

Thank you so much for downloading BarMD's Black Letter Law Cheat Sheets FREE SAMPLE! We hope you find these helpful in memorizing.

A few tips on memorizing and using these sheets:

- Print: you can print these sheets 1 time. We highly encourage you to print these, mark them up, make them work for YOU
- Don't always start in the same place. For example, if you are going to focus on Con Law, don't always start with preliminary issues. Perhaps start with Preliminary Issues one day and Individual Rights the next day.
- Quiz yourself:
  - Pick 3 subjects/day and quiz yourself on those subjects
  - For all areas where you struggled to recall the elements/buzzwords quickly, make a list, drill those rules, and test yourself again in 1-2 days

A few notes for you on abbreviations and structure:

- **Abbreviations:** We use common abbreviations, but just for clarity, they are delineated here:
  - Π or π: plaintiff
  - Δ: defendant
  - 3P: Third Party
  - 1A, 2A, 3A: the capital "A" refers to Amendment
  - G: Government
  - ER: Employer
  - EE: Employee
  - 3P: Third Party
  - K: contract
- **Structure:** I tend to use numbers for elements of rules and letters for either alternatives of a rule or for factors of a factor test. For example:
  - Negligence: a defendant is liable for negligence when there is: (1) duty, (2) breach, (3) causation, and (4) damages
  - Malice Aforethought: a defendant has malice aforethought through (a) intent to kill, (b) intent to cause serious bodily injury, (c) depraved heart, or (4) felony murder
- We also emphasize where the rule is elemental by writing AND in all caps, where the rule is an alternative with an OR in all caps, and where there is an exception by writing UNLESS in all caps or EXCEPT in all caps

If you have any questions or need clarification, email us at [hello@bar-md.com](mailto:hello@bar-md.com) and we will do our best to get back to you in a timely manner.

## Criminal Procedure

### FOURTH AMENDMENT

- **Defined:** Fourth Amendment protects against unreasonable searches and seizures.
- For the 4A to apply there must have been:
  1. Government Conduct
  2. Reasonable Expectation of Privacy
- **Government Conduct:** the government or a government agent was involved in the search or seizure
- **Reasonable Expectation of Privacy:** the court will consider the totality of the circumstances to determine whether an individual has a reasonable expectation of privacy in the place searched.
  - **Home:** a person has an REOP in their home
  - **Curtilage:**
    - Defined: area immediately outside the dwelling house and its outbuildings
    - To determine whether an area is or is not curtilage, a court will consider its proximity to the dwelling
    - A person has an REOP of their curtilage
  - **Person:** a person has an REOP in their person; however, prisoners have a lower expectation of privacy than non-prisoners and are subject to a search of their persons
  - **Thing:** you need to explain why a person does / does not have a reasonable expectation of privacy
  - **Garbage:** no REOP
  - **Technology:** information regarding a home's interior obtained through using sense-enhancing technology not in public use is a search
  - **Open Fields Doctrine:** areas outside the curtilage are not protected by the 4A
  - **Dog Search:** a drug-detection dog cannot sniff around the entry to the home or other areas within the curtilage without a warrant
- **Warrant Requirement:** for a search to comply with the requirements of the 4A, the government agent must have acted pursuant to a valid warrant.
  - Valid Warrant Requirements:
    1. Probable Cause
    2. States places and things to be searched with particularity
    3. Issued by a neutral magistrateIf warrant is not valid → did the officers rely on it in good faith?
  - Properly Executed Warrant:
    1. No unreasonable delay
    2. Knock & Announce
    3. Search within the scope of the warrant

