CHAPTER OBJECTIVES

Chapter 9 helps students develop an appreciation for the history and rationale underlying the protections against unreasonable searches and seizures, including the exclusionary rule. Further, students learn the basic principles of the law of search and seizure, the critical importance of precedent cases, and how to apply the law to new fact situations. Students learn to draft the documents related to this area of criminal procedure and paralegal practice.

LECTURE OUTLINE

I. Introduction
II. Scope of the Fourth Amendment
   A. State Action
      • *Key terms include state action*
      • Application Assignment 1
      • Case: Katz v. U.S.
   B. Reasonable Expectation of Privacy
      • *Key terms include curtilage, open fields*
      • Application Assignments 2 and 3
      • Analysis Problems 9–1 and 9–2
      • Case: Minnesota v. Carter
III. Warrant Requirements
   A. Issuance: Probable Cause, Neutrality, Particularity
      1. Probable Cause
         • *Key terms include probable cause, anticipatory search warrant, de novo*
         • Application Assignment 4
      2. Neutrality
      3. Particularity
         • Application Assignment 5
         • Exhibit 9–1, Application and Affidavit for Search Warrant (see Transparency Master 17)
         • Exhibit 9–2, Sample Warrant and Inventory
B. Execution of the Warrant
   1. Who and When
   2. Detention and Search of Persons
   3. Seizure of Items Other Than Those Named in the Warrant
   4. Required Inventory
      • Sample inventory is in Exhibit 9–2, as shown above
C. Warrant Subsequent to Search: Independent Source
   • Application Assignments 6 and 7
D. Officer Liability and the Fourth Amendment
IV. Exceptions to the Requirement for a Warrant
   • Exhibit 9–3, Exceptions to the Fourth Amendment Requirement for a Warrant (see Transparency Master 18)
A. Introduction
B. Arrest
   • Case: Whren v. U.S.
C. Stop and Frisk (Investigatory Detention)
   • Key terms include stop and frisk (investigatory detention)
   • Application Assignment 8
D. Search Incident to Lawful Arrest
E. Plain View
F. Motor Vehicle Searches
   • Analysis Problem 9–3
   • Case: Wyoming v. Houghton
G. Hot Pursuit
   • Key terms include hot pursuit
   • Analysis Problem 9–4
H. Evanescent Evidence
   • Key terms include evanescent evidence
   • Analysis Problem 9–5
I. Border, Regulatory, and Emergency Searches
   • Application Assignments 9 through 11
   • Analysis Problem 9–6
   • Case: Michigan Department of State Police v. Sitz
J. Consent Searches
   • Internet Exercise 1
K. Inevitable Discovery
L. Community Caretaking Function
V. Electronic Surveillance
VI. Secret Agents
VII. The Exclusionary Rule
   • Key terms include exclusionary rule
   • Application Assignment 12
   • Analysis Problem 9–7
   • Case: U.S. v. Leon
VIII. Conclusion
PREPARING FOR CLASS: INSTRUCTIONAL SUPPLEMENTS

1. Review your state criminal law and cases for significant material on search and seizure, especially any cases in which your state’s highest court has interpreted the state constitution to require more stringent safeguards than does the U.S. Supreme Court’s interpretation of the U.S. Constitution. One area of possible disagreement could be the “good faith” exception to the lawful warrant requirement.

2. Review the proposed assignments for this chapter and select those that best suit your needs.

3. Supplement where needed copies of the following forms or documents from your jurisdiction: search warrant, affidavit in support of request for search warrant, search inventory, motion to suppress evidence and supporting memorandum of law, and prosecution response to motion to suppress evidence.

4. Supplement where needed checklists for drafting and responding to motions to suppress evidence.

5. Visit suggested Web sites and add your suggestions and critiques.

SUGGESTED CLASS ACTIVITIES

1. Use assignments and problems for class discussion and to evaluate the level of student understanding of the text material. Discussions should also allow you to evaluate the ability of students to apply relevant cases and legal principles in the chapter to new fact situations.

2. Provide opportunity for critical thinking and evaluation of the search and seizure protections, particularly the exclusionary rule.

3. Show a video on search and seizure.

4. Invite a police officer to discuss the process of obtaining a search warrant and what must be done in executing the warrant. Questions regarding the permissible scope of the officer’s search, in particular fact situations could be interesting. Videotape for future classes.

