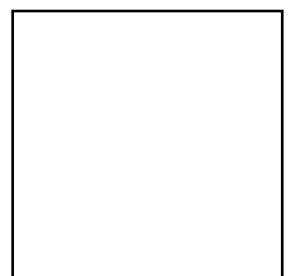
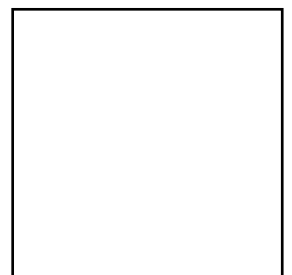
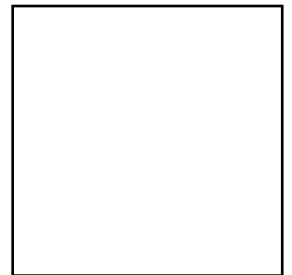


Nelson Thornes Distance Learning

A2 Law WJEC

Clare Anderson



Nelson Thornes

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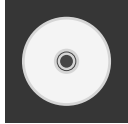
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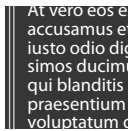
Hand-in activity (either by post or email)



Listening



Discussion



Reading



Internet research or online activity

You should have received all the sections and booklets listed on this contents page in your pack of Student Course Materials. Please check your pack for all these materials and contact your tutor if any sections or booklets are missing.

Study Calendar

A2 Law | 2010–11

Study week	Unit start date	Unit	Internally Assessed Assignment	Work due date
		Introduction		
1 + 2		Unit 1.1 Stop, Search and Arrest	Assignment 1.1 Write-up for Tutorial of Week 3	
3 + 4		Unit 1.2 Detention and Interrogation	Assignment 1.2 Write-up for Tutorial of Week 5	
5		Unit 2.3 Criminal Appeals	Assignment 2.3 Write-up for Tutorial of Week 6	
6		Unit 3.4 Elements of a Crime – <i>Actus Reus</i>		
7		Unit 3.5 Elements of a Crime – <i>Mens Rea</i>	Assignment 3.5 Write-up for Tutorial of Week 8	
8		Unit 3.6 Strict Liability	Assignment 3.6 Write-up for Tutorial of Week 9	
9 + 10		Unit 3.7 Homicide		
11		Unit 3.8 Involuntary Manslaughter	Assignment 3.8 Write-up for Tutorial of Week 12	
12		Unit 3.9 Non-fatal Offences Against the Person	Assignment 3.9a Write-up for Tutorial of Week 13	
13		Unit 3.9 Non-fatal Offences Against the Person	Assignment 3.9b Write-up for Tutorial of Week 15	
14		Unit 3.10 General Defences – Insanity and Automatism		
15		Unit 3.11 General Defences – Age, Mistake and Intoxication		
16		Unit 3.12 General Defences – Self-defence, Duress and Necessity	Assignment 3.12 Write-up for Tutorial of Week 17	
17		Unit 4.13 Juvenile Crime and the Treatment of Juveniles	Assignment 3.13 Write-up for Tutorial of Week 18	

Study week	Unit start date	Unit	Internally Assessed Assignment	Work due date
18		Unit 4.14 Sentencing		
19		Unit 5.15 The Crown Prosecution Service		
20		Unit 5.16 Bail and Plea Bargaining		

Notes:

- All the assignments for AS Law can be found in the relevant units of the Nelson Thornes Distance Learning Student Course Materials.
- Students should also take their mock exam at some point during weeks 13–18, to be agreed between your Nelson Thornes Distance Learning tutor and Link Teacher in school.

Topic 1 Police Powers

Unit 1 Stop, Search and Arrest

On completion of this unit, you should:

- Have detailed knowledge of police powers under the Police and Criminal Evidence Act 1984
- Be aware of the significance of the Codes of Practice issued under the Police and Criminal Evidence Act 1984
- Be able to apply the relevant sections and codes in given situations.

Key terms:

- Codes of Practice
- Stop and search of persons and vehicles
- Roadblocks
- The concept of reasonableness
- Searches of premises

Relevant websites:

www.homeoffice.gov.uk
www.cjsonline.org/index.html

The Police and Criminal Evidence Act 1984

There are 140,000 police in England and Wales and each year they arrest over one-and-a-half million citizens. Every arrest means a person is deprived of their personal liberty for hours or even days. Once charged they may not be given bail, which means further deprivation of liberty. In order to safeguard suspects before, during and after arrest, the **Police and Criminal Evidence Act 1984 (PACE)** was passed which governs police powers.

Activity 1

Read Elliott and Quinn pages 369–371 (10th)/384–386 (11th) and answer the following.

1 What event triggered the Royal Commission on Criminal Procedure?

2 The Commission reported back in 1981. What was their conclusion?

3 When the Act was passed why was it criticised?

4 What was the Act attempting to achieve?

5 Which areas of police powers does it cover?

At vero eos e
accusamus e
iusto odio die
simos ducim
qui blanditis
praesentium
voluptatum d



6 How has it been extended under the **Criminal Justice and Public Order Act 1994 (CJPOA)**?

7 Under PACE, the Home Secretary was given powers to issue Codes of Practice for the exercise of police powers within the Act. They guide the conduct of criminal investigations by the police.

Although breach of these codes cannot give rise to a legal action how might a suspect use it?



Some critics of the Act said the powers it gave to the police would result in a 'police state'. On the other hand, senior police officers said that PACE acted as a major constraint on effective policing as it created so much 'form filling and paperwork' that it kept officers off the beat and adversely affected the crime clear-up rate. Some officers claimed that obeying the Act and having to adhere to the Codes of Practice handcuffed them in their duties.

Yet civil liberty groups claim it has now gone too far in favour of the police with the passing of the **CJPOA 1994**. This Act greatly extended police powers and abolished the right to silence. PACE provided police with additional powers, but sought to control their exercise by more rigorous procedural requirements for fairness in the arrest and detention of suspects. A police officer has often been likened to a 'citizen in uniform', yet they have enormous powers over ordinary citizens.

One concept that runs right throughout the Act however, and which has been the subject of much discussion and case law, is that of '**reasonableness**'. Many of the provisions refer to reasonableness, for example reasonable suspicion, reasonable behaviour, reasonable force, etc. From this we shall see that the police have wide discretion to carry out their job within the Act.

Activity
2



Consider the word '**reasonableness**'. Can you think of any problems with the use of this word?

Police and Criminal Evidence Act 1984: Codes of Practice

Section 66 of the Police And Criminal Evidence Act 1984 provides for the Home Secretary to issue Codes of Practice. These codes are intended to clarify certain sections of the Act for both the police and members of the public who may, for example, be held in police custody. Copies of the codes must be kept in every police station and be available for the public.

The Codes are crucial to the operation of the Act; they contain detailed notes for guidance on the exercise of the powers given in the Act and a breach of a Code can result in evidence being excluded at trial and can therefore endanger a prosecution. It must, however, be a 'serious and substantial' breach.

Pre-arrest powers

Activity 3

Read Elliott and Quinn pages 371–372 (10th)/386–387 (11th).

