

BILL OF RIGHTS

POP QUIZ

1. True or False. A suspect in a criminal case may be taken to the station house for interrogation if the police have reasonable suspicion to believe that he has committed a crime.

Answer:

2. True or False. Police officers may search a dwelling house at any time at night, as long as the officers deem it necessary to do so.

Answer:

3. True or False. Motor vehicles can be searched without a valid search warrant.

Answer:

4. True or False. Police who arrest someone for an offense, i.e. speeding, may conduct a search of the passenger compartment of the car, including opening containers such as a briefcase, although they have no expectation of finding any evidence of the offense for which the arrest was made.

Answer:

5. True or False. If a house is occupied by two unrelated adults, both persons must consent to a search of the house to allow the evidence found to be used against both occupants.

Answer:

6. True or False. If a person is arrested and taken to be shown to the victim for identification shortly after a crime, the person has a right to be represented by counsel while he or she is shown to the victim.

Answer:

7. True or False. Immediately after a person is arrested, he is entitled to receive the Miranda warnings, i.e., the warning of the right to counsel, the right to remain silent, etc.

Answer:

8. True or False. Officers violate the Fourth Amendment, if, without probable cause, they jump over a barbed wire fence to search through a cornfield on the defendant's property.

Answer:

9. True or False. Under the First Amendment right of freedom of speech and press, a person's right to communicate cannot be regulated by the government.

Answer:

10. True or False. A state can deny unemployment compensation to persons who have been dismissed from their jobs because of use of drugs which play a major role in their religious ceremonies.

Answer:

11. True or False. A state can limit the amount of money people can contribute to any group organized for the specific purpose of opposing a referendum (a vote by the citizens) on a political issue, for example, teaching only English in the state's high schools or affirmative action.

Answer:

12. True or False. It is constitutional for a city to prohibit carrying a sign intended to influence the judicial process on the sidewalks outside any building in the city where a trial is occurring.

Answer:

13. True or False. The only rights you have are those actually listed in the constitution.

Answer:

14. True or False. A city can erect a nativity scene in front of city hall to celebrate the Christmas holiday.

Answer:

15. True or False. Because a central belief of the Amish religion forbids high school education, Amish children are entitled to an exception from the law requiring school attendance until age 16.

Answer:

16. True or False. A defendant convicted under Delaware law of First Degree Intentional Murder can be sentenced to death by hanging.

Answer:

17. True or False. If a high school student who is under 18 is arrested for breaking into a neighbor's house and stealing his car and jewelry, the State can prevent the newspaper from publishing, but not the radio from broadcasting, the student's name in a description of the crime.

Answer:

18. True or False. If a minor is sexually molested, the press can always be excluded from the trial of the offender.

Answer:

19. True or False. A public high school can suspend students who wear an arm band to protest the expulsion of three students for gang-related activity.

Answer:

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ANSWER KEY

1. False. There must be “probable cause.” In Dunaway v. New York, 442 U.S. 200 (1979), the United States Supreme Court held that, as a general proposition, detention for custodial interrogation without probable cause violates the Fourth and Fourteenth Amendments of the United States Constitution.
2. False. Pursuant to 11 *Del. C.* § 2308, a search warrant shall not authorize a search of any dwelling house in nighttime unless the issuing judge is satisfied that it is necessary to prevent the escape, removal or destruction of the person or thing to be searched and then authority shall be expressly stated in the warrant. See Mason v. State, Del. Supr., 534 A.2d 242 (1987). Nighttime falls between 10:00 p.m. and 6:00 a.m.. 11 Del. C. § 2308.

