

CRIMINAL PROCEDURE



BILL OF RIGHTS

STAY COURT INDEPENDENCE

- Supreme Court decisions favoring the government may not be absolute regarding state law
- Different levels of protection between state and federal constitution
- Use of language and independent policy determination

RETROACTIVITY DOCTRINE

- Extent to which Supreme Court decisions apply to cases pending decision
- Full retroactivity: every defendant awaiting trial or already convicted
- Total prospectivity: conduct occurring after the Supreme Court decision
- Almost wholly prospective: specific defendant for whom the rule was changed
- Harlan approach: new rule applies to cases that are not final on date of new ruling

INCORPORATION DOCTRINE

- Court decisions apply on federal and state levels
- Fourteenth Amendment prevents states from depriving individuals of life, liberty, or property without benefit of due process
- Analysis involves fundamental rights, due by state, and total incorporation

SELECTIVE INCORPORATION

- Fourth Amendment: Freedom from unreasonable search and seizure
- Fifth Amendment: Privilege against forced self-incrimination
- Sixth Amendment: Right to counsel

FOURTH AMENDMENT REMEDIES

EXCLUSIONARY RULE

- Evidence obtained in violation of defendant's rights excluded from trial
- Court is not constitutionally required to exclude such evidence
- No objection allowed where defendant dissociates from ownership of item under question

EXCLUSION OF DERIVATIVE EVIDENCE

- Challenge admission of evidence derived from initial illegality
- Also known as fruit of the poisonous tree
- Link between illegal search or seizure and obtained evidence may be attenuated to the point where evidence is no longer tainted
- Giving a Miranda warning may eliminate taint of illegal search or seizure
- Other relevant factors include time between arrest and confession, intervening circumstances, and purpose of official misconduct

COLLATERAL USE EXEMPTION

- Grand jury proceedings
- Consideration of evidence for parole, probation, and sentencing purposes
- Exclusionary proceedings for extrinsically illegal property
- Civil deportation proceedings
- Petition of habeas corpus

- Legitimate expectation of privacy or primary interest regarding search
- Proof of burden lies with the defendant
- Refers to direct evidence obtained from illegal search
- Seizure, not search, may be contested

- Informer's voluntary testimony against defendant is attenuated from illegality
- Evidence shown to be from independent source will not qualify
- Inevitable discovery exception overrules exclusionary rule when shows that evidence would have been discovered in any case
- Focus on what the police would have done to reach the evidence through legal means
- Requirement of active pursuit through legal means

GOOD FAITH EXCEPTION

- Officer obtains a warrant under principles of good faith but is not supported by probable cause
- Evidence is admissible as long as with the magistrate, not the officer
- Officer must possess reasonable belief in validity of warrant

FOURTH AMENDMENT

ELEMENTS

- Protection of rights of freedom against unreasonable search and seizure
- Regulates state action involving public officials, not individual actions
- Protection encompasses person, property, and home

SEARCH & SEIZURE

- **Katz test** states that legitimate expectations of privacy, personal security, and property interests are protected
- **Search** refers to intrusion upon individual's protected interest in privacy
- **Seizure** refers to intrusion upon protected interest in property or security
- **Harlan test** requires citizen's display of subjective expectation of privacy and interest must be reasonable by society's standards
- Protected legitimate interests include freedom from physical disruption and inconvenience, interest in privacy, and possessory interests
- Illegal activities have no legitimate privacy interest
- Devices which increase sensory enhancement (such as dog sniffing, surveillance equipment, and so on) do not constitute search where they do not go beyond regular senses
- Property in the open is not exempt from search

PROBABLE CAUSE REQUIREMENT

- Proof of criminal activity justifying search and seizure
- Facts must lead reasonable person to suspect fair probability of criminal activity
- Exceptions to probable cause include limited search and seizure with reasonable suspicion, limited search to protect the police officer from harm, and search or seizure for reasons other than criminal law
- Specific information must be subject to crime
- Probable cause required to search location where person or evidence is suspected to be
- Officers are allowed to make reasonable mistakes
- Determination of totality of circumstances, including experience of officers involved
- Issues of staleness and multiple locale should be considered
- Third party information used as basis of search and seizure is assessed according to informant's reliability and source of information

WRIT SEARCH WARRANT

- Documents issued by magistrate authorizing search and seizure
- Magistrate must be neutral and unbiased
- Probable cause based on facts given to magistrate before search occurs
- Substitution of affidavit: citing all facts relating to cause particularly
- Location of search must be described with reasonable particularity
- Allowance for reasonable mistakes of fact
- Things to be seized must be particularly described
- Catch-all clauses may be considered overly broad without cause
- Search and seizure of more evidence is permitted

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John Indermaur, Charles Thwaites



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1. Understanding the eBook Criminal Law And Procedure Quick Guide
 - The Rise of Digital Reading Criminal Law And Procedure Quick Guide
 - Advantages of eBooks Over Traditional Books
2. Identifying Criminal Law And Procedure Quick Guide
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Criminal Law And Procedure Quick Guide
 - User-Friendly Interface
4. Exploring eBook Recommendations from Criminal Law And Procedure Quick Guide
 - Personalized Recommendations
 - Criminal Law And Procedure Quick Guide User Reviews and Ratings
 - Criminal Law And Procedure Quick Guide and Bestseller Lists
5. Accessing Criminal Law And Procedure Quick Guide Free and Paid eBooks
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 - Criminal Law And Procedure Quick Guide Compatibility with Devices
 - Criminal Law And Procedure Quick Guide Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Criminal Law And Procedure Quick Guide
 - Highlighting and Note-Taking Criminal Law And Procedure Quick Guide
 - Interactive Elements Criminal Law And Procedure Quick Guide

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 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Criminal Law And Procedure Quick Guide
9. Balancing eBooks and Physical Books Criminal Law And Procedure Quick Guide
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Criminal Law And Procedure Quick Guide
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Criminal Law And Procedure Quick Guide
 - Setting Reading Goals Criminal Law And Procedure Quick Guide
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Criminal Law And Procedure Quick Guide
 - Fact-Checking eBook Content of Criminal Law And Procedure Quick Guide
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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