

THE LONGMAN DICTIONARY OF LAW

Eighth Edition



P. H. Richards • L. B. Curzon

THE LONGMAN

DICTIONARY
OF LAW

defendant. 'A person against whom a claim is made': CPR, r 2.3. Applied also to person charged with offences. See CLAIM, SERVICE OF.

defendant, compelling appearance of. Appearance may be compelled by summons, warrant for arrest and arrest without warrant. See M.C.A. 1980, s 1. For waiving of defendant's right to be present at his trial, see *R v Hayward* (2001) *The Times*, 14 February.

defendant's absence from judgment. In *Hackney LBC v Driscoll* (2003) *The Times*, 29 August, the CA held that the common-law right of a defendant who had not received notice of legal proceedings, to apply for the setting aside of a judgment, had no application to a defendant who had appeared in proceedings which had been adjourned, but had not been notified of a new date of hearing.

defer. To delay; to postpone. A decision to defer is not necessarily a refusal: *R v Middlesbrough DC ex p Cameron Holdings Ltd* [1992] COD 247.

deferred debts. Debts deferred under statute until those with priority are paid in full.

deferred shares. Shares, now rarely issued, carrying a right to all, or a substantial proportion of, profits after ordinary shares have received a dividend. Known also as 'founders' shares'. The number of such shares must usually be stated in the prospectus (q.v.): see F.S.A. 1986, ss 146–148, 162–164.

deferring of sentence. Under P.C.C.(S.)A. 2000, s 1, the Crown Court (q.v.) or magistrates' court (q.v.) can defer passing sentence on an offender (with his consent and in the interests of justice) to enable the court, in determining his sentence, to consider any change in his circumstances or conduct after conviction (q.v.). The court which deferred sentence may deal with him if, before the end of the deferment period, he is convicted in England or Wales of a later offence: s 2.

defraud. 'To deprive a person dishonestly of something which is his or of something to which he is or would or might but for the perpetration of the fraud be entitled': *Scott v Metropolitan Police Commissioner* [1974] 3 All ER 1032. See CONSPIRACY TO DEFRAUD.

defunct company. A company (q.v.) which the Registrar of Companies has reasonable cause to believe is non-operational or not carrying on business. He may strike it off the register: Cos.A. 2006, s 1000.

de jure. By right; by lawful title.

delay in litigation. See LACHES.

delay in relation to criminal trial. In *A-G's Reference (No. 2 of 2001)* (2003) *The Times*,

12 December, the HL held that criminal proceedings can be delayed on the ground of a violation of the necessity for a hearing to be held within a reasonable time, under the Human Rights Convention, but only if a fair hearing had become impossible, or it was unfair to try defendant on the ground of some compelling reason.

del credere agent. (*Del credere* = of belief; of trust.) An agent who receives a higher rate of commission than that which is usual, in return for a guarantee that his principal will receive due payment for goods sold.

delegated legislation. Legislation made by some person or body (e.g., a minister or local authority) under authority delegated by Parliament under statute. See, e.g., Planning and Compensation Act 1991, s 84(2). It may take the form of statutory instruments (q.v.) (based commonly on Orders in Council (q.v.)), departmental orders, regulations, rules, circulars, codes of practice. Known also as 'subordinate legislation'. Can be controlled by judicial review, pre-promulgation consultation, supervision by Parliament. For challenge to validity of subordinate legislation (made under Transport Act 1962, s 67), see *Boddington v British Transport Police* [1999] 2 AC 143.

delegated legislation, justification of. Stated in *Report on Ministers' Powers* 1932, to be: pressure on Parliament's time; technicality of much legislation; ease of modification in light of experience; the need for occasional arbitrary and swift action in administrative matters.

delegated legislation, sub-. A 'three-tier' process of legislation: an enabling ('parent') Act is made; regulations are made under that Act; those regulations are utilised so as to create further regulations. See Emergency Powers (Defence) Act 1939, s 1(3); European Communities Act 1972, s 2(2), Sch 2; *Jackson, Stansfield & Sons v Butterworth* [1948] 2 All ER 558.

