

Widener University Delaware Law School

From the Selected Works of Judith L Ritter

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Take Our Quiz About Constitutional Law

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This is the 11th year that Delaware Law School and The News Journal have teamed up to provide you with a collection of essays to celebrate Constitution Day, September 17, the national observance marking the date in 1787 when the Framers signed the Constitution in Philadelphia. This year's collection is a series of quizzes to test your knowledge of constitutional law. Of course, we realize that most of you are not judges or lawyers so don't feel badly if you get stumped by some or all of the questions. But we do hope you welcome this opportunity to expand your knowledge of constitutional law. After all, lawyers and judges did not "ordain and establish" the Constitution; "We the People" did.

If our nation is to continue becoming an ever "more perfect Union," it needs citizens who are educated and engaged, and who are eager to participate in the democratic process with their voices and votes.

That's why Justice Louis Brandeis said "the greatest menace to freedom is an inert people" and "public discussion is a political duty."

1. Penal Codes list crimes and contain the elements that must be proven in order to convict a defendant. The prosecution has the burden of proving each of these elements beyond a reasonable doubt. While not explicitly stated in the document, the Supreme Court has held that the reasonable doubt standard is nevertheless required by the Constitution.

Which part of the Constitution requires proof beyond a reasonable doubt in a criminal case?

- The Sixth Amendment right to a speedy and public trial in criminal prosecutions
 - The Fifth and Fourteenth Amendments' right to due process of law
 - The Eighth Amendment ban on cruel and unusual punishment
 - The First Amendment right to freedom of speech
2. The Fourth Amendment prohibits unreasonable searches and seizures by government officials. When evidence is obtained in violation of the Fourth Amendment, this evidence may not be introduced by the prosecution in a criminal trial.

This principle is called:

- the Miranda rule
- the ex post facto rule



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The Sixth Amendment provides that in a criminal prosecution an accused has the right to a trial by an impartial jury.

- the corpus delicti rule
 - the exclusionary rule
3. The Sixth Amendment provides that in a criminal prosecution an accused has the right to a trial by an impartial jury. This clause has been interpreted to require a jury trial for which of the following?
- only non-petty offenses
 - all criminal cases except for traffic violations
 - only aggravated felonies
 - only homicides
4. The double jeopardy clause of the Fifth Amendment says that a person may not, "be subject for the same offense to be twice put in jeopardy of life or limb." This has been interpreted to mean that an accused cannot be:
- put on trial a second time after being acquitted
 - put on trial a second time after being convicted
 - sentenced multiple times for the same offense
 - all of the above
5. If a suspect in police custody asks for a lawyer to be present either before or during any interrogation, the police must stop any questioning until a lawyer is provided or until the suspect initiates further conversation with the police. This rule is based upon:
- the Sixth Amendment right to a fair trial
 - the Fourth Amendment protection

- against illegal arrests
- the Fifth Amendment right against compelled self-incrimination
- the Civil Rights Act

ANSWERS

1. The answer is (b). In the 1970 case, *In re Winship*, the Supreme Court ruled that the guarantee of due process prohibits a criminal conviction unless a defendant has been proven guilty of all necessary facts beyond a reasonable doubt. The Fifth Amendment requires due process in federal trials. The due process clause in the Fourteenth Amendment covers state court criminal trials.

2. The answer is (d). The Constitution does not explicitly require the exclusion of illegally seized evidence. However, in *Weeks v. U.S.*, decided in 1914, the Supreme Court held that evidence seized in violation of the Fourth Amendment, may not be used in federal trials. Later, in *Mapp v. Ohio*, the Court held that the rule also applied in state trials. Neither the Fourth Amendment nor the exclusionary rule applies to searches by private parties.

3. The answer is (a). The Supreme Court has held that the right to a trial by jury only applies to non-petty criminal offenses defined as crimes for which the maximum penalty is more than six months in jail. However, if an accused knowingly and voluntarily waives his or her right to a jury trial, a

judge alone may decide the question of guilt for any type of offense.

4. The answer is (d). The constitutional protection against double jeopardy is intended to prevent successive and potentially abusive prosecutions and penalties for the same offense. The determination of whether two cases involve the "same offense" can be complicated. For instance, assault with a deadly weapon and an ordinary assault on a single victim on one occasion are considered the same offense for double jeopardy purposes. Usually however, when a defendant appeals his or her conviction asking for a new trial, the double jeopardy clause will not prevent the retrial.

5. The answer is (c). The Fifth Amendment states that a person may not be, "compelled in any criminal case to be a witness against himself." To assist suspects in the exercise of this right, the Supreme Court has recognized a right to counsel during custodial interrogation. The Court has also held that if a suspect requests a lawyer, the police must cease questioning and unless a lawyer is present, may not subsequently approach the suspect to try to obtain a confession.

Judy Ritter is the founding director of the Criminal Defense Clinic at the Delaware Law School and the director of the school's Taishoff Advocacy, Technology and Public Service Institute.