

# Evidence Exam Notes

## Police Powers: Arrest

### Part 1: Police Powers

- In NSW: powers in Law Enforcement (Powers and Responsibilities) Act 2002 (aka LEPR)
- There are a few remaining common law powers (s4 LEPR)

Once an Arrest occurs, it triggers a range of other police powers, including the power to:

1. Detention
2. Interrogation
3. Search (of that person) and Seizure (seize possession of their property)
4. Finger print and photographs

### (i) Arrest Defined

Arrest is established once person is deprived of liberty & are no longer a free person (*R v O'Donoghue*)

- Mere words may be sufficient. No longer requires actual seizing or touching of the suspect. *Hatzinikolaou v Snape (1989)*: so long as they can move when and where they want to.
- Apart from making it clear that the person is no longer free to go, Police must also tell the person why he is being arrested: *NSW v Dally [2007]*.

### (ii): Arrest Powers

- Arrest **with Warrant** s101 LEPR – straight forward (b/c judge has ordered it)
- Arrest **without Warrant** (s99 LEPR) (\*\*main one)
- Public arrest - **Powers of Others to Arrest without Warrant** (s100 LEPR)\*

### (A) Arrest Without Warrant

**2 Stage Test**: under s99 a police officer 'may'

1. Whether **an officer suspects on reasonable grounds** that an offence is or has been committed.

2. **Whether the officer is satisfied that the arrest is reasonably necessary.**

- This must satisfy one of the grounds in s99(1)(b)(i)-(ix).

## Admissions

**Another exception to hearsay rule: IE EVIDENCE OF AN ADMISSION CAN BE ADMITTED**

Admissions generally considered to be more reliable than other examples of Hearsay (hence broader acceptance).

### 1. The Rule

**S 81 – Hearsay and opinion rules: exception for ADMISSIONS & related representations**

- (1) The hearsay rule and the opinion rule do not apply to evidence of an admission.
- (2) The hearsay rule and the opinion rule do not apply to evidence of a previous representation:
  - (a) that was made in relation to an admission at the time the admission was made, or shortly before or after that time, and
  - (b) to which it is reasonably necessary to refer in order to understand the admission. (ie **ancillary stuff needed to understand admission**)  
EG: He was just asking for it.” (asking for what?) this is how s81(2) ancillary works – helps us understand.

Example:

D admits to W, his best friend, that he sexually assaulted V. In D's trial for the sexual assault, the prosecution may lead evidence from W:

- a) that D made the admission to W as proof of the truth of that admission (**hearsay use**), and
- b) that W formed the opinion that D was sane when he made the admission. (**opinion use**)

***ie s81 together – admission and docs to understand are exceptions to hearsay rule***

### Dictionary Pt 1 - Admissions

#### **Dictionary pt 1 – Admissions**

**admission** means a previous representation that is:

- (a) Made by a person who is or becomes a party to a proceeding (including a **defendant in a criminal proceeding**, AND  
(ie includes anyone; civil or criminal)
- (b) adverse to the person's interest in the outcome of the proceeding.

Very Broad not just 'I killed her'. It has been extended to facts inferred from words or conduct, even from silence. Two types of admissions:

(1) **Inculpatory Admissions**: ones that **express or imply something that establishes guilt**.