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Advanced Criminal Law

1. Advanced Police Station Skills I	
1. The Investigative Powers of the Police	p.1-11
2. Note on Drug Offences	p.12-13
3. Procedure from Arrest to Charge	p.14-22
4. Alternatives to Charging	p.23-24
5. Role of the Solicitor When Attending the Police Station	p.25-32
6. Considerations When Reviewing the Custody Record	p.33-37
7. Responses to Interview Questions	p.38-41
8. Safest Defence - Decision Making Template	p.42
2. Advanced Police Station Skills II	
1. Role of the Solicitor in an Interview	p.43-50
2. The Critical Incidents Test	p.51-65
3. Complaints about the Police	p.66
4. Identification Procedures	p.67-73
5. Key Provisions from PACE Code C and D	p.74-77
3. Advanced Bail	
1. Plea Before Venue Hearings	p.78-81
2. Custody Time-Limits	p.82-83
3. Bail Granted by the Court	p.84-87
4. Procedure at a Contested Bail Application	p.88-89
5. Conditions on Bail	p.-91
6. Breaches of Bail	p.92-95
7. Appeals Against Decisions on Bail	p.96-99
8. Exemplar Bail Appeal Notice Form	P100-101
4. Advanced Evidence	
1. Case Analysis - Rape	p.102-105
2. Relevant Rules of Evidence in Sexual Offence Cases	P106-109
3. Special Measures	p.110-112
4. Guidelines When Relying on Identification Evidence	p.113-115
5. Hearsay Evidence	p.116-126
6. Hearsay Notices	p.127
7. Challenging the Admissibility and Credibility of Hearsay Evidence	p.128-129
8. Notice to Adduce Hearsay In the Interests of Justice (s114(1)(d))	p.130-132
9. Example Submissions to Oppose Adducing Hearsay in the Interests of Justice	p.133-134
10. Adducing Evidence of the Defendant's Previous Convictions	p.135-139
11. Gateway (d)	p.140-145
12. Exemplar Notice of Bad Character Evidence (Gateway (e))	p.146-148
13. Evidence of Good Character	p.149-150
14. Admitting Bad Character Evidence of Someone Other than the Defendant	p.151-153
5. Getting to the Crown Court	
1. Procedure to a Crown Court Trial	p.154-160

2. Editing the Record of Audibly Record Interview	p.161
3. Indictments	p.162-165
4. Case Management Duties of the Parties	p.166-167
5. Briefs to Counsel	p.168-173
6. Example Brief to Counsel	p.174-177
7. Disclosure & the Defence Statement	p.178-181
8. Trial Procedure	p.182-185
6. The Crown Court	
1. Newton Hearings	p.186-187
2. Sentencing in the Crown Court	p.188-198
3. Ancillary Orders	p.199-201
4. Summing Up	p.202-208
5. Appeals from the Crown Court	p.209-214
7. Road Traffic Offences	
1. Additional Penalties for Road Traffic Offences	p.215-221
2. Special Reasons	p.222-224
3. Mitigating Circumstances	p.225-227
4. Sentencing Guidelines for Road Traffic Offences	p.228-234
8. Juveniles at the Police Station	
1. Juveniles at the Police Station	p.235-238
2. Alternatives to Charging Juveniles	P239-245
3. Appropriate Adults	p.246-249
4. Critical Incidents Test - Juvenile Suspects	p.250-259
9. Juveniles at the Youth Court	
1. The Youth Court	p.260-264
2. Bail in the Youth Court	p.265-267
3. Sentencing and Appeals in the Youth Court	p.268-275
4. Case Analysis - Theft	p.276-281
5. Matters that do not Need to be Proved by Evidence	p.282
6. Corroboration	p.283
7. Drafting a Notice to Introduce Evidence of a Non-Defendant's Bad Character	p.284-287
8. Example Notice of Non-Defendants Bad Character Evidence (2)	p.288-290
9. Plea in Mitigation - Preparation and Structure	p.291-293
10. Legal Aid Funding	p.294-297

Colour Coding Guide	<ul style="list-style-type: none"> ❖ Blue Text – Reference to statutes and case law. ❖ Green Text – Reference to textbook¹ paragraphs, workshop tasks² and other notes in this guide. ❖ Orange Text – Reference to Criminal Procedural Rules and Court Forms. ❖ Purple Text – Reference to Professional Conduct Rules or Principles.
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¹ Textbook references are to the CLP Legal Practice Guides by CLP Publishing.

² References to Workshop tasks are to University of Law workshop tasks (which may be adopted by other LPC institutions). The content and structure of Workshops is subject to change at short notice and so task references should be treated as a general guide only.

The Investigative Powers of the Police

❖ [Criminal Litigation, Chapter 2](#)

Overview	<ul style="list-style-type: none"> ❖ The following note looks at the rules regarding the exercise of police powers outside the police station, when they are investigating an offence. ❖ The major powers of the police, governed by the Police and Criminal Evidence Act 1984 (PACE 1984), are as follows: <ul style="list-style-type: none"> ➤ Power to stop and search a suspect. ➤ Power of arrest. ➤ Powers of Entry, Search and Seizure.
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<p>Stop and Search</p> <p>Criminal Litigation, 2.2</p> <p>s1(2) PACE 1984</p>	<p>What is the power of stop and search?</p> <p>Criminal Litigation, 2.2.1</p>	<ul style="list-style-type: none"> ❖ A police officer has the power to search any person or vehicle when they have reasonable grounds for suspecting that they will find: <ul style="list-style-type: none"> ➤ Stolen articles; ➤ Prohibited articles; <ul style="list-style-type: none"> ▪ I.e., offensive weapons made for use in connection with: <ul style="list-style-type: none"> • Burglary; • Theft; • Taking a motor vehicle or other conveyance without authority; • Fraud; • Destroying or damaging property. ➤ Articles to which s1(8A) applies. <ul style="list-style-type: none"> ▪ I.e., an article with a blade or a point in a public place.
		<p>“Reasonable Grounds for Suspicion”</p> <p>Para 2.2, PACE, Code A</p>
		<ul style="list-style-type: none"> ❖ What constitutes “reasonable grounds” depends on the circumstances in each case. ❖ There must, however, be an objective basis for the suspicion based on: <ul style="list-style-type: none"> ➤ Facts; ➤ Information; and/or ➤ Intelligence; ➤ Which are relevant to the likelihood that the object will be found.
		<ul style="list-style-type: none"> ❖ The article can also be seized if the officer has reasonable grounds for suspecting that the article falls into one of the above categories (s1(6)).
<p>Where can the power be exercised?</p>		<ul style="list-style-type: none"> ❖ The power can be exercised at any place which: <ul style="list-style-type: none"> ➤ At the time of the search, the public, or any part of the public, have access. <ul style="list-style-type: none"> ▪ The access can be: <ul style="list-style-type: none"> • By payment or otherwise; or

