

Constitutional Rights of the Accused

by Sophia Tutorial



WHAT'S COVERED

In this lesson, you will learn about certain rights afforded to those who have been accused of committing crimes. Specifically, this lesson will cover:

1. Search and Seizure
2. Trial Rights
 - a. Presumption of Innocence
 - b. Double Jeopardy
 - c. Self-Incrimination
 - d. Speedy Trial
 - e. Cross-Examination
 - f. Assistance of Counsel
3. Cruel and Unusual Punishment

1. Search and Seizure

The rights of those accused of a crime are spelled out in four of the ten constitutional amendments that make up the Bill of Rights (Amendments Four, Five, Six, and Eight). For the most part, these amendments have been held to apply to both the federal and the state governments.

The Fourth Amendment says in part that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” Although there are numerous and complicated exceptions to the general rule, ordinarily the police may not break into a person’s house, confiscate his papers, or arrest him unless they have a warrant to do so.

➞ **EXAMPLE** This means that a police officer cannot simply stop you on a street corner and ask to see what is in your pockets (a power the police enjoy in many other countries), nor can your home be raided without probable cause to believe that it contains evidence of a crime.

A warrant is obtained from a court based on a sworn **affidavit** presented by the police, showing probable cause that the search will turn up evidence of a crime. The search also must be reasonable. It is not considered reasonable for police to go on a “fishing expedition” for evidence; there must be reliable information to support the claim that a search will produce relevant evidence.

In addition to a search warrant, police are authorized to do “stop and frisk” searches if they have reasonable suspicion that a crime is being committed. But what if the police do search or seize unreasonably?

The courts have devised a remedy to use at trial for the fruits of an unlawful search or seizure. Evidence that is unconstitutionally seized is excluded from the trial. This is called the **exclusionary rule**, first made applicable in federal cases in 1914 and brought home to the states in 1961.

The exclusionary rule is highly controversial, and there are numerous exceptions to it; however, it remains generally true that the prosecutor may not use evidence willfully taken by the police in violation of constitutional rights. This most often applies to evidence in violation of Fourth Amendment rights.

Evidence unconstitutionally obtained is called “fruit of the poisonous tree” because it refers to all evidence improperly obtained as well as additional evidence gained from that evidence.



TERMS TO KNOW

Affidavit

A sworn statement.

Exclusionary Rule

The rule declaring that evidence obtained in violation of the U.S. Constitution must be excluded at trial.

2. Trial Rights

The following constitutional rights relate to the accused's trial proceedings.

2a. Presumption of Innocence

The most important constitutional right in the U.S. criminal justice system is the **presumption of innocence**.

The Supreme Court has repeatedly cautioned lower courts in the United States that juries must be properly instructed that the defendant is innocent until proven guilty. This is the origin of the “beyond a reasonable doubt” standard of proof and is an instruction given to juries in each criminal case.

The Fifth Amendment notes the right of “due process” in federal proceedings, and the Fourteenth Amendment requires that each state provide “due process” to defendants.



TERM TO KNOW

Presumption of Innocence

A foundational doctrine of English common law and U.S. law that a criminal defendant is presumed innocent until the government (state) proves him or her guilty beyond a reasonable doubt.

2b. Double Jeopardy

The Fifth Amendment prohibits the government from prosecuting a person twice for the same offense, or committing **double jeopardy**. The amendment says that no person shall be “subject for the same offence to be twice put in jeopardy of life or limb.”

If a defendant is acquitted, the government may not appeal. If a defendant is convicted and his conviction is upheld on appeal, he may not thereafter be re-prosecuted for the same crime.



TERM TO KNOW

Double Jeopardy

A prohibition in the Fifth Amendment of the U.S. Constitution of a second prosecution after a completed trial for the same offense.

2c. Self-Incrimination

The Fifth Amendment is also the source of a person's right against **self-incrimination** (no person "shall be compelled in any criminal case to be a witness against himself"). The debate over the limits of this right has given rise to an immense literature.

In the broadest outline, the right against self-incrimination means that the prosecutor may not call a defendant to the witness stand during trial and may not comment to the jury on the defendant's failure to take the stand.

Moreover, a defendant's confession must be excluded from evidence if it was not voluntarily made (e.g., if the police beat the person into giving a confession).

