

Arizona Peace Officer Standards and Training

Basic Curriculum Model Lesson Plan

LESSON TITLE: CONSTITUTIONAL LAW 2.10

SUBJECT:	Constitutional Law
AZ POST DESIGNATION:	2.10
HOURS:	6
COURSE CONTENT:	An outline of the United States Constitution emphasizing the rights of the individual. A foundation for future instruction in the laws of arrest and search and seizure is provided.
PERFORMANCE OBJECTIVES:	Upon completion of this course of instruction, students using notes, handouts and other support materials as references, within the allotted time, will: <ul style="list-style-type: none">2.10.1 Identify the concept of the “supremacy clause” (hierarchy of the federal court system).2.10.2 Identify what constitutes case law.2.10.3 Identify examples of how case decisions affect and clarify statutory law (Stare Decisis).2.10.4 Identify, and be able to explain, the scope of the following rights protected by the 1st, 4th, 5th, 6th, 8th and 14th Amendments of the U.S. Constitution:<ul style="list-style-type: none">A. Freedom of religion.B. Freedom of speech.C. Freedom of the press.D. Freedom of assembly.E. Freedom from unreasonable searches and seizures.F. Right to be told of charges when arrested.G. Freedom from being tried twice for the same crime.H. Freedom from self-incrimination.

- I. Right to due process before being deprived of life, liberty or property.
- J. Right to a speedy trial.
- K. Right to a public trial by an impartial jury.
- L. Right to confront witnesses.
- M. Right to subpoena witnesses.
- N. Right to counsel.
- O. Freedom from excessive bail.
- P. Freedom from cruel and unusual punishments.
- Q. Right to equal protection of the laws.

2.10.5 Identify the following types of information that should generally be provided to crime victims:

- A. Existence of the Victim's Compensation Program.
- B. Availability and nature of local victim/witness services.
- C. Means of accessing police reports.
- D. Case follow-up procedures and responsibilities.
- E. All provisions of A.R.S. §§13-4405 and 13-4406.

DATE FIRST PREPARED: January 2001

PREPARED BY: SME Committee

REVIEWED – REVISED :	SME Committee	DATE: April 2002
REVIEWED – REVISED :	SME Committee	DATE: April 2006
REVIEWED – REVISED :	Lt. Dave Kelly, ALEA (Typo's)	DATE: August 2009
REVIEWED – REVISED:	SME Committee	DATE: November 2011
REVIEWED – REVISED :	SME Committee	DATE: August 2017
REVIEWED – REVISED :	SME Committee	DATE: August 2019
REVIEWED – REVISED :	SME Committee	DATE: October 2020
REVIEWED – REVISED :	AZPOST (DocX)	DATE: January 2020
REVIEWED – REVISED:		DATE:
REVIEWED – REVISED:		DATE:
REVIEWED – REVISED:		DATE:
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INSTRUCTOR REFERENCES:

CLASS LEVEL: Student

TRAINING AIDS: <http://www.azleg.gov/ArizonaRevisedStatutes.asp>

INSTRUCTIONAL STRATEGY: Interactive lecture and class discussion.

SUCCESS CRITERIA: 70% or higher on a written, multiple-choice examination.

COMPUTER FILE NAME: 2.10 Constitutional Law

DATE RELEASED TO THE SHARE FILE: August 2023

I. INTRODUCTION

- A. Instructor – (self) introduction.
- B. Preview of performance objectives.

II. SOURCES OF LAW

- A. “Natural law” – the philosophy that all persons have certain inalienable rights, with which they are born.
- B. “Common law” – the body of law that developed throughout history in the countries and cultures of Anglo-Saxon peoples, primarily England.

- C. “Case law” – a part of the common law.

P. O. 2.10.2

- 1. It is the interpretation of laws and the application of those laws to the facts, as decided by the courts in individual cases.
- 2. The principles determined by the courts establish precedent and are followed by subsequent courts in deciding similar issues.

- D. Constitutional law - the fundamental law of a nation or state which establishes the character, form and structure of its government and provides and limits the power and authority of that government.

- E. Statutory law – acts adopted by local, state or federal legislative bodies.

