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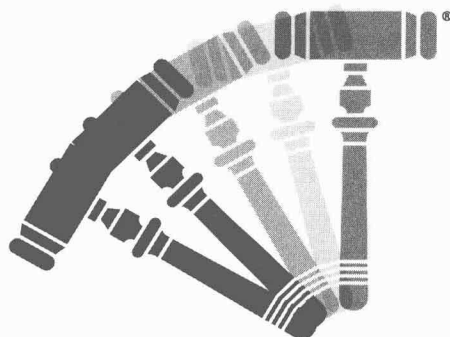
**Legomsky and Rodríguez's
Immigration and Refugee Law and Policy**

Fifth Edition



Wolters Kluwer
Law & Business

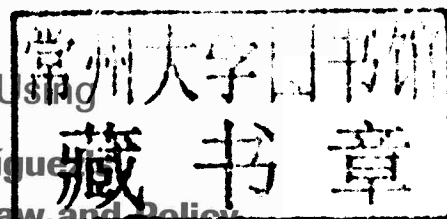
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Format for the Casenote Legal Brief

Nature of Case: This section identifies the form of action (e.g., breach of contract, negligence, battery), the type of proceeding (e.g., demurrer, appeal from trial court's jury instructions), or the relief sought (e.g., damages, injunction, criminal sanctions).

Palsgraf v. Long Island R.R. Co.

Injured bystander (P) v. Railroad company (D)

N.Y. Ct. App., 248 N.Y. 339, 162 N.E. 99 (1928).

Fact Summary: This is included to refresh your memory and can be used as a quick reminder of the facts.

Rule of Law: Summarizes the general principle of law that the case illustrates. It may be used for instant recall of the court's holding and for classroom discussion or home review.

Facts: This section contains all relevant facts of the case, including the contentions of the parties and the lower court holdings. It is written in a logical order to give the student a clear understanding of the case. The plaintiff and defendant are identified by their proper names throughout and are always labeled with a (P) or (D).

NATURE OF CASE: Appeal from judgment affirming verdict for plaintiff seeking damages for personal injury.

FACT SUMMARY: Helen Palsgraf (P) was injured on R.R.'s (D) train platform when R.R.'s (D) guard helped a passenger aboard a moving train, causing his package to fall on the tracks. The package contained fireworks which exploded, creating a shock that tipped a scale onto Palsgraf (P).



RULE OF LAW

The risk reasonably to be perceived defines the duty to be obeyed.

FACTS: Helen Palsgraf (P) purchased a ticket to Rockaway Beach from R.R. (D) and was waiting on the train platform. As she waited, two men ran to catch a train that was pulling out from the platform. The first man jumped aboard, but the second man, who appeared as if he might fall, was helped aboard by the guard on the train who had kept the door open so they could jump aboard. A guard on the platform also helped by pushing him onto the train. The man was carrying a package wrapped in newspaper. In the process, the man dropped his package, which fell on the tracks. The package contained fireworks and exploded. The shock of the explosion was apparently of great enough strength to tip over some scales at the other end of the platform, which fell on Palsgraf (P) and injured her. A jury awarded her damages, and R.R. (D) appealed.

ISSUE: Does the risk reasonably to be perceived define the duty to be obeyed?

HOLDING AND DECISION: (Cardozo, C.J.) Yes. The risk reasonably to be perceived defines the duty to be obeyed. If there is no foreseeable hazard to the injured party as the result of a seemingly innocent act, the act does not become a tort because it happened to be a wrong as to and her. If the wrong was not willful, the plaintiff must show that the act as to her had such great and apparent possibilities of danger as to entitle her to protection. Negligence in the abstract is not enough upon which to base liability. Negligence is a relative concept, evolving out of the common law doctrine of trespass on the case. To establish liability, the defendant must owe a legal duty of reasonable care to the injured party. A cause of action in tort will lie where harm,

though unintended, could have been averted or avoided by observance of such a duty. The scope of the duty is limited by the range of danger that a reasonable person could foresee. In this case, there was nothing to suggest from the appearance of the parcel or otherwise that the parcel contained fireworks. The guard could not reasonably have had any warning of a threat to Palsgraf (P), and R.R. (D) therefore cannot be held liable. Judgment is reversed in favor of R.R. (D).

