Introduction to the Constitution and Law Enforcement

Course
Principles of LPSCS

Unit II
Law Enforcement

Rationale
The U.S. Constitution, specifically the Bill of Rights, plays a significant part in governing the actions of Law Enforcement. Students need to understand the limitations placed on Law Enforcement by the 4th amendment as it relates to their ability to arrest, search, seize property, and use force.

Objectives
The student will be able to:

1. Define when a person is under arrest, in constructive custody, and under restraint
2. Recognize that once an arrest, search, or stop has been made, the information gathered to establish probable cause or the articulate suspicion to justify the officer’s initial action cannot be added to
3. Identify the statutory authority or other authority to affect an arrest or detain another
4. Recognize that obtaining an arrest warrant is the best course of action, except when in an emergency situation
5. Analyze the impact of constitutional law on police as it relates to arrests, use of force, searches, and seizures
6. Identify the advantages of obtaining a search warrant
7. List the major components of search warrant documentation
8. Explore essential components of an affidavit for the issuance of a search warrant
9. Define key terms related to the use of force
10. List and explain the legal authorities for the use of force
11. Discuss the civil liabilities of officers and legal remedies available to citizens when excessive or unnecessary force is used

Engage
Do an Internet search for the following video: Police defend use of force in shooting. Show the video to the class. With the students, discuss whether or not deadly force was justified under the circumstances. Use the Discussion Rubric for assessment.

Key Points
I. Fourth Amendment
   A. People to be secure in their
      1. Persons
      2. Houses
      3. Papers
      4. Effects
   B. Free from unreasonable search and seizure
      1. Warrant issued only under probable cause
      2. Based on oath or affirmation
3. Describing person, places, and/or things to be searched and seized

II. Arrest

A. Levels of Proof

1. Mere hunch – a sixth sense, gut feeling, or thought that is not based on any actual information
2. Reasonable suspicion – a reasonable person under the same circumstances would also infer that the suspect is involved in a crime
   a) Stop
   b) Frisk
   c) Question
3. Probable Cause – facts or evidence that would make a reasonable person believe that a crime or wrongdoing has been, is being, or will be committed
   a) Arrest
   b) Search
   c) Indictment
   d) Information

B. Probable Cause Building Blocks

1. These do not necessarily constitute probable cause on their own, but together help to create justification for arrest, search, and/or seizure
2. Examples
   a) Flight
   b) Furtive acts or movement
   c) Hiding
   d) Attempting to destroy evidence
   e) Resistance to officers
   f) Admissions or confessions
   g) Evasive answers/conflicting stories
   h) Unreasonable explanations
   i) Physical evidence (latent prints/hair/handwriting)
   j) Identification by witness
   k) Contraband or weapons in plain view
   l) Hearsay information (informant, anonymous tip)
   m) Computerized information (TCIC/NCIC)
   n) Police radio broadcast
   o) Drug dogs
   p) Electronically obtained evidence

C. When a person is under arrest

1. A person is arrested when he or she has been actually placed under restraint or taken into custody by an officer or person executing a warrant of arrest, or by a person having authority to arrest (Criminal Code of Procedure (CCP) 15.22)
2. Restraint – general authority exercised over another within certain limits
3. Constructive custody – actual, corporeal, and forcible detention; confined or imprisoned
4. Medford v. State
   a) The restriction of a person’s liberty may occur whether through physical force or the person’s submission to authority
   b) A reasonable person would believe that the restraint of freedom is equal to a former arrest
5. Arrests can occur anytime, day or night (CCP 15.23)
6. Any amount of force necessary may be used to make an arrest; no greater force, however, shall be resorted to than is necessary to secure the arrest and detention of the suspect (CCP 15.24)

D. Elements of an arrest
   1. Intent – can be given verbally or physically
   2. Authority – officers must be within both their jurisdiction and their legal right to arrest
   3. Custody – actual seizure of a person
   4. Constructive seizure – when a person voluntarily submits to the authority of the officer
   5. Understanding of subject – the person being arrested must be aware that they are under arrest

E. Arrest without a warrant
   1. Offense within view (CCP 14.01)
   2. Offense within view of magistrate (CCP 14.02)
   3. Authority of peace officers (CCP 14.03)
      a) Felony
      b) Breach of peace
      c) Disorderly conduct (Penal Code (PC) Ch 42)
      d) Public intoxication
      e) Inchoate offense
      f) Assault (protection)
      g) Family violence (bodily injury)
      h) Prevent theft
   4. Felony offense with no time to procure a warrant because the offender is about to escape (CCP 14.04)

F. Show of force and authority
   1. Temporary detention
      a) Florida v. Royer
         (1) The police can only hold persons long enough to conduct an investigation
         (2) The detention must match the justification for the stop
      b) Reasonable suspicion that a crime has occurred or is about to occur and the person being detained is connected
2. Stops
   a) Officers are justified in stopping individuals under the following circumstances:
      (1) Matches the description of a wanted person
      (2) Is frightened, intoxicated, or extremely emotional
      (3) Runs from the police or makes furtive movements
      (4) Is loitering/hanging out or providing a look out
      (5) Is in a crime scene area

G. “Terry Frisk” or Frisk
   1. A pat down of the outer clothing; it is not a fishing expedition
   2. Authorized if
      a) The subject is engaging in unusual conduct
      b) The emotions or behavior of the subject do not match the circumstances
      c) The officer
         (1) Believes that the subject may be armed and dangerous
         (2) Desires to protect self or others
         (3) Suspects that a crime has occurred and that a weapon may have been used in that crime
         (4) Is alone and there is no backup

3. *Terry v. Ohio*
   a) The officer
      (1) Observes unusual conduct
      (2) Concludes reasonably that criminal activity is occurring
      (3) Believes the subject may be armed and dangerous
      (4) Desires to protect self or others
   b) Pat down of outer clothing for weapons

III. Search
   A. Definition
      1. Prying into hidden places for that which is concealed
      2. A violation or invasion of the expectation of privacy (the 4th Amendment protects people, not places)
      3. Not a search to observe that which is open to view

