

Laws 101 - Final Exam Approach

Multiple Choice Questions:

1. Read the facts
2. Read the question
3. Read all the answers
4. Read the facts again
5. If the answer doesn't jump out at you, eliminate the answers you know to be wrong.
 - a. Wrong answer will state the rule improperly or be incomplete.
 - b. Wrong answers will not apply to the facts in the case.

Essay Questions:

1. Read the facts
2. Read the question
3. Read the facts again
4. Answer the question - is it a 4th, 5th, or 6th Amendment issue
 - a. Deny the appeal; i.e. no
 - b. Grant/Affirm the appeal; i.e. yes
 - c. State the rule.
 - d. Use facts that apply to the rule and support your answer.

6th Amendment Analysis

1. Refer to chart on page 129 - Summary of Rules
 2. Ask - Was the Defendant charged/indicted?
 - a. If yes, then AJP has begun and 6th Amendment right to counsel attaches
 - i. Is the charge a felony?
 1. If yes...
 - a. Is the defendant unable to afford counsel (indigent)?
 - i. If yes, then the defendant is entitled to appointed counsel.
 - ii. If no, then defendant is entitled to counsel, but NOT appointed counsel
 2. If no, the charge is a misdemeanor.
 - a. Did defendant get jail time? (either actual imprisonment or jail sentence which was suspended)
 - i. If yes, then the defendant is entitled to counsel.
 1. Ask if the defendant is indigent? Apply analysis above.
 - ii. If no, then defendant is not entitled to counsel.
 - ii. What stage of the proceeding is the defendant at?
 1. Is the stage critical?
3. Was the identification procedure a critical stage?

- a. Photo drops are never a critical stage: Therefore no 6th Amendment right to counsel. Apply instead the *Stoval -Brathwaite* DUE PROCESS test.
- b. A physical line-up is always a critical stage
 - i. If defendant is charged at time of line-up (i.e. attachment)
 - 1. *Use Wade/Gilbert* - Exclusionary Rule
 - ii. If the Defendant wasn't charged at the time of line up:
 - Apply Due Process test:
 - 1. *Stoval / Brathwaite* analysis: US + SLIM (DCOAT Analysis)

4th Amendment Analysis: Applies ONLY to searches & seizures

- 1. Refer to chart on page 199
 - a. Remember!! Even if the seizure is valid, the search must be independently justified.

2. SEIZURES

- a. Is there a seizure?
- b. Would a reasonable person feel free to leave? (*Mendenhall Case*)
 - i. If yes, then there is no seizure.
 - ii. If no, the 4th Amendment applies.
 - 1. Physical Seizure
 - a. Momentary
 - b. Detention
 - 2. Show of Authority
 - a. Police conduct would make a reasonable person feel restrained from leaving
 - 3. Note: Defendant must submit or actually be restrained
- c. How intrusive was the seizure?
 - i. arrest or what is tantamount to arrest: need PC
 - 1. note: do not need warrant if arrest is in public place
 - ii. temporary detention : need RS
 - iii. momentary stop: ok with RS; may also be ok if:
 - 1. individual officer's discretion to stop is controlled by some policy guideline. (e.g. Stop every third car) AND
 - 2. primary purpose of stop serves a special need (e.g. public safety) other than ordinary law enforcement.

3. SEARCHES

- a. Search of the person:
 - i. Requires individualized justification: *Ybarra*
 - ii. Stop & Frisk: Apply *Terry* Rule...Did the cop have reasonable suspicion (RS) based upon facts (personally observed OR a tip for which there was an indicia of reliability) that criminal activity was afoot?
 - 1. Did the officer reasonably fear for his safety?
 - 2. Was the scope of the search reasonable?
 - a. Pat down search for weapons only: cannot do full search of person (*Sibron*)
 - b. Automobile - search of car's passenger compartment for weapons only (*Long*)

- iii. Full Search of Person: need PC unless police are conducting the search incident to a valid custodial arrest (SIA).
 - 1. Where an officer makes a custodial arrest (rather than issue a citation) , then as a contemporaneous incident of that arrest, he or she can conduct a full search of the person and the area which is within the arrestee's immediate control at the moment of the arrest.
 - 2. Note: Officer must have PC for the arrest.
- b. Search of a place:
 - i. REP Analysis - A search occurs when the government invades a reasonable expectation of privacy.
 - 1. A person has a reasonable expectation of privacy if he has manifested a subjective expectation of privacy AND society is willing to recognize that expectation as reasonable.
 - 2. If there is no REP then the officer's observation of or entry into that place was not a search.

Katz- have REP in public telephone booth with door closed
Knotts - no REP in public movements
Oliver- no REP in open fields: Note: Even though the officers trespassed on open field it was not a search, because there was no Threshold REP in the first place.
 - ii. RFLPV - Reasonably Foreseeable Lawful Public Vantage Point
 - 1. Even if defendant has threshold REP under the above two pronged *Katz* analysis, the officer's observation is NOT a search if he stood on a spot where members of the public also lawfully and routinely stand or travel.
 - 2. Did the officer trespass? If yes, then, if defendant had threshold REP, the observation was a search.
 - 3. If the officer was standing where any member of the public had a right to be (LPV) was it reasonably foreseeable that members of the public would stand there? If yes, then his observation was not a search because there was no REP from that method of observation.
 - a. *Riley* - Even though D had REP in fenced backyard, no REP from helicopter view if helicopters used by public routinely flew over his backyard. (Note: not holding of that case, but 5 justices would agree with this statement)
 - 4. If technology was used to enhance the senses ask: Does the general public routinely use this type of technology? I.E. Is it reasonably foreseeable that the general public would have lawfully acquired the same information thru common use of the same technology?
 - a. If yes, (e.g. binoculars) then there was no REP from this type of technology and its use did not constitute a search
 - b. If no, then the use of technology will constitute a search even if no intimate details were revealed.

5. If there was a search, did the officer have PC?
 - a. *Gates*: Looking at the totality of circumstances is there a reasonable belief that the evidence sought will be found in the place to be search?
 - i. A "fair probability" or "substantial chance" is sufficient.
 - ii. Informant Tip: Affidavit should show informant's credibility (track record) and basis of knowledge (how did he know).
 1. However, while these are important factors, they are not rigidly required if the officer's further investigation corroborates tip sufficiently to reduce the chances that it is a "reckless or prevaricating tale."
 - b. If no PC, then search is invalid unless an exception applies:
 - i. SIA : area within arrestee's immediate control
 - ii. Terry search of passenger compartment of automobile:
 1. must have RS that car may contain a weapon:
 - a. Note: scope limited to areas where weapon could be hidden (e.g. cannot open small vial that could not contain a weapon)
- iii. Was the place searched a home?
 1. If yes, then a warrant is needed unless there were exigent circumstances: (e.g. hot pursuit, *Warden v Hayden*)
 2. If there was a search warrant, the fruits of the search will be admissible even if there was no PC, UNLESS:
 - a. The officer lied in the affidavit for the search warrant
 - b. The warrant was executed more than 10 days after it was issued
 - c. The search exceeded the scope of the warrant. (e.g. a Search warrant for an elephant does not authorized the officer to open a small jewelry box.)

Fifth Amendment: Privilege Against Self-Incrimination

1. Custodial Interrogation = compulsion. Therefore to be able to use an incriminating statement obtained thru interrogation of someone in custody police must obtain a waiver of the right to be free from compelled self-incrimination.
2. If therefore follows that Miranda Warnings are required only if the person is in custody and is interrogated. Miranda does not apply to spontaneous admissions or statements by suspects in custody. Miranda does not apply to questioning suspects who are not in custody.