DISSENT: (Andrews, J.) The concept that there is no negligence unless R.R. (D) owes a legal duty to take care as to Palsgraf (P) herself is too narrow. Everyone owes to the world at large the duty of refraining from those acts that may unreasonably threaten the safety of others. If the guard's action was negligent as to those nearby, it was also negligent as to those outside what might be termed the "danger zone." For Palsgraf (P) to recover, R.R.'s (D) negligence must have been the proximate cause of her injury, a question of fact for the jury.

ANALYSIS

The majority defined the limit of the defendant's liability in terms of the danger that a reasonable person in defendant's situation would have perceived. The dissent argued that the limitation should not be placed on liability, but rather on damages. Judge Andrews suggested that only injuries that would not have happened but for R.R.'s (D) negligence should be compensable. Both the majority and dissent recognized the policy-driven need to limit liability for negligent acts, seeking, in the words of Judge Andrews, to define a framework "that will be practical and in keeping with the general understanding of mankind." The Restatement (Second) of Torts has accepted Judge Cardozo's view.

Quicknotes

FORESEEABILITY A reasonable expectation that change is the probable result of certain acts or omissions.

NEGLIGENCE Conduct falling below the standard of care that a reasonable person would demonstrate under similar conditions.

PROXIMATE CAUSE The natural sequence of events without which an injury would not have been sustained.

Party ID: Quick identification of the relationship between the parties.

Concurrence/Dissent: All concurrences and dissents are briefed whenever they are included by the casebook editor.

Analysis: This last paragraph gives you a broad understanding of where the case "fits in" with other cases in the section of the book and with the entire course. It is a hornbook-style discussion indicating whether the case is a majority or minority opinion and comparing the principal case with other cases in the casebook. It may also provide analysis from restatements, uniform codes, and law review articles. The analysis will prove to be invaluable to classroom discussion.

Issue: The issue is a concise question that brings out the essence of the opinion as it relates to the section of the casebook in which the case appears. Both substantive and procedural issues are included if relevant to the decision.

Holding and Decision: This section offers a clear and in-depth discussion of the rule of the case and the court's rationale. It is written in easy-to-understand language and answers the issue presented by applying the law to the facts of the case. When relevant, it includes a thorough discussion of the exceptions to the case as listed by the court, any major cites to the other cases on point, and the names of the judges who wrote the decisions.

Quicknotes: Conveniently defines legal terms found in the case and summarizes the nature of any statutes, codes, or rules referred to in the text.

Note to Students

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Casenote Legal Briefs are designed to help you save time when briefing assigned cases. Organized under convenient headings, they show you how to abstract the basic facts and holdings from the text of the actual opinions handed down by the courts. Used as part of a rigorous study regimen, they can help you spend more time analyzing and critiquing points of law than on copying bits and pieces of judicial opinions into your notebook or outline.

Casenote Legal Briefs should never be used as a substitute for assigned casebook readings. They work best when read as a follow-up to reviewing the underlying opinions themselves. Students who try to avoid reading and digesting the judicial opinions in their casebooks or online sources will end up shortchanging themselves in the long run. The ability to absorb, critique, and restate the dynamic and complex elements of case law decisions is crucial to your success in law school and beyond. It cannot be developed vicariously.

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How to Brief a Case

A. Decide on a Format and Stick to It

Structure is essential to a good brief. It enables you to arrange systematically the related parts that are scattered throughout most cases, thus making manageable and understandable what might otherwise seem to be an endless and unfathomable sea of information. There are, of course, an unlimited number of formats that can be utilized. However, it is best to find one that suits your needs and stick to it. Consistency breeds both efficiency and the security that when called upon you will know where to look in your brief for the information you are asked to give.

Any format, as long as it presents the essential elements of a case in an organized fashion, can be used. Experience, however, has led *Casenotes* to develop and utilize the following format because of its logical flow and universal applicability.

NATURE OF CASE: This is a brief statement of the legal character and procedural status of the case (e.g., “Appeal of a burglary conviction”).

There are many different alternatives open to a litigant dissatisfied with a court ruling. The key to determining which one has been used is to discover *who is asking this court for what*.

