

Name _____ Date _____

The Bill of Rights



The Bill of Rights is part of the U.S. Constitution. The Bill of Rights is the first ten amendments to the Constitution. These amendments explain what rights U.S. citizens have that the government is not allowed to take away. Even if everyone thinks that the government should take away the right to do something, if the Bill of Rights or some other part of the Constitution says it must be allowed, then the government may not pass any law that bans it. If such a law is passed, then the judicial branch can declare that law unconstitutional in court, and overturn that law. The head of the judicial branch is the Supreme Court, and it is responsible for interpreting the Constitution. The “Founding Fathers” wrote the Bill of Rights to guarantee certain basic freedoms that they believed no one should take away.

An important thing to remember is that although the federal government is limited in what it can tell state governments to do, state governments are also limited in what they can do to individuals. Certain matters are left up to the states, but no state has the power to deprive individuals of freedoms granted by the Constitution and the Bill of Rights. That is because the 14th Amendment to the Constitution guarantees the equal protection of rights for every American no matter what state he or she lives in. After all, it would not be fair to deprive someone of a basic freedom just because he or she lives in the wrong state. The 14th Amendment is not part of the Bill of Rights, but it is important not to forget it when discussing the freedoms guaranteed by the Bill of Rights. Even when an amendment does not say anything about what a state can or can't do, the 14th amendment makes it clear that states cannot pass laws that violate basic Constitutional rights. If they do, those laws may be overturned by the judicial branch. What a state can do (if it wants to) is to give residents in those states *more* rights than are guaranteed by the Constitution, but not fewer.

Name _____ Date _____

The Bill of Rights



The 1st Amendment combines many rights together that guarantee the freedom of expression. It says that the government can not “establish” any religion, but also that people have freedom of religion. That means that the government can’t support religion, or choose sides in religious disputes, but the government also can’t stop anyone from practicing any religion he or she wants. It also says that U.S. citizens have “free speech” and “free press”. That means that with a few exceptions (such as yelling “fire” in a crowded theater, or writing lies about someone in order to damage their reputation), U.S. citizens can say or write what they want. Free press also means that news agencies can say what they want, even if the government does not like what they are saying. The 1st Amendment also guarantees “free assembly,” which means that as long as you are peaceful you can gather in groups with whomever you want. The 1st Amendment also says you are allowed to complain to the government about the job that it’s doing.

The 2nd Amendment says that people have a right to keep guns in order to have a militia. A *militia* is a group of citizens who have guns just in case the government becomes so extremely oppressive that the people have to overthrow it by force.

The 3rd Amendment says that in peacetime, soldiers can’t just take over a person’s house and live there without permission. Even if there is a war, they must follow certain laws about wanting to live in someone else’s house.

The 4th Amendment protects against unreasonable search and seizures, or those done without “probable cause”. In other words, the government, including the police, may not just search a house or take (seize) things that are someone else’s without proving that there is *probable cause*. Proving that there is probable cause means proving that there is a good reason to believe that a crime may have been committed. When the police are able to show probable cause, a judge issues a *warrant*. A warrant is a document giving the government permission to search or confiscate property.

The 5th Amendment is a combination of many rights guaranteed to people when they are accused of a serious crime. If you are accused of a serious crime in the United States, you have the right to a trial by jury. You cannot be tried twice for the same crime (no *double jeopardy*). You can’t be forced to testify in court against yourself, nor can the government take away your right to life, liberty (freedom), or property without “due process”. *Due process* means that certain rules have to be followed to make sure that everything is fair. The 5th Amendment also guarantees that the government cannot take your property for public use without paying you a fair price for it.

Name _____ Date _____

The Bill of Rights



The 6th Amendment guarantees more rights to people accused of crimes. If you are accused of a crime in the United States, the 6th Amendment gives you the rights to a speedy and public trial by an impartial (unbiased) jury, the right to know what you are being accused of, the right to confront the person making the accusations, the right to call witnesses that can help your defense, and the right to have a lawyer. It is important that people have a fair trial so that innocent people are not convicted. Sometimes innocent people do get convicted, but it happens less often than it might otherwise, thanks to the 6th Amendment.