	<p>Criminal Litigation, 2.2.2</p>	<ul style="list-style-type: none"> • As of right or by virtue of express or implied permission; <ul style="list-style-type: none"> ▪ E.g., shopping centres, pubs. ➤ <u>In any other place (other than a dwelling) to which people have ready access at the time the officer intends to carry out the search.</u> <ul style="list-style-type: none"> ▪ E.g., a garden. 		
	<p>When can the power be exercised?</p> <p>Criminal Litigation, 2.2.3</p>	<ul style="list-style-type: none"> ❖ The officer <i>must</i> have reasonable grounds for suspicion. ❖ Before exercising a power of stop and search, the officer must have reasonable grounds for suspecting that they will find stolen or prohibited articles or any article to which s1(8A) applies (s1(3)). 		
	<p>Steps that need to be taken prior to the search.</p> <p>Criminal Litigation, 2.2.4</p>	<ul style="list-style-type: none"> ❖ The officer must, prior to the search, take reasonable steps to bring to the person’s attention to the following factors: <ul style="list-style-type: none"> ➤ If the officer is not in uniform, that they are a police officer (s2 and s3); ➤ That the person is being detained for the purposes of a search; ➤ The officer’s name and the name of the police station to which he is attached; ➤ The object of the proposed search (i.e., details of the article(s) for which there is a power to search); ➤ The officer’s grounds for proposing to carry out the search. 		
	<p>Other Powers of Stop and Search¹</p>	<ul style="list-style-type: none"> ❖ The police can be granted powers of stop and search in addition to those powers granted by PACE 1984 by specific legislation. Examples include: <table border="1" data-bbox="459 1527 1471 1966" style="width: 100%; border-collapse: collapse;"> <tr> <td data-bbox="459 1527 657 1966" style="width: 30%; padding: 5px;"> <p>Powers to search persons and vehicles for controlled drugs.</p> <p>s23 Misuse of Drugs Act 1971</p> </td> <td data-bbox="657 1527 1471 1966" style="padding: 5px;"> <ul style="list-style-type: none"> ❖ s23(2): provides the police with a power to: <ul style="list-style-type: none"> ➤ Search a person, and detain them for the purposes of searching. ➤ Stop and search any vehicle or vessel in which the constable suspects that a drug may be found. ➤ Seize and detain anything found in the course of the search. </td> </tr> </table> 	<p>Powers to search persons and vehicles for controlled drugs.</p> <p>s23 Misuse of Drugs Act 1971</p>	<ul style="list-style-type: none"> ❖ s23(2): provides the police with a power to: <ul style="list-style-type: none"> ➤ Search a person, and detain them for the purposes of searching. ➤ Stop and search any vehicle or vessel in which the constable suspects that a drug may be found. ➤ Seize and detain anything found in the course of the search.
<p>Powers to search persons and vehicles for controlled drugs.</p> <p>s23 Misuse of Drugs Act 1971</p>	<ul style="list-style-type: none"> ❖ s23(2): provides the police with a power to: <ul style="list-style-type: none"> ➤ Search a person, and detain them for the purposes of searching. ➤ Stop and search any vehicle or vessel in which the constable suspects that a drug may be found. ➤ Seize and detain anything found in the course of the search. 			

¹ [Workshop 1, Prep Task 1, Question 2\(b\)](#)

			<ul style="list-style-type: none"> ❖ s23(3): enables the police to apply to the magistrates’ court for a warrant to gain entry to a premises of the purposes of lawfully searching any persons present and the property itself. <ul style="list-style-type: none"> ➤ This provides the police with a power of entry where the officer is not already lawfully on the relevant premises and consent to enter is being refused by the occupier. ➤ To grant a warrant, the magistrate must be satisfied that there are reasonable grounds for suspecting; <ul style="list-style-type: none"> ▪ That controlled drugs are in the possession of a person on the premises; or ▪ That a document connected with a transaction or dealing which would be an offence under the Act is in possession of a person on the premises. ❖ The police may use such force as is reasonable when carrying out the search (s3(1), Criminal Law Act 1967).
		<p>Powers under the Criminal Justice and Public Order Act 1994 (CJPOA 1994)</p>	<ul style="list-style-type: none"> ❖ Police stop and search powers are extended to the following situations by the CJPOA 1994: <ul style="list-style-type: none"> ➤ An incident involving serious violence has taken place; ➤ A dangerous instrument or offensive weapon used in the incident is being carried; and ➤ It is expedient to give an authorisation under this section to find the instrument or weapon.
		<p>Searches of detained persons.</p> <p>s54 PACE 1984</p>	<ul style="list-style-type: none"> ❖ s54(1) and (2) PACE 1984 require the custody officer to search a suspect who has been detained at a police station. ❖ The custody officer: <ul style="list-style-type: none"> ➤ Must make a record of any items of property on the suspect’s person (s54(1) and (2)). ➤ May seize and retain property (s54(3)) if the custody officer has reasonable grounds for believing: <ul style="list-style-type: none"> ▪ It may be evidence; or

			<ul style="list-style-type: none"> ▪ That the suspect may use it to (a) cause injury, (b) cause damage to property, (c) interfere with evidence, or (d) assist them to escape (Code C, para 4.2).
<p>Arrest</p> <p>Criminal Litigation, 2.3</p>	<p>When will an arrest be valid?</p> <p>Criminal Litigation, 2.3.1</p>	<ul style="list-style-type: none"> ❖ To be valid, an arrest must be: <ul style="list-style-type: none"> ➢ Carried out pursuant to a power of arrest; and ➢ Carried out in the proper manner. ❖ If either of these features are not present, the arrest will be in breach of the suspect’s right to liberty under Art 5 ECHR. 	
	<p>Power of Arrest</p> <p>Criminal Litigation, 2.3.2</p>	<p>Power of Arrest under s24 PACE 1984:</p>	<ul style="list-style-type: none"> ❖ The police’s power of arrest is derived from two sources: <ul style="list-style-type: none"> ➢ s24 PACE 1984; and ➢ The common law power of arrest to prevent a breach of the peace. ❖ An officer can lawfully arrest a person where: <ul style="list-style-type: none"> ➢ They are about to commit a criminal offence; ➢ They are committing a criminal offence; ➢ The officer has reasonable grounds for suspecting that a person is about to commit a criminal offence; or ➢ The officer has reasonable grounds for suspecting that a person is committing a criminal offence. ➢ (s24(1)). ❖ Additionally, there must be reasonable grounds for believing that the arrest is “necessary” for any of the reasons set out in in s24(5) (s24(4)). These are: <ul style="list-style-type: none"> ➢ To enable the name of the person to be ascertained; ➢ To enable the address of the person in question to be ascertained; ➢ To prevent the person in question: <ul style="list-style-type: none"> ▪ Causing physical injury to himself or any other person; ▪ Suffering physical injury;