- F. Judicial decisions (case law) may have a significant effect on statutory law. For example:

P. O. 2.10.3

- 1. In many states, including Arizona, there are statutes that allow a peace officer to use deadly force to prevent the escape of a person fleeing from felony arrest.
- 2. The United States Supreme Court, in *Tennessee v. Garner* determined that such statutes violated the 4th Amendment and that deadly force was properly used only when the suspect poses a threat of serious physical harm either to the officer or to others. (*Tennessee v. Garner*, 471 u.s. 1 (1985))
- 3. Both Arizona and the United States have statutes that are an attempt to overrule the Supreme Court’s decision in *Miranda*. In *Dickerson v. U.S.* (2000), the Supreme Court reaffirmed that *Miranda* has a constitutional basis and cannot be overruled by statute.
- 4. A city ordinance making it a crime for people to gather on the sidewalks and behave in such a way that annoys passersby, was struck down as unconstitutional because it was vague and an excessive intrusion on free assembly and free association. (*Coates v. Cincinnati*, 402 U.S. 611 (1971)).

III. OVERVIEW OF THE U.S. CONSTITUTION (Briefly discuss the Constitution and its structure.)

A. Article I – Legislative Power (Congress).

1. Congress consists of:
 - a. House of Representatives.
 - b. Senate.
2. Congressional powers include:
 - a. Making all federal laws.
 - b. Establishing and maintaining courts.
 - c. Taxing.
 - d. Coining money.

B. Article II – Executive Power (President). ***INSTRUCTOR NOTE:*** *Law Enforcement officers are a part of the executive role, seeking to make the rules work.*

1. Presidential term of office.
2. President's powers include:
 - a. Appointing Supreme Court judges and other federal judges and ambassadors (subject to Senate confirmation).
 - b. Power to pardon.
 - c. Commander-in-chief of the armed forces.
 - d. Power to make treaties.

C. Article III – Judicial Power.

1. The Constitution creates one (1) Supreme Court and other inferior courts as Congress chooses.
2. Judicial tenure is a life of good behavior.
3. The Supreme Court renders the final opinion on questions regarding the interpretation of the U.S. Constitution.

- D. Article IV – Interstate Relations – full faith and credit.
- E. Article V – Amending Power.
- F. Article VI – Supremacy Clause. **P. O. 2.10.1**
 - 1. This clause in the Constitution provides that the Constitution, treaties and laws of the U.S. shall be the supreme law of the land.
- G. Article VII – Ratification of the Constitution. **INSTRUCTOR NOTE:** *The Constitution is a balance of individual rights versus society rights.*
- H. First 10 Amendments – Bill of Rights.
 - 1. History – to secure passage of the Constitution and provide safeguards against the federal government. (i.e. Taliban, Singapore will cane people for criminal damage.)
 - 2. Review.
 - a. Amendment 1:
 - i. Freedom of religion. **P. O. 2.10.4A**
 - ii. Freedom of speech. **P. O. 2.10.4B**
 - iii. Freedom of the press. **P. O. 2.10.4C**
 - iv. Right to assemble. **P. O. 2.10.4D**
 - b. Amendment 2 – right to bear arms.
 - i. The 2nd Amendment has been interpreted as assuring the states of their right to maintain a militia.
 - c. Amendment 3 – quartering of soldiers.
 - d. Amendment 4:
 - i. No unreasonable search and seizure. **P. O. 2.10.4F**
 - ii. Search warrant requirement.
 - e. Amendment 5:

- i. No double jeopardy. **P. O. 2.10.4H**
 - ii. No self-incrimination. **P. O. 2.10.4I**
 - iii. Due process clause. **P. O. 2.10.4J**
 - iv. Just compensation clause.
 - f. Amendment 6:
 - i. Right to a speedy trial. **P. O. 2.10.4K**
 - ii. Public trial by impartial jury. **P. O. 2.10.4L**
 - iii. Right to confront witnesses. **P. O. 2.10.4M**
 - iv. Right to be informed of charges when arrested. **P. O. 2.10.4G**
 - v. Right to compulsory process. **P. O. 2.10.4N**
 - vi. Right to counsel. **P. O. 2.10.4O**
 - g. Amendment 7 – trial by jury in federal civil suits. (This applies only to federal courts, not state courts.)
 - h. Amendment 8:
 - i. No excessive bail. **P. O. 2.10.4P**
 - ii. No cruel and unusual punishment. **P. O. 2.10.4Q**
 - i. Amendment 9 – rights retained by the people.
 - j. Amendment 10 – states’ rights.
- I. Balance of powers – short discussion of checks and balances:
- 1. Congress approves the budget and jurisdiction of the courts.
 - 2. The President nominates judges and has veto power.
 - 3. Court reviews actions of legislative and executive branches.

