**1) *Plessy v. Ferguson* (1896) see textbook p. 441**

* **BACKGROUND OF THE CASE**

In 1890 a law called the Separate Car Act in Louisiana ordered railroads to “provide equal but separate accommodations for the white and colored races.” Racial segregation laws like this were commonly referred to as “Jim Crow” laws. Under this particular law railway personnel were responsible for assigning people to separate railroad cars according to their race. Violating the law and sitting on the wrong car carried a fine of $20 or 25 days in jail.

Homer Plessy, who was one-eighth black (which under Louisiana law technically made him a ‘colored’ person), took a seat on a car reserved for white people and when ordered by a conductor to move from this car, he refused. He was arrested and ordered imprisoned by John Ferguson, a local Louisiana judge. The Louisiana Supreme Court found Plessy’s arrest to be valid and upheld the Separate Car Act. Wanting to challenge the constitutionality of Jim Crow laws, Plessy then appealed to the United States Supreme Court.

* **CONSTITUTIONAL ISSUE**

Plessy’s appeal claimed the Louisiana law violated the “Equal Protection Clause” of the 14th

Amendment which prohibits a state from denying “to any person within its jurisdiction the equal protection of the laws.”

* **THE COURT’S DECISION**

The Court ruled 7-1 (with one justice absent) in favor of Ferguson and the state of Louisiana. Justice Henry Brown wrote the majority opinion in which he said laws requiring segregation “do not necessarily imply the inferiority of either race to the other, and they have been generally recognized as within the competency of the state legislatures in the exercise of their police power.” Brown concluded that a state is free to take into account “established usages, customs, and traditions of the people.” He rejected the notion that “social prejudices may be overcome by legislation,” stating instead that “a legal distinction between the white and colored races has no tendency to destroy the legal equality of the two races.”

The reasoning accepted by the Court in this case has generally been referred to as the “separate-but-equal” doctrine which held that legally separating the races from one another in public places was not a denial of equal protection under the Constitution as long as both got accommodated. In other words, as long as the railroad was willing to provide a seat for Plessy somewhere on the train, it was not unconstitutional to require it to be on a car separate from people of a different race. Under this doctrine, Jim Crow laws were allowed to stand for more than another half century beyond the Plessy case.

**2) *Brown v. Board of Education Topeka, Kansas* (1954) see textbook p. 441**

* **BACKGROUND OF THE CASE**

Prior to 1954, in communities in many states around the country black children were by law forbidden from attending segregated white public schools. Linda Brown was one of these black students in Topeka, Kansas. The primary precedent case in this area of law was *Plessy v. Ferguson* (1896) which held that ‘separate but equal’ public facilities did not violate the Constitution. A more recent case, *Sweatt v. Painter* (1950) held that black students must be admitted to the previously segregated University of Texas Law School because no separate but equal facility existed for black people in the state of Texas.

When the *Brown* case was in the lower courts, the Topeka School Board won because it was decided “that the Negro and white schools in the city either were or were in the process of being equalized” in terms of their quality. The Brown family was represented by a leading civil rights organization called the National Association for the Advancement of Colored People (NAACP) and its chief lawyer Thurgood Marshall who appealed the case to the United States Supreme Court.

* **CONSTITUTIONAL ISSUE**

As in *Plessy*, the question in this case is: Do racial segregation laws violate the “Equal Protection Clause” of the 14th Amendment?

* **THE COURT’S DECISION**

The Court in this case made one of its most momentous decisions, siding unanimously with Linda Brown. Chief Justice Earl Warren wrote the Court’s opinion in which he explained the Court’s method of evaluating the case was to “look to the effect of segregation” on the education of children like Linda Brown. Warren agreed with a judge from a state court in Kansas who had said that “segregation with the sanction of law has a tendency to retard the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racially integrated school system.”

Warren concluded that segregation of black school children “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone…and that in the field of education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal….any language in *Plessy v. Ferguson* contrary to this finding is rejected.”

In other words, regardless of the quality of the facilities involved, segregated schools are always unequal because of the message of inferiority sent to black children by the act of separating them out and not allowing them to attend school with white students. It is this message of inferiority which does damage to the ‘hearts and minds’ of black children and prevents them from getting full and equal educational benefits out of segregated public schools. If it is the act of segregating which sends this message of inferiority and it is this message which does such psychological damage, then it follows there is no possible way that separate schools can ever be equal.

**3) *Gideon v. Wainwright* (1963) see textbook p. 406**

* **BACKGROUND OF THE CASE**

Clarence Earl Gideon a poor man in Florida who had been convicted of felonies four times before, was arrested in 1961 for breaking into and burglarizing a local pool hall. When brought to trial he could not afford a lawyer, so he asked the trial court to appoint an attorney to help him argue his case and as this was not required by Florida law, the judge refused. Left no choice, Gideon then defended himself, he was found guilty and sentenced to five years in prison.