   B. Search Warrant requirements *(CCP 18.01)*
      1. Issued by a neutral and detached magistrate
      2. Must include a probable cause statement with information that is current and relevant
      3. Includes a sworn affidavit by an officer including
         a) Offense committed
         b) Property to be searched
         c) Property to be seized

   C. Search warrant exceptions
1. Protective sweep
2. Protection of evidence from destruction
3. Evidence is discovered in plain view
4. Property or contraband that, as a result of the search, is believed to exist at another location on the property

D. Search Warrant Unnecessary
   1. Vehicles
   2. Open fields
   3. Anything with consent
   4. Abandoned property
   5. Inventory
   6. Plain view

E. Scope of search
   1. Must be limited to the area where items can be found
   2. Must be listed on the warrant

F. Searches at school
   1. Reasons
      a) Must be justified
      b) Must have reasonable suspicion that a law or school rule has been violated
      c) Must be reasonably related to the circumstances
      d) Must be conducted in a reasonable manner
   2. Types allowed
      a) Backpack searches
      b) Locker searches
      c) Vehicle searches
      d) Strip searches
      e) Metal detector use
      f) Drug dog use
      g) Searches with consent
   3. Authorities
      a) Administrators
         (1) Must have reasonable suspicion from
            (a) Tips
            (b) Past behavior
            (c) Students reactions to questions
      b) Police
         (1) Must have probable cause
         (2) A law must have been violated

G. Searches with consent
   1. The person must have the authority to consent
      a) Must be at least 17 years of age
      b) Must be the owner of the property and have the legal right to access the area being searched or an agent acting on behalf of the owner
      c) Must be mentally capable of understanding consent and its
possible consequences
2. The person may withdraw his or her consent at anytime
3. The person may limit the scope of the search

H. Search incident to arrest
1. The arrest must be lawful
2. Only the search area of immediate control
3. The search must immediately follow the arrest
4. The search may be conducted to prevent destruction of property

IV. Seizure of Property
A. Contraband – property of any nature, real, personal, tangible, or intangible, that is used in the commission of a crime or has been altered from its original intended use
   1. Item used in the commission of a crime
   2. Obtained from the commission of a crime
   3. Illegal by statute or case law
B. Plainview doctrine
   1. *Coolidge v. New Hampshire*
      a) The initial intrusion must be lawful or must lawfully be in a position to view contraband
      b) Discovery must be inadvertent
      c) Must immediately be able to tell that the property is illegal to possess
C. Exclusionary Rule
   1. No evidence will be admitted into trial if obtained by a violation of constitutional rights *(CCP 38.23)*
   2. *Mapp v. Ohio* – any evidence obtained illegally will be excluded from trial
D. Officers may seize any items (contraband) that they reasonably believe are evidence of a crime or have been obtained as a result of criminal behavior

V. Use of Force
A. Key Terms *(PC Ch 9)*
   1. Use of Force – the application or threat of physical acts intentionally used to commit a crime
   2. Custody – under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court
   3. Escape – unauthorized departure from custody or failure to return to custody following a temporary leave for a specific purpose or limited period
   4. Deadly Force – force that is intended or known by the actor to cause, or in the manner of its intended use is capable of causing, death or serious bodily injury
   5. Force – physical acts or the threat of physical acts intentionally used to do an act or commit a crime (use this requirement: “Had
to do it, had to do it now; nothing less would do!”

6. Reasonable or Necessary Force – the minimum amount of lawful aggression sufficient to achieve a legitimate law enforcement objective.

7. Deadly Weapon
   a) Any firearm or other weapon, device, or instrument which in the manner of its use or intended use is capable of producing death or serious bodily injury.

8. Serious Bodily Injury – bodily injury that creates substantial risk of death or serious permanent disfigurement/impairment of any bodily member or organ.

B. Legal Authorities for the Use of Force
   1. Justification as a Defense (PC 9.02).
   2. Confinement as Justifiable Force (PC 9.03).
   4. Reckless Injury of Innocent Third Persons (PC 9.05).

C. Civil Liabilities of Officers and Legal Remedies
   1. Justification Generally (PC Ch 9 subch B)
      a) Privileged Use of Force (state law) is not a defense to civil liabilities.
      b) Public Duty (PC 9.21).
      c) Necessity (PC 9.22).
   2. Protection of Persons (PC Ch 9 subch C)
      a) Self-Defense (PC 9.31).
      b) Deadly Force in Defense of Third Person (PC 9.32).
      c) Defense of Third Person (PC 9.33).
      d) Protection of Life or Health (PC 9.34).
         (1) Civil Practices – remedies Code 83.001.
   3. Protection of Property (PC Ch 9 subch D)
      a) Deadly Force to Protect Property (PC 9.42).
      b) Protection of one’s own property (PC 9.41).
      c) Protection of Third Person’s Property (PC 9.43).
      d) Use of Devices to Protect Property (PC 9.44).
   4. Law Enforcement (PC Ch 9 subch E)
      a) Arrest and Search.
      b) Prevention of Escape from Custody.
      c) Maintaining Security in Correctional facility.
   5. Special relationships (PC Ch 9 subch F)
      a) Parent-Child (PC 9.61).
      b) Educator-Student (PC 9.62).
      c) Guardian-Incompetent (PC 9.63).

D. Civil Remedies Unaffected (PC 9.06)
   1. The use of force against a person who is in the presence of the police for custodial interrogation, who poses no threat to safety or that of others, and who does not otherwise initiate action which would indicate to a reasonably prudent peace officer that
the use of force is justified, is unconstitutional

2. Federal Law – an officer is immune from liability for money damages if a reasonable officer could have believed the conduct to be lawful in light of the information that the officer possessed and the clearly established constitutional law at the time of the incident.

3. The fact that conduct is justified under this chapter does not abolish or impair any remedy for the conduct that is available in a civil suit.

