

153263

BASIC COURSE INSTRUCTOR UNIT GUIDE

16

SEARCH AND SEIZURE

November 1, 1994

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THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING

STATE OF CALIFORNIA

BASIC COURSE INSTRUCTOR UNIT GUIDE

16

SEARCH AND SEIZURE

November 1, 1994

The curricula contained in this document is designed as a *guideline* for the delivery of performance-based law enforcement training. It is part of the POST Basic Course guidelines system developed by California law enforcement trainers and criminal justice educators in cooperation with the California Commission on Peace Officer Standards and Training.

The training specifications referenced herein express the required minimum content of this domain.

UNIT GUIDE 16

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SPECIFICATIONS FOR LEARNING DOMAIN #16: SEARCH AND SEIZURE

June 1, 1994

I. INSTRUCTIONAL GOALS

The goals of instruction on **Search and Seizure** are to provide students with:

- A. an understanding of the protection provided by the United States and California Constitutions against unreasonable searches and seizures of people, houses, and personal property; and
- B. an understanding of circumstances under which searches and seizures can be conducted.

II. REQUIRED TOPICS

The following topics shall be covered:

- A. Terminology/concepts related to searches and seizures:
 - 1. Search
 - 2. Seizure
 - 3. Probable cause
 - 4. Scope
- B. Conditions under which a search can be made without a warrant:
 - 1. Consent
 - 2. Incident to an arrest
 - 3. Exigent circumstances
 - 4. Cursory search (e.g., pat-down)
- C. Conditions/limitations under which a search can be made with a warrant:

1. Service requirements
2. Entry requirements (e.g., knock and notice)
- D. Observations (e.g., plain view, etc.)
- E. Probation and parole searches
- F. Searches and seizures associated with vehicles
- G. Closed container searches
- H. Use of force/compulsion to conduct a search and/or recover evidence (e.g., bodily invasion, fingerprints, etc.)
- I. Identification procedures
 1. Field showups/eliminations
 2. Photographic identifications
 3. Lineups

III. REQUIRED TESTS

The POST-constructed knowledge test for Domain #16

IV. REQUIRED LEARNING ACTIVITIES

None

V. HOURLY REQUIREMENTS

Students shall be provided with a minimum of **12 hours** of instruction on search and seizure.

VI. ORIGINATION DATE

July 1, 1993

VII. REVISION DATES

June 1, 1994

CURRICULUM

I. SOURCE OF SEARCH AND SEIZURE LAW

- A. Search and seizure law originates in the Fourth Amendment to the U.S. Constitution and in Article 1 of the California Constitution. The Fourth Amendment has two important clauses:

1. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and
2. No warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

NOTE: The first phrase above is commonly referred to as the "warrantless clause", whereas the second phrase describes the "warrant clause".

B. Interests protected

1. The 4th Amendment was created to protect three interests: privacy, liberty and possession. Law enforcement is typically involved with a persons's **reasonable expectation of privacy**. To determine what is reasonable the courts will look at two things:
 - a. Did the person (defendant) exhibit a subjective expectation of privacy, and
 - b. Was it objectively reasonable for him to do so.
2. A subjective expectation of privacy is an affirmative action by a person designed to protect their right to privacy (e.g., building a fence, closing the shades, etc.).
3. "Objective reasonableness" refers to whether society is prepared to recognize the individual's expectation as reasonable.

C. Standing

1. "Standing" means having a legitimate possessory interest in the property seized, or a legitimate privacy interest in the area searched, or a personal liberty interest that was infringed.
2. In order for a defendant to challenge the admissibility of evidence, he must have standing and there must have been a violation of his rights.

II. NONSEARCHES (PLAIN SIGHT)

A. The plain sight rule:

1. If officers observe seizeable evidence from a position where they have a lawful right to be, they may seize the evidence without a search warrant, if the evidence itself is also in a place where the officer has a lawful right to go.
2. The general rule now is, that an officer may lawfully seize evidence or contraband in plain sight if
 - a. the officer made the observation from a place where he had a lawful right to be, and
 - b. the thing to be seized is in a place the officer has a lawful right to be.
3. To state the rule another way, officers must show in court that they did not violate any right of privacy which the defendant reasonably expected.

EXAMPLE: An officer, from a lawful vantage point on the sidewalk, observes unlawful activity in the living room through an open window. These observations would be lawfully admitted in court, because the officer was standing in an area that is accessible to the general public. Therefore, the occupants in the house could not constitutionally claim that their privacy was invaded.

However, the officer does not have a right to be inside the house. Therefore, in the absence of bona fide exigent circumstances a warrant or other exception would still be required to enter the residence and seize the contraband.

4. Recent court decisions have ruled that, if a person by his actions and conduct, exhibits a reasonable expectation of privacy and an officer unreasonably violates that expectation of privacy, the Fourth Amendment has been violated, and any evidence obtained as a result of the unlawful intrusion may be inadmissible in court. (Exclusionary Rule)

EXAMPLE: If a person draws the draperies of the window in their living room, they have indicated that they expect privacy, at least with respect to activities which take place in the living room. If an officer walks across the front yard, positions himself in front of the window and peers through a crack in the draperies into the living room, the court would rule that the officer has unreasonably violated the expectation of privacy which the person exhibited. Thus, any evidence obtained as a result of the unlawful intrusion might be inadmissible.

NOTE: The Exclusionary Rule is not always this absolute. Even after a clear-cut violation, evidence may still be admissible under the doctrines of attenuated taint, independent source, inevitable discovery, and good faith. Additionally the evidence may also be admissible for impeachment, rebuttal, sentencing, and revocation.

5. As a general rule, if an officer is in a "common access" area, that is, an area over which the public or some members of the public have been expressly or impliedly invited, that is an area where the officer has a lawful right to be.

- a. A sidewalk, pathway, common entrance or similar passageway offers an implied permission to the public, including a police officer, to enter the property and observations from these areas would be lawful.
- b. If a person exposes his activities to public view, he does not expect privacy, and observation of these activities by a police officer would obviously be lawful (e.g., selling drugs openly in a park)..

B. Sensory aids

1. The courts have held that the use of flashlights and/or night vision devices is permissible under the plain view doctrine.

NOTE: This means that if an officer is standing in a place where he has a lawful right to be, his observation of that which is in plain sight is lawful regardless of whether the illumination permitting the observation is natural light, artificial light or light from a flashlight held by the officer viewing the object.

2. Binoculars may be used to enhance what can already be seen with the naked eye. Binoculars may not be used to violate a reasonable expectation of privacy. (People v. Arno 90 CA3 505 (1979).

