



## **CRESTPOINT UNIVERSITY**

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### **Constitutional Law & Criminal Procedure**

#### **PLG-110**

#### **Syllabus and Course Guide**

The Crestpoint University Constitutional Law & Criminal Procedure course is a pre-recorded class. This means that all lectures will be made available at the outset of the class. The student should listen to all 15 lectures at his or her convenience. However, the student must interact with the school by taking a quiz or answering a discussion question each week.

All assignments and exams must be submitted by the course deadline. The deadline can be found on your progress report, which can be accessed on the Course Materials page or by clicking on the assignments and exams button on your student menu and then selecting this course.

If a student is having trouble completing the course, the student is strongly encouraged to contact his or her academic advisor or Academic Support ([academicsupport@crestpoint.edu](mailto:academicsupport@crestpoint.edu)).

#### **COURSE DESCRIPTION:**

Although concepts in constitutional law do not often manifest themselves in the everyday practice of law, a basic understanding of the foundation on which our entire legal system is built is vital to a student's legal education. This course will provide our students with a general understanding of the major issues in constitutional law, including the separation of powers between the executive, legislative and judicial branches of the federal government; federalism and states' rights; the concept of interstate commerce; freedom of speech (the First Amendment); substantive and procedural due process; the Equal Protection Clause; and various areas of discrimination.

Perhaps the portions of the Constitution most relevant to the everyday practice of law are those sections of the Bill of Rights which deal with criminal procedure and litigation. Therefore, this course will especially focus on the rights of a criminal defendant. The areas to be highlighted will include: the Fourth Amendment's protection against unreasonable searches and seizures by

the police; the Fifth and Fourteenth Amendments' guarantees of "due process" for an alleged criminal; the Sixth Amendment's guarantee of the right to counsel along with the landmark case of *Miranda v. Arizona*; and the Eighth Amendment's prohibition of cruel and unusual punishment.

### **COURSE OBJECTIVES:**

At the completion of this course, the student should be able to:

- Explain the concept of separation of powers.
- Articulate the standards the courts use in determining whether the government may make classifications that treat people differently from one another.
- Determine whether a claim of government deprivation of civil rights is likely to succeed.
- Differentiate between "searches" that are regulated by the Fourth Amendment and police actions that are not considered searches and are thus not restricted by the Amendment.
- Determine whether a statement given by a suspect was in response to a proper Miranda "interrogation".
- Determine whether a government regulation impacting religion violates the First Amendment.
- Distinguish between government actions satisfy procedural due process requirements and those that don't.
- Explain what kinds of speech are and are not protected under the First Amendment.
- Describe the significance of the Commerce Clause and the latitude it affords Congress to legislate.
- Articulate the elements necessary for obtaining a search warrant.

### **READING ASSIGNMENTS:**

All reading assignments refer to the Crestpoint courseware, including the interactions attached to each subchapter. Cases and/or statutes that are specifically mentioned in the syllabus are required reading. The texts of these cases and/or statutes may be accessed directly from the courseware. In addition to the assigned courseware and cases, students should familiarize themselves with the various legal documents listed for each lecture. These documents can be found on the "Documents and Slides" page on the Crestpoint student website. Some, but not all, of these documents will be discussed in class. Reading assignments for each class should be completed prior to the class.

**In addition to the courseware's electronic form, you may also view/print out a PDF version of the courseware that includes:**

- 1) The courseware**
- 2) All lectures slides**
- 3) Selected provisions from the Constitution of the United States**

**See the course materials page for the link.**

## School Virtual Library

All Crestpoint students are encouraged to take advantage of the NPC virtual library, which can be accessed from the “course materials” page on the student menu or directly through this link: <http://nationalparalegal.edu/Students/VirtualLibrary.aspx>.

## WRITTEN ASSIGNMENTS:

At the outset of the course, two assignments will be posted on the “assignments and exams” page. The 2 assignments will cumulatively count for 30% of the student’s grade for the course.