			<ul style="list-style-type: none"> ▪ Causing loss of or damage to property; ▪ Committing an offence against public decency; ▪ Causing an unlawful obstruction of the highway; <ul style="list-style-type: none"> ➤ To protect a child or other vulnerable person from the person in question; ➤ (e) To allow the prompt and effective investigation of the offence or of the conduct of the person in question; ➤ (f) To prevent any prosecution for the offence from being hindered by the disappearance of the person in question. <p>❖ These grounds are extremely broad and will normally be able to be relied upon by the police to justify an arrest in most instances.</p>
		<p>Common Law Power of Arrest to Prevent a Breach of the Peace</p>	<p>❖ Additionally, any person is entitled to arrest someone else where:</p> <ul style="list-style-type: none"> ➤ A breach of the peace is committed in their presence; ➤ The person has reasonable cause to believe that a breach of the peace will be committed in the imminent future; ➤ A breach of the peace has been committed and the person he has reasonable grounds to believe that it will be renewed if the person is not arrested. <p>❖ Breach of the peace occurs where <i>“harm is actually done or is likely to be done to a person or in his presence to his property or a person is in fear of being so harmed through an assault, an affray, a riot or other disturbance”</i> (R v Howell [1982] QB 416).</p>
	<p>Conduct of an arrest</p> <p>Criminal Litigation, 2.3.3-2.3.6</p>	<p>“Force” can be Used.</p>	<p>❖ In addition to the officer exercising a lawful power of arrest, to be lawful an arrest must also be carried out in the proper manner:</p> <p>❖ The police are permitted to use such force as is reasonable when effecting an arrest (s3(1), Criminal Law Act 1967).</p>

			<ul style="list-style-type: none"> ❖ What is reasonable is a matter of fact and degree. Use of excessive force may result in a civil claim being made by the suspect or a criminal prosecution against the officer concerned.
		<p>The arresting officer must give the suspect certain information.</p>	<ul style="list-style-type: none"> ❖ When arresting the suspect, the police officer must: <ul style="list-style-type: none"> ➤ Tell the suspect: <ul style="list-style-type: none"> ▪ That they are under arrest (s28(1)); and ▪ The ground(s) for the arrest (s28(3)). ▪ This is always the case, even if the fact of the arrest and grounds are seemingly obvious. ➤ Caution the suspect (PACE Code C, para 10.4): <ul style="list-style-type: none"> ▪ The police officer must say the following to the suspect: <i>“You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence”</i>.
		<p>Searches following arrest.</p>	<ul style="list-style-type: none"> ❖ A police officer can search the person arrested: <ul style="list-style-type: none"> ➤ For anything which the person might use to assist them in escaping from custody, or which might be evidence (s32(2)(a)); ➤ If the officer has reasonable grounds for believing that the person may present a danger to themselves or to others; (s32(1)). ❖ The officer may also: <ul style="list-style-type: none"> ➤ Enter any premises which the arrested person was in when, or immediately before, they were arrested; and ➤ Search for any evidence relating to the offence (s32(2)(b)).
		<p>Interviews after arrest.</p>	<ul style="list-style-type: none"> ❖ In order for answers to questions to be put into evidence before a court, a person who is suspected of committing an offence must be cautioned before they are questioned about an offence (Code C, para 10.1). ❖ When a suspect has been arrested:

			<ul style="list-style-type: none"> ➤ The suspect should not be interviewed about the relevant offence except at a police station or other authorised place of detention; ➤ Unless the delay caused by having to take the suspect to a police station to be interviewed would be likely to (Code C, para 11.1): <ul style="list-style-type: none"> ▪ Lead to interference with, or harm to, evidence connected with an offence; or ▪ Lead to interference with, or physical harm to, other people; or ▪ Lead to serious loss of, or damage to, property; or ▪ Lead to alerting other people suspected of committing an offence but not yet arrested for it; or ▪ Hinder the recovery of property obtained in consequence of the commission of an offence.
		<p><u>Suspect taken to police station.</u></p>	<ul style="list-style-type: none"> ❖ The suspect must be: <ul style="list-style-type: none"> ➤ Taken to the police station “as soon as practicable” (s30(1A)). <p>OR</p> ➤ Released on bail (known as “street bail”) to allow the officer to conduct further investigations before interview (s4 CJA 2003). ❖ If released on street bail, the police officer may impose conditions where these are necessary: <ul style="list-style-type: none"> ➤ To secure that the person surrenders to custody; ➤ To secure that the person does not commit an offence while on bail; ➤ To secure that the person does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person; or