Also advise that in Delaware, police must abide by the “knock and announce” rule. Gregory v. State, Del. Supr., 616 A.2d 1198 (1992).
3. True. So long as the police have probable cause to believe that an automobile is carrying contraband or evidence, they may lawfully search the vehicle for contraband without a warrant, including personal belongings, containers and other passengers. Carroll v. United States, 267 U.S. 132, 153-154 (1925); Tatman v. State, Del. Supr., 494 A.2d 1249, 1251 (1985); Wyoming v. Houghton, 119 S. Ct. 1297 (1999), 1999 WL 181177 (Apr. 5, 1999).
4. True. Delaware law gives a police officer the discretion to make a custodial arrest for violation of any motor vehicle law, 21 Del. C. § 703(a), (b). In Traylor v. State, Del. Supr., 458 A.2d 1170, 1173-75 (1983), the Supreme Court held that whenever the police have made a custodial arrest of the occupant of an automobile, they may, as a contemporary incident of that arrest, conduct an immediate, warrantless search of both the arrestee's person, and the passenger compartment of the automobile. See also Davis v. State, Del. Supr., 625 A.2d 278 (1993). Moreover, **any container** found within the passenger compartment may also be examined. New York v. Belton, 453 U.S. 454 (1981).
5. False. Under Delaware law, 11 *Del. C.* § 2301, “[n]o person shall search any person, house, building, conveyance, place or other thing without the consent of the **owner (or occupant, if any)** unless such search is authorized by and made pursuant to statute or the Constitution of the United States.” (emphasis provided). Thus, a search and seizure may be made without a warrant if a person with authority to do so gives his or her consent to the search. State v. Harris, Del. Super., 642 A.2d 1242 (1993).

6. False. Immediate “show-up” confrontations such as here are “to be commended as essential both to law enforcement and fairness to innocent suspects.” Anderson v. State, Del. Supr., 452 A.2d 955, 956 (1982). Delaware courts have consistently held that the right to counsel at such corporeal or “in person” identification procedures attaches only at the initiation of formal adversarial judicial proceedings -- generally initial presentment to a magistrate in Delaware. See, e.g., Goodyear v. State, Del. Supr., 348 A.2d 174 (1975); see also Wade v. United States, 388 U.S. 218 (1967)(Sixth Amendment right to counsel at post-indictment police line-up). Thus, there is no right to counsel at show-ups or line-ups prior to that time. There is never a right for counsel to be present when a photographic line-up is conducted, no matter when it occurs. Reed v. State, Del. Supr., 281 A.2d 142 (1971); United States v. Ash, 413 U.S. 300 (1973).
7. False. If there is no custodial interrogation, the police are not required to administer a Miranda warning. Nicholson v. State, Del. Supr., 707 A.2d 766 (1998); Gordon v. State, Del. Supr., 604 A.2d 1367 (1992).
8. False. State v. Halco, Del. Super., 188 A.2d 100, 110 (1962) (citations omitted)(“The special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers and effects' is not extended to the open fields.”).
9. False. As a general matter, it is unconstitutional for the government to place burdens on speech because of its content. To justify such content-based regulation of speech, the government must show that the regulation is **necessary** to serve a **compelling** state interest and is narrowly drawn to achieve that end. Simon & Schuster, Inc. v. Members of the New York State Crime Victims Board, 502 U.S. 1105 (1991). Certain categories of speech (obscenity, defamation and “fighting words”) generally are proscribable despite the First Amendment. Furthermore, while the First Amendment guarantees the right of free speech, the State has the authority to regulate conduct, which adversely affects public interest and indirectly affects right of free speech. State v. Elliott, Del. Super, 548 A.2d 28 (1988) (citing State of Delaware v. Ayers, Del.Supr., 260 A.2d 162, 168 (1969)).

The Courts will give the government more latitude in regulating “conduct as speech” by permitting the government to adopt “**content neutral, time, place and manner**” restrictions. If the regulation involves a “public forum,” such as a public protest, the regulation must be “narrowly tailored” to achieve an “important government interest.” If it is a “non-public forum,” such as a law prohibiting billboards in order to preserve public safety, the regulation need only have a “reasonable relationship to a legitimate regulatory purpose.”

10. True. The United States Supreme Court in Employment Div., Depart. of Human Resources of Or. v. Smith, 494 U.S. 872 (1990), held that (1) the free exercise of religion clause permits a state to include religiously inspired use of peyote with the reach of the state’s general criminal prohibition on use of that drug, where there is no contention that the state’s drug law represents an attempt to regulate religious beliefs, the communication of religious beliefs, or the raising of one’s children in those beliefs; (2) the free exercise of religion clause thus permitted Oregon to deny unemployment benefits to persons

dismissed from their jobs because of such religiously inspired use; and (3) generally applicable, religion-neutral criminal laws that have the effect of burdening a particular religious practice need not be justified, under the free exercise of religion clause, by a compelling governmental interest.