Please compose your answers to assignments on your own computer, remembering to save your work frequently. Once your assignment is complete, please submit by uploading it pursuant to the directions on the “Assignments and Exams” page within the Crestpoint student site. Assignments may be submitted as PDF files, Microsoft Word documents, Open Office documents or PowerPoint presentations.

Each submitted assignment will be graded on the following scale:

4 - Excellent

3 - Good

2 – Satisfactory

1 – Poor

0 – Not acceptable (must resubmit)

(Half-points may also be awarded in assignment grading.)

Please see the “Assignment Grading Rubric” (the next page of this syllabus) for more detailed information as to how assignments are graded and the key elements of assignments that instructors look for when grading assignments.

In addition to a grade, students will receive written feedback from the instructor on their assignments, where appropriate.

For more information on assignments, please see the *Crestpoint Student Handbook*.

***To the extent possible, it is recommended that students complete the assignments as the course proceeds rather than waiting until after the course ends.***

## Assignment Grading Rubric

Factor	4 (Excellent)	3(Good)	2(Satisfactory)	1 (Poor)	0 (no credit)
<b>Thoroughness</b>	Answers all questions in the exercise completely and in the appropriate order.	Answers all questions in the exercise but not completely and/or not in the appropriate order.	Answers most of the questions in the exercise but not completely and/or not in the appropriate order.	Does not answer many of the questions in the exercise but does make some reasonable effort to do so.	Makes little or no reasonable effort to answer the questions posed in the assignment.
<b>Demonstrates Understanding of the Assignment and has come to an appropriate conclusion</b>	Response demonstrates a thorough understanding of the exercise and the student has justified and enunciated an appropriate conclusion.	Response demonstrates an understanding of the exercise and comes to a conclusion.	Response demonstrates some understanding of the exercise. The conclusion that the student comes to may not be appropriately justified by the rest of the essay.	Response demonstrates some understanding of the exercise but shows a high level of confusion on the part of the student. The student's conclusion, if any, is not supported by the rest of the essay.	Response demonstrates a very poor understanding of the subject matter presented by the assignment.
<b>Documentation/ Legal research (note: For assignments, sources should be those obtained through legal research; for exam essays, legal principles learned in class or the courseware is sufficient.)</b>	Student has cited at least two excellent sources and has applied them appropriately. Appropriate sources are documented and well cited and well integrated.	Student has cited one excellent source or two or more good sources but has missed at least one excellent source. Sources are integrated well in the assignment.	Student has cited appropriate sources but has missed the best available OR student has cited good sources but has done a poor job of integrating them.	Student has cited poor or inappropriate authorities or has failed to establish the relevance of the sources that he or she has cited.	Student has not cited any legal authorities or has cited authorities that are irrelevant.
<b>Organization</b>	Essay is organized very well; the reader can clearly understand where the essay is going at all points and a cohesive easy-to-follow argument is made in the essay. Separate paragraphs are used for separate ideas.	Essay is well organized. The essay is coherent, though may not flow freely. Different components of the essay are broken up appropriately.	Essay shows some level of organization, but is difficult to follow. The essay is not as focused as it should be. Essay may go back and forth between points without using new paragraphs.	Essay is poorly organized and is very difficult to follow. The student did not appropriately separate thoughts and did not properly organize the essay.	Student's essay is in chaos. There is no reasonable attempt to organize the essay coherently.
<b>Critical Thinking and Analysis</b>	Shows excellent critical thinking and analysis. The student was able to apply the cited law to the facts of the given case in a clear and convincing manner.	Shows good critical thinking and analysis. The student's points are well argued and well supported.	Shows adequate critical thinking and analysis. The student's points are supported by logic, but are not exceptionally convincing.	Shows minimal critical thinking and analysis. The student's arguments are weak and unconvincing.	Shows no effort at critical thinking or analysis. The student's points make no sense.

Credit may also be taken off for poor spelling or grammar.

## **Weekly Discussions**

At the outset of the course, a weekly discussion question will be posted on the “Assignments and Exams” page. The 6 discussions will cumulatively count for 30% of the student’s grade for the course. These assignments have a due date specified in the assignment and in the assignment title. Answers submitted after the due date will incur a grade penalty.

