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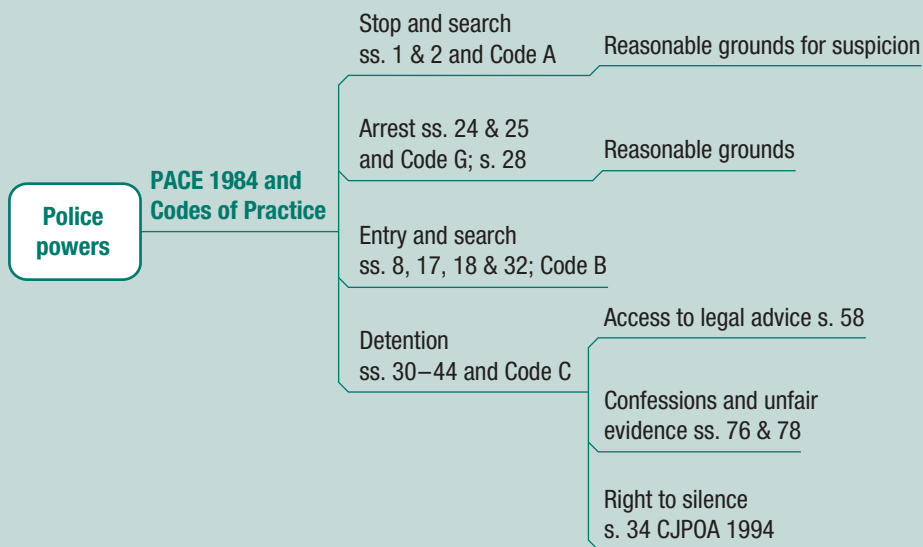
CLAIRE DE THAN

HUMAN RIGHTS

5TH EDITION

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■ Topic map



■ Introduction

The Police and Criminal Evidence Act 1984 ('PACE' or 'the Act') sets out the main framework regarding the numerous duties and powers of the police when stopping, searching, arresting, detaining, investigating and questioning suspects.

Included, as an integral part of the Act, are the Codes of Practice which are extremely helpful in interpreting various sections of the Act. It is important to understand that a failure to follow the relevant Code will not result in the action taken by the officer being immediately quashed, but may result in evidence being inadmissible at trial. There have been various revisions to the Codes of Practice in recent years, with Code A being revised as recently as 2015, so it is important to keep up to date with the changes and why they were made. At the time of writing further changes are in progress, since the Policing and Crime Act 2017 is coming into force in stages. The 2017 Act is wide-ranging and the reforms it introduces include: 'super-complaints'; giving more powers to civilian staff and volunteers; introduction of a presumption that pre-charge suspects will be released from police stations without bail unless the custody officer is satisfied that bail is 'necessary and proportionate' having regard in particular to any bail conditions and release on bail has been authorised by an inspector; statutory controls on police bail; a duty to inform persons who have been released after arrest or after attending the police station voluntarily, that they will not be prosecuted; preventing the detention of children with mental health problems in police cells; and amending PACE to ensure that 17 year olds are treated consistently as children. If these issues are on your syllabus, keep up to date with which sections of the 2017 Act have been brought into force and their impact!

The key ECHR right in this area is Article 5, because police powers are all about deprivation of liberty, but you should also bear in mind the rights which guarantee a fair trial in Article 6. Also see Articles 2 and 3 on the treatment of suspects whilst in custody.

ASSESSMENT ADVICE

Essay questions

Essay questions on police powers are not too uncommon and generally centre around difficulties of interpreting the Act, for example, what constitutes 'reasonable grounds for suspicion' or difficulties relating to those areas involving a lawful arrest. Questions also often centre around issues of the 'right of silence' and specifically the erosion of that right. In recent years, the law has developed in this area and students should be ►

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advised to keep up to date with the latest conditions and case law. An essay question may also focus on a comparison between the Act itself and specific Articles of the ECHR.