This first entry in the brief should be kept as *short as possible*. Use the court’s terminology if you understand it. But since jurisdictions vary as to the titles of pleadings, the best entry is the one that addresses who wants what in this proceeding, not the one that sounds most like the court’s language.

RULE OF LAW: A statement of the general principle of law that the case illustrates (e.g., “An acceptance that varies any term of the offer is considered a rejection and counteroffer”).

Determining the rule of law of a case is a procedure similar to determining the issue of the case. Avoid being fooled by red herrings; there may be a few rules of law mentioned in the case excerpt, but usually only one is *the* rule with which the casebook editor is concerned. The techniques used to locate the issue, described below, may also be utilized to find the rule of law. Generally, your best guide is simply the chapter heading. It is a clue to the point the casebook editor seeks to make and should be kept in mind when reading every case in the respective section.

FACTS: A synopsis of only the essential facts of the case, i.e., those bearing upon or leading up to the issue.

The facts entry should be a short statement of the events and transactions that led one party to initiate legal proceedings against another in the first place. While some cases conveniently state the salient facts at the beginning of the decision, in other instances they will have to be culled from hiding places throughout the text, even from concurring and dissenting opinions. Some of the “facts” will often be in dispute and should be so noted. Conflicting evidence may be briefly pointed up. “Hard” facts must be included. Both must be *relevant* in order to be listed in the facts entry. It is impossible to tell what is relevant until the entire case is read, as the ultimate determination of the rights and liabilities of the parties may turn on something buried deep in the opinion.

Generally, the facts entry should not be longer than three to five *short* sentences.

It is often helpful to identify the role played by a party in a given context. For example, in a construction contract case the identification of a party as the “contractor” or “builder” alleviates the need to tell that that party was the one who was supposed to have built the house.

It is always helpful, and a good general practice, to identify the “plaintiff” and the “defendant.” This may seem elementary and uncomplicated, but, especially in view of the creative editing practiced by some casebook editors, it is sometimes a difficult or even impossible task. Bear in mind that the *party presently* seeking something from this court may not be the plaintiff, and that sometimes only the cross-claim of a defendant is treated in the excerpt. Confusing or misaligning the parties can ruin your analysis and understanding of the case.

ISSUE: A statement of the general legal question answered by or illustrated in the case. For clarity, the issue is best put in the form of a question capable of a “yes” or “no” answer. In reality, the issue is simply the Rule of Law put in the form of a question (e.g., “May an offer be accepted by performance?”).

The major problem presented in discerning what is *the* issue in the case is that an opinion usually purports to raise and answer several questions. However, except for rare cases, only one such question is really the issue in the case. Collateral issues not necessary to the resolution of the matter in controversy are handled by the court by language known as “*obiter dictum*” or merely “*dictum*.” While dicta may be included later in the brief, they have no place under the issue heading.

To find the issue, ask *who wants what* and then go on to ask *why did that party succeed or fail in getting it*. Once this is determined, the “why” should be turned into a question.

The complexity of the issues in the cases will vary, but in all cases a single-sentence question should sum up the issue. *In a few cases*, there will be two, or even more rarely, three issues of equal importance to the resolution of the case. Each should be expressed in a single-sentence question.

Since many issues are resolved by a court in coming to a final disposition of a case, the casebook editor will reproduce the portion of the opinion containing the issue or issues most relevant to the area of law under scrutiny. A noted law professor gave this advice: "Close the book; look at the title on the cover." Chances are, if it is Property, you need not concern yourself with whether, for example, the federal government's treatment of the plaintiff's land really raises a federal question sufficient to support jurisdiction on this ground in federal court.

The same rule applies to chapter headings designating sub-areas within the subjects. They tip you off as to what the text is designed to teach. The cases are arranged in a casebook to show a progression or development of the law, so that the preceding cases may also help.

It is also most important to remember to *read the notes and questions* at the end of a case to determine what the editors wanted you to have gleaned from it.

HOLDING AND DECISION: This section should succinctly explain the rationale of the court in arriving at its decision. In capsulizing the "reasoning" of the court, it should always include an application of the general rule or rules of law to the specific facts of the case. Hidden justifications come to light in this entry; the reasons for the state of the law, the public policies, the biases and prejudices, those considerations that influence the justices' thinking and, ultimately, the outcome of the case. At the end, there should be a short indication of the disposition or procedural resolution of the case (e.g., "Decision of the trial court for Mr. Smith (P) reversed").