4. Tort
   a) A private or civil wrong or injury resulting from a breach of a legal duty
   b) Winning a tort suit requires proof that there was a duty breached, and the breach caused the injury or damage
   c) Three degrees of tort actions
      (1) Negligence
      (2) Gross Negligence
      (3) Intentional Action

E. Use of Force Continuum
   1. Officer Presence – no force is used; the officer is able to control the situation by his or her uniformed presence (95% of all aggression ends here)
   2. Verbal Commands – force is not physical; control is gained through giving loud, verbal commands to the person being engaged
   3. Empty-Hand Control – officers use bodily force to gain control of the situation
      a) Soft Hand – includes grabs, holds, pressure points, and joint locks
      b) Hard hand – includes kicks, punches, and strikes
   4. Less than Lethal – officer uses baton, Oleoresin Capsicum (OC) spray, or Taser to gain compliance from a suspect
   5. Deadly Force – officer uses a deadly weapon to gain control; it should only be used if the suspect poses a serious threat to the officer or others
      a) 5th Circuit Court of Appeals says, “an officer cannot use deadly force without an immediate threat to himself or others”
      b) Tennessee v. Garner (1985) – deadly force is not justified unless a suspect poses a risk of serious harm

Activities
1. Use of Force Scenarios. Have students read each scenario and answer the accompanying questions. They should reference Chapter 9 of the Texas Penal Code listed on the Use of Force Handout or http://www.statutes.legis.state.tx.us/docs/PE/htm/PE.9.htm and answer
thoroughly. Use the Use of Force Scenarios for the activity and the Use of Force Scenarios Key for the assessment.

2. *Tennessee v. Garner* Debate. Have students read the *Tennessee v. Garner* Handout. Group students into an even number of teams. Assign each group a side to debate. The students are to form arguments based on the following:
   - Is a “fleeing felon” justification to use deadly force?
   - What are the benefits and consequences of each argument?
Use the Debate Rubric for assessment.

**Assessments**

Introduction to the Constitution and Law Enforcement Exam
Use of Force Scenarios Key
Discussion Rubric
Debate Rubric
Individual Work Rubric
Research Rubric

**Materials**

Introduction to the Constitution and Law Enforcement computer-based presentation
Introduction to the Constitution and Law Enforcement Key Terms
Use of Force Handout
Use of Force Scenarios and Key
*Tennessee v. Garner* Handout
Computers with Internet access

**Resources**

Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) [http://www.tcleose.state.tx.us/](http://www.tcleose.state.tx.us/)
Arlington Police Academy [http://www.statutes.legis.state.tx.us/](http://www.statutes.legis.state.tx.us/)
[www.searchandseizure.org](http://www.searchandseizure.org)

Do an Internet search for the following:
   - Police defend use of force in shooting
   - Caselaw findlaw Tennessee v Garner

**Accommodations for Learning Differences**

For reinforcement, students will review when an officer may arrest without a warrant. Students will also list the search warrant requirements and review Chapter 9 of Texas Penal Code (Use of Force Worksheet) to examine when force is justified by law. Use the Individual Work Rubric for assessment.

For enrichment, students will research at least three Supreme Court cases that involve arrest, search, seizure, and/or use of force. Explain how these
court decisions impacted the laws related to arrest, search, seizure, and/or use of force. Use the Research Rubric for assessment.

**State Education Standards**

*Texas Essential Knowledge and Skills for Career and Technical Education*

§130.292. Principles of Law, Public Safety, Corrections, and Security (One-Half to One Credit).

(8) The student identifies the roles of the public safety professional. The student is expected to:

(E) analyze the impact of constitutional law on police as it relates to arrest, use of force, searches, and seizure;

**College and Career Readiness Standards**

*Social Studies Standards*

I. Interrelated Disciplines and Skills

F. Problem-solving and decision-making skills

1. Use a variety of research and analytical tools to explore questions or issues thoroughly and fairly.
2. Analyze ethical issues in historical, cultural, and social contexts.
Introduction to the Constitution and Law Enforcement Key Terms

Authority – officers must be within their jurisdiction and their legal right to arrest
Constructive Custody – actual, corporeal, and forcible detention; confined or imprisoned
Constructive Seizure – when a person voluntarily submits to the authority of the officer
Contraband – property of any nature, real, personal, tangible, or intangible, that is used in the commission of a crime or has been altered from its original intended use
Custody – actual seizure of a person or under arrest by a peace officer; under restraint by a public servant pursuant to an order of a court
Deadly Force – force that is intended or known by the actor to cause, or in the manner of its intended use is capable of causing, death or serious bodily injury; officer uses a deadly weapon to gain control; it should only be used if the suspect poses a serious threat to the officer or others
Deadly Weapon – any firearm or other weapon, device, or instrument which in the manner of its use or intended use is capable of producing death or serious bodily injury
Empty-Hand Control – officers use bodily force to gain control of the situation
Escape – unauthorized departure from custody or failure to return to custody following a temporary leave for a specific purpose or limited period
Federal Law – an officer is immune from liability for money damages if a reasonable officer could have believed the conduct to be lawful in light of the information that the officer possessed and the clearly established constitutional law at the time of the incident
Force – physical acts or the threat of physical acts intentionally used to do an act or commit a crime (use this requirement: “Had to do it, had to do it now; nothing less would do”)
Hard Hand – includes kicks, punches, and strikes
Intent – can be given verbally or physically
Less than Lethal – officer uses a baton, Oleoresin Capsicum (OC) spray, or a Taser to gain compliance from a suspect
Mere Hunch – a sixth sense, gut feeling, or thought that is not based on any actual information
Officer Presence – no force is used; the officer is able to control the situation by his or her uniformed presence (95% of all aggression ends here)
Probable Cause – facts or evidence that would make a reasonable person believe that a crime or wrongdoing has been, is being, or will be committed
Probable Cause Building Blocks – do not necessarily constitute probable cause on their own, but together help to create justification for arrest, search, and seizure
Reasonable or Necessary Force – the minimum amount of lawful aggression sufficient to achieve a legitimate law enforcement objective
Reasonable Suspicion – a reasonable person under the same circumstances would also infer that a person is involved in a crime
Restraint – general authority exercised over another within certain limits
Serious Bodily Injury – bodily injury that creates substantial risk of death or serious permanent disfigurement/impairment of any bodily member or organ
Soft Hand – includes grabs, holds, pressure points, and joint locks
**Tort** – a wrong; a private or civil wrong or injury resulting from a breach of a legal duty. Winning a tort suit requires proof that there was a duty breached, and the breach caused the injury or damage. There are three degrees of Tort actions: negligence, gross negligence, and intentional action.