### → Exceptions to the Warrant Requirement

- **Automobile Stop:** police may stop automobiles when there is reasonable suspicion of wrongdoing based on an objective standard
  - **Pretextual Stops:** ok so long as there is an independent justification for the stop
  - **Passengers:** all passengers may be ordered out of the car
- **Roadblock / Checkpoint:** police may establish a roadblock for: (a) Information seeking (e.g., when a bank has been robbed and officers are searching for suspects) OR (b) to test compliance with laws related to driving (e.g., DUI checkpoints)
  - Checkpoints must be based on a neutral, articulable standard
  - Highway checkpoints for purpose of detecting possession of and / or use of illegal drugs are NOT permitted.
- **Consent:** warrant not required when police have obtained consent to search.
  - Consent must be voluntary
  - Search cannot extend beyond the scope of the area consented to be searched.
- **Plain View:** a warrant is not required if evidence if:
  1. Officer is legitimately on the premises;
  2. Evidence is in plain view;
  3. It is immediately apparent that the evidence is contraband or a fruit or instrumentality of a crime
- **Search Incident to Lawful Arrest:** a warrant is not required if officers are making a lawful arrest  
*Note:* limited to arrestee's immediate grabbing areas; not locked containers
- **Protective Sweep:** a warrant is not required when:
  1. Police are making a lawful arrest
  2. police have a reasonable belief other danger is or might be present
- **Vehicle Search:** a warrant is not required when:
  1. Police have probable cause to believe that a vehicle contains contraband or evidence of a crime
  2. Police believe the vehicle might contain the objects for which they are searching
- **Administrative (Inventory) Search:** police may conduct a routine search of a lawfully impounded vehicle or lawfully arrested person
- **Exigent Circumstances:** police may conduct a warrantless search when:
  1. Police have probable cause
  2. It is necessary to:

- a. Prevent imminent destruction of evidence;
  - b. Prevent imminent personal injury
  - c. Search for a felony suspect police are in hot pursuit of AND reasonably believe has entered a particular premises.
- **Terry Stop:** an officer may stop and frisk someone when the officer has a reasonable suspicion of criminal activity based on the totality of the circumstances.
    - During the stop, the officer may:
      - Detain the individual for a brief time;
      - Conduct a pat-down of the individuals outer clothing for weapons, and
      - Pursuant to the plain feel doctrine, seize items that are immediately apparent are contraband without manipulating the item
    - **Flight in High Crime Area:** unprovoked flight in a high crime area when coupled with other factors (e.g., presence of police in a high crime area), can provide reasonable suspicion to justify a **Terry** stop, at least in absence of circumstances that suggest the flight is motivated by non-criminal purposes (e.g., a jogger).

### FIFTH AMENDMENT

- **Privilege Against Self-Incrimination:** the 5A privilege against self-incrimination protects individuals from compelled self-incrimination.
  - Applies to any testimony one may give, regardless of whether it is in a criminal trial. If it may later incriminate you in a criminal trial, you can invoke the privilege.
  - Testimonial: a statement is testimonial when:
    1. It conveys thoughts, opinions, observations, or knowledge; AND
    2. The primary purpose is to establish or prove facts relevant to a criminal prosecution
- **Miranda:** an officer must give **Miranda** warnings when the arrestee is in custody and subjected to an interrogation
  - **Custodial:** a reasonable person would not feel free to leave
  - **Interrogation:** any words or actions of the police are those the police should know are reasonably likely to elicit an incriminating response
  - **Invocation of Right to Counsel:** must be unequivocal

## Criminal Procedure

- Once the individual invokes their right to counsel, police must cease custodial interrogation
  - Re-interrogation only permissible once counsel has been made available OR the suspect initiates further communication, exchanges, or conversations with the police
  - Waiver of Right to Counsel: must be voluntary, knowing, and intelligent; mere silence is insufficient
  - Invocation of Right to Remain Silent: if an individual indicates, in any manner, at any time prior to or during questioning, that they wish to remain silent, the interrogation must cease
  - Waiver of Right to Remain Silent: must be voluntary and knowing:
    - Voluntary: product of free and deliberate choice rather than intimidation, coercion, or deception
    - Knowing: made with full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it
  - Re-Mirandizing Suspect: after a suspect invokes rights under Miranda, police may re-interrogate when:
    1. The police re-Mirandize the suspect; AND
    2. There has been a sufficient break in custody.  
*Note: two weeks is usually a sufficient break*
- **Due Process Clause**
- Exculpatory Evidence: prosecutor must disclose to the defense and the court all known exculpatory evidence or information that tends to prove or disprove guilt or mitigates an offense
  - Lineups: lineups may not be unnecessarily suggestive
  - Confessions: must be voluntary based on the totality of the circumstances

### SIXTH AMENDMENT

- **Right to Counsel**: right to assistance of counsel applies at all critical stages of criminal prosecution after formal proceedings have commenced
- Right to counsel applies:
    - In all felony and misdemeanor cases where incarceration is possible
    - At all critical stages of prosecution from charge to sentencing, including interrogations and arraignments
    - Unless it has been waived