The foregoing format is designed to help you "digest" the reams of case material with which you will be faced in your law school career. Once mastered by practice, it will place at your fingertips the information the authors of your casebooks have sought to impart to you in case-by-case illustration and analysis.

B. Be as Economical as Possible in Briefing Cases

Once armed with a format that encourages succinctness, it is as important to be economical with regard to the time spent on the actual reading of the case as it is to be economical in the writing of the brief itself. This does not mean "skimming" a case. Rather, it means reading the case with an "eye" trained to recognize into which "section" of your brief a particular passage or line fits and having a system for quickly and precisely marking the case so that the passages fitting any one particular part of

the brief can be easily identified and brought together in a concise and accurate manner when the brief is actually written.

It is of no use to simply repeat everything in the opinion of the court; record only enough information to trigger your recollection of what the court said. Nevertheless, an accurate statement of the "law of the case," i.e., the legal principle applied to the facts, is absolutely essential to class preparation and to learning the law under the case method.

To that end, it is important to develop a "shorthand" that you can use to make margin notations. These notations will tell you at a glance in which section of the brief you will be placing that particular passage or portion of the opinion.

Some students prefer to underline all the salient portions of the opinion (with a pencil or colored underliner marker), making marginal notations as they go along. Others prefer the color-coded method of underlining, utilizing different colors of markers to underline the salient portions of the case, each separate color being used to represent a different section of the brief. For example, blue underlining could be used for passages relating to the rule of law, yellow for those relating to the issue, and green for those relating to the holding and decision, etc. While it has its advocates, the color-coded method can be confusing and time-consuming (all that time spent on changing colored markers). Furthermore, it can interfere with the continuity and concentration many students deem essential to the reading of a case for maximum comprehension. In the end, however, it is a matter of personal preference and style. Just remember, whatever method you use, underlining must be used sparingly or its value is lost.

If you take the marginal notation route, an efficient and easy method is to go along underlining the key portions of the case and placing in the margin alongside them the following "markers" to indicate where a particular passage or line "belongs" in the brief you will write:

- N (NATURE OF CASE)
- RL (RULE OF LAW)
- I (ISSUE)
- HL (HOLDING AND DECISION, relates to the RULE OF LAW behind the decision)
- HR (HOLDING AND DECISION, gives the RATIONALE or reasoning behind the decision)
- HA (HOLDING AND DECISION, APPLIES the general principle(s) of law to the facts of the case to arrive at the decision)

Remember that a particular passage may well contain information necessary to more than one part of your brief, in which case you simply note that in the margin. If you are using the color-coded underlining method instead of margin notation, simply make asterisks or

checks in the margin next to the passage in question in the colors that indicate the additional sections of the brief where it might be utilized.

The economy of utilizing “shorthand” in marking cases for briefing can be maintained in the actual brief writing process itself by utilizing “law student shorthand” within the brief. There are many commonly used words and phrases for which abbreviations can be substituted in your briefs (and in your class notes also). You can develop abbreviations that are personal to you and which will save you a lot of time. A reference list of briefing abbreviations can be found on page xii of this book.

C. Use Both the Briefing Process and the Brief as a Learning Tool

Now that you have a format and the tools for briefing cases efficiently, the most important thing is to make the time spent in briefing profitable to you and to make the most advantageous use of the briefs you create. Of course, the briefs are invaluable for classroom reference when you are called upon to explain or analyze a particular

case. However, they are also useful in reviewing for exams. A quick glance at the fact summary should bring the case to mind, and a rereading of the rule of law should enable you to go over the underlying legal concept in your mind, how it was applied in that particular case, and how it might apply in other factual settings.

As to the value to be derived from engaging in the briefing process itself, there is an immediate benefit that arises from being forced to sift through the essential facts and reasoning from the court’s opinion and to succinctly express them in your own words in your brief. The process ensures that you understand the case and the point that it illustrates, and that means you will be ready to absorb further analysis and information brought forth in class. It also ensures you will have something to say when called upon in class. The briefing process helps develop a mental agility for getting to the *gist* of a case and for identifying, expounding on, and applying the legal concepts and issues found there. The briefing process is the mental process on which you must rely in taking law school examinations; it is also the mental process upon which a lawyer relies in serving his clients and in making his living.