5. Invite a defense attorney or defense paralegal to discuss guidelines in preparing a motion to suppress evidence.

SYSTEM FOLDER ASSIGNMENTS

- Summary list of property that is protected from unwarranted searches by the Fourth Amendment, and another of property that is not protected from such searches, including case references

- Checklist for determining when a warrant is needed

- List of what must be included in a warrant and affidavit and what should be avoided (see Murray)

- Requirements for when a warrant is needed for an arrest in your state, based on your state’s criminal statutes, constitution, or digest
• Your state’s application of the “good faith” exception to the exclusionary rule in *U.S. v. Leon*

• Sample documents

• Complete Exhibit 9–3, noting state cases that differ from Supreme Court law and their interpretations of the exceptions

**APPLICATION ASSIGNMENTS**

1. Is it state action for an off-duty police officer working as a roofer to reach into an attic space to retrieve illegal drugs? What arguments are there on both sides of the issue? See *U.S. v. Paige*, 136 F.3d 1012 (5th Cir. 1998).

   *Answer:* The state could argue that an off-duty officer is not acting in any official capacity nor as an arm of the state. The defense could argue that the special training and experience of a police officer, especially in drug cases, makes that officer an official arm of the state even when off duty. The court held that the officer’s seizure was a private-party seizure, and no warrant was required.

2. Should a person have a reasonable expectation of privacy in documents that are shredded and then placed in the person’s garbage [*U.S. v. Scott*, 975 F.2d 927 (1st Cir. 1992)]?

   *Answer:* Despite arguments that the act of shredding demonstrated a reasonable expectation of privacy, the court ruled that the abandoned property doctrine prevailed.

3. Police have consent to enter a defendant’s motel room after the defendant checked out. They search the motel room’s trash baskets and find incriminating evidence. Assuming the motel owner’s consent was valid, should the police have had a warrant? Does the defendant have a reasonable expectation of privacy that would exclude the evidence from trial? See *Abel v. U.S.*, 362 U.S. 217 (1960).

   *Answer:* Deciding factors according to *Abel* are not only whether the property is abandoned, but also whether there is a reasonable expectation of privacy in the place abandoned. Since there is no such expectation in a trash can, police do not need a warrant.

4. Based on the cases in this section, draw analogies to resolve the following case.

   Police become aware that several individuals in town have ordered fifty gallons of ether from a photographic supply outlet. The police are informed that the ether will be used to extract cocaine from clothing imported into the United States. With the permission of the supply outlet, police place an electronic tracking “beeper” in the drum of ether.

   The drum is picked up by three persons and placed in their vehicle. Police track the vehicle both visually and by the beeper. Eventually the beeper tells police that the drum has been deposited at K’s residence where it remains, according to beeper signals, for several days.

   Eventually the police get a search warrant and find cocaine and laboratory equipment. K challenges the use of the cocaine and equipment as evidence on the basis that they were the fruit of an illegal search (i.e., the use of the “beeper” to locate the drum).
You are the judge. Write an opinion on the suppressibility of the evidence. Assume that there was no other evidence or support of the police search warrant beyond that obtained by the beeper. See U.S. v. Karo, 468 U.S. 705 (1984).

Answer: This case follows facts similar to U.S. v. Karo. The Court found that there was an expectation of privacy in the drum, but that the beeper was lawfully placed. Second, there was not a sufficiently strong expectation of privacy in the vehicle because of the use of the vehicle in public. At that point, the beeper revealed no more information than could have been observed virtually in plain view. Once the drum was moved inside the residence, however, use of the beeper was akin to sending an officer without a warrant into the house to confirm the presence of the drum. This violated the high expectation of privacy associated with the home. Therefore, the use of the beeper to determine information not available from simple plain view observation was an illegal search. In our fact scenario, the evidence gained would have to be suppressed. In Karo, there was sufficient evidence other than that gained by the beeper to support the search warrant, so the evidence did not have to be suppressed.

Although the Karo case is a useful guide on how to answer this assignment, some students may effectively argue that there was an expectation of privacy once the drum became K’s and was placed into the vehicle, and that there was a significant expectation of privacy in any closed area of the vehicle. Thus, the tracking of the drum in the vehicle could also be a violation of Fourth Amendment strictures.

