

Criminal Procedure: From First Contact to Appeal, 6e (Worrall)
Chapter 1 Introduction to Criminal Procedure

1.1 Multiple Choice Questions

1) The most important source of rights applying to criminal procedure is/are:

- A) Court decisions
- B) The U.S. Constitution
- C) State constitutions
- D) Statutes

Answer: B

Page Ref: 3

Objective: Summarize the constitutional basis for criminal procedure.

Level: Basic

2) There are five constitutional amendments that are of special importance to criminal procedure: the Fourth, Fifth, Sixth, Eighth, and Fourteenth. Which of these is the most well-known source of rights in criminal procedure?

- A) Fourth Amendment
- B) Fifth Amendment
- C) Sixth Amendment
- D) Eighth Amendment

Answer: A

Page Ref: 3

Objective: Summarize the constitutional basis for criminal procedure.

Level: Basic

3) Which statement is true of the Fourth Amendment?

- A) It protects from cruel and unusual punishment.
- B) It provides for a speedy and public trial, impartial jury, confrontation, compulsory process, and assistance or counsel.
- C) It provides protection from double jeopardy and self-incrimination and for grand jury indictment in serious crimes.
- D) It protects from unreasonable searches and seizures.

Answer: D

Page Ref: 3

Objective: Summarize the constitutional basis for criminal procedure.

Level: Basic

4) Which statement is true of the Fifth Amendment?

- A) It protects from unreasonable searches and seizures.
- B) It provides protection from double jeopardy and self-incrimination and for grand jury indictment in serious crimes.
- C) It provides for a speedy and public trial, impartial jury, confrontation, compulsory process, and assistance or counsel.
- D) It includes the so-called due process clause, which has been used to incorporate various other rights described in the Bill of Rights.

Answer: B

Page Ref: 4

Objective: Summarize the constitutional basis for criminal procedure.

Level: Basic

5) Which statement is true of the Sixth Amendment?

- A) It protects from unreasonable searches and seizures.
- B) It includes the so-called due process clause, which has been used to incorporate various other rights described in the Bill of Rights.
- C) It protects from cruel and unusual punishment.
- D) It provides for a speedy and public trial, impartial jury, confrontation, compulsory process, and assistance or counsel.

Answer: D

Page Ref: 4

Objective: Summarize the constitutional basis for criminal procedure.

Level: Basic

6) Which statement is true of the Eighth Amendment?

- A) It protects from cruel and unusual punishment.
- B) It protects from unreasonable searches and seizures.
- C) It includes the so-called due process clause, which has been used to incorporate various other rights described in the Bill of Rights.
- D) It provides for a speedy and public trial, impartial jury, confrontation, compulsory process, and assistance or counsel.

Answer: A

Page Ref: 4

Objective: Summarize the constitutional basis for criminal procedure.

Level: Basic

7) Which statement is true of the Fourteenth Amendment?

A) It provides protection from double jeopardy and self-incrimination and for grand jury indictment in serious crimes.

B) It provides for a speedy and public trial, impartial jury, confrontation, compulsory process, and assistance or counsel.

C) It includes the so-called due process clause, which has been used to incorporate various other rights described in the Bill of Rights.

D) It protects from cruel and unusual punishment.

Answer: C

Page Ref: 4

Objective: Summarize the constitutional basis for criminal procedure.

Level: Basic

8) The due process clause consists of two types of due process: substantive and procedural.

Substantive due process refers to:

A) Procedural fairness

B) Protection from arbitrary and unreasonable action on the part of state officials

C) Exemption from complicity by government officials

D) None of the above

Answer: B

Page Ref: 4

Objective: Summarize the constitutional basis for criminal procedure.

Level: Intermediate

9) There are three concerns that make the incorporation debate significant. Which of the following is NOT one of them?

A) Incorporation may threaten federalism.

B) Most contact between police and citizens takes place at the federal level.

C) Incorporation protects separation of powers.

D) All of these are concerns

Answer: D

Page Ref: 5

Objective: Summarize the constitutional basis for criminal procedure.

Level: Intermediate

10) The total incorporation perspective can be best described as the view that:

A) The Fourteenth Amendment's due process clause incorporates the entire Bill of Rights

B) Protections listed in the Bill of Rights should be incorporated

C) Not just the whole Bill of Rights, but other rights (e.g., privacy) should be incorporated

D) Fundamental rights should be incorporated

Answer: A

Page Ref: 6

Objective: Summarize the constitutional basis for criminal procedure.