Abbreviations for Briefs

acceptance	acp	offer	O
affirmed	aff	offeree	OE
answer	ans	offeror	OR
assumption of risk	a/r	ordinance	ord
attorney	atty	pain and suffering	p/s
beyond a reasonable doubt	b/r/d	parole evidence	p/e
bona fide purchaser	BFP	plaintiff	P
breach of contract	br/k	prima facie	p/f
cause of action	c/a	probable cause	p/c
common law	c/l	proximate cause	px/c
Constitution	Con	real property	r/p
constitutional	con	reasonable doubt	r/d
contract	K	reasonable man	r/m
contributory negligence	c/n	rebuttable presumption	rb/p
cross	x	remanded	rem
cross-complaint	x/c	res ipsa loquitur	RIL
cross-examination	x/ex	respondeat superior	r/s
cruel and unusual punishment	c/u/p	Restatement	RS
defendant	D	reversed	rev
dismissed	dis	Rule Against Perpetuities	RAP
double jeopardy	d/j	search and seizure	s/s
due process	d/p	search warrant	s/w
equal protection	e/p	self-defense	s/d
equity	eq	specific performance	s/p
evidence	ev	statute of limitations	S/L
exclude	exc	statute of frauds	S/F
exclusionary rule	exc/r	statute	S
felony	f/n	summary judgment	s/j
freedom of speech	f/s	tenancy in common	t/c
good faith	g/f	tenancy at will	t/w
habeas corpus	h/c	tenant	t
hearsay	hr	third party	TP
husband	H	third party beneficiary	TPB
in loco parentis	ILP	transferred intent	TI
injunction	inj	unconscionable	uncon
inter vivos	I/v	unconstitutional	unconst
joint tenancy	j/t	undue influence	u/e
judgment	judgt	Uniform Commercial Code	UCC
jurisdiction	jur	unilateral	uni
last clear chance	LCC	vendee	VE
long-arm statute	LAS	vendor	VR
majority view	maj	versus	v
meeting of minds	MOM	void for vagueness	VFV
minority view	min	weight of the evidence	w/e
Miranda warnings	Mir/w	weight of authority	w/a
Miranda rule	Mir/r	wife	W
negligence	neg	with	w/
notice	ntc	within	w/i
nuisance	nus	without prejudice	w/o/p
obligation	ob	without	w/o
obscene	obs	wrongful death	wr/d

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3. Limits to the Federal Immigration Power. The government may require, as a condition of an alien's residency, testimony of one of not of his race as to whether he has met residency requirements. (Fong Yue Ting v. United States)	5
4. Procedural Due Process in Exclusion Cases. If the Attorney General excludes, for national security reasons, an alien that no other country will admit, the continued exclusion will not constitute the sort of unlawful detention that would permit a court to admit him temporarily on bond. (Shaughnessy v. United States ex rel. Mezei)	6
5. Procedural Due Process in Deportation Cases: More Cracks in the Plenary Congressional Power. Once a potential deportee is given notice of the deportation and the opportunity to be heard, her due process rights have been respected. If that deportee has issues in regard to the Inspector's decision, the proper procedure is to appeal to the Secretary of the Treasury. If no appeal is made, that decision is final and conclusive. [Yamataya v. Fisher (The Japanese Immigrant Case)]	7
6. Substantive Applications of the Plenary Power Doctrine. The government may constitutionally deport a resident alien because of membership in the Communist Party which terminated prior to the 1940 Alien Registration Act. (Harisiades v. Shaughnessy)	8
7. Substantive Cracks in the Plenary Congressional Power. If an act of Congress permits deportable alien residents to reenter the country on a discretionary basis, but does not grant such discretionary permission to remain to aliens who have never left the country, then the act deprives resident aliens of equal protection of the laws. (Francis v. INS)	9
8. Still More Cracks. Whether a statute is constitutional is for the courts to decide. (INS v. Chadha)	10
9. Still More Cracks. The Attorney General is authorized to detain a removable alien, who has already been admitted into the country, only for a period reasonably necessary to secure the alien's removal. He is not to be indefinitely detained, and once removal is no longer reasonably foreseeable, continued detention is no longer authorized by the statute. (Zadvydas v. Davis)	11
10. Still More Cracks. The detention beyond the removal period permitted by § 241(a)(6) of the Immigration and Nationality Act applies equally to admissible and inadmissible aliens. (Clark v. Martinez)	13

