

LAWS1021 - CRIME AND THE CRIMINAL PROCESS

Table of Contents

| | |
|--|----|
| LEGAL PERSONHOOD | 3 |
| ARREST WITHOUT WARRANT | 4 |
| SEARCH POWER WITHOUT WARRANT | 6 |
| SEARCH POWER DURING ARREST | 8 |
| SEARCH POWER OF VEHICLES WITHOUT WARRANT | 10 |
| PERSONAL SEARCHES | 11 |
| QUESTIONING AND INVESTIGATING POWERS | 14 |
| DRUG DETECTION DOGS | 16 |
| POLICE USE OF FORCE..... | 18 |
| MOVE ON POWERS FOR PUBLIC PLACES | 18 |
| MOVE ON POWERS FOR INTOXICATED PEOPLE | 19 |
| POSSESSION OF A PROHIBITED DRUG | 21 |
| CULTIVATION OF A PROHIBITED PLANT | 23 |
| MANUFACTURE AND PRODUCTION | 25 |
| POSSESSION OF PRECURSORS | 27 |
| SUPPLY..... | 28 |
| TRAFFICABLE QUANTITY - DEEMED SUPPLY | 31 |
| ONGOING SUPPLY BASIS | 33 |
| AIDING AND INCITING SUPPLY | 34 |

| | |
|--|----|
| BAIL..... | 35 |
| OFFENSIVE CONDUCT..... | 40 |
| OFFENSIVE LANGUAGE..... | 44 |
| RIOTS..... | 48 |
| AFFRAY..... | 49 |
| UNLAWFUL ASSEMBLY..... | 50 |
| CRIMINAL ASSOCIATION OFFENCES..... | 51 |
| ASSOCIATING WITH A MEMBER OF A TERRORIST ORGANISATION..... | 53 |
| CONSORTING..... | 54 |
| ESSAY NOTES..... | 56 |

*Note: The legislation that has been copied for these notes may not be complete and may have more circumstances/conditions contained in them.

Legal Personhood

Requirements: Children (Criminal Proceedings) Act s5

It shall be conclusively presumed that no child who is under the age of 10 years can be guilty of an offence.

Doli Incapax
C v DPP [1995]

From ages 10 to under 14, a child has a rebuttable presumption of innocence.

To proceed with charges, the crown must:

- 1) Prove beyond reasonable doubt that the child's act is distinct from mere naughtiness or childish mischief,
- 2) Prove the child's act was seriously wrong according to ordinary standards of the reasonable person

RP v The Queen [2016]

Even if a child's conduct goes beyond normal childish acts or experimentation, it does not mean that the child thought it to be seriously

wrong by normal adult standards and distinct from being merely 'rude or naughty'.

You may consider the development and upbringing to determine their intellectual limitations.

RH v DPP

The test is subjective and considers what the child actually knew, not what they ought to have known. There must be evidence presented to demonstrate their state of mind.

Not under 14

The accused is not under the age of 14 and can be charged for criminal offences.

Arrest without Warrant

Step 1:

Under s99 of LEPR, police officers may arrest without a warrant.

Lawful Arrest LEPR s99

To lawfully arrest an individual, the arrest must satisfy the two-stage test:

Test 1

Suspicion on Reasonable Grounds LEPR s 99(1)(a)

(a) the police officer suspects on reasonable grounds that the person is committing or has committed an offence

(R v Rondo)

Facts: Teenager driving parents' expensive-looking car. Police thought that was reasonable suspicion to believe he was a drug dealer, and thus search the vehicle. Search was deemed illegal.

- (i) A reasonable suspicion involves 'less than a belief but more than a possibility', where it must be something which would create an apprehension of fear in the mind of a reasonable person (Rondo)
- (ii) A reasonable suspicion cannot be arbitrary and must have some factual basis (Rondo)
- (iii) The information in the mind of the police officer at the time of arrest is important to ascertain whether a reasonable suspicion could be formed (Rondo)

Test 2

Arrest must be Reasonably Necessary LEPR s 99(1)(b)

(b) the police officer is satisfied that the arrest is reasonably necessary for any one or more of the following reasons:

- (i) to stop the person committing or repeating the offence or committing another offence,
- (ii) to stop the person fleeing from a police officer or from the location of the offence,
- (iii) to enable inquiries to be made to establish the person's identity if it cannot be readily established or if the police officer suspects on reasonable grounds that identity information provided is false,
- (iv) to ensure that the person appears before a court in relation to the offence,
- (v) to obtain property in the possession of the person that is connected with the offence,
- (vi) to preserve evidence of the offence or prevent the fabrication of evidence,
- (vii) to prevent the harassment of, or interference with, any person who may give evidence in relation to the offence,
- (viii) to protect the safety or welfare of any person (including the person arrested),
- (ix) because of the nature and seriousness of the offence.

Common Law Authority

The following factors are then considered:

- (i) It is not reasonably necessary to arrest for the purpose of investigation or questioning (*Mclean*).

Arrest as a
Last Resort

(DPP v Carr)

The power to arrest should be the last resort (*Carr*)

- (i) The NSW Police Code of Practice requires police officers to always consider alternatives to arrest (caution, warning, move on, etc) (*Carr*)
- (ii) If the accused did not demonstrate any behaviour that would endanger the community, the situation does not call for the urgency of arrest (*Carr*)
- (iii) If the police knew the defendant's name and address, arrest is not necessary for minor offences (*Carr*). A summons would be more appropriate in these circumstances (*Dobson*).

Step 2:

Nature of Arrest

The nature of the arrest is then considered.

