

Brainscape has created this content in partnership with several AP U.S. Government teachers and tutors, as well as ex-executives from test prep publishers such as Kaplan and The Princeton Review. The material is as comprehensive as possible, while still being broken down into small bite-sized chunks that make it easy to study. We have included a variety of question formats to help students’ minds encode the knowledge as deeply as possible.

How to Use This Resource

Teachers and students can use these flashcards in a variety of creative ways. Below are a few common use cases:

1. Post this PDF on your class website, so students can download it on their own, and potentially print their own copy as a study aid (and even *cut out* individual flashcards)
2. Use these questions as inspiration for your own quiz questions
3. Use these flashcards as a “game”, where one student (or group of students) asks another student (or group) a random question, and keeps score of how well the questions are being answered
4. Encourage students to use the digital version of the flashcards (see below)

Online and Mobile Version

All of these flashcards are available to study on the Brainscape website (brainscape.com) and in our mobile app(s). Brainscape’s “smart flashcards” study system uses our unique “Confidence-Based Repetition” method, which repeats questions in a progressive pattern based on students’ personalized path of mastery. Teachers can track students’ progress and identify students who need more guidance.

Students can study a portion of Brainscape’s premium flashcards for FREE and can gain unlimited access for a small fee. Students can also use Brainscape to create & share their own supplementary flashcards (which is ALWAYS FREE).

If you are interested in a bulk class license for Brainscape’s web & mobile study system, please contact info@brainscape.com, and we can set up some time for a call.

#	Question	Answer
1	Define statutory law	<p>Statutory law is law as established by a statute passed by legislature.</p> <p>For instance, there is a statute that makes it illegal to kill the American bald eagle. One who kills an American bald eagle is guilty of violating the statute.</p>
2	Define: common law	<p>Common law refers to law made through judicial decisions, as opposed to law made by statute. In common law jurisdictions, great deference is given to previous judicial decisions that interpreted the same or similar matters.</p> <p>As an example, common law may establish whether a party has breached a contract, because there is no statute governing the issue. If there is a statute governing the issue before the court, the statute trumps common law.</p>
3	Define: civil law	<p>Civil law refers to a legal system in which the primary tenets are established and codified to which judges can then refer. Louisiana is the only state that has a civil law system.</p> <p>Civil law is distinct from common law, because in common law jurisdictions the court looks towards previous court decisions, rather than codified tenets.</p>
4	What is meant by the Latin term "stare decisis"?	<p>Stare decisis means "let the decision stand." It is the principle that judges should decide current cases by referencing past judicial decisions that dealt with similar facts, known as precedents.</p> <p>Trial courts, state and federal appellate courts, state supreme courts, and the United States Supreme Court generally respect the principle of stare decisis.</p>
5	What is meant by the legal concept of standing?	<p>Standing refers to the power of a party to file suit, and requires that the plaintiff before the court must have suffered a harm or be under threat of imminent harm. If a plaintiff does not have standing, the case must be dismissed, as there is no live case or controversy before the court.</p> <p>As an example, if A's friend B is hit by a car, B can file suit, but not A, because A has not suffered a harm.</p>

#	Question	Answer
6	What is an appeal?	An appeal is a request for a higher court to review a decision of a lower court to determine whether the decision was correct. Importantly, an appellate court cannot review a factual determination by a jury or judge, but only a decision upon a judge's legal reasoning.
7	Define: jurisdiction	Jurisdiction is the right and power to apply the law. Before a court can hear a case, it must have jurisdiction over it. In Article III, the Constitution established both the original and appellate jurisdiction of the Supreme Court.
8	How are the federal courts organized?	The Judiciary Act of 1789 basically established three levels of courts: <ol style="list-style-type: none"> 1. district courts: lowest federal courts where cases are filed and trials are held 2. circuit courts: intermediate courts between the district courts and the U.S. Supreme Court that review appeals from the decisions of the district courts 3. Supreme Court: exercises appellate jurisdiction over all federal courts, in addition to having original jurisdiction over some matters
9	How are state courts organized?	Each state court system is different. Generally, each state has trial courts in each county, an intermediate appellate court, and a supreme court, that serves as the highest appellate court. State trial courts are often divided into divisions, such as family court, probate court, and criminal court.
10	What type of state legal decisions may the U.S. Supreme Court review?	Under principles of federalism, state courts are responsible for interpreting state law, and federal courts are responsible for federal law. The U.S. Supreme Court may choose to review a decision of a state's highest court if a federal law or the Constitution is at issue.