Please compose your answers to assignments on your own computer, remembering to save your work frequently. Once your assignment is complete, please submit by uploading it pursuant to the directions on the “Assignments and Exams” page within the Crestpoint student site. Assignments may be submitted as PDF files, Microsoft Word documents, Open Office documents or PowerPoint presentations.

Weekly discussions will be graded on the same 0-4 scale as the research assignments.

In addition to a grade, students will receive written feedback from the instructor on their assignments, where appropriate.

*To the extent possible, it is highly recommended and encouraged that students stay as current as possible with the weekly and submit them in a manner that allows you to practice as you learn the material. Submitting the weekly discussion beyond the given deadlines will result in a grade penalty.*

## **EXAMINATIONS:**

Examinations will be posted on the Crestpoint website when indicated on the syllabus of the course. The examinations consist entirely of “short essay” questions. The 2 examinations will cumulatively count for 40% of the student’s course grade.

Examinations are non-cumulative; they cover only the material that was covered since the previous examination. The instructor will provide specific information regarding the content of each examination, as the examination time approaches.

All examinations are timed. A student may begin the examination any time after it is posted to the NPC website. Once begun, the examination must be completed within 4 hours.

Examinations will be graded on a conventional 0-100 scale. The number of points each question is worth is equal to 100 divided by the number of questions on the examination.

For each examination question, full credit will be awarded if the student:

- 1) Correctly identifies the legal issue(s) presented by the question
- 2) Applies the correct law to the legal issue(s) presented (note: full credit may also be awarded if the student’s answer comes to an “incorrect” conclusion if the student bases his or her analysis on correct law and supports his or her position in a convincing manner)

- 3) Presents his or her answer in a clear and understandable manner

The amount of partial credit to be awarded, if any, for an answer that is not complete and correct is at the discretion of the instructor. Instructors are instructed to award partial credit that is proportional to the level of knowledge and legal skill displayed by the student in answering the question.

*Please note that, even if not directly stated in the question, you must give reasons for your answers to open ended questions. One word answers such as “yes” or “no” or answers that merely restate the question without explaining the answer given will not be credited.*

The following factors are generally NOT taken into account in grading examinations:

Legal research: Although research is a key component of assignments, examinations are graded on the student’s knowledge of the legal concepts taught and do not require independent research.

Grammar and spelling (unless they impact the ability of the graded to understand the student’s answer): Although these are essential skills for a paralegal, examinations test legal knowledge and ability to apply the skills learned, not necessarily the ability to write professional legal memoranda (assignments test this skill). In addition, because exams are taken under time constraints, we would rather see the students spend their time spotting legal issues and applying applicable law than on proofreading answers for typos and grammar mistakes.

For more information on examinations, please see the *Crestpoint Student Handbook*.

*To the extent possible, it is recommended that students complete the exams as the course proceeds rather than waiting until after the course ends.*

## **CRESTPOINT ACADEMIC ADVISOR**

Each Crestpoint student is assigned an academic advisor upon enrollment. Your academic advisor is a resource that can and should be drawn on if you need academic assistance. This includes advice on studying, help with assignments, general academic questions, etc. You should have received an email from your academic advisor upon enrollment. If you have not received such an email or do not know who your academic advisor is, please contact Anne Lewis at [anne@crestpoint.edu](mailto:anne@crestpoint.edu).

## CRESTPOINT PLAGIARISM POLICY

All work done by Crestpoint students on assignments, examinations and research projects is expected to be their own work. Quoting other sources as part of analyzing a subject is desirable and necessary in many cases. However, when other sources are quoted or used, they must be properly attributed to the original sources. This applies to direct quotes of sources and to paraphrasing other sources or using ideas obtained from other sources even if the exact text is not used.

Plagiarism means using the materials of others without appropriately citing the source and is an academic offense.

Under the Crestpoint plagiarism policy, a student may not, as part of any assignment or exam submission:

- 1) Quote any text from any other source without:
  - a) putting quotation marks around the quoted material;
  - AND
  - b) appropriately citing the source of the quote.
- 2) Pass off the work of another as his or her own, even if the student does not directly quote from the other source.

