

ANSWER KEY

Eminent Domain: Eminent domain refers to the government's right to acquire private property for public use.

Public Use: The use of land for the benefit of the public.

Just Compensation: The just compensation clause of the Fifth Amendment means the federal government must pay for any private property it does take for public use.

Examples of things that could be considered "public use": roads, schools, post offices, military bases, railroads, interstate highways, canals.

Handout B: Background Essay - How Does the Fifth Amendment Protect Property?

1. The Fifth Amendment guarantees that people have the right to their life, liberty,

and property. The government cannot randomly decide to meddle with those things without a reason, or without following due process.

2. *Lucas v. South Carolina Coastal Commission* was considered a taking because the state had taken away the value of the land because owners were not allowed to build on it.
3. *Kelo v. New London* became the landmark case surrounding the government's ability to exercise eminent domain and changed the concept of public use versus private use.

Handout C: Property and the Supreme Court

Accept reasoned answers.

Unit 7: The Bill of Rights and Due Process

LESSON 1: HOW DO DUE PROCESS PROTECTIONS FOR THE ACCUSED PROTECT US ALL?

Handout A: Background Essay - How Do Due Process Protections for the Accused Aim to Protect Us All?

1. The Fourth, Fifth, Sixth, and Eighth Amendments of the Bill of Rights address a variety of protections for the accused. These were included in the Bill of Rights by the Founders because they knew, from experience, that if specific safeguards were not in place for those who commit crimes, the government could exercise unlimited power and liberty would be endangered.
2. Fourth Amendment: no unreasonable searches and seizures by government without a warrant; warrant only issued upon probable cause; warrant must be

specific to who will be searched, the place to be searched, and the items to be searched/seized. Fifth Amendment: the accused cannot be forced by government to self-incriminate [right to remain silent]; no double jeopardy/cannot be tried for the same crime twice.

3. The Sixth Amendment protects the accused after having been charged with a crime in the following ways: a speedy and public trial by a citizen jury; trial must occur where the alleged crime was committed; know the specific crimes/accusations/evidence; confront accuser; call witnesses in defense; right to a lawyer.
4. Answers will vary, but students should point out that the protections of the Fourth, Fifth, Sixth, and Eighth Amendments require government to follow the rule of law as well; if government is not bound by law, the

ANSWER KEY

principle of due process is no more; the government cannot commit crimes or disregard its own rules while trying to enforce laws. It is likely that the Founders would have agreed with the *Mapp v. Ohio* quote.

5. Answers will vary, but students should explain the principle that justice and due process require that the rights of all individuals – even those who are ostracized as suspected criminals – are likely to be protected and laws be enforced equally. Unless everyone's rights are safe, no one's rights are safe.

Handout B: Criminal Procedure Protection

Fourth Amendment:

2. "No warrants shall issue, but upon probable cause." Police must show probable cause to a judge in order to get a search warrant.
3. "...describing the place to be searched and the persons or things to be seized." The warrant must name the place or person that police will search, as well as what they are looking for.

Fifth Amendment

2. People may not be put on trial more than once for the same crime.
3. "No person...shall be compelled to be a witness against himself." People do not have to give evidence that may make them appear guilty.
4. "No person shall be deprived of life, liberty or property without due process of law." If the government wants to take away someone's life, liberty, or property, it must follow duly enacted laws and apply them in the same way to everyone.

Sixth Amendment

1. People accused of crimes have the right to a trial by jury in a timely and open manner.
3. "To be confronted with witnesses against him." Defendants have the right to know who the witnesses are against them and to ask them questions.
4. "...to have compulsory process for obtaining witnesses in his favor..." Defendants have the right to legally demand witnesses who might help their case to testify at their trials.
5. "...and to have the assistance of counsel for his defense." Defendants have the right to a lawyer to help defend them.

Seventh Amendment

2. "No fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." Courts will not decide on a case after a jury has declared a verdict.

Eighth Amendment

2. "...nor excessive fines imposed." Bail cannot be unreasonable.
3. "...nor cruel and unusual punishments inflicted." Punishments may not be brutal or bizarre.

Handout C: Defining Cruel and Unusual

Accept reasoned answers.

Handout D: Cruel and Unusual?

Scenario 1

1. Answers will vary, but students may suggest: the murder was planned in advance; Christopher bragged about his role in it, both before and after; he is very close to 18 and his decisions show adult like behavior. Some may also suggest that sentencing someone to death for

ANSWER KEY

intentionally causing the death of another is neither cruel nor unusual.