EXAMPLE: An officer on the street sees a plant which he believes is marijuana on the open balcony of an apartment. Binoculars may be used to enhance the officer's vision of that plant. However, the officer may not use the binoculars to look through the slats of the venetian blinds to see if there are more plants in the rest of the apartment.

3. Dogs - The California State Courts do not view the use of contraband-sniffing dogs as intrusive. (People v. Mayberry 31 Cal. 3d 335)
 - a. If a specially trained dog reacts positively to the item, this does not provide authority to search the item.
 - b. This provides probable cause to seize the article and arrest the person.

NOTE: If the container is in the possession of the suspect, probable cause to believe contraband is inside justifies **arrest** of the suspect, and the container can then be searched incident to arrest.

C. Abandoned property

1. Abandoned property is not protected under the Fourth Amendment and may be seized without a warrant because it no longer carries with it any reasonable expectation of privacy. (California v. Hodari 499 US 113 (1991))
2. Trash that has been placed in a position for pick-up outside the curtilage of the house is considered to have been abandoned.
3. "Curtilage" refers to that portion of a person's property which is used for normal living activity.

D. Aerial surveillance

1. A person who cultivates open land can reasonably expect that such activity is exposed to public view by those using the public airspace lawfully. *People v. Mayoff* (1986) 42 C3 1302
2. The U.S. Supreme Court has held that it is legal to look down into a fenced backyard or other private area next to a house (the "curtilage") and make naked-eye observations of marijuana from an aircraft which is flying within FAA regulations. It makes no difference whether the flight is made as part of a routine patrol or is made in response to a specific "tip". (*California vs. Ciraolo* 476 US 207 (1986))

III. WARRANT SEARCHES (PO 4.7.1)

A. Reasonableness searches and seizures

1. The items for which an officer may legally search are:
 - a. Dangerous weapons
 - b. Fruits of the crime
 - c. Instruments of the crime
 - d. Contraband
 - e. Suspects
 - f. Additional victims
 - g. Physical evidence.

B. Searches with a warrant

1. A search warrant is an order in writing which is signed by a magistrate, directed to a peace officer, and commands the officer to search for personal property and bring it before the magistrate within a prescribed time. (California Penal Code Sections 1523-1534).
 - a. A search warrant includes:
 - (1) Items sought
 - (2) Location(s) to be searched
 - (3) Vehicle(s) to be searched or seized
 - (4) Person(s) to be searched
 - (5) Statutory grounds for issuance (Penal Code Section 1524), as set forth in the affidavit.
 - b. Affidavit in Support Thereof:
 - (1) Identifies who is seeking the warrant
 - (2) The items to be seized
 - (3) The areas to be searched
 - (4) The statutory grounds for issuance (Penal Code Section 1524), and
 - (5) Probable cause for affiant's belief that items sought are located in places to be searched

c. Descriptions of items sought and areas to be searched

- (1) Describe items to be seized and areas to be searched with sufficient detail so that if an officer, with no knowledge of the case, were to serve the warrant he would have no difficulty in recognizing the items to be seized or the location (including person(s)) to be searched.
- (2) Give a physical description of each item of evidence, contraband or paraphernalia associated with the crime and all areas to be searched such as, the residence, outbuildings, yard areas, trash containers, etc.
- (3) Under some circumstances a search warrant should be obtained to search for an arrestee in a residence other than their own. (Steagald v. U.S. 451 U.S. 204 (1981); Peo. v. Codinha, 138 CA3d 167 (1982)).
- (4) List items to be seized and/or photographs/diagrams showing locations to be searched
- (5) Items which are not named in the warrant may be seized when they are in plain view. (Nexus Rule)

NOTE: When officers, in the course of a bona fide effort to execute a valid search warrant, discover articles which, although not included in the warrant, are reasonably identifiable as contraband, they may seize them whether they are initially in plain sight or come into plain sight subsequently as a result of the officers' efforts. (Skelton v. Superior Court 1 Cal. 3d 144 (1968))

d. Statutory grounds for issuance of a search warrant (Penal Code Section 1524)

- (1) Use as many penal code sections as apply.
- (2) Use Penal Code Section 1524(4) to seize evidence such as rent receipts to show possession or control of the premises.
- (3) There are additional authorities to obtain a search warrant to seize child pornography. (Penal Code Section 311.2)

C. Informants

NOTE: Additional information on informants is contained in Learning Domain 15 (Laws of Arrest).

1. Search warrants are frequently issued based on information provided by informants.
2. In order to decide if an informant's information amounts to probable cause, the court will consider the totality of the circumstances. Some of these circumstances are:

a. Types of informants:

- (1) Criminal informant

(2) Anonymous informant

(3) Citizen informant

b. Credibility of the informant

c. Reliability of the information

d. Law enforcement corroboration of the information provided by the informant

NOTE: Corroboration is emerging as the single most important element for obtaining a search warrant which is based upon information provided by an informant.

D. Securing premises pending issuance of search warrant

1. Permissible after arrest of suspects within the location (People v. Superior Court (Irwin) 33 CA3 475 (1973))
2. Permissible after arrest of suspects whose confederates will destroy items sought upon learning of the arrest (People v. Freeny 37 CA3 20 (1974); Ferdin v. Superior Court 36 CA3 774 (1974))
3. Refusal of consent does not in and of itself provide an authority to secure the premises pending issuance of a search warrant (People v. Shuey 13 CA3 835 (1973))

E. Actions while serving a warrant

1. When serving a warrant it is permissible to detain people present on the premises for officer safety and prevent the destruction of evidence. Searches of these detainees must be based on articulable facts. (People v. Gallant 225 Cal App 3d 200 (1990))
2. Exercise caution with regard to detaining persons who arrive at the premises during the execution of a search warrant. If they are not known to be connected to the residence or involved with the criminal activity, the courts will probably find it illegal to detain them.

IV. KNOCK AND NOTICE (PO 4.7.2)

- A. When serving the warrant, officers must comply with knock and notice requirements. (Penal Code Sections 844 and 1531)
- B. The purpose of knock and notice is to avoid a potentially violent confrontation in the house and provide time for the subject to respond to the officers' request for entry.
- C. Elements of compliance with knock and notice:
 - 1. Knock or alert the people inside to your presence
 - 2. Identify yourself as a peace officer
 - 3. Explain your purpose and authority
 - 4. Demand entry
 - 5. Wait a reasonable period of time before entering to enable the occupant to respond.

V. STOPS AND FRISKS (PO 4.7.1)

NOTE: Additional information concerning stops and frisks is contained in Learning Domain 15 (Laws of Arrest).