delegation. The empowering of one person with appropriate and sufficient authority to act for another, e.g., as a representative or agent.

delegation of personal rights. In *Gregory v North Somerset Council* (2003) *The Times*, 21 February, the CA held that a person could not confer on another, through use of power of Attorney, a right to appear in court as that person's lay advocate. The right to appear in person in court could not be delegated, since it is a personal right.

delegation, principle of. An aspect of vicarious and strict liability (qq.v.). 'When an absolute offence has been created by Parliament, then the person on whom a duty is thrown is responsible,

whether he has delegated or whether he has acted through a servant; he is absolutely liable regardless of any intent or knowledge or *mens rea*. The principle of delegation comes into play, and only comes into play, in cases where, though the statute uses words which import knowledge or intent such as in this case “knowingly”; or in some other cases “permitting” or “suffering” and the like, cases to which knowledge is inherent, nevertheless it has been held that a man cannot get out of the responsibilities which have been put on him by delegating those responsibilities to another’: *R v Winson* [1968] 1 All ER 197. For delegation by a government minister to his officials, see *Carltona Ltd v Comms of Works* [1943] 2 All ER 560. See also *Vane v Yiannopoulos* [1964] 3 All ER 820. See *MENS REA*.

delegatus non potest delegare. A delegate cannot delegate. See now Tr.A. 2000, Part IV. ‘The law is not that trustees cannot delegate: it is that trustees cannot delegate unless they have authority to do so’: *Pilkington v IRC* [1962] 3 All ER 622. Under Trustee Delegation Act 1999, s 5, a new Tr.A. 1925, s 25(1), is substituted, allowing a trustee to delegate the exercise of trustee functions by power of attorney. The donor of a power of attorney given under s 25 is liable for a donee’s acts or defaults in the same manner as if they were the donor’s acts or defaults: s 25(7). See *TRUSTEE’S POWER OF DELEGATION*.

de lege ferenda. From law to be passed. Law made for evolving circumstances.

deliverable state. See *GOODS, DELIVERABLE STATE*.

delivery. The voluntary and formal transfer of possession, i.e., the putting of property into the legal possession of another. It may be actual or constructive, e.g., by symbolic delivery (of a bill of lading). See S.G.A. 1979, s 61; *The Naxos* [1990] 1 WLR 1337; *Gerson Ltd v Wilkinson* (2000) *The Times*, 12 September.

delivery of a deed. Formerly performed by the person executing the deed placing his finger on the seal, saying at the same time: ‘I deliver this as my act and deed’. Requirement of sealing is now abolished; delivery is denoted in any way by which a party indicates that he regards the deed as binding on him. See L.P. (Misc. Provs.) A. 1989, s 1; *Longman v Viscount Chelsea* (1989) 2 EGLR 242. See *DEED*.

delivery of goods. It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale: S.G.A. 1979, s 27. Whether it is for the buyer to take possession of the goods or for the seller to send them to the

buyer is a question depending in each case on the contract, express or implied, between the parties: S.G.A. 1979, s 29(1). In *Computer 2000 Ltd v ICM Computer Solutions* (2004) *The Times*, 29 December, the CA held that under a contract of sale, where goods were delivered to a specified address and person, the sellers had performed that part of the contract and were entitled to be paid. See *TIME AS ESSENCE OF A CONTRACT*.

delivery up of goods. Remedy, in a case of conversion (q.v.) or trespass to goods, by which claimant recovers his goods from defendant who is interfering with them, under Torts (Interference with Goods) Act 1977. For an appropriate order, see r 25.1(e).

delivery, writ of. Writ of execution enforcing a judgment for delivery of goods by directing the sheriff (q.v.) to seize goods and deliver to the plaintiff, or for recovery of their assessed value. See CPR, Sch 1; O 45, r 4. A writ of *specific delivery* directs the seizure of goods stated in the writ, but with no alternative for payment of assessed value. See *JUDGMENTS, ENFORCEMENT OF*.