IV. FREEDOM OF RELIGION (1ST AMENDMENT)**P. O. 2.10.4A**

- A. Found in the 1st Amendment:
1. Protects both the right to the religion of one's choice and the right to be free from religion. **INSTRUCTOR NOTE:** *Wallace v. Jaffree, 469 U.S. 1102 (1967).* (*State law mandated a moment of silence in schools is intended to promote prayer and therefore, violates the 1st Amendment.*)
 2. This Amendment has been interpreted as acting to separate church and state.
- B. "Establishment clause" and "free exercise" clause:
1. The state may neither establish a religion (no "state" religion), **INSTRUCTOR NOTE:** *Wisconsin v. Yoder 406 U.S. 205 (1972)* (*Amish parents cannot be prosecuted for refusing to send their children to state school past 8th grade.*)
 2. Nor may it interfere with the free exercise of religion.

V. FREEDOM OF SPEECH (1ST AMENDMENT)**P. O. 2.10.4B**

- A. Not an absolute right; examples of unprotected speech include:
1. Libel and slander – truth is defense.
 2. Obscene speech. (*Ashcroft v. ACLU & FLCU 535 U.S. 564* *Pacifica Foundation*)
 - a. 3 part test
 - b. Decisions should be made with a prosecutor. (George Carlin "7 Dirty words")
 3. Fighting words. (*Wisconsin v. Mitchell 508 U.S. 476* and *Chaplinsky v. New Hampshire 315 U.S. 568*)
 - a. A person can be prosecuted for yelling "fire" in a crowded theater, or
 - b. For telling people at a demonstration, "Go get your guns, we're gonna kill those traitors."
 4. Dangerous speech.
 - a. *Chambers v. Florida 309 U.S. 227*, *Bridges v. State of California 314 U.S. 252*
R.A.V. v. City of St. Paul, MN 505 U.S. 377
 5. Speech plus – refers to situations in which a person's conduct is expressive and intended to communicate an idea. **INSTRUCTOR NOTE:** *A person cannot be prosecuted for burning an American flag in protest or for telling people at a demonstration that, "if it*

were up to me, those traitors would be executed.”

- a. Burning a flag or carrying a picket sign. **INSTRUCTOR NOTE:** *If considering an arrest for speech, ask yourself, if you would still arrest the person(s) if they said “I love the police”. If so, arrest is likely legal (i.e. time, place, manner. (ARS 13-1707 & 13-1708)(ARS 13-1708 constitutionality of it is questionable.)*
- b. Residential picketing. (Carey v. Brown 447 U.S. 455, Frisby v. Schultz 487 U.S. 474, St v. Baldwin 184 Ariz. 267)
- c. Such “speech” is also protected.

- B. The regulation must be both specific and narrowly tailored to the interests of the governmental entity that is trying to regulate the speech.

VI. FREEDOM OF THE PRESS (1ST AMENDMENT)

P. O. 2.10.4C

- A. This phrase is read along with the freedom of speech as a single guarantee.
- B. The press enjoys no privileges beyond those enjoyed by a private person.

VII. FREEDOM OF ASSEMBLY (1ST AMENDMENT)

P. O. 2.10.4D

- A. This right guarantees the right to assemble in a public forum to petition the government.
- B. This right applies only to public forums, not private property. Generally, the government cannot bar public access to places which were historically available for expressive activities, such as parks, sidewalks and streets.
- C. The government may regulate the time, place and manner of the assembly, so long as the laws or regulations are applied in a manner that is content-neutral, narrowly serve a significant government interest and leave open alternative forms of communication.
- D. Denying the right to hold a demonstration in the middle of a busy street at rush hour would be an acceptable time, place and manner restriction.

VIII. FREEDOM FROM UNREASONABLE SEARCHES AND SEIZURES (4TH AMENDMENT)

P. O. 2.10.4F

- A. Applies only to those places in which a person has a reasonable expectation of privacy.
- B. Applies only to searches and seizures, not to consensual encounters. Therefore, a police officer may simply stop to chat with someone without raising any 4th Amendment issues. Similarly, a dog may sniff the air without that sniff being considered a 4th Amendment search. (Katz v. United States, 389 U. S. 347 (1967), Terry v. Ohio, 392 U.S. 1 (1968).
- C. Applies only to state actors – people acting on behalf of the government. Does not apply to

private citizens.