A. A "stop" is temporary detention of a person for an investigative purpose

1. A "stop" is also a seizure within the meaning of the Fourth Amendment, but is allowed because it is not as much of an intrusion into a person's liberties as an arrest.
2. There must be a reasonable basis for the stop.
3. A temporary "detention" or "stop" occurs when peace officers use their authority to compel a person to halt, to remain in one place, or to perform some act. Examples are:
 - a. A routine traffic stop
 - b. A field evaluation of a person suspected of driving under the influence or alcohol or drugs
 - c. A field interview

B. A "pat-down or frisk" is a cursory search for weapons of the outer clothing of the person stopped. It is not a search for contraband.

1. The basis for any frisk is to prevent danger to the officer from an unexpected assault.
2. The courts have held that an officer must be able to point to **articulable facts** which support a reasonable belief, in light of the officer's experience, that the individual detained was armed and presently dangerous. (Frank V. 223 Cal App 3d 1232 (1992))
3. Officers should avoid using the catch-all phrase "for officer safety" when justifying a pat-down.

C. Transporting nonarrestees

1. If you are offering to give an individual a ride as a favor, then the officer must tell the individual that they have the right to refuse and that if they accept the ride they may be subject to a search for weapons. (People v. Scott 16 CAL 3d 242 (1976))
2. If the officer has a duty to transport a person (e.g., an officer taking a hitchhiker off the freeway), the officer has the right to conduct a pat-down. (People v. Tobin 219 Cal App 3d 634 (1990))

D. The scope of the frisk

- a. An officer may conduct a cursory search, not only of the individual's outer clothing, but of any area (including a vehicle) from which the individual might easily procure

weapons, if the officer reasonably suspects that a weapon is located there. (Penn v. Mimms 434 US 106 (1972))

- b. Although the officer may have the right to pat down the suspect's outer clothing, the officer may not reach inside the clothing of the suspect or search further unless they have reason to believe that the pat-down has disclosed the presence of a weapon or contraband. (People v. Lee 194 Cal App 3d 975 (1987))
- c. If during the pat down for weapons, contraband becomes **immediately apparent** it may be seized (e.g., the officer feels a syringe). If during the pat-down an officer feels something they suspect is contraband but is not immediately recognizable as such, they may not manipulate the suspected area in order to develop additional probable cause.
- d. If the stop and frisk or the scope of the frisk are unreasonable, any evidence obtained by the officer as a result of these actions may be inadmissible in court.

VI. SEARCHES INCIDENT TO A LAWFUL ARREST (PO. 4.7.1 and PO 4.7.2)

A. Custodial arrest

1. A full search of the person and any areas with the person's immediate control is justified when made pursuant to a **custodial arrest**.
2. This search is justified by the custodial nature of the arrest, not by the specific charges that led to the arrest.

B. Noncustodial arrest

1. Searches incident to an arrest are not permissible when the arrest will be disposed of by a mere citation unless probable cause exists to believe a search will yield further evidence of the crime.

EXAMPLE: A person cited for smoking marijuana (Penal Code Section 11357(b)) may be searched for further contraband. However, it would be considered unreasonable to search a person cited for littering (Penal Code Section 374(a)) since there would be no further evidence of the crime.

C. Search of premises for additional suspects or victims ("protective sweeps")

1. The entire premises where the suspect is arrested may be searched for additional suspects or victims when the officer has reasonable cause to believe there are additional suspects or victims.
2. Immediately adjoining spaces may be searched for potential assailants when a suspect is lawfully arrested inside a premises (Buie 110 S.Ct. 1093 (1990))

D. Requirements for a search incident to an arrest

1. There are three requirements for a lawful search incident to an arrest:
 - a. In order for the search to be lawful, the arrest itself must be legal.
 - b. The search must be contemporaneous with the actual arrest.
 - c. The arrest must be custodial. Generally, the scope of a search incident to an arrest is the "arms reach rule". The arms reach rule means
 - (1) The area within the arrestee's immediate control may be searched contemporaneous to the arrest.
 - (2) The area of immediate control is defined as the area from which a weapon may be obtained or evidence destroyed. (Chimel v. California 395 US 752 (1969))

NOTE: The "Arm's Reach" rule is not absolute. Sometimes it is permissible to search areas well beyond the suspect's "arm's reach", even when the suspect is

handcuffed and caged and couldn't possibly get back to his vehicle, for example. (See Michigan v. Long and New York v. Belton)

2. As a general rule, the search must take place at the same general time and same general location as the arrest.

EXAMPLE: An officer, after having lawfully arrested a person at his job, cannot go to the arrestee's house and search it as incident to the arrest. However, the courts have allowed searches that were not conducted contemporaneous with the actual arrest, because the time lapse between arrest and search, were attributable to reasonable police necessities.

EXAMPLE: If a motorist is arrested for narcotics violations and a hostile crowd gathers, police may interrupt the search of the suspect and vehicle by moving to a different location to continue the search.

EXAMPLE: In the case of an arrest of a hit-and-run driver, the police may wish to impound the vehicle and subject it to an extensive analysis for evidence of that crime.

NOTE: In these examples, police should be prepared to explain their reasons for conducting a search at a different time and place than the actual arrest. (See Exigent Circumstances: Vehicle Searches)

VII. STRIP SEARCHES

A. Definitions:

1. "Strip search" means any search which requires the officer to remove or arrange some or all of that person's clothing so as to permit a visual inspection of the underclothing, breasts, buttocks, or genitalia of the person.
2. "**Visual** body cavity search" means visual inspection of the rectal cavity of a person and vagina of a female person.
3. "**Physical** body cavity search" means physical intrusion into a body cavity for the purpose of discovering any object concealed in the body cavity.

B. Conditions

1. A strip search or visual body cavity search may only be conducted if all of the following requirements are met:
 - a. The person to be searched must be under arrest and ultimately booked.
 - b. The arrest must be for an offense involving weapons, controlled substances or violence.
 - c. The person conducting the search must be of the same sex as the person being searched.
 - d. The search must be conducted in an area of privacy so that it cannot be observed by persons not participating in the search.
2. A physical body cavity search requires a search warrant which specifically authorizes the physical body cavity search.

VIII. BLOOD SAMPLES (PO 4.8.3)

A. Reasonable force can be used to obtain a blood sample from an arrestee who is refusing to provide a sample, if necessary to preserve "evanescent" evidence.

1. As a general rule, a test for blood may be given whether or not the defendant is conscious.
2. In a vehicular traffic accident which has resulted in either property damage, injuries, and/or fatalities, a peace officer may, without a warrant, arrest a person involved in a traffic accident when the officer has reasonable cause to believe that such person had been driving while under the influence of intoxicating liquor and/or any drug. (Vehicle Code 40300.5)
 - a. The officer is then entitled to transport the suspect to a hospital and obtain a blood sample over the protestations of the suspect.
 - b. It would make no difference if the suspect were conscious or unconscious.