			<ul style="list-style-type: none"> ➤ For the person’s own protection, or, if aged under 17, for the person’s own welfare or in the person’s own interests. 						
<p>Entry, Search and Seizure²</p> <p>Criminal Litigation, 2.4</p>	<p>❖ Police officers also have powers of entry, search, and seizure, designed to allow officers to search for, and seize property to ensure that evidence is preserved. The powers are as follows:</p> <p>Powers of Entry</p> <p>s8 PACE 1984</p> <p>Criminal Litigation, 2.4.1</p>	<p>❖ A police officer can apply to a magistrate for a warrant to enter and search a premises under s8.</p> <p>❖ To issue a warrant, the magistrate must be satisfied that there are reasonable grounds for believing all of the following:</p>	<table border="1"> <tr> <td data-bbox="464 651 667 813"> <p>That there has been an indictable offence.</p> </td> <td data-bbox="667 651 1503 813"> <p>❖ That an indictable offence has been committed.</p> </td> </tr> <tr> <td data-bbox="464 813 667 936"> <p>Material on the premises.</p> </td> <td data-bbox="667 813 1503 936"> <p>❖ That there is material on the premises which is likely to be of substantial value to the investigation of the offence.</p> </td> </tr> <tr> <td data-bbox="464 936 667 2009"> <p>That the material is relevant, not privileged, and not excluded.</p> </td> <td data-bbox="667 936 1503 2009"> <p>❖ The material must:</p> <ul style="list-style-type: none"> ➤ Be likely to be relevant evidence; and ➤ Not consist of or include items that are: <ul style="list-style-type: none"> ▪ Subject to legal privilege: <ul style="list-style-type: none"> • This includes: <ul style="list-style-type: none"> ○ Communications between a client and solicitor where the purpose of the communication is the giving or receiving of legal advice (advice privilege). ○ Communications between the client / client’s solicitor, and a third party which come into existence after litigation is contemplated or commenced; and are for the sole or dominant purpose of litigation (litigation privilege). </td> </tr> </table>	<p>That there has been an indictable offence.</p>	<p>❖ That an indictable offence has been committed.</p>	<p>Material on the premises.</p>	<p>❖ That there is material on the premises which is likely to be of substantial value to the investigation of the offence.</p>	<p>That the material is relevant, not privileged, and not excluded.</p>	<p>❖ The material must:</p> <ul style="list-style-type: none"> ➤ Be likely to be relevant evidence; and ➤ Not consist of or include items that are: <ul style="list-style-type: none"> ▪ Subject to legal privilege: <ul style="list-style-type: none"> • This includes: <ul style="list-style-type: none"> ○ Communications between a client and solicitor where the purpose of the communication is the giving or receiving of legal advice (advice privilege). ○ Communications between the client / client’s solicitor, and a third party which come into existence after litigation is contemplated or commenced; and are for the sole or dominant purpose of litigation (litigation privilege).
<p>That there has been an indictable offence.</p>	<p>❖ That an indictable offence has been committed.</p>								
<p>Material on the premises.</p>	<p>❖ That there is material on the premises which is likely to be of substantial value to the investigation of the offence.</p>								
<p>That the material is relevant, not privileged, and not excluded.</p>	<p>❖ The material must:</p> <ul style="list-style-type: none"> ➤ Be likely to be relevant evidence; and ➤ Not consist of or include items that are: <ul style="list-style-type: none"> ▪ Subject to legal privilege: <ul style="list-style-type: none"> • This includes: <ul style="list-style-type: none"> ○ Communications between a client and solicitor where the purpose of the communication is the giving or receiving of legal advice (advice privilege). ○ Communications between the client / client’s solicitor, and a third party which come into existence after litigation is contemplated or commenced; and are for the sole or dominant purpose of litigation (litigation privilege). 								

² [Workshop 1, Prep Task 1, Question 2\(b\)](#)

			<ul style="list-style-type: none"> ▪ Excluded material; or ▪ Special procedure material. <ul style="list-style-type: none"> • E.g., health records or journalistic material.
		<p>Any of the following conditions are met.</p>	<ul style="list-style-type: none"> ❖ The magistrate must be satisfied that any of the conditions specified in s8(3) apply, namely: <ul style="list-style-type: none"> ➤ That it is not practicable to communicate with any person entitled to grant entry to the premises; ➤ That it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence; ➤ That entry to the premises will not be granted unless a warrant is produced; or ➤ That the purpose of a search may be frustrated or seriously prejudiced unless a police officer arriving at the premises can secure immediate entry to them.
	<p>Powers of Search</p> <p>s17 and s18 PACE 1984</p> <p>Criminal Litigation, 2.4.2-2.4.3</p>		<ul style="list-style-type: none"> ❖ s17: A police officer can enter and search a premises for the purpose of: <ul style="list-style-type: none"> ➤ Executing a warrant of arrest; or ➤ Arresting a person for an indictable offence; or ➤ Recapturing any person who is unlawfully at large and whom he is pursuing. ❖ In such circumstances, the officer must have reasonable grounds for believing that the person they are seeking is on the premises. ❖ The officer can also enter and search a premises for the purpose of saving life or limb, or preventing serious damage to property (s17(d)) (in which case they do not have to have reasonable grounds for believing that a person is on the premises). ❖ This allows the police to, for instance, enter and search a premises without a warrant if they have reasonable grounds for believing that a suspect accused of an indictable offence is hiding there.

		<p>Suspect Arrested for an Indictable Offence s18³</p>	<ul style="list-style-type: none"> ❖ s18 allows a police officer to enter and search any premises occupied or controlled by a person who has been arrested for an indictable offence. ❖ The power can be used to search the home of a suspect who has been arrested. ❖ The police officer must have reasonable grounds for suspecting that there is evidence at the premises that relates: <ul style="list-style-type: none"> ➤ To that offence; or ➤ To some other indictable offence which is connected with or similar to that offence.
	<p>Powers of Seizure</p> <p>s19 PACE 1984</p> <p>Criminal Litigation, 2.4.4</p>	<p>When can the power be exercised?</p>	<ul style="list-style-type: none"> ❖ s19 of PACE 1984 gives police officers the power to seize items found on a premises: <ul style="list-style-type: none"> ❖ An officer has the power to seize items when the officer is “<i>lawfully on any premises</i>”. ❖ An officer will be “<i>lawfully on any premises</i>” where they are there: <ul style="list-style-type: none"> ➤ With the consent of the occupier; ➤ To execute a search warrant under s8; ➤ Pursuant to any powers granted by: <ul style="list-style-type: none"> ▪ s17 (power to enter and search a premises for the purpose of executing a warrant of arrest / arresting a person for an indictable offence). ▪ s18 (power to enter and search a premises occupied or controlled by a person who has been arrested for an indictable offence); or ▪ s32 (power to search a person who has been arrested, and search any premises in which the person was when arrested or immediately before he was arrested).
		<p>What can be seized?</p>	<ul style="list-style-type: none"> ❖ The officer may seize anything which is on the premises, if the officer has reasonable grounds for believing that: <ul style="list-style-type: none"> ➤ s19(2): <ul style="list-style-type: none"> ▪ It has been obtained in consequence of the commission of an offence; and

³ [Workshop 1, Prep Task 1, Question 2\(b\)](#)

			<ul style="list-style-type: none"> ▪ It is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed. <p>➤ s19(3):</p> <ul style="list-style-type: none"> ▪ It is evidence in relation to an offence; and ▪ It is necessary to seize it in order to prevent the evidence being concealed, lost, altered or destroyed.
	<p>Power to retain seized property (s22)</p> <p>Criminal Litigation, 2.4.6</p>		<ul style="list-style-type: none"> ❖ The police can retain: <ul style="list-style-type: none"> ➤ Any property seized under s19 “so long as is necessary in all the circumstances” (s22(1)). ➤ Anything seized for the purposes of a criminal investigation (s22(2)) for: <ul style="list-style-type: none"> ▪ Use as evidence at a criminal trial, or ▪ Forensic examination, or investigation in connection with an offence.

