

I. TEST ITEM FILE

TEST ITEM FILE *Zalman, Criminal Procedure, 6e*

Chapter 1 – The Meaning of Criminal Procedure

*** * * * MULTIPLE CHOICE QUESTIONS * * * ***

- (1) The Preamble to the U.S. Constitution lists the following purposes of government, EXCEPT
- A. The pursuit of happiness
 - B. To establish justice
 - C. To promote the general welfare
 - D. To guarantee liberty

ANSWER: A

- (2) The primary purpose of criminal procedure is to maintain the proper balance between
- A. License and tyranny
 - B. Liberty and order
 - C. Self-rule and dictatorship
 - D. Equality and servitude

ANSWER: B

- (3) According to Herbert Packer, both conservatives and liberals share each of these justice system values, EXCEPT
- A. Rule of law
 - B. Prohibition of *ex post facto* laws
 - C. Effective law enforcement
 - D. Finality

ANSWER: D

- (4) The Crime Control Model of criminal justice as developed by Prof. Packer emphasized each of the following EXCEPT
- A. Efficiency
 - B. Finality
 - C. Formality
 - D. Speed

ANSWER: C

COMMENT: The Due Process Model puts an emphasis on the full, formal judicial process rather than on routinized procedures like plea bargaining designed to process cases quickly

- (5) Packer's Due Process Model of criminal justice assumes that the criminal justice system
- A. Is prone to error
 - B. Is properly balanced
 - C. Is dictatorial
 - D. Should be replaced by a rehabilitative/mental health approach

ANSWER: A

- (6) The causes of wrongful convictions include each of the following, EXCEPT
- A. Jailhouse informants
 - B. Excessive use of force
 - C. Lineup procedures
 - D. Overzealous prosecutors

ANSWER: B

- (7) The text describes several "alternate" justice systems, including the
- A. Arbitration justice system
 - B. Mental health justice system
 - C. Military justice system
 - D. Shadow justice system

ANSWER: D

- (8) One of the classifications of law listed in the text is
- A. Ecclesiastical law
 - B. Imperial law
 - C. Regulatory law
 - D. Substantive law

ANSWER: D

- (9) Regarding appellate courts, which statement is INCORRECT? Appellate courts:
- A. Are subordinate to courts of general jurisdiction
 - B. Can overrule their prior precedent
 - C. Engage in rule making
 - D. Can reverse lower court factual decisions only for clear error

ANSWER: A

- (10) The concept of federalism is best described as the
- A. Jurisdiction of the Supreme Court in constitutional issues
 - B. Process by which the Bill of Rights was applied to the states
 - C. Power relationship between the national and state governments
 - D. The key to explaining the hierarchy of laws

ANSWER: C

- (11) The supremacy clause states that
- A. In conflicts with international law, United States law controls
 - B. The people are sovereign in the United States
 - C. In conflicts with state law, United States law controls
 - D. The president is the highest civilian officer of the United States government

ANSWER: C

- (12) The power of the United States Supreme Court to declare Acts of Congress unconstitutional is known as the power of
- A. Judicial fiat
 - B. Judicial review
 - C. Judicial supremacy
 - D. Superintending control

ANSWER: B

- (13) A state may grant greater rights than the United States Supreme Court under the adequate and independent state ground doctrine for each of the following reasons, EXCEPT
- A. The state constitution's text describes rights in a positive form
 - B. The state adopted the doctrine of nullification
 - C. Framers of the state's constitution intended expanded liberties
 - D. Local traditions lead to heightened definitions of state rights

ANSWER: B

- (14) The political theories discussed in the text include each of the following, EXCEPT:
- A. Constitutionalism
 - B. Equality
 - C. Natural Law
 - D. Rule of Law

ANSWER: C

- (15) The most important reason why knowledge of history is necessary is that it
- A. Helps the student better understand constitutional criminal procedure
 - B. Is integral to the Supreme Court's reasoning process in constitutional law
 - C. Makes the subject of criminal procedure more interesting
 - D. Fills in the context of constitutional criminal procedure

ANSWER: B

- (16) The Supreme Court established the foundation of constitutional criminal procedure between 1865 and 1940 in cases involving abuses of Southern justice, except for
- A. Use of torture to obtain confessions
 - B. Reference to African American witnesses by first names
 - C. Exclusion of African Americans from juries
 - D. Mob justice

ANSWER: B

- (17) The presidential candidate who ran for office on an anti-crime platform was
- A. Dwight Eisenhower (1953-1961)
 - B. John Kennedy (1961-1963)
 - C. Lyndon Johnson (1963-1969)
 - D. Richard Nixon (1969-1974)