In order to prevent and detect crime the police will need to question members of the public.

- 1 Are you obliged to answers such questions? Go to the police station? Or be detained unless arrested? What happened in *Rice v Connolly (1966)*? Compare with *Ricketts v Cox (1982)*.

At vero eos e
accusamus e
iusto odio die
simos ducim
qui blanditis
praesentium
voluptatum e



- 2 Explain how the **Police Reform Act 2002** has further extended police powers.

He said the Conservative Party would save 1.2 million police hours a year by cutting red tape associated with form-filling for stop and search, and give officers greater discretion on the use of the powers.

'If the government is serious about freeing up our police to combat the scourge of knife crime they would adopt our proposals,' he said.

A Home Office spokesman said the police had to have the power to stop someone in a public place and ask them to account for their actions, behaviour, presence in an area, or possession of anything.

'But, as with all police powers, they must be exercised efficiently and, importantly, in support of and with support from the local community.'

On the issue of red tape, a spokesman said that there were plans to scrap the form used for 'stop and account' although police would still record the encounter – a move already being piloted in some force areas.

The Association of Chief Police Officers (Acpo) said it was working hard to make sure everyone had confidence the system operated fairly and offered 'protection to victims of crime regardless of their background.'

Chief Constable Craig Mackey, of Cumbria Constabulary, the Acpo lead on stop and search, said it was crucial to have a 'visible and responsive policing presence' to reduce crime.

'Figures that point out disparity between black and white with respect to arrest rates, victims of crime and stop and search do not provide any indication of the reasons for significant differences,' he said.

'Acpo supports the proper use of stop and search, while recognising that it continues to attract comment and concern with minority communities.

'The reasons for the rise are varied across forces but include improved use of intelligence to target activity, increased focus on street crime and better briefing and training.'

He added it was important to remember searches generally do not occur evenly across any force area but are usually targeted on 'hot spots'.

'It is becoming increasingly recognised that the reasons for these variations are multiple and include economic and social factors as well as policing practice and individual behaviour,' he added.

Simon Reed, vice-chairman of the Police Federation of England and Wales, said the statistics were 'completely meaningless' unless put into context.

'The statistics alone are based on the general population, not the street population,' he said.

'They do not include the time of day or whether the increase is as a result of specific initiatives or particular legislation being used.

'I expect to see a further increase in the number of stop and searches in the next year ... Increasing stop and search is the only sure way of reducing the catalogue of weekly knife crime tragedies.'

BBC News © BBC MMIX, 8 July 2008

<http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk/7495075.stm>

Activity 4

Read Elliott and Quinn pages 372–375 (10th)/387–390 (11th) and the article 'Police stop and search figures up' (pages 5–6 of this pack) and then answer the questions below.

At vero eos e
accusamus e
iusto odio d
simos ducim
qui blanditi
praesentium
voluptatum



1 Under **section 1** and additions to section 1, who may police search and what for?

2 Which code is 'stop and search' governed by?

3 In order to exercise his power under **section 1** the officer must have 'reasonable suspicion'.

What was this intended to protect from?

4 What does the Code of Practice say with regard to reasonable suspicion?

Turn your focus to the article above and answer the following:

5 How many times more likely are you to be stopped and searched if black? What are the reasons given for this?

6 Why are politicians in favour of the increased use of stop and search?

7 Taking into account all the comments made in the article, discuss whether there are enough safeguards in place to prevent an abuse of the power to stop and search.



An officer must have grounds to **stop and search**. There is no power to stop or detain a person in order to find grounds for a search. Before carrying out a search, the officer may question the person about his behaviour or his presence in circumstances that gave rise to the suspicion. The person may have a satisfactory explanation, which will make a search unnecessary. If there are no reasonable grounds for suspicion to begin with, any search or detention for the purposes of a search will be unlawful.

However, questioning may reveal reasonable grounds to suspect the possession of a different kind of unlawful article from that originally suspected.

Conduct of the search

The search must be conducted at the place where the person or vehicle was first detained or nearby and every reasonable effort must be made to minimise any embarrassment that a person being searched may experience.

The thoroughness and extent of a search depends on what is suspected of being carried and by whom. If the suspicion relates to a particular article, such as an offensive weapon, which is seen to be slipped into a person's pocket then, in the absence of other grounds for suspicion or an opportunity for the article to be moved elsewhere, the search must be confined to that pocket. In the case of a small article that can be easily concealed, such as a drug, a more extensive search may be necessary. Any search carried out in public must be restricted to a superficial examination of outer clothing.

Where, on reasonable grounds it is considered necessary to conduct a more thorough search, this should be done out of public view (e.g. in a police van). Any search involving more than the removal of an outer coat, jacket, gloves, headgear or footwear may only be made by an officer of the same sex as the person searched and may not be made in the presence of anyone of the opposite sex.

Once the search has been carried out, the officer must make a record under section 3.



Reasonable force

What constitutes 'reasonable' force?

WHO, WHAT, WHY?

The Magazine answers ...

The officer whose violent arrest of Toni Comer was caught on video says his use of 'brute force' suited the circumstances. But how do you decide on the right amount of force?

The law is clear on the circumstances when force, by a police officer or any member of the public, may be used:

1. Self-defence
2. Defence of another or property
3. Prevention of crime
4. Lawful arrest

According to the Crown Prosecution Service, you can only use 'such force as is reasonable in the circumstances'. So how to assess reasonableness?

The law says the person using force must honestly believe that it was justified, and not excessive.

The police are trained to ensure any use of force is reasonable. 'Nick', a serving officer who asked to remain anonymous, told the BBC that in training he worked on an escalation of the threat.

'You placate a verbal threat by use of your voice. As the threat rises your response rises. At the end of the day a police officer doesn't have to wait until he's being physically attacked.

'At the time, if you feel you were in danger of being attacked or killed you can use whatever force is appropriate.'

Steve Wedd from the Criminal Law Solicitors' Association insists the police response should always be proportionate to the threat from the person being arrested.

'If the person is willing to walk to the squad car you take them by the elbow, you walk them across. If there's a little bit more force you use a little bit more effort.

'If there's quite a lot of violence then you use quite a lot of force.'

Higher standard

The law on police use of force is set out in the Police and Criminal Evidence Act 1984.

Officers are subject to the same rules as the rest of society, but must meet higher standards than the public for two main reasons:

Firstly, because officers are trained in using force they must use approved methods of restraint.

Secondly, because police forces are public bodies, officers have a duty under the Human Rights Act not to use force that might constitute 'inhuman and/or degrading treatment.'

So did police use reasonable force when they arrested Toni Comer?

No, says Tony Murphy, head of police powers at solicitors Bindman & Partners. He believes the police actions failed both of the above tests.

'Repeatedly punching a member of the public, not least a woman, in an unexceptional arrest situation is not an approved use of force.'

'It should properly be denounced as inhuman and degrading treatment in a democracy.'

But former Metropolitan Police Commander John O'Connor disagrees.

'Is punching ok? It depends where she's being punched. I think those blows were being directed to her arm to try and get her into handcuffs.'

