

# Brief #5

Law



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Schmerber v. California, 384 U. S. 757 (1966), Brennan J. No: Schmerber v. California, 384 U. S. 757(1966), Brennan J.

### Introduction

The Los Angeles Municipal Court of the Criminal offense found Schmerber guilty of driving while intoxicated. The petitioner claimed that his constitutional rights are violated in obtaining blood sample from his body for the test of intoxication. This paper will use IRAC method for briefing the case.

### Issue

The issue highlighted in the case Schmerber v. California is violation of constitutional rights of the petitioner under Fourteenth Amendment, Fourth Amendment, Fifth Amendment and Sixth Amendment. Did the involuntary withdrawal of the petitioner's blood violate his right against his self-incrimination?

### Rule

According to the court, "[T]he prohibition of compelling a man in a criminal court to be witness against himself is a prohibition of the use of physical or moral compulsion to extort communications from him, not an exclusion of his body as evidence when it may be material". While accessing the privilege under Fourteenth Amendment, the court also judged the withdrawal of petitioner's blood against " the right of a person to remain silent unless he chooses to speak in the unfettered exercise of his own will, and to suffer no penalty.... for such silence".

### Analysis

The petitioner was driving with his companion and because of being intoxicated, he struck a tree due to which, he and his companion got injured.

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While having being treated for the injuries at the hospital, he was arrested on account of intoxication while driving. His blood sample for the test of intoxication was extracted against his will with the help of a physician because the officer found him drunk. The search and seizure was not unreasonable. The petitioner was informed about his right to get an attorney's counsel, but blood sample was taken against his will. According to the petitioner, his rights under the Fourteenth Amendment, Fourth Amendment, Fifth Amendment and Sixth Amendment were violated due to which, the evidence of his blood sample should be rejected. However, the Appellate Department of California Superior court affirmed the conviction and rejected his contentions. According to the court, there is no 'compelling communication' or 'testimony' that violate the petitioner's rights and any compulsion with the support of which, 'real or physical evidence' is obtained about a suspect, is not a violation of privileges. The cases applicable here are *Malloy v. Hogan*, *Holt v. United States* (1910) and *Miranda v. Arizona* (1966).

#### Conclusion

The Los Angeles Municipal Court of the Criminal offense decided that Schmerber was guilty of intoxicated driving and the Appellate Department of California Superior court confirmed the conviction. Therefore, as per court, petitioner's constitutional right of self-incrimination was not violated.

#### References

Lippman, M. (2014). *Criminal procedure*. 2nd Ed. Thousand Oaks California: SAGE Publications.