IN CONTEXT

In *Miranda v. Arizona*, the Supreme Court ruled that no confession is admissible if the police have not first advised a suspect of his or her constitutional rights, including the right to have a lawyer present to advise the suspect during the questioning.

These so-called Miranda warnings have prompted scores of follow-up cases that have made this branch of jurisprudence especially complex.

Miranda v. Arizona, 384 US 436 (1966).



TERM TO KNOW

Self-Incrimination

Implicating oneself in a crime. The Fifth Amendment of the U.S. Constitution prohibits the government from requiring a person to be a witness against him or herself.

2d. Speedy Trial

The Sixth Amendment tells the government that it must try defendants speedily. How long a delay is too long depends on the circumstances in each case.

In 1975, Congress enacted the **Speedy Trial Act** to give priority to criminal cases in federal courts. It requires all criminal prosecutions to go to trial within seventy-five days (though the law lists many permissible reasons for delay).

Many times, a delay will be caused by a defendant's request for additional time to prepare a defense, waiving the right to a speedy trial.



TERM TO KNOW

Speedy Trial Act

A federal act of Congress that, in 1974, set time limits in the prosecution of federal criminal cases.

2e. Cross-Examination

The Sixth Amendment also says that the defendant shall have the **right to confront witnesses** against him.

No testimony is permitted to be shown to the jury unless the person making it is present and subject to cross-examination by the defendant's counsel.



TERM TO KNOW

Right to Confront Witnesses

A right guaranteed by the Sixth Amendment of the U.S. Constitution allowing the accused to cross-examine any witness against him or her.

2f. Assistance of Counsel

The Sixth Amendment guarantees criminal defendants the right to have the assistance of defense counsel.

During the eighteenth century and before, the British courts frequently refused to permit defendants to have lawyers in the courtroom during trial.

The right to counsel is much broader in this country, as the result of Supreme Court decisions that require the state to pay for a lawyer for **indigent** defendants in most criminal cases.



TERM TO KNOW

Indigent

Without financial means.

3. Cruel and Unusual Punishment

Punishment under the common law was frequently horrifying. Death was a common punishment for relatively minor crimes.

➦ **EXAMPLE** The guillotine, famously in use during and after the French Revolution, is no longer used, nor are defendants put in stocks for public display and humiliation.

➦ **EXAMPLE** In pre-Revolutionary America, an unlucky defendant who found himself convicted could face brutal torture before death.

The Eighth Amendment banned these actions with the words that “**cruel and unusual punishments** shall not be inflicted.” Virtually all such punishments either never were enacted or have been eliminated from the statute books in the United States.

Nevertheless, the Eighth Amendment has become a source of controversy, first with the Supreme Court's

ruling in 1976 that the death penalty, as haphazardly applied in various states, amounted to cruel and unusual punishment. Later Supreme Court opinions have made it easier for states to administer the death penalty. As of 2019, there were 2,656 defendants on death row in the United States, a number that has been steadily declining since 1999.

Of course, no corporation is on death row, and no corporation's charter has ever been revoked by a U.S. state, even though some corporations have repeatedly been indicted and convicted of criminal offenses.



TERM TO KNOW

Cruel and Unusual Punishment

Punishment prohibited by the Eighth Amendment of the U.S. Constitution; punishment considered by societal norms as barbaric or torturous; punishment not known to the common law; punishment so disproportionate to the offense that it shocks the moral sense of society.



SUMMARY

In this lesson, you learned that the U.S. Constitution provides several important protections for criminal defendants. The Fourth Amendment in the Bill of Rights protects individuals against unreasonable **search and seizure**. Arrests and evidence unconstitutionally obtained are not permissible in U.S. courts.

A defendant also has constitutionally guaranteed **trial rights**, including the **presumption of innocence**, the prohibition of **double jeopardy**, a right against **self-incrimination**, a **speedy trial**, and a right to **cross-examination** and **assistance of counsel**. The U.S. Constitution also prohibits **cruel and unusual punishment**, although whether or not this includes the death penalty is still a source of debate.

Best of luck in your learning!

Source: This content has been adapted from Lumen Learning's "Constitutional Rights of the Accused" tutorial.



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