**Understanding of Subject** – the person being arrested must be aware that he or she is under arrest.

**Use of Force** – the application of physical acts or the threat of physical acts intentionally used to commit a crime.

**Verbal Commands** – force is not physical; control is gained through giving loud, verbal commands to the person being engaged.
Introduction to the Constitution and Law Enforcement Exam

1. _____ Which level of proof is based on no factual information?
   A. Mere hunch
   B. Probable cause
   C. Reasonable suspicion
   D. Beyond a reasonable doubt

2. _____ Which level of proof allows officers to stop, frisk, or question a person?
   A. Beyond a reasonable doubt
   B. Probable cause
   C. Mere hunch
   D. Reasonable suspicion

3. _____ Which level of proof would suggest to officers that a reasonable officer or person
   would believe that a person is involved in criminal activity under the same
   circumstances?
   A. Probable cause
   B. Reasonable suspicion
   C. Beyond a reasonable doubt
   D. Mere hunch

4. _____ Which level of proof contains facts or evidence that a crime has been, will be or is
   being committed?
   A. Mere hunch
   B. Beyond a reasonable doubt
   C. Probable cause
   D. Reasonable suspicion

5. _____ Which level of proof allows an officer to arrest or search?
   A. Beyond a reasonable doubt
   B. Mere hunch
   C. Probable cause
   D. Reasonable suspicion

6. _____ What level of proof is required in a criminal trial?
   A. Clear and convincing evidence
   B. Preponderance
   C. Probable cause
   D. Beyond a reasonable doubt
7. _____ A suspect may exhibit behavior that is consistent with committing a crime, such as attempting to destroy evidence, evasive answers, or resisting officers. These behaviors are considered to be
   A. Evidence that a crime has occurred
   B. Probable cause
   C. Reasonable suspicion
   D. Probable cause building blocks

8. _____ Actual, corporeal, and forcible detention defines what type of custody?
   A. Restraint
   B. Constructive custody
   C. Arrest
   D. Confinement

9. _____ General authority exercised over others within certain limits is which of the following?
   A. Arrest
   B. Constructive custody
   C. Restraint
   D. Custody

10. _____ Which Supreme Court case says that restriction of a person’s liberty may occur whether through physical force or the person’s submission to authority?
    A. Tennessee v. Garner
    B. Coolidge v. New Hampshire
    C. Terry v. Ohio
    D. Medford v. State

11. _____ The Code of Criminal Procedure states that an officer may use excessive force to make an arrest if necessary.
    A. True
    B. False

12. _____ Which of the elements of arrest requires officers to be within their jurisdiction and their legal right to arrest?
    A. Intent
    B. Custody
    C. Authority
    D. Understanding of person

13. _____ Actual seizure of a person and constructive seizure is when a person voluntarily submits to the authority of the officer, and defines which element of arrest?
    A. Authority
    B. Custody
    C. Intent
    D. Understanding of the person
14.____ Which of the following does not allow officers to arrest without a warrant?
   A. Breach of the peace
   B. Disorderly conduct
   C. Misdemeanor, not in view
   D. Inchoate offenses

15.____ Which Supreme Court case states that officers may only hold you long enough to conduct their investigation and detention must match the justification for the stop?
   A. Florida v. Royer
   B. Medford v. State
   C. Terry v. Ohio
   D. Tennessee v. Garner

16.____ Which of the following is not a justification for a stop?
   A. Matches the description of a wanted person
   B. Subject is in a crime scene area
   C. Subject is frightened, intoxicated, or highly emotional
   D. Subject looks suspicious and turns to head the other direction when he or she sees you

17.____ Which of the following justifies a frisk?
   A. Subject is engaging in normal behavior
   B. Multiple officers are present
   C. Belief that suspect may be armed and dangerous
   D. Suspects emotions are normal under the circumstances

18.____ Which Supreme Court case ruled that officers may pat down outer the clothing of a subject if they are believed to be armed and dangerous and for protection of themselves or others?
   A. Florida v. Royer
   B. Terry v. Ohio
   C. Mapp v. Ohio
   D. Coolidge v. New Hampshire

19.____ A sworn affidavit in a search warrant must include all but which of the following?
   A. Name of suspect
   B. Offense committed
   C. Property to be searched
   D. Property to be seized

20.____ Which of these is not an exception to the search warrant requirement?
   A. Protective sweep
   B. Discover evidence in a hidden location, not on the warrant
   C. Protection of evidence from destruction
   D. Hunt for property or contraband that as a result of the search, believes exists in another location on the property
21. _____ A search warrant is not needed for which of the following locations?
   A. Abandon property
   B. Locked compartment of vehicle
   C. A house without consent
   D. Hidden items

22. _____ What level of proof is required for a search at school?
   A. Probable cause
   B. Beyond a reasonable doubt
   C. Reasonable suspicion that school rule or law has been violated
   D. No level of proof required

23. _____ Which of the following is not a search that can be conducted at school?
   A. Body cavity search
   B. Strip search
   C. Backpacks
   D. Vehicle searches

24. _____ Match the appropriate person with the correct level of proof required for searches at school.
   A. Administrators—probable cause, Police—reasonable suspicion
   B. Administrators—reasonable suspicion, Police—no proof needed
   C. Administrators—probable cause, Police—probable cause
   D. Administrators—reasonable suspicion, Police—probable cause