While in prison Gideon conducted legal research in the prison library and then submitted a handwritten appeal against Louie Wainwright, the director of the Florida prison system. The Supreme Court not only agreed to hear Gideon’s case, but as he was stuck sitting in a Florida prison serving his sentence, the Court appointed Abe Fortas, a noted Washington, D.C. lawyer, to argue it for him.

The main precedent in this area of the law was *Betts v. Brady* (1942), a case in which the Supreme Court ruled that states are only required to appoint lawyers to represent poor defendants if there are “special circumstances” (such as illiteracy, incompetency, inexperience, etc.) which make it all but impossible for a person to argue a case themselves. Following this decision, many states adopted a public-defender system to provide lawyers to all poor criminal defendants. Florida and some other states felt such a system was too expensive and chose not to establish one. Since Gideon didn’t have any conditions which would fall under the *Betts* definition of ‘special circumstances,’ Florida left him to defend himself.

* **CONSTITUTIONAL ISSUE**

The 6th Amendment says that a criminal defendant has a right to “assistance of counsel for his defense.” The question of this case is: Does this provision of the Constitution require states to provide court-appointed attorneys to all people who get arrested and cannot afford to hire their own?

* **THE COURT’S DECISION**

The Court decided unanimously in Gideon’s favor, overturning his conviction and ordering Florida to give him a new trial and appoint an attorney to defend him. Justice Hugo Black wrote the Court’s opinion.

Black accepted the argument made by Abe Fortas that “in our adversary system of criminal justice, any person brought into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” Black reasoned that even an intelligent and well-educated person would generally be incapable of dealing with all the complications of legal procedures such as police interrogation, indictments, witnesses and evidence, “he lacks both the skill and the knowledge to adequately prepare his defense….he requires the guiding hand of counsel at every step of the proceedings against him.”

After serving two years of his five-year prison sentence, Gideon was given a new trial in the same Florida courtroom, in front of the same judge, but this time with a court-appointed attorney by his side. At this second trial a different jury found that Gideon was not guilty of breaking into and burglarizing the pool hall.

**4) *Miranda v. Arizona* (1966) see textbook p. 408**

* **BACKGROUND OF THE CASE**

The *Miranda* decision actually was a consolidation of four cases dealing with similar constitutional issues. In each of these cases, the persons involved had been convicted of crimes based on confessions they made after long periods of interrogation by law enforcement. None of these criminal suspects had been informed at any time during police questioning of their rights under the Constitution to remain silent or to the assistance of counsel.

In his case, Ernesto Miranda had been arrested in Phoenix on charges of kidnapping and rape. After two hours of interrogation in police custody, he signed a written confession which was used by the prosecutor at his trial as the key piece of evidence to convict him. During this trial, Miranda’s court-appointed lawyer objected to the use of this confession as evidence claiming it had been unfairly obtained since Miranda neither knew anything about, nor was he informed by police of any of his Constitutional rights. After Miranda was convicted his case was appealed all the way to the United States Supreme Court.

* **CONSTITUTIONAL ISSUE**

The 5th Amendment says “no person…shall be compelled in any criminal case to be a witness against himself.” This line in the Constitution is generally referred to as the “right to remain silent.” In addition the 6th Amendment guarantees a criminal defendant “assistance of counsel for his defense.” As was clarified in the *Gideon* case this means a person has a “right to a lawyer” throughout a criminal case.

* **THE COURT’S DECISION**

By a controversial vote of 5 to 4, the Court overturned Miranda’s conviction and ordered Arizona to give him a new trial at which his confession could not be used as evidence against him. Chief Justice Earl Warren wrote the majority opinion.

Warren discussed his concern for what goes on in the “privacy” of police interrogation. He observed that a suspect being questioned by police is subjected to great psychological pressures designed “to put the defendant in such an emotional state as to impair his capacity for rational judgment.” In order for a suspect’s rights to be fully protected, Warren stated, “procedural safeguards must be employed. He must be warned prior to any investigation that he has the right to remain silent, that anything he says may be used against him in a court of law, that he has the right to the presence of an attorney [during questioning by police], and that if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires.”

This decision made clear that any confession obtained by police without informing a suspect of these rights would be inadmissible as evidence at trial. Warren also indicated that any accused person may waive these rights although he warned there would be “a heavy burden….on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to counsel.”

After Miranda won in the Supreme Court he was given a new trial in Arizona during which he was convicted of the kidnapping and rape by prosecutors without the use of his written confession which by the “exclusionary rule” they were not allowed to use as evidence.

**5) *Roe v. Wade* (1973) see textbook p. 398**

* **BACKGROUND OF THE CASE**

Norma McCorvey was a poor, divorced 21-year-old woman who had already given birth to two children, and in 1969, got pregnant a third time and wanted to terminate this pregnancy. At the time abortion was prohibited by Texas state law except when, in a doctor’s judgment, it would be necessary to save the mother’s life. Since McCorvey’s life was not endangered by her pregnancy, she was not able to obtain a legal abortion in Texas and at the encouragement of some local women’s rights lawyers she sued the Dallas County District Attorney Henry Wade.