Please note that the Crestpoint plagiarism policy does not mean that you cannot quote language from the courseware, textbook or slides as part of an answer to a question on an exam. These are resources that are meant to be used on an exam when applied in an appropriate manner. However, quoting any source *without attribution* is plagiarism.

In addition, Crestpoint students may not share their completed work, answer keys, or sample answers which they have obtained by any method with any other student. Students may NOT upload any sample answer (whether written by themselves or any other person) to any publicly available website or database. **Any student who uploads a sample assignment or exam answer to a publicly available website or database shall be disciplined in a manner to be determined by the school Dean, up to and including expulsion from the college.**

### Policy on the use of Artificial Intelligence in the completion of academic assessments

AI (artificial intelligence) resources such as ChatGPT and Bard can be useful in a number of ways. However, it can also be abused, as students may be tempted to use AI-generated content in place of the work needed to build the skills necessary to complete their academic programs.

Students are expected to submit substantially their own work product. To the extent student assessments are copied and pasted from AI platforms, they must be framed by quotation marks or block quotes with appropriate citations, just as though they were citing any other Internet source.

Submitting work copied from AI sources without attribution is plagiarism and will be dealt with accordingly.

Submitting content generated by AI with proper quoting and attribution is not plagiarism. However, heavy use of AI-generated content in an assessment may show lack of original work and grading will reflect that. At the grader's discretion, assignments composed substantially of AI-generated content will be awarded little or no academic credit.

For more information regarding the Plagiarism Policy, penalties and due process rights where plagiarism is alleged, please see the Crestpoint Plagiarism Policy at:

<http://nationalparalegal.edu/pages/PlagiarismPolicy.pdf>

## **WEEKLY INTERACTION REQUIREMENT**

To ensure that all students are involved and participating in the course as the course moves forward, each student enrolled in this course must, at least once during each week, either:

- 1) Submit at least one assignment
- OR
- 2) Take at least one examination
- OR
- 3) Answer a weekly “interaction” question or questions that will be posted on the “Assignments and Exams” page.

The weekly “interaction” question(s) will be straightforward and will cover material covered in class each week. Answers to these questions should be short (typically 1-3 sentences) and to the point.

## **COURSE GRADES**

Grades are issued on a classical A through F scale based on the grades scored on the assessments, per this syllabus.



## **Lecture and reading assignments schedule**

### **CLASS ONE**

In this first class, we will acquaint ourselves with the basic principles of American government and constitutional law. We will begin with an examination of what it means to have a federal system of government, and how the Constitution divides power between the national and state governments as well as between the branches of the national government. We will begin looking at federal power by analyzing the powers of Congress via the various clauses in Article I, Section 8 of the Constitution and the various enforcement clauses of the Amendments. We will save the “commerce clause” however, for later in the course.

#### **Courseware Reading:**

Chapter 1: Federalism & Separation of Powers

A. What is Federalism?

B. Congressional Powers

#### **Cases and Statutes:**

##### United States Constitution, Article I, Section 8

This is the section of the Constitution that lays out Congress’ sources of power. Keep in mind that before any law can be passed, the power to legislate in that area must have been given to Congress by the Constitution.

##### McCulloch v. Maryland

This seminal case established the supremacy of the federal government over the state governments by disallowing state taxation of a federal entity. It also confirmed federal Congressional power to do things that were only tangentially related to the carrying out of its enumerated powers.

Suggested Videos:

<https://lawshelf.com/videos/entry/the-american-system-of-government-separation-of-powers>

<https://lawshelf.com/videos/entry/sources-of-law-in-the-united-states>

## CLASS TWO

Tonight, we will continue our discussion of federal power by looking at the power of the executive and judicial branches of our government. We will discuss the President's powers both in relation to foreign and domestic affairs. We will then look at the federal court system, including the Supreme Court's all important power of "judicial review."