25. _____ Which of the following requirements does not have to be met in order to have consent to search?
   A. Must be mentally capable of understanding consent and its possible consequences
   B. Person must be legally authorized to consent to the search of the area
   C. Person must be at least 14 years of age
   D. Person may limit the scope of the search

26. _____ Search incident to arrest occurs when
   A. An unlawful arrest occurs
   B. A search is conducted to ensure that the evidence is destroyed
   C. A search of the immediate area is done before the arrest
   D. A search of the immediate area occurs after a lawful arrest

27. _____ Property of any nature, real, tangible, intangible, or personal, that is used in the commission of a crime or has been altered from its intended use is which of the following?
   A. Contraband
   B. Evidence
   C. Fruits of the crime
   D. Personal property
28. _____ Which Supreme Court case states that items in plain view can be seized as long as the officer was legally there, the property was discovered inadvertently, and it is clear the item is illegal to possess?
   A. Florida v. Royer
   B. Mapp v. Ohio
   C. Coolidge v. New Hampshire
   D. Terry v. Ohio

29. _____ Which Supreme Court case ruled that items of contraband that have been seized during an illegal search cannot be used as evidence during the trial?
   A. Mapp v. Ohio
   B. Coolidge v. New Hampshire
   C. Florida v. Royer
   D. Terry v. Ohio

30. _____ The application of physical acts or the threat of physical acts intentionally used to commit a crime is which of the following?
   A. Reasonable or necessary force
   B. Force
   C. Use of Force
   D. Deadly force

31. _____ Physical acts or the threat of physical acts intentionally used to do an act or to commit a crime is which of the following?
   A. Force
   B. Use of Force
   C. Deadly force
   D. Reasonable or necessary force

32. _____ Force that is intended or known by the actor to cause, or in the manner of its intended use is capable of causing, death or serious bodily injury is which of the following?
   A. Force
   B. Reasonable or necessary force
   C. Deadly force
   D. Use of Force

33. _____ The minimum amount of lawful aggression sufficient to achieve a legitimate law enforcement objective is which of the following?
   A. Force
   B. Use of Force
   C. Deadly Force
   D. Reasonable and necessary force
34. _____ Bodily injury that creates substantial risk of death or serious permanent disfigurement/impairment of any bodily member or organ is which of the following?
   A. Bodily injury
   B. Serious bodily injury
   C. Force
   D. Deadly force

35. _____ Under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court is which of the following?
   A. Use of force
   B. Arrest
   C. Custody
   D. Restraint

36. _____ Unauthorized departure from custody or failure to return to custody following a temporary leave for a specific purpose or limited period is which of the following?
   A. Escape
   B. Administrative Leave
   C. Run away
   D. Absconder

37. _____ Any firearm or other weapon, device, or instrument which in the manner of its use or intended use is capable of producing death or serious bodily injury is which of the following?
   A. Weapon
   B. Deadly weapon
   C. Less than lethal weapon
   D. Aggravated weapon

38. _____ Conduct that is excusable if the conduct was justified under Chapter 9 of the Texas Penal Code is which of the following?
   A. Confinement as justifiable force
   B. Threats of justifiable force
   C. Justification as a defense
   D. Reckless injury of an innocent third party

39. _____ Confinement that is justified when force is justified and the officer takes reasonable measures to terminate the confinement when the person can be safely released is which of the following?
   A. Justification as a defense
   B. Threats as justifiable force
   C. Confinement as justifiable force
   D. Civil remedies unaffected
40._____ A threat to cause death or serious bodily injury by displaying a weapon does not constitute the use of deadly force as long as the actor’s purpose is to create an apprehension that deadly force will be used if necessary. This is which of the following?
   A. Threats as justifiable force
   B. Confinement as justifiable force
   C. Civil remedies unaffected
   D. Justification as a defense

41._____ An officer’s use of justified force is no longer justified if, in using force or deadly force, the officer recklessly injures or kills an innocent third person. This is which of the following?
   A. Justification as a defense
   B. Threats as justifiable force
   C. Confinement as justifiable force
   D. Reckless injury of an innocent third person

42._____ Which subchapter of Chapter 9 says that a person may use force as a public duty or out of necessity?
   A. Justification generally
   B. Protection of persons
   C. Protection of property
   D. Special relationships

43._____ Which of the following is not a justification for protection of persons?
   A. Self-defense
   B. Use of devices to protect property
   C. Deadly force in defense of a third person
   D. Protection of life and health

44._____ Under protection of property, a person is justified in using force if he or she reasonably believes the actor has no claim of right to the land or property, and
   A. The actor is trying to commit arson
   B. Believes the land can be protected in another way
   C. The actor accomplishes dispossession by using force, threat, or fraud against the person
   D. The use of the device is reasonable under all circumstances

45._____ Law enforcement is also covered under Chapter 9 of the Texas Penal Code. Which of the following is not an authority given to law enforcement officials?
   A. Arrest and search
   B. Protection of one’s own property
   C. Prevention of escape from custody
   D. Maintaining security in correctional facilities
46. _____ Which of the following is not a protected relationship under Chapter 9?
   A. Parent-child
   B. Educator-student
   C. Administrator-child
   D. Guardian-incompetent

47. _____ A tort is a private or civil wrong or injury resulting from a breach of a legal duty. Winning a tort suit requires proof that there was a duty breached, and the breach caused the injury or damage. Which of the following is not a degree of tort?
   A. Negligence
   B. Gross negligence
   C. Intentional action
   D. Criminal negligence

48. _____ Which Supreme Court decision states that deadly force is not justified unless the suspect poses a risk of serious harm?
   A. Tennessee v. Garner
   B. Coolidge v. New Hampshire
   C. Terry v. Ohio
   D. Florida v. Royer

49. _____ Which level of force on the force continuum uses bodily force to gain control of the situation, including soft and hard hand?
   A. Less than lethal
   B. Deadly force
   C. Officer presence
   D. Empty Hand control

50. _____ Which level of force stops 95 percent of all aggression?
   A. Verbal commands
   B. Empty hand control
   C. Officer presence
   D. Deadly force
**Introduction to the Constitution and Law Enforcement Exam Key**

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Use of Force Handout

Chapter 9, Texas Penal Code

Justification as a defense, 9.02 – justification for conduct is (excusable) a defense to prosecution if conduct was justified in Chapter 9. To prove justification, it must be beyond a reasonable doubt and not by a preponderance of evidence. The defense must prove the justification.