Level: Intermediate

11) Which view of incorporation favors incorporation of certain protections enumerated in the Bill of Rights, but not all of them? It deems certain rights as being more critical or fundamental than others.

- A) Total Incorporation
- B) Selective Incorporation
- C) Total Incorporation Plus
- D) Case-by-Case Incorporation

Answer: B

Page Ref: 6

Objective: Summarize the constitutional basis for criminal procedure.

Level: Intermediate

12) Which incorporation perspective has arguably "won out" over the others?

- A) Total Incorporation
- B) Selective Incorporation
- C) Total Incorporation Plus
- D) Case-by-Case Incorporation

Answer: B

Page Ref: 6

Objective: Summarize the constitutional basis for criminal procedure.

Level: Basic

13) A precedent is a rule of case law that is binding on all lower courts and the court that issued it. The courts will defer to prior decisions based on a similar set of facts and legal questions. This doctrine is known as:

- A) *Res Gestae*
- B) *Scire Feci*
- C) *Stare Decisis*
- D) *Suo Motu*

Answer: C

Page Ref: 7

Objective: Explain the importance of precedent.

Level: Basic

14) When a decision does not apply to the current facts, a court will _____, saying, in effect, that because the facts of the present case are different, the case cannot be decided the same way.

- A) Distinguish the case
- B) Use case precedent
- C) Judge decision
- D) Enact case law

Answer: A

Page Ref: 7

Objective: Explain the importance of precedent.

Level: Basic

15) The theory world and real world can differ for which of the following reasons?

- A) The Supreme Court sometimes makes decisions on excruciatingly detailed matters that have almost no applicability to most law enforcement officers most of the time.
- B) The Supreme Court frequently hands down decisions that would seem to have dramatic effects on the nature of law enforcement, but actually involve issues that are already being addressed by many police agencies.
- C) What the courts say and what the police do can differ simply as a consequence of some aspect of the U.S. legal system.
- D) All of the above

Answer: D

Page Ref: 9

Objective: Compare the theory of criminal procedure to the reality.

Level: Intermediate

16) The primary purpose of criminal procedure is to maintain the proper balance between:

- A) Controlling crime and due process
- B) Dictatorship and democracy
- C) Servitude and equality
- D) Protection and procedure

Answer: A

Page Ref: 10

Objective: Compare the theory of criminal procedure to the reality.

Level: Intermediate

17) Which of the following are NOT one of the concepts underlying the due process perspective?

- A) The criminal process looks, or should look, something like an "obstacle course."
- B) Quantity is better than quality.
- C) Formality is preferred over informality.
- D) A great deal of faith is put in the courts.

Answer: B

Page Ref: 10-11

Objective: Describe the public order (crime control) and individual rights (due process) perspectives of criminal justice and how criminal procedure balances the two.

Level: Intermediate

18) Which of the following is NOT a characteristic of the crime control perspective?

- A) Assembly-line justice
- B) Quantity over quality
- C) Insistence on formality of due process rules
- D) Faith in the courts

Answer: D

Page Ref: 11-12

Objective: Describe the public order (crime control) and individual rights (due process) perspectives of criminal justice and how criminal procedure balances the two.

Level: Intermediate

19) Legal guilt is determined by whether a person is guilty according to the:

- A) Police
- B) Judge
- C) Law
- D) Jury

Answer: C

Page Ref: 10

Objective: Describe the interests of public order (crime control) and individual rights (due process) perspectives of criminal justice and how criminal procedure balances the two.

Level: Basic

20) Typically, the lowest-level court(s) in a given state is/are:

- A) Courts of general jurisdiction
- B) The state supreme court
- C) Intermediate appellate courts
- D) Courts of limited jurisdiction

Answer: D

Page Ref: 13

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Basic

21) Each state has its own highest court, typically referred to as:

- A) Superior courts
- B) Intermediate appellate courts
- C) State supreme courts
- D) Courts of limited jurisdiction

Answer: C

Page Ref: 13

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Basic

22) At the federal level, the lowest-level trial court is referred to as:

- A) U.S. Supreme Court
- B) U. S. courts of appeals
- C) District courts
- D) Trial courts

Answer: C

Page Ref: 13

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Basic

23) When an appellate court reverses a lower court's decision, it:

- A) Nullifies or sets aside a trial verdict
- B) Sends the case back to the trial level for further action consistent with the appellate decision
- C) Sets the defendant free
- D) Adjudicates the case

Answer: A

Page Ref: 17

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Intermediate

24) When an appellate court agrees with a lower court's decision, it _____ that decision.