ANSWER: D

- (18) Before the Civil War the United States Supreme Court decided that the Bill of Rights did not apply to the states in a case involving which amendment?
- A. Second – right to bear arms
 - B. Fourth – search and seizure
 - C. Fifth – just compensation
 - D. Eighth – cruel and unusual punishments

ANSWER: C

- (19) In the early Republic, the United States Supreme Court established its status as a powerful organ of government in cases ruling in each of the following ways, EXCEPT
- A. Reversed a state court interpretation of the U.S. Constitution
 - B. Reversed a state court interpretation of its state Constitution
 - C. Reversed a state court interpretation of a federal statute
 - D. Declared an act of Congress unconstitutional

ANSWER: B

- (20) Article 1 of the Fourteenth Amendment, which states that “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside,” was ratified in order to overrule
- A. *Fletcher v. Peck* (1810)
 - B. *Martin v. Hunter’s Lessee* (1816)
 - C. *Baron v. Baltimore* (1833)
 - D. *Scott v. Sandford* (1857)

ANSWER: D

- (21) In the late nineteenth century Justice John Harlan (I) persuaded his Supreme Court colleagues to rely on the following concept, which later played a role in incorporation:
- A. British liberties ideals
 - B. Fundamental rights concept
 - C. Privileges and Immunities Clause
 - D. Total incorporation approach

ANSWER: B

- (22) Which of the following played NO ROLE in the process of incorporating provisions of the Fourth, Fifth, Sixth, and Eighth amendments into the Due Process Clause?
- A. Civil Rights Act of 1957
 - B. Federalism
 - C. The incorporation of First Amendment rights
 - D. The concept of formal rights

ANSWER: A

- (23) The Supreme Court Justice who was most responsible for bringing about the incorporation of the Bill of Rights was Justice
- A. Hugo Black
 - B. James Byrnes
 - C. Felix Frankfurter
 - D. Wiley Rutledge

ANSWER: A

- (24) The alternative judicial method of sanctioning police misconduct under the Constitution without incorporating a Bill of Rights provision was the
- A. Equal protection approach
 - B. Formal rights approach
 - C. Fundamental rights approach
 - D. Due process approach

ANSWER: D

- (25) The case that initiated the due process revolution of the 1960s was
- A. *Benton v. Maryland*
 - B. *Mapp v. Ohio*
 - C. *Miranda v. Arizona*
 - D. *Robinson v. California*

ANSWER: B

- (26) Which provision of the Bill of Rights' has been incorporated?
- A. Quartering soldiers
 - B. Right to bear arms
 - C. Peaceable assembly
 - D. Jury trial in civil case

ANSWER: C

(Table 1-1)

Caveat – this is still accurate in 2009 under *Heller*, but the Supreme Court may incorporate the Second Amendment in a future case

- (27) According to Prof. Charles Whitebread, the Burger Court's decisions in criminal procedure displayed each of the following characteristics EXCEPT:
- A. Adhered to the Crime Control Model of criminal justice
 - B. Showed a concern for the factual guilt of the party
 - C. Established broad, general rules
 - D. Established a hierarchy of constitutional rights

ANSWER: C

- (28) Characteristics of the Rehnquist / Roberts Court include each EXCEPT:
- A. Applying the fair and balanced doctrine
 - B. Overruling recent liberal precedents
 - C. Tampering with underlying principles like the extension of harmless error analysis to coerced confessions
 - D. Upholding constitutional rights that have little limiting effect on police

ANSWER: A

- (29) According to the text the most justified example of repression of civil rights during wartime by the United States government was
- A. The Alien and Sedition Acts in the 1790s
 - B. Imprisonments and the suspension of habeas corpus during the Civil War
 - C. The Palmer raids, roundups and deportation of radicals after World War I
 - D. Political trials of anti-war activists (e.g., the "Chicago 7" trial) in the 1960s

ANSWER: B

- (30) Which statement regarding the Supreme Court’s Guantanamo detention decisions is INACCURATE
- A. *Hamdi v. Rumsfeld* (2004) held that the Afghan War authorization did not give the president authority to detain combatants.
 - B. *Rasul v. Bush* (2004) held that federal courts have jurisdiction to hear challenges to the legality of the detention of foreign nationals captured during hostilities
 - C. *Hamdan v. Rumsfeld* (2006), held that Bush administration military commissions to try detainees were illegal
 - D. *Boumediene v. Bush* (2008) held that Congress cannot strip federal courts of habeas corpus power unless the writ is formally suspended