NOTE: (Hammer vs. Gross 932 F. 2d 842 (Ninth Circuit 1991)) Reasonable Force to Restrain - may be subject to civil liability if unreasonable force is used.

NOTE: (People v. Ryan 116 CA 3d 168 (1981)) Reasonable force to restrain. The number of officers restraining the suspect is irrelevant as long as the force they use is reasonable and necessary. (Five police officers restrained the suspect in this case and this was viewed as being reasonable.)

3. If a blood sample is taken in a "medically-accepted manner" from a person arrested for drunk driving and without "excessive force", no constitutional right is violated. The courts have allowed a reasonable degree of force to overcome the resistance of an individual who refused to submit to such test.
4. The officer may use reasonable force to overcome a defendant's verbal refusal to submit to a blood sample.
 - a. Reasonable force is that degree of force necessary to obtain the blood sample. It may include the degree of force necessary to position the suspect and/or overcome actual physical resistance.
 - b. It is necessary for the officer to use considerable discretion in determining the amount of force that may be used in overcoming a defendant's resistance.
5. A blood test administered in a medically-approved manner does not subject the defendant to an unreasonable search, nor does it violate the defendant's right of due process of law or his privilege against self-incrimination. (Schmerber v. California 384 U.S.757 770-72 (1966))
6. A defendant's failure to participate in a test that they have no legal right to refuse may be used as evidence of consciousness of guilt.

7. The only time that a warrantless blood draw is justified is when the evidence is of a dissipating nature (i.e., alcohol or drugs in the blood). Otherwise, a warrant would be required.

IX. FINGERPRINT EVIDENCE (PO 4.8.4)

A. Lawful force in order to obtain fingerprints

1. When being booked, an arrestee has no legal right to refuse a fingerprint examination.
2. Officers may use a reasonable amount of force to obtain the fingerprints; however
 - a. if the force necessary shocks the conscience of the court, or would produce a nonidentifiable exemplar, a court has the authority to order the arrestee to submit to a fingerprint examination.
 - b. Any further refusals would result in a contempt-of-court proceeding.

B. Officers cannot randomly select persons for purposes of obtaining fingerprint exemplars.

1. In *Davis v. Mississippi* 394 U.S. 721 (1969), police officers fingerprinted a number of male juveniles, without probable cause to determine if their fingerprints matched those left at the scene of a particular crime.
2. It was held that obtaining fingerprints under these circumstances would be unlawful.

X. HANDWRITING EXEMPLARS (PO 4.8.5)

A. Exemplars of the defendant's handwriting obtained by law enforcement are admissible.

1. A court order may be issued to compel the suspect to provide an exemplar.

NOTE: Instructors may wish to refer to the California Attorney General Video Tape entitled "Detention and Interrogation".

2. During an administrative booking process, a defendant's Fifth Amendment rights are not violated when they are requested to give a handwriting example.
3. A defendant's refusal to give an exemplar may later be commented upon at their trial as consciousness of guilt.
4. It is impractical to physically force a defendant to provide a handwriting exemplar.

B. Related types of evidence

1. Voice evidence

- a. A suspect has no legal right to refuse to give voice evidence.
- b. If an arrested person refuses to give voice evidence, his refusal can later be commented upon in a trial for the purpose of showing consciousness of guilt.

2. Photographs

- a. A suspect has no legal right to refuse a mug shot.
- b. Reasonable force may be used to obtain a mug shot of a suspect.

XI. USE OF EMETICS (PO 4.8.2)

- A. An emetic is a substance used to induce vomiting, and must be administered in a medically approved manner.**
- B. An emetic can be administered only under the following conditions:**
 - 1. With the consent of the suspect or**

- 2. If ordered by a physician based upon their judgement of medical necessity**

NOTE: A peace officer cannot request or order a doctor to administer an emetic.

EXAMPLE: In People v. Bracamonte 15 Cal. 3rd 394, the court ruled that the forced ingestion of an emetic solution which caused the defendant to vomit seven balloons containing heroin violated her constitutional rights.

- C. As a general rule, no bodily intrusion is permissible if the force necessary to do it would "shock the conscience of the court". Also, significant intrusions must be subject to independent medical determination of necessity.**

XII. USE OF FORCE/COMPULSION TO PREVENT THE DESTRUCTION OF EVIDENCE (PO 4.8.1)

A. Use of reasonable force allowed

1. An officer can verbally command a suspect to spit out evidence from his mouth.
2. When a peace officer has probable cause to believe a suspect is swallowing evidence, the peace officer may use reasonable force to prevent a suspect from swallowing evidence.
3. Courts have held that officers can act in several ways to prevent the swallowing of evidence.
 - a. An officer may use restraint by putting his arm around the suspect's neck when he tells him to spit out the substance. A hold of this nature is permissible if it does not prevent breathing or substantially impair the flow of blood to the suspect's head. (People v. Miller 248 Cal. App 2d 731 (1967))
 - b. "Permissible force" may be used by police officers to prevent the suspect from swallowing the evidence. In attempting to define "permissible force," the courts have considered a variety of holds that may be applied to the suspect's neck area. In one case, an officer was able to prevent a subject from swallowing narcotics by pressing the subject's head forward and down.
 - c. While physical force may be applied to the neck area, choking is expressly prohibited by the courts.
 - (1) Choking has been defined as the impermissible use of force applied to the neck area, which could result in unconsciousness or prevents an individual from breathing.
 - (2) The seizure of evidence through choking is a violation of the suspect's Fourth Amendment rights, and the evidence seized could be inadmissible.
 - (3) It makes no difference how little or how long the officer chokes the suspect.
 - (4) In People v. Larkins 52 Cal. App. 3d 514 (1975), a police officer asked a female suspect her name; the officer observed balloons normally used to contain heroin inside her mouth. He reached inside her mouth and retrieved the evidence. The extracted evidence was held admissible.

B. Police officers may forcibly remove an object from a suspect's hand or clenched fist.

1. The force used must be reasonable under the circumstances.
2. Use of brutal force is prohibited.

C. Documentation

1. The manner in which an officer accurately describes their conduct in arrest reports, as well as in the courtroom, may significantly affect the admissibility of any evidence recovered through the application of physical force.

EXAMPLE: An officer testified that he applied a hold about the suspect's neck for approximately ten seconds, while simultaneously ordering the suspect to spit out the narcotics. The officer noted that, during the application of the hold, the suspect was able to breathe and speak, because the suspect kept shouting profanities at the officer.

2. "Choking" should not be used as a generic term to describe all applications of force to the neck area, particularly when the hold was designed to prevent swallowing, and yet allow the suspect to breathe.

XIII. CONSENT SEARCHES (PO 4.7.1)

A. Consent defined:

1. A voluntary agreement to do something proposed by another.
2. To be valid, a person's consent must be clear, specific, and unequivocal.