- A) Reverses
- B) Affirms
- C) Remands
- D) Vacates

Answer: B

Page Ref: 17

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Basic

25) In order for a case to reach the Supreme Court, the court must decide whether it wants to hear the case. If the Supreme Court agrees that case is worth deciding, it issues what is known as a:

- A) *Lex loci*
- B) *Jus cogens*
- C) *Certiorari*
- D) *Writ of certiorari*

Answer: D

Page Ref: 18

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Basic

26) Which of the following is NOT a reason a "bright-line" decision may be helpful?

- A) It promotes consistency.
- B) It promotes clarity and predictability.
- C) It is ambiguous.
- D) It is subject to very little interpretation.

Answer: C

Page Ref: 19

Objective: Summarize the important constitutional basis for criminal procedure.

Level: Intermediate

27) Police conduct that is considered reasonable by the police officer engaged in the conduct is referred to as:

- A) Subjective reasonableness
- B) Objective reasonableness
- C) Reasonable objectiveness
- D) Unreasonable objectiveness

Answer: A

Page Ref: 20

Objective: Provide an overview of the criminal process.

Level: Basic

28) The term "objective reasonableness" in criminal procedure refers to:

- A) What a single individual believes is reasonable
- B) What a reasonable person believes is reasonable
- C) What a jury believes is reasonable
- D) What a reasonable person would do or feel under the circumstances

Answer: D

Page Ref: 20

Objective: Provide an overview of the criminal process.

Level: Intermediate

29) Judicial restraint refers to:

- A) Limiting decisions to the facts of each case
- B) Deciding cases based on additional, hypothetical situations
- C) Interpreting complex legal issues
- D) Relying on case law to determine outcomes

Answer: A

Page Ref: 22

Objective: Summarize important issues and trends in criminal procedure.

Level: Basic

30) The past Supreme Court requirement that a physical intrusion by authorities must have taken place to violate one's privacy is referred to as the:

- A) Electronic communication protection doctrine
- B) Doctrine
- C) Trespass doctrine
- D) Physical protection doctrine

Answer: C

Page Ref: 23

Objective: Provide an overview of the criminal process.

Level: Intermediate

1.2 True/False Questions

1) Criminal procedure is mostly about constitutional rights, notably, those found in the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments.

Answer: TRUE

Page Ref: 3

Objective: Summarize the constitutional basis for criminal procedure.

Level: Basic

2) Total Incorporation Plus is concerned with the extent to which the various provisions of the Bill of Rights should be binding on the states.

Answer: FALSE

Page Ref: 4

Objective: Summarize the constitutional basis for criminal procedure.

Level: Intermediate

3) Total incorporation favors the incorporation of all rights in the Bill of Rights.

Answer: TRUE

Page Ref: 6

Objective: Summarize the constitutional basis for criminal procedure.

Level: Basic

4) The Fourth Amendment contains no mention of privacy.

Answer: TRUE

Page Ref: 23

Objective: Summarize the constitutional basis for criminal procedure.

Level: Basic

5) Criminal procedure is closely linked to history because of the importance of precedent. Before making decisions, courts almost always look to the past for the purpose of determining whether a case with similar facts has already been decided.

Answer: TRUE

Page Ref: 29

Objective: Explain the importance of precedent.

Level: Basic

6) *Stare decisis* usually only applies to courts within a single jurisdiction.

Answer: TRUE

Page Ref: 7

Objective: Explain the importance of precedent.

Level: Intermediate

7) The theoretical world of the courts most often aligns in the most important ways with the real world of law enforcement.

Answer: FALSE

Page Ref: 29

Objective: Compare the theory of criminal procedure to the reality.

Level: Intermediate

8) The crime control perspective emphasizes controlling crime, often at the expense of people's rights.

Answer: TRUE

Page Ref: 11

Objective: Describe the public order (crime control) and individual rights (due process) perspectives of criminal justice and how criminal procedure balances the two.

Level: Basic

9) The due process perspective is concerned primarily with protecting people's rights.

Answer: TRUE

Page Ref: 10

Objective: Describe the public order (crime control) and individual rights (due process) perspectives of criminal justice and how criminal procedure balances the two.

Level: Basic

10) The United States has a three-tiered court structure consisting of federal, state, and city courts.

Answer: FALSE

Page Ref: 13

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Basic

11) At the federal level, three types of courts are relevant: district courts, circuit courts of appeals, and the U.S. Supreme Court.