delusion. Continuing self-deception relating to some matter, in spite of evidence to the contrary. 1. In the case of a testator (q.v.), where the delusion does not result in the impairing of his understanding and where it relates to matters which do not involve his property, he may make a valid will: *Smee v Smee* (1879) 28 WR 703. See also *Banks v Goodfellow* (1870) LR 5 QBD 549. 2. For criminal acts committed under an insane delusion, see the M’Naghten Rules (q.v.).

demanding with menaces. See *BLACKMAIL*.
demesne land. Land belonging to Her Majesty in right of the Crown which is not held for an estate in fee simple absolute in possession: *Land Registration Act 2002*, s 132(1).

de minimis non curat lex. The law does not concern itself with trifles. The so-called *de minimis principle* refers, e.g., to some circumstances in which the police might tend to refrain from prosecuting: *Delaroy-Hall v Tadmán* [1969] 2 QB 208; *Regent OHG v Francesca* [1981] 3 All ER 327 (maxim used in relation to delivery of goods).

demise. 1. Transference, on the death of a monarch, of the royal dignity. 2. Transfer by grant of a lease (q.v.) of lands as in a mortgage by a long lease (e.g., 3,000 years): see L.P.A. 1925, ss 85, 86. For meaning of ‘demised premises’, see *Oceanic Village Ltd v United Attractions Ltd* (2000) *The Times*, 19 January. 3. Death – in *Hodgeson v Clare* [2002] there was a home-made will in which a testator used

the phrase 'should my wife demise together with me'. It was held that the words were not ambiguous in relation to Administration of Justice Act 1982, s 21 (1), and that they were clearly related to the event of the testator and wife dying together, and that extrinsic evidence intended to aid interpretation was not admissible.

demolition order. An order requiring that premises be vacated within a specified period of at least 28 days from the date on which the order becomes operative, and be demolished within six weeks after the end of that period, or within a longer period considered reasonable by the local housing authority (q.v.): H.A. 1985, s 267(1). See T.C.P.A. 1990, s 55; Planning and Compensation Act 1991, s 13; SI 99/293.

demonstrative legacy. A gift, in its nature general, directed to be satisfied or paid out of a specified fund or specified part of the testator's property. Example: '£1,000 out of my deposit account with Barclays'. See *Re Webster* [1937] 1 All ER 602. See LEGACY.

demotion claims. Part 2 of Anti-Social Behaviour Act 2003 came into force on 30 June, 2004 (see SI 04/1502). Local authorities, housing action trusts and registered social landlords are now empowered to request demotion orders against anti-social tenants. As a result, such orders can remove security of tenure, temporarily, allowing a landlord to obtain possession without having to prove grounds.

demurrage. An agreed sum to be paid by the charterer to the shipowner as liquidated damages (q.v.) for any delay beyond a time stipulated in the contract. See *The Notos* [1987] 1 Lloyd's Rep 503.

de novo. Anew. See *VENIRE DE NOVO*.

Department for Constitutional Affairs. The Government published, on 25 February 2004, the first draft of the Constitutional Reform Bill and confirmed that the office of Lord Chancellor is to be abolished and replaced by a partnership of the judiciary and the Department of Constitutional Affairs. The Bill proposes a guarantee of judicial independence and makes provision for accountability to Parliament for the efficiency and effectiveness of the court system to be exercised by the Department, which will also be responsible for supporting the judiciary to enable it to carry out its functions. Judicial appointments will be the responsibility of a new, independent judicial appointments commission which will advertise vacancies and evaluate candidates; suitable candidates will be recommended to the Secretary of State for Constitutional Affairs for appointment.