B. Types of consent

1. Expressed consent is that which is directly given either orally or in writing. It is a positive, direct, unequivocal consent, requiring no inference or implication to supply its meaning.
2. Implied consent is manifested by signs, actions, or facts, which raise a presumption that the consent has been given. This is the weakest form of consent, and every effort should be made to obtain an expressed consent.

C. General issues regarding consent

1. The voluntary consent is one that is freely given, without threat or promise.
2. A consent is involuntary if given in submission to an unlawful assertion of authority, whether expressed or implied, or following an unlawful arrest or detention.
3. An officer cannot use coercive methods or otherwise intimidate the person into giving consent.

EXAMPLE: An officer cannot tell a subject: "You better let me search your car, or else!"

4. An officer can tell an occupant that he will seek a search warrant if consent is not given provided the officer believes he could in fact seek and obtain one. (People v. Ruster 16 C3 690 (1976)).
5. Consent obtained as the result of any illegal act will be held to be involuntary.

D. The authority of the consenter

1. Persons with a right to use or control property may give consent.
2. As a general rule, a third person can give a valid consent to search
 - a. the area under their exclusive control or
 - b. the areas that they share in common with the suspect.
3. These rules apply to the following relationships:
 - a. Husband and wife

EXAMPLE: In a husband-wife relationship, either spouse may give consent to search anywhere in the premises except those areas that are under the exclusive control of the spouse.

b. Parent and child

EXAMPLE: Parents can give permission to search a juvenile's room unless it is an area of exclusive control. (In Re: Scott K. 24 CAL 3d 395 (1979))

c. Cohabitants (roommates)

d. Other persons in control (visitors, babysitters, etc.)

4. The following are **not** persons who have a right of use or control so as to give consent.

a. Apartment manager, landlord, hotel clerk

b. Guests in a hotel are protected under the fourth amendment. They are protected as if they were in their own home against unlawful intrusions by police officers.

c. A cohabitant cannot refuse the search of common areas.

5. Knowledge of right to refusal

a. The U.S. Supreme Court has said that it is not legally necessary for an officer to advise a person that he has a constitutional right to refuse consent. (Schneckloth v. Bustamante 412 US 218 (1973) and People v. James, 19 C. 3d 99 (1977))

b. Failure to advise the person of their rights may be considered by the court together with the totality of circumstances in determining the voluntariness of the consent.

6. Limitation on area of consent

a. Officers must carefully observe any limitations placed upon the consent.

(1) In other words, consent to search portions of a suspect's premises does not imply consent to search the entire premises.

(2) The person giving consent has the right to withdraw the consent at any time during the search.

(a) The withdrawal of consent may be expressed, or it may be implied by conduct that demonstrates the consent is withdrawn.

(b) If officers choose to ignore the withdrawal of consent, any evidence that is subsequently seized will be inadmissible at trial unless it can be justified on other grounds.

XIV. PROBATION AND PAROLE SEARCHES (PO 1.10.2 and PO 1.10.5)

A. Probation searches

1. A probation search is a search made pursuant to consent given by the probationer as a condition of their probation.
 - a. When placed on "searchable probation" a probationer is said to have waived his rights of privacy that otherwise might exist.
 - b. Not all probationers have a "search condition" to their probation. Not all search conditions are the same.
2. Reasonable belief that the probationer has violated terms of their probation is not necessary prior to the search. The only prerequisite for this type of search is that the officer must conduct the search for a legitimate law enforcement purpose and not for the purpose of harassment. (People v. Bravo 43 Cal. 3d 600 (1987))
3. Verification of status and/or search conditions is recommended. However, some cases have upheld a probation search where the officer was unaware of the search condition. It is not necessary to procure the consent or permission of the probation officer.
4. It is not necessary for the probationer to be present at the time or place of the probation search. (People v. Lillenthal) 22 CAL 3d 891 (1978))
5. Knock and notice is required. (Penal Code Sections 844 and 1531)

B. Parole searches

1. A parole search is a search conducted in accordance with the parole conditions set forth by the provisions of 15 CCR 2511.
2. All parolees have the same standard search conditions.
 - a. Unlike probation searches, parole searches require reasonable suspicion of violation of the law or violation of his or her conditions of parole.
 - b. There must be a direct and close relationship between the search and the parolee's involvement with a criminal activity. (People v. Johnson 47 CAL 3d 576 (1988))
3. It is recommended that the officer make some attempt to contact the parole agent before conducting the search.

XV. LINEUPS AND SHOWUPS (PO 4.9.1)

A. There are several identification procedures which officers may use to substantiate the identify of a suspect. These include:

1. A showup: which is viewing of a suspect by a victim or a witness that commonly occurs in the field shortly after a crime has been committed
2. A physical lineup: which is an identification procedure in which the victim or witness to a crime is asked to look at a number of individuals within a custodial environment, one of which is the suspect.
3. A photographic lineup: which is an identification procedure in which the victim or witness to a crime is asked to look at a number of photographs in an attempt to identify the suspect

B. When using any identification procedure, the main thing officers must protect against is doing anything that would be "impermissibly suggestive". That is to say, that officers should not do anything that suggests to the victim or witness which suspect to pick.

C. In order to insure fairness in the identification procedure, officers should:

1. **Always** tell the witness or victim:
 - a. to keep an open mind
 - b. that the person who committed a crime may or may not be among those present
 - c. not to talk to other witnesses or victims about the identification
2. **Never** tell the witness or victim:
 - a. that you caught the person who committed the crime
 - b. that the victim's property was found in the suspect's possession
 - c. that the suspect made incriminating statements
 - d. the person to be observed is a suspect

D. Procedures for showups

1. A showup may be conducted if it can be done within a short time after the crime. A showup conducted the next day would be inappropriate.
2. The general rule is that an officer who detains a suspect pending a showup should not move the suspect to another location. The witness should be moved to the suspects. There are three exceptions to the rule:

- a. The suspect consents to being moved.
 - b. Probable cause to arrest exists and the suspect is placed under arrest
 - c. Impracticability of moving the victim or witness to the suspect's location which includes:
 - (1) The witness or victim is too injured to be moved to the suspect's location
 - (2) Availability of officers is limited. If the delay caused by waiting for a transporting officer would create a greater intrusion into the freedom of the suspect than transporting the suspect, the suspect may be moved.
3. Sometimes it is necessary to restrain, handcuff or place the suspect into a police vehicle. This does not necessarily taint the identification procedures.
4. After the detention of the suspect, the circumstances may require that a pat-down be conducted. Officers should not conduct a "full" search unless
- a. the suspect is placed under arrest or
 - b. the suspect consents to the full search.
5. Documenting witness descriptions
- a. In order to increase the chances of properly identifying the suspect, officers should obtain from the victim or witness as accurate and complete a suspect description as possible.
 - b. Additionally, at the showup officers should record verbatim the victim or witness's response to viewing the suspect.

