

CONSTITUTIONAL LAW Part 2

First Amendment

The First Amendment guarantees freedoms concerning religion, expression, assembly, and the right to petition. It forbids Congress from both promoting one religion over others and restricting an individual's religious practices. It guarantees freedom of expression by prohibiting Congress from restricting the press or the rights of individuals to speak freely and the right of citizens to assemble peaceably and to petition their government for a redress of grievances.

Fifth Amendment provides, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The clauses incorporated within the Fifth Amendment outline basic constitutional limits on police procedure. Scholars consider the Fifth Amendment as capable of breaking down into the following five distinct constitutional rights: grand juries for capital crimes, a prohibition on double jeopardy, a prohibition against required self-incrimination, a guarantee that all criminal defendants will have a fair trial, and a promise that the government will not seize private property without paying market value. While the Fifth Amendment originally only applied to federal courts, the U.S. Supreme Court has interpreted the Fifth Amendment's provisions as now applying to the states through the Due Process Clause of the Fourteenth Amendment.

Grand Juries

A person being charged with a crime that warrants a grand jury has the right to challenge members of the grand juror for partiality or bias, but these challenges differ from peremptory challenges, which a defendant has when choosing a trial jury. When a defendant makes a peremptory challenge, the judge must remove the juror without making any proof, but in the case of a grand juror challenge, the challenger must establish the cause of the challenge by meeting the same burden of proof as the establishment of any other fact would require. Grand juries possess broad authority to investigate suspected crimes. Ultimately, grand juries may make a presentment. During a presentment the grand jury informs the court that they have a reasonable suspicion that the suspect committed a crime.

Double Jeopardy

This Clause aims to protect against the harassment of an individual through successive prosecutions of the same alleged act, to ensure the significance of an acquittal, and to prevent the state from putting the defendant through the emotional, psychological, physical, and financial troubles that would accompany multiple trials for the same alleged offense. Jeopardy refers to the danger of conviction. Thus, jeopardy does not attach unless a risk of the determination of guilt exists. If some event or circumstance prompts the trial court to declare a mistrial, jeopardy has not attached if the mistrial only results in minimal delay and the government does not receive added opportunity to strengthen its case.

Self-Incrimination

The Fifth Amendment protects criminal defendants from having to testify if they may incriminate themselves through the testimony. A witness may "plead the Fifth" and not answer if the witness believes answering the question may be self-incriminatory.

In the landmark *Miranda v. Arizona* ruling, the United States Supreme Court extended the Fifth Amendment protections to encompass any situation outside of the courtroom that involves the curtailment of personal freedom. Therefore, any time that law enforcement takes a suspect into custody, law enforcement must make the suspect aware of all rights. Known as *Miranda* rights, they include the right to remain silent, the right to have an attorney present during questioning, and the right to have a government-appointed attorney if the suspect cannot afford one.

If law enforcement fails to honour these safeguards, courts will often suppress any statements by the suspect as violative of the Fifth Amendment's protection against self-incrimination, provided

that the suspect has not actually waived the rights. An actual waiver occurs when a suspect has made the waiver knowingly, intelligently, and voluntarily. To determine if a knowing, intelligent and voluntary waiver has occurred, a court will examine the totality of the circumstances, which considers all pertinent circumstances and events. If a suspect makes a spontaneous statement while in custody prior to being made aware of the *Miranda* rights, law enforcement can use the statement against the suspect, provided that police interrogation did not prompt the statement.

Due Process Clause

The guarantee of due process for all citizens requires the government to respect all rights, guarantees, and protections afforded by the U.S. Constitution and all applicable statutes before the government can deprive a person of life, liberty, or property. Due process essentially guarantees that a party will receive a fundamentally fair, orderly, and just judicial proceeding. While the Fifth Amendment only applies to the federal government, the identical text in the Fourteenth Amendment explicitly applies this due process requirement to the states as well.

Courts have come to recognize that two aspects of due process exist: procedural due process and substantive due process. Procedural due process aims to ensure fundamental fairness by guaranteeing a party the right to be heard, ensuring that the parties receive proper notification throughout the litigation, and ensures that the adjudicating court has the appropriate jurisdiction to render a judgment. Meanwhile, substantive due process has developed during the 20th century as protecting those right so fundamental as to be "implicit in the concept of ordered liberty."

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I. Complete the sentences with the given words:

petition, self-incrimination, due, indictment, curtailment, expression, acquittal, jeopardy, plead, challenge

1. The First Amendment guarantees freedoms concerning religion, _____ and assembly.
2. No person shall be held liable for a capital crime, unless on _____ of a grand jury.
3. No one shall be twice put in _____ of life.
4. A prohibition against required _____ is one of five constitutional rights.
5. The charged with a crime has the right to _____ members of the grand jury for bias.
6. Double Jeopardy Clause ensures the significance of _____ .
7. It guarantees the rights of individuals to _____ for a redress of grievances.
8. A witness may not answer questions and _____ the Fifth if he believes it may be self-incriminatory.
9. *Miranda's* rights counteract the _____ of personal freedoms.
10. The _____ Process Clause requires the government to respect all rights, guarantees and protections of the U.S. Constitution.

II. Match the terms with definitions:

1 jeopardy	A statement made by a witness under oath
2 presentment	B to answer a charge admitting or denying guilt
3 challenge	C a right of an attorney at trial to dismiss a prospective jeopardy
4 peremptory	D limitation
5 waiver	E a written accusation of crime by a grand jury
6 testimony	F the danger of conviction
7 plead	G it requires fair notice and fair hearing prior to deprivation of liberty, life
8 procedural due process	H the right to remain silent, to have an attorney present during questioning
9 curtailment	I an intentional relinquishment of a right
10 <i>Miranda's</i> rights	J an objection to the inclusion of a juror as a member of the jury

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Mgr Anita Krok