'It might look terrible, but it's nothing like it's being portrayed, and she didn't suffer any major injuries. I think it's reasonable.'

In this case, it may end up that the courts decide who is right.

BBC News © BBC MMIX, 8 March 2007

<http://news.bbc.co.uk/go/pr/fr/-/1/hi/magazine/6430073.stm>

Activity 5

Referring to the article above, 'What constitutes 'reasonable force'?', answer the following:

1 Explain how 'reasonableness' is assessed.

At vero eos e
accusamus e
iusto odio die
simos ducim
qui blanditis
praesentium
voluptatum e



2 Discuss the higher standards placed on the police.

- 3 Do you think the police used excessive force on Toni Comer? Give reasons for your answer.



Section 1 concerns the general power to stop and search a person or vehicle for stolen or prohibited articles. There are other statutes that also give the police the power to stop and search, the most controversial of which is **section 44** of the **Terrorism Act 2000**.

In his anti-terror speech in 2007, Gordon Brown stated his government's goal was to 'root out terrorism'. For the purposes of this unit the police have the following additional powers to deal with terror suspects:

Terrorism Act 2000

Section 41, Arrest without warrant:

A constable may arrest without a warrant a person whom he reasonably suspects to be a terrorist. He may then, under section 43 search to discover whether he has in his possession anything which may constitute evidence that he is a terrorist.

Section 43, Search of persons:

(1) A constable may stop and search a person whom he reasonably suspects to be a terrorist to discover whether he has in his possession anything which may constitute evidence that he is a terrorist.

(3) A search of a person under this section must be carried out by someone of the same sex.

(4) A constable may seize and retain anything which he discovers in the course of a search of a person and which he reasonably suspects may constitute evidence that the person is a terrorist.

Section 44, Search of persons/vehicles:

(1) An authorisation under this subsection authorises any constable in uniform to stop a vehicle in an area or at a place specified in the authorisation and to search the vehicle, the driver, a passenger, anything in or on the vehicle or carried by the driver or a passenger.

- (2) An authorisation under this subsection authorises any constable in uniform to stop a pedestrian in an area or at a place specified in the authorisation and to search the pedestrian and anything carried by him.
- (3) An authorisation under subsection (1) or (2) may be given only if the person giving it considers it expedient for the prevention of acts of terrorism.
- (4) An authorisation may be given by a police officer for the area who is of at least the rank of assistant chief constable.

Section 4

(3) A constable may not require a person to remove any clothing in public except for headgear, footwear, an outer coat, a jacket or gloves.

Activity 6

Read Elliott and Quinn pages 375–376 (10th)/390–391 (11th) and the article ‘Fears over stop and search powers’ (pages 13–14) and answer the following questions:

- 1 Explain the powers granted to the police under **section 44** of the **Terrorism Act 2000**.

- 2 How many searches were carried out in London under **section 44** in the year to September 2008? How does this compare to the previous year?

- 3 Why is the public critical of the use of these powers by police?

- 4 Discuss whether you think **section 44** is necessary.



- 5 Note the House of Lords (Supreme Court) decision in *R (on the application of Gillan) v Commissioner of Police for the Metropolis (2006)*. Using the internet, find out the view of the ECHR and discuss. www.guardian.co.uk/world/2010/jan/12/stop-and-search-ruled-illegal



Fears over stop and search powers

Metropolitan Police officers are stopping and searching too many innocent people using powers designed for fighting terrorism, it is claimed.

There were more than 157,290 stop and searches in London under anti-terror laws in the year to September 2008, leading to 1,200 arrests.

That is nearly triple the 54,693 searches the previous year.

Critics said the force should curb its use of the power, but the Met Police said they were using the tool properly.

Use sparingly

Section 44 of the Terrorism Act 2000 gives police the power to stop and search people in specific areas without the reasonable need to suspect them of being involved in terrorism.

Currently it is being applied across the whole of London but officers have been advised to use the power sparingly.

Amateur photographer Nicholas Ling said he was stopped and searched by officers outside West Ruislip station in November last year.

He said: 'I thought it was totally unnecessary – it wasn't as if I was vandalising anything.

'All I was doing was standing here with my camera.'

Chris Milner, deputy editor of Railway magazine, said he had received many similar complaints from readers who have been stopped and searched.

He said: 'There's a lot of anger – it's not just railway enthusiasts, it's people in the street, it's tourists being hassled, it's students who are doing photography and architecture courses.

'It's people just walking up and down the street who just want to take a picture of anything.'

In 2004, a report from the Metropolitan Police Authority (MPA) said the power to stop and search 'trampled on the basic human rights of too many Londoners'.

Barrister Sebastian Gardiner, chairman of the Society of Labour Lawyers' crime group, said little had changed.

'If you look at the occasions when it's been used, for example the arms fair protests and the Heathrow runway protests, people were stopped and searched under Section 44 when neither could be said to be likely to involve terrorist activity,' he said.

However, the police insisted that the powers were being used appropriately.

'The feedback, the very limited complaints and the public reaction to the way we go about using this power shows that we're not misusing it overall or in specific cases,' said Commander Simon Bray.

'We recognise the sensitivities but remember it is a really important method of deterring and preventing terrorism.'

BBC News © BBC MMIX, 23 January 2009

<http://news.bbc.co.uk/go/pr/fr/-/1/hi/england/london/7846526.stm>



Unattended vehicles

After searching an unattended vehicle, or anything in or on it, an officer must leave a note in it or, if it has been searched without opening it, on it saying that it has been searched.

The power to stop and search exists where the police officer has reasonable grounds to believe that a person is in possession of a stolen or prohibited article.

Roadblocks

Under **section 4 PACE** the police have the power to conduct a roadblock. It must have been authorised by a superintendent who has reasonable grounds to believe it will lead to:

- catching a person who has committed a serious offence
- catching someone about to commit a serious offence
- tracing witnesses to a serious offence
- catching someone unlawfully at large.

An alternative would be for police to invoke power under **section 60 CJPOA 1994**. Where a senior officer reasonably believes that serious violence may take place in an area, they may, in order to prevent it, give written authority for officers to stop and search persons and vehicles in that area for up to 24 hours. With such authority police can stop and search pedestrians and vehicles for offensive weapons or dangerous instruments. They do not have to have grounds for suspecting the person is carrying such objects.

A serious offence is one defined by PACE as being one of, for example, rape, murder and manslaughter.

Police Powers and Responsibilities Act 2000 section 526

- (i) A police officer may establish a roadblock if the police officer reasonably suspects a roadblock may be effective to apprehend or locate a person in a vehicle who:

- (a) has committed an offence punishable by a seven-year sentence
or
- (b) may be unlawfully depriving someone else of liberty
or
- (c) is being unlawfully deprived of liberty
or
- (d) has escaped from lawful custody
or
- (e) may be endangering the life or safety of someone else.

Power to search premises

If an occupier consents, premises can always be searched without a warrant.

Activity 7

Read Elliott and Quinn pages 391–393 (10th)/406–408 (11th).