Confinement as justifiable force, 9.03 – confinement is a type of force. Confinement is justified when force is justified and the actor (officer) takes reasonable measures to terminate the confinement when the person can safely be released, unless the person is under arrest. Confinement as “justified force” does not apply to persons who have been confined due to an arrest.

Threat as justifiable force, 9.04 – threats to use force are “force.” Threats to use force can be justified when the use of force is justified in Chapter 9. A threat to cause death or serious bodily injury by showing (displaying) a weapon does not constitute the use of deadly force [as long as the actor’s (officer’s) purpose is to create an apprehension that deadly force will be used if necessary]. Whenever force or deadly force is justified, threats of force or deadly force are justified.

Reckless injury of innocent third person, 9.05 – an actor’s (officer’s) use of justified force is no longer justified if, in using force or deadly force, the actor (officer) recklessly injures or kills an innocent third person.

Civil remedies unaffected, 9.06 – even though an actor’s (officer’s) use of force may be justified under Chapter 9, civil lawsuits can still be filed for the force used.

Public Duty, 9.21 – except as stated below, the use of force or deadly force is justified if the actor (officer) reasonably believes the force/deadly force is required or authorized by law, the judgment or court order of a competent court, or governmental tribunal, or in execution of legal process. The use of deadly force is not justified in Chapter 9 unless the actor (officer) reasonably believes the deadly force is specifically required by statute or unless it occurs in war. If deadly force is justified there is no duty to retreat before using deadly force. An actor (officer) is justified in using force if he reasonably believes the force is required or authorized to assist a public servant in performing his official duty, even though the public servant exceeds his authority.

Necessity, 9.22 – conduct (force/deadly force) is justified if:
1. The actor (officer) reasonably believes it is immediately necessary to avoid imminent harm
2. The desirability and urgency of avoiding harm clearly outweigh (according to ordinary standards of reasonableness) the harm sought to be prevented by the law prescribing the conduct (force)
3. A legislative purpose to exclude the justification is claimed for the conduct (force) does not otherwise clearly appear
The conduct (force/deadly force) must be reasonable and necessary. The actor (officer) must be able to articulate these three areas:
1. I had to do it
2. I had to do it right now
3. Nothing less would do

The amount of force necessary in any situation must be the least amount necessary to affect the purpose. Any force above the minimum amount necessary to affect a lawful purpose is unlawful.

**Self-Defense, 9.31** – a person is justified in using force against another when he believes the force is immediately necessary to protect himself against the other’s use or attempted use of unlawful force.

The use of force against another person is not justified
1. In response to verbal provocation
2. To resist an arrest or search that the person knows is being made by a peace officer (or by a person acting in a peace officer’s presence and at his direction), even though the arrest or search is unlawful (unless the resistance is justified)
3. If the actor provoked the other’s use or attempted use of unlawful force
4. If the actor provoked the other’s use or attempted use of unlawful force unless
   a. The actor abandons the encounter, or tells the other he wants to stop the use of force
   b. The other person continues or attempts to use unlawful force against the actor
   c. The use of force to resist an arrest or search is justified
      1) Before the actor (suspect) offers any resistance, the peace officer (or the person acting under his authority) uses or attempts to use greater force than necessary to make the arrest or search
      2) When and to the degree that the actor (suspect) reasonably believes the force is necessary to protect himself against the officer’s (or other’s) use or attempted use of greater force than necessary

**Deadly force in defense of person, 9.32** – deadly force is justified against another
1. If the actor would be justified in using force against the other in self-defense
2. If a reasonable person in the same situation would not have retreated
3. When and to the degree the actor reasonably believes the deadly force immediately necessary
   a. To protect himself against another’s use or attempted use of unlawful deadly force
   b. To prevent the other’s imminent commission of
      1) Aggravated kidnapping
      2) Murder
      3) Sexual assault
      4) Aggravated sexual assault
      5) Robbery
      6) Aggravated robbery

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Defense of third person, 9.33 – force or deadly force is justified against another to protect a third person if
1. Under the circumstances as the actor reasonably believes them to be, the actor would be justified (under self defense 9.31 and defense of third person 9.32) in using force or deadly force to protect himself against unlawful force or unlawful deadly force he or she reasonably believes to be threatening the third person he or she wants to protect
2. The actor reasonably believes his intervention is immediately necessary to protect the third person

Protection of life or health, 9.34 – force (but not deadly force) is justified against another when, and to the degree the actor reasonably believes, the force is immediately necessary to prevent the other from committing suicide or inflicting serious bodily injury to himself or herself.

Force and deadly force is justified when, and to the degree a person reasonably believes, the force or deadly force is immediately necessary to preserve the other’s life in an emergency.

Protection of one’s own property, 9.41 – a person in lawful possession of land or tangible, movable property is justified in using force when, and to the degree he reasonably believes, the force is immediately necessary to prevent or terminate the other’s trespass on land or unlawful interference with the property.