- D. If a state actor violates the 4th Amendment, the evidence revealed by the search and/or the things seized may be suppressed by the court. Suppression means that the evidence cannot be used in the government's case in chief. This is known as the exclusionary rule.
- E. Rule #1 – if there is doubt about whether to get a warrant, get one. (ARS 13-3911 through 13-3925)
- F. Follow the statutory process to get the warrant.
- G. Exceptions to the warrant requirement:
 - 1. Consent.
 - 2. Incident to arrest.
 - 3. Plain view (not a search).
 - 4. Inventory (not a search).
 - 5. Open fields/curtilage (not a search).
 - 6. Vehicles.
 - 7. Exigent/emergency circumstances.
 - 8. Abandoned property (not a search).
- E. Seizures – a seizure occurs whenever a police officer interferes with a person's right to go on about their business. (Terry v. Ohio, 392 U.S. 1 (1968)
 - 1. Consensual contact: An officer may have a consensual contact with a person without implicating the 4th Amendment. The person is free to leave.
 - 2. Stop/temporary detention: An officer must have reasonable suspicion that criminal activity has occurred, or reasonable suspicion of a traffic violation, and that the person stopped is involved in that offense before stopping or detaining a person. (State v. stricklin, 191 Ariz. 245 (App 1997)
 - 3. Arrest: An officer must have probable cause before arresting a person.
 - 4. Pat-down/frisk: An officer may pat a lawfully detained person down only if the officer has reasonable suspicion that the person is presently armed and dangerous. (Terry v. Ohio, 392 U.S. 1 (1968), State v. Serna, 235 Ariz. 270 (2914)

IX. RIGHT TO BE TOLD OF CHARGES WHEN ARRESTED (6TH AMENDMENT) P. O. 2.10.4G**X. FREEDOM FROM BEING TRIED TWICE FOR THE SAME CRIME (5TH AMENDMENT) P. O. 2.10.4H**

- A. The 5th Amendment provides that no person shall be tried twice for the same crime. (ARS 13-3887 and 13-3888)(Include the Dual Sovereignty Doctrine, Gamble v. United States 139 S. Ct 1960 (2019))
- B. The common name for this constitutional principle is “double jeopardy.”

XI. FREEDOM FROM SELF-INCRIMINATION (5TH AND 6TH AMENDMENTS) P. O. 2.10.4I

- A. Basic legal principle is that no person may be compelled, or required, to testify against himself/herself. (Miranda v. Arizona, 384 U.S. 436 (1966))
- B. An in-custody confession from an individual may be introduced at trial only if the state can prove that the confession was voluntarily given and if the defendant was properly given Miranda rights. (The instructor may wish to briefly discuss the warnings themselves.)
- C. Miranda:
 - 1. Warnings must be given when a person is in custody AND being interrogated.
 - 2. A person is in custody when they are not free to leave.
 - 3. A person is being interrogated when the person is asked or questioned, or when statements or actions intending to elicit information related to the criminal investigation from the suspect are made or done. (Brewer v. Williams, 97 S. Ct 1232 (1977))
 - 4. Failure to give proper Miranda warnings will result in the confession being ruled inadmissible in the state’s case in chief.
 - 5. There are some exceptions to Miranda. For example, there is an exception for emergency or public safety needs. Questions, such as, “Is anyone hurt?” or “Where is the gun?” are asked when officers are first responding to the emergency may be found to be allowable without Miranda. (New York v. Quarles, 467 U.S. 649 (1984))

XII. RIGHT TO DUE PROCESS BEFORE BEING DEPRIVED OF LIFE, LIBERTY OR PROPERTY P. O. 2.10.4J

- A. Found in the 5th and 14th Amendments to the Constitution.
- B. Essentially means that each person is entitled to notice and an opportunity to be heard, before being deprived of life, liberty or property.
- C. Due process in criminal cases means that a person is entitled to receive notice of the charges against the person (indictment or complaint) and an opportunity to be heard (trial).

- D. The right to due process exists anytime the government seeks to take a significant right or property from a citizen.
 - 1. (E.g., if the government wishes to stop paying a disabled person Social Security Supplemental Income Allowance because the government believes the person is no longer disabled, the person is entitled to notice of the proposed action and a hearing on whether the payments should be stopped.)
- E. The amount and timing of the notice and the type and timing of the opportunity to be heard depend on the significance of the proposed government action and the right involved.
 - 1. (E.g., a government civil service employee has a right to a civil service or merit board hearing over the employee's termination, but not until after the termination has taken place.)
 - 2. At the same time, the employee is entitled to notice of the proposed action and some chance to respond to the reasons for the proposed action, before termination.