In an attempt to conceal her identity, McCorvey was identified in court records only as “Jane Roe,” a name commonly used in controversial cases to try to protect a woman’s identity (an equivalent pseudonym often used for males is “John Doe”). As a case of this type normally takes years to complete its journey through the court system, Jane Roe’s pregnancy ran its course and she put her child up for adoption (something she had previously done with her two older children). After more than three years of trials in lower courts, the case finally reached the United States Supreme Court.

* **CONSTITUTIONAL ISSSUE**

Roe’s lawyers argued that her decision to obtain an abortion should be protected by the “right to privacy,” a right the Court had stated in earlier cases is implied in several places in the Bill of Rights even though it is not explicitly stated.

* **THE COURT’S DECISION**

By a vote of 7 to 2 the Court decided in Roe’s favor although with some qualifications. Justice Harry Blackmun wrote the majority opinion.

First, the Court reaffirmed the precedent there is a constitutional right to privacy which can be inferred from the 1st, 3rd, 4th, 5th, 9th, and 14th Amendments. Blackmun wrote this “right of privacy….is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”

Yet the Court granted no absolute right to get an abortion, as that decision “must be considered against important state interests in regulation.” The decision then turned to the question of fetal personhood with Blackmun noting that “the word person, as used in the Constitution, does not include the unborn.” Although he continued by recognizing that states have two separate interests, one is “preserving and protecting the health of the pregnant woman….and the other is in protecting the potentiality of human life.”

To satisfy these two different sets of interests, the Court divided pregnancy into two stages using the common trimester (three-month) terminology. The first stage of a pregnancy is the entire first trimester and most of the second (roughly the first six months) during which a fetus is dependent on the mother and cannot survive outside the womb. During this part of pregnancy, the Court decided states may regulate abortions in such areas as doctors’ qualifications and licensing of facilities, however during this stage no state may deny a woman her choice that a pregnancy should be terminated.

The point at which the state’s interest in preserving potential life begins is when the fetus has developed enough to become ‘viable,’ or capable of living outside the womb – in most pregnancies this so-called “**point of viability”** is reached either very late in the second trimester, or early in the third (usually at about 24 weeks). According to Blackmun’s decision, during this stage of pregnancy, after the point of viability, any state may constitutionally forbid abortion, except when necessary to preserve a woman’s life or health.

**6) *University of California Regents v. Bakke* (1978) see textbook p. 451**

* **BACKGROUND OF THE CASE**

In the early 1970s the medical school at the University of California at Davis was using an affirmative-action admissions process in an attempt to admit a more diverse student body. Of 100 students admitted each year, the school selected 84 students using its regular admissions practice which relied primarily on an applicant’s undergraduate college GPA and their scores on the Medical College Aptitude Test (MCAT). Then, the last 16 spots were reserved for students from minority or traditionally disadvantaged groups which at the time included women, African-Americans, Hispanics and Native Americans. Collectively this latter group generally had lower GPAs and MCAT scores than those admitted using the regular admissions process and consequently in past decades they had been underrepresented in the medical profession.

Allan Bakke was a white Vietnam veteran who in 1973 and 1974 applied and was denied admission to the Davis medical school. His science grades were slightly below the average for those in the regular applicant group, but his MCAT scores were above the average for this group. Feeling as though he had been discriminated against because as a white male he was not considered for admission to any of the affirmative-action spots, Bakke sued the state governing board known as the Regents of the University of California. The California State Supreme Court supported Bakke and ordered the medical school to admit him. The U.C. Regents then appealed to the United States Supreme Court.

* **CONSTITUTIONAL ISSUE**

The main question in this case was: Does the affirmative-action admissions procedure used by the University of California violate Bakke’s rights under the “Equal Protection Clause” of the 14th Amendment?

* **THE COURT’S DECISION**

In a complicated 5 to 4 decision, the Court ruled that the admissions program used by the UC Davis medical school did violate the Equal Protection clause, although a properly constructed program could well be constitutional. Justice Lewis Powell wrote the majority opinion.

Powell began his opinion by clarifying that the rights guaranteed by the 14th Amendment belong not just to minorities, but to everyone as individuals. “The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal.” This answered the question of whether a white man like Bakke could use the 14th Amendment to claim discrimination when this amendment had clearly been added to the Constitution immediately following the Civil War in an attempt to protect African-American freed slaves from discrimination.

The Court felt the university’s affirmative-action admissions program erred by making race the primary criterion and setting aside a fixed number of places for certain applicants, thus establishing a quota system. Powell explained a university might well use racial criteria in an effort to ensure diversity in its student body by making race one factor among many in the competition for all available admissions places but not by using it “as a cover for the functional equivalent of a quota system.”

As a result of this decision, Bakke was admitted to the Davis medical school, graduating in 1982 and eventually becoming an anesthesiologist.