XVI. SEARCHES PURSUANT TO EXIGENT CIRCUMSTANCES (PO 4.7.1)

A. Under exigent (emergency) circumstances, an officer may postpone compliance with the warrant requirement and enter an area that otherwise has a reasonable expectation of privacy.

B. An exigent circumstance is a situation requiring swift action where the following situations exist:

1. Imminent danger to life.

EXAMPLES:

a. Where a person is placing another person in imminent danger of life or great bodily injury (such as through a violent assault)

b. In medical emergencies where the victim may be incapacitated

2. Serious damage to property.

EXAMPLES:

a. In burning buildings

b. Where chemical or gas leaks present a danger of explosion

3. To prevent the imminent escape of the suspect.

4. Hot/Fresh Pursuit.

EXAMPLES:

a. An officer initiates an investigation shortly after a dangerous crime has been committed and is in the continual investigation of the crime

b. An officer is actually chasing a suspect

c. A suspect jumps out of a fleeing vehicle and runs into a house. No warrant would be required to enter the house

5. Imminent destruction or removal of evidence

a. Where there are specific and articulable facts that evidence will be destroyed or removed

b. A mere suspicion that evidence will be destroyed does not trigger exigent circumstances

C. Once the emergency has dissipated, a warrant may be needed for further investigation

1. An officer may not create the exigent circumstance and then use it as a justification for not obtaining a warrant.

EXAMPLE: An officer sees two people smoking rock cocaine through the open window of their apartment. He goes to the door and demands entry at which time he believes evidence is being flushed down the toilet. In this case, the officer created the emergency and cannot use that as the basis for making a warrantless entry.

XVII. SEARCHES OF VEHICLES

A. Special rules exist for the searches of vehicles due to:

1. Their increased mobility, and
2. The reduced expectation of privacy

B. A search of a vehicle may be conducted:

1. Based upon probable cause to believe the vehicle contains seizable property
2. Incident to a lawful arrest
3. Pursuant to consent

C. Searches of vehicles based upon probable cause

1. A general rule is that if an officer has probable cause to believe that a vehicle contains evidence or contraband, such that a magistrate would be justified in issuing a warrant, then the officer can conduct the search without a warrant.
2. The scope of the search would be limited to those areas in the vehicle where it would reasonably be likely to find the evidence or contraband in question.

D. Searches incident to an arrest

1. When an officer makes a custodial arrest of a person in a vehicle:
 - a. A search may be conducted of the area within that person's reach. This area includes the entire "passenger" compartment of the vehicle and any container therein (even if that container belongs to someone else in the vehicle).
 - b. This search is based on the custodial nature of the arrest, not on the specific charge that the person was arrested for.
2. Searching the trunk
 - a. This does not include searching the trunk of the car since the trunk is not within the arrestee's immediate control and access.
 - b. The trunk may be searched if you can develop independent probable cause that it contains evidence or contraband.

EXAMPLE: During a custodial arrest an officer finds ammunition in the passenger compartment, but no gun. Since it is probable that a gun could be stored in the trunk, a search of the trunk would be justified.

E. Searches of vehicles pursuant to consent

1. The rules for searching a vehicle based on consent are the same as any other consent search.

2. The consent must be knowingly, intelligently, and voluntarily given and the officer must comply with the scope (limitations) of the consent.
3. Traffic stops
 - a. Consent should be sought **during**, not after, the scope of a traffic stop.
 - b. If consent is sought after the citation process has concluded, this creates a problem of unjustifiably prolonging detention, during which the consent could be "tainted" by the fact that the driver should have been allowed to leave upon signing the citation (See People v. James 19 C3rd at 109 and U.S. v. Walker, 933 F2d at 816)

F. Search Warrants

1. As a general rule, no search warrant is needed to search a vehicle.
2. If the vehicle is in a place (such as a garage) that would require a warrant, the warrant is necessary to search the garage for the vehicle.

G. Vehicle Inventories

1. An inventory is a procedure an officer uses to account for personal property in a vehicle **after the vehicle has been impounded or stored..**
2. An inventory is **not** a search for evidence or contraband.
3. The purpose of a vehicle inventory is to:
 - a. Protect the property of a person whose vehicle is impounded or stored
 - b. Protect government agencies from false claims of loss.
4. In order to conduct an inventory:
 - a. The vehicle must be in the lawful custody of law enforcement (e.g. impounded to stored pursuant to a specific statute, removed at the request of the driver, etc.)
 - b. The officer must conduct the inventory pursuant to their agency policy
5. If during the course of an inventory the officer discovers evidence or contraband, it may be seized.

EXAMPLE: An officer impounds a vehicle because the driver (the sole occupant) had no driver's license. While waiting for a tow truck, the officer conducts an inventory. During the inventory narcotics are discovered. The narcotics may be seized and the driver may be placed under arrest.

6. Scope of inventory searches

- a. A vehicle inventory search is distinguishable from a conventional vehicle search, in that officers are not looking with the express purpose of finding evidence, but are merely taking note of personal property. (People v. Burch 188 Cal. App. 3d 172 (1986))
- b. An inventory search is conducted whenever the police have decided to store or impound a vehicle.
- c. The general rule is that whenever the police are authorized to remove and store vehicles, and the officer is acting in good faith and following his department standardized procedures, evidence discovered during a contents inventory will be admissible. (Colorado v. Bertine 107 S. Ct. 783 (1987))
- d. An inventory may not be used as a pretext to search for evidence. (People v. Aguilar 228 Cal App 3d 1049 (1990))

H. Vehicles defined

- 1. Motor vehicle as defined by CVC 415. A motor vehicle is a vehicle that is self-propelled.
- 2. A motor home is considered a mobile "vehicle" and may be searched as any other vehicle when it is being used on a highway, or is capable of such use and is found stationary at a place not regularly used for residential purposes (Calif. v. Carney 5 S Ct 2066 (1985)).