Answer: TRUE

Page Ref: 13

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Basic

12) State court structures vary from one state to the next but generally consist of courts of limited jurisdiction, trial courts of general jurisdiction, intermediate appellate courts, and supreme courts.

Answer: TRUE

Page Ref: 13

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Basic

13) Criminal procedure consists of a vast set of rules and guidelines describing how suspected and accused criminals are to be handled and processed by the justice system.

Answer: TRUE

Page Ref: 2

Objective: Provide an overview of the criminal process.

Level: Basic

14) The due process model emphasizes factual guilt.

Answer: FALSE

Page Ref: 10

Objective: Describe the public order (crime control) and individual rights (due process) perspectives of criminal justice and how criminal procedure balances the two.

Level: Intermediate

15) A bright-line decision is one in which the Court hands down a specific rule that is meant to be applied uniformly in every case, with very little interpretation.

Answer: TRUE

Page Ref: 19

Objective: Summarize important issues and trends in criminal procedure.

Level: Intermediate

16) A decision requiring case-by-case adjudication is quite different from a bright-line decision. In these types of rulings, the Supreme Court often refers to the concept of case-specific circumstances.

Answer: FALSE

Page Ref: 20

Objective: Summarize important issues and trends in criminal procedure.

Level: Intermediate

17) Police conduct that is deemed subjectively reasonable, or characterized by subjective reasonableness, is conduct that would be considered reasonable by the police officer engaged in the conduct.

Answer: TRUE

Page Ref: 20

Objective: Summarize important issues and trends in criminal procedure.

Level: Basic

18) A concurring opinion disagrees with the court's decision.

Answer: FALSE

Page Ref: 17

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Basic

19) An appeal is not the only method of challenging a guilty verdict. The right of *writ of certiorari*—also commonly referred to as a collateral attack—is guaranteed in the Constitution.

Answer: FALSE

Page Ref: 28

Objective: Provide an overview of the criminal process.

Level: Intermediate

20) One who files a *habeas corpus* petition is known as an appellant.

Answer: FALSE

Page Ref: 17

Objective: Provide an overview of the criminal process.

Level: Intermediate

1.3 Fill in the Blank Questions

1) The _____ Amendment's due process clause has been used by the United States Supreme Court to apply many of the rights listed in the Bill of Rights against the states.

Answer: Fourteenth

Page Ref: 4

Objective: Summarize the constitutional basis for criminal procedure.

Level: Basic

2) Total incorporation plus holds that the Fourteenth Amendment's due process clause _____ the whole Bill of Rights, as well as additional rights not specified in the Constitution, such as the "right to privacy."

Answer: Incorporates

Page Ref: 6

Objective: Summarize the constitutional basis for criminal procedure.

Level: Intermediate

3) The _____ incorporation perspective views that the due process clause makes all of the provisions of the Bill of Rights applicable to the states.

Answer: Total

Page Ref: 6

Objective: Summarize the constitutional basis for criminal procedure.

Level: Intermediate

4) The due process perspective is, first and foremost, concerned with people's _____ and liberties.

Answer: Rights

Page Ref: 10

Objective: Describe the public order (crime control) and individual rights (due process) perspectives of criminal justice and how criminal procedure balances the two.

Level: Intermediate

5) The _____ is the voice of the five justices, although one or more of the five may opt to write a concurring opinion, which supports the majority's decision but for different reasons.

Answer: Opinion

Page Ref: 17

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Intermediate

6) A(n) _____ opinion disagrees with the court's decision.

Answer: Dissenting

Page Ref: 17

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Intermediate

7) A past decision may not be available for every case, but when one is, the courts should follow the doctrine of *stare* _____ and defer to the past case.

Answer: *Decisis*

Page Ref: 7

Objective: Explain the importance of precedent.

Level: Intermediate

8) The term judicial _____ refers to the philosophy of limiting decisions to the facts of each case, and deciding only the issue or issues that need to be resolved in a particular situation.

Answer: Restraint

Page Ref: 22

Objective: Provide an overview of the criminal process.

Level: Intermediate

9) The Bill of Rights is the first _____ Amendments to the United States Constitution.

Answer: Ten

Page Ref: 5

Objective: Summarize the constitutional basis for criminal procedure.

Level: Basic

10) When the justices limit their decision to the specific facts of the case on appeal, they exercise judicial _____.

Answer: Restraint

Page Ref: 22

Objective: Summarize important issues and trends in criminal procedure.

Level: Basic

1.4 Matching Questions

1-1. Match the term listed in Column 1 to the correct definition in Column 2.

