

### EXAMINERS' ANALYSIS OF QUESTION NO. 5

Private property is a right protected from government interference. *In re Forfeiture of 2000 GMC Denali and Contents*, 316 Mich App 562, 571 (2016). Property rights are closely related to liberty, neither can be arbitrarily or capriciously deprived by the government. *Id.* at 572-573.

The Due Process Clause of the Fourteenth Amendment provides . . . "nor shall any State deprive any person of life, liberty, or property, without due process of law . . . ." US Const Am XIV. Neither the federal government, by the Fifth Amendment, nor the states, via the Fourteenth Amendment, can deprive a person of life, liberty, or property without due process of law. The due process clause of the U.S. Constitution protects private property rights. See *Block v Hirsh*, 256 US 135, 165 (1921).

Procedural due process prevents the mistaken or unjustified deprivation of life, liberty or property. *Zinermon v Burch*, 494 US 113, 125-126 (1990). "Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment - to minimize substantively unfair or mistaken deprivations of property . . . ." *Fuentes v Shevin*, 407 US 67, 81 (1972).

The constitutional challenge can be: i) facial, or ii) as applied. Cindy's challenge of the government action to her car is 'as applied'. *Bonner v City of Brighton*, 495 Mich 209, 223 n 27 (2014); *Denali*, 316 Mich App at 569. The challenge operates to prevent similar future such applications under the statute, but does not void the statute. *Denali*, 316 Mich App at 569.

Requirements of procedural due process are notice and an opportunity to be heard. *United States v James Daniel Good Real Property*, 510 US 43, 48 (1993). Procedural due process requires a hearing before deprivation of a property right. *Boddie v Connecticut*, 401 US 371, 378-380 (1971).

Due process prohibits the government from denying the opportunity for a hearing to persons whose property has been seized and is subject to forfeiture solely because of an inability to post a bond. *Denali*, 316 Mich App at 583; *MLB v SLJ*, 519 US 102, 113 (1996). Cindy had no alternative means to get her car returned. The bond was a condition precedent to

obtaining a judgment declaring her car was not subject to forfeiture. The law cannot use a cost requirement to foreclose a party's opportunity to be heard without violation of due process, even if the provision is valid on its face. *Boddie*, 401 US at 380.

Cindy's only remedy to get her car back was a judicial determination that her Cadillac was not subject to forfeiture. Such a determination was predicated on her posting the statutorily required bond. She was unable to do so, and the car was lost without a hearing.

The bond requirement unconstitutionally deprived Cindy of her opportunity for a court hearing to get her property (car) returned. This is a violation of due process. *Denali*, 316 Mich App at 562, 583.

Cindy's inability to post the bond excluded her from the forum empowered to settle her dispute. *Boddie*, 401 US at 376; *Denali*, 316 Mich App at 583. Cindy was therefore deprived of a significant property interest without an opportunity for a hearing because she was unable to post a bond.