

# **Core Criminal Procedure**



# **Core Criminal Procedure**

## Learning Through Multiple-Choice Questions

SECOND EDITION

**Kathy Swedlow**



CAROLINA ACADEMIC PRESS  

---

Durham, North Carolina

Copyright © 2022  
Kathy Swedlow  
All Rights Reserved

ISBN 978-1-5310-2245-7  
e-ISBN 978-1-5310-2246-4  
LCCN 2021953319

Carolina Academic Press  
700 Kent Street  
Durham, North Carolina 27701  
(919) 489-7486  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

# Contents

---

Preface	ix
<b>1 Core Constitutional Concepts Questions</b>	<b>3</b>
Basic Constitutional Principles Affecting Criminal Procedure	3
<b>2 Fourth Amendment Questions</b>	<b>9</b>
Fourth Amendment Searches	9
Fourth Amendment Seizures	17
Probable Cause and Reasonable Suspicion	25
Warrants	34
Warrantless Arrests	44
Exigent Circumstances	50
Plain View	63
Searches Incident to Arrest	71
<i>Terry</i> Stop and Frisk	82
Protective Sweeps	92
Automobile Exception Searches	98
Consent Searches	111
Inventory Searches	121
Special Needs Searches	126
Other “Reasonableness” Searches	132
Standing	138
Fourth Amendment Remedies	145
<b>3 Fifth Amendment Questions</b>	<b>159</b>
Privilege Against Self-Incrimination	159
<i>Miranda</i> Custody	164
<i>Miranda</i> Interrogation	169
<i>Miranda</i> Exceptions	176
<i>Miranda</i> Warnings	181
<i>Miranda</i> Invocations	188
<i>Miranda</i> Reinitiation	196
<i>Miranda</i> Waivers	199
<i>Miranda</i> /Fifth Amendment Remedies	204
Non- <i>Miranda</i> Challenges to Statements	211
Double Jeopardy	214

Grand Jury	220
<b>4 Sixth Amendment Questions</b>	<b>225</b>
Basic Scope of the Sixth Amendment Right to Counsel	225
<i>Massiah</i> Doctrine	235
Right to Counsel and Identification	249
Ineffective Assistance of Counsel	254
Right to Self-Representation	271
Conflicts of Interest	278
<b>5 Answer Key</b>	<b>285</b>
<b>6 Core Constitutional Concepts Explanations</b>	<b>289</b>
Basic Constitutional Principles Affecting Criminal Procedure	289
<b>7 Fourth Amendment Explanations</b>	<b>295</b>
Fourth Amendment Searches	295
Fourth Amendment Seizures	300
Probable Cause and Reasonable Suspicion	305
Warrants	310
Warrantless Arrests	316
Exigent Circumstances	319
Plain View	326
Searches Incident to Arrest	331
<i>Terry</i> Stop and Frisk	337
Protective Sweeps	343
Automobile Exception Searches	346
Consent Searches	353
Inventory Searches	359
Special Needs Searches	362
Other “Reasonableness” Searches	365
Standing	370
Fourth Amendment Remedies	374
<b>8 Fifth Amendment Explanations</b>	<b>383</b>
Privilege Against Self-Incrimination	383
<i>Miranda</i> Custody	386
<i>Miranda</i> Interrogation	389
<i>Miranda</i> Exceptions	392
<i>Miranda</i> Warnings	396
<i>Miranda</i> Invocations	399
<i>Miranda</i> Reinitiation	403
<i>Miranda</i> Waivers	404
<i>Miranda</i> /Fifth Amendment Remedies	407
Non- <i>Miranda</i> Challenges to Statements	410

Double Jeopardy	412
Grand Jury	416
<b>9 Sixth Amendment Explanations</b>	<b>421</b>
Basic Scope of the Sixth Amendment Right to Counsel	421
<i>Massiah</i> Doctrine	426
Right to Counsel and Identification	434
Ineffective Assistance of Counsel	437
Right to Self-Representation	446
Conflicts of Interest	450
Index of Cases	455
Index	467





# Preface

---

For many years, I taught criminal law and criminal procedure to law students. Every term, my students would ask me to recommend comprehensive study materials that would both help them in class and on the bar exam. But there were none. Hornbooks provide comprehensive coverage but don't help with test-taking skills. And study aids and bar preparation materials are ill-suited for formative use, as they sample topics instead of providing comprehensive treatment of discrete topics.

I wrote the first edition of this book in 2017 to fill this gap: to provide bar-style multiple choice questions that can be used formatively, as students are progressing through a law school criminal procedure class, or as law school graduates are preparing for the Multistate Bar Exam (MBE). The second edition continues this tradition. It has new sections, 50 new questions, and has been revised to address the latest United States Supreme Court opinions and other developments in the law.<sup>1</sup>

The first half of the book consists of 500 multiple choice questions divided between four chapters: Core Constitutional Concepts, Fourth Amendment, Fifth Amendment, and Sixth Amendment. The questions in the first chapter address how the Supreme Court interprets the Constitution to affect issues of criminal procedure. The questions in the following three chapters address the same topics covered in most law school criminal procedure classes, and by the bar examiners in the MBE. Each chapter is broken down into subsections; each subsection begins with a question explaining a basic concept, and subsequent questions walk the reader through the most common variations on that concept. Questions are written in the same format used by bar examiners, so that law students and bar studiers can sharpen their test-taking skills as they learn (or just review) criminal procedure.

The second half of the book consists of answers accompanied by concise explanations. The explanations include relevant citations, so students can refer to their casebooks for more detailed information. In many instances and for ease of reading, I excluded parenthetical information describing omissions from a quotation, *e.g.*, footnotes, emphasis, internal citations, etc.

No one writes or revises a book all on her own. As always, I've had the support of my friends and family, and I thank them for all their help along the way. But I'm especially grateful to Erik Altmann, and for all the ways he makes life—even during a pandemic—so much fun.

---

1. Coverage is current through the Supreme Court's 2020–2021 Term. Unless a specific question indicates otherwise, readers should assume that marijuana is strictly illegal.

