

Droit - Economie - Sciences Sociales

Melun

Session : Septembre 2018



Année d'étude : Troisième année de Licence Droit

Discipline : *Anglais juridique*

Examen : Premier semestre (UEC1 7031)

Durée : 1h30

Titulaires du cours : Ms. Cingal, Mr. Huet, Mr. Jendoubi, Ms. Regen

Les documents et les appareils électroniques ne sont pas autorisés.

Exercices can be done in any order.

I. Complete the following sentences, adding between 10 and 25 words. Do not start a new sentence. (20 points)

1. Although the death penalty...
2. Due to the Fifth Amendment to the US Constitution...
3. Even if hate speech...
4. Double jeopardy...
5. Pursuant to *Gregg v. Georgia* (1976)...

II. Choose ONE of the following topics and write an essay in approximately 250 words (+/- 10%). (50 points)

1/ Comment the following quotation by Alan Dershowitz: *"We don't have an Official Secrets Act in the United States, as other countries do. Under the First Amendment, freedom of the press, freedom of speech, and freedom of association are more important than protecting secrets."*

2/ How does the Constitution protect the pre-trial rights of American citizens?

III. Read the following document and answer each of the questions below. (approximately ten lines/100 words for each question). Use your own words. DO NOT QUOTE DIRECTLY FROM THE TEXT. (30 points)

Can Cops Force You to Unlock Your Phone With Your Face?

Kaveh Waddell, The Atlantic, September 13, 2017

Customers who shell out \$999 for an iPhone X when it comes out in November will have a new party trick in their pockets: they'll be able to unlock the phone with nothing more than a quick glance at the screen. When they look away, it will lock up again.

When new features like this one, which Apple is calling Face ID, make it easier to unlock a phone, they save time; Apple says iPhone users unlock their phones an average of 80 times a day. But make it too easy to get into a phone and people start to get nervous.

Apple executives emphasized the security of Face ID as they announced the latest generation of iPhones on Tuesday. Once a phone learns to recognize its owner, using a 3-D map made up of more than 30,000 infrared dots projected onto a person's face, it'll only unlock itself when it senses that the owner is looking straight at the device. The map can't be fooled by photos or masks, said Phil Schiller, Apple's senior vice president for marketing, at Tuesday's event, and it's stored locally in a secure part of the device. Locking the phone just requires closing your eyes or glancing away, so waving a phone in front of its sleeping owner won't unlock it.

Even if Face ID is advanced enough to keep pranksters out, many wondered Tuesday if it would actually make it easier for police to get in. Could officers force someone they've arrested to look into their phone to unlock it?

That's a question with no easy answer. Technologists had a similar question a few years ago when smartphones started rolling out fingerprint readers: Could cops make someone scan their thumbprint to unlock their phone? The answer, it turned out, is ... maybe. In several cases since 2014, state and federal judges have signed search warrants that compelled fingerprint unlocks. The Fifth Amendment protects people from having to give up information that could incriminate them, like a password or PIN code. But a thumbprint isn't something you know, which would be protected by the Constitution; it's something you are. Like DNA or your handwriting, physical attributes are usually considered outside the boundaries of Fifth Amendment protections.

Despite the judges' decisions, some legal scholars disagree with the idea that the government should be able to use a search warrant to force people to unlock phones secured with biometric authentication, which relies on physical characteristics. The fact that a physical attribute is used for unlocking a device changes how it should be treated under law, the argument goes.

"When you put your fingerprint on the phone, you're actually communicating something," Albert Gidari, the director of privacy at Stanford University's Center for Internet and Society, told me last year. "You're saying, 'Hi, it's me. Please open up.'" That communication should be protected under the Fifth Amendment, just like a password, he said—and the same would hold for any other way of unlocking your phone using physical characteristics, including facial recognition. (...)

Whether law enforcement could legally get someone to unlock their phone with their face will remain an open question until it's been litigated. (...)

In fact, the most meaningful changes in Apple's digital security won't arrive with its new flagship phone, but with iOS 11, the company's new mobile operating system, which will be available for free next week on newer iPhone models.

With this upgrade, users will be able to click the power button five times fast to enter an emergency mode, with options to make an SOS call or display a medical ID. It also disables the fingerprint reader, immediately requiring a password to get back into the phone. (...) It's not clear yet whether emergency mode will also disable Face ID, but it seems likely that it would. And since constitutional protection for passwords is set in stone, those five clicks would quickly move an iPhone user out of the gray area of biometrics. (...) This extra layer of protection may be especially useful at the U.S. border, writes Nicholas Weaver, a computer-security researcher at the International Computer Science Institute in Berkeley, in *Lawfare*. Taking advantage of a broad exception at the border to the Fourth Amendment, which protects against warrantless searches, border agents regularly look through passengers' devices as they enter or even exit the country. Often, they copy the entire contents of a device to a computer using forensic software, where they can scan it thoroughly for keywords or contacts.

But at the border, the Fifth Amendment also isn't always honored the way it would be elsewhere. Agents have shown that they're more than willing to ask passengers for their phone PINs, which would nullify the protection of iOS 11's extra password prompt.

Questions

1. What new smartphone features does the article describe? What constitutional issues could the use of those features raise?
2. What types of constitutional protections would (or would not) be available to phone users according to the article?
3. Do you agree with Albert Gidari's interpretation of the Fifth Amendment's protections?