2. Answers will vary, but students may suggest: Christopher is a minor, and sentencing a minor to death is cruel and unusual; he showed child-like immaturity in bragging about it both before and after; he showed child-like immaturity in convincing other, even younger friends to go along with him. Some may also suggest that sentencing someone to death is always cruel and unusual, no matter the crime they commit.
3. Answers will vary as to each group's ruling; accept reasoned answers. The U.S. Supreme Court, in *Roper v. Simmons* (2002), ruled that both American and international "standards of decency" have evolved so that executing individuals who were legally minors when their crime was committed is now both cruel and unusual. In its ruling, the Court cited that the vast majority of state legislatures have done away with the death penalty for minors, and that it is a disproportionate punishment for juveniles.
4. Answers will vary, but students may state the following factual changes might have made their ruling different: if Christopher had been an adult, not a minor; if the murder had not been planned in advance. Some may also voice continued opposition to the death penalty, no matter the circumstances.

Scenario 2

1. Answers will vary, but students may suggest: Evan intentionally caused the death of his friend Cole; they went back to the crime scene to cover up the evidence of their crime, showing adult-like behavior. Some may also suggest that a sentence of life in prison without parole for an extreme crime is neither cruel nor

unusual.

2. Answers will vary, but students may suggest: Evan, while guilty of murder, did not originally set out or plan to murder Cole; that he is very clearly a minor at age 14, and exhibited a variety of childlike, immature actions throughout the scenario; that Evan had a long history of a troubled life that should be taken into consideration as mitigating factors. Some may also suggest that a sentence of life in prison without parole for someone so young is cruel and unusual.
3. Answers will vary as to each group's ruling; accept all reasoned answers. The U.S. Supreme Court, in *Miller v. Alabama* (2012), ruled that children are constitutionally different than adults and should be treated differently when sentencing them for their crimes. While a life sentence for such a crime by an adult does not violate the Eighth Amendment, the Court ruled it is disproportionate for a child, amounting to cruel and unusual punishment.
4. Answers will vary, but students may state the following factual changes might have made their ruling different: if Evan had been an adult, not a minor; if the murder had been planned in advance; if Evan did not have a history of physical and/or drug/alcohol abuse.

Scenario 3

1. Answers will vary, but students may suggest: careful medical considerations have been taken to ensure the condemned do not suffer; the method is quick and painless, particularly in comparison to past methods of execution; medical personnel who are trained in the administration of drugs are responsible for preparing the conditions of the execution. Some may also suggest

ANSWER KEY

that sentencing someone to death for intentionally causing the death of another is neither cruel nor unusual.

2. Answers will vary, but students may suggest: the process, if not followed exactly, can lead to prolonged suffering and death; the actual execution, while set up by medical personnel, is conducted by the warden, who is not himself trained in medicine and the administration of drugs. Some may also suggest that sentencing someone to death is always cruel and unusual, no matter how it is carried out.
3. Answers will vary as to each group's ruling; accept all reasoned answers. The U.S. Supreme Court, in *Baze and Bowling v. Rees* (2008), ruled that Kentucky's lethal injection process and procedures similar to it in other states, did not amount to cruel and unusual punishment. The Court noted a lack of evidence supporting the claim that even an incorrect administration of drugs would lead to unconstitutional pain and/or suffering. The Court did suggest, however, that a state may violate the Eighth Amendment if it continued to use method(s) that have been shown to produce needless pain or suffering and/or an unnecessarily prolonged process of death.
4. Answers will vary, but students may state the following factual changes might have made their ruling different: if it can be shown that the lethal injection process does indeed cause pain and suffering, and/or needlessly prolongs the execution if not carried out in an exact medical manner; if there have been a number of "botched" lethal injection procedures, as has been the case for the electric chair throughout history; if there is no doctor/medical personnel willing to oversee the execution.

LESSON 2: WHAT IS A REASONABLE EXPECTATION OF PRIVACY?

Handout A: Background Essay - How Have the Protections of the Fourth Amendment Been Interpreted, Applied, and Enforced?

1. The Fourth Amendment's warrant requirement provides for one of the most important individual protections: freedom from unreasonable searches and seizures.
2. The Exclusionary Rule means that government is not allowed to use evidence against a suspect at trial that was gained as a result of an illegal search.
3. Accept reasoned answers. The Court has held that school officials need only "reasonable suspicion" to search students. The Court has upheld policies of drug-testing public school students who play sports or participate in extracurricular activities because the tests "reasonably serve the School District's important interest in preventing drug use among students."
4. Due process ensures that our government establishes justice and secures the blessings of liberty for future generations.
5. Accept reasoned answers. Some students may say that the numerous and varied exceptions the Supreme Court has carved out - or that citizens allow by passively accepting them - violate the letter and spirit of the Fourth Amendment, and that the promise of greater security is not worth the threat to liberty. Others may say that the exceptions, while numerous, strike a good balance between the requirements of the Fourth Amendment and the need for effective law enforcement to maintain a safe and orderly society. Still others may say that