- Effective Assistance of Counsel: 6A requires an attorney to provide effective assistance; violated when:
    1. Attorney does not act as a reasonably effective attorney would under the circumstances; AND
    2. Causation: but for the attorney's failure, the Δ would have achieved a different result
  - Right to Substitute Counsel: a criminal Δ may substitute their attorney in the interest of justice whereby the court will weigh the following factors:
    - a. Conflicts;
    - b. The Δ's interests;
    - c. Judicial efficiency; AND
    - d. timeliness
  - Waiver of Right to Counsel: a Δ may refuse counsel and proceed pro se at trial when the waiver is
    1. Knowing;
    2. Intelligent; AND
    3. Timely
  - Informants: it is NOT a violation of the 6A to place an informant in Δ's presence; however, the 6A does apply when the informant takes some action deliberately designed to elicit incriminating remarks
- **Confrontation Clause**
- Under the Confrontation Clause, a criminal Δ has the right to confront adverse witnesses.
    - Prosecution may not introduce testimonial statements made by a third person against the Δ UNLESS the declarant is or was subject to cross at the time of the statement or during trial
  - Joint Δs: prohibits a confession of one Δ against another Δ where two Δs are jointly tried UNLESS:
    - a. The person who made the statement testifies and is subject to cross; OR
    - b. The statement is redacted
  - Severance of Joint Trial: where Δs are charged jointly, a Δ is entitled to severance when the joint trial would result in substantial prejudice to one of the co-Δs
- **Pleas**: before accepting a plea, a judge must determine that the plea was voluntary and intelligent by addressing the Δ in person and on the record, which requires the judge to determine the Δ understands:
  1. The nature of the charge they are pleading to;
  2. The maximum and minimum penalties for the charge they are pleading to

3. They have a right to plead not guilty; AND
  4. They waive the right to trial by pleading
- **Right to Jury Trial**: criminal Δs are entitled to a jury trial for offenses that have a potential sentence of greater than 6 months.
- Waiver: a Δ may voluntarily, knowingly, and intelligently waive their right to jury trial
- **Right to Testify**: a criminal Δ has a right to testify
- **Right to Speedy Trial**: the 6A guarantees the right to speedy trial. To evaluate whether a Δ received a speedy trial, a court will evaluate:
  - a. The length of delay;
  - b. Whether the Δ asserted their right to a speedy trial;
  - c. The reason for the delay; AND
  - d. Prejudice that resulted to Δ as a result of the delay
- **Double Jeopardy**: an individual may not be tried for the same offense once jeopardy has attached.
- Jury Trial: jeopardy attaches when the jury has been empaneled and sworn
  - Bench Trial: when the first witness has been sworn in

### EIGHTH AMENDMENT

- **Cruel and Unusual Punishment**: a penalty may not be grossly disproportionate to the seriousness of the crime
- Death Penalty: Δ cannot be sentenced to death if the Δ is either (a) mentally handicapped, OR (b) was a minor at the time of the crime
  - Life Sentence without Parole: a minor may not be sentenced to life without parole

### REMEDY FOR VIOLATION

- **Exclusionary Rule**: evidence obtained in violation of the 4A, 5A, or 6A is inadmissible
- Note: physical evidence obtained in violation of Miranda is not excluded
- **Fruit of the Poisonous Tree**: all evidence obtained from exploitation of illegally obtained evidence must be excluded UNLESS one of the following exceptions applies:
  - a. Independent Source: Prosecutors may use evidence that is fruit of the poisonous tree when the evidence could have been obtained from an independent source separate from the illegal source
  - b. Inevitable Discovery: Prosecutors may use evidence that is fruit of the poisonous tree when the evidence would inevitably have been discovered by other police techniques

## Criminal Procedure

- c. Purged Taint: Prosecutors may use evidence that is fruit of the poisonous tree when sufficient additional factors intervened between the original illegality and the final discovery such that the link is too tenuous that the taint of the constitutional violation has been purged
- **Good Faith Warrant Exception:** The exclusionary rule does not apply when an officer acts in reasonable reliance upon a facially valid search warrant issued by a proper magistrate and the warrant is ultimately found to be unsupported by probable cause; however, this exception is inapplicable if:
- a. The affiant knew the information he was providing was false;
  - b. The magistrate's reliance on the affidavit was unreasonable because there was a lack of probable cause; OR
  - c. The warrant was facially defective