departure directions. Under Child Support Act 1991, s 28A (inserted by Child Support Act 1995, s 1), C.S.P.S.S.A. 2000, Sch 2, a person may apply for a departure direction, which will take into account, for purposes of reassessment of maintenance: special expenses, e.g., costs incurred by non-resident parent in maintaining contact with child; costs attributable to long-term illness of a relevant child.

dependant. One who relies for his support on another. Under Inheritance (Provision for Family and Dependents) Act 1975, those who may apply for reasonable financial provision from the deceased's estate (where they can show that deceased's will or the laws of intestacy, or both together, fail to make a reasonable financial provision for them) include: wife or husband, or former wife or husband who has not remarried, or child of the deceased; any person (not being a child of the deceased) who, in the case of any marriage to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to that marriage; any other person who immediately before the death of the deceased was being maintained, either wholly or partly by the deceased: s 1; any person who was living with the deceased in the same household immediately before the date of death, and had been living with him or her in the same household for at least two years before that date, and was living during the whole of that period as the deceased's husband or wife [this has reference to cohabitants (q.v.)]: s 1(1), (1A), inserted by Law Reform (Succession) Act 1995, s 2. See *Re Hancock* [1998] 2 FLR 346; CPR, Sch 1; O 99 (application under the 1975 Act must be made by issue of a claim form); *Bouette v Rose* (2000) *The Times*, 1 February (mother considered as a dependant of her daughter).

dependent relative revocation. Where the revocation of a will is relative to another will and is intended to be dependent upon the fact of that other will being valid, then unless that other will takes effect, the revocation is ineffective. Example: testator (q.v.) destroys his will with the intention of making another one, but then fails to make another will. The original will is considered as unrevoked. See *Dixon v Solicitor to the Treasury* [1905] P 42; *Re Finmore* [1991] 1 WLR 793. See REVOCATION OF WILL.

dependent territory. Any territory outside the British Isles for whose external relations the government of the UK is responsible.

deponent. One who gives evidence by affidavit (q.v.) or affirmation: PD 32, para 2. See

also r 34.8(2). See DEPOSITION, EVIDENCE BY, UNDER CPR.

deportation. Expulsion from a country. ‘The taking of the person in question from the country from which he is deported to some other place’: *R v Secretary of State for Foreign Affairs ex p Greenberg* [1947] 2 All ER 550.

deportation from the UK. Persons who do not have a right of abode are liable to be removed from the UK under the following circumstances: where over 17, following conviction for an offence punishable with imprisonment where the court recommends deportation; where another person to whose family he belongs is or has been ordered to be deported; where Home Secretary deems deportation conducive to the public good; where they have remained beyond the time limit on a stay or failed to comply with a condition of admission. The court’s recommendation for deportation of an offender who comes from any EU country is subject to EU restrictions on interference with free movement of workers: *R v Bouchereau* [1978] QB 732. See Immigration Act 1971, s 3, Sch 3 (as amended by C.J.A. 1982, Sch 10); Immigration and Asylum Act 1999, ss 63, 64; *R v Immigration Appeal Tribunal ex p Patel* [1988] 1 WLR 375 (deportation for deception after entry); *R v Secretary of State ex p Cheblack* [1991] 2 All ER 319 (deportation on grounds of national security).

deportation, right of appeal against. Procedure whereby the person against whom the deportation order has been made exercises the right of appeal, in the first instance, to the adjudicators appointed by the Home Secretary. Appeal to an adjudicator is confined to cases relating to ‘family’ and ‘the public good’: see Immigration and Asylum Act 1999, s 63, Sch 14, para 44. If dissatisfied with the adjudication, the appellant or Home Secretary may appeal to the Immigration Appeal Tribunal. See Immigration Act 1971, ss 12–22, as amended; *Egbale v Secretary of State for the Home Department* [1997] INLR 88. See IMMIGRATION.

depose. To make a deposition (q.v.) or a statement on oath.