- 11. Still More Cracks.** Section 236(c), which requires detention in removal proceedings for aliens who have been convicted of one of a specified set of crimes, is valid because Congress has a justifiable concern that deportable criminal aliens who are not detained continue to engage in crime and fail to appear for their removal hearings, and, therefore, Congress may require that such aliens be detained for the brief period necessary for their removal proceedings. (*Demore v. Hyung Joon Kim*)

Chae Chan Ping v. United States (The Chinese Exclusion Case)

Immigrant (P) v. U.S. government (D)

130 U.S. 581 (1889).

NATURE OF CASE: Appeal of order dismissing challenge to immigrant labor legislation.

FACT SUMMARY: Congress enacted a law excluding Chinese laborers from entering the United States.



RULE OF LAW

Congress may enact legislation excluding Chinese laborers from entering the United States.

FACTS: Concerned with a perceived excess in immigration of workers from China, in 1888 Congress passed legislation prohibiting the entry of Chinese, despite an 1868 treaty which permitted such immigration. Ping (P), an affected immigrant, challenged the law. The trial court rendered judgment in favor of the federal Government (D), and the Supreme Court granted review.

ISSUE: May Congress enact legislation excluding Chinese laborers from entering the United States?

HOLDING AND DECISION: (Field, J.) Yes. Congress may enact legislation excluding Chinese laborers from entering the United States. That the Government of the United States (D) can exclude aliens from its territory is a proposition not open to controversy. Jurisdiction over its borders is an incident of every independent nation. To preserve its independence against foreign aggression and encroachment is the highest duty of every government, and it does not matter whether an encroachment comes from a foreign nation acting as a state, or from hordes of its people crowding in upon us. The fact that the 1888 law was passed in contravention of an earlier treaty is of no moment; a treaty has the force of law, and Congress is free to change its duly enacted laws. Thus, any challenge to the 1888 law may be mounted only through the political process, not the judiciary. Affirmed.

ANALYSIS

There is no serious disagreement that, except for a few due process concerns, the federal government is free to regulate the borders as it sees fit. Interestingly, this power is not enumerated in Article I of the U.S. Constitution, which has led some to question from whence this right springs, as the federal government is one of limited powers. It might well be that such power is so inherent in state sovereignty that it need not be enumerated.

Quicknotes

DUE PROCESS The constitutional mandate requiring the courts to protect and enforce individuals' rights and liberties consistent with prevailing principles of fairness and justice and prohibiting the federal and state governments from such activities that deprive its citizens of life, liberty, or property interest.



Ekiu v. United States
Alien (P) v. U.S. government (D)
142 U.S. 651 (1892).

NATURE OF CASE: Appeal of a denial of an application for habeas corpus.

FACT SUMMARY: Ekiu (P) was denied admittance into the United States and applied for habeas corpus.



RULE OF LAW

It is not a violation of a foreigner's due process rights for the legislative and executive branches to decide whether that individual shall be allowed to enter this country without judicial review.

FACTS: Ekiu (P), a citizen of Japan, came to the United States on a ship. She explained to the immigration inspector that her husband lived in the United States and that she was going to meet him at a hotel. However, she did not know his current address and had \$22 in cash. The inspector did not allow her into the country because he concluded that she would likely become a public charge. Ekiu (P) applied for habeas corpus. The circuit court did not allow her to introduce evidence and denied her relief concluding that the statute made the findings of fact by the inspector conclusive upon the court. Ekiu (P) appealed and argued that the statute violated due process.

ISSUE: Was Ekiu (P) denied her right to due process by Congress's prohibition of judicial review of findings of fact made by officials assigned the duty of reviewing entrance requests?

