



PART I - FOURTH AMENDMENT – Search & Seizure

Issue 1: Is the search of seizure governed by the Fourth Amendment?

Issue 2: Was the search or seizure of an area or item protected by the Fourth Amendment?

Issue 3: Did the government agent’s conduct satisfy one of the two tests necessary to implicate the Fourth Amendment?

Issue 4: Did the individual subjected to the search or seizure have “standing” to challenge the government agent’s conduct?

➤ **Standing**

Fourth Amendment rights are personal and may not be asserted vicariously.

➤ **Exclusionary Rule**

The right to be free from unreasonable searches and seizures must be distinguished from the remedy. The primary remedy is the “exclusionary rule”, which prevents the introduction at a subsequent criminal trial of evidence unlawfully seized.

→ Only to criminal trials, it does not apply in other court nor in civil proceedings.

➤ **Standard of review**

The judge, not the jury, resolves suppression issues raised by a pretrial motion to suppress.

Appeal on law are reviewed *de novo*; factual findings are review only for **clear error**.

➤ **Threshold of Governmental action**

Fourth Amendment limits governmental action NOT private parties.

→ Even if governmental action exists, **there is no constitutional violation unless**

(i) **the individual had a reasonable expectation of privacy**; and either

(ii) **the police did not have a valid warrant**; or

(iii) **they executed an invalid warrantless search**

EXAM: The Fourth Amendment applies only to searches and seizures conducted by police or someone acting under police discretion.

I/ ARREST: UNREASONABLE SEIZURE OF PERSONS

1) **Seizure: Objective test -> No free to leave**

A person is seized by the police when:

(1) **Officer intentionally physically touches a subject**; or

(2) **Subject submits to the officer’s show of authority**

[Terry v. Ohio]

For all other conduct, see if, in view of the totality of the circumstances, **a reasonable innocent person would believe he was not free to leave.**

2) **Contrast Stop and Frisk => Need reasonable suspicion based on articulable facts**

Stop: Temporary detention for the purpose of a criminal investigation is a stop, not an arrest, but still a seizure for Fourth Amendment purpose.

→ Whether the officer by means of physically force or show of authority has restrained the liberty of the citizen.