#	Question	Answer
11	Define exclusive jurisdiction	<p>Exclusive jurisdiction refers to the types of cases that only the federal courts can hear.</p> <p>As an example, the Sherman Antitrust Act provides that the federal courts have exclusive jurisdiction to decide cases alleging violations of the Act. Thus, no case alleging a violation of the Act can be brought in a state court.</p>
12	Define: concurrent jurisdiction	<p>Concurrent jurisdiction refers to cases in which both state and federal courts may hear the same case. In some cases, both a federal and state court have the power to hear a case.</p> <p>As an example, both state courts and federal courts may hear cases regarding trademark infringement, and the plaintiff may determine in which court he seeks to file suit.</p>
13	What is diversity jurisdiction?	<p>To protect out-of-state defendants, U.S. law establishes diversity jurisdiction. The basic rule states that if none of the plaintiffs are from the same state as the defendants, the claim may be heard in federal, rather than state, court.</p> <p>In addition, the federal courts may only exercise jurisdiction when the amount in controversy exceeds \$75,000.</p>
14	Who has the power to create the lower federal courts, such as the district courts and circuit courts?	<p>Article III grants Congress the power to create inferior federal courts. Congress has used this power to establish the 13 circuit courts and the 94 district courts.</p>
15	What determines which of the Federal Circuit Courts of Appeals have jurisdiction over a case?	<p>Geographic location is the basis for jurisdiction of the Federal Circuit Courts of Appeals. For instance, the Second Circuit has jurisdiction over appeals arising from district courts in New York, Connecticut, and Vermont, while the Seventh Circuit is responsible for Illinois, Indiana, and Wisconsin.</p>

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16	The Constitution provides original jurisdiction to the Supreme Court in what matters?	Original jurisdiction refers to the power to hear a case for the first time. The Supreme Court's original jurisdiction is confined to cases involving ambassadors, ministers, and counsels, and cases in which the United States has a controversy with a state, or two states have disputes with each other.
17	Generally speaking, how does a party commence an appeal to the U.S. Supreme Court?	With rare exceptions, the Supreme Court is not compelled to hear appeals. To request that the Supreme Court do so, a party petitions the Court for a writ of certiorari. If granted, the writ compels a lower court to send the case's record for review, and the appeal commences.
18	How does the Supreme Court determine whether or not to grant a writ of certiorari?	Each petition for a writ of certiorari is voted on by the nine Supreme Court Justices. If four justices vote to grant certiorari, the Court hears the case, hence the Rule of Four. Only rarely do four justices vote in the affirmative, and only 1.1% of petitions are granted.
19	How many justices sit on the Supreme Court?	The Supreme Court has nine justices. Three justices are women (Ginsburg, Sotomayor, Kagen); one is hispanic (Sotomayor); and one is black (Thomas). Justice Scalia is the longest serving justice, having been on the Court since 1986. All of the justices attended either Harvard, Yale, or Columbia. The justices have distinct courtroom personalities. For instance, Justice Scalia makes jokes from the bench, while Justice Thomas did not make a single open court statement between 2006 and 2013.

#	Question	Answer
20	What are the three types of appellate court opinions?	<p>The three types of appellate court opinions are:</p> <ol style="list-style-type: none"> 1. majority opinions: written opinion of the majority of the court, setting out the reasons for the majority's decision 2. dissenting opinions: written opinion of those disagreeing with the majority, and their reasons for so doing 3. concurrent opinions: opinion of any judge or justice agreeing with the majority or minority opinions, but for different reasons than cited by those opinions
21	What role does the Chief Justice of the United States play?	<p>Other than presiding over impeachment hearings in the Senate, the Constitution does not establish any special powers in the office of the Chief Justice.</p> <p>By tradition, if the Chief Justice is in the majority in any case before the Court, he assigns the writing of the majority opinion. The Chief Justice also organizes hearings and guides discussion.</p> <p>Non-judicial roles for the Chief Justice include administering the Presidential Oath of Office and serving as the Chancellor of the Smithsonian Institution.</p>
22	How long do federal judges serve once appointed by the president and confirmed by the Senate?	<p>Once confirmed, judges have lifetime tenure, and serve as long as they wish. Like other federal officials, judges can only be removed through a formal impeachment process.</p> <p>Acquitted by the Senate in 1805, Samuel Chase was the only Supreme Court justice ever impeached. Eight lower-court judges have been impeached and removed, including for reasons of drunkenness and perjury.</p>
23	What is an amicus brief?	<p>An amicus brief is a legal brief filed by a party not before the Court who has information on a case. As an example, in a case involving the Environmental Protection Agency, the environmental group Greenpeace may file an amicus brief.</p> <p>The term amicus brief comes from the Latin term <i>amicus curiae</i> translated as "friend of the court."</p>