5. As a paralegal for the prosecuting attorney, write a memo that your supervisor can use in deciding on a response to a challenge to the warrant in this case.

A warrant specifies a search for x contraband in the second floor dwelling of a yellow and white house located at 315 George St. in a properly named county and city. When the police arrive, they see that the second floor of the house has been divided into two apartments instead of one. The police proceed to search both apartments. Eventually the defendant challenges the warrant and requests suppression of evidence on the basis that the description in the warrant was not specific enough (i.e., “second floor dwelling” instead of “apartment A” or “B”).

On what would you base your memo? Would it make any difference if the warrant said “dwelling at 315 George St.,” and the police found a house and a cottage at that address and searched them both? See Maryland v. Garrison, 107 S.Ct. 1013 (1967).

Answer: The Court found the warrant to be adequate. In the second scenario, the fact that there are two separate buildings seems to argue against the search of both.

6. Using the documents in Exhibits 9–1 and 9–2 as a guide and using forms for your state, if available, draft a search warrant and supporting affidavit for judicial approval in the Eldon Spiers case. Use the following scenario.

Following Eldon Spiers’s arrest, the Legalville police want to search his apartment for evidence of the crime. Assume that the arrest occurred yesterday, that Kate Lamb said it was the university janitor who regularly worked nights at the lecture hall, and that he was a medium build, about 5’10” tall, and was wearing camouflage pants and a green army jacket. Assume that she described the knife blade as longer than a typical pocket knife but narrow; and that she may have pulled off one of the jacket buttons. Ms. Lamb’s statement was obtained two days ago.

Answer: The key here is for students to draft a warrant that alleges adequate facts to demonstrate probable cause to believe that evidence of the crime will be found, and
that the location of the property to be seized and the place to be searched is described with adequate specificity to limit police discretion.

7. Identify the issues and points that may lead to a successful attack on the “nightmare” search at the beginning of this chapter.

   Answer: A student might mention some of the following issues and points:
   Do the police have a search warrant? Was it based on probable cause? Does the warrant authorize a search beyond “daytime” hours?
   Did the police announce their presence or were they justified in not doing so because there was a “substantial risk” that such identification would lead to destruction of the evidence, permit escape, or significantly increase the danger to the officers?
   Was the search of the persons present based on probable cause to believe the person was in possession of contraband, was it “incident to lawful arrest,” or was there some basis to believe the individual was armed?
   Was the search, which apparently covered most rooms in the house, within the scope justified by the warrant or covered by the “plain view” doctrine, or was it “unreasonable”?

8. Write a paragraph on a sample case or two from your state courts that shows whether or how far the reasonableness or stop and frisk exception to the arrest requirement has been expanded in your state.

   Answer: Answers should be based on information from your state cases.

9. Compare rationales in the Sitz, Edmond, and Lidster decisions. Assume that evidence in a case similar to Lidster reveals that the secret, primary reason for the roadblock was not to gain citizen assistance in the crime as stated to the public, but to see if such a roadblock could cause the perpetrator to reveal him or herself in some manner. Write a couple of paragraphs on whether case law and Fourth Amendment principles would require a different result from that in Lidster.

   Answer: Sitz relied on the “special need” of government to control the imminently dangerous drunk driver and the context of the serious incidence of death and injury caused by drunk drivers, considering the extent of the intrusion, the compelling government need, and the presence of controls on fair police procedure. Edmond confirmed that warrantless roadblock searches for general crime control purposes are invasive to the general population, and that illegal drugs do not rise to the imminent “special needs” level that formed the basis in Sitz. Lidster is distinguished from Edmond on the basis that solving a specific crime of a grave nature creates a special need, and that the brief informational stop was minimally invasive. A student should recognize that if the real reason for a roadblock is to cast a large net in hopes of finding an unknown suspect, regardless of how it is disguised or characterized, that places the case more under the Edmond rationale.

10. A driver was pulled over by police for legally having his left turn signal on but failing to change lanes. Without further evidence to arouse suspicion and after 90 seconds, police got the driver’s consent to search the car, which turned up illegal drugs. Is the search a reasonable investigative detention [U.S. v. Miller, 146 F.3d 274 (5th Cir. 1998)]?

   Answer: No, there was no justification for the original stop, and the consent was the product of the 90 second time period, which was unreasonable.