ANSWER: A

- (31) According to the text, which practice that has been employed in the “global war on terror” is LEAST likely to be imported into domestic law enforcement
- A. “Sneak and peek” home entries allowing police to defer notification
 - B. Excessive use of para-military SWAT teams
 - C. Electronic information sharing in “fusion centers”
 - D. Use of torture to obtain confessions

ANSWER: D

*** * * * TRUE/FALSE QUESTIONS * * * ***

- (1) The Preamble to the U.S. Constitution includes the “blessings of Liberty” because liberty was the most valued political theory throughout history.

FALSE

- (2) The rule that a person can only be prosecuted for a violation of a law that is “on the books” (i.e., the rule against ex post facto laws) is a component of Prof. Packer’s Due Process Model.

FALSE

COMMENT: The rule is supported both by the crime control and the due process models.

- (3) Proponents of the Packer’s crime control model of criminal justice agree that criminal suspects deserve a trial and procedural safeguards.

TRUE

COMMENT: This is one of the points on which Crime Control and Due Process Model proponents agree. This is tricky because Due Process Model supporters desire a greater level of “judicialization,” e.g., more evidentiary hearings.

- (4) The Due Process Model emphasizes factual guilt.

FALSE

COMMENT: it emphasizes legal guilt

- (5) Estimates of wrongful conviction make it plausible that thousands occur every year.

TRUE

- (6) An area of criminal procedure closely related to the problem of convicting innocent people is illegal searches and seizures.

FALSE

- (7) The matrix of ideas of proper action, of right and wrong, and of justice applied in the courts derive from ordinary social norms.
TRUE
- (8) The criminal justice system and the civil law system are comparable in size.
FALSE
- (9) Home raids by Immigration and Customs Enforcement (ICE) agents do not present any legal or constitutional issues as long as they are directed against illegal immigrants.
FALSE
- (10) Law includes rules created by appellate courts
TRUE
- (11) Public law includes cases that involve disputes between individuals and corporations.
FALSE
- (12) Substantive law establishes and defines rights, powers, and obligations.
TRUE
- (13) Remedial law prescribes methods of enforcing substantive rights that are breached and includes rules of jurisdiction, the serving of legal process
FALSE
- (14) Courts of general jurisdiction are trial courts.
TRUE
- (15) Constitutional cases are taken to the United States Supreme Court by a writ of habeas corpus.
FALSE
- (16) When an appellate court finds that the decision of a lower court is incorrect, the appellate court overrules the lower court's decision.
FALSE
COMMENT: the court reverses lower courts, and overrules its own prior precedent. This may seem picky – use the question is you want students to be precise in their terminology
- (17) Federalism is a matter of concern in constitutional law because of the structure of American government.
TRUE
- (18) The United States Supreme Court has no direct jurisdiction over matters of state law.
TRUE
COMMENT: An exception is pendent jurisdiction, but this basic point is important and is part of the incorporation conundrum that many students have difficulty understanding. The contrasting rule is that the Supreme Court may decide federal questions that arise in state courts.
- (19) The Supreme Court has higher authority than Congress to determine whether a law is constitutional.
TRUE

- (20) A state supreme court cannot grant suspects and defendants greater rights than those established by the United States Supreme Court.
FALSE
- (21) Personal privacy is a political philosophy protected by the Bill of Rights.
TRUE
- (22) Many of the rights in the United States Constitution derive from the English common law.
TRUE
- (23) The issue of racism is equally important in the study of criminal procedure as it is in every criminal justice subject.
FALSE
COMMENT: The Supreme Court's early criminal procedure cases reacted to racist practices & established foundation of rights; thus plus the origin of the Fourteenth Amendment makes the topic of racism organic to the origin & study of criminal procedure.
- (24) United States Supreme Court justices are mainly successful in setting aside their ideological predilections when they decide criminal procedure cases.
FALSE
- (25) Human rights are a special class of rights held by a person simply by virtue of being human.
TRUE
COMMENT: This is an advanced question. Human rights can be established by domestic legislation, but the gist of the definition given in the text is that human rights are anterior to specific authorizing law.
- (26) For most of American history the Bill of Rights did not apply to local police.
TRUE
- (27) Prior to the Civil War, the United States Supreme Court had no jurisdiction to take an appeal from a state case that interpreted federal law.
FALSE
COMMENT: In *Martin v. Hunter's Lessee* (1816) and *Cohens v. Virginia* (1821),
- (28) The *Dred Scott* case established national citizenship in all state citizens.
FALSE
COMMENT: Fourteenth Amendment, first sentence. .
- (29) In *Hurtado v. California* (1884) the Supreme Court held that the right to a grand jury indictment was not required in state capital cases.
TRUE
- (30) In *Hurtado v. California* (1994) the Supreme Court adopted the fundamental rights test to decide whether a Bill of Rights provision should apply to the states.
TRUE
- (31) The Supreme Court incorporated no constitutional rights into the Fourteenth Amendment Due Process Clause in the nineteenth century.
FALSE