The 7th Amendment says that in the United States, even if you are not being accused of a crime, if someone sues you in court in a *common law* case, then you have the right to a trial by jury.

The 8th Amendment protects people against “cruel and unusual” punishments. Before the Constitution, people were sometimes drawn and quartered, otherwise tortured, tied to a pole in the hot sun, flogged, whipped, beaten or put into stocks. Today such punishments are unconstitutional.

The 9th Amendment says that people have other rights besides those stated in the Constitution. In other words, just because a right isn’t listed doesn’t mean that people do not have that right. A good example is the right to privacy, which has been recognized by the Supreme Court. One of the ways in which the right to privacy has been applied was to strike down laws that forbid mixed-race couples from getting married. Today, because of the right to privacy, mixed-race couples are allowed to get married in the United States. It is the job of the Supreme Court to interpret the Constitution and tell U.S. citizens which rights they have.

Finally, the 10th Amendment says that any power that the federal government does not have, and that is not forbidden to state governments will go to the states or to the people. This means that the states can make some laws that the federal government can’t make. However, because of the 14th Amendment guaranteeing equal protection, states can give people more rights than the federal government. No state may take away rights guaranteed by the Constitution.

Name _____ Date _____

Review your knowledge by answering the following questions.

1. What is the Bill of Rights? _____
2. Why does the United States have a Bill of Rights? _____

3. What happens if a law passes that takes away a right guaranteed by the Bill of Rights, or any other part of the Constitution? _____

4. What right does the 14th amendment give people in the United States? _____

5. Which rights are guaranteed by the 1st Amendment?
 - a. no establishment of religion (the government can't tell you what to believe)
 - b. religious freedom (the government can't prevent you from practicing your religion)
 - c. free speech and free press
 - d. free peaceful assembly
 - e. right to complain to the government
 - f. all of the above
6. In order for the police or any other government agency to search a house, what must they be able to prove? _____
7. What is "probable cause"? _____

8. If you are accused of a serious crime in the United States, the 5th Amendment guarantees that:
 - a. You have the right to a trial by jury.
 - b. You can't be tried twice for the same crime.
 - c. You can't be forced to testify against yourself in court.
 - d. The government can only take away your life, liberty or property if it follows due process of law.
 - e. If the government takes your property for the public use, it must pay a fair price for it.
 - f. all of the above
9. What is "due process"? _____
10. The 6th Amendment guarantees a fair trial. Name five rights that are included to make sure the trial is fair.

11. If a right is not named in the Constitution, is it possible that we still have it? _____
12. How would we know? _____

Name _____ Date _____



Imaginary Case Study

Let's imagine that you live in the U.S., and the state in which you live just passed a law outlawing music by your favorite band, the FreakyJams. (Keep in mind that this is only an example used to test your knowledge of American rights, and not something that is likely to happen to you in the U.S.). One day, the police stop you and search the backpack that you are carrying. Inside, they find a music CD of the band FreakyJams and immediately arrest you. They put you in jail and tell you that if you are found guilty, you will be repeatedly thrown into a thorn bush, as the new law requires. The police also tell you that it might be six months before you will be tried in court. You decide that your Constitutional rights have been violated and would like to sue in court.

1. You must help your lawyer prove that the law against FreakyJams music is unconstitutional and to prove that your rights were violated. Please list each right that your state has violated, along with the Amendments that guarantee each of those rights. For full credit, you must list four.

2. The Governor of your state defends the new law by saying that it is only the federal government that must guarantee free expression, and that each state may decide what it wants to do. He also says most people like the new law and the majority rules. Explain why both his arguments are wrong.

Name _____ Date _____



Tinker versus Des Moines School District

Unlike the example on the previous page, this story really happened. In the late 1960's, many people were against U.S. involvement in the Vietnam War. Three students in public school in Des Moines, Iowa chose to express their opposition to the war by wearing black armbands to school until the end of December. They were 15-year-old John F. Tinker, his sister 13-year-old sister Mary Beth, and 16-year-old Christopher Eckhardt.