11. Assume that you are doing an internship in your school’s attorney’s office. The governing board has noted an increase in incidents involving the
possession and sale of methamphetamine on campus. Police reports indicate that the meth is being brought to campus by commuters. Consequently, the board has asked the school attorney to research the legality of implementing a school policy that requires all students with commuter parking stickers to take periodic drug tests. The attorney asks you to use the Internet to find what is used to manufacture meth, the most current cases on the issue, and whether any other schools, including high schools, have adopted or are considering such issues. Then write a short memo listing the usual suspect ingredients and whether the cases and applicable standards permit such a plan.

Answer: There are many recipes for methamphetamine, but common ingredients are over-the-counter cold and asthma medications containing ephedrine or pseudoephedrine, red phosphorous, hydrochloric acid, drain cleaner, battery acid, lye, lantern fuel, and antifreeze. Students should acknowledge the lower expectation of privacy for public institutions (your school may be private, raising another issue) where the state has a responsibility for “discipline, health, and safety” (Vernonia and Earls). Because postsecondary schools serve adults, however, the state responsibility may be at a sufficiently lower level to distinguish the high school cases. Being able to drive to campus might also be considered a privilege analogous to participation in extracurricular activities, and an activity sufficiently fraught with danger (analogous to athletics) to justify such a drug testing program. Information located on the Internet should add interest to the student analysis. Some locations are considering testing student drivers. Students should be able to find a number of schools permitting police to do random drug testing of students who drive to school. Colleges may be another matter.

12. Write a brief memo for your supervising attorney on whether the precedent-setting ruling in Leon should control the following case.

Facts: Police search and seize evidence from the defendant under a state statute authorizing warrantless administrative searches of licensed automobile parts stores. Later the statute is ruled unconstitutional. Should the evidence be suppressed or should the Leon exception apply?


Answer: The Court in Krull ruled that the Leon “good faith” exception applied when a statute was later declared unconstitutional. It reasoned that any deterrent effect from the exclusionary rule was not for legislators or judges, but for police. Police action would not be within the Leon exception if the statute was such that a police officer should have known that the statute was unconstitutional.

INTERNET EXERCISE

Go to www.lectlaw.com, through the Reference Room, to the section on Criminal Law and Procedure. Read the analysis of DOJ computer seizure guidelines there. In general, if a computer is used by more than one person, how many users need to consent to search the entire system?

Answer: One, unless users have taken “special steps” such as passwords or encryption to ensure privacy; then a warrant is in order.
ANALYSIS PROBLEMS

9–1. You are asked as a judge to decide whether police may enter a bus and use new x-ray devices to examine both passengers and bags for weapons, drugs, or other suspicious items and then use the information to arrest and prosecute violators of the law. What is your decision based on the cases defining a reasonable expectation of privacy?

9–2. Do you think it would have made any difference to the majority opinion in Carter if Carter had eaten and taken a short nap at the apartment? Explain.

9–3. Does this and should this open the way for searches of golf carts, motorized farm implements, lawnmowers, and shopping carts?

9–4. What are the likely issues in a motion to suppress “hot pursuit” evidence?

9–5. Based on Schmerber, should police be permitted to have a suspect’s blood tested to determine its DNA structure without a warrant? What about a blood test for AIDS from the suspect in a rape case? Explain.

9–6. Identify the issues and interests in Sitz, and analyze whether the majority or the dissent has the better opinion. What is the danger if Indianapolis v. Edmonds didn’t draw the line at drug interdiction roadblocks?

9–7. Who do you believe has presented the stronger argument in Leon, the majority or the dissent? Why? Do you think the exclusionary rule should be viewed as “a judicially created remedy to safeguard Fourth Amendment rights” as argued by the majority, or do you believe it should be viewed as included in the Fourth Amendment right of privacy through court interpretation as argued by the dissent?