### Courseware Reading:

Chapter 1: Federalism & Separation of Powers

C. Presidential Powers

D. Judicial Review

### Cases and Statutes:

#### Marbury v. Madison

This case established the concept of judicial review and it set the important precedent that a court (especially the Supreme Court) can declare the actions of another branch of government to be "unconstitutional."

Suggested Video

<https://lawshelf.com/videos/entry/congressional-and-presidential-war-powers-under-the-us-constitution>

## CLASS THREE: (Assignment/Lexis walkthrough)

This class will consist of a Lexis tutorial/ assignment walkthrough. The instructor will use a research assignment from a past or current course to demonstrate the manner in which an assignment should be researched and composed.

The instructor will walk the students through the various Lexis databases and explain to students how to most efficiently use the Lexis system to complete research assignments. Various general aspects of navigating Lexis, including Shepardizing, seeking and finding appropriate search databases, getting a document by citation, etc., may be explored.

The Instructor will also discuss how to most effectively plan, outline, organize and draft research assignments. Model answers and/or past student submissions may be used to illustrate what a "4" assignment looks like and how to compose one.

## CLASS FOUR

We will devote this class to examining the Commerce Clause, which is the constitutional provision that largely explains how Congress enjoys vast legislative authority despite its powers being technically limited to a few areas of law. We will explore how the Great Depression breathed life into the Commerce Clause, and how assertions of states' rights in the last twenty years have led to a slight diminution of the Clause's impact.

### Courseware Reading:

Chapter 2: Congress's Power to Regulate Interstate Commerce

A. The Commerce Clause

B. "Substantial Effects" Commerce Clause power

### Cases and Statutes:

#### Gibbons v. Ogden

Written by the great Chief Justice John Marshall, this case established and discussed the expansive powers afforded to the federal government by the all-important "interstate commerce" clause in Article I, Section 8, Clause 3 of the Constitution.

#### United States v. Lopez

This 1995 decision put limits on the Commerce Clause for the first time in the modern era. The Supreme Court put boundaries on the scope of the power allowed to the federal government by the Constitution.

## CLASS FIVE

In this class, we will examine what has come to be known as the "Dormant Commerce Clause," a judicial doctrine that limits a state's power to regulate commerce even in areas where Congress has taken no action. This is done to prevent states from interfering too much with interstate commerce. We will also discuss the very closely related doctrine of the "privileges and immunities" clause of Article IV of the Constitution, which prevents states from discriminating against people from other states.

### Courseware Reading:

Chapter 2: Congress's Power to Regulate Interstate Commerce

C. The Dormant Commerce Clause

D. The Privileges and Immunities Clause

Suggested videos:

<https://lawshelf.com/blog/post/federal-judge-in-texas-strikes-down-obamacare>

## **CLASS SIX**

In this class, we will begin our discussion of civil rights guaranteed by the Constitution. This class will begin our examination of the Constitution's Due Process Clause, a vaguely worded provision that the Supreme Court has interpreted to be the source of many important individual rights. We will first explore what are called rights of substantive due process, which used to be considered primarily economic but have for the last eighty years been understood to relate to matters of personal autonomy and family life.

### **Courseware Reading:**

Chapter 3: Due Process of Law

A. Substantive Due Process: Economic Regulation

B. Substantive Due Process: Fundamental Rights

### **Cases and Statutes:**

#### U.S. Constitution: Fourteenth Amendment

The Fourteenth Amendment must be the starting point for due process for equal protection and due process analyses because it is the source of the important "equal protection" and "due process" clauses.

#### Griswold v. Connecticut

This case will be discussed for its role as the grandfather of all the right-to-privacy cases, as this was the first case that established privacy as a Constitutional right. Many famous constitutional law cases, including those on abortion, gay rights and the right to make one's own healthcare decisions, are, in reality, progeny of Griswold.

## CLASS SEVEN

Tonight we will continue our discussion of the substantive due process rules. We will look at specific rights such as the right to refuse healthcare, certain aspects of the right to privacy and we will look at the always controversial topic of abortion and the status under Supreme Court law, of the right to choose an abortion. We will conclude by looking at the other side of due process rights: those that require government to follow fair procedures in limiting individual freedom.