COMMENT: *Chicago, Burlington and Quincy Railroad Company v. Chicago* (1897) – just compensation clause.

- (32) The Supreme Court can overturn a state’s conviction of a defendant under the Fourteenth Amendment even though the state did not violate a specific provision in the Bill of Rights.

TRUE

COMMENT: This is a way of stating the “due process approach.”

- (33) The Supreme Court in *Powell v. Alabama* (1932) held that confessions obtained by torture inflicted by local authorities violate the Due Process Clause of the Fourteenth Amendment.

FALSE

- (34) Justice Benjamin Cardozo was opposed to incorporating criminal procedure rights in the Bill of Rights into the Fourteenth Amendment Due Process Clause but favored incorporating First Amendment rights.

TRUE

- (35) Justice Hugo Black favored incorporating criminal procedure rights in the Bill of Rights into the Fourteenth Amendment Due Process Clause in order to even the balance between the prosecution and the defense.

FALSE

COMMENT: It is arguable from his Sixth Amendment cases that Black did want to equalize justice, but his prime motive was the framer’s intent. This is inferred from his decisions and opinions in *Adamson* and in *Wolf*.

- (36) The shocks the conscience test incorporated the search and seizure provision of the Fourth Amendment.

FALSE

- (37) The Second Amendment right to bear arms has been incorporated by the Supreme Court.

FALSE

CAVEAT: *Heller* is limited to federal law as of 2009, but the Court may incorporate the right in the future.

- (38) The Due Process Revolution of the 1960s was characterized by the process of selective incorporation.

TRUE

- (39) When a provision of the Bill of Rights is incorporated, the Supreme Court must interpret federal and states cases in exactly the same way,

FALSE

COMMENT: The Court allowed divergent interpretations in *Williams v. Florida* (1970) re jury size and in *Johnson v. Louisiana* (1972) and *Apodaca v. Oregon* (1972) re jury unanimity

- (40) A characteristic of Burger Court jurisprudence was to decide cases in broad and sweeping terms.

FALSE

- (41) Justice Rehnquist has stated that the rule of *stare decisis* (i.e., precedent) is not important where earlier cases were decided by close votes
TRUE
- (42) The Supreme Court upheld the power of the president to suspend the writ of habeas corpus when the country is engaged in a civil war in *Ex Parte Milligan* (1866).
FALSE
- (43) History shows that the United States has for the most part upheld civil rights during times of war and military crises.
FALSE
- (44) *Rasul v. Bush* (2004) held that federal courts have jurisdiction to consider challenges to the legality of the detention of foreign nationals captured during hostilities abroad and incarcerated at Guantanamo Bay.
TRUE
- (45) Arguably unconstitutional acts conducted by the Bush Administration in the GWOT affected only foreign nationals and did not affect the constitutional rights of United States citizens.
FALSE

* * * * FILL IN QUESTIONS * * * *

- (1) The two items listed in the Preamble to the U.S. Constitution that are most closely related to criminal justice and criminal procedure are _____ and _____.
ANSWER: establish Justice and insure domestic Tranquillity
- (2) The elimination of mistakes is emphasized more by the _____ Model of criminal justice.
ANSWER: Due Process Model
- (3) "If the Crime Control Model resembles an _____," Packer says, "the Due Process Model looks very much like an _____."
ANSWER: assembly line obstacle course
- (4) Police, prosecution and correctional agencies are located in the _____ branch of government.
ANSWER: executive
- (5) The two major functions of the courts are rule _____ and rule _____.
ANSWER: application; making
- (6) When a conflict arises between state and federal law, the _____ Clause of the U.S. Constitution states that federal law controls.
ANSWER: Supremacy