XIII. RIGHT TO A SPEEDY AND PUBLIC TRIAL BEFORE AN IMPARTIAL JURY, THE RIGHT TO COUNSEL, THE RIGHT TO SUBPOENA AND CONFRONT WITNESSES **P. O. 2.10.4K**

- A. The Constitution provides the right of all defendants to a speedy trial. (Rule 8.2 ARCrP)
 - 1. The exact time limits vary, but the concept is to keep the government from jailing citizens and "holding them for trial" forever.
 - 2. Presently in Arizona, defendants must be tried within 180 days if out of custody and 150 days if in custody.
- B. All persons are entitled to public trials. **P. O. 2.10.4L**
 - 1. In addition, if a person is charged with a "serious" offense (all felonies and serious misdemeanors), a person is entitled to a trial by jury.
 - 2. The jury must be one that is impartial.
 - 3. Prospective jurors are questioned prior to being placed on a jury to ensure that they can be impartial in the case they are selected to hear.
- C. Every person charged with a criminal offense has the right to subpoena witnesses. **P. O. 2.10.4N**
 - 1. A subpoena is a court order requiring a person to come to court at a certain time and to remain there until questioned in a particular case.
 - 2. In addition, a person is entitled to cross-examine a witness who appears and testifies

against that person's interests.

P. O. 2.10.4M

- D. Any person who may be sentenced to jail as a result of the criminal charges against the person is entitled to be represented by an attorney. If a person cannot afford an attorney, the government is required to provide one (1) to the person at no cost. (Gideon v. Wainwright, 372 u.s. 335 (1963)

P. O. 2.10.4O

XIV. FREEDOM FROM EXCESSIVE BAIL AND CRUEL AND UNUSUAL PUNISHMENT (8TH AMENDMENT)

- A. A person is entitled not to be held on excessive bail. Generally speaking, the constitutionally recognized reason for bail is to ensure the appearance of the defendant at trial. (Arizona State Constitution Article 2, Section 22)

P. O. 2.10.4P

- B. The Constitution prohibits cruel and unusual punishment.

P. O. 2.10.4Q

1. This provision is often applied in prison litigation situations and has recently been expanded to other law enforcement activities.
2. However, it has been applied to forfeiture actions by the government.

XV. RIGHT TO EQUAL PROTECTION OF THE LAWS

P. O. 2.10.4R

- A. The 14th Amendment, adopted after the civil war, was intended to resolve issues related to improper treatment of African Americans.
- B. Among other provisions, the 14th Amendment mandates that no person within the jurisdiction of any state be denied equal protection of the law. The 14th Amendment is the mechanism for rights affirmed by the Constitution to apply to State action.
1. This amendment was used to stop "separate, but equal" provision of schools and other government services.
- C. The right to equal protection essentially means that the government must have a rational basis for treating different classifications of people differently.
- D. If the difference in treatment is based on race or national origin or affects a fundamental right such as voting or free speech, the government must have more than a rational basis for the difference.
1. It must provide a compelling state interest for the classification.
 2. This burden is rarely met.

XVI. VICTIM'S RIGHTS

P. O. 2.10.5

- A. Victim's rights are now guaranteed by the Arizona Constitution and state statute.
- B. Arizona crime victim's rights. **INSTRUCTOR NOTE:** *The instructor should go through the statutes with the class, highlighting the requirements that apply to law enforcement.*
 - 1. A.R.S. §§13-4401 through 13-4438 (in general).
 - 2. A.R.S. §§8-281 through 8-290.25.
 - 3. Department rules of procedure.
- C. Responsibilities.
 - 1. Notify victims of their rights by completing and distributing the pamphlet, "Information for Victims of Crime" or other appropriate means of providing information used within your jurisdiction.
 - 2. Ascertain if the victim wishes to waive or invoke his/her rights.
 - 3. If appropriate, determine whom the victim wishes to designate as lawful representative.
- D. Victim Compensation Program. **P. O. 2.10.5A**
- E. Victim/witness program. **P. O. 2.10.5B**
- F. Explain to the victim how to access police reports at the officer's agency. **P. O. 2.10.5C**
- G. Explain to the victim the case follow-up procedures and responsibilities at the officer's agency. **P. O. 2.10.5D**
- H. Emphasize all provisions of A.R.S. §§13-4405 and 13-4406. **P. O. 2.10.53**

XVII. CONCLUSION

- A. Review of performance objectives.
- B. Final questions and answers.
- C. Instructor closing comment(s).