



# SEARCHES AND SEIZURES

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- The right against unreasonable searches and seizure is available to all persons (natural or juridical), including aliens (foreigners), whether accused of a crime or not.
- This right is personal and may be invoked only by the person entitled to it.
- General rule is that there should be a warrant (search warrant or arrest warrant).
  - State agents (Bill of Rights) vs. Private person (Self-Help Doctrine)
- Requisites of a valid warrant:
  - Probable Cause
  - Determined personally by a judge
  - Examination under oath or affirmation of the complainant and witnesses
  - Particularly describe the place to be searched and persons or things to be seized
- Probable Cause – such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place to be searched.





- Probable cause is not proof beyond reasonable doubt, but must be more than mere suspicion.
- A warrant must refer to only one specific offense. Otherwise, it is a scatter-shot warrant and is thus invalid.
- In *Disini vs. Executive Secretary* (G.R. No. 203335, February 11, 2014), the Supreme Court declared invalid Section 19 of the Republic Act No. 10175 or the Cybercrime Prevention Act of 2012 which authorized the Department of Justice to issue an order to restrict or block access to computer data when the same is found prima facie to be in violation of provisions of law.
- Determination of probable cause must be made personally by the judge.
- The judge cannot rely merely on the determination of probable cause by the prosecutor or fiscal.
- Fiscal – whether there is sufficient ground for the accused to be held for trial; Judge – whether the accused should be arrested and placed in custody of law enforcement authorities.





- Only a judge can issue arrest and search warrants.
- Evidence offered by the complainant and his witnesses should be based on their own personal knowledge and not mere information or belief. Hearsay is not allowed.
- The place to be searched and the persons or things to be seized must be described with particularity. Otherwise, it is a general warrant which is invalid. However, it is only required that a search warrant be specific as far as the circumstances will ordinarily allow.
- A John Doe warrant is generally held invalid, but it will satisfy the constitutional requirement if there is some *description personae* that will enable the police officer to identify the person to be arrested.
- A description of the place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended.
- Where by the nature of the articles to be seized, their description must be general, it is not required that a technical description be given.





- A search warrant fulfills the requirement of particularity in the description of the things to be seized when the things described are limited to those that bear a direct relation to the offense for which the warrant is being issued.
- Articles illegally seized are not admissible as evidence. They are deemed the fruit of the poisonous tree. However, the articles illegally seized may be used in the judicial proceeding to be filed against the officer responsible for its illegal seizure.
- In *Rodel Luz vs. People of the Philippines* (G.R. No. 197788, February 29, 2012), the Supreme Court acquitted an accused charged with illegal possession of dangerous drugs since the same was confiscated from him through an unlawful search, which was conducted after he was stopped for a traffic violation.
- If the accused will not raise the issue on the inadmissibility of the evidence against him, it will constitute a waiver of the protection granted by the Constitution.





- Exceptions to the general rule that there must be a search warrant for a search to be valid:
  - Consented search
  - Search incidental to a lawful arrest
  - Searches of vessels and aircraft for violation of immigration and customs laws
  - Search of a moving vehicle
  - Plain view search
  - Stop and frisk search or the “Terry search”
  - Searches under exigent and emergency circumstances
- Exceptions to the general rule that there must be an arrest warrant for an arrest to be valid:
  - *In flagrante delicto* arrest
  - Hot pursuit arrest
  - Arrest of an escapee
  - Arrest of a person who jumped bail





- *Marcelo Saluday vs. People of the Philippines* (G.R. No. 215305, April 3, 2018):
  - Further, in the conduct of bus searches, the Court lays down the following guidelines. Prior to entry, passengers and their bags and luggages can be subjected to a routine inspection akin to airport and seaport security protocol. In this regard, metal detectors and x-ray scanning machines can be installed at bus terminals. Passengers can also be frisked. In lieu of electronic scanners, passengers can be required instead to open their bags and luggages for inspection, which inspection must be made in the passenger's presence. Should the passenger object, he or she can validly be refused entry into the terminal.
  - While in transit, a bus can still be searched by government agents or the security personnel of the bus owner in the following three instances. First, upon receipt of information that a passenger carries contraband or illegal articles, the bus where the passenger is aboard can be stopped en route to allow for an inspection of the person and his or her effects. This is no different from an airplane that is forced to land upon receipt of information about the contraband or illegal articles carried by a passenger on board. Second, whenever a bus picks passengers en route, the prospective passenger can be frisked and his or her bag or luggage be subjected to the same routine inspection by government agents or private security personnel as though the person boarded the bus at the terminal. This is because unlike an airplane, a bus is able to stop and pick passengers along the way, making it possible for these passengers to evade the routine search at the bus terminal. Third, a bus can be flagged down at designated military or police checkpoints where State agents can board the vehicle for a routine inspection of the passengers and their bags or luggages.