- (7) A state Supreme Court may grant a defendant greater rights than granted by the United States Supreme Court under the federal Constitution if the state decision is based on _____.
ANSWER: adequate and independent state grounds
- (8) Under the adequate and independent state grounds doctrine, states establish the constitutional _____ and the United States Supreme Court the constitutional _____ of criminal procedure rights.
ANSWER: ceiling and floor
- (9) Granting defense counsel to indigent defendants at state expense is an example of the political philosophy of _____.
ANSWER: equality
- (10) The ability of a civilian to sue a police officer and police department for breach of the person's constitutional rights exemplifies the _____ [political philosophy]
ANSWER: Rule of Law
- (11) The _____ doctrine applied provisions of the Bill of Rights to state and local courts and officers.
ANSWER: incorporation
- (12) _____ is the theory that the due process clause of the Fourteenth Amendment makes all of the provisions of the Bill of Rights (Amdts. I to VIII) applicable to the states.
ANSWER: Total incorporation
- (13) In the era between 1884 and 1908 the only Bill of Rights provision held by the Supreme Court to be included in the concept of due process was the _____ Clause.
ANSWER: Just Compensation
COMMENT: The case is *Chicago, Burlington & Quincy RR. Co. v. Chicago* (1897)
- (14) In the 1920s and 1930s the Supreme Court incorporated various provisions of the _____ of the Bill of Rights.
ANSWER: First Amendment
- (15) In *Palko v. Connecticut* (1937), Justice Cardozo ruled that the Double Jeopardy Clause of the Fifth Amendment did not apply in a state case because it was a mere _____ right.
ANSWER: formal
COMMENT: The question is not picky, because it contrasts a "formal" to a "fundamental right"
- (16) The criminal procedure decisions of the Burger and Rehnquist courts, after the decade of the 1960s, has been termed a _____.
ANSWER: counterrevolution
- (17) The Supreme Court applies the _____ doctrine when it rules that there was a constitutional error in the case but the conviction is still upheld.
ANSWER: harmless error
COMMENT: *Arizona v. Fulminante* (1991)

- (18) List **one** reason why a state supreme court may interpret its constitution to grant defendants greater rights than granted by the U. S. Supreme Court's under the U.S. Constitution:

ANSWER: wording of state constitution grants greater freedoms / wording puts right in positive rather than negative form / state's constitutional history shows its framers intended greater liberties / early state legislation more broadly defined rights / local traditions favor liberty / heightened definitions of state rights / distinctive local popular attitudes .

- (19) A country in which no civil or constitutional rights effectively protect citizens and residents from acts by the government, including detention, questioning, and conviction is known as a/an

ANSWER: police state

- (20) List **one** historical example of a law or practice that threatened civil liberties during a time of war:

ANSWERS: Alien and Sedition Laws, 1790s / Civil War suspension of habeas corpus / WWI - Sedition Laws / WWI - Red Scare, Palmer Raids / WW II - Japanese Internment / WWII - wiretapping & national security / Korean War steel plant seizure / Cold War - twentieth century national security state/ Vietnam era - political crimes & trials.

- (21) A _____ is a total, interlocking, data base designed to identify potential terrorists but also includes criminal and commercial data bases that allow law enforcement agencies to gather an unprecedented amount of information about citizens.

ANSWER: fusion center

*** * * * SAMPLE LONG ESSAY QUESTIONS * * * ***

General instruction regarding the names of cases: You are not expected to know the names of cases except for the Case & Comments. You *are* expected to know the holdings (facts + decisions) of cases. In your essays, the names of cases are not required. It is more important to know the rules and doctrines that arise from the cases and the case facts that exemplify the rules and are constituents of case holdings.

General instruction regarding questions that ask for rules, doctrines and explanations of named cases: In all such questions your primary task is to explain rules of law and the reasoning of cases. Describe case facts only to the extent necessary to explain the law. To the greatest extent possible, discuss the reasoning and analysis the supports the rules. Wherever there is disagreement between the justices, explain the argumentation of the majority, dissenting and concurring justices.

* * *

Describe and explain the process by which the Bill of Rights was incorporated into the Due Process Clause of the Fourteenth Amendment by the United States Supreme Court. List the major events or milestones in the process toward incorporation. [Do not include a discussion of cases decided after incorporation of Bill of Rights in the 1960s]

Explain the legal foundation of criminal procedure, with reference to the definition and structure of law, the court system, federalism, and the special role of the Supreme Court

Describe the challenges to freedom that have occurred in times of crisis in American history, how society and the courts have responded to past crises, and how the Supreme Court has dealt with liberty constitutional issues arising out of the detention of prisoners at Guantanamo Bay?