One unlawfully dispossessed of land or tangible, movable property by another is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to reenter the land or recover the property if the actor uses the force immediately or in fresh pursuit after the dispossession and
1. The actor reasonably believes the other person had no claim of right to the land or property
2. The other (suspect) accomplished the dispossession by using force, threat, or fraud against the actor

Deadly force to protect property, 9.42 – deadly force is justified against another to protect land or tangible, movable property if
1. The actor would be justified in using force, as in “protection of one’s own property,” when and to the degree the actor reasonably believes, the deadly force would be immediately necessary to
   a. Prevent the imminent commission of
      1) Arson
      2) Burglary
      3) Robbery
      4) Aggravated robbery
      5) Theft at nighttime
      6) Criminal mischief at nighttime
   b. Prevent another from fleeing immediately after committing
      1) Burglary
      2) Aggravated robbery
      3) Robbery
      4) Theft at nighttime from escaping
2. The actor must reasonably believe that
a. The land or property cannot be protected or recovered any other way
b. The use of force other than deadly force would expose the actor or another to a substantial risk of death or serious bodily injury (used to protect or recover land or property)

**Protection of third person’s property, 9.43** – force or deadly force is justified to protect land or tangible, movable property or a third person if, under the circumstances as the person reasonably believes them to be, he or she would be justified in using force or deadly force to protect his or her own land or property (as listed in Protection of one’s own property, 9.41 & Deadly force to protect property, 9.42), and

1. The person reasonably believes the unlawful interference constitutes attempted or consummated theft or criminal mischief of tangible movable property
2. The person reasonably believes that
   a. The third person has requested the person to protect the land or property
   b. The person has a legal duty to protect the third person’s land or property
   c. The other person’s land or property the actor is using force or deadly force to protect is the actor’s spouse, parent, or child; resides with the person; or is under their care

**Use of device to protect property, 9.44** – the justification afforded in “Protection of one’s own property, 9.41 & Protection of third person’s property, 9.43” applies to this section if

1. The device is not designed to cause, or known by the person to create a substantial risk of causing, death or serious bodily injury, and
2. The use of the device is reasonable under all circumstances as the person believes them to be when he or she installs the device

**Arrest and Search, 9.51** – a peace officer (or person acting under direction of a peace officer) is justified in using force when and to the degree he reasonably believes the force is immediately necessary to make or assist in making an arrest or search, or to prevent or assist in preventing escape after arrest if

1. The person reasonably believes the arrest or search is lawful or if made under warrant he reasonably believes the warrant was valid, and
2. Before using force the person manifests his purpose to arrest or search and identifies as a peace officer (or another acting under authority of a peace officer), unless identity is already known or cannot reasonably be made known to the person being arrested

A peace officer is justified in using deadly force to make an arrest or to prevent escape after arrest if the use of force would have been justified under section (a) 9.51 as above, and

1. He or she reasonably believes the offense prior to the arrest included the use or attempted use of deadly force, or
2. He or she reasonably believes there is a substantial risk the person to be arrested will cause death or serious bodily injury to the officer or another if the arrest is delayed

A person other than a peace officer acting in the peace officer’s presence or direction is justified in using deadly force against another when he reasonably believes the deadly force is immediately necessary to make a lawful arrest, prevent escape after lawful arrest (if the force would have been justified under subsection (b) 9.51 above), and
1. The person reasonably believes the felony or offense includes the use or attempted use of deadly force.
2. The person reasonably believes a delay in arrest will cause the suspect to cause death or serious bodily injury to another person.

**Prevention of escape, 9.52** – force to prevent escape of an arrested person from custody is justified when force could have been employed to make the arrest, except that a guard in a penal institution or a peace officer is justified in using any force, including deadly force, to prevent escape of a person from a jail, prison, or other institution for the detention of persons charged with or convicted of crimes.

**Maintaining security in penal institutions, 9.53** – a peace officer, jailer, guard employed at a municipal or county jail, or correctional officer employed by the Texas Department of Criminal Justice (TDCJ) is justified in using force against a person in custody to maintain security in the institute, the safest security of other persons in custody, and/or a person employed at the institute for his own safety.

**Parent-Child, 9.61** – force (but not deadly force) is justified against a child younger than 18 years of age.
1. If the person is the child’s parent or stepparent, or acting in loco parentis to the child, and
2. When and to the degree the person reasonably believes the force is necessary to discipline the child, or safeguard or promote the child’s welfare.

*In loco parentis* includes grandparents and guardians; any person acting by, through, or under the direction of a court with jurisdiction over the child; and anyone who has express consent of the parent or parents.

**Educator-student, 9.62** – force (but not deadly force) is justified.
1. If the person (teacher, etc.) is entrusted with the care, supervision, or administration of the person for a special purpose, and
2. When and to the degree the person reasonably believes the force is necessary to further the special purpose or to maintain discipline in a group.

**Guardian-Incompetent, 9.63** – force (but not deadly force) is justified on a mental incompetent.
1. If the person is the guardian or someone similarly responsible for the general care and supervision or the incompetent, and
2. When and to the degree the actor (guardian) reasonably believes the force is necessary.
   a. To safeguard and promote the incompetent’s welfare.
   b. If the incompetent is in an institution for his or her care and custody, to maintain discipline in the institution.
Use of Force Scenarios

**Directions:** Read each scenario; imagine you are a law enforcement officer and make sure to note every fact. After you have read the scenario, determine the answer to its accompanying questions. Answer the questions asking “under what authority” with which section of the Texas Penal Code, Chapter 9 would give legal authority based on the scenario.

1. You (an officer) confront a suspect. As you approach from approximately 30 feet, the suspect pulls a small caliber pistol and begins firing at you. You unholster your weapon, drop to the ground, and instantly notice a group of individual bystanders some distance behind the suspect.
   a. What force can you justifiably use?
   b. What gives you the authority?
   c. What would be the consequences of your injuring a third party?
   d. What authority does the injuring of a third party come from?

2. You (an officer) arrive at the scene of a reported shooting. You observe an individual lying face down across the threshold. The individual appears to be unconscious. He is bleeding from what appears to be a gunshot wound in his right side. You investigate and find a shotgun tied to a chair, and a rope tied from the trigger device of the shotgun to the open door. Your investigation reveals that this was a device to deter burglars.
   a. Is the owner justified in using this level of force to prevent the consequences of theft?
   b. If so, under what authority? If not, why not?
   c. Is the owner justified in using force or the threat of force in this manner?
   d. If so, under what authority? If not, why not?