HOLDING AND DECISION: (Gray, J.) No. It is not a denial of due process for Congress to prohibit the judiciary from reviewing findings made by officials assigned the duty of reviewing entrance requests. In the United States, it is the national government that has the entire control over international relations and the power to control the entrance of foreigners. This power may be exercised through treaties made by the President and Senate, or through statutes enacted by Congress which has the power to regulate commerce with foreign nations and to establish uniform rule of naturalization. An alien immigrant, prevented from entering the United States by an official of the United States, is entitled to a writ of habeas corpus to ascertain whether the restraint is lawful. Congress may, at its discretion, investigate the facts surrounding the immigrant's alleged right to enter. Congress, however, can entrust the final determination on those facts to executive officers and it is up to the officers to make an opinion based on those facts. No other body is entitled to reexamine those determinations unless the law so allows. Since the official in this case was empowered to make findings of fact and no

other such tribunal was so authorized, his findings constituted due process. Affirmed.

ANALYSIS

The Court's holding in this case is that Congress may specify an executive branch official as the primary fact-finder without violating due process.



Quicknotes

DUE PROCESS The constitutional mandate requiring the courts to protect and enforce individuals' rights and liberties consistent with prevailing principles of fairness and justice and prohibiting the federal and state governments from such activities that deprive its citizens of life, liberty, or property interest.

NATURALIZATION The process pursuant to which a person becomes a citizen of a country.

WRIT OF HABEAS CORPUS A proceeding in which a defendant brings a writ to compel a judicial determination of whether he is lawfully being held in custody.



Fong Yue Ting v. United States

Deported immigrant (P) v. U.S. government (D)

149 U.S. 698 (1893).

NATURE OF CASE: Review of order denying habeas corpus petition.

FACT SUMMARY: Ting (P) was ordered deported because of his inability to produce a statutorily-mandated Caucasian witness to his residency.



RULE OF LAW

The government may require, as a condition of an alien's residency, testimony of one not of his race as to whether he has met residency requirements.

FACTS: In 1892, Congress enacted an alienage law covering Chinese immigrants. One of its provisions was that to remain in the country, an alien had to have met certain residency requirements, and that this had to be proved by the testimony of at least one Caucasian witness. Ting (P), threatened with deportation, was unable to produce a non-Chinese witness. He was ordered deported. He petitioned for habeas, and this was denied. The Supreme Court granted review.

ISSUE: May the government require, as a condition of an alien's residency, testimony of one not of his race as to whether he has met residency requirements?

HOLDING AND DECISION: (Gray, J.) Yes. The government may require, as a condition of an alien's residency, testimony of one not of his race as to whether he has met residency requirements. It is within the power of the federal Government (D) to prescribe rules regarding the kind and competency of evidence that shall be presented in its courts. Congress recognized the difficulty in establishing the residency of a Chinese alien through the testimony of one of his own kind, and consequently provided that a Caucasian witness's corroboration would be necessary. This was well within its rights. As a deportation proceeding is civil, there is no constitutional, defendant's-rights dimension to the issue. As the alien has no right to remain in the United States, his presence here being at the will of the Government (D), no due process right is involved. For these reasons, the law is valid. Affirmed.

DISSENT: (Brewer, J.) Persons lawfully residing within the United States are within the protection of the Constitution, and the law in question here deprives them of liberty without due process. It is impossible to argue that deportation is not punishment.

DISSENT: (Field, J.) The Government (D) may not expel lawfully residing aliens to the extent it can exclude their entry. While the government certainly can take steps to discover whether individuals in a class of aliens are

lawfully residing, it cannot do so in a manner that violates due process, as the manner prescribed by Congress.

ANALYSIS

Justice Gray wrote the opinion in *Ping v. United States*, 130 U.S. 581 (1889), yet dissented in this one. To some observers, this might appear inconsistent. Justice Gray, no doubt realizing the potential for such an appearance, offered an explanation. He asserted in his opinion that the government can exclude aliens at will, but once they were lawfully within the United States, they were entitled to constitutional protection.



Quicknotes

ALIENAGE The condition of being an individual who is a citizen of a foreign country.

PETITION OF HABEAS CORPUS Petition to compel an independent review of whether a prisoner is being lawfully imprisoned.