CHAPTER 9 TEST

Multiple Choice

1. Rights provided in the Fourth Amendment often conflict with the need for
   A. judicial restraint
   B. aggressive law enforcement
   C. effective counsel for the indigent
   D. more severe criminal penalties
   E. religious values

2. The Fourth Amendment protects citizens against
   A. intrusive neighbors
   B. violent crime
   C. excessive state action
   D. organized crime

3. A police search that violates the Fourth Amendment is the uninvited
   A. entry into an apartment building foyer
   B. entry into the front hallway of a house
   C. observation from a porch
   D. observation from a sidewalk
4. The Supreme Court in *Kyllo v. U.S.* established the line for sense-enhancing searches between
   A. the exterior and interior of homes
   B. public and private areas of office buildings
   C. warranted and unwarranted searches
   D. technology that “sees” and technology that “hears”
5. A person’s expectation of privacy is violated by a search of
   A. garbage left for pickup
   B. a passenger’s bag left on a bus
   C. a bag in possession of a passenger
   D. an abandoned house
6. Probable cause is
   A. a preponderance of the evidence
   B. proof beyond a reasonable doubt
   C. clear and convincing evidence
   D. more than a suspicion, less than justification for conviction
7. *Illinois v. Gates* established that evidence to support probable cause should include
   A. the totality of the circumstances
   B. the basis for the informant’s conclusions
   C. the credibility of the informant
   D. only that which meets standards of admissibility at trial
8. Search warrants are issued by
   A. the prosecutor on the basis of police information
   B. the judge on the basis of probable cause
   C. the clerk of court on the basis of a signed affidavit
   D. the chief of police on the basis of probable cause
9. Evidence included in an affidavit supporting a finding of probable cause
   A. must meet standards in Federal Rules of Evidence
   B. is valid no matter how old it is
   C. should be based on police conclusions
   D. should be weighed by the magistrate
10. Anticipatory search warrants can be executed
    A. by telephone
    B. without probable cause
    C. before the anticipated event occurs
    D. after the anticipated event occurs
11. Legal execution of a warrant includes all except it
    A. must usually be within a specified time period
    B. may be done by police in disguise
    C. may be done by breaking in a locked door
    D. may be done unannounced under special circumstances
12. A search warrant subsequent to an illegal search must be based on
    A. plain view evidence
    B. probable cause independent of the illegal search
    C. reasonable suspicion arising from the first search
    D. the illegal search invalidates all subsequent warrants
13. Exceptions to the requirement for a search warrant where there is an expectation of privacy
   A. are rare
   B. are common
   C. depend on the decision of the issuing judge
   D. depend on the judgment of the police who conduct the search

14. “Fruit of the poisonous tree” is
   A. contraband
   B. the product of crime, such as stolen goods or illegal drugs
   C. evidence obtained from an illegal arrest
   D. evidence obtained from a “plain view” search

15. A warrant is necessary for arrest
   A. when there is no probable cause
   B. when police must go to a dwelling to make the arrest
   C. for all felonies
   D. whenever a person is detained by police

16. A person arrested without warrant must be brought before a magistrate
   A. to determine probable cause for detention
   B. to issue a postarrest warrant
   C. within 4 to 8 days
   D. within 10 days

17. The case of Maryland v. Pringle concerns the
   A. illegal search of luggage
   B. probable cause for arrest
   C. probable cause for a search warrant
   D. arrest following a pat-down search

18. Whren v. U.S. established that
   A. a traffic stop is illegal if officers are motivated by concerns other than the traffic violation
   B. a person cannot be arrested for a traffic violation
   C. a warrant is necessary for all vehicle searches
   D. a traffic stop based on probable cause is legal, regardless of whether the officer’s motive is other than the traffic violation

19. Under most circumstances, when an arresting officer has probable cause to believe a crime has been committed in the officer’s presence
   A. the officer then obtains an arrest warrant
   B. the officer then obtains a search warrant
   C. the arrest may be challenged for lack of a warrant
   D. no further inquiry into the reasonableness of the arrest is required

20. A stop and frisk requires
   A. probable cause
   B. reasonable suspicion of wrongdoing and carrying of a weapon
   C. reasonable suspicion of wrongdoing
   D. a warrant

21. The standards for a stop and frisk were established in
   A. Terry v. Ohio (1968)
22. The following generally provide insufficient reasonable suspicion for a stop and frisk except
   A. an uncorroborated, anonymous tip
   B. running from police
   C. refusing to provide identification to police
   D. an informant’s somewhat reliable tip

23. Police may require suspects to give their names
   A. if police already have suspicion sufficient for a Terry stop
   B. if police make the same request of everyone in the area
   C. when suspects are on public transportation
   D. in any circumstances

24. For a “plain feel” Terry search to be lawful, the contraband must be
   A. drugs
   B. guns
   C. immediately identifiable as contraband
   D. extensively handled by police officers to ensure accuracy