### Courseware Reading:

Chapter 3: Due Process of Law

C. Procedural Due Process

### Cases and Statutes:

Planned Parenthood of S.E. Pennsylvania v. Casey

Although Roe v. Wade is often thought of as the arbiter of constitutional law with respect to abortion, in reality, this 1992 case is the Court's most recent definitive statement on the right to choose an abortion and how far that right extends.

### Documents for Review:

Complaint by Prisoners under the Civil Rights Act

## CLASS EIGHT

We will examine the Constitution's Equal Protection Clause, which in simplest terms requires the government to treat similarly situated people equally. We will begin with an overview of the historical circumstances leading to the Clause's creation, and how its significance has expanded over time. We will look at the three tiers of review and the classifications to which each is applied.

### Courseware Reading:

Chapter 4: Equal Protection

A. History & Levels of Review

B. Nonsuspect Classifications

### Cases and Statutes:

U.S. Constitution: Fourteenth Amendment

### United States v. Virginia

Known as the “VMI” case, this case is a classic example of a Supreme Court discussion of the equal protection clause. This is an excellent case to analyze because it presents an interesting balancing test between competing interests in its analysis and contains a vigorous dissent.

## **CLASS NINE**

In this class, we will continue our equal protection discussion. We will look at suspect classifications and the differences between discriminatory intent and discriminatory effect. We will look at famous race discrimination cases like Brown v. Board of Education of Kansas and discuss the effects of these seminal cases to this day. We will also see how the Clause has been interpreted to permit certain kinds of race- and sex-conscious affirmative action programs.

### **Courseware Reading:**

Chapter 4: Equal Protection

C. Suspect Classifications Based on Race

D. Fundamental Rights and the Equal Protection Clause

### **Cases and Statutes:**

#### Korematsu v. United States

This famous (and, in many eyes, infamous) case allowed the internment of Japanese Americans during World War II. The case is a very important one to analyze because it demonstrates that, under some circumstances, even the most invidious types of discrimination can sometimes be justified by circumstances.

### **Documents for Review:**

- Civil Rights Complaint under 42 U.S.C. Sections 1983 and 1985

- Civil Rights Complaint Form- U.S. Attorney’s Office

**The midterm examination will be posted at this point.**

**Assignment 1 can be completed at this point.**

## CLASS TEN

We will focus in the class on the all-important rights of freedom of speech and freedom of the press under the First Amendment to the Constitution. We will begin with the freedom of expression, learning how courts rarely allow the government to suppress expression because of the ideas it may convey. We will then examine the situations in which government may regulate expression because of its content or means of delivery. Also, we will discuss various types of speech that are not protected under the First Amendment or which are only protected to a lesser extent.

### Courseware Reading:

Chapter 5: Freedom of Expression & Religion

A. Freedom of Expression

B. Substantive & Procedural Limits on Expression

### Cases and Statutes:

#### Brandenburg v. Ohio

Although a much earlier case established the “clear and present danger” rule for “dangerous” speech, this case represents the modern Supreme Court rule on that subject. It is important to analyze the “imminent lawless action” standard that was established by this case and how it differs from the “clear and present danger” rule that it replaced.

Suggested Videos:

<https://lawshelf.com/videos/entry/constitutional-law-and-the-first-amendment-freedom-of-speech>

<https://lawshelf.com/videos/entry/freedom-of-speech-exceptions-categories-of-speech-not-protected>

## CLASS ELEVEN

This class will feature an exploration of the freedom of religion clauses of the First Amendment. We will look at the “establishment” clause, examining how government may interact with religious groups and the extent to which religion is allowed in government sponsored activities. We will also look at the “free exercise” clause and the limits on the government in passing laws or taking actions that limit people’s right to practice their religion.

### Courseware Reading:

Chapter 5: Freedom of Expression & Religion

C. The Establishment Clause

D. The Free Exercise Clause

### Cases and Statutes:

#### Lemon v. Kurtzman

This case is important to read and discuss because it presents an excellent synopsis of the way in which courts must analyze whether a government program or action is considered an “establishment” of religion, and thus a First Amendment violation.