<p>Illegal Searches</p> <p>Criminal Litigation, 21.3</p>	<ul style="list-style-type: none"> ❖ R v Stewart [1995] Crim LR 500: the CPS will be allowed to rely on evidence even if it is obtained following an illegal search so long as the evidence is “relevant” to the charge the defendant faces. ❖ The fact that such items were found only as a result of an illegal search does not affect the fairness of the trial because such evidence is relevant to the defendant’s guilt.
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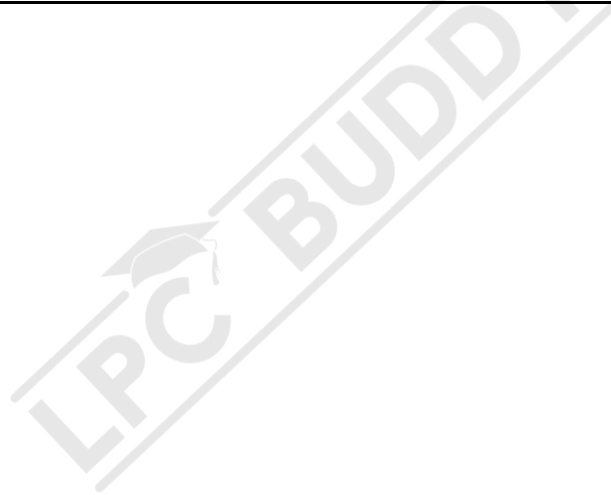
Drugs Offences¹

Overview	<ul style="list-style-type: none"> ❖ Students at the University of Law are required to understand the basic elements of three main drug offences: <ul style="list-style-type: none"> ➤ Production of a controlled drug; ➤ Possession of a controlled drug; and ➤ Possession of a controlled drug with intent to supply. ❖ The University of Law examines a case study of Nigel Lawson, a suspect who is arrested having been found to be in possession of “<i>a small amount of vegetable matter believed to be cannabis</i>”. ❖ Mr Lawson admits possessing cannabis for personal use. He is arrested on suspicion of the following offences.
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Producing cannabis.	<ul style="list-style-type: none"> ❖ s4(2)(a) Misuse of Drugs Act (MDA) 1971 renders it a criminal offence to “produce” a “controlled drug”. 				
Contrary to s4(2)(a) MDA 1971	<table border="1"> <tr> <td style="background-color: #e0e0e0;">“Produce”</td> <td>❖ “Produce” means producing by manufacture, cultivation or any other method (s37).</td> </tr> <tr> <td style="background-color: #e0e0e0;">“Controlled drug”</td> <td>❖ A “controlled drug” is any substance specified, in Parts I, II or III of Schedule 2 of the Act (which includes cannabis (a Class B controlled drug)).</td> </tr> </table>	“Produce”	❖ “Produce” means producing by manufacture, cultivation or any other method (s37).	“Controlled drug”	❖ A “controlled drug” is any substance specified, in Parts I, II or III of Schedule 2 of the Act (which includes cannabis (a Class B controlled drug)).
“Produce”	❖ “Produce” means producing by manufacture, cultivation or any other method (s37).				
“Controlled drug”	❖ A “controlled drug” is any substance specified, in Parts I, II or III of Schedule 2 of the Act (which includes cannabis (a Class B controlled drug)).				
	<ul style="list-style-type: none"> ❖ The offence requires evidence: <ul style="list-style-type: none"> ➤ That a controlled drug was produced; ➤ Of some link between the suspect and the production process; and ➤ That the suspect knew that a controlled drug was being produced. 				
Possession of cannabis	<ul style="list-style-type: none"> ❖ s5(1) MDA 1971 renders it a criminal offence for a person to be in “possession” of a “controlled drug”. 				
Contrary to s5(1) MDA 1971.	<table border="1"> <tr> <td style="background-color: #e0e0e0;">“Possession”</td> <td> <ul style="list-style-type: none"> ❖ A person is in “possession” of a controlled drug where they: <ul style="list-style-type: none"> ➤ Are unlawfully in physical possession or in control of any substance or product specified in Parts I, II or III of Schedule 2 of the Act; and ➤ Had knowledge of possession of the item, even if they did not know it was a controlled drug. </td> </tr> <tr> <td style="background-color: #e0e0e0;">Defence (s28)</td> <td> <ul style="list-style-type: none"> ❖ The person may have a defence if they: <ul style="list-style-type: none"> ➤ Did not know, suspect, or have reason to suspect the existence of some fact that the prosecution is required to prove (for example that they were in possession of the drug); or </td> </tr> </table>	“Possession”	<ul style="list-style-type: none"> ❖ A person is in “possession” of a controlled drug where they: <ul style="list-style-type: none"> ➤ Are unlawfully in physical possession or in control of any substance or product specified in Parts I, II or III of Schedule 2 of the Act; and ➤ Had knowledge of possession of the item, even if they did not know it was a controlled drug. 	Defence (s28)	<ul style="list-style-type: none"> ❖ The person may have a defence if they: <ul style="list-style-type: none"> ➤ Did not know, suspect, or have reason to suspect the existence of some fact that the prosecution is required to prove (for example that they were in possession of the drug); or
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¹ [Workshop 1, Prep Task 1, Question 2\(a\)](#)

		<ul style="list-style-type: none"> ➤ They neither believed, suspected, nor had reason to suspect that the substance in question was a controlled drug; or ➤ They believed the product to be a type of controlled drug, which had it been that drug, would mean that there would not have been an offence at the time that they committed it.
<p>Possessing cannabis with intent to supply</p> <p>Contrary to s5(3) MDA 1971</p>	<p>“Supply”</p>	<ul style="list-style-type: none"> ❖ s5(3) MDA 1971 renders it a criminal offence for a person to be in “possession” of a “controlled drug” with intent to “supply” it to another. ❖ Includes distributing (s37(1)) and does not require proof of payment or reward. ❖ The drug recipient must be enabled to apply the thing handed over to purposes for which he desires or has a duty to apply it. So, for instance, a return of drugs to the original supplier would be a supply (R v Maginnis (1987) 1 All ER 907 HL). ❖ Includes the retention and return of controlled drugs deposited with a custodian <i>“by another person, even if the custodian did not lack of consent to the arrangement”</i> (R v Panton, TLR 27 March 2001).



