

JURD7121 Crime and the Criminal Process

Master Cheat Sheet

The whole paper on one map: sequences, quantities and traps

Master Cheat Sheet

The paper, and how to spend the time

One fact scenario drives Q1 to Q3. Q4 is the essay plus your observation log.

Q	Topic	Marks	Suggested time
1	Police powers under LEPR	20	35 min
2	Offences, elements, admissibility	20	35 min
3	Bail under the Bail Act 2013	10	20 min
4	Criminal process essay	37.5	55 min
4	Court observation log	12.5	already written

The three things the examiner rewarded across Q1 to Q3: fixing the **moment** a power was exercised, using the **statutory doctrines that help the prosecution** rather than stopping at the obvious charge, and naming **actual conditions** rather than concluding "bail should be granted".

Q1 Police powers, run it in this order

STEPS

1. **Who exercised what power, and when.** List each act separately. A search, an arrest and a use of force are three exercises, each needing its own justification.
2. **Which search power?** Three of them, and they are not interchangeable. No arrest: **s 21**, on one of the four closed **s 21(1)** circumstances (a dangerous implement in a public place or school is **s 23** instead, and the seizure power in **s 23(5)** is confined to the same). At or after arrest: **s 27**, available to the arresting officer or any officer present, on reasonable grounds that it is **prudent** to search to ascertain whether the person is carrying a listed thing. Only **s 27(1)** carries the evidence limbs (c) to (e); an arrest merely to take someone into lawful custody drops you to **s 27(2)**, safety and escape only. Once in lawful custody after arrest, at a station or in transport: **s 28A**, no suspicion required, anything found may be seized. **s 27(4)** says the two are cumulative, not competing, so on a street arrest run **s 27** as the primary power and **s 28A** for anything done at or on the way to the station. Ancillary mouth and hair power is **s 21A** for a **s 21** search and **s 28** for a **s 27** search, nothing for **s 28A**. Whichever power, the Div 4 manner rules still bite.
3. **Reasonable suspicion, at the moment of exercise.** **s 21(1)** plus *Rondo*. Suspicion must exist when the power is used. What the officer learns afterwards is too late. A second officer must form her own suspicion; a briefing is not automatically enough.
4. **Which search is it?** General search **s 30**, strip search **s 31**, ancillary **s 21A**, consent **s 34A**. **s 30(a)** is quickly running hands over outer clothing; **s 30(b)** allows removal of a coat, jacket, gloves, shoes, socks and hat but not all clothing. Anything more is a strip search.
5. **If strip search:** **s 31(b)** is two cumulative requirements, seriousness and urgency. Kill the second one specifically. Then **s 32** privacy safeguards and **s 33** rules.
6. **Arrest.** **s 99(1)(a)** suspicion on reasonable grounds, then separately **s 99(1)(b)** reasonably necessary for one of the listed reasons. (a) can be satisfied while (b) is not, because police could seize under **s 21** instead. Then *Carr*, arrest as a last resort, and **s**

[2] Reasonably necessary (s 99(1)(b))

FILL-IN

- The officer must also have been satisfied that arrest was **reasonably necessary** for one of the nine s 99(1)(b) reasons; the reason in issue is ____ [eg (i) stop the offence continuing; (ii) stop flight; (iii) establish identity; (viii) protect safety].
- "Reasonably necessary" is a genuine, proportionate, evaluative judgment, more than convenient but not essential: *Jankovic*; it is not met if a less drastic alternative (a warning, CIN, CAN or FCAN) would achieve the purpose: *Wotton*.
- Arrest is a **last resort** at common law, and that principle survives the reformed s 99: *Carr* (adopting RCIADIC Rec 87).
- Here the officer [did / did not] weigh the alternatives: [decided to arrest in advance / gave only reason ____ / ignored an available CAN], as in *Jankovic*.
- Therefore arrest [was / was not] reasonably necessary. [If not -> unlawful.]

[3] Proper purpose (s 99(3))

FILL-IN

- At the time of arrest the officer must intend to **charge** [name] and take them before a court as soon as reasonably practicable: s 99(3).
- An arrest merely to question, or to investigate whether to charge, is for an **improper purpose** and unlawful: *Robinson*.
- Here the officer's purpose was _____. Therefore the purpose was [proper / improper, as in *Robinson*].

[4] Reasonable force (ss 230-231) , if force was used (see Topic 2)

FILL-IN

- Force to make an arrest must be reasonably necessary (s 231), judged **objectively** (*Greenhalgh*); if excessive, the arrest is unlawful. [Full treatment in Topic 2.]

[C] Consequences (s 138 + execution of duty)

FILL-IN

- [If any element fails] The arrest is [unlawful / improper].
- Because the officer was not acting in the **execution of duty**, the charge[s] of [resist / assault police] under s 60 (or s 60(1AA)) cannot be made out: *Coleman v Power*.
- The evidence is liable to be excluded under s 138 *Evidence Act 1995* (NSW): its probative value is ____; the offence is [summary / serious]; and the gravity of the impropriety is ____ (a deliberate deprivation of liberty for a minor matter weighs toward exclusion: *Bennett*).
- [Civil] [name] may also sue for false imprisonment or assault: *Gibb-Smith*.