11. False. Such a statute would violate the First Amendment rights of free speech and free association. See *Citizens Against Rent Control v. City of Berkley*, 454 U.S. 290 (1981). The government does not have an interest in curtailing debate and discussion of a ballot measure significant enough to outweigh the burdens placed on the exercise of First Amendment rights by such a statute. The government also may not limit the amount an individual may spend independent of a candidate's campaign. See *Buckely v. Valeo*, 424 U.S. 1 (1976). Also known as "soft money," such amounts are frequently spent on issue ads. The government may, however, limit the amount of contributions that an individual can contribute to a candidate's campaign to avoid corruption or the appearance of corruption. See *id.* Thus, because the statute at issue is not content neutral, i.e., it regulates speech based on the subject matter of the speech (opposing referenda supporting affirmative action), the statute violates the First Amendment.
12. False. Such an ordinance would violate the First Amendment because certain public property, e.g., sidewalks and streets, is considered to be a public forum because it is historically associated with the exercise of First Amendment rights. Speech in or on a public forum can be regulated only by content neutral laws.

Speech in a nonpublic forum, however, may be regulated based on the content of the speech because such locations are not so historically linked to the exercise of free speech, and in such locations free speech might interfere with the intended use of such locations. The government may regulate speech in these locations provided that the regulation is reasonably related to the purpose served by the location and is not designed merely to suppress a particular point of view. Accordingly, an ordinance that prohibits carrying a sign intended to influence the judicial process **in the interior** of a city building where a trial is occurring would be constitutional because: (i) the interior of the building is a non-public forum; and (ii) the ordinance is reasonably related to the purpose of providing an orderly judicial process free from outside influence.
13. False. The 9th Amendment specifically states that individuals have rights other than those listed in the Constitution. These rights are often called "fundamental" or "natural" rights. An example of such a right would be the right to privacy for married couples (e.g. birth control decisions) and families (e.g. educational decisions).
14. False. A government maintained holiday-Christmastime display which includes religious symbols (e.g., a nativity scene or a menorah) will only satisfy review under the three-part establishment clause test if it includes secular holiday decorations as well (e.g., a Christmas tree or a Santa Clause figure). See *County of Alleghany v. ACLU*, 492 U.S. 573 (1989).

15. True. The Supreme Court has found that the Amish are productive and law-abiding, and has ruled that, **for the Amish**, the right to educate one's children and the Free Exercise Clause outweighed the state's interest in requiring school attendance until age 16. Wisconsin v. Yoder, 406 U.S. 205 (1972).
16. False. Although hanging has not been ruled unconstitutional, Delaware's capital punishment statute was recently amended to provide that lethal injection shall be the only form of capital punishment imposed. See 11 Del. C. § 4209(f).
17. False. The United States Supreme Court, in Smith v. Daily Mail Publishing Co., 443 U.S. 97 (1979), held a statute prohibiting the publication of a juvenile's name, even where the name had been obtained through routine investigative reporting such as monitoring police radio and questioning witnesses, unconstitutional where it did not effect other forms of media or publication. In a concurring opinion, Justice Rehnquist suggested that a statute prohibiting all forms of media and publication from releasing a juvenile's name would be constitutional given the State's significant interest in protecting the anonymity of juvenile offender to further their rehabilitation.
18. False. In Globe Newspaper Co. v. Superior Court of the County of Norfolk, 457 U.S. 596 (1982), the United State Supreme Court struck down a Massachusetts statute providing for the mandatory exclusion of the general public from trials for certain sexual offenses involving a minor as violating the First Amendment. The Court found that the First Amendment includes a right of access to criminal trials and that although the State has significant interests in protecting minors from the trauma and embarrassment of a public trial and in encouraging minor victims to come forward and testify, such interest does not justify a mandatory closure of such trial, especially where the transcript is available to the press and public. There are, however, limited circumstances where the press and the public can be barred from a trial.
19. False. In Tinker v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503 (1969), the United States Supreme Court held that students could not be suspended for wearing armbands in protest of the Vietnam War because such suspension violated the students' First Amendment right to free speech. The Court found that wearing armbands was more akin to speech than conduct and recognized that the school had not evidence to suggest that wearing the armbands would substantially interfere with school activities or the rights of other students.