Procedure from Arrest to Charge

❖ [Criminal Litigation; Chapter 3](#)

Overview	<ul style="list-style-type: none"> ❖ An individual who has been arrested and detained at a police station is entitled to free legal advice, and to be represented by a solicitor (s58, the Police and Criminal Evidence Act 1984 (PACE 1984)). ❖ Where the individual exercises their right to legal advice, the solicitor’s role is to protect and advance their legal rights (PACE Code C Guidance Notes, para 6D). In doing so, the solicitor will attend the police station to advise the client and accompany them in an interview. ❖ The solicitor must be aware of the procedure the police should have gone through when arresting the suspect and authorising their detention:
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Suspect is Arrested			
<p>The suspect is taken to the police station.</p> <p>Criminal Litigation; 3.2</p>	<ul style="list-style-type: none"> ❖ The suspect should be taken to the police station “<i>as soon as is practicable after the arrest</i>” (s30(1A)¹). ❖ They should then be brought before the custody officer “<i>as soon as practicable</i>” on arrival at the police station (Para 2.1A, PACE Code C). 		
<p>The Custody Officer</p>	<ul style="list-style-type: none"> ❖ The custody officer is responsible for: <ul style="list-style-type: none"> ➢ Authorising the detention of the suspect, and ➢ Supervising the suspect’s welfare whilst in police custody. ❖ As part of their role, they must maintain: <ul style="list-style-type: none"> ➢ A custody record: this records key information such as the suspect’s personal details; details of the offence and why the suspect was detained; and the date and time of arrest and detention. ➢ A detention log: this is a record of all of the significant events that occur whilst the suspect is in custody. 		
<p>The suspect is informed of their rights.</p>	<ul style="list-style-type: none"> ❖ The custody officer must inform the suspect about his ongoing rights, namely: <table border="1" style="width: 100%; margin-top: 10px;"> <tr> <td style="background-color: #e0e0e0; vertical-align: top;"> <p>Right to have someone informed of the arrest.</p> <p>s56(1)</p> </td> <td> <ul style="list-style-type: none"> ❖ The suspect is entitled, on request, to have one person told, as soon as practicable, that they have been arrested and are being detained. ❖ The right can be delayed up to a maximum of 36 hours by an officer of at least the rank of inspector, if: <ul style="list-style-type: none"> ➢ The suspect has been detained for an indictable offence (i.e., an offence that is tried by jury; so a </td> </tr> </table> 	<p>Right to have someone informed of the arrest.</p> <p>s56(1)</p>	<ul style="list-style-type: none"> ❖ The suspect is entitled, on request, to have one person told, as soon as practicable, that they have been arrested and are being detained. ❖ The right can be delayed up to a maximum of 36 hours by an officer of at least the rank of inspector, if: <ul style="list-style-type: none"> ➢ The suspect has been detained for an indictable offence (i.e., an offence that is tried by jury; so a
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¹ All references are to [the Police and Criminal Evidence Act 1984](#) unless otherwise stated.

		<p><u>Criminal Litigation.</u> <u>3.4.1</u></p>	<p>serious offence) in the Crown Court) (s56(2)(a) and (b)); and</p> <ul style="list-style-type: none"> ➤ There are reasonable grounds to believe that telling the named person of the arrest will: <ul style="list-style-type: none"> ▪ Lead to interference with or harm to evidence connected with an indictable offence, or interference with or physical injury to other persons; ▪ Lead to the alerting of other persons suspected of an offence but not yet arrested; or ▪ Hinder the recovery of any property obtained as a result of such an offence (s56(5)).
		<p>Right to legal advice s58(1)</p>	<ul style="list-style-type: none"> ❖ The suspect has a right to receive free and independent legal advice on request (s58(1)). ❖ The right can be delayed up to a maximum of 36 hours. ❖ The circumstances in which the right can be delayed are the same as those for delaying the right to inform another of their arrest above, save for a delay in exercising a right to legal advice must be authorised by a superintendent or above.
		<p>Right to consult the Codes of Practice (i.e., PACE)</p>	<ul style="list-style-type: none"> ❖ The suspect has the right to consult the PACE codes of practice (which regulate police powers and set out the suspect’s rights).
		<p>Right to be informed about the offence, and why they have been arrested and detained.</p>	<ul style="list-style-type: none"> ❖ PACE Code C, Para 11.1A: <i>“Before a person is interviewed, they and, if they are represented, their solicitor must be given sufficient information to enable them to understand the nature of any such offence, and why they are suspected of committing it”.</i>
	<p>The suspect is searched.</p>	<ul style="list-style-type: none"> ❖ The custody officer will then search the suspect. ❖ They: 	

		<ul style="list-style-type: none"> ➤ Must make a record of any items of property on the suspect’s person (s54(1) and (2)). ➤ May seize and retain property (s54(3)) if the custody officer has reasonable grounds for believing: <ul style="list-style-type: none"> ▪ It may be evidence; or ▪ That the suspect may use it to: <ul style="list-style-type: none"> • Cause injury; • Cause damage to property; • Interfere with evidence; or • Assist them to escape • PACE Code C, para 4.2 				
<p>The suspect is charged or detained.</p> <p>Criminal Litigation, 3.3</p>	<ul style="list-style-type: none"> ❖ The custody officer must determine whether there is already “sufficient evidence” to charge the suspect with the offence for which they have been arrested (s37(1)). ❖ They will ask the investigating officer for details of: <ul style="list-style-type: none"> ➤ The evidence against the suspect; and ➤ What steps the officer proposes to take if further detention is authorised. ➤ This will usually be done in the presence of the suspect. The custody officer should not put any questions to the suspect (Code C, para 3.4), but should note any comments the suspect makes in relation to the investigating officer’s account (PACE Code C, para 3.4). ❖ If there is sufficient evidence, the custody officer will charge the suspect. ❖ If there is not sufficient evidence, the custody officer may authorise the suspect’s detention without charge if the following grounds are made out. 	<table border="1" data-bbox="311 1326 1481 2101"> <tr> <td data-bbox="311 1326 469 1765"> <p>Detention Without Charge</p> </td> <td data-bbox="469 1326 1481 1765"> <ul style="list-style-type: none"> ❖ The custody officer may authorise that the suspect be kept in police detention where either: <ul style="list-style-type: none"> ➤ They have reasonable grounds for believing that detention is necessary to secure or preserve evidence relating to an offence for which he is under arrest; or ➤ It is necessary to obtain such evidence by questioning (s37(2)). ❖ The suspect must be released immediately if either ground ceases to apply (s39). </td> </tr> <tr> <td data-bbox="311 1765 469 2101"> <p>The suspect’s rights when detained.</p> </td> <td data-bbox="469 1765 1481 2101"> <ul style="list-style-type: none"> ❖ Where the suspect is detained, they have rights to: <ul style="list-style-type: none"> ➤ Certain conditions of detention; <ul style="list-style-type: none"> ▪ (E.g., they are entitled to a cell that is adequately heated, cleaned and ventilated, and adequately lit (Code C, para 8.2). </td> </tr> </table>	<p>Detention Without Charge</p>	<ul style="list-style-type: none"> ❖ The custody officer may authorise that the suspect be kept in police detention where either: <ul style="list-style-type: none"> ➤ They have reasonable grounds for believing that detention is necessary to secure or preserve evidence relating to an offence for which he is under arrest; or ➤ It is necessary to obtain such evidence by questioning (s37(2)). ❖ The suspect must be released immediately if either ground ceases to apply (s39). 	<p>The suspect’s rights when detained.</p>	<ul style="list-style-type: none"> ❖ Where the suspect is detained, they have rights to: <ul style="list-style-type: none"> ➤ Certain conditions of detention; <ul style="list-style-type: none"> ▪ (E.g., they are entitled to a cell that is adequately heated, cleaned and ventilated, and adequately lit (Code C, para 8.2).
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			<ul style="list-style-type: none"> ▪ See notes on Considerations When Reviewing the Custody Record/Detention Log. ➤ Not to be kept for longer than is permissible under s41-43 PACE 1984. <ul style="list-style-type: none"> ▪ In overview, a suspect is entitled to be detained for an initial period of 24 hours. ▪ Longer time periods require an extension to be authorised by, initially, a superintendent or above, and subsequently the Magistrates' Court. ▪ See notes on Considerations When Reviewing the Custody Record/Detention Log.
<p>The suspect is interviewed.</p> <p>Criminal Litigation, 3.5</p>	<p>❖ Once the custody officer has authorised the suspect's detention, the investigating officer will further the investigation, normally by interviewing the suspect.</p> <p>❖ Interviews conducted at the police station must comply with the requirements of PACE Codes C and E; a failure to comply with the Codes may result, at any subsequent trial, in any admission or confession made by the defendant being inadmissible.</p>	<p>Should the suspect be interviewed?</p> <p>Criminal Litigation, 3.5.2.2; 3.5.2.5</p>	<p>❖ A suspect should not generally be interviewed if:</p> <ul style="list-style-type: none"> ➤ PACE Code C, Para 11.18(b): They appear unable to: <ul style="list-style-type: none"> ▪ Appreciate the significance of questions or their answers; or ▪ Understand what is happening because of the effects of drink, drugs, or any illness, ailment or condition. ➤ PACE Code C, para 6.6: They have not received legal advice. <ul style="list-style-type: none"> ▪ However, this is subject to five exceptions, where: <ul style="list-style-type: none"> • The police delay the suspect receiving legal advice under s58(1) (as outlined above); or • An officer of superintendent or above believes the delay would lead to issues set out in Code C, para 6.6(b)(i); (such as interference or harm to evidence, or other people); or