25. According to Minnesota v. Dickerson (1993), if a patdown reveals identifiable contraband it may
   A. not be seized
   B. be seized only with a warrant
   C. be seized on the spot
   D. be seized only if it was in plain view

26. A search may not be made at the time of arrest if
   A. it is contemporaneous with the arrest
   B. the area searched includes the interior of a car within reach of the suspect
   C. there is no probable cause for the arrest
   D. there is reason to believe there are others present in the residence

27. Since Horton v. California (1990), a prerequisite to a legal plain view search is
   A. the police are legally at the site of the search
   B. the item is discovered inadvertently
   C. the criminal character of the object is not apparent
   D. no special technology was used in the search

28. Warrantless searches of vehicles are generally allowed because
   A. there is a reduced expectation of privacy
   B. cars are often used in the commission of crimes
   C. car interiors are always within the grasp of the arrestee
   D. car interiors are always in plain view

29. Hot pursuit
   A. limits search to plain view
   B. allows searches within dwellings anywhere the suspect is likely to be found
   C. is not an exception to the warrant requirement
   D. allows warrantless searches in open areas but not in dwellings
30. Warrantless intrusions of the body are
   A. never allowed
   B. always allowed
   C. allowed whenever there is probable cause
   D. allowed if the evidence is evanescent

31. Suspicionless drug tests would not be allowed on
   A. a high school tennis team
   B. employees of a county library
   C. city bus drivers who were involved in accidents
   D. armed customs officers

32. Traffic roadblocks have not been allowed for
   A. border control
   B. general crime control
   C. traffic safety
   D. citizen assistance

33. Testing of blood or breath for alcohol can be done without the suspect’s agreement because of
   A. probable cause
   B. transferred consent
   C. implied consent
   D. superseding consent

34. For consent to search to be valid, it must be
   A. by the owner of the property
   B. accompanied by a warrant
   C. voluntary
   D. given only after police have informed the person of the right to refuse consent

35. Evidence found during an illegal search
   A. is admissible if it would have been discovered inevitably
   B. is never admissible
   C. is admissible only if accompanied by a confession
   D. is admissible on a motion in limine

36. Permissible government surveillance targets and methods were significantly expanded by the
   A. PATRIOT Act
   B. PROTECT Act
   C. Anti-Terrorism Act
   D. Foreign Intelligence Surveillance Act

37. The Foreign Intelligence Surveillance Act requires
   A. the only purpose of wiretaps to be foreign intelligence gathering
   B. Attorney General approval of surveillance orders
   C. probable cause of wrongdoing
   D. probable cause to believe the target is a foreign agent

38. The Fourth Amendment does not apply to the use of pen registers and trap and trace devices because
   A. the PATRIOT Act eliminated rights against unreasonable search and seizure
   B. there is implied consent to search such devices
C. there is no expectation of privacy regarding phone numbers
D. they are only used against foreigners

39. Illegal searches and seizures can lead to
A. prosecution for invasion of privacy
B. prosecution for harassment
C. good faith exceptions to the exclusionary rule
D. civil actions for violation of civil rights

A. provided the “good faith” exception to the exclusionary rule in all courts
B. provided the “good faith” exception to the exclusionary rule in all federal courts
C. excluded all evidence tainted by illegal police procedure from being admitted during trial
D. excluded evidence resulting from illegal arrest from being admitted at trial

**True/False**

*Generally, the Following Searches Are Legal without a Warrant.*

T F 41. From behind rocks, police see Joe sell cocaine to Mary on a deserted public beach.

T F 42. Rumor reaches the police that an unoccupied house abandoned by its owners has been used to store stolen goods. The police search the house.

T F 43. Police looking for incriminating pages torn from a diary sift through Antoine’s garbage placed at the end of his driveway.

T F 44. A built-on enclosed porch with a separate entrance is at the back of a suspect’s house. Police enter it expecting to find a murder weapon.

T F 45. A fenced pasture posted with no trespassing signs contains cattle. Police enter to see if the cattle bear the same brand as some cattle reported stolen earlier in the week.

T F 46. Police break into an office in the back room of a store in a public shopping mall in an attempt to stop a suspected drug transaction in progress.

T F 47. Police search the contents of a suitcase belonging to a bus rider who just arrived in Omaha from Kansas City.


