



Policy Example 3

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PURPOSE

Sample Brief—Marbury v. Madison, 5 U.S. 137, 1 Cranch 137 (1803)

FACTS: William Marbury was one of President Adams’ “midnight appointments.” All of the necessary paperwork and procedures were completed to secure his appointment as a justice of the peace for Washington, D.C., but Secretary of State John Marshall – himself a midnight appointee to a somewhat more exalted judicial position – failed to deliver his commission. Upon assuming the presidency, Jefferson ordered his Secretary of State – James Madison – not to deliver the commission. Under authority of the Judiciary Act of 1789, Marbury sued to ask the Supreme Court to issue a writ of mandamus to force Madison to deliver the commission.

ISSUES: 1) Does Marbury have a right to this commission? 2) If he has a right, is there a remedy at law to realize it? 3) If there is a remedy, is it one that can issue from the Supreme Court? Director of Nursing suggestion a change.

HELD: 1) Yes. 2) Yes. 3) No.

REASONING (Marshall for a 6-0 Court):

To 1. Because Marbury’s commission was signed by the President and sealed by the Secretary of State, he has a legal right to the commission.

To 2. Because the signing and sealing completed the appointment process, denial of the commission is a violation of the law. In a government of laws, a violation of the law creates a governmental responsibility to remedy the violation. A writ of mandamus is such a remedy.

To 3. The Constitution is the “supreme law of the land” (Art. VI). As such, it is “superior” and “fundamental and paramount.” It establishes “certain limits” on the power of the government it creates. This includes the Congress. Without such limits, “it would be giving to the legislature a practical and real omnipotence.” Thus, “a legislative act contrary to the Constitution is not law.”

“It is emphatically the province and duty of the judicial department to say what the law is.” When a case comes to the Supreme Court, the Court must decide that case according to the law. If “ordinary” (statutory) legislation conflicts with the limits imposed on government by the Constitution, the fundamental law must govern the ordinary. If the legislature passed an act that the Constitution forbids – like a tax on interstate sales, an *ex post facto* law, or a treason conviction based on something other than two witnesses or a confession in court – the courts would have to strike it down. Otherwise, the Constitution would not limit government. Courts have this power because they decide cases under law; judges take an oath to uphold the Constitution, and this is part of that function.

Following these principles, Marbury cannot receive a mandamus from the Court. The Constitution creates two categories of jurisdiction for the Supreme Court – original and appellate. Congress, under Article III, has the power to regulate appellate jurisdiction; no such power, however, is given for the regulation of original jurisdiction. The latter is completely and exclusively defined by Article III – it cannot be added to or taken away from. The provision of the Judiciary Act of 1789 which *added* matters of mandamus to the original jurisdiction of the Court, therefore, is beyond the power given to Congress by the people in the Constitution. Having no legitimate jurisdiction over this matter, the



Court cannot provide Marbury with the remedy he seeks.

DECISION: Dismiss for want of jurisdiction.

DISSENTS: None

SIGNIFICANCE: Marshall, relying heavily on “logical reasoning” and little constitutional text, read the power of judicial review over acts of the national government into American constitutional law. This power was extended over the actions of state governments in *Martin v. Hunter’s Lessee* (1816) and state courts in *Cohens v. Virginia* (1819), and is 1) the source of most of the authority the Court has come to know, and 2) the focal point of the ultimate debate about the Court’s proper constitutional role: should it exercise this power frequently (activism) or sparingly (restraints).

Our organization’s objective in establishing a dress code is to permit employees to work comfortably, but safely within the learning environment. Employees must project professionalism at all times, as one never knows if potential or current customers, visitors or students may visit the company unexpectedly.

Due to the variance in business and industry models in which all companies revolve around, each simulated workplace is required to develop a dress code conducive to their company. The following template will assist and guide instructors and students in developing their company dress code.

All casual clothing is not suitable for the workplace. These guidelines will help the supervisor and employees determine appropriate dress for their company.

** Clothing considered suitable for hanging out, hunting, yard work, exercise sessions, or social events is not always appropriate for work environments.*

- Clothing that reveals too much cleavage, your back, your chest, your feet, your stomach or your underwear is not appropriate for a place of business, even within the Simulated Workplace classroom. * If you can trip over your jeans because the legs are too long it is a safety issue.
- Even in a business casual work environment, clothing should be pressed and never wrinkled.
- Torn, dirty, or frayed clothing is unacceptable.
- Any clothing that has words, terms, or pictures that may be offensive to other employees, customers or visitors is unacceptable.
- Clothing depicting the school or company logo is encouraged.
- Sports team, university, and fashion brand names on clothing are generally acceptable.
- Certain days may require specific dress. Interviews, presentations, field trips, or when visitors are coming to the classroom, employees may be required to wear a company shirt with clean jeans or



kaki's.