1 Which Code of Practice governs search of premises?

At vero eos e
accusamus e
iusto odio d
simos ducim
qui blanditi
praesentium
voluptatum d



2 What does the Code have to say regarding these powers?

3 How does this conflict with television coverage of actual searches?

4 Who do the police apply to for a search warrant?



The police must identify themselves and state the purpose of the search and the grounds for undertaking it. They may only use reasonable force, and search only to the extent necessary, with due consideration for the property and privacy of the occupiers.

Under **section 8** the police may seize and retain items covered by the warrant, if either they are stolen or may be used in evidence. They may also take them in order to prevent their being concealed, lost, altered or destroyed.

They cannot take communications between professional legal adviser and client, as these come under legal privilege.

Any evidence taken can be retained for evidence at trial or forensic examination. A record must be kept of searches.

Powers of arrest

Activity 8

At vero eos e
accusamus e
iusto odio di
simos ducim
qui blanditis
praesentium
voluptatum d



Read Elliott and Quinn pages 376–378 (10th)/391–393 (11th).

Arrest is a formal act by which a police officer or citizen detains someone reasonably suspected of a crime. If an arrest is made on insufficient or unreasonable suspicion it will be false imprisonment. Officers can be sued in the High Court for false imprisonment. Arrest, like search, can be either with or without a warrant.

1 Explain how an arrest with a warrant works.

As with searches, however, the majority of arrests are made without a warrant.

Until January 2006 arrest was governed by section 24 and section 25. Section 24 of PACE gave the police the power to arrest without a warrant anyone who is or whom he has reasonable grounds for suspecting has committed, is committing or is about to commit an arrestable offence (serious offences).

2 Which Act increased and simplified the police powers of arrest?

3 Explain how the new powers of arrest will operate.

There must again be reasonable suspicion and, as Code A emphasises, personal factors such as colour, age, hairstyle, dress and ‘stereotyped images’ of likely offenders can never alone amount to reasonable suspicion.

4 Under the new powers the arrest must be ‘necessary’. Explain what this means.

5 Explain how the court assesses ‘reasonable suspicion’ using O’Hara (1996).

6 When can a private citizen make an arrest?

Once arrested, Code C comes into play.

7 Under section 28 what must the arresting officer tell the suspect?



Update: Under **section 28** the person arrested must be told, in simple, non-technical language that he can understand, the legal and factual grounds for arrest.

The powers of arrest

Under the **Serious Organised Crime and Police Act 2005**, the police have had new powers of arrest since January 2006.

The aim of the act is to equip police with the power to tackle crime effectively. The **Serious Organised Crime and Police Act 2005** simplifies arrest powers and provides police with the power of arrest for all offences.

This means there is no longer a distinction between arrestable and non-arrestable offences. The police are now able to arrest for even the most minor crimes such as dropping litter and failing to wear a seat belt.

A new **Code G** deals with the new power to arrest persons suspected of involvement in a criminal offence. For an arrest to be lawful, an officer must be satisfied that the person has been involved or attempted to be involved in the commission of a criminal offence; and that there are reasonable grounds for believing that the person's arrest is 'necessary'.

The government claim that the 'necessity' test will act as a significant safeguard as it will mean the officer has to focus on the individual circumstances of the case, the circumstances of the victim, offender and needs of the investigation.

However, the civil liberties group Liberty view the new powers as creating more powers for the police at the expense of the suspect.

Activity 9

At vero eos e
accusamus e
iusto odio d
simos ducim
qui blanditi
praesentium
voluptatum



Read the following problem. Consider whether the police have acted lawfully with regard to the road block and arrests.

Although we have not yet covered the other powers, jot down anything that may cause problems for either the police or Ahmed.

Following an attack on an elderly woman in a Cardiff street, the police set up a roadblock and questioned motorists leaving the area. Ahmed, a sixteen-year-old school student, attempts to ride past the roadblock on his bicycle. He is stopped by PC Rod who thinks Ahmed matches an eyewitness description of the attacker. When asked for his name and address, Ahmed does not answer. He is taken to a police station and questioned for seven hours by detectives. Ahmed replies to every question by asking to be allowed to telephone his mother. The police take Ahmed's fingerprints and a sample of his blood. After this, Ahmed is placed in a cell, where he spends the night. Next morning, PC Rod tells Ahmed that he will be allowed to see his mother if he admits to having carried out the attack. Ahmed makes a confession, and is charged with attempted murder.

Advise Ahmed.

- 2) Refer back to your AS unit on bail, and explain what bail is and which Acts govern it.
 - ◀ Focus on the power of the police and in particular the role of the custody officer.
 - ◀ Explain when bail can be refused and the factors that should be taken into account when deciding whether to grant bail or not.
 - ◀ Explain when conditions can be imposed.
 - ◀ Discuss what conditions can be imposed and consider what might be appropriate in Jack's case.



Revision sheet 1.1 – police powers

- 1) What is the main Act that regulates police powers?
 - 2) Which Act has since been passed that has extended their powers?
 - 3) Explain the effect of a breach of code.
 - 4) What was the significant outcome of *Rice v Connolly (1966)*? How does this compare with *Ricketts v Cox (1982)*?
 - 5) If a person feels they have been wrongly arrested or falsely imprisoned what can they do?
 - 6) If a case of false imprisonment goes to court, which court would it be heard in and who would decide the case and amount of damages?
 - 7) Explain how and why the Court of Appeal has restricted damages in the types of action referred to in Question 5.
 - 8) Section 1 gives the police the power to do what?
 - 9) Which Code governs section 1 and how does it act as a safeguard?
 - 10) What powers exist under section 60 CJPOA 1994?
 - 11) Whose authorisation is required to carry out a roadblock?
 - 12) For what purposes can a roadblock be set up?
 - 13) When can a section 44 Terrorism Act search be carried out?
 - 14) What powers exist under section 17?
 - 15) Following arrest for an indictable offence, what powers exist for search of premises?
 - 16) What does Code B have to say on the matter of search of premises?
 - 17) Which Act of 2005 has simplified arrest powers?
 - 18) Explain how the new Code G will operate.
- N.B.: 'Once lawfully on the premises', then under section 19 the police will have the power to search. The police may be 'lawfully' on the premises even if by trickery.

Topic 1 Police Powers

Unit 2 Detention and Interrogation

On completion of this unit, you should:

- Have detailed knowledge of police powers under the Police and Criminal Evidence Act 1984
- Be aware of the significance of the Codes of Practice issued under the Police and Criminal Evidence Act 1984
- Be able to apply the relevant sections and codes in given situations
- Be aware of how the complaints procedure works
- Understand the role of the IPCC
- Be able to evaluate the effectiveness of the police complaints procedure
- Be able to evaluate civil actions against the police.

