

JURD7121-CCP

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BAIL-Bail Act 2013-see p329

Step 1: Show Cause Offence? —s 16B—NB: drug offence w/ commercial quantity (s 16B(f))

- ✧ Refuse bail UNLESS the accused shows cause why his/her detention is unjustified—s 16A(1)
- ✧ If D does show cause, then turn to Unacceptable Risk Test—s 16A(2)
- ✧ not apply if under the age of 18—s 16A(3)

Step 2: Unacceptable Risk Test—s 17—**refuse** bail if D is released from custody will:

- a) fail to appear at any proceedings for the offence, or
- b) commit a serious offence, or
- c) endanger the safety of victims, individuals or the community, or
- d) interfere with witness or evidence

assess by considering the matters set out in s 18

Step 3: Bail Condition—s 20A—any condition that must be imposed to address any bail concerns?

- ✧ yes—conditional release
- ✧ no—unconditional release, which means: a. to release without bail; or b. to dispense with bail; or c. to grant bail without the imposition of bail condition

Exception: Offences for which there is **A Right to Release**—must release (un/conditional) —s 21(1)

s 21 (2) There is a right to release for the following offences:

- (a) a fine-only offence,
- (b) an offence under the Summary Offences Act 1988, other than an excluded offence,
- (c) an offence that is being dealt with by conference under Part 5 of the Young Offenders Act 1997.

[Legislation inserted here]

Police Powers:

ARREST, DETAIN, SEARCH

Powers of ARREST: s 99 of LEPR:

- s 99(1): Police may arrest without warrant if:
- (a) suspects on reasonable grounds is or has committed an offence; (TEST1: REASONABLE SUSPICION) AND
- (b) satisfied that the arrest is reasonably necessary for any one or more of the following reasons (TEST2: REASONABLY NECESSARY)
- (PURPOSES OF ARREST)**
- (i) to stop the person committing an offence;
- (ii) to stop the person fleeing;
- (iii) to enable inquiries to be made to establish the person's identity, or if the police officer suspects on reasonable grounds that identity information is false;
- (iv) to ensure person in court;
- (v) to obtain property in the possession;
- (vi) to preserve evidence or prevent the fabrication of evidence,
- (vii) to prevent the harassment of witness;
- (viii) to protect the safety or welfare of any person,
- (ix) because of nature and seriousness.

- (2) If directed by another officer. Other officer should have lawful means.

- (3) Must take person as soon as possible to authorised officer to be dealt with in accordance with the law.
- (4) Person who has been arrested lawfully may be lawfully detained.
- (5) This section does not authorise a person to be arrested for an offence for which the person has already been tried.

Alternatives to arrest:

Considering whether an arrest is reasonably necessary for one or more of the above reasons may require you to consider facts and circumstances particular to the person. your knowledge of things such as the person's background, residence or employment may be relevant.

-if cannot satisfy one of these reasons, must:

- Summons/notices
- Cautions/warnings
- Penalty notice
- Court attendance notice
- Youth justice conferencing

Voluntary Attendance and Consent S and J:

IF: The circumstances convey to a reasonable person that he had no genuine choice as to whether to accompany the police officer; OR, the degree of de facto over their freedom of movement

Then: the police off must make it clear that the suspect is not under arrest and is free to refuse to accompany him.

DPP v Carr—arrest as the last resort(repealed)

Facts:

- Carr aboriginal man arrested for offensive language
- Instead of dealing with the matter via summons- was arrested by police
- Magistrate had held that evidence obtained for matter should be dismissed under s 138 of Evidence Act 1995- Carr should have been summoned
- s138 "improperly" – objective test – usual police

Issue: Principles of arrest as a last resort.

Judgement:

- it is inappropriate for powers of arrest to be used for minor offences where the defendant's name and address are known, there is no risk of him departing and there is no reason to believe that a summons will not be effective.

TEST 1: Suspect on reasonable grounds:

Rondo:

Facts:

- Appeal against conviction of supply of cannabis & cultivating prohibited plant
- police stopped vehicle, searched it & found money in the console & cannabis leaf in the glove box – they then got warrant to search house

Judgement:

- o Unlawful stopping = subsequent search was illegal
- 1. **A reasonable suspicion involves less than a reasonable belief but more than a possibility**
- 2. **Some factual suspicion must be shown – mustn't be arbitrary**
- 3. **Source of officer's info & its content must be assessed in light of the whole of the surrounding circumstances**

Mcclean: --arrest for inquiry, then resist arrest.