deposit. 1. A sum of money paid on terms under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it, and which are not referable to the provision of property or the giving of security: Banking Act 1987, s 5(1). For fraudulent inducement to make a deposit, see s 35. 2. Payment made in a contract for sale of land,

so as to bind a bargain. See L.P.A. 1925, s 49(2); *Barrington v Lee* [1971] 3 All ER 1231. 3. Use of title deeds as security for a loan (which created an equitable charge (q.v.)). 4. In a contract for sale of goods, ‘a guarantee that the purchaser means business’: *Soper v Arnold* (1889) 61 LT 702. 5. Any sum payable by a debtor or hirer by way of deposit or down payment: C.C.A. 1974, s 189(1). 6. Includes the sense of leaving, remaining or leave lying: *Craddock v Green* [1983] RTR 479; *Scott v Westminster CC* (1996) 93 LGR 370.

deposition, evidence by, under CPR. A party may apply for an order for a person to be examined before hearing takes place. Person from whom evidence is to be obtained following the order is known as a ‘deponent’; his evidence is a ‘deposition’. Examination is on oath before a judge, examiner of the court or some other person appointed by the court. See r 34.15. For enforcement of attendance before an examiner, see r 34.10. Deposition may be given in evidence at a hearing: r 34.11(1). Deponent may be required to attend hearing and give evidence orally: r 34.11(4).

deposition in criminal cases. Statements made on oath before a magistrate or court official by a witness and usually reduced to writing. Depositions may be read, e.g., if the witness is insane, or too ill to attend. See, e.g., *Henriques v R* [1991] Crim LR 912. In the case of certain types of offences against children, the child’s deposition may be read if signed by an examining magistrate or if the court is satisfied that the child’s attendance would involve serious risk to health. See M.C.A. 1980, ss 80, 97A, 103; Magistrates’ Courts Rules 1981, rr 7, 33; C.P.I.A. 1996, Sch 2, para 2. See also Civil Evidence Act 1972, s 1. See EVIDENCE.

Deposit Protection Board. Constituted under Banking Act 1987, s 50 and Sch 4, to administer the Deposit Protection Fund (established by Banking Act 1979, s 21 (now repealed)). If at any time an authorised institution becomes insolvent (see 1987 Act, s 59(1)) the Board will pay to each depositor who has a protected deposit (see s 60) three-quarters of such deposit: s 58. See Bank of England Act 1998, s 29. See BANK, AUTHORISED.

deposit-taking business. Business in the course of which money received by way of deposit (q.v.) is lent to others or any other activity of the business is financed out of the capital of or interest on money received by way of deposit. In general, deposit-taking is prohibited except in the case of the Bank of England, authorised

banks (q.v.), licensed institutions: Banking Act 1987, ss 3–7. For the minimum criteria, see Sch 3. See I.C.T.A. 1988, s 481, as amended; *SCF Finance Co v Masri* [1987] QB 1028. See BANK, AUTHORISED.

deprave. To corrupt. ‘If someone is made or kept morally bad or worse by something they are depraved by it’: *R v Sumner* [1977] Crim LR 362. See Obscene Publications Act 1959. See OBSCENITY.

deprivation of citizenship. Procedure whereby the Secretary of State may remove the status of British and British Dependent Territories citizenship from those registered or naturalised as such if he is satisfied that the registration or naturalisation was obtained by fraud, false representation or concealment of a material fact, or if he is satisfied of their disloyalty, disaffection or where the person has served a year’s imprisonment within five years of registration or naturalisation: B.N.A. 1981, s 40. See *R v Secretary of State for Home Department ex p Ejaz* (1993) *The Times*, 7 December.

deprivation of property, order for. Where a person is convicted of an offence and the court is satisfied that the property in his possession or control at the time of his apprehension had been used to commit or facilitate the commission of the offence or was intended by him to be used for that purpose, an order depriving him of that property may be made: P.C.C.(S.)A. 2000, s 143.

