

**Fourth Amendment**

The Fourth Amendment protects the public from unreasonable searches and seizures by the government.

**Exclusionary Rule**

Evidence seized in violation of the Fourth Amendment will be excluded at trial. If (Defendant) can show the search was unlawful, the (item) will be inadmissible.

**Search and Seizure**

Here, \_\_\_\_\_. Thus,\_\_\_\_\_.

**Government**

To be unlawful, (Defendant) must show that the search or seizure was conducted by the government.

Here, \_\_\_\_\_. Thus,\_\_\_\_\_.

**Standing**

To assert one's Fourth Amendment rights, the accused must have a reasonable expectation of privacy or substantial ownership interest in the item searched or seized.

<b><u>Reasonable Expectation of Privacy</u></b>	<b><u>Substantial Ownership Interest</u></b>
Here, _____. Thus, _____.	Here, _____. Thus, _____.

**WARRANT Requirement**

Observations and subsequent seizure of the (item) by the police are illegal unless accompanied by a valid warrant, or supported by an exception to the warrant requirement

**Valid Warrant**

A valid warrant requires Probable cause, Particularity, Issuance by a neutral and detached magistrate, Execution without unreasonable delay.

<b><u>Probable Cause</u></b>	<b><u>Good Faith Belief</u></b>
Probable cause exists when it is <u>more probable than not</u> that a crime was, is being, or is about to be committed. Here, _____. Thus,_____.	Evidence obtained by police in <u>reasonable reliance on a facially valid warrant</u> may be introduced as evidence by the prosecution, despite an ultimate finding that the warrant was not supported by probable cause. Here, _____. Thus,_____.

**Particularity**

A warrant must state with particularity the places and persons to be searched or seized.

Here, \_\_\_\_\_. Thus,\_\_\_\_\_.

**Bar None Review Bar Exam Template – CRIMINAL PROCEDURE: 4<sup>TH</sup> AMENDMENT**

Neutral and detached magistrate

Issuing magistrate must not be an agent of the police, but in a neutral and detached position such that he is able to objectively examine the officer's supporting affidavit.

Here, \_\_\_\_\_.

Thus, \_\_\_\_\_.

Delay

Officers must execute the Warrant without unreasonably delay once it is issued, to avoid the probable cause upon which it was based from going "stale."

Here, \_\_\_\_\_.

Thus, \_\_\_\_\_.

**EXCEPTIONS to the Warrant Requirement**

<b><u>Search Incident to Arrest</u></b>	<b><u>Consent</u></b>	<b><u>Automobile Exception</u></b>	<b><u>Plain View</u></b>	<b><u>Exigent Circumstances</u></b>	<b><u>Stop and Frisk</u></b>	<b><u>Administrative Inspections</u></b>
<p>The search incident to arrest exception allows a limited search of the defendant's person and areas within his immediate reach incident to the defendant's lawful arrest.</p> <p><b><u>Moving Wingspan</u></b></p> <p>The defendant's wingspan moves with the defendant as (he/she) moves.</p> <p><b><u>Protective Sweep</u></b></p> <p>Police may make a protective sweep of the area beyond the wingspan if the police believe that accomplices may be present.</p>	<p>A defendant's consent to a search or seizure must be voluntary under the totality of circumstances.</p>	<p>Under the automobile exception, vehicles may be searched if there is probable cause to believe that the auto contains contraband.</p> <p><b><u>Inventory Search</u></b></p> <p>The police may also conduct an inventory search of an automobile for booking and impound purposes.</p>	<p>The plain view exception allows the warrantless seizure of items in plain view when the officer has probable cause and is lawfully present.</p>	<p>A warrantless search is justified when the police reasonably believe delay would endanger police and public or would allow a suspect to destroy evidence.</p>	<p><b><u>[Terry stop]</u></b> Police may stop an individual for a brief detention if the police have a reasonable articulable suspicion that criminal activity is afoot.</p> <p><b><u>Frisk</u></b></p> <p>After a valid stop, police may frisk, or pat down, an individual if the police have reasonable grounds to believe that the suspect is presently armed and dangerous.</p> <p><b><u>Search</u></b></p> <p>The police may conduct a further search if the officer felt a weapon or contraband upon plain feel.</p>	<ol style="list-style-type: none"> <li>Private homes and buildings may be searched provided there is a warrant <i>and</i> a neutral enforcement plan.</li> <li>Inventory search of the person and personal effects upon incarceration based on lawful arrest.</li> <li>Airline passengers - implies consent</li> <li>Public school officials only need reasonable grounds for search.</li> <li>Search of probationer's home is permissible there are if reasonable grounds to believe contraband is present in the home.</li> <li>Government employee's desk and files are permissible if work-related need or reasonable suspicion of work-related misconduct so long as the search is reasonable in scope.</li> <li>Drug testing is permissible without probable cause or suspicion.</li> </ol>

Here, \_\_\_\_\_.

Thus, \_\_\_\_\_.