The police officer must make it plain, by words and conduct, that the person is being arrested and is no longer a free person (*Inwood*)

The police officer must further inform the person of the reason as to why they are being arrested unless they themselves make this practically impossible (*Vincent*)

Other factors
to consider

LEPRA s99

- (2) A police officer may also arrest a person without a warrant if directed to do so by another police officer. The other police officer is not to give such a

direction unless the other officer may lawfully arrest the person without a warrant.

- (3) A police officer who arrests a person under this section must, as soon as is reasonably practicable, take the person before an authorised officer to be dealt with according to law.

Note : The police officer may discontinue the arrest at any time and without taking the arrested person before an authorised officer--see section 105.

- reason s105(2)(a): if the arrested person is no longer a suspect or the
for the arrest no longer exists for any other reason
some s105(2)(b): if it is more appropriate to deal with the matter in
other manner

- (4) A person who has been lawfully arrested under this section may be detained by any police officer under Part 9 for the purpose of investigating whether the person committed the offence for which the person has been arrested and for any other purpose authorised by that Part.
- (5) This section does not authorise a person to be arrested for an offence for which the person has already been tried.

LEPRA s202

- (1) A police officer who exercises a power to which this Part applies must provide the following to the person subject to the exercise of the power:
- (a) evidence that the police officer is a police officer (unless the police officer is in uniform),
 - (b) the name of the police officer and his or her place of duty,
 - (c) the reason for the exercise of the power.

Search Power without Warrant

Relevant
offences
(Section 20)

The following offences are
"relevant offences" for the purposes of this Division:

- (a) indictable offences,
- (b) an offence against section 93FB of the *Crimes Act 1900*,
- (c) an offence against the *Weapons Prohibition Act 1998*, the *Firearms Act 1996*, or a regulation made under either of those Acts,
- (d) an offence against a provision of Part 2 of the *Explosives Act 2003*.

Step 1:

Lawful Search LEPRA s21

Under s21(1) of LEPRA, police may lawfully search a person without a warrant if they suspect on reasonable grounds that any of the following circumstances exists:

- (a) the person has in his or her possession or under his or her control anything stolen or otherwise unlawfully obtained,

- (b) the person has in his or her possession or under his or her control anything used or intended to be used in or in connection with the commission of a relevant offence,
- (c) the person has in his or her possession or under his or her control in a public place a dangerous article that is being or was used in or in connection with the commission of a relevant offence,
- (d) the person has in his or her possession or under his or her control, in contravention of the *Drug Misuse and Trafficking Act 1985*, a prohibited plant or a prohibited drug.

Consent LEPRA s34A

- (1) A police officer may search a person with the person's consent but only if the police officer has sought the person's consent before carrying out the search.
- (2) A police officer must, before carrying out any such consensual search, provide the person with:
 - (a) evidence that the police officer is a police officer (unless the police officer is in uniform), and
 - (b) the name of the police officer and his or her place of duty.

Ancillary
Powers to
search
(Section 21A)

LEPRA s21A (if applicable):

- (1) In conducting a search of a person under section 21, a police officer may, if the police officer suspects on reasonable grounds that a thing referred to in section 21 (1) (a), (b), (c) or (d) is concealed in the person's mouth or hair, require the person:
 - (a) to open his or her mouth to enable it to be searched, or
 - (b) to shake, or otherwise move, his or her hair.
- (2) Subsection (1) does not authorise a police officer to forcibly open a person's mouth.
- (3) A person must not, without reasonable excuse, fail or refuse to comply with a requirement made by a police officer in accordance with this section.
Maximum penalty: 5 penalty units.

Step 2:

Reasonable Suspicion

(R v Rondo)

- (i) A reasonable suspicion involves 'less than a belief but more than a possibility', where it must be something which would create an apprehension of fear in the mind of a reasonable person (*Rondo*)
- (ii) A reasonable suspicion cannot be arbitrary and must have some factual basis (*Rondo*)
The information in the mind of the police officer at the time of arrest is important to ascertain whether a reasonable suspicion could be formed (*Rondo*).

Step 3:

Seize and Detain LEPRA s21

Under s21(2), a police officer may seize and detain:

- (a) all or part of a thing that the police officer suspects on reasonable grounds is stolen or otherwise unlawfully obtained, and
- (b) all or part of a thing that the police officer suspects on reasonable grounds may provide evidence of the commission of a relevant offence, and
- (c) any dangerous article, and
- (d) any prohibited plant or prohibited drug in the possession or under the control of a person in contravention of the *Drug Misuse and Trafficking Act 1985*, found as a result of a search under this section.

Safeguards

From the Evidence Act, there are certain safeguards for individuals under investigation.

Adversely affected

Evidence Act s85

admission
(Evidence Act Section 85)

- (1) Evidence of the admission is not admissible unless the circumstances in which the admission was made were such as to make it unlikely that the truth of the admission was adversely affected.

Improperly obtained evidence

Evidence Act s138

(Evidence Act Section 138)

- (1) Evidence that was obtained:
 - (a) improperly or in contravention of an Australian law, or
 - (b) in consequence of an impropriety or of a contravention of an Australian law,
 is not to be admitted unless the desirability of admitting the evidence outweighs the undesirability of admitting evidence that has been obtained in the way in which the evidence was obtained.

Types of improper evidence

Evidence Act s139

(Evidence Act Section 139)

- (2) For the purposes of section 138(1)(a), evidence of a statement made or an act done by a person during questioning is taken to have been obtained improperly if:
 - (a) the questioning was conducted by an investigating official who did not have the power to arrest the person, and
 - (b) the statement was made, or the act was done, after the investigating official formed a belief that there was sufficient evidence to establish that the person has committed an offence, and
 - (c) the investigating official did not, before the statement was made or the act was done, caution the person that the person does not have to say or do anything but that anything the person does say or do may be used in evidence.

Search Power during Arrest

Step 1:

Lawful Search LEPR s27