• HELD:

1. it is not enough to arrest a person simply because there is a reasonable suspicion that they have committed an offence
2. must necessary to achieve one of the purpose set out in s 99.
3. for the **purpose of investigation** or interrogation is unlawful.
4. every citizen should be entitled to **resist arrest** unless that arrest is lawful.
5. unquestioning obedience does not flourish on Australian soil

DRUG

- **For DOLI INCAPAX:** (*Children (Criminal Proceedings) Act 1987 s 5*)

under 10 = incapable

age of 10 but is not yet 14—presumption: not intending to commit criminal offences

rebuttable by P—knew the act was seriously wrong 'as distinct from an act of mere naughtiness or childish mischief. (*C (A Minor) v DPP*)

- **For VOLUNTARINESS:**

Use just one sentence to deal with the some less controversial issues like voluntariness.

E.g., clearly the accused act deliberately, so there is no problem with voluntariness.

SO: Possession s 10 Element: - PD – sch 1 - possession-TEST - not unlawful if prescribed	TEST FOR POSSESSION 1. ACTUS REUS A degree of physical control of the item (AR) ➤ Filippetti —(group situation)—All 6 occupants had equally free access and made equally free use of the lounge where the drugs were found i) Should be <u>exclusive physical control</u> of the drugs. ii) Ultimately, need to negate possession on the part of the others. ➤ Dib —drugs in foil on the top of a fridge sitting in the house of which the daughter has a licence (3 others were present) i) When possession is alleged, the accused had <u>the right to exclude any person</u> not acting in correct with him from interference with the property. ii) The property shall <u>either in his manual possession</u> , or in a place he may <u>go without bar</u> (in order to obtain it). ---also the test for <i>joint possession</i> (according to the bench book) ➤ Delon —hidden drugs i) Hide the thing effectively so that he can take it into his physical control when he wishes but <u>others are unlikely to discover it except by accident</u> . 2. MENS REA: 1 st MR: An intention to control the item (inferred by proof of an <u>awareness of its existence</u>) and 2 nd MR: An intention to control a prohibited drug (inferred from proof of an awareness of the <u>likelihood of its nature</u>) ➤ He Kaw Teh i) Know of the <u>existence</u> and <u>nature</u> , or of the <u>likely</u> existence and likely nature ii) The onus (BRD) is on the P. ➤ Baird iii) Enough if proved that D <u>believed</u> that the substance in question was (illicit drugs). ➤ Saad iv) <u>Belief (falling short of actual knowledge)</u> that article comprised or contained a narcotic drug would sustain an inference of intention v) Be aware of the <u>likelihood</u> , or a <u>significant or real chance</u> , that his conduct involved that illegal act. ➤ Amanatidis —drug found in D's car of which his daughter, a heroin user, also has the key. Facts: a) D and his daughter is heroin users b) 9 grams of heroin was found inside a car for which he had the key.
SO: Possession of Equipment for Administration s 11 - equipment for the administration - possession-TEST - not apply to syringe or needle	
SO: Sale, supply and display of water pipes and ice pipes s 11A - pipes—definition in s 11A - sale/ supply commercially/display in a shop (in s 11A) - guilty UNLESS the person satisfies the court that the display was not for a commercial purpose	
SO: Possession of tablet press or drug encapsulator s 11B - definition in s 3 - possession-TEST - reasonable excuse	
SO: self-administration of prohibited drugs s 12 - administer (s 5) (attempts to) to him/herself (AR) - PD in sch 1 (AR) - general + 2 nd MR (if necessary) - lawful if prescribed	
SO: Administration of prohibited drugs to others s 13 - administer (s 5) (or attempts to) to another - PD in sch 1 - general + 2 nd MR (if necessary) - lawful if prescribed	
SO: Permitting another to administer prohibited drugs s 14 - permit another to (attempt to) administer to the accused - a PD - general + 2 nd MR (if necessary) - lawful if prescribed.	