Problem questions

Problem questions are by far the most popular type of question. Students generally have little difficulty in recognising the problem areas in the question. However, one major weakness is that they do not know how to properly apply the law they have stated to the specific issues in the question. The issues generally covered by the problem include such areas as an unreasonable stop and search; the suspect's right not to answer questions; unlawful arrest; no caution given; no reasons stated for the arrest; whether a confession is admissible. The highest marks in this type of question come from spotting the more 'technical' issues (for example, what grade of police officer is authorised to delay access to legal advice) and also from demonstrating wider understanding (for example, pointing out that there is no defence of entrapment in UK law, despite proposals in this area from the Law Commission in 1977).

■ Sample question

Could you answer this question? Below is a typical problem question that could arise on this topic. Guidelines on answering the question are included at the end of this chapter, whilst a sample essay question and guidance on tackling it can be found on the companion website.

PROBLEM QUESTION

James, who has four previous convictions for theft, is spotted by Police Constable Smith after coming out of a betting shop. The previous night, a jewellery shop had been broken into and watches, gold rings and money stolen. PC Smith notices that James is wearing a ring on his finger. He asks James from where he had purchased the ring, but no answer is given. PC Smith then proceeds to search James and discovers a Rolex watch and £500 in cash in a bag he is carrying. James says that he has just won the money by betting that Manchester United would beat Chelsea. 'A likely story,' says PC Smith. 'You're coming with me.' 'On what charge?' asks James. PC Smith replies, 'I'll tell you later.' PC Smith then proceeds to take James to the nearest police station.

Advise James as to his legal rights.

■ Stop and search

The power of the police to stop and search members of the public is governed by sections 1 and 2 of PACE, and Code of Practice A (CoP A). You should also be aware that there are some restricted further circumstances in which the police may stop and search individuals. However, there is no general duty to answer police questions before arrest. This means that a failure to answer questions does not constitute obstruction of an officer in the execution of their duty: see *Rice v Connolly* (1966).

Under sections 1 and 2 and CoP A, a police officer may search any person or vehicle and detain that person or the vehicle for the purpose of the search. The search can only be carried out to look for certain items, most importantly stolen items and prohibited items (i.e. offensive weapons and articles adapted for or used for criminal offences). Crucially, a police officer may only stop and search an individual if they have **reasonable grounds for suspecting** that they will find one of these items. See also section 60 of the Criminal Justice and Public Order Act 1994 ('CJPOA'), where the stop and search of persons and vehicles is based on a *reasonable belief* by the authorising officer that serious violence may occur in certain areas, or that dangerous instruments or offensive weapons may be carried by persons in these areas.

KEY DEFINITION: Reasonable grounds for suspicion

It is essential that you understand that the term 'reasonable grounds for suspicion' is an objective test; reasonableness is not assessed simply by reference to the police officer's opinion.

The reasonable grounds must exist before the person is stopped; a police officer cannot stop to find grounds for a search (para. 2.11, CoP A). Reasonable grounds for suspicion depend on the circumstances, but there must be an objective basis for the suspicion and it can never be based solely on generalisations stemming from personal factors without reliable supporting information (para. 2.2, CoP A). It can, in unusual circumstances, exist on the basis of generalisations stemming from behaviour without supporting information, but it should normally be linked to some intelligence (para. 2.4, CoP A) and can never be based on personal factors (para. 2.2B). If reasonable grounds for suspicion cease to exist, the police officer must not search that person, and, in the absence of any other power to detain, the person is free to leave (see *King v Gardiner* (1979)).

The police cannot require the person being searched to remove any clothing in public other than an outer coat, jacket or gloves. However, under section 60AA of the CJPOA, where section 60 is in force, an officer may remove face coverings, such as a mask, where he reasonably believes that it is worn for the purpose of concealing that person's identity. In extreme situations the police may instigate a forcible search, but only if the suspect refuses to co-operate or resists (see para. 3.2, CoP A). Co-operation must always be sought.

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However, not all physical searches constitute a forcible search. For example, see the case of *James v DPP* [2012] EWHC 1317 (Admin) where the police officer placing his hand around the throat of a suspect to prevent him swallowing some drugs did not amount to a forcible search under CoP A para. 3.2.

