

**Bar None Review Writing Template – CRIMINAL PROCEDURE: 8<sup>TH</sup> AMENDMENT**

**EIGHTH Amendment**

The 8<sup>th</sup> Amendment specifies that “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

<p><b><u>Right Against Excessive Bail</u></b></p> <p>Most state constitutions create a right to be released on bail <u>unless</u> charged with a capital crime. The main purpose of bail is NOT to punish, but to ensure that defendant appears for his next court appearance.</p> <p>The court has discretion on the amount of bail based on:</p> <ul style="list-style-type: none"><li>▪ The nature and severity of the crime;</li><li>▪ Defendant’s criminal record (especially missed court appearances); and</li><li>▪ Safety for victim or public;</li></ul> <p>Here, _____. Thus, _____.</p>	<p style="text-align: center;"><b><u>Sentencing Rules</u></b></p> <p>During sentencing the defendant is entitled to counsel but not to an adversarial proceeding and cross-examination; the judge can rely on hearsay.</p> <p>Here, _____. Thus, _____.</p> <p style="text-align: center;"><b><u>Cruel and Unusual Punishment</u></b></p> <p>Applies only to persons already convicted of a crime;</p> <p>Sentence cannot be grossly disproportionate to seriousness of offense;</p> <p>Here, _____. Thus, _____.</p> <p style="text-align: center;"><b><u>Death Penalty</u></b></p> <p>8<sup>th</sup> Amendment prohibition against cruel and unusual punishment requires that any death penalty must:</p> <ol style="list-style-type: none"><li>1. Allow the judge or jury <u>guidelines and discretion</u> to impose such a sentence; and</li><li>2. Allow for hearing full information about the defendant, including mitigating circumstances.</li></ol> <p style="text-align: center;"><b><u>Felony Murder</u></b></p> <p>The Supreme Court has held that the death penalty can be imposed on a defendant convicted of felony murder <b>if</b> he was a major contributor to the crime and acted with reckless indifference to the lives of others.</p> <p>Here, _____. Thus, _____.</p>
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