

CRIMINAL LAW (DEBATE)
SEARCH AND SEIZURE AND THE EXCLUSIONARY RULE

The Fourth Amendment to the Constitution of the United States provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizure, shall not be violated, and 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.

Background: The Fourth Amendment of the Constitution protects individuals against unreasonable searches and seizure by law enforcement officers. If a search is found to be unconstitutional, the evidence seized cannot be used in court and is excluded.

In reviewing cases based on the Fourth Amendment, courts must determine what constitutes a reasonable search and seizure. In each case involving search and seizure there are arguments on both sides. On the one side, people generally do not want government (police officers) to be free to invade their personal privacy. If police were allowed to legally enter into our personal areas without restrictions, we would undoubtedly feel harassed and violated. Alternatively, police should not be unreasonably restricted from investigating crimes or searching private homes and individuals, then it is highly unlikely that any crimes would ever be prevented or resolved.

Assignment: Each student should receive a number. Depending on what number is assigned, the student will be required to argue one side or the other. Students receiving odd numbers should debate a student who received an even number arguing why it would be “reasonable” to allow police to conduct a search in each of the following situations. Students receiving even numbers should debate a student who received an odd number using reasons why it would not be “reasonable.”

1. John Doe has just been arrested because an undercover officer saw John selling cocaine to a person on the street. The arresting officer wants to conduct a pat down search of John as well as a search of his vehicle that is parked several feet away. Is this a reasonable search?
2. There have been several burglaries in your neighborhood in the past week. Your neighbors’ house was robbed about two hours ago and someone saw the robber jump the fence into your backyard. A police officer comes to your door and demands to be allowed to search your house. Is it reasonable for the police officer to search your house without permission?
3. Zions bank has just been robbed. Police officers are dispatched and arrive just in time to see the robber fleeing. The police officers follow the robber until he enters a warehouse. Would it be reasonable for the police officers to pursue the robber into the warehouse even though it is private property?

4. Officer Friday spots a person talking to Fast Eddie on the street near Pioneer Park. The vicinity of Pioneer Park is a high drug area and it is 3:00 in the morning. The person talking to Fast Eddie was arrested two years ago by officer Friday for possession of marijuana. Officer Friday feels that Fast Eddie is selling drugs. Should officer Friday be able to stop Fast Eddie and search him?
5. John is parked in Ted's driveway with his engine running waiting for his friend Ted to finish using the phone and come out of his house. While John is waiting for Ted, detective Basqueda walks by and observes a bong on the front seat of John's car. Should detective Basqueda be allowed to search John's car?
6. Bill and Ted are just getting back from an excellent adventure to Brazil. The flight they are on is late and they are afraid they will miss their connecting flight to god old Salt Lake City, Utah. The customs agents demand that Ted and Bill turn over their suitcases to be searched. Should the customs agents be allowed to search Bill's and Ted's suitcases?

Conclusion: In wrapping up this debate session, the teacher can review the exceptions to "Searches Without a Warrant" from Street Law and might also review the cases in the Criminal Law case studies folder. The teacher can discuss the problems that courts have in determining what is "reasonable" in search and seizure cases. The teacher might point out potential grey areas in the law. Hopefully, the students will gain an understanding of what the Fourth Amendment is designed to protect!!