deregulation and contracting out, ministers’ powers. Deregulation and Contracting Out Act 1994, s 1, empowers government ministers to reduce burdens on businesses by amending or repealing by SI any provisions made by an enactment which imposes a burden affecting persons carrying on a trade, business or profession. Similarly, under s 5, ministers are empowered to improve enforcement procedures so far as ‘fairness, transparency and consistency’ are concerned. Under the 1994 Act, Part II, ministers may make orders specifying local authority functions which may be contracted out.

derivative claim. A claim by one or more shareholders of a company where the cause of action is vested in the company and relief is accordingly sought on its behalf. It is an exception to the rule that the proper plaintiff in respect of a wrong alleged to be done to a company is, *prima facie*, the company. See *Foss v Harbottle* (1843) 2 Hare 461; *Fargo v Godfroy* [1986] 1 WLR 1134. See Cos.A. 2006, Part 11.

derivative deed. One deed of settlement or conveyance (q.v.) related to another document

of settlement or conveyance, which enlarges, confirms or otherwise alters it.

derivative trust. A sub-trust (q.v.).

derogate. To annul or restrict the strength of an obligation or right by some subsequent act. ‘No man may derogate from his own grant’: *Wheelodon v Burrows* (1879) 12 Ch D 31. A landlord has an implied obligation not to derogate from his grant (see *Ward v Kirkland* [1967] Ch 194); derogation may occur if the property is ‘rendered unfit or materially less fit to be used for the purposes for which it was demised’: *per* Parker J in *Browne v Flower* [1911] 1 Ch 219. See *Yankwood Ltd v Havering LBC* [1998] EGCS 75; *Peckham v Ellison* [2000] 79 P & CR 276. See European Convention on Human Rights 1950, art 15 (derogations from Convention).

derogation, designated and Human Rights

legislation. Phrase used in Human Rights Act 1998, s 14, to refer to declared derogation of the UK from the European Convention, art 5(3) (concerning the prompt bringing of a suspect before a judge). Designation orders require Parliamentary approval within 49 days (s 16(3)); designated derogations must be reconfirmed every five years (s 16(1)). See SI 01/1216.

descendant. A person descended from an ancestor (q.v.). See *Re Eyton* [1876] WN 142. Generally refers to lineal descendants only.

descent. Devolution (q.v.) of an estate by inheritance and not by will. Prior to their abolition by A.E.A. 1925, s 45, the rules were: descent was traced from the last purchaser (q.v.); priority of males, so that the eldest took to exclusion of others in the same degree; lineal descendants of purchaser represented him; lineal ancestors took after lineal descendants; paternal were preferred to maternal ancestors.

descent, citizenship by. See CITIZENSHIP, BRITISH, ACQUISITION BY DESCENT.

description, sale by. Refers to a specific article sold as an article which corresponds to a description, or to articles to be identified by reference to a certain description. (Description involves ‘an account of an object by a recital of its characteristics and qualities’: Black.) There is an implied condition (q.v.) that, where there is a sale of goods, they shall correspond with their descriptions: S.G.A. 1979, ss 13, 14. See *Harlington Enterprises v Christopher Hull Ltd* [1990] 1 All ER 737; *Stevenson v Rogers* [1999] QB 1028.

desertion. 1. Continual absence from cohabitation, which may be a ground for a decree of divorce or judicial separation (q.v.). ‘Separation

without consent and just cause': *Pheasant v Pheasant* [1972] 1 All ER 587. Characterised by the fact that the common life and common home have ceased to exist: *Walker v Walker* [1952] 2 All ER 138. Cessation of cohabitation and respondent's intention permanently to desert petitioner must be proved. For case of cohabitation during desertion, see *Mat.C.A.* 1973, s 2(5). Desertion for period of two years may be proof of irretrievable breakdown of marriage. See *Mat.C.A.* 1973, s 1(2)(c). 2. Improper absence from one's place of duty with HM Forces, with the intention of remaining permanently absent. See *Army Act* 1955, s 38; *Armed Forces Acts* 1976, 1996, Sch 1; *Reserve Forces Act* 1996, s 98.

