Table of Contents

CHAPTER 1. SUPPRESSION OF EVIDENCE IN CALIFORNIA

A. HISTORY AND ORIGIN OF SUPPRESSION LAW

§ 1:1	Early history	of search	and	seizure	law	in	California;
	Mayen						

- § 1:2 Origin and purpose of the Fourth Amendment
- § 1:3 Federal suppression law before 1914; Boyd
- § 1:4 Federal exclusionary rule; Weeks
- § 1:5 California suppression law (1955–1970); Cahan
- § 1:6 California suppression law (1970–1982); Brisendine
- § 1:7 Proposition 8: The "Victims' Bill of Rights" (1982)
- § 1:8 Procedure for challenging a search or seizure; Former law

B. PRELIMINARY CONSIDERATIONS

- § 1:9 State action—"Private Search Doctrine"
- § 1:10 —Development in California
- § 1:11 —Private security guards; Zelinski, Collins
- § 1:12 —Public and school employees; Camara, Randy G.
- § 1:13 Exclusionary rule in non-criminal cases; Barlow's Inc.
- § 1:14 Exclusionary rule—Closely regulated businesses; Colonnade, Burger
- \S 1:15 —Administrative inspections and warrants; *Oklahoma Press*
- § 1:16 —Civil matters; Susan T.
- § 1:17 —Juvenile delinquency; Gault
- § 1:18 —Probation or parole revocation cases; Martinez, Scott
- § 1:19 —Sentencing considerations
- § 1:20 —Grand jury; Calandra
- § 1:21 —Impeachment
- § 1:22 —Federal Indian Civil Rights Act; Ramirez
- § 1:23 "Engaged in the performance of duties"
- § 1:24 Other defense challenges to admissibility of evidence
- § 1:25 Fruit of the poisonous tree; Silverthorne
- $\S~1:26$ Fruit of the poisonous tree—Origin and development; Nardone
- § 1:27 —Initial burden of establishing exploitation; *Alderman*
- § 1:28 —Attenuation—Generally
- § 1:29 —Witness testimony; Havens

- § 1:30 —Search warrant as taint remover; Segura, Murray
- § 1:31 —Consent as taint remover; *Machupa*
- § 1:32 —*Miranda* as taint remover
- § 1:33 —Arrest warrant as taint remover; Strieff
- § 1:34 —Probation or Parole Status as taint remover
- § 1:35 Independent source/inevitable discovery; Nardone
- § 1:36 Independent source/inevitable discovery—"In any event"
- § 1:37 —Admission of blood, identification, photographs; Crews
- § 1:38 —"Only a matter of time"; Rosales, Nix
- § 1:39 —Prosecutor's duty to present evidence

CHAPTER 2. WHAT IS A SEARCH?

A. WHAT DOES THE FOURTH AMENDMENT PROTECT?

- § 2:1 Overview
- § 2:2 Search: physical intrusion of enumerated area (1914–1967)
- § 2:3 Search: invasion of an expectation of privacy; Katz
- § 2:4 Search: physical intrusion of protected area; Jones
- § 2:5 What does the fourth amendment protect?

B. WHO MAY CLAIM PROTECTION? ("STANDING")

- § 2:6 Overview
- § 2:7 "Standing" (1951–1978)
- § 2:8 "Standing" as part of "expectation of privacy"
- § 2:9 "Standing" procedural considerations; estoppel, waiver, disclaimer
- § 2:10 Seizure of property; Robey, Jacobsen

C. SPECIFIC TYPES OF SEARCHES

- § 2:11 Search of a person
- § 2:12 Search of a vehicle
- § 2:13 Search of a house
- § 2:14 Search in the "curtilage"; Jardines, Collins
- § 2:15 Search of "papers and effects" including electronic devices
- § 2:16 Search of a business
- § 2:17 Search in jail or prison
- § 2:18 Search of abandoned property
- § 2:19 Search in open fields

§ 2:20 Search on school property; "Special Needs"

D. "PLAIN VIEW" DOCTRINE

- § 2:21 Origin of plain view
- § 2:22 Plain view affirmed
- § 2:23 Plain view denied
- § 2:24 Plain view, tools and technology