3. You (an officer) are by yourself driving through an area that has several retail stores. You witness a man grab a woman's purse. The two of them are struggling for the control of the purse. The man starts to strike the woman with his hands.
   a. What would you do?
   b. Under what authority would you be justified?

4. You and several other officers are attempting to arrest a subject at his residence. As you walk up to the house, the front door opens and the subject appears. He steps out of the doorway and onto the front porch. He has a gun in his hand and he begins shooting at you.
   a. What would you do?
   b. Under what authority would you be justified?
Use of Force Scenarios Key

1. You are justified in using deadly force. Penal Code (PC) 9.21 states that an officer has the public duty to act using force/deadly force if he reasonably believes the force is justified under law. The officer may also be covered under PC 9.22 Necessity, which states that force is justified if the officer believes it is immediately necessary to avoid imminent harm, which it is in this case since the suspect met the officer outside and began firing. Obviously, the officer is also justified under PC 9.31 Self-Defense. You believed the use of force was immediately necessary to protect yourself against the suspect’s gun fire. Since there was a group of bystanders nearby, you were also justified in using force under PC 9.33 Defense of a third person.

However, the bystanders standing behind the suspect make it difficult for you to use the needed force to stop the attack. PC 9.05 states that an officer is no longer justified in using force/deadly force if the officer is reckless and injures or kills an innocent third person. Ultimately you must weigh the benefits with the consequences or change your plan of attack.

2. Under PC 9.41, 9.43 and 9.44 the owner or agent of the owner would be justified in using force to protect his property or the property of a third person, including using a device to do so. PC 9.41 says a person has a legal right to protect his or her own property by using force immediately necessary to prevent or terminate the other’s trespass on land or unlawful interference with property. PC 9.43 says a person has the right to use force or deadly force to protect land or tangible property of a third person if the person is justified under 9.41. Finally, PC 9.44 states that if a person is justified in using force to protect one’s own property, he or she is justified in using necessary force if the device used is not designed to create substantial risk of death or serious bodily injury and the use of the device is seen as reasonable.

3. There is nothing wrong with you getting on the radio and calling for assistance. However, in this scenario you should do more than that. You should get out of your car and identify yourself as a police officer; then order the man to let go of the woman. If the man does not stop attacking the woman, you must physically stop him. You would then place him under arrest.

The panel may ask you if you would draw your weapon. In this type of situation, you probably cannot shoot the attacker. If you see no weapons in his hands, then your gun will probably remain holstered. You may not know what type of intermediate weapons this agency allows its officers to carry. However, you can still suggest that you may use a baton or pepper spray on the subject if he refuses to stop the attack.

4. The first thing you should do is seek cover. The subject is firing his weapon at you, so there is no time to give verbal commands for him to stop. You should draw your gun and return fire. You are attempting to stop the subject’s aggression. When it is safe to do so, you should get on the radio and call for assistance.
In *Tennessee v. Garner*, the Supreme Court held that the common law rule on use of deadly force violated the Fourth Amendment. Garner involved a section 1983 action brought after a policeman killed a fleeing teenage burglar despite being “reasonably sure” the teenage suspect was unarmed. The officer had acted in accordance with a Tennessee state statute providing that if, after an officer gave notice of intent to arrest and the suspect resisted or fled, “the officer may use all necessary means to affect the arrest.” Utilizing the Fourth Amendment “balancing process” that the Court has employed in other cases, the “suspect’s fundamental interest in his own life” was weighed against “governmental interests in effective law enforcement,” resulting in this conclusion.

The use of deadly force to prevent the escape of all felony suspects, whatever the circumstance, is constitutionally unreasonable. It is not better that all felony suspects die rather than escape. When the suspect poses no immediate threat to the officer and/or no threat to others, the harm resulting from failing to apprehend him or her does not justify the use of deadly force. It is no doubt unfortunate when a suspect who is in sight escapes, but the fact that the police arrive a little late or are a little slower afoot does not always justify killing the suspect. A police officer may not seize an unarmed, non-dangerous suspect by shooting him dead. The Tennessee statute is unconstitutional insofar as it authorizes the use of deadly force against such fleeing suspects.

It is not, however, unconstitutional on the surface. Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not unconstitutionally unreasonable to prevent the escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.
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<tbody>
<tr>
<td>Follows directions</td>
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<tr>
<td>Student completed the work as directed, following the directions given, in order and to the level of quality indicated</td>
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<tr>
<td>Time management</td>
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<tr>
<td>Student used time wisely and remained on task 100% of the time</td>
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<tr>
<td>Organization</td>
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<tr>
<td>Student kept notes and materials in a neat, legible, and organized manner. Information was readily retrieved</td>
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<tr>
<td>Evidence of learning</td>
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<tr>
<td>Student documented information in his or her own words and can accurately answer questions related to the information retrieved</td>
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<tr>
<td>*Research/Gathering information (if relevant)</td>
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<tr>
<td>Student used a variety of methods and sources to gather information. Student took notes while gathering information</td>
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<tr>
<td>Total Points (20 pts.)</td>
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Comments:
<table>
<thead>
<tr>
<th>Research Rubric</th>
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<tbody>
<tr>
<td><strong>Question/goal</strong></td>
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<tr>
<td>Student identified and communicated a question or goal of the research</td>
</tr>
<tr>
<td><strong>Research/Gathering information (if relevant)</strong></td>
</tr>
<tr>
<td>Student used a variety of methods and sources to gather information. Student took notes while gathering information</td>
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<tr>
<td><strong>Conclusion/Summary</strong></td>
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<tr>
<td>Student drew insightful conclusions and observations from the information gathered. Information is organized in a logical manner</td>
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<tr>
<td><strong>Communication</strong></td>
</tr>
<tr>
<td>Student communicated the information gathered and summary or conclusions persuasively. Student demonstrated skill in the use of media used to communicate the results of research</td>
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<tr>
<td><strong>Reflection</strong></td>
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<tr>
<td>Student reflected on the importance of the research and its potential application</td>
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<tr>
<td><strong>Total Points (20 pts.)</strong></td>
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Comments: