Applying Precedents Activity

Comparison case: *Gibbons v. Ogden* (1824)

Precedent case: *McCulloch v. Maryland* (1819)

What you need to know before you begin: When the Supreme Court decides a case, it clarifies the law and serves as guidance for how future cases should be decided. Before the Supreme Court makes a decision, it always looks to precedents—past Supreme Court decisions about the same topic—to help make the decision. A principle called *stare decisis* (literally "let the decision stand") requires that the precedent be followed. If the case being decided is legally identical to a past decision, then the precedent is considered binding and the Supreme Court must decide the matter the same way. However, cases that make it to the Supreme Court are typically not completely identical to past cases, and justices must consider the similarities and differences when deciding a case.

The process of comparing past decisions to new cases is called applying precedent. Lawyers often argue for their side by showing how previous decisions would support the Supreme Court deciding in their favor. This might mean showing how a previous decision that supports their side is analogous (similar) to the case at hand. It can also involve showing that a previous decision that does not support their side is distinguishable (different) from the case they are arguing.

How it's done: In this exercise, you will analyze a precedent and compare it to *Gibbons v. Ogden*. You have been provided with information about two cases: **1)** the background, facts, issue, and constitutional provisions/precedents of the comparison case (*Gibbons v. Ogden*) and **2)** a summary of a precedent case (*McCulloch v. Maryland)* within the materials for *Gibbons*.

After reading about the cases, you will look for evidence that *Gibbons v. Ogden* is analogous (similar) to the precedent case and evidence that the cases are distinguished (different) from each other. After considering both possibilities, you must decide whether the precedent is analogous enough to command the same outcome in the comparison case, or whether the comparison case is different enough to distinguish itself from the precedent.

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1. Using factual and legal similarities, show how *Gibbons v. Ogden* is **analogous** (similar) to the precedent case *(McCulloch v. Maryland)*:

2. Show how *Gibbons v. Ogden* is **distinguished** (different) from the precedent case *(McCulloch v. Maryland)* by pointing out factual and legal differences:

3. We found that *Gibbons v. Ogden* is ___________________ (**analogous to** or **distinguished from**) the precedent case *(McCulloch v. Maryland)* because (choose the most convincing similarities or differences from questions 1 and 2):

4. Based on the application of the precedent, how should *Gibbons v. Ogden* be decided?

   _____ Decision for Gibbons

   _____ Decision for Ogden

Comparison Case: *Gibbons v. Ogden* (1824)

Argued: February 5–9, 1824

Decided: March 2, 1824

Background

Before the current United States Constitution, the states were governed by the **Articles of Confederation**. The system of government created by the Articles of Confederation was short-lived in part because the federal government had very little power compared to the states. A major problem was that the states could pass laws that controlled **commerce**, or economic activity, outside of their borders. Many states did precisely that, creating self-serving and protectionist trade barriers between and among the states. This made trade between the states difficult and ineffective. The weak national government under the Articles of Confederation had no power to regulate interstate commerce or nullify protectionist state measures.

When the Constitution was written to replace the Articles of Confederation, the Framers were careful to make sure that this problem would not continue under the new system. To prevent this, they included the **Commerce Clause** in Article I, Section 8. This gives Congress the power to create laws governing interstate (and foreign) commerce. **Interstate commerce** refers to economic activity involving multiple states or their citizens. This differs from **intrastate commerce**, which occurs entirely within the borders of a single state. The Framers hoped that the Commerce Clause would strengthen the U.S. economy by allowing states to trade more efficiently.

In the early 19th century, the Constitution was still new and was largely untested. There were a lot of questions about which powers it gave to the three branches of the government, as well as to the states. Article VI, Clause 2 of the Constitution, known as the **Supremacy Clause**, says that when a state law conflicts with a federal law, the federal law prevails over the state law.

Facts

In 1808, the state of New York granted a license to Robert Livingston and Robert Fulton that gave them the sole right to operate boats on New York waterways for 30 years. That meant that no one other than Livingston, Fulton, and those who worked for them could operate boats in New York waters.

In 1815, Aaron Ogden bought a **franchise** from Livingston and Fulton. In selling a franchise, Livingston and Fulton allowed Ogden to operate boats in New York under their name in exchange for a fee and a percentage of his profits. Ogden's business made money by carrying goods between New York and New Jersey.

Thomas Gibbons, Ogden's former business partner, wanted to compete with Ogden. Gibbons obtained a license from the federal government, based on an act of Congress, to operate his boats in the same waters. His license allowed him to transport individuals between New York and New

Jersey. Ogden sued in a New York state court to stop Gibbons from using that route, arguing that the federal government lacked authority to interfere with New York state's control over access to its waterways. By contrast, Gibbons argued that transportation between New York and New Jersey met the definition of interstate commerce and should, therefore, be governed by the federal government, not New York. The New York state court found in favor of Ogden (who had the New York state license) and prohibited Gibbons (who had the federal license) from operating his boats on that route. Gibbons asked the Supreme Court of the United States to hear his case, and it agreed.

Issue

Does the Commerce Clause of the U.S. Constitution give Congress the power to regulate interstate navigation and to override any state laws that interfere with the interstate flow of persons and goods?

Constitutional Provisions and Supreme Court Precedents

- **Commerce Clause, Article I, Section 8 of the U.S. Constitution**

  Article I, Section 8 gives Congress the power "To regulate Commerce…among the several states."

- **Supremacy Clause, Article VI, Clause 2 of the U.S. Constitution**

  "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding."

- ***Marbury v. Madison* (1803)**

  Marbury v. Madison established the concept of **judicial review**, giving the federal courts the power to determine whether federal and state laws and executive orders are constitutional. If a court decides that a law conflicts with the U.S. Constitution, the law is said to be unconstitutional and will be struck down. *Marbury* greatly expanded the Supreme Court's powers, as it held that the Constitution is the supreme law of the land and that the Supreme Court has the final say in interpreting it.

- ***McCulloch v. Maryland* (1819)**

  This landmark case reaffirmed the supremacy of the U.S. Constitution and federal law. In particular it recognized the ability of the federal government to exercise implied powers, greatly expanding its authority to act for the general welfare of the nation. In their decision, the justices declared that "the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective states and cannot be controlled by them." Therefore, Maryland was not allowed to tax a branch of the national bank because it burdened the function of constitutional laws passed by Congress.