Cite this for that

proposition	cite
when the arrest occurred; words alone can suffice	<i>Donohue</i> ; <i>Bennett</i>
reasonable suspicion test (more than possibility, less than belief)	<i>Rondo</i>
innocent facts do not raise suspicion	<i>Fortescue</i> ; <i>Attalla</i> ; <i>Filip Black</i>

4. Bail (Bail Act 2013, the two-step test)

FLOWCHART, how is bail determined? (Bail Act 2013, Pt 3) , work top to bottom

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[0] RIGHT TO RELEASE? s 21
    fine-only offence, or most Summary Offences Act matters -> bail cannot be refused
    | no
    v
[1] SHOW CAUSE OFFENCE? s 16B (and accused 18+ s 16A(3))
    triggers: life; sexual / serious violence / DV; weapons; commercial drugs;
    a serious indictable offence committed WHILE ON BAIL / parole s 16B(1)(h)
    | yes -> accused must SHOW CAUSE on the balance of probabilities s 32
    |       why detention is not justified s 16A (court may use anything
    |       credible s 31, not just s 18)      not shown -> BAIL REFUSED
    | shown / not a show cause offence
    v
[2] UNACCEPTABLE RISK (Div 2, ALL offences)
    assess the four s 17(2) bail concerns on the s 18 factors ONLY
    (fail to appear | commit a serious offence | endanger safety | interfere)
    | can conditions mitigate the concern? s 20A / s 18(1)(p)
    | yes -> RELEASE with conditions s 20 (types: ss 25-30)
    | no -> UNACCEPTABLE RISK -> REFUSE s 19
    v
[3] OVERRIDES
    s 22B post-conviction / pre-sentence, full-time likely -> special or
    exceptional circumstances
    s 22C a 14-18 year-old on bail for a relevant offence -> "high degree
    of confidence" (R v RB: a test unknown to the criminal law)
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    keep SHOW CAUSE and UNACCEPTABLE RISK separate (Tikomaimaleya; s 19(3))
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The fill-in answer bank

[0] Right to release (s 21)

FILL-IN

- [name] is charged with [offence]. [If a fine-only offence, or a Summary Offences Act offence (other than an excluded one), there is a **right to release** and bail cannot be refused: s 21.] [Otherwise, proceed.]

[1] Show cause (s 16A / s 16B)

FILL-IN

- The first question is whether this is a **show cause offence** (s 16B). [name] is charged with [offence], which is a show cause offence because [s 16B limb, eg a serious indictable offence committed while on bail, s 16B(1)(h)]. [Show cause does not apply if the accused was under 18 at the time: s 16A(3).]
- For a show cause offence the authority **must refuse bail unless the accused shows cause** why their detention is not justified, on the balance of probabilities (s 32): s 16A; the court may consider anything credible or trustworthy (s 31), not only the s 18 factors.
- Cause here: [family vulnerability (*Mawad*); a first offence; strong ties; a weak prosecution case; ____]. Cause may be a single powerful factor or a combination, and there is no need to show "special or exceptional" circumstances (*Moukhallaletti*).
- Therefore cause [is / is not] shown. [If not -> bail refused. If shown -> go to unacceptable risk.]

7. Mens rea (intention, recklessness, knowledge)

FLOWCHART, mens rea , find the fault for EACH actus reus element

- [1] What does the STATUTE require? read the section
| silent? -> presumption of full MR (He Kaw Teh) -> strict/absolute (Topic 8)
v
- [2] WHICH fault standard? (may differ element by element)
INTENTION (highest) = the result is the accused's PURPOSE Zaburoni
RECKLESSNESS = foresight of a risk, and proceeding anyway Zaburoni
degree: MURDER = probability (Crabbe); assault/property = possibility (Blackwell)
KNOWLEDGE = subjective awareness of a circumstance (wilful blindness counts) ..
Crabbe
NEGLIGENCE = OBJECTIVE, a great falling short of the reasonable person (not subjective)
v
- [3] PROVING intent: it is INFERRED from the facts (Pemble); there is NO presumption that a person intends the natural consequences of the act .. Parker (not Smith)
v
- [4] Extras: transferred malice; ULTERIOR intent (eg break-and-enter with intent, s 113);
basic vs specific intent (the line mainly bites for INTOXICATION)

The fill-in answer bank

[1]-[2] The required fault

FILL-IN

- The mens rea for [the AR element] is [intention / recklessness / knowledge], because the section [says so / is silent, so the presumption of full mens rea applies: *He Kaw Teh*].
- **Intention** means the result was the accused's **purpose or aim**: *Zaburoni*. Here [name]'s purpose was ____.
- **Recklessness** means the accused **foresaw the risk** and went on regardless: *Zaburoni*; the degree depends on the offence, **probability** for murder (*Crabbe*), **possibility** for assault and property offences (*Aubrey*; *Blackwell*).
- **Knowledge** means subjective awareness of the circumstance; **wilful blindness** (deliberately not asking) is treated as knowledge: *Crabbe*.
- Therefore the fault element [is / is not] made out.

[3] Inferring intention

FILL-IN

- Intention is **inferred** from what the accused did and said (*Pemble*); the tribunal must not **presume** that a person intends the natural consequences of their acts: *Parker* (rejecting *DPP v Smith*).
- Here the available inference is ____.

Cite this for that

proposition	cite
mens rea is wholly subjective	<i>DPP v Morgan</i>
intention = the result is the purpose; recklessness = foresight of a risk	<i>Zaburoni</i>
reckless murder = foresight of probability; wilful blindness = knowledge	<i>Crabbe</i>