

Chapter 02 Constitutional Limitations on the Criminal Law

Multiple Choice Questions

1. Criminal statutes may be unconstitutional because
 - A. they may cause defendants to give self-incriminating testimony.
 - B.** of the way in which they are applied by government officials.
 - C. of the method government officials used to create them.
 - D. None of the above is correct.

2. In the case of _____, a court declared that dog sniffs are searches and can be conducted only if police have probable cause to believe the person, place, or thing to be sniffed is connected to criminal action.
 - A. *U.S. v. Place*
 - B. *Loving v. Virginia*
 - C. *Craig v. Boren*
 - D.** *Commonwealth v. Johnston*

3. Substantive criminal law is enforced through
 - A.** procedural criminal law.
 - B. common law.
 - C. case law.
 - D. the Model Penal Code (MPC).

4. The sources of procedural criminal law include Article I of the U.S. Constitution and
 - A. the Fourth Amendment
 - B. the Sixth Amendment
 - C. the Fifth Amendment
 - D.** All the above are correct.

5. Over time, the courts have held that _____ encompasses the multiple procedures and processes that must be followed before a person can be legally deprived of his or her life, liberty, or property.

- A. substantive criminal law
- B. procedural criminal law
- C.** due process
- D. statutory law

6. A possible characteristic of an ex post facto law includes the fact that

- A.** it alters the legal rules of evidence, allowing evidence of guilt that is lesser or different from what the law required at the time of the commission of the offense by the offender.
- B. it makes criminal an act committed less than six months after passage of the law, thus preventing the criminal from having enough time to know that it was a crime.
- C. it inflicts a less punishment than the original law.
- D. All the Above are correct.

7. The Sixth Amendment and the due process clauses of the Fifth Amendment and Fourteenth Amendment require that the law provide

- A. counsel to defendants.
- B. protection against cruel and unusual punishment.
- C. protection against unreasonable searches and seizures.
- D.** fair notice of the charges.

8. Under the due process clause of the Fourteenth Amendment, criminal statutes must NOT be

- A. vague.
- B. ambiguous.
- C. overly broad.
- D.** All the above are correct.

9. _____ has NOT been found to be unconstitutional.
- A. Statutes stating that "no person shall loiter . . . in or upon any street, park or public place, or in any public building," with no definition of the word "loiter."
 - B. A harassment statute prohibiting conduct that "alarms or seriously annoys" another person.
 - C. A statutes that punished a person who "publicly treats contemptuously the flag of the United States."
 - D.** A federal statute that provides that murdering a "federal egg inspector" can be a "capital crime."
10. The substantive rights specifically enumerated within the Bill of Rights include the right to
- A. bring grievances against the government.
 - B. have protection against cruel and unusual punishment
 - C. keep and bear arms
 - D.** All the above are correct.
11. The right to _____ is NOT covered by the First Amendment
- A.** the right to due process
 - B. the exercise of religion
 - C. the right to peaceable assembly
 - D. the right to free speech
12. The rights to speech that the First Amendment does NOT automatically cover is
- A. obscenity.
 - B.** grievances against the government.
 - C. the advocacy of unlawful conduct.
 - D. fighting words.
13. In _____, the defendant was convicted of interfering with the draft during wartime and of urging insubordination in the military.
- A. *People v. Maness*
 - B. *R.A.V. v. St. Paul*
 - C.** *Schenck v. United States*
 - D. *Hatch v. Superior Court*

14. In _____, the U.S. Supreme Court held unconstitutional a city ordinance banning the burning of a cross and the display of symbols such as swastikas.

A. *People v. Maness*

B. *R.A.V. v. St. Paul*

C. *Schenck v. United States*

D. *Hatch v. Superior Court*

15. _____ is NOT a characteristics used to define the concept of "police powers" in the application of the First Amendment.

A. "Federal, state, and local governments may enact laws."

B. "Despite these regulations, First Amendment rights cannot be completely taken away (or banned) in the interest of the general public."

C. "Federal, state, and local governments may authorize enforcement activities that regulate the time, place, and manner in which an individual can exercise constitutionally protected rights."

D. "American citizens are authorized to commit slander at certain times when it is appropriate."

16. _____ is/are not an example of a religious freedom claim that was rejected by courts.