Key terms:

- Intimate and non-intimate samples
- Admissibility of evidence
- IPCC
- Civil actions

Relevant websites:

www.advice.org.uk

www.ipcc.gov.uk

Police powers of detention, treatment and questioning

Persons reasonably suspected of crime are cautioned, interrogated, searched, often finger-printed and photographed. They will then either be set free or charged and brought before a court which will consider whether to grant bail or remand in custody. PACE tries to balance between getting the truth of the offence, whilst treating the suspect with fairness and humanity. Many of the miscarriages of justice you studied in your AS pack were based on false or unreliable confessions. PACE was brought in to ensure confessions are not obtained through violence or inducement, nor are indeed fabricated. Although PACE introduced the tape-recording of interviews it cannot fully guard against 'verbal bullying' by police.

Activity 1

Read Elliott and Quinn pages 378–379 (10th)/393–394 (11th).

As you can see, suspects may be detained without charge for up to four days. There are, however, safeguards built into PACE to prevent abuse of this power.

1 Where should a person be taken after arrest? Give the section number.

At vero eos e
accusamus e
iusto odio dig
simos ducim
qui blanditis
praesentium
voluptatum e



All police stations must have a custody officer on duty at all times. It is the custody officer's job to ensure suspects are treated according to PACE and he is independent from the actual investigation.

2 What should the custody officer decide when a suspect is brought in?

Once charged, a suspect should be released on bail.

3 Under section 38 when might the police refuse bail?

4 If bail is refused what happens next?

- 5 If there is not enough evidence to charge when a suspect is first brought in, what can the police do under section 37?

- 6 How often should detention be reviewed?

- 7 What was the basic rule on how long a defendant may be held without charge? And explain how this has been changed.

- 8 When might the maximum period be used?

- 9 What is the maximum length of time a suspect may be held without charge and on whose approval?

Terrorism Act 2006: Section 23 Extension of period of detention of terrorist suspects

The Terrorism Act 2000 (c. 11) (detention of terrorist suspects) is amended so that the period of detention for suspected terrorists can be authorised by a judicial authority to the extent that a suspected terrorist can be detained for up to 28 days.

(Note that under TA 2000 the maximum detention period was 7 days, CJA 2003 increased it to 14 days and TA 2006 has now further increased it to 28 days. There have been renewed and consistent efforts by the Government to increase further up to a maximum of 90 days but these have been rejected by Parliament.)

- 10 Why do you think the additional powers are considered necessary for those suspected of terrorism?

- 11 Although the introduction of custody officers was intended to act as a safeguard, how is this limited?

Safeguards for the suspect

Activity 2

Read Elliott and Quinn pages 380–384 (10th)/394–399 (11th). These safeguards are designed to protect suspects whilst they are being interrogated etc.

- 1 What must an officer inform the suspect of on arrest?
- 2 What does section 60 say? How was this supposed to help suspects? How do the police avoid section 60?

At vero eos e
accusamus e
iusto odio dig
simos ducim
qui blanditis
praesentium
voluptatum d



Note that the defence will only get a summary of the tape unless they request the whole.

- 3 What problems might this cause?
- 4 What are your rights under section 56?

5 In what cases can this right be suspended for up to 36 hours?

6 More importantly, what are your rights under section 58?

Note that this may also be suspended for up to 36 hours.

7 What happened in *Samuel's Case (1988)* and how does this compare with *R v Alladice (1988)*?

Research conducted in 1989 revealed that only 25 per cent of arrested people actually request a solicitor.

8 Why is this? How did things improve in 1991?

Although there is access to free legal advice under the duty solicitor schemes, there are problems with the scheme.

- 9 What are the drawbacks encountered with the duty solicitor scheme?

Additional rights for vulnerable suspects

Activity 3

Read Elliott and Quinn pages 384 (10th)/399–400 (11th). **Under section 57 there are additional rights for young people and mentally disordered suspects. These are in addition to their rights under section 58.**

- 1 What are these additional rights?

At vero eos e
accusamus e
iusto odio dig
simos ducim
qui blanditis
praesentium
voluptatum e



Note that the absence of this person would render any subsequent confession unreliable. Under section 77 a warning would be given to the jury where a confession was made by a mentally handicapped person.

General points

- 2 How should suspects be treated and under what conditions?

Exclusion of evidence

One of the most important safeguards in PACE is the possibility for the court to refuse to admit evidence which has been improperly obtained.

Activity 4

Read Elliott and Quinn pages 385–386 (10th)/400–401 (11th) and the article below about Colin Stagg.

1 Explain how a defendant's lawyer could use section 76 to get a confession excluded.

At vero eos e
accusamus e
iusto odio dig
simos ducim
qui blanditis
praesentium
voluptatum e



2 What is the definition of '**oppression**'? Give examples to illustrate what might amount to '**unreliable circumstances**'.

3 Under section 78 when can a court refuse to admit evidence of any kind?

Any judge would do the same. The case against Colin Stagg was based on a single rotten plank.

Robert Napper's guilty plea yesterday to the manslaughter of Rachel Nickell completes a remarkable legal circle. When Colin Stagg was charged with that same brutal killing I was the judge appointed to try a case that excited enormous media coverage. Before the trial in 1994 three things were apparent.

First, the police were faced with overwhelming pressure to identify the killer and establish a compelling case. Second, they were faced with a desperate lack of evidence of any quality against Mr Stagg – their exclusive candidate for the murder – let alone evidence sufficient to establish guilt beyond a reasonable doubt. Finally, it was obvious that the judge would need to be especially wary of the real risk that the jury might be swept along by the tide of widespread hostility to the accused and return a guilty verdict notwithstanding the absence of effective proof.

The second of those features led the police to set up the so-called honey trap, using an undercover policewoman to seduce Mr Stagg into a confession. It proved to be a fruitless initiative. The high-water mark of the material thereby obtained was a single comment by him that might, on one view, have been construed as betraying an awareness of details of the attack that could only have been known to the perpetrator. There was nothing else in the prosecution's locker. There was no identification, no scientific evidence, no circumstantial evidence and no subsequent incriminating behaviour. Neither was there DNA available either to implicate or to exonerate him. In the event, I ruled that the evidence derived from the entrapment should not go before the jury. It is a graphic measure of the frailty of the prosecution case that, bereft of the foothold offered to them by that rotten plank, they elected to drop their case, and Mr Stagg was acquitted.

Since then a campaign of innuendo has been mounted in sections of the press that has repeatedly invited the public to conclude that Mr Stagg had literally 'got away with murder'. The truth, of course, was that he had not got away with anything. He had been singled out because he was a soft target. His appearance, his lifestyle and the libidinous exchanges with the policewoman painted him in singularly unattractive colours.

The police closed their minds to any other possibility than that of his guilt. That cardinal error corrupted the whole of their investigation. They were wrong. I claim no special credit for ruling as I did. I am certain that any other judge in my position would have recognised that proof of guilt was simply not there. To leave the entrapment evidence to the jury would be to open the door to the wholly unacceptable risk that prejudice would replace proof.

There will no doubt be suggestions that there are obvious lessons to be learned from this 14-year saga. I am not so sure. Media hysteria, an embattled police force and the duty of a criminal trial judge to ensure inherent fairness of the process are not novel dimensions in the history.