CHAPTER 3. PROCEDURAL REQUIREMENTS

A. PENAL CODE § 1538.5

rview

- § 3:2 Proper party to bring motion
- § 3:3 Motion to continue suppression hearing
- § 3:4 What property/evidence is subject to suppression?
- § 3:5 Challenge of warrantless search; 1538.5(a)(1)(A)
- § 3:6 Facial challenge of search warrant; 1538.5(a)(1)(B)
- § 3:7 Facial challenge—Warrant insufficient on its face; 1538.5(a)(1)(B)(i)
- § 3:8 —Property seized was not described in warrant; 1538.5(a)(1)(B)(ii)
- § 3:9 —Affidavit did not provide probable cause; 1538.5(a)(1)(B)(iii)
- § 3:10 —Overbroad warrant; 1538.5(a)(1)(B)(iii)
- § 3:11 —Stale information; 1538.5(a)(1)(B)(iii)
- § 3:12 —Challenge based upon method of execution; 1538.5(a)(1)(B)(iv)
- $\ 3:13$ —Any other federal or state constitutional standard; 1538.5(a)(1)(B)(v)
- § 3:14 Written motion required; 1538.5(a)(2); Williams
- § 3:15 Proper judicial officer to hear motion; 1538.5(b)
- § 3:16 Motion contemplates *one* evidentiary hearing; 1538.5(c)(1)
- § 3:17 Witness exclusion; 1538.5(c)(2), (3), (4)
- § 3:18 Effect if motion granted; 1538.5(d)
- § 3:19 Effect if motion granted; property returned; 1538.5(e)
- § 3:20 Motion to suppress at preliminary hearing; 1538.5(f)
- § 3:21 Motion to suppress in misdemeanor (or infraction); 1538.5(g)
- § 3:22 Motion to suppress at trial; multiple hearings? 1538.5(h)
- § 3:23 Motion to suppress at special hearing; 1538.5(i)
- § 3:24 Options when motion granted or denied; 1538.5(j)

- § 3:25 Defendant's custodial status pending pre—trial review; 1538.5(k)
 § 3:26 Stay pending review if motion granted; 1538.5(l)
 § 3:27 Preserving right to appeal after plea; 1538.5(m)
 § 3:28 Substantive law of suppression not altered; 1538.5(n)
 § 3:29 People may seek writ review; 1538.5(o)
- § 3:30 Effect if motion granted twice in felony case; 1538.5(p)
- $\S~3{:}31~~1997~Amendments~prospective~only;~1538.5(q)$

B. SPECIAL PROCEDURAL ISSUES

- § 3:32 Role of the judicial officer hearing motion
- $\S~3:33$ Collective knowledge; official channels and Harvey Madden
- § 3:34 Motion for Discovery of Informant's Background; Luttenberger
- § 3:35 Unsealing the sealed affidavit; *Hobbs*
- § 3:36 Challenging the truthfulness of the affidavit; Franks
- § 3:37 Closed hearings
- § 3:38 Motion for return of property; §§ 1536, 1539, 1540

CHAPTER 4. WHAT IS A SEIZURE?

A. OVERVIEW

§ 4:1 "Seizure" of a person (arrest or detention)

B. ARREST

- § 4:2 Arrest defined
- § 4:3 Probable cause for arrest
- § 4:4 Lack of probable cause to arrest; suppression of evidence?
- § 4:5 Arrest warrant
- § 4:6 Arrest in dwelling; Payton v. N.Y.
- § 4:7 Entry to effect arrest in third-party home; Steagald
- § 4:8 Citation or custodial arrest; Atwater, Macabeo
- § 4:9 Presence requirement for misdemeanor/infraction arrest
- § 4:10 Arrest of minor
- § 4:11 De facto arrest; *Celis*
- § 4:12 Post-arrest probable cause judicial determination

C. TEMPORARY DETENTION

- § 4:13 Overview and history
- § 4:14 Temporary detention; Terry, Mendenhall

Table of Contents

§ 4:15	Reasonable suspicion to support detention; Tacardon
§ 4:16	No reasonable suspicion
§ 4:17	"High crime area"; suspected gang member
§ 4:18	"Flight" or evasive conduct; <i>Flores</i>
4:19	Furtive gesture; furtive movement
4:20	Nighttime
4:21	Detention based upon anonymous tip; Navarette
4:22	Detention based upon "close proximity"
\$ 4:23	Seizure by force or by show of authority; <i>Hodari D.</i> , <i>Torres</i>
§ 4:24	Extended or prolonged detention; <i>Rodriguez</i> , <i>McGaughran</i>
§ 4:25	Pretextual stops and ulterior motives; Whren
§ 4:26	Traffic stops
§ 4:27	Search of vehicle incident to citation or traffic stop; <i>Knowles</i>
§ 4:28	Pat-down search for weapons
§ 4:29	Pat-down search extended to passenger compartment; <i>Michigan v. Long</i>
§ 4:30	Identification and Immigration
§ 4:31	Pat-down search for drugs
§ 4:32	Asking unrelated questions during detention; Johnson
§ 4:33	Seizure of passengers; <i>Brendlin</i>
§ 4:34	Seizure on public school grounds
§ 4:35	Border stops and immigration sweeps
§ 4:36	Checkpoints and roadblocks
§ 4:37	Administrative search doctrine; vehicle inventory search

D. CONSENSUAL ENCOUNTER

- § 4:38 Consensual encounter: Defined
- § 4:39 Suspicionless seizures
- \$ 4:40 Consensual encounter or detention? Mendenhall, Tacardon
- § 4:41 When does a consensual encounter become a detention?