A. Criminal convictions for polygamy

B. Handling poisonous snakes in religious ceremonies

C. A Christian Scientist parent's withholding medical treatment for a child

D. Practicing the Wiccan religion on U.S. Army bases

17. The right of the people to assemble publicly is NOT absolute because

A. public assembly may threaten public safety, peace, and order, the government has the right to impose reasonable restrictions on the time, place, and manner of assembly.

B. past problems with riots and other tumultuous disturbances has led American courts to create a quota of public assemblies per year nationwide.

C. political interests prevent more extreme groups from a public display of their beliefs.

D. the American system of government has not yet evolved to live up to the promises of the U.S. Constitution.

18. When it comes to anti-loitering statutes, American courts

- A. have held that these statutes do not have to promote identifiable public interests in order to be justified.
- B. have found these laws unconstitutional when they are found to be vague, such as by failing to give fair warning of the precise conduct that is prohibited.**
- C. have found these laws unconstitutional when applied them to hard-working, law-abiding citizens, but not when applied to transients.
- D. have increasingly used these laws to drive out gangs.

19. The U.S. Supreme Court differs from organizations like the National Rifle Association in its interpretation of the Second Amendment because

- A. the U.S. Supreme Court has held that this provision must be read in conjunction with the other clause of the Second Amendment referring to a "well regulated militia."**
- B. the U.S. Supreme Court does not agree with the Second Amendment.
- C. The U.S. Supreme Court does not believe that persons aged 12-17 should keep and bear arms, but it does believe this right is exclusively for adults.
- D. None of the above is correct.

20. The Eighth Amendment to the U.S. Constitution prohibits

- A. excessive bail.
- B. both treason and usurious money lending.
- C. cruel and unusual punishment.**
- D. slavery.

21. The U.S. Supreme Court has interpreted the Eighth Amendment requirement of _____ to mean that the punishment inflicted for a criminal violation should not be grossly inappropriate for the crime committed.

- A. fair notice
- B. *ex post facto*
- C. due process
- D. proportionality**

22. In the 1972 case of _____, the U.S. Supreme Court examined the imposition of the death penalty in three cases and analyzed in the constitutional issues raised by capital punishment.

- A. *Gregg v. Georgia*
- B. *Furman v. Georgia***
- C. *Weems v. United States*
- D. *Coker v. Georgia*

23. The U.S. Supreme Court has held that a right of privacy is NOT implicit in

- A. the Second Amendment right to keep and bear arms.**
- B. the First Amendment right of free association.
- C. the Fourth Amendment ban on unreasonable searches and seizures.
- D. the Third Amendment protection against the quartering of soldiers in private homes.

24. The right of privacy includes the right to

- A. live without unwarranted interference.
- B. be left alone.
- C. be free from unwanted publicity.
- D. any type of internet usage.**

25. The U.S. Supreme Court has legally recognized, within the concept of personal privacy, the right

- A. to decide whether or not to beget a child.
- B. to readily available contraceptives and contraceptive devices for single and married persons.
- C. of a woman to choose to terminate her pregnancy through abortion.
- D. All the above are correct.**

True / False Questions

26. Neither the U.S. Congress nor state legislatures enact laws that will raise constitutional problems.

FALSE

27. The U.S. Constitution defines only one crime—murder.

FALSE

28. A bill of attainder is a legislative enactment that declares individuals or members of a group guilty of a crime and subject to punishment without a trial.

TRUE

29. Criminal statutes lacking in clarity are susceptible to enforcement in an arbitrary or discriminatory manner by police, prosecutors, judges, and juries.

TRUE

30. Ignorance of the law is often a defense for violating a validly existing criminal law.

FALSE

31. In special circumstances, state and federal agencies can legally enact or enforce criminal statutes that unnecessarily inhibit the substantive rights identified in the U.S. Constitution.

FALSE

32. Freedom of religion and speech are sometimes grouped together and referred to as "freedom of expression."

TRUE

33. American courts will invalidate criminal statutes that are viewed as thinly veiled attempts to restrict the freedom of religion.

TRUE

34. The right to keep and bear arms, as provided in the Second Amendment, has proven to be relatively absolute in recent years.

