

Searches Without Warrants

Consent Searches

Issue One - Voluntariness

- Is the person in custody?
- Has a promise been made?
- Has a threat been made?
- Does the person know they do not have to consent?

Issue Two – Scope of Search

- Consent can be given to search anywhere for anything or nothing at all.
- Consent can be withdrawn for any location.
- Consent can be revoked at any time.
- Refusal or withdrawal of consent are not factors that contribute to reasonable suspicion or probable cause.

Issue Three – 3rd Party Consent

- The consenting party must have exclusive or common authority or access to the area to be searched.
 - Cars
 - Hotels
 - Businesses
 - Homes

Other Issues

- Waiver forms
- Containers
- Other people's property
- No response to the question asked

Vehicle Frisk

- Reasonable Fear for Frisk
 1. Time of day
 2. Neighborhood
 3. Nature and demeanor of the subject including things like hands in pockets
 4. Nature of the underlying offense suspected
 5. Intoxication
 6. Whether the police are likely to put the subject in close quarters, like in a squad
 7. The officer's subjective safety concerns

Automobile Exception aka the Carroll Doctrine

- ...a law enforcement officer does not need a search warrant to search a motor vehicle if that vehicle is parked on public property and the officer has probable cause to believe that an item subject to seizure is inside it

Inventory

- Protection Against False Claims
- Scope of Search
- Policy and Practice

Incident to Arrest

- Arrest, Custody and Transport
- Scope of Search
- Control of Passengers
- Limits on Searching

Exigent Circumstances

- There are four well-recognized categories of exigent circumstances that have been held to authorize a law enforcement officer's warrant-less entry into a home: 1) hot pursuit of a suspect, 2) a threat to the safety of a subject or others, 3) a risk that evidence will be destroyed, and 4) a likelihood that the suspect will flee.

Exigent Circumstances

1. Hot Pursuit of a suspect
2. A threat to the safety of a subject or others
3. A risk that evidence will be destroyed
4. A likelihood that a suspect will flee

Exigent Circumstances

- A search is reasonable, and a search warrant is not required, if all of the circumstances known to the officer at the time, would cause a reasonable person to believe that entry or search was necessary to prevent physical harm to the officer or other persons/the destruction or concealment of evidence/the escape of a suspect, and if there was insufficient time to get a search warrant.

Emergency Exception

- Legitimate medical concerns
- “Subjectively Reasonable”

Community Caretaker

- The community caretaker exception may only apply to those circumstances totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.

Community Caretaker Test

1. The protection of the owner's property while it remains in police custody,
2. The protection of police against claims or disputes concerning lost or stolen property, or
3. Protection of the public and police from physical danger.