#	Question	Answer
24	What is an advisory opinion?	<p>An advisory opinion is an opinion of a court interpreting a law, but without an actual case before it requiring it to do so. The federal courts do not issue advisory opinions, deeming them to violate Article III's "case or controversy" requirement. Some state courts do so.</p> <p>The federal tradition dates to the first Chief Justice, John Jay, who denied George Washington's request for an advisory opinion.</p>
25	How are judges appointed to the federal bench?	<p>The president nominates individuals to serve as federal court judges, with the advice and consent of the Senate. In the case of Supreme Court justices, the confirmation procedure can be lengthy and contentious, but lower-court justices often have less difficult times.</p>
26	Define: litmus test	<p>A litmus test is a question asked of nominees to political or judicial office, to determine a nominee's political ideology. In judicial confirmation proceedings, common litmus tests regard abortion, the death penalty, or strict constructionism.</p>
27	What is senatorial courtesy?	<p>Senatorial courtesy refers to the customary practice of nominating district court judges who meet the approval of the senior senator of the president's political party from the state containing the district court. In the event that the president and both senators from within that circuit are from differing political parties, the courtesy is not typically extended.</p> <p>Since the circuit courts cover multiple states, the approval of individual senators is of less importance.</p>
28	What principle was codified by the 11th Amendment?	<p>The 11th Amendment codified the principle of sovereign immunity. Under the 11th Amendment, states may not be sued in federal court without their consent.</p>

#	Question	Answer
29	What is the judicial philosophy of textualism?	<p>Textualists, such as Justice Scalia, contend that it is the role of the judiciary to apply the statute as written. According to a prominent judge, the textualists looks "at the statutory structure and hear[s] the words as they would sound in the mind of a skilled, objectively reasonable user of words."</p> <p>In opposition to textualists, some judges review legislative histories or signing statements to determine the legislators' intent and then apply the statute to conform with that intent.</p>
30	Define: originalism	<p>Originalism is a form of textualism, which requires a judge to determine what the words of the Constitution or other law meant to those who enacted them.</p> <p>Originalism arises most often in constitutional jurisprudence, where judges scrutinize historical records to determine what the words meant to the people of the time.</p>
31	What is judicial activism?	<p>Judicial activism refers to decision making by judges based, at least in part, on their personal views rather than existing law. Critics of judicial activism criticize it as usurping the legislature's role in establishing law. Proponents contend that the legal interpretations must change as society changes, and therefore judges need not overly rely on previous cases.</p> <p>A frequently cited example of judicial activism was the Court's opinion in <i>Roe v. Wade</i> (1973), which established a constitutional right to an abortion in the first trimester, although no federal legislature had so decided.</p>
32	What is judicial restraint?	<p>Judicial restraint is not the precise opposite of judicial activism; rather it refers to a judicial philosophy that gives deference to <i>stare decisis</i>, and to the legislature. It holds that courts should not strike down laws unless they are obviously unconstitutional.</p> <p>An example of judicial restraint is the majority opinion in <i>NFIB v. Sebelius</i> (2012), where Justice Roberts upheld Obamacare's individual mandate as a tax, despite it being listed as a penalty in the legislation.</p>

#	Question	Answer
33	What is meant by the term "Living Constitution"?	<p>The term "Living Constitution" refers to the argument that the Constitution should not be interpreted by the terms of the past, but in light of present beliefs and trends.</p> <p>As an example, a Living Constitution advocate may contend that while in 1790 the death penalty was not prohibited by the 8th Amendment, due to changing mores, today it does constitute cruel and unusual punishment.</p> <p>Opponents of the Living Constitution concept note the dangers in judge-made law, and the availability of constitutional amendments.</p>
34	What did the case of Marbury v. Madison (1803) establish?	<p>Marbury v. Madison established the principle of judicial review.</p> <p>Marbury held that William Marbury was entitled to his appointment as Justice of the Peace for Washington D.C., but that the Judiciary Act of 1789, which gave him the right to appeal to the Supreme Court for redress, was unconstitutional, and therefore Marbury's request was denied.</p>
35	Although the Supreme Court had held a federal law unconstitutional in Marbury v. Madison, in what case did the Supreme Court establish the principle that it could hold a state law unconstitutional?	<p>Fletcher v. Peck (1810)</p> <p>In Fletcher, the Georgia state legislature had enacted a law that voided some land sales which a previous legislature had made and which were induced by bribery.</p> <p>The Marshall Court held that the Georgia legislature's law was a violation of the U.S. Constitution.</p>
36	According to the Sixth Amendment, where are criminal trials to be held?	The Sixth Amendment's "vicinage" clause requires that trials be held in the district in which the crime occurred.
37	The Sixth Amendment's Confrontation Clause allows for what right?	The Confrontation Clause allows those accused of crimes to "confront" (cross-examine) those who are witnesses against them.

#	Question	Answer
38	The Seventh Amendment guarantees the right to a _____ in all civil trials where the amount in controversy is in excess of \$20.	jury
39	The Seventh Amendment prohibits appellate courts from taking what action?	Under the Seventh Amendment, appellate courts are barred from overturning any factual determination reached by the jury, unless those determinations are clearly erroneous.