		<ul style="list-style-type: none"> • The solicitor has agreed to attend but awaiting their arrival would “cause unreasonable delay” to the investigation (Code C, para 6.6(b)(ii)); or • The solicitor cannot be contacted or has declined to attend, and the suspect has declined a duty solicitor (Code C, para 6.6(c)); or • The suspect asks for legal advice but changes their mind. In such a case, the interview will be subject to certain prerequisites (e.g., the suspect should be reminded of their right to legal advice at the beginning of the interview). 								
	<p>Caution</p> <p>Criminal Litigation, 3.5.2.3</p>	<ul style="list-style-type: none"> ❖ At the start of the interview, the officer will caution the suspect by stating “<i>You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence</i>” (PACE Code C, para 10.4). ❖ The caution reflects the fact that the suspect: <ul style="list-style-type: none"> ➢ Has a right to remain silent; ➢ However, if a defendant remains silent, the court will be, in certain circumstances, permitted to draw a negative conclusion (an “adverse inference”) from their silence (see notes on Inferences from Silence). 								
	<p>Conduct of the Interview</p> <p>Criminal Litigation, 3.5.2.4</p>	<ul style="list-style-type: none"> ❖ When conducting the interview, the officer must: <table border="1" data-bbox="531 1364 1469 2087"> <tr> <td data-bbox="531 1364 759 1485"> <p>Not Use Oppression</p> </td> <td data-bbox="759 1364 1469 1485"> <ul style="list-style-type: none"> ❖ The interviewer may not “<i>try to obtain answers or elicit a statement by the use of oppression</i>” (PACE Code C, Para 11.5). </td> </tr> <tr> <td data-bbox="531 1485 759 1688"> <p>Not Offer Inducements</p> </td> <td data-bbox="759 1485 1469 1688"> <ul style="list-style-type: none"> ❖ The interviewer may not “<i>indicate, except to answer a direct question, what action will be taken by the police if the person being questioned answers questions, makes a statement or refuses to do either</i>” (PACE Code C, Para 11.5). </td> </tr> <tr> <td data-bbox="531 1688 759 2009"> <p>End the Interview when “All the Questions they Consider Relevant” have been asked</p> </td> <td data-bbox="759 1688 1469 2009"></td> </tr> <tr> <td data-bbox="531 2009 759 2087"> <p>Give the suspect rest</p> </td> <td data-bbox="759 2009 1469 2087"></td> </tr> </table> 	<p>Not Use Oppression</p>	<ul style="list-style-type: none"> ❖ The interviewer may not “<i>try to obtain answers or elicit a statement by the use of oppression</i>” (PACE Code C, Para 11.5). 	<p>Not Offer Inducements</p>	<ul style="list-style-type: none"> ❖ The interviewer may not “<i>indicate, except to answer a direct question, what action will be taken by the police if the person being questioned answers questions, makes a statement or refuses to do either</i>” (PACE Code C, Para 11.5). 	<p>End the Interview when “All the Questions they Consider Relevant” have been asked</p>		<p>Give the suspect rest</p>	
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<p>Give the suspect rest</p>										

		<p>periods and suitable breaks.</p>	
<p>The suspect is released, or charged²</p> <p><i>Criminal Litigation; 3.6</i></p>	<p>Releasing the suspect.</p> <p><i>Criminal Litigation; 3.6.3</i></p>	<p>Who can grant bail?</p>	<ul style="list-style-type: none"> ❖ When the time for the suspect’s detention is up, the police must decide to: <ul style="list-style-type: none"> ➤ Release the suspect without charge and without bail; or ➤ Release the suspect without charge but on bail whilst they make further enquiries; or ➤ Release the suspect without charge but on bail (or keep the suspect in police detention for the purpose of enabling the CPS to make a decision on charges); or ➤ Charge the suspect (or offer an alternative to charge (see notes on <i>Alternatives to Charging</i>)). <ul style="list-style-type: none"> ❖ If the suspect is to be released whilst further investigations are conducted, there is a presumption in favour of the suspect being released on bail (s45 Police, Crime, Sentencing and Courts Act 2022) rather than being released without bail. ❖ The suspect may be released on bail where: <ul style="list-style-type: none"> ➤ It is “necessary and proportionate” in all the circumstances; and ➤ A custody officer authorises the release, having considered any representations made by the suspect. <ul style="list-style-type: none"> ❖ Bail may be granted by either: <ul style="list-style-type: none"> ➤ A constable (under s30A(1) PACE 1984); this power will most often be exercised immediately after arrest and before the suspect arrives at the police station, known as “street bail”. It is designed to enable front-line officers to remain on patrol and give them flexibility; ➤ A custody officer, whilst further investigations are conducted (under s34(5) and s37(2) PACE 1984). ❖ In either circumstance, conditions may be imposed (under either s30A(1), or s47ZZA). ❖ In determining whether releasing the person on bail is “necessary and proportionate”, the officer must have regard to:
		<p>“Necessary and proportionate”.</p>	