When the principals of all the Des Moines schools found out what the black armbands meant, they decided to ban them and to suspend any student who refused to remove his or her armband. So when John, Mary Beth and Christopher arrived at school wearing their black arm bands in order to protest the Vietnam War, their principals told them they were suspended from school until they were willing to come back without the arm bands. The students did not return to school until January, when the time to wear the armbands was over.

The parents of the students decided to sue to stop the schools from punishing students for wearing the armbands, and also to make the school pay money as a punishment for violating their children's rights. Usually, the first step is to sue in federal district court, which is what they did. Unfortunately, the federal district court sided with the school saying that the school was only trying to prevent a "disturbance". However, the students were not being noisy or preventing the teachers from teaching. They just wanted to let others know how they felt about the war.

So the parents did not give up. They appealed the case to the Court of Appeals. When a person in the U.S. thinks that a district court made a mistake about a case involving Constitutional rights, the Court of Appeals is the next place to go. There are different appeals courts and each make decisions that apply to their own *circuit*, or group of states. Because the students lived in Iowa, the case went to the Court of Appeals for the 8th Circuit. Unfortunately, exactly half of the 8th Circuit judges sided with the school, which meant that the district court's decision was upheld.

The Tinker and Eckhardt families still did not give up. In the U.S., when you think a Court of Appeals made the wrong decision you may ask the Supreme Court to hear your case. The Supreme Court did agree to hear the case, and once they did they reversed the district court decision. The Supreme Court said that the students should have been allowed to wear the arm bands, and that the Des Moines school officials were wrong.

Name _____ Date _____

Review your knowledge by answering the following questions.

1. Why do you think that the Supreme Court decided that the students should have been allowed to wear black arm bands to school? Which Amendment do you think they based their decision on?

2. If you are a U.S. citizen, and you think your Constitutional rights have been violated, which federal court would hear your case first?

3. If you think the first court made a bad decision, where would you go in order to appeal the case?

4. If you lost your appeal, which court would be your last hope of winning your case?

5. If an appeals court decides that a rule in school is okay, and the Supreme Court decides that the rule is wrong, which court decision should the schools follow?

6. a) Does the Constitution protect the rights of a student to wear a t-shirt with a political slogan on it? _____
b) Would a public school be allowed to tell a student not to wear that t-shirt? _____

Name _____ Date _____

ANSWER KEY:

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1. The first 10 amendments to the Constitution.
2. To guarantee certain basic freedoms.
3. The judicial branch can overturn that law (declare it unconstitutional).
4. The right to equal protection of rights, no matter what state the person lives in.
5. f, all of the above
6. Probable cause
7. Having a good reason to believe that a crime has occurred.
8. f, all of the above
9. Making sure all the rules and laws are followed so that everything is fair when the government takes someone's life, liberty or property.
10. Speedy and public trial by an impartial (unbiased) jury, to know what you are being accused of, to confront the person accusing you, to call witnesses that can help in your defense, and to have a lawyer.
11. Yes.
12. The Supreme Court would decide.

Case Study

1.
 - Freedom of speech (or freedom of expression), 1st Amendment
 - Protection against unreasonable search and seizure (or "there was no probable cause"), 4th Amendment
 - Right to a speedy trial, 6th Amendment
 - Protection against cruel and unusual punishments, 8th Amendment
2. The 14th Amendment gives equal protection so that citizens of all states can enjoy rights granted by the Constitution. "Majority rules" never overrides basic rights given to people by the Constitution. (If a law is unconstitutional, it is not allowed no matter how many people like it.)

Tinker V. Des Moines School District

1. American students have a right to free speech (or free expression) as guaranteed by the First Amendment.
2. District court
3. Court of Appeals
4. Supreme Court
5. The Supreme Court's decision
6. Yes b) No