I. Other considerations concerning vehicle searches

- 1. Vehicle search incident to a lawful arrest
 - a. The "Bright Line Rule of Belton" holds that an officer who makes a custodial arrest of the occupant of a vehicle, may search the passenger compartment of the vehicle, including the glove box, and any containers found, whether open or closed. (N.Y. v. Belton 453 U.S. 454 (1981)).
 - b. No matter what the person is in custody for, the scope of the search includes the entire passenger compartment and any container. It does not include the trunk (People v. Stoffle 1 Cal App 4th 1671 (1991)).
 - c. This rule applies even when the suspect has already been handcuffed and placed in the back of the patrol car. However, under this rule the search of the vehicle must be contemporaneous and occur at or near the scene of the arrest.
- 2. Searches when the vehicle is an instrumentality of a crime
 - a. When the vehicle has been seized as an instrumentality of the crime, the vehicle can be taken from the scene and searched later without a warrant (People v. North 8 Cal 3d 301 (1972)).
- 3. Vehicle searches with probable cause (Carroll Doctrine)
 - a. Rationale for the rule:

- (1) The capacity of a motor vehicle to be moved quickly to an unknown location or beyond the jurisdictional reach of a law enforcement officer often makes it impossible to obtain a warrant to search a vehicle.
 - (2) In many cases, if the officer takes the time to obtain a search warrant, they the risk that contraband, fruits of a crime, instrumentalities of a crime, or other criminal evidence will be destroyed, removed, or concealed in the meantime.
- b. Courts have responded to this problem by allowing warrantless searches of vehicles when the officer has probable cause to believe that the vehicle contains items subject to seizure. NOTE: Carroll v. U.S. 267 U.S. 132 (1925), People v. Chavers 33 C. 3d 462 at p. 469 (1983) - not requirement of exigency, People v. Valdez 35 C. 3d 11 (1983), and U.S. v. Johns 469 U.S. at 484-487.
 - c. When an officer has probable cause to believe that properly seizable items are located within a vehicle, he may conduct a warrantless search of any part of that vehicle, including the trunk (People v. Acevedo 161 Cal App 3d 235 (1985)).
 - d. The officer may search any containers found in the vehicle which he reasonably believes to contain the items for which he has probable cause to search (US v. Ross 456 US 798 (1982)). (Example: Don't look in the glove compartment when you have probable cause to believe a stolen 25" TV is in the vehicle)

EXAMPLES: An officer who stops an auto solely for a traffic infraction violation intending to issue only a citation or warning may order an occupant out of a vehicle:

NOTE: Pennsylvania v. Mimms 434 U.S. 106 (1977) There are no specific facts or suspicions required for a Mimms order-out. The court said that it is acceptable as a **routine practice** in traffic stops.

XVIII. ADMINISTRATIVE/REGULATORY SEARCHES

NOTE: Searches included under these general categories are those sanctioned by or conducted pursuant to some statute or ordinance.

A. Pervasively regulated businesses

1. The courts have indicated no warrant is necessary in those cases where the industry involved is one that is so pervasively regulated, warrantless inspections are necessary to insure proper business practices.

EXAMPLE: Warrantless search of a room in a gun dealer's place of business. Searches conducted pursuant to the Gun Control Act were approved by the court in *U.S. v. Biswell* 408 U.S. 311, 92 SC 1593, 32 LE2 87 (1972).

B. Other regulatory searches

1. The courts have indicated resort to a warrant is still necessary to perform a lawful search even of an administrative nature such as fire, building code, safety, etc.
2. In some instances, licenses to do business imply consent to search, but do not permit a forcible entry (*Collonade Catering Corporation v. U.S.* 397 U.S. 72, 90 SC 774, 25 LE2d 60 (1970)).

C. Residential areas

1. In 1967 the U.S. Supreme Court indicated a warrant was necessary to conduct a nonconsensual search of a residential area even though the city code stated the search was permissible.
2. The court indicated, however, the "probable cause" necessary for such an appraisal of the area by the inspecting officer. In essence, they did not require the traditional "criminal investigative" probable cause. (*Camara v. City and County of San Francisco* 387 U.S. 523, 87 SC 1727, 18 LE2d 930 (1967))

D. Commercial areas

1. In 1967, the U.S. Supreme Court, in a companion case to *Camara* above, required the issuance of a search warrant for the regulatory inspection of commercial areas. (See *v. City of Seattle* 387 U.S. 541, 87 SC 1737, 18 LE2d 943 (1967))
2. Since these cases, the U.S. Supreme Court has continued to find unconstitutional those provisions of inspection schemes which don't provide for the issuance of a search warrant prior to the inspection. (*Marshall v. Barlow's, Inc.* 436 U.S. 307, 98 SC 1816, 56 LE2d 305, (1978))
3. In the above three mentioned cases, the court, while requiring a "search warrant," points out that this warrant is NOT the equivalent of a criminal investigative search warrant.
4. California inspection warrant scheme for regulatory searches

- a. After the decision of the U.S. Supreme Court in the cases of *Camara* and *See*, noted above, the California legislature enacted the inspection warrant scheme. Probable cause in the criminal sense is not required.
- b. California Code of Civil Procedure, Sections 1822.50 et seq.
- c. In those instances wherein violation of the regulations governing the business sought to be inspected carry with them criminal sanctions, a search warrant containing probable cause in the traditional criminal law sense IS required. *Salwasser v. Municipal Court of Fresno County* 94 CA3 223, 156 CR 292 (1979).
- d. Administrative and criminal investigative searches

A Michigan furniture store burned in 1978. In connection with the investigation into the cause of the fire, several warrantless entries were made by the fire chief and the police both at the time of the fire and after several weeks had passed.

The Supreme Court approved the initial entries inasmuch as they were governed by exigent circumstances. The later entries, however, were deemed unreasonable and the court suggested "administrative warrant" permitting a search to determine the cause of the fire was necessary.

The court further indicates, when evidence of a crime is observed, a search warrant in the traditional criminal law sense containing probable cause must be obtained. (*Michigan v. Tyler* 436 U.S. 499, 98 SC 1942, 56 LE2d 486, (1978)).

E. Other California regulatory/administrative searches

- 1. Vehicle Code
 - a. Section 13353 - Blood, breath, or urine
 - b. Section 320(b) - Auto dismantlers
 - c. Section 2805 - C.H.P. & auto theft detectives searching for stolen parts
- 2. Penal Code
 - a. Section 12031(a) - Inspection of firearm in a public place.
 - b. Section 12028.5 - Seizure of firearms involved in family violence.