² [Workshop 11, Task 2, Question 3](#)

			<ul style="list-style-type: none"> ➤ Any conditions of bail which would be imposed; and ➤ The factors in s30A(1B) PACE 1984, which are: <ul style="list-style-type: none"> ▪ The need to secure that the person surrenders to custody; ▪ The need to prevent offending by the person; ▪ The need to safeguard victims of crime and witnesses (taking into account any vulnerabilities of any alleged victim or witness that the officer has identified); ▪ The need to safeguard the person, taking into account any vulnerabilities they have that the officer has identified; ▪ The need to manage risks to the public.
		<p><u>Length of Bail and Extensions</u></p>	<ul style="list-style-type: none"> ❖ The suspect will be bailed for a maximum of three months. ❖ Extensions to this period are available: <ul style="list-style-type: none"> ➤ To up to six months: if authorised by an officer of the rank of inspector or above. ➤ To up to nine months: if authorised by an officer of the rank of superintendent or above. ❖ Further extensions must be sought from the magistrates' court. ❖ For an extension to be granted, on the day of the decision, the following conditions must be met (s47ZC, PACE 1984): <ul style="list-style-type: none"> ➤ There are reasonable grounds to suspect that the suspect is guilty of the offence;

			<ul style="list-style-type: none"> ➤ Further investigation is needed or further time for police decision to charge is required; ➤ The investigation or charging decision is being conducted diligently and expeditiously; and ➤ Release on bail is necessary and proportionate. 							
	<p>Charging the suspect.</p> <p><i>Criminal Litigation;</i> 3.6.4 – 3.6.5</p>	<ul style="list-style-type: none"> ❖ If the police believe that there is sufficient evidence to charge the suspect, they will refer the case to the CPS who will determine whether the suspect should be charged and, if so, with what offence (s37B PACE 1984). ❖ The CPS will apply a two-part test to determine whether or not the suspect should be charged. There must be: <ul style="list-style-type: none"> ➤ Sufficient evidence to provide a “realistic prospect of conviction”; and ➤ It must be in the public interest to charge the suspect. ❖ Alternatively, the CPS may recommend that the matter should be dealt with other than by way of charge. ❖ If the case has been referred to the CPS for a charging decision, the suspect will normally be released on bail under s47(3)(b) PACE 1984. ❖ If the suspect is ultimately charged, the custody officer has two options, to: <ul style="list-style-type: none"> ➤ Keep the suspect in police custody until they can be brought before a magistrates’ court; or ➤ Release them on bail, which may be with conditions (s38(1)). 								
<p>Bail after charge.</p> <p><i>Criminal Litigation,</i> 3.7</p>	<ul style="list-style-type: none"> ❖ A suspect who is charged MUST be released on bail UNLESS one of the conditions set out in s38(1)(a), PACE 1984 is satisfied: <table border="1" data-bbox="306 1563 1487 2087"> <tr> <td data-bbox="306 1563 545 1688">Name and address.</td> <td data-bbox="545 1563 1487 1688">❖ The suspect’s name or address cannot be ascertained, or the custody officer has reasonable grounds for doubting whether a name or address provided is the suspect’s real name or address;</td> </tr> <tr> <td data-bbox="306 1688 545 1771">Risk of failure to answer bail.</td> <td data-bbox="545 1688 1487 1771">❖ The custody officer has reasonable grounds for believing that the person arrested will fail to appear in court to answer to bail;</td> </tr> <tr> <td data-bbox="306 1771 545 1933">Prevention of a further offence.</td> <td data-bbox="545 1771 1487 1933">❖ In the case of a person arrested for an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from committing an offence;</td> </tr> <tr> <td data-bbox="306 1933 545 2087">Detention is necessary to obtain a sample.</td> <td data-bbox="545 1933 1487 2087">❖ In a case where a sample may be taken from the person... the custody officer has reasonable grounds for believing that the detention of the person is necessary to enable the sample to be taken from them;</td> </tr> </table>	Name and address.	❖ The suspect’s name or address cannot be ascertained , or the custody officer has reasonable grounds for doubting whether a name or address provided is the suspect’s real name or address;	Risk of failure to answer bail.	❖ The custody officer has reasonable grounds for believing that the person arrested will fail to appear in court to answer to bail ;	Prevention of a further offence.	❖ In the case of a person arrested for an imprisonable offence , the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from committing an offence ;	Detention is necessary to obtain a sample.	❖ In a case where a sample may be taken from the person... the custody officer has reasonable grounds for believing that the detention of the person is necessary to enable the sample to be taken from them;	
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	Prevention of injury or property damage.	❖ In the case of a person arrested for an offence which is not an imprisonable offence, the custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent him from causing physical injury to any other person or from causing loss of or damage to property ;
	Interference with the administration of justice.	❖ The custody officer has reasonable grounds for believing that the detention of the person arrested is necessary to prevent them from interfering with the administration of justice or with the investigation of offences or of a particular offence; or
	Necessary for the suspect's own protection.	❖ The custody officer has reasonable grounds for believing that the detention of the person arrested is necessary for his own protection .
Conditions on Bail <i>Criminal Litigation, 3.7.2</i>	❖ If the suspect is released on bail, this may be with conditions attached:	
	When can conditions be imposed?	❖ Conditions may be imposed only if they are necessary for the following reasons: <ul style="list-style-type: none"> ➤ To prevent the suspect from failing to surrender to custody; ➤ To prevent the suspect from committing an offence whilst on bail; ➤ To prevent the suspect from interfering with witnesses or otherwise obstructing the course of justice. ➤ For the suspect's own protection.
	What conditions might be imposed?	❖ The suspect may be required: <ul style="list-style-type: none"> ➤ To reside at a particular address; ➤ Not to speak to or contact any witnesses; ➤ Not to enter a particular area or set of premises; or ➤ To observe a curfew at night between specified hours.