desertion, constructive. See CONSTRUCTIVE DESERTION.

desertion, mutual. See MUTUAL DESERTION.

designated land (in charities). Land held on trusts which stipulate that it is to be used for the purposes, or any particular purposes, of the charity. *Charities Act* 2006 s 40.

design right. A property right in an original design, i.e., the design of any aspect of the shape or configuration of the whole or part of an article: *Copyright, Designs and Patents Act* 1988, s 213. The designer is the first owner of the right: s 215. Maximum period of protection is 25 years: s 216. Remedies for infringement include damages, injunction: s 229. See also *Registered Designs Act* 1949, as amended by 1988 Act, Sch 4.

de son tort. See EXECUTOR DE SON TORT; TRUSTEE DE SON TORT.

destroy. Appears to imply, not necessarily demolition, but rather the rendering of property useless for its intended purpose: *Samuels v Stubbs* [1972] 4 SASR 200.

desuetude. Disuse, as in reference to 'practices which have fallen into desuetude'. A statute does not become inoperative merely through desuetude: *R v LCC* [1931] 2 KB 215.

detain. To hold or retain as though in custody. While every arrest involves a deprivation of liberty, the converse is not necessarily true in that arrest can only be effected in the exercise of an asserted authority: *R v Brown* [1977] RTR 160. For detention of goods, see r 25.1(1)(c). See ARREST.

detainer, forcible. See FORCIBLE DETAINER.

detention and training orders. 1. Under *P.C.C.(S.)A.* 2000, s 100, the court may order that an offender under 18 shall be subject, for the term specified under the order, to a period of detention and training, followed by a period

of supervision. For length of period to be served in secure accommodation (e.g., secure training centre), see ss 102, 107. 2. CA held in *R v Slocombe* [2005] *The Times*, 6 December, where a young offender is convicted of indecent assault and a detention and training order is imposed under the *Powers of Criminal Courts (Sentencing) Act* 2000, for the purposes of s 131 and s 82(1) of the *Sexual Offenders Act* 2003, the period of detention to be considered is the actual period itself and not the whole period of the detention and training order.

detention centre. A place used solely for the detention of detained persons but which is not a short-term holding facility (place used solely for detention for periods of not more than seven days), a prison or part of a prison: *Immigration and Asylum Act* 1999, s 147. For management and rules, see ss 148, 153.

detention, mental health. European Court of Human Rights held in *Benjamin and Wilson v UK* (*Application No.* 28212/95) (2002) *The Times*, 9 October, that European Convention, art 5.4 (affecting speedy decision by court in relation to lawfulness of detention) was infringed where a mental health review tribunal lacked the power to order release of a detainee (since the power lay with Home Secretary).

detention, police. A person is in police detention if he has been taken to a police station after being arrested for an offence, or he is arrested at a police station after attending there voluntarily or accompanying a constable to it, and is detained there, or is detained elsewhere in charge of a constable: *P.&C.E.A.* 1984, s 118, as amended; *Terrorism Act* 2000, Sch 8, Sch 9, para 5(12); *R v Hughes* [1994] 1 WLR 876. See *Revised Code C* (1991). He must not be kept in police detention except in accordance with the provisions of Part IV of the Act: s 34(1), as amended. In general, he must not be kept in detention for more than 24 hours before being charged: s 41(1); he must be brought before a magistrates' court as soon as practicable and not later than the first sitting after he is charged: s 46(1). See *C.J.P.O.A.* 1994, s 29, inserting *P.&C.E.A.* 1984, s 46A (power of arrest for failure to answer to police bail). For compensation for detention in custody caused by wrongful conviction, see *R v Secretary of State for Home Department ex p Garner* (1999) 149 NLJ 637.

detention, sentence of in young offender institution. No court is to pass a sentence of detention in a young offender institution or a sentence of custody for life, and no court is to