- A) A general concern with people's rights and liberties. The due process perspective is closely aligned with a liberal political orientation.
- B) A rule of case law (i.e., a decision by a court) that is binding on all lower courts and the court that issued it
- C) A perspective that emphasizes the importance of controlling crime, perhaps to the detriment of civil liberties
- D) A vast set of rules and guidelines that describe how suspected and accused criminals are to be handled and processed by the justice system

1) Precedent

Page Ref: 2-11

Objective: n/a

Level: Basic

2) Due process perspective

Page Ref: 2-11

Objective: n/a

Level: Basic

3) Crime control perspective

Page Ref: 2-11

Objective: n/a

Level: Basic

4) Criminal procedure

Page Ref: 2-11

Objective: n/a

Level: Basic

Answers: 1) B 2) A 3) C 4) D

1-2. Match the term listed in Column 1 to the correct definition in Column 2.

- A) The requirement that four U.S. Supreme Court justices must agree to hear a case before it goes before the full Court
- B) An appellate court verdict that sends a case back to the lower court for further action consistent with the appellate court's decision
- C) An appellate court verdict that expresses agreement with a lower court's decision
- D) The voice of the majority of judges in an appellate court decision. At the U.S. Supreme Court level, the opinion is the voice of at least five justices.
- E) At the U.S. Supreme Court level, an opinion authored by a justice in the majority that supports the majority's decision but with different legal logic. Concurring opinions are sometimes authored in lower appellate court cases.
- F) An appellate court decision that is, for all practical purposes, the same as a reversal
- G) An appellate court verdict that is akin to nullifying or setting aside a lower court's verdict
- H) At the U.S. Supreme Court level, an opinion written by a justice in the minority that expresses disagreement with the majority decision. Dissenting opinions are sometimes authored in lower appellate court cases.

5) Affirm

Page Ref: 17-18

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Intermediate

6) Vacate

Page Ref: 17-18

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Intermediate

7) Remand

Page Ref: 17-18

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Intermediate

8) Reverse

Page Ref: 17-18

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Intermediate

9) Concurring opinion

Page Ref: 17-18

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Intermediate

10) Rule of four

Page Ref: 17-18

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Intermediate

11) Dissent

Page Ref: 17-18

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Intermediate

12) Opinion

Page Ref: 17-18

Objective: Outline the structure of the court system, including the responsibilities and jurisdictions of each level.

Level: Intermediate

Answers: 5) C 6) F 7) B 8) G 9) E 10) A 11) H 12) D

1-3. Match the term listed in Column 1 to the correct definition in Column 2.

- A) The party that appeals. Both the prosecutor and the defendant can appeal, although defense appeals are more common than prosecution appeals.
- B) The person charged with a crime.
- C) The official representing the government in a criminal case.
- D) The name given to a convicted criminal who challenges the constitutionality of his or her confinement via a *habeas corpus* petition.

13) Defendant

Page Ref: 16-17

Objective: Provide an overview of the criminal process.

Level: Basic

14) Petitioner

Page Ref: 16-17

Objective: Provide an overview of the criminal process.

Level: Basic

15) Prosecutor

Page Ref: 16-17

Objective: Provide an overview of the criminal process.

Level: Basic

16) Appellant

Page Ref: 16-17

Objective: Provide an overview of the criminal process.

Level: Basic

Answers: 13) B 14) D 15) C 16) A

1-4. Match the term listed in Column 1 to the correct definition in Column 2.

- A) Protection from arbitrary and unreasonable action on the part of state officials.
- B) Protection of significant life, liberty, or property interests, sometimes described as "procedural fairness."
- C) When evaluating the actions of law enforcement officials, conduct that would be considered acceptable by a "reasonable person." A judge usually decides what a "reasonable person" would consider acceptable.
- D) When evaluating the actions of law enforcement officials, conduct that would be considered reasonable by the police officer engaged in the conduct.

17) Objective reasonableness

Page Ref: 4, 20

Objective: Describe the public order (crime control) and individual rights (due process) perspectives of criminal justice and how criminal procedure balances the two.

Level: Basic

18) Subjective reasonableness

Page Ref: 4, 20

Objective: Describe the public order (crime control) and individual rights (due process) perspectives of criminal justice and how criminal procedure balances the two.

Level: Basic

19) Substantive due process

Page Ref: 4, 20

Objective: Describe the public order (crime control) and individual rights (due process) perspectives of criminal justice and how criminal procedure balances the two.