CHAPTER 5. AUTOMOBILE EXCEPTION

- § 5:1 History and overview; Carroll
- § 5:2 Probable cause for search
- § 5:3 No probable cause for search
- § 5:4 "Readily movable"
- § 5:5 Limits to the scope of search

CHAPTER 6. CONSENT

§ 6:1 Consent as an exception to warrant requirement

- § 6:2 Did the defendant consent?
- § 6:3 Scope of consent search; Jimeno
- § 6:4 Free and voluntary; DUI blood test cases
- § 6:5 Tainted consent
- § 6:6 Third party consent; "veto" power
- § 6:7 Refusal or withdrawal of consent; consciousness of guilt?

CHAPTER 7. SEARCH INCIDENT TO ARREST

- § 7:1 Overview and history
- § 7:2 Twin rationales; Chimel v. California
- § 7:3 Search of arrestee's person; Robinson
- § 7:4 Lawful, custodial arrest
- § 7:5 Limitations on scope; cell phones
- § 7:6 Search of vehicle incident to arrest; Arizona v. Gant
- § 7:7 Protective sweeps; Buie

CHAPTER 8. EMERGENCY AID, EXIGENT CIRCUMSTANCES, HOT PURSUIT

- § 8:1 Overview
- § 8:2 Emergency Aid; Brigham City
- § 8:3 Exigent circumstances
- § 8:4 Reasonable limitations ("scope" and "manner")
- § 8:5 Search beneath the skin; Schmerber, McNeely
- § 8:6 "Hot Pursuit"

CHAPTER 9. PROBATION OR PAROLE SEARCH

- § 9:1 Overview
- § 9:2 No reasonable suspicion required; Samson
- § 9:3 Advance knowledge required; Jamie P., Sanders
- § 9:4 Privacy rights of third parties
- § 9:5 Scope of probation/parole search; Ricardo P.; Schmitz

CHAPTER 10. SEARCH WARRANTS

A. PROBABLE CAUSE

- § 10:1 Overview
- § 10:2 Probable cause
- § 10:3 Stale information; "ongoing criminal activity"?
- § 10:4 Nexus (connection) with location

Opinions and conclusions
Affidavit based upon informants; corroboration
Search pursuant to warrant following unlawful
antecedent search
Sealing affidavit

B. OTHER STATUTORY OR CONSTITUTIONAL REQUIREMENTS

§ 10:9	Statutory grounds for search warrant (Pen. Code, § 1524)
§ 10:10	Necessity of oath, writing; telephonically authorized search warrant
§ 10:11	Warrant must <i>particularly</i> describe place to be searched
§ 10:12	Warrant must <i>particularly</i> describe person or things to be seized
§ 10:13	Overbroad
§ 10:14	Neutral and detached magistrate; Johnson
§ 10:15	Fax, email, or electronic transmission
§ 10:16	Search of attorney, physician, psychotherapist, member of clergy (Penal Code §§ 1524(c); 1525)
§ 10:17	Mandatory blood, swab, and fingerprint samples ("DNA")
§ 10:18	Intrusions into the body
§ 10:19	Search warrant to test for HIV (Penal Code § 1524.1)
§ 10:20	California Electronic Communications Privacy Act
§ 10:21	Law enforcement electronic investigative tools
§ 10:22	Wiretaps

C. EXECUTION (SERVICE) OF THE WARRANT

§ 10:23	"One warrant, one search"; ten-day rule
§ 10:24	Nighttime service of warrant
§ 10:25	Exhibiting the search warrant
§ 10:26	Jurisdiction issues; Out of county warrants
§ 10:27	Knock and announce; <i>Hudson</i>
§ 10:28	Detaining people at scene; Summers, Bailey
§ 10:29	Seizing property not described in warrant
§ 10:30	Securing real or personal property pending issuance
	of search warrant
§ 10:31	Search warrant return

CHAPTER 11. GOOD FAITH/OBJECTIVELY REASONABLE

§ 11:1 Overview and historical development

- § 11:2 Good faith exception (federal decisions)
- § 11:3 Good faith exception (California decisions)
- § 11:4 Search based upon prior law or precedent (DeFillippo, Davis)
- § 11:5 Mistake of Fact, Law, or Both
- § 11:6 Good faith based on tainted affidavit?

APPENDICES

- Appendix 1. United States Constitution (Selected portions); Federal Rules of Criminal Procedure, Rule 41
- Appendix 2. California Constitution (Selected portions)
- Appendix 3. California Code Of Civil Procedure (Selected portions)
- Appendix 4. California Evidence Code (Selected portions)
- Appendix 5. California Health And Safety Code (Selected portions)
- Appendix 6. California Penal Code (Selected portions)
- Appendix 7. California Vehicle Code § 23612

Table of Laws and Rules

Table of Cases

Index