Sir Harry Ognall: Commentary

The Times, 19 December 2008

<http://www.timesonline.co.uk/tol/news/uk/crime/article5367901.ece>

Activity 6

Read Elliott and Quinn pages 390–391 (10th)/404–406 (11th) and answer the following questions.

- 1 What is an intimate search?
- 2 If police wish to make an intimate search under section 55 whose authority must be sought?
- 3 When would authorisation be given?
- 4 Who carries out the search?
- 5 What does section 65 CJPOA authorise and why was it passed?
- 6 What are the powers in section 62?

At vero eos e
accusamus e
iusto odio di
simos ducim
qui blanditis
praesentium
voluptatum d



7 Explain how the powers of search have been extended under the **Criminal Justice and Police Act 2001**.

8 Give an example of a non-intimate sample.

9 Section 61 permits police to take what from suspects?



Although consent is generally required, it may be overridden by a superintendent provided he has reasonable grounds for suspecting the person was involved in a criminal offence.

Consent (if required) to all searches must be given by:

- the individual if over 17 years
- the individual and parent or guardian if between 14 and 17 years
- the parent or guardian if under 14 years.

N.B.: Although consent may be withheld for **intimate samples** the Home Office states 'refusal may harm your defence if you are brought to trial'.

Complaints against the police

The police are accountable to the Chief Constable (who is head of each police force) and the Local Police Authority (LPA), which is made up of local councillors and magistrates. The LPA works with the Chief Constable to maintain an efficient and effective force, although day-to-day control remains with the Chief Constable. Both are answerable to the Home Secretary, the government minister with overall control of the 43 police forces in England and Wales. They are not above the law and must operate within the law. They have specific powers and their behaviour is regulated by the Codes of Practice contained in PACE.

There may be occasions when a citizen feels angry at treatment by the police or may feel the police have acted outside their powers. There are controls upon the police and the first and foremost is the internal control within each force, i.e. internal discipline. Often the trigger for discipline will be a complaint from an aggrieved citizen. Although complaints are made to the force in question they were supervised by a body set up under PACE, the Police Complaints Authority (PCA). In 2004, the PCA was replaced by the Independent Police Complaints Commission (IPCC). For more information refer to the website www.ipcc.gov.uk. If a criminal offence is found to have been committed by an officer, the DPP is informed. It is then his decision whether to proceed with a prosecution.

History of the complaints process

Originally any complaints made against the police came under **section 49 Police Act 1964** but this was criticised as it was carried out completely by the force in question.

Under the **Police Act 1976** an attempt was made to introduce an independent body to consider complaints. This was the Police Complaints Board (PCB). However, the PCB only had the power to consider complaints, the police carried out the investigation and made any relevant decisions. It lacked both the power and resources to carry out its own investigations. They were heavily criticised for not being independent enough and biased towards police.

In response to demand for an independent body to deal with complaints, the Police Complaints Authority (PCA) was set up under PACE. The PCA was an independent body, which reported to Parliament through the Home Secretary. It was based in London and had 14 members. The members were all full-time and came from a variety of backgrounds though none may have been a police officer. It had two divisions: one dealing with the supervision of investigations and the other with discipline. It is important that the complaints procedure is seen as fair and impartial, the question was whether the system achieved this. Due to dissatisfaction with the system, the PCA had now been replaced by the IPCC in April 2004.

Police Complaints Authority

The PCA considered itself independent as no police officer, past or present, could be a member and the Authority had their own budget. However, complaints were only **supervised** by the PCA as all complaints were investigated by the police. The other main role of the PCA concerned police discipline, i.e. reviewing any action taken and assessing its effectiveness.

How a complaint was made

Complaints had to be made in writing and submitted to the police force in question. **N.B.: this has not changed under the IPCC.**

The Chief Constable then decided how the complaint should be dealt with. This could either be via **informal resolution** or **formal investigation and has not changed under the IPCC**. However, whichever route was taken, the complaint was handled by the police. **This has changed under the IPCC**. If dealt with informally it would be carried by the police force in question and the likely outcome would be an apology. **This is still the case under the IPCC**. If considered serious enough or the complainant requested it, a formal investigation would be carried out. Although an investigation was often conducted by an officer from another force, it was only ever supervised by the PCA. **This has changed under the IPCC.**

Reform of the complaints system

Although the PCA had gone some way to improving the process, most people still felt that complaints should be investigated by someone other than the police. The alternative would be a totally independent investigative body. The Home Affairs Select Committee identified a 'critical lack of public confidence' in the complaints system. With a success rate of 1 per cent it is hardly surprising. In 1992, Lord Colville said: 'If a disciplinary system seldom if ever reaches an adverse decision, it is more likely that the system is faulty than that nobody in that profession ever makes a mistake.'

In April 2004, a new body was set up to deal with complaints against the police. The PCA was replaced by this new body: the Independent Police Complaints Commission (IPCC). The new police complaints system and the IPCC resulted from numerous calls from, among others, the McPherson inquiry into the death of Stephen Lawrence and the police service itself. Royal Assent was given in the **Police Reform Act 2002**.

The IPCC is a completely new body with new powers. It has the powers and resources to investigate complaints separately from the police service. The investigators will have full police powers and access to all police premises and documents etc. The IPCC has extensive powers of inspection where police have handled the complaint. The IPCC will also be responsible for setting statutory guidelines for the handling of complaints.

Who are the IPCC? Are they independent?

The IPCC is not part of any government department.

- It is an entirely separate public body.
- It is independent of the police service.
- Its decisions cannot be overruled apart from by a court of law.

The 18 commissioners must not have previously been police officers therefore retaining the independence claimed by the PCA.

However, the police will still be responsible for recording complaints and dealing with informal resolutions. The reasons given for this are:

- it is important that the police are able to hear directly the concerns of the public they serve, and
- many complaints can be dealt with quickly at a local level for example, by apology.

To find out more visit their website: **www.ipcc.gov.uk**.

About the IPCC

Our purpose

Why we are here

- *To ensure people's complaints against the police are properly investigated, using our new legal powers to intervene and investigate.*
- *We will increase public confidence in the police by demonstrating our independence and by securing the integrity and accountability of the complaints system.*

Complaint forms can now be downloaded online and emailed through the IPCC.

Each police force must have a Professional Standards Department who will consider all complaints and decide whether they should be recorded. If they decide not to record a complaint an appeal can be made. If a complaint is recorded and the complainant agrees to a Local Resolution (Informal) the complaint will be dealt with internally. It should be noted that local resolution cannot lead to discipline. If a complaint disagrees with a local resolution or the matter is considered too serious the Professional Standards may refer it to the IPCC.

N.B.: if the matter refers to death/serious injury the matter must be referred to the IPCC. The IPCC may then supervise, manage or carry out an independent investigation.

Supervision – The investigation will be directed and controlled by the police but supervised by the IPCC.

Managed – The investigation will be undertaken by the police but under the direction and control of the IPCC.

Independently investigated – The investigation will be conducted by IPCC staff.