T F 49. Police dogs sniff all the suitcases in the cargo bay of a bus arriving in Middlebury, Vermont, from Albany, New York.

T F 50. At a photo lab, police looking for evidence of child pornography examine the snapshots from a roll of film left for developing.

T F 51. A school principal searches the locker of a student who was found smoking marijuana in the school restroom.

T F 52. Police stop a car bearing an out-of-date license plate and proceed to search the trunk because a theft recently occurred in the neighborhood.

T F 53. Police tail a suspect fleeing the scene of a crime into his home, arrest him, then search the entire building for contraband.
T  F  54. Fire inspectors search the ruin of a burned building for arson evidence within four hours of the fire.

T  F  55. A postal inspector intercepts and reads a letter between a woman in Colombia reasonably believed to be the center of a continuing criminal enterprise and one of her cohorts in Seattle.

T  F  56. Police search a cabin cruiser boat passing through the Sault Ste. Marie Locks from Lake Superior to Lake Huron.

T  F  57. Police enter a house and search the parents’ bedroom with the consent of their 13-year-old daughter.

T  F  58. Police without probable cause tell the manager of a restaurant that they can get a search warrant, so she gives consent for the search.

T  F  59. On reasonable suspicion, police stop and frisk a suspect on a deserted road and find a packet of cocaine tucked into the crotch of his pants.

T  F  60. During an illegal search, police seize contraband. Independent probable cause existed for a warrant, which inevitably would have produced the contraband.

True/False

T  F  61. A search by a private citizen may be considered state action if done with the knowledge and for the purpose of the government.

T  F  62. Open fields have greater protection from searches under some state laws than under federal law.

T  F  63. A Franks hearing is held to determine whether a warrant is invalid for lack of probable cause.

T  F  64. Evidence upon which a warrant is issued must be no more than a year old.

T  F  65. An item not named in a search warrant may not be seized during a search for named items.

T  F  66. If a computer can legally be seized, password-protected files in its memory can be searched.

T  F  67. Appellate courts should consider both factual and legal issues in probable cause appeals.

T  F  68. An item named in a search warrant can be seized anywhere it is found.

T  F  69. No-knock entries with search warrants are always reasonable in felony drug investigations.

T  F  70. A federal agent who executed a warrant he should have known was faulty could be sued.

T  F  71. The U.S. kidnapping of a foreign citizen in his own country is a valid arrest if probable cause is shown.

T  F  72. A stop and frisk is not an arrest.

T  F  73. A state court may not put U.S. constitutional restrictions on police conduct if the U.S. Supreme Court has refrained from doing so.

T  F  74. A search may be made in connection with an arrest only if both an arrest warrant and a search warrant have been obtained.

T  F  75. A warrantless search may be made incident to a traffic citation.

T  F  76. A vehicle is not subject to search incidental to arrest if the arrested driver was not in the car when the officer first made contact.
TF 77. A search incident to arrest is limited to the area within the immediate grasp of the arrestee.

TF 78. A search incident to arrest involving a vehicle extends to the entire passenger area and closed containers in it.

TF 79. Evanescent evidence is not subject to warrant because its use at trial is unlikely.

TF 80. A warrant to inspect a building for regulatory compliance does not require probable cause.

TF 81. Suspicionless drug searches of high school students are permitted if there is evidence of an existing drug problem in the school.

TF 82. California v. Acevedo declared highway sobriety checkpoints constitutional.

TF 83. Police can sometimes search a vehicle or dwelling without warrant or probable cause for the purpose of community safety.

Short Answer


85. Define curtilage and explain its importance in search and seizure cases.

86. Who has standing to challenge a Fourth Amendment search of property? How does Minnesota v. Carter (1998) affect this standing?

87. What must be shown to establish probable cause for an arrest warrant? For a search warrant?

88. What are two of the three justifications enumerated in Michigan v. Summers (1981) for detaining a person during a search of premises?

89. Define arrest.

90. What is the decision in Wyoming v. Houghton (1999), and what is its impact on searches and seizures?

91. To enter a residence without a warrant, police must have

1. ...........................................................................................................

2. ...........................................................................................................

92. Racial and ethnic profiling are prohibited except for investigations involving ____________________ and ____________________.
93. If during a warranted search of a computer for evidence of fraud, officers find files containing child pornography, that evidence may be used based on which warrant exception?