FALSE

35. Typical federal and state gun control statutes impose licensing requirements such as background checks and waiting periods.

TRUE

36. The Supreme Court has ruled that the death penalty cannot be imposed upon a defendant who was less than 18 years old at the time of the killing offense.

FALSE

37. The effect of the U.S. Supreme Court case *Furman v. Georgia* was an "informal moratorium" until the execution of Gary Gilmore in 1977.

TRUE

Matching Questions

38. Match the following Amendments with the provisions below.

1. A well regulated militia	First Amendment <u>6</u>
	Second
2. The right to freedom of speech	Amendment <u>1</u>
3. Protection against unreasonable searches and seizures	Third
	Amendment <u>10</u>
	Fourth
4. The right to freedom of religious exercise	Amendment <u>3</u>
	Eighth
5. Protection against cruel and unusual punishment	Amendment <u>5</u>
	Eighth
6. The right to public assembly	Amendment <u>7</u>
7. The right to proportionality in sentencing	First Amendment <u>4</u>
	Second
8. The right to freedom of expression	Amendment <u>9</u>
9. The right to keep and bear arms	First Amendment <u>8</u>
10. Protection against the quartering of soldiers in private homes	First Amendment <u>2</u>

Short Answer Questions

39. Write a paragraph explaining the historical basis for the Bill of Rights and why they were created.

On the basis of experiences as English colonists, many people objected to the U.S. Constitution because it did not explicitly protect the rights of the people. These former colonists were aware of the ways in which a government can abuse its authority, and they wanted to avoid it in the United States. As a result, the first U.S. Congress proposed and then adopted a set of 12 amendments that defined the powers of the federal government and the rights of the people. By 1791, the states had adopted 10 of these, which became known as the Bill of Rights.

40. Explain the provisions of the Fourteenth Amendment to the U.S. Constitution.

The Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process or law; nor deny to any person . . . the equal protection of the laws." Thus, any law that distinguishes between two classes of persons (e.g., men and women, wealthy and poor, minorities and non-minorities) is subject to attack as failing to provide constitutionally mandated equal protection. Today, all laws that make a distinction between persons based on race, ethnicity, gender, religion, sexual orientation, or national origin are subject to constitutional scrutiny, even when they are designed to rectify the discrimination of the past, because of the provisions of the Fourteenth Amendment.

41. Give three examples of past incidents regarding First Amendment rights that reflect its uneven application throughout American history.

In *Schenck v. United States* (1919), Justice Holmes found the defendant guilty of inciting antiwar sentiments. Given modern redefinitions of the clear and present danger test used to determine if speech falls within constitutional protection, it is unlikely that the conduct and speech in this case would be considered criminal by the Supreme Court today. In 1912, feminist Margaret Sanger was arrested for giving a lecture on birth control. During the 19th and 20th centuries, meetings held by trade unions were banned, and persons violating court orders prohibiting strikes and labor protests were sentenced to prison. During World War I, individuals peacefully protesting American involvement in the war were jailed for expressing their opinion. The display of red or black flags, which are symbols of communism and anarchism, was outlawed in many states in the early 1920s. Author Upton Sinclair was arrested in 1923 for attempting to read the text of the First Amendment at a union rally.

42. Discuss the Amendments to the U.S. Constitution that criminal statutes typically contradict, according to the requirements of substantive due process?

They may run afoul of the specific dictates of the First or Second Amendments, the somewhat broader prohibitions of the Eighth Amendment, or the general exercise of liberty mentioned in both the Fifth and Fourteenth Amendments.

43. Discuss the significance of *Weems v. United States* and *Robinson v. California* to the Eighth Amendment.

In *Weems v. United States* (1910), Weems, an officer of the Bureau of the Coast Guard and Transportation of the United States Government of the Philippine Islands, was convicted of falsifying a "public and official" document. He was sentenced to 15 years' incarceration at the hard labor with chains on his ankles. The Supreme Court judged this punishment to be excessive and thus in violation of the Eighth Amendment. In *Robinson v. California* (1962), the Court held that a 90-day prison sentence for violation of a California statute making it a crime to be addicted to the use of narcotics was a cruel and unusual punishment.