Examples:

IPCC to manage inquiry into Woking death

On Monday 31 December 2004, at 7.30 a.m. Surrey police were called to assist ambulance staff who were dealing with a 36 year old man who had collapsed. After receiving medical attention the man was detained by police for two criminal offences. On arrival at the station he deteriorated and died despite prompt attention from police and medical staff. The investigation is being undertaken by the police but under the direction and control of the IPCC.

IPCC to investigate fatal shooting

On the 29 December 2007 Kent police were called to an incident involving a man armed with a sub-machine gun and threatening members of the public. Armed officers were called to the scene and tackled the man. Shots were fired and the man was fatally wounded. The investigation is being undertaken by the IPCC.

Review at the IPCC – November 2007

Of all complaints received by police only 30% are investigated. The Professional Standards Department of each force decides which complaints are recorded. The 2002 Act which set up the IPCC also replaced Formal resolution with Local resolution which are dealt with internally and cannot lead to a permanent record against the officer. 47% of complaints are dealt with by Local resolution.

Of the remaining complaints that are dealt with formally, the vast majority are still investigated by the police. However there is now an appeal route via the IPCC.

Under the previous system it was noted that only 1% of complaints investigated were substantiated. Under the new system this has increased to 11%. Although this is an improvement it would still mean that approximately 9 out of 10 complaints are either malicious or mistaken. This ties in with the problems identified by Leigh of the complaints system.

Other key points

- All police officers regardless of rank, special constables and police civilian staff are within the IPCC's remit.
- The IPCC cannot intervene in overall force management decisions.
- Its powers are set out in Part 2 of the Police Reform Act 2002.
- The Commission consists of a Chair, two Deputy Chairs and fifteen other Commissioners.
- To ensure people's complaints against the police are properly investigated, using our new legal powers to intervene and investigate.
- The Commission is supported by a 200 strong staff headed by a Chief Executive.
- It became operational on 1 April 2004.
- It has regional offices in Cardiff, Coalville, London and Sale.

HOW TO MAKE A COMPLAINT

If you feel that a police officer has behaved wrongly or badly, then you are the one who must make the complaint.

First, decide what you think the police officer did wrong. For example, was the police officer rude to you? Did he damage your property? Or injure you unnecessarily? If so you have every right to complain.

But remember that the police have to enforce the law. Sometimes people complain about the police when it is actually a particular law they do not like.

Write a full account of what you say happened, and send it to the Chief Constable of the force to which the police officer concerned belongs.

You can go to any police station to make the complaint in person.

Your local Citizens Advice Bureau can give advice on whether you have a valid complaint and how to go about making it.

The next step

What happens next depends on your complaint. You may feel that an apology is all you need. This may come either from the officer or from his police force. On the other hand you may find that there was a reason for the way the police behaved and that you are satisfied with an explanation. This process is called informal resolution. It's up to you to decide whether or not you are happy for the complaint to be dealt with in this way.

If this is not acceptable or if the complaint concerns a serious matter, there will be a full investigation. Depending on the seriousness of the complaint the IPCC will:

Supervise

Manage

Investigate

If no law has been broken the Chief Constable must decide whether to discipline.

If so he must inform the IPCC. The IPCC have the right to insist on a disciplinary tribunal. The complainant will be able to attend the hearing. The complainant will be informed of the outcome of the complaint.

Extracts from **www.ipcc.gov.uk**

Activity 7

Read the notes 'About the IPCC' above and pages 314–315 (10th)/330–331 (11th) and the two articles following this activity.

1 Explain why the IPCC was set up.

At vero eos e
accusamus e
iusto odio dic
simos ducim
qui blanditis
praesentium
voluptatum e



2 Who will be responsible for recording complaints and how might the complaints be dealt with?

3 Consider whether (and how) the IPCC will be an improvement on the PCA.

4 Consider whether the system of complaints can be improved further and suggest how.

5 Explain the possible outcomes of an investigation by the IPCC.



Complaint against police upheld

A complaint that an allegation of serious sexual assault was not properly investigated by two Avon and Somerset police officers has been upheld.

The complaint, which refers to an incident in October 2007, was investigated by the Independent Police Complaints Commission (IPCC).

The two officers have both since apologised to the complainant.

The IPCC said a superintendent would be showing the two officers the proper way to deal with such allegations.

IPCC Commissioner Rebecca Marsh said: 'This was an allegation of a serious crime and the two officers did not properly deal with the matter as set out in the force policy on dealing with allegations of rape and serious sexual assault.'

'The force has taken on-board important lessons to ensure the public can have confidence that a similar case in the future will be dealt with properly.'

'Our investigators have met the complainant and have shared the investigation outcome with her.'

BBC News © BBC MMIX, 13 January 2009

<http://news.bbc.co.uk/go/pr/fr/-/1/hi/uk/7495075.stm>

Rise in complaints against police

Dyfed-Powys Police has recorded the second highest percentage increase in England and Wales for the number of public complaints received against it.

The force saw a 53% rise in complaints from 2006/7 to 2007/8 which in real terms saw complaints rise from 188 to 287 across the period.

The nation's Gwent, North Wales and South Wales forces saw respective 14%, 9% and 12% increases.

Dyfed-Powys said it welcomed complaints and expected to be held to account.

Each year a number of complaints are made by members of the public about the conduct of serving police officers and these are handed on to the Independent Police Complaints Commission (IPCC) at the end of each financial year.

The allegations range in gravity from impoliteness through to allegations of assault against officers and are compiled by the IPCC in its annual Police Complaints report.

For the year ending 31 March 2008 the organisation recorded 28,963 complaints against English and Welsh forces representing virtually no change on the previous year's figures.

Of these cases, 63% were completed with the remaining 37% classed ongoing with a majority of a majority of forces, 24 out of 43, seeing a decrease in the number of complaints recorded against them.

The biggest increase in the number of complaints was seen by Sussex Police which saw an 81% increase working out to a 346 rise in the actual number of complaints.

The IPCC has been handed the task of increasing public confidence in the complaint systems by aiming to make investigations more open, timely, proportionate and fair.

In a statement Dyfed-Powys Police pointed to this as a reason behind the increase in the number of complaints against it saying the rise was evidence of public confidence in the complaints system.

It outlined that when put in context the rise in numbers worked out to being just short of an additional two cases per week and that the average number of allegations attached to each case was 1.7 which was consistent with the national average.

It also pointed out that as a region it handled around 200,000 calls for assistance each year and that the total number of complaint allegations against it totalled 507.

'Police confidence'

'Such increases are acknowledged as a potential indication of public confidence in the complaints system in that the public are confident that when reporting allegations of wrongdoing by police officers and staff, they will be recorded and dealt with appropriately,' explained the force.

'It is fair to say that most police officers and staff do their best to provide the highest quality of service in what sometimes can be very difficult and challenging circumstances. Inevitably there will be occasions where we do not always get it right.

'We welcome comments and complaints from members of the public, and as a public service we expect to be held to account. We endeavour to learn lessons from cases whether this be on an individual or organisational basis.'

The Gwent and South Wales forces responded in similar fashion outlining their own beliefs that the rise in complaints was a reflection of the increased public confidence in the police complaints system.