94. A police officer observes a man outside a jewelry store at 3:00 A.M. After going around the block, the officer sees the same person looking in the windows and then moving into the shadows of an adjoining alley. The officer puts a spotlight on the person and confronts him. The man has no identification and is vague about where he lives. The officer places the person against the wall and pats him down. He finds a hard bulge in the suspect’s jacket pocket. He reaches into the jacket and finds a glass cutter. He arrests the individual for possession of burglary tools. Is the evidence admissible? What is the issue?

95. Police are told by a reliable local informant that he purchased crack cocaine from X over a period of one week at a travel home parked at campsite six at the Joy Campground. Without a warrant, the police go directly to the campsite, enter the motor home, and seize cocaine. Is the cocaine admissible? What are the issues?

96. Artful Dodge is a slippery fellow that the FBI has been trying to get for years. Officer Jenks uses bureau wiretap equipment to tap Dodge’s phone line. At the same time, Jenks’s partner uses a night vision scope to view into Dodge’s dark apartment. Incriminating evidence is heard and observed. Is this evidence admissible? What are the issues?

ANSWERS FOR CHAPTER 9 TEST

Multiple Choice

13. A (IV. A.) 27. A (IV. E.)
True/False

41. T (II. B.) 56. T (IV. I. 6.) 71. T (IV. B.)
42. T (II. B.) 57. F (IV. J.) 72. T (IV. C.)
43. T (II. B.) 58. F (IV. J.) 73. T (IV. C.)
44. F (II. B.) 59. T (IV. C.) 74. F (IV. D.)
45. T* (II. B.) 60. T (IV. K.) 75. F (IV. D.)
46. F (II. B.) 61. T (II. A.) 76. F (IV. D.)
47. F (II. B.) 62. T (II. B.) 77. T (IV. D.)
49. T (II. B.) 64. F (III. A. 1.) 79. F (IV. H.)
50. T (II. B.) 65. F (III. A. 3.) 80. T (IV. I. 1.)
51. T (IV. I. 8.) 66. F (III. A. 3.) 81. F (IV. I. 8.)
52. F (IV. E.) 67. T (III. A. 1.) 82. F (IV. I. 9.)
53. F (IV. G.) 68. F (III. A. 3.) 83. T (IV. L.)
54. T (IV. I. 2.) 69. F (III. B. 1.)
55. F (IV. I. 4.) 70. T (III. D.)

* May be false in some states

Short Answer

84. Katz v. U.S. shifted the focus of the Fourth Amendment from physical trespass to justifiable expectation of privacy. Tapping a public phone booth line was a search. (II. B.)

85. Curtilage is the area around a dwelling that is used for domestic purposes, within which there is an expectation of privacy from unwarranted searches (except from the air and pathways for entry). (II. B.)

86. Anyone who has sufficient interest or expectation of privacy in the property has standing. This may extend to overnight guests and those who do not live in a house but have belongings there.

   Carter specifies that temporary visitors invited into a home to conduct a common task have no expectation of privacy and, therefore, no standing to object to a search. (II. B.)

87. Establishing probable cause for an arrest warrant must show that a crime occurred and that the person to be arrested committed it.

   Establishing probable cause for a search warrant must show that the items sought are connected with criminal activity and that they will be at the place to be searched. (III. A. 1.)

88. Justifications include (a) to prevent flight, (b) to reduce risk of harm to police, and (c) to facilitate orderly completion of the search. (include two) (III. B. 2.)

89. Arrest is the taking into custody by police, significantly restricting freedom of movement, subjecting the arrestee to police authority. (IV. B.)

90. Police officers with probable cause to search a car may inspect passengers’ belongings found in the car that are capable of concealing the object of the search. It extends the exception to the warrant requirement for searches under the Fourth Amendment by emphasizing a reasonableness standard. (IV. F.)

91. probable cause and exigent circumstances (IV. B.)
92. terrorism and national security (IV. C.)
93. plain view (IV. E.)
94. Yes. Is there reasonable suspicion for a stop and frisk? (IV. C.)
95. No. Is there probable cause? Is the informant credible? What is the basis for the information? Without consent, police need a warrant based on probable cause. (III. A. 1.)
96. No. Is there a reasonable expectation of privacy in the apartment and on the phone? A phone tap is not legal without a warrant. (V.)