CONSTITUTIONAL CRIMINAL LAW & PROCEDURE: QUIMBEE OUTLINE

**ARREST, SEARCH, AND SEIZURE**

The 4th Amendment establishes two important safeguards: 1. Prohibits against unreasonable governmental searches or seizures and 2. The requirements for a valid warrant.

1. Governmental Action: Constitutional protections do not apply unless there is governmental action. This is satisfied if government officials or employees (law enforcement, public school teachers) are acting in their professional capacities.
2. Search: Whenever government intrudes upon any area which a subject has an actual, subjective expectation of privacy that society is prepared to recognize as objectively reasonable.
3. Reasonable Expectation of Privacy: There is a reasonable expectation of privacy in-
	1. One’s person
	2. Private conversations
	3. Personal residence, curtilage, other enclosed property such as sheds
	4. Closed containers, such as automobiles, luggage, purses, bags, trunks, safes
	5. Workplace generally, protection is weaker than home
4. No reasonable Expectation of privacy: whatever someone knowingly exposes to the public is not protected by the 4th amendment
	1. Odors from property such as smell of narcotics in luggage
	2. Contents of garbage bag
	3. Bank statements
	4. Prison cell
5. Seizure
6. Seizure of persons: government uses physical force or show of authority to restrain the persons liberty
	1. Person submits to government officer’s show of authority
	2. Government official successfully arrests a person, with/without physical force or
	3. Government official physically subdues or restrains a person
7. Seizure of property: government assumes possession and control of property
8. Police use of force: with a valid seizure, law enforcement may only use force that is reasonably necessary under circumstances
9. Warrant Requirement
10. Valid warrant
	1. Probable cause: reasonable grounds to believe, not just suspect, there is probability that:
		1. In the case of search warrant, contraband or evidence of crime will be found at place to be searched or
		2. In the case of arrest warrant person to be arrested has committed or is committing crime
		3. PROBABLE CAUSE MUST EXIST AT TIME WARRANT IS EXECUTED
	2. Oath or affirmation and: law enforcement officer requesting warrant may present magistrate with sworn affidavit setting forth facts and circumstances in support of probable cause. Can be based on
		1. Officers personal knowledge
		2. Hearsay with sufficient independent corroboration or
		3. Information from confidential informant
	3. Describe who or what is to be searched or seized
	4. Must be issued by qualified, neutral, detached magistrate
11. Execution of valid warrant
	1. Reasonable time after issued
	2. Scope of search or seizure does not exceed warrant specifications and \
	3. Manner of entry on premises be proper
12. Exceptions to warrant requirement
	1. Good faith
	2. Plain-view doctrine
	3. Arrests & searches incident to lawful arrests
	4. Terry stop-and-frisks
	5. Exigent circumstances
	6. Automobile exception
	7. Consent
	8. Administrative searches
	9. Inventory searches
	10. Special-needs searches
13. Warrantless Arrests: unless exception to warrant requirement applies, law enforcement must have arrest warrant to arrest suspect. Incident to lawful arrest, officers may generally conduct search of arrestee’s person and immediate vicinity or arrestee w/o warrant or other justification
14. Investigatory Stop and Frisks (Terry Stops): lawful if police officers have reasonable suspicion that individual is engaged in criminal activity. Once officers have effectuated a Terry stop, they can conduct a brief pat-down of outer clothing in search of a deadly weapon if totality of circumstances would justify a reasonable person to suspect individual poses danger to officers or others
15. Exigent Circumstances
	1. Hot pursuit
	2. Dangerous criminal poses imminent risk of harm
	3. Imminent destruction of evidence
	4. Emergency-aid exception
16. Automobile Exception: cars can be searched or seized in connection with a lawful arrest or terry stop-and-frisk
17. Consent: can conduct search w/o warrant or probable cause based on subject’s consent, if it was voluntary and given by someone authorized to consent
18. Law enforcement may conduct a warrantless search of property *lawfully in its custody* if the owner’s diminished expectation of privacy is outweighed by a need to protect (1) law enforcement from potential danger or from a claim of lost or stolen property or (2) the owner’s property from loss or damage while it is in government custody.
19. Special-Needs Searches: they must satisfy 2 criteria—(1) the search must further a special need *beyond the normal law enforcement need* that would be compromised by a warrant or probable cause requirement, and (2) the governmental interest served by the search must *outweigh the nature of the intrusion* on the implicated privacy interest. Permissible special-needs searches include:
	1. Warrantless searches of parolees;
	2. Warrantless strip searches of arrestees or prisoners,
	3. Programmatic, suspicionless drug testing of employees or public-school students; and
	4. Sobriety checkpoints on public roadways.
20. Exclusionary Rule (pg. 18)

The exclusionary rule provides that evidence obtained in violation of a criminal defendant’s 4th, 5th, or 6th Amendment rights is *excluded* from introduction at trial as *evidence of a defendant’s guilt.*

1. Sufficiently Attenuated: a court may admit evidence that would not have been discovered but for violation of a defendant’s constitutional rights if the causal connection between the violation and the discovery of the derivative evidence is *sufficiently attenuated*.
2. Independent-Source Exception: evidence discovered through a *source independent from the misconduct* is admissible.
3. Inevitable-Discovery Exception: unconstitutionally obtained evidence may be admitted if it would have *inevitably been discovered* through independent, constitutional means.