IPCC chair Nick Hardwick added: 'Clearly the public continues to feel greater confidence in the complaints process.'

BBC News © BBC MMIX, 25 September 2008

<http://news.bbc.co.uk/go/pr/fr/-/1/hi/wales/7633839.stm>



In addition the following reforms have also been made:

- The burden of proof regarding a complaint was beyond reasonable doubt. This has now been lowered to the balance of probabilities.
- Previously, if an officer had been cleared of criminal charges he could not be disciplined. Again this has now been changed.
- Thirdly, officers can no longer evade discipline by taking early retirement or long-term sick leave.

Evaluation of the complaints process

Dealing with complaints against the police is a difficult task and as such will always be subject to criticism. The handling and investigation of complaints still causes controversy and there remains dissatisfaction amongst the public and the police themselves. The system was often described as 'police investigating police', which is one of the reasons the IPCC was set up.

L. H. Leigh in his book *Police Powers in England and Wales* makes the following comment regarding the complaints process:

- Many aggrieved citizens are unaware of the complaints system. Even if aware they may not have the ability to write a complaint without help.
- Many people are afraid of possible repercussions.
- Many allegations are difficult to prove. It is often the officer's word against the complainant.
- There is a tendency for officers to close ranks.
- Some people such as working class, ethnic minorities, etc. fail to register complaints.
- The police are still the ones carrying out the investigations.
- It makes no provision for any compensation to be paid to successful complainants.



The alternative to the complaints system

One of the most serious problems with the complaints system is that it does not have the power to order the police to compensate successful complainants. The only option for those seeking compensation would be to sue in the civil courts. Cases would be conducted in the High Court and most cases would be decided by a jury.

Civil proceedings

If you make a complaint you still have the right to take the police to court and sue for compensation. This is called a civil action.

Police may be sued for:

- Assault/Battery – i.e. unlawful application of force by officers (remember reasonable force though!)
- False imprisonment – i.e. where detention is considered unlawful.
- Trespass – i.e. where police enter your property without lawful authority.

Police may also be sued for breaching your Human Rights or for racial discrimination.

Activity 8



Read Elliott and Quinn pages 310–312 (10th)/326–328 (11th) and the article ‘Force of habit’ below and answer the following questions:

- 1 Briefly describe the facts and outcome of *Goswell v Commissioner of Metropolitan Police (1996)*.

At vero eos e
accusamus e
iusto odio die
simos ducim
qui blanditis
praesentium
voluptatum d



- 2 Why was Kenneth Hsu awarded £220,000?

3 What did the Court of Appeal do to his damages?

4 Discuss the ceiling placed by the Court of Appeal on future actions against the police. Why do you think they did this?



Force of habit

Once again a devastating miscarriage of justice has been laid at the door of the police. Officers forged one confession and faked another to put four men wrongly behind bars for the murder of Carl Bridgewater. Police have been the prime culprits behind a dismal catalogue of wrongful convictions uncovered in the 1990s, yet those responsible have escaped virtually unscathed.

Ironically, the release of the Bridgewater defendants by the Court of Appeal came only two days after the court delivered another ruling which will make it harder for the police to be held to account for their wrongdoing in the civil courts. The court reduced the £220,000 damages awarded by a High Court jury to a London hairdresser, Kenneth Hsu, to £35,000. He was arrested, had his arms twisted behind his back, was put into a neck lock and bundled into a police van after police were called to his home in the middle of a dispute with a former tenant. After his release, his back and kidneys were found to be bruised and he was passing blood. A psychiatrist said he was suffering from post traumatic stress disorder. His complaint about the conduct of the three policemen who arrested him was rejected, but the jury believed his story. Last week the Court of Appeal put a ceiling of £50,000 on exemplary damages for 'oppressive, arbitrary or unconstitutional' behaviour by the police.

The right to call public servants to account is a basic principle of democracy. Yet without the means to enforce it, such a right is meaningless. The Court of Appeal's ruling undermines the value of the civil action as the main avenue through which the police can be held to account, given the limits of the formal complaints system. Complaints are investigated not by an independent body but by other police forces, a case, critics argue, of the fox being asked to look after the chickens. Such scepticism is given credence by the statistics. The Police Complaints Authority points out that of 4,154 fully investigated complaints in 1995-6, just over a quarter were upheld. Yet this does not address the most significant question: the percentage of complaints that led to disciplinary charges. In 1995-6, only 6 per cent of complaints resulted in such charges. No wonder increasing numbers of victims of police conduct have turned to the civil courts. A civil action has a key attraction: the right to trial by jury. Juries have proved consistently willing to believe

complainants and to indicate their disapproval by making large awards of exemplary damages, though that power has now been curbed.

Civil actions against the police also have their limits. There is a whole range of misconduct for which you cannot sue and often the cases will settle out of court without any admission of liability. Damages are paid not by the officer(s) in question but out of public funds.

Police powers have steadily increased over the past two decades. In such a climate the right to challenge how these powers is exercised becomes more important than ever. The fact that such a fundamental right is rendered little more than an empty phrase should be a matter of concern to us all.

The Guardian 1997



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Assignment 1.2



Refer back to the facts of Tom in Activity 5.

Explain to Tom how he could make a complaint against the police and consider whether he could sue the police. [11]

Plan

Introduction – Explain how the police are accountable and to whom. Introduce the two means of redress: the complaints process and civil action.

Development – Explain how a complaint is made. Using the website www.ipcc.gov.uk explain to Tom how a complaint should be made. Then examine the two different complaint routes, formal resolution and informal resolution. Consider which might apply to Tom.

Explain the role of the IPCC.

Explain when the police may be sued and in which court. Look at the role of the jury. Using Hsu's case, comment on the Court of Appeal's ceiling on damages for actions against police.

Conclusion – Consider whether Tom is likely to succeed in any action and the probable outcome.



Revision sheet 1.2 – police powers

- 1) Where should a person be taken following arrest? How does this act as a safeguard?
- 2) When should detention be reviewed? And what is the general maximum detention period?
- 3) Can the general detention period be extended? For how long and on what grounds?
- 4) Explain the role of the custody officer.
- 5) How effective is the custody officer?
- 6) What safeguard is contained in section 60? And how do the police avoid it?
- 7) What are section 56 and section 58 rights? When can they be suspended?
- 8) Discuss the pros and cons of the duty solicitor scheme.
- 9) Who is entitled to an appropriate adult and why?
- 10) Section 76 allows the court to exclude evidence – under what grounds?
- 11) Give an example to illustrate when evidence might be excluded under section 78.

- 12) Give an example of an intimate search and explain when one can be made.
- 13) Briefly explain how a person should make a complaint against the police.
- 14) Who decides whether a complaint is recorded and dealt with locally or formally?
- 15) When would a formal investigation be carried out?
- 16) Explain the role of the IPCC?
- 17) Can compensation be claimed under the complaints process?
- 18) Explain why Goswell was given damages against the police.
- 19) In which court did Goswell and others like him sue the police? Who will make the decision and assess damages?
- 20) What happened to Kenneth Hsu's damages when the police appealed to the CA?