- No dress code can cover all contingencies; therefore, employees must exert a certain amount of judgment in their choice of clothing. If employees experience uncertainty about acceptable or professional business casual attire, they are advised to ask the supervisor for approval.

Shoes and Footwear

- Shoes and Footwear: (**Enter type(s) of acceptable footwear**) are acceptable for Simulated Workplace environments.
- Flip-flops, slippers, and any shoe with an open toe are **not acceptable** at Simulated Workplace environments due to safety violations.
- (**Enter the type(s) of acceptable shoes/boots**) shoes/boots are required in the manufacturing operation area.
- Inappropriate attire for work includes:

Jewelry, Makeup, Perfume, and Cologne

- Jewelry, makeup, perfume, and cologne should be in good taste. Remember, that some co-workers, customers or visitors may be allergic to the chemicals in perfumes and make-up, so wear these substances with restraint.
- Body piercing should be limited and in some instances removed or covered, in order to compile with safety regulations.
- Tattoos should be limited and in some instances covered, especially if they may be offensive to co-workers, costumers or visitors.

Hats and Head Covering

- Hats are **not appropriate** in an office environment.
- Head Covers that are required for (**Enter required head cover(s)**) safety regulations are required while working in the manufacturing area.
- Head covers that are required for religious purposes or to honor cultural tradition are permitted.

If clothing fails to meet these standards, as determined by the employees and supervisor, the offending employee will be reprimanded in accordance to the disciplinary policies and procedures

*(A **concise** statement of the rationale for the policy, including if appropriate, reference to external regulation,*



Further policy discussion, etc. Provide a summary (in one paragraph) and clearly state the important policy content (e.g., who will or will not do what and in what context).

APPLICABILITY

(Exactly whom the policy applies to and the consequences for non-compliance, if applicable.)

POLICY STATEMENT

(A **concise** statement of the policy.)

IMPLEMENTATION PROCEDURES

(Provide detailed procedures that are necessary to carry out the intent of the policy.)

DEFINITIONS

The cellular phone policy applies to any device that makes or receives phone calls, leaves messages, sends text messages, surfs the Internet, or downloads and allows for the reading of and responding to email whether the device is company-supplied or personally owned.

Cell Phones or Similar Devices at Work

(Main) is aware that employees utilize their personal or company-supplied cellular phones for business purposes. At the same time, cell phones are a distraction in the workplace. To ensure the effectiveness of instruction/hands-on activities, in addition to safety of all employees; all employees are asked to leave cell phones at their desk or out of the working/learning environment. Nevertheless, on the unusual occasion of an emergency or anticipated emergency that requires immediate attention, please inform your supervisor and ask for guidance.

Employees who violate this policy will be subject to disciplinary actions, up to and including **employment termination**.

(Definitions of terms – as needed.)

REFERENCES

(Cite related laws, regulations, or policies. Give complete references and ensure that documents cited are readily available. If needed, provide additional background discussion here.)

(Main's) Tobacco Free Policy is dedicated to providing a healthy, comfortable, and productive work



environment for our employees.

Numerous studies have found that secondhand smoke is a major contributor to indoor air pollution. Breathing secondhand smoke (also known as tobacco smoke pollution) is a main cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually. The Americans with Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability.

The U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke. The Environmental Protection Agency has determined that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation. Air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke. A significant amount of secondhand smoke exposure occurs in the workplace.

Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.

Smoke-filled workplaces result in higher worker absenteeism due to respiratory disease, lower productivity, higher cleaning and maintenance costs, increased health insurance rates, and increased liability claims for diseases related to exposure to secondhand smoke.

In light of these findings, **(Main)** shall be entirely tobacco free effective **(Date)**. Smoking shall not be permitted in any enclosed company/school facility. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities. This policy applies to all employees, clients, contractors, and visitors.

Copies of this policy shall be distributed to all employees.



RESPONSIBILITY

(State who is responsible for assuring adherence to this policy and what the specific responsibilities are.)

RESOURCES AND TRAINING

Identify the office and specific individual position/ title – with telephone number and email address, as appropriate – that should be contacted for interpretations, resolution of problems, and special situations

