

## Answers to end-of-chapter quick test questions

### Chapter 16 – Human rights in the UK: public order and police powers

#### 1. How did Watkins LJ define a breach of the peace in *R v Howell*?

Though breach of the peace is an offence that can be traced back as far as the 16<sup>th</sup> century, it is the 1982 case of *R v Howell* that we traditionally turn to for Watkins LJ's definition of the concept. He stated:

'[W]e cannot accept that there can be a breach of the peace unless there has been an act done or threatened to be done which either actually harms a person, or in his presence his property, or is likely to cause such harm, or which puts someone in fear of such harm being done. There is nothing more likely to arouse resentment and anger in him, and a desire to take instant revenge, than attacks or threatened attacks upon a person's body or property'.<sup>1</sup>

#### 2. On what basis can a police officer arrest an individual for an anticipated breach of the peace?

As the case of *Howell* shows, breach of the peace is a common law offence. There are, therefore, common law powers that permit the police to deal with and prevent breaches of the peace. Of particular interest, though, is the power of the police to arrest somebody they reasonably believe will cause a breach of the peace in the immediate future.<sup>2</sup> In terms of the basis on which such an arrest can be effected, Watkins LJ explained in *Howell* that 'a constable has a power of arrest where there is reasonable apprehension of imminent danger of a breach of the peace'.<sup>3</sup>

#### 3. What are the facts of *Austin v Commissioner of Police for the Metropolis*?

The facts of *Austin* concern a May Day demonstration that took place in London in 2001. Fearing that a breach of the peace would occur, due to the number of people present and the occurrence of disturbances in the past, police imposed a cordon around a group of protestors in Oxford Circus. Those within the cordon were not permitted leave for seven hours. Austin, however, challenged the lawfulness of the cordon, arguing that it breached her Article 5 right to liberty. Her challenge failed as the UK courts – endorsed by the ECtHR – found that the police's actions were proportionate in the circumstances. Indeed, they said that Article 5 had not even been engaged.

#### 4. Explain the offences set out in sections 4, 4A, and 5 of the Public Order Act 1986.

There is a common feature of these offences insofar as they all prohibit the use of threatening, abusive words or behaviour. It is the basis on which such words or behaviour are offered, and the subsequent consequences, that these three offences differ. Section 4 is satisfied where there is an intention to cause a person to believe that

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<sup>1</sup> [1982] QB 416, 426

<sup>2</sup> See: [1982] QB 416, 426

<sup>3</sup> [1982] QB 416, 426

immediate unlawful violence will occur or be provoked by what is said; section 4A is satisfied where there is an intention to cause a person harassment, alarm, or distress; and section 5 is satisfied where the words or behaviour take place within the hearing or sight of a person likely to be caused harassment, alarm, or distress.

**5. What does section 1 of the Police and Criminal Evidence Act 1984 provide? How do similar powers, set out in other legislation, differ from this provision?**

Section 1 of the Police and Criminal Evidence Act 1984 sets out a stop and search power, authorising a police officer to search a person or vehicle where he or she has reasonable grounds for suspecting that stolen or prohibited articles will be found. The requirement of objective, reasonable suspicion is central to this offence and is the main feature omitted from certain other stop and search powers. Section 47A of the Terrorism Act 2000, for example, authorises a police officer to search people or individuals for the purposes of discovering evidence relating to potential terrorist activities. Reasonable suspicion is not required in respect of this power.

**6. What are the crucial differences between riot, violent disorder, and affray, all set out in the Public Order Act 1986?**

These three offences all have a common feature, namely the prohibition of the use, or threatened use, of unlawful violence, but the differences relate to the number of people required for the commission of the offence. Riot, for instance, must be committed by 12 or more people acting towards a common purpose; violent disorder requires three or more people; affray can be satisfied by one individual.

**7. Explain the different powers with which the police can enter a property belonging to another.**

There are four provisions of PACE that potentially authorise the police's entry to another's property.

- Section 8 authorises a police officer to enter and search premises with a warrant issued by a magistrate.
- Section 17 permits a police officer to enter somebody else's property without a warrant, but only in limited circumstances. These are: for the purposes of carrying out an arrest; for the purposes of recapturing an escaped individual; or to save life and limb of an individual in the property or to prevent serious damage from being caused.
- Section 18 permits a police officer to enter another person's property following an arrest for an offence, provided there are reasonable grounds for suspecting that evidence relating to the offence in question will be found there (or evidence relating to a connected offence). This power permits the police to enter any property occupied or controlled by the arrested individual.
- Section 32 permits the police to enter somebody else's property following the arrest of an individual to search the individual and to search the specific property in which the suspect was arrested.