Suggested Videos:

<https://lawshelf.com/videos/entry/the-free-exercise-clause>

<https://lawshelf.com/videos/entry/do-bible-lessons-in-schools-violate-the-first-amendments-establishment-of-religion-clause>



## CLASS TWELVE

We will shift focus here to concentrate on how the Constitution applies to regulate the criminal law. The emphasis of the remaining classes will therefore be on the constitutional rights of criminal suspects and defendants. We will devote this class to an examination of the Fourth Amendment's prohibition on unreasonable government searches and seizures. Starting with the rule that evidence obtained in violation of the Amendment may not be used against a criminal defendant, we will explore the matter of just what constitutes a police search or seizure. We will then examine the two main prerequisites for authorizing such state action: that probable cause exists to undertake the search or seizure, and that the police obtain a warrant before taking action.

### Courseware Reading:

Chapter 6: Protection from unreasonable searches and seizures

- A. The Exclusionary Rule
- B. Searches and seizures defined
- C. Probable Cause

### Cases and Statutes:

U.S. Constitution: Fourth Amendment

The Fourth Amendment forbids unreasonable searches and seizures and it requires that police have probable cause before obtaining a warrant to conduct searches. Clearly, any discussion of criminal procedure must begin with a reading of the Fourth Amendment.

Mapp v. Ohio

This seminal case announced that the “exclusionary rule” applied to state police searches. This means that any evidence gained through an illegal search cannot be used in a court of law against the victim of the bad search. In reading the case, note the lengths that the Court goes to defend its decisions based on practical and theoretical arguments.

Wong Sun v. United States

An important corollary to the exclusionary rule is the rule announced in this case. The Supreme Court here held that any evidence obtained even indirectly because of an illegal search must be excluded from court. This is known as the “fruit of the poisonous tree” rule. Analysis of the rule and a discussion as to what extent it hampers law enforcement efforts are important aspects of practical criminal procedure.

### Documents for Review:

- Michigan Miscellaneous Felony Forms
- Arrest Order-State

Suggested Videos:

<https://lawshelf.com/videos/entry/reasonable-expectation-of-privacy>

<https://lawshelf.com/videos/entry/the-fourth-amendment-the-requirement-of-probable-cause>

## **CLASS THIRTEEN**

In this class, we will continue our discussion of searches and seizures. We will focus on the warrant requirement for a police search and the exceptions to the general rule that a warrant is required. We will discuss who may issue a warrant and what circumstances a warrant must be based upon to be valid. We will finish by focusing on the various “exigent circumstances” in which a warrant is not required for a search.

### **Courseware Reading:**

Chapter 6: Protection from unreasonable searches and seizures

D. The Warrant Requirement

E. Exceptions to the Warrant Requirement

### **Cases and Statutes:**

#### Terry v. Ohio

In this case, the Supreme Court announced the “stop and frisk” rule. The case allows police officers to stop and frisk a potentially armed and dangerous suspect even without a warrant and based on a showing of less than the normally required “probable cause” in some cases. This case should be analyzed as an important check on the earlier cases that had broadened the protections afforded to suspects by the federal Constitution.

### **Documents for Review:**

- Affidavit for Search Warrant -State

- Arrest Warrant - State

Suggested Videos:

<https://lawshelf.com/videos/entry/fourth-amendment-exceptions-to-the-warrant-requirement-part-i>

<https://lawshelf.com/videos/entry/fourth-amendment-warrant-requirement-exceptions-part-ii>

**Assignment 2 can be completed at this point.**

## CLASS FOURTEEN

We will examine here how the police may behave in questioning people. Using *Miranda v. Arizona* as our focal point, we will explore precisely what the police must do to inform a person of his or her constitutional rights before commencing a custodial interrogation. We will then examine some of the situations in which the Miranda protection does not apply, such as when a person is not in police custody, no actual interrogation has occurred, or the person has waived his or her rights.