Level: Basic

20) Procedural due process

Page Ref: 4, 20

Objective: Describe the public order (crime control) and individual rights (due process) perspectives of criminal justice and how criminal procedure balances the two.

Level: Basic

Answers: 17) C 18) D 19) A 20) B

1.5 Essay Questions

1) Identify and discuss the sources of rights in criminal procedure.

Answer: The U.S. Constitution is the most important source of rights applying to criminal procedure. In addition to the Constitution, important sources of rights include court decisions, statutes, and state constitutions. The rules that govern the conduct of all criminal proceedings brought in to federal courts, known as the Rules of Criminal Procedure, also impact criminal procedure. Criminal procedure cannot be understood without attention to the interplay between federal and states' rights. The two-tiered system of government in the United States creates a unique relationship between the federal and state levels that impacts criminal procedure.

Page Ref: 2-5

Objective: Summarize the constitutional basis for criminal procedure.

Level: Intermediate

2) Describe and explain the various perspectives related to the incorporation controversy.

Answer: Answers should include a discussion of the *total incorporation* perspective; the *selective incorporation*, or the *fundamental rights* perspective; the *total incorporation plus* perspective; and finally the view some have that the topic of incorporation deserves case-by-case consideration.

Page Ref: 5-6

Objective: Summarize the constitutional basis for criminal procedure.

Level: Intermediate

3) Describe and analyze the due process and the crime control perspectives.

Answer: Good answers should include a discussion of the competing concerns in criminal procedure of controlling crime and the guarantee of due process rights. Liberals tend to focus on liberty interests — individual liberty and rights — while conservatives tend to focus on crime control using a "cost/benefit perspective." Due process believe it is the government's job to maximize human freedom and that a suspect is innocent until proven guilty. Due process has four ideals: that the criminal justice system should look like an obstacle course, quality over quantity, insistence on formality, and faith in the courts. Crime control advocates believe that the benefit of controlling crime to society at large outweighs the cost of infringing on some individuals' due process protections. Crime controls also has four ideals: the criminal process should look like an assembly line, quantity over quality, insistence on informality, and faith in the police.

Page Ref: 10-12

Objective: Describe the public order (crime control) and individual rights (due process) perspectives of criminal justice and how criminal procedure balances the two.

Level: Difficult

4) Define and explain the difference between judicial restraint and judicial activism.

Answer: Good answers should identify judicial restraint as limiting a decision to the facts of the particular case before the court. Judicial restraint avoids unnecessary decisions on constitutional questions, seeks to interpret the Constitution and defers to precedent, while judicial activism sees cases as an opportunity to interpret the constitution with an eye for sweeping changes in the future. Judicial activism avoids precedent and favors "judge-made" laws.

Page Ref: 22

Objective: Summarize important issues and trends in criminal procedure.

Level: Intermediate

1.6 Critical Thinking Questions

1) Considering that the Bill of Rights was designed as a series of limitations on the federal government, does it make sense that many of the same limitations have been applied to all states by the United States Supreme Court? Take a position and defend it.

Answer: Answers should include a discussion of the various incorporation arguments, including the *total incorporation* perspective; the *selective incorporation*, or the *fundamental rights* perspective; the *total incorporation plus* perspective; and finally the view that some have that the topic of incorporation deserves a case-by-case consideration. The important aspect of this question is the position taken and the analytical support given to the answer. Which incorporation perspective makes the best sense to the writer, and why? Poor answers will merely recite definitions and have minimal analysis.

Page Ref: 5-6

Objective: Summarize the constitutional basis for criminal procedure.

Level: Difficult

2) Argue why the PATRIOT Act's attempt to ensure crime control may come at too great a loss to due process and individual liberty.

Answer: Answers should identify the basic definitions of the competing interests of crime control and individual liberty and due process. Then analyze the PATRIOT Act's sweeping crime control provisions from both perspectives, ultimately reaching a conclusion as to the specific question asked. Poor answers will just recite definitions and skip the analysis.

Page Ref: 10-11, 22-24

Objective: Summarize important issues and trends in criminal procedure.

Level: Difficult

3) Should Americans enjoy a right to privacy, even though no such right is listed in the Constitution? Give some current examples of situations in which you believe the right to privacy should be respected by the courts.

Answer: Answers will discuss the basis for the right to privacy and then relate it to modern examples, which could include Internet issues, medical marijuana use, abortions, religious freedoms, etc.

Page Ref: 20-23

Objective: Summarize important issues and trends in criminal procedure.

Level: Difficult