- *Marcelo Saluday vs. People of the Philippines* (G.R. No. 215305, April 3, 2018) (con't):
  - In both situations, the inspection of passengers and their effects prior to entry at the bus terminal and the search of the bus while in transit must also satisfy the following conditions to qualify as a valid reasonable search. First, as to the manner of the search, it must be the least intrusive and must uphold the dignity of the person or persons being searched, minimizing, if not altogether eradicating, any cause for public embarrassment, humiliation or ridicule. Second, neither can the search result from any discriminatory motive such as insidious profiling, stereotyping and other similar motives. In all instances, the fundamental rights of vulnerable identities, persons with disabilities, children and other similar groups should be protected. Third, as to the purpose of the search, it must be confined to ensuring public safety. Fourth, as to the evidence seized from the reasonable search, courts must be convinced that precautionary measures were in place to ensure that no evidence was planted against the accused.
  - The search of persons in a public place is valid because the safety of others may be put at risk. Given the present circumstances, the Court takes judicial notice that public transport buses and their terminals, just like passenger ships and seaports, are in that category.
  - Aside from public transport buses, any moving vehicle that similarly accepts passengers at the terminal and along its route is likewise covered by these guidelines. Hence, whenever compliant with these guidelines, a routine inspection at the terminal or of the vehicle itself while in transit constitutes a reasonable search. Otherwise, the intrusion becomes unreasonable, thereby triggering the constitutional guarantee under Section 2, Article III of the Constitution.
  - To emphasize, the guidelines do not apply to privately-owned cars. Neither are they applicable to moving vehicles dedicated for private or personal use, as in the case of taxis, which are hired by only one or a group of passengers such that the vehicle can no longer be flagged down by any other person until the passengers on board alight from the vehicle.







- *People of the Philippines vs. Jerry Sapla* (G.R. No. 244045. June 16, 2020):
  - The police cannot conduct a warrantless intrusive search of a vehicle on the sole basis of an unverified tip relayed by an anonymous informant.
- Section 21 of Republic Act No. 9165 a.k.a. The Comprehensive Dangerous Drugs Act of 2002, as amended by Republic Act No. 10640.





# RIGHT TO PRIVACY OF COMMUNICATION

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- The right to privacy is the right to be free from unwarranted publicity, or to live without unwarranted interference by the public in matters in which the public is not necessarily concerned. Simply put, the right to privacy is the right to be left alone.
- Republic Act No. 4200 or the Anti-Wiretapping Law.
  - Section 1. It shall be unlawful for any person, not being authorized by all the parties to any private communication or spoken word, to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or dictaphone or walkie-talkie or tape recorder, or however otherwise described:
  - It shall also be unlawful for any person, be he a participant or not in the act or acts penalized in the next preceding sentence, to knowingly possess any tape record, wire record, disc record, or any other such record, or copies thereof, of any communication or spoken word secured either before or after the effective date of this Act in the manner prohibited by this law; or to replay the same for any other person or persons; or to communicate the contents thereof, either verbally or in writing, or to furnish transcriptions thereof, whether complete or partial, to any other person: Provided, That the use of such record or any copies thereof as evidence in any civil, criminal investigation or trial of offenses mentioned in section 3 hereof, shall not be covered by this prohibition.





- Civil Code

- Article 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:
  - (1) Prying into the privacy of another's residence;
  - (2) Meddling with or disturbing the private life or family relations of another;
  - (3) Intriguing to cause another to be alienated from his friends;
  - (4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.

- Revised Penal Code

- Article 364. Intriguing against honor. - The penalty of arresto menor or fine not exceeding 200 pesos shall be imposed for any intrigue which has for its principal purpose to blemish the honor or reputation of a person.





- The protection to privacy under Article 26 of the Civil Code is not confined to his house or residence as it may extend to places where he has the right to exclude the public or deny them access. It thus covers places which he may consider as private.
- *Spouses Bill and Victoria Hing v. Choachuy* (G.R. No. 179736, June 26, 2013). CCTV in another's property case.
- In ascertaining whether there is a violation of a person's right to privacy, the Reasonable Expectation of Privacy Test is used.
- However, the right to privacy, as with all other rights, is not absolute. The right to privacy cannot be invoked to resist publication and dissemination of matters of public interest.
- *Rhonda Ave Vivares et al. vs. St. Theresa's College* (G.R. No. 202666, September 29, 2014)
- *Social Justice Society vs. Dangerous Drugs Board* (G.R. No. 157870, November 3, 2008)
  - Students
  - Private and Public Employees
  - Persons charged before the fiscal with offenses punishable with 6 months and 1 day imprisonment





- Disini vs. Executive Secretary
  - Section 4(c)(1) - Cybersex. — The willful engagement, maintenance, control, or operation, directly or indirectly, of any lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favor or consideration.





**END**

THANK YOU AND STUDY WELL