XIX. DEFINITION OF TERMS (PO 4.7.2)

- A. **Knock-and-notice** is the requirement that an officer must announce his presence, identify himself as an officer, state his purpose, and demand entry before forcibly entering a private dwelling
- B. The **scope of a search** is the area covered by a search (e.g., the outer clothing of a suspect or the trunk of a car). The scope of a lawful search is limited by the circumstances under which the search is conducted
- C. **Search warrants** are written orders signed by a magistrate directing a peace officer to search a specific place for specific items and bring them before a magistrate
- D. **Showups** are one-to-one confrontations between a suspect and a witness to a crime that typically occur in the field shortly after a crime has been committed
- E. A **photographic lineup** is an identification procedure in which the witness to a crime is typically asked to look at six or more photographs, one of which is a photograph of the suspect
- F. A **physical lineup** is an identification procedure in which a witness to a crime is typically asked to look at six or more individuals lined up against a wall, one of which is the suspect

PERFORMANCE OBJECTIVES FOR LEARNING DOMAIN 16

- 4.7.1 Given a word picture depicting a search or seizure, the student will identify if the search or seizure was legal, and if it was legal, the type of search or seizure depicted. The types of searches and seizures and the conditions under which they can be legally conducted are described below. (6-1-93)

- A. **Searches conducted pursuant to a warrant** are searches authorized by a written order, signed by a magistrate, directing a peace officer to search a specific place for specific items and bring them before the magistrate. The warrant must particularly describe the items sought, the location, vehicle, or person to be searched, and must list the statutory grounds for issuing the warrant. An officer serving a warrant must announce his presence, identify himself as an officer, state his purpose, demand entry, and wait a reasonable time to be admitted before forcibly entering a private dwelling
- B. **Probable cause searches** are warrantless searches by an officer who has specific articulable facts to believe the object of his or her search is located in a specific area. The scope of a lawful search is limited by the circumstances under which it is being conducted (e.g., the outer clothing of a suspect or the interior of a car).
- C. **Searches incidental to an arrest** are searches conducted contemporaneous to an arrest. They are limited to the suspect and areas in the suspect's immediate control. The purpose of these searches is to protect the officer (by locating weapons) and to prevent the destruction of evidence or contraband.
- D. **Consent searches** are searches conducted after consent to search has been given freely and voluntarily. The person giving the consent must possess and exercise sufficient mentality to make an intelligent choice and must have actual or apparent authority to give consent
- E. **Searches under exigent circumstances** are emergency searches. An officer may enter into an area where there is an expectation of privacy for the purpose of protecting life, health or property. The necessity to enter must involve a substantial and immediate threat to life, health or property or in the fresh pursuit of a criminal suspect. Once the emergency abates, a warrant is required. An officer cannot create the exigent circumstances.
- F. **Plain view seizures** are not searches. If an officer observes items of evidence or contraband in plain view from a position he or she has a lawful right to be, he or she may seize the evidence without a search warrant if the evidence itself is also in a place where the officer has a lawful right to be
- G. **Pat-down or frisk searches** are cursory searches of legally detained suspects to protect an officer from an unexpected assault when the officer reasonably believes that the person is armed with a weapon or potentially dangerous instrument

- 4.7.2. Given a definition of one of the following terms, the student will identify the term that matches the definition: (6-1-93)

- A. **Knock-and-notice** is the requirement that an officer must announce his presence, identify himself as an officer, state his purpose, demand entry, and wait a reasonable time to be admitted before forcibly entering a private dwelling
- B. The **scope of a search** is the area covered by a search (e.g., the outer clothing of a suspect or the trunk of a car). The scope of a lawful search is limited by the specific circumstances/legal authority under which the search is conducted

- C. A **search warrant** is a written order signed by a magistrate directing a peace officer to search a specific place for specific items and bring them before a magistrate
- D. A **showup** is a viewing of a suspect by a victim and/or witness to a crime that commonly occurs in the field shortly after a crime has been committed
- E. A **photographic lineup** is an identification procedure in which the victim/witness to a crime is asked to look at a number of photographs in an attempt to identify a suspect
- F. A **physical lineup** is an identification procedure in which a victim/witness to a crime is asked to look at a number of individuals within a custodial environment, one of which is the suspect
- G. A **search** is a governmental intrusion into an area where there is a reasonable expectation of privacy for the purpose of discovering contraband or evidence to be used in a criminal prosecution
- H. A **seizure** occurs when there is some meaningful interference with an individual's possessory interest in property

4.8.1 Given a word picture depicting a suspect attempting to swallow evidence, the student will identify whether force can be lawfully used to prevent the loss or destruction of the evidence. (6-1-93)

4.8.2 Given a word picture depicting a suspect who has swallowed evidence, the student will identify whether the suspect can be legally induced to vomit. A suspect can be legally induced to vomit in a medically approved manner under any of the following conditions: (6-1-93)

- A. The suspect consents
- B. The ingested substance is an immediate threat to the suspect's life
- C. A warrant is issued permitting the search

4.8.3 Given a word picture depicting a situation where an officer(s) obtained a blood sample from a person, the student will identify if the sample was obtained using the proper procedures. The procedures for obtaining blood samples are:

- A. Obtain the suspect's consent when possible
- B. Obtain the blood sample in a medically approved manner
- C. If a person refuses to voluntarily supply a blood sample, the only way the sample can be forcibly obtained is if the person is under arrest or if probable cause to arrest exists
- D. Obtain a search warrant if time is not a factor (e.g., if the purpose of the sample is to obtain the suspect's blood type)
- E. Use only reasonable force to obtain an involuntary blood sample
- F. Take blood samples without consent from incapacitated persons (e.g., incoherent, unconscious) when needed for a legitimate law enforcement purpose

4.8.4 Given a word picture depicting a situation where an officer collected fingerprint evidence from a person who is under arrest, the student will identify if the evidence was collected legally. The legal requirements governing the involuntary collection of fingerprint evidence from an arrestee are:

- A. An arrestee has no legal right to refuse fingerprinting
- B. An officer may use reasonable force to obtain fingerprint evidence from an arrested person

- 4.8.5 Given a word picture depicting a situation where an officer collected handwriting exemplars from a person, the student will identify if the evidence was collected legally. The legal principles governing the involuntary collection of a handwriting exemplar from a suspect are:
- A. A suspect has no legal right to refuse to provide a handwriting exemplar
 - B. Physical force is impractical for obtaining a handwriting exemplar
- 4.9.1 Given a word picture depicting a situation where a showup was used to identify a suspect, the student will identify whether or not the legal requirements for the showup were met. For the showup to be legal, the suspect must not be moved unless:
- A. The suspect is under arrest, or
 - B. The suspect consents to being moved, or
 - C. It is impossible or impractical to bring the victim/witness to the suspect's location.
- 1.10.2 Given a word picture depicting a person on parole, the student will identify if the person can be lawfully searched as a condition of their parole. A person on parole can be searched under the following conditions:
- A. Reasonable suspicion that the person is in violation of written conditions of parole
 - B. Reasonable suspicion that the person is in violation of the law
 - C. At the direction of a parole officer
- 1.10.5 Given a word picture depicting a person on probation, the student will identify if the person can be lawfully searched as a condition of their probation. A person on probation can be searched under the following conditions:
- A. When the officer has knowledge that the probationer has an existing search condition
 - B. When the officer has knowledge as to the specific scope of the search condition
 - C. At the direction of a probation officer

ADDITIONAL REFERENCES

POST Video Catalog. (916) 227 4856.