Finally, if police officers are not in uniform, before commencing the search they must take reasonable steps to show that they are police officers (see sections 2 and 3 of PACE).

Code A was revised in 2015, with the stated aim ‘to make clear what constitutes “reasonable grounds for suspicion” – the legal basis upon which police officers carry out the vast majority of stops. The revised Code will also emphasise that where officers are not using their powers properly they will be subject to formal performance or disciplinary proceedings’.

EXAM TIP

PACE governs what the police can do, when they can do it, where they can do it and how they must do it – you should make sure you are clear about each of these requirements. An easy way to pick up (or lose!) marks is ‘little’ points in the question, such as whether the officer was in plain clothes. However, the key to understanding this particular area is to ensure you are very clear about the requirement for reasonable grounds for the officer’s suspicion.

An excellent answer to a problem question could (and an essay question should) make reference to ECHR jurisprudence. The key cases here are *Engel v The Netherlands* (1976) and *Guzzardi v Italy* (1980), in which the European Court held that Article 5 relates to deprivation of liberty, and will therefore not apply where there is simply restriction of movement. In deciding where to draw the line, regard should be had to criteria including the type, duration, effects and manner of the implementation of the measure. See especially the recent ECHR case of *Gillan and Quinton v UK* (2010) involving a police stop and search, where the court did not find it necessary to determine the issue of deprivation of liberty under Article 5, but instead did find a violation under Article 8, i.e. the right to respect for privacy.

KEY DEFINITIONS: Different types of offence

Offences are divided into three categories depending, in general terms, on their seriousness. ‘Summary offences’ are the least serious offences and are dealt with by magistrates. ‘Indictable offences’ are the most serious offences and are dealt with by the Crown Court. ‘Either-way offences’ fall in between and can be tried in either category depending on how serious the offence was – there is a sliding scale which takes into account a range of factors. Some police powers can only be exercised where the offence

is an indictable offence, and this will include offences which are triable either way. Knowledge of the differences between these offences is particularly relevant to arrest conditions (see below).

Arrest

PACE does not define arrest, but merely lays down conditions: the definition of arrest has been left to the courts. There is a great deal of case law on the subject, but in essence there are three elements:

- a submission by the arrested party, or physical restraint enforcing the arrest;
- the arrestor must signify in clear words that he is arresting the other party as soon as practicable (see PACE ss. 28(1) and (5), discussed below);
- the arrestor must make the grounds for the arrest clear as soon as is practicable (see PACE s. 28(3)).

Arrest powers

The key power of arrest is arrest without a warrant by a police officer under section 24 of PACE (as amended by the Serious and Organised Crime and Police Act 2005 (SOCAP 2005) and CoP G). Prior to the amendments introduced by SOCAP, arrest was based on the concept of ‘arrestable offences’ and unless the **offence** fell into the categories of arrestable offences, the police officer could not arrest. However, since 31 December 2005, the arrest powers for police officers have been fundamentally restructured. It should be noted that once the suspect is arrested, any attempt to escape will be unlawful. However, prior to arrest there is no power to detain and the individual is generally free to leave. See *R v Iqbal* [2011] EWCA Crim 273.

Arrest can also be carried out where a magistrate has issued a warrant or where there is a breach of the peace. Furthermore, section 25 of PACE also gives a power of arrest where an indictable offence is being committed.

Breach of the peace

Every citizen, including a police officer, has power to arrest where there is a breach of the peace. Where the arrest is on the basis of an apprehended (feared) breach of the peace, the power to arrest should only be used exceptionally, where there is a sufficiently serious and imminent threat. The key is that the police must be able to point to an imminent breach of the peace, and, where they can, the response to that imminent breach must be proportionate (see the case in Public Order of *R (on the application of Laporte) v Chief Constable of Gloucestershire* (2006) – a case in which the police lost on both counts).

The Supreme Court in *Hicks v Chief Constable for the Metropolis* [2017] UKSC 9 found that pre-emptive detention (to prevent a breach of the peace via protests at the time of the Royal