### **Courseware Reading:**

Chapter 7: Police Interrogation

- A. Miranda v. Arizona
- B. Custody defined
- C. Interrogation defined
- D. Waiver of right

### **Cases and Statutes:**

United States Constitution: Fifth Amendment

The Fifth Amendment contains many famous and important constitutional rights guaranteed to criminal defendants, such as the right to remain silent, the right to due process and the right to avoid having to face double jeopardy.

United States Constitution: Sixth Amendment

The Sixth Amendment enumerates many of the rights that the criminal defendant has at trial itself, including the all important right to the assistance of counsel.

Miranda v. Arizona

One of the most famous cases in Supreme Court history, this case mandated that police officers who are arresting a suspect advise him or her of the rights to remain silent and the assistance of counsel. Students reading the case should think about whether it is clear that the Fifth Amendment really requires this warning and whether the Court's arguments that the warnings are necessary to protect the Fifth Amendment are persuasive.

Rhode Island v. Innis

If Miranda is mostly about the theory of what is necessary to protect the Fifth Amendment rights of suspects, then this case is about the practical application of Miranda. This case discusses the very practical question of: What is considered an "interrogation" for Miranda purposes?

Documents for Review:

- Affidavit of Indigency- State
- Appointment of Counsel for Indigent - Federal
- Notice of Appearance in Criminal Case - Federal
- Subpoena in a Criminal Case - Federal
- Voucher for Experts Services for Indigents – Federal

## CLASS FIFTEEN

We will conclude this course with an examination of a criminal defendant's constitutional rights at trial. Beginning with a defendant's right to a competent attorney, we will examine the rights to confront adverse evidence, to compel the production of favorable evidence, and to not be forced to incriminate oneself. We will also explore what showing of proof is required to convict a defendant, and how a convicted person may not be sentenced to cruel and unusual punishment.

### Courseware Reading:

#### Chapter 8: Rights at trial

- A. The right to effective assistance of counsel
- B. The Confrontation Clause
- C. The right to compulsory process
- D. Burden of proof
- E. Protection from cruel and unusual punishment

### Cases and Statutes:

#### United States Constitution: Eighth Amendment

This Amendment contains the famous Constitutional ban on "cruel and unusual punishment" that mandates that sentences be proportional to the crimes committed and that has been used time and again to challenge the death penalty.

#### Maryland v. Craig

Reading and discussing this case is one of the best ways to analyze the important balancing test that must be performed in a criminal case between the defendant's right to a fair trial and the interest in protecting the victim. This case decides the fascinating issue of whether allowing an alleged victim of child abuse to testify without the defendant in the room (if the child is scared of the defendant) violates the defendant's right to "confront" his accuser. Also, if you get the chance, read Justice Scalia's thought provoking dissent to the allowance of this procedure, in which he observes "Perhaps that is a procedure today's society desires; perhaps (though I doubt it) it is even a fair procedure; but it is assuredly not a procedure permitted by the Constitution."

#### Gregg v. Georgia

After the Supreme Court temporarily invalidated the death penalty "as it was then applied" in 1972, in *Furman v. Georgia*, the Supreme Court decided this case, which reinstated the death penalty, but set strict guidelines for its "execution."

### Documents for Review:

- Deposition Subpoena in a Criminal Case - Federal
- Witness Protection Order - State

## **CLASS FIFTEEN, continued**

### Documents for Review:

- Waiver of Trial by Jury- State
- Voir Dire Checklist for Criminal Trials - Federal
- Jury Questionnaire
- Notice of Appeal in a Criminal Case - Federal
- Motion to Vacate Sentence by a Person in Federal Custody
- Motion to Vacate Judgment by a Person in Federal Custody
- Petition for Writ of Habeas Corpus by a Person in Federal Custody
- Petition for Writ of Habeas Corpus by a Person in State Custody
- Application to Proceed In Forma Pauperus

### Suggested Video:

<https://lawshelf.com/videos/entry/defendants-rights-to-exculpatory-evidence-brady-v-maryland>

**The final examination will be posted at this point.**