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MAGCO LEGAL LESSONS #24

LEGAL TOPIC: A CITIZEN'S RIGHTS WHILE UNDER ARREST

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Definition of 'Arrest':

An arrest is often defined as the seizing or touching of the person of an individual with a view to restraining him: **Alderson v Booth [1969] 2 QB 216**. However, the author of **Commonwealth Caribbean Criminal Practice and Procedure 4th Edition** noted that an arrest may be constructive, that is, the arrestor may not physically touch the person he has arrested. Once an individual (arrestee) knows that he is forbidden to leave, this may constitute an arrest.

Who can make an arrest?

An individual may be arrested with or without a warrant. In Trinidad and Tobago, both common law and statute allow powers of arrest to private citizens and police. According to the case of **Albert v Lavin [1981] 3 All ER 878**, the House of Lords held that it is the right and duty of every citizen in whose presence an actual or reasonably apprehended breach of the peace is being or is about to be committed to *'make the person who was breaching or threatening to break the peace, refrain from so doing'*, and if

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appropriate, to detain him against his will. The author of **Commonwealth Caribbean Criminal Practice and Procedure** cited the case of **R v Howell [1981] 3 All ER 383** and stated that where a citizen reasonably believes that there is an imminent threat of a breach of the peace he is justified in arresting the person who threatens the peace.

In Trinidad and Tobago, the law as reflected in the **Criminal Law Act, Chap 10:04** (hereinafter referred to as the “**Criminal Law Act**”) refers to ‘arrestable offence’. An arrestable offence is one for which the penalty is at least five years’ imprisonment or fixed (mandatory) by law. **Section 3 (1)** of the **Criminal Law Act** states,

“The powers of summary arrest conferred by the following subsections shall apply to capital offences or offences for which a person (not previously convicted) may, under or by virtue of any written law be sentenced to imprisonment for a term of five years, and to attempts to commit any such offence; and in this Act, including any amendment made by the Law Revision (Miscellaneous Amendments) (No. 1) Act 1979 in any other written law, “arrestable offence” means any such offence or attempt.”

By virtue of **section 3 (2)** of the **Criminal Law Act**, any person may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, in the act of committing an arrestable offence. The statute further provides that where an arrestable offence has been committed, any person may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, guilty of the offence: **section 3(3)** of the **Criminal Law Act**.

Police officer has the power to arrest without a warrant, anyone whom he suspects with reasonable cause, is about to commit an arrestable offence or whom he suspects has committed such an offence: **sections 3 (4) and (5)** of the **Criminal Law Act**.

Additionally, **section 3 (6)** of the **Criminal Law Act** allows police officers to enter and search the premises where the suspect is located or any premises where the police officer suspects the person to be. The section states,

“3 (6) For the purposes of arresting a person under any power conferred by this section a police officer may enter (if need be, by force) and search any place where that person is or where the police officer, with reasonable cause, suspects him to be.”

SEARCH

A person who has been arrested may be searched if it is believed that he has a weapon or implement which may be utilised for escape on his person and/or as the case of **Elias v Pasmore [1934] 2 KB 164** expounded, if it is believed that the individual may have material evidence in his/her possession.

THE RIGHT TO BE INFORMED OF THE REASON FOR ARREST

The **Constitution of the Republic of Trinidad and Tobago Chapter 1:01** (hereinafter referred to as “**the Constitution**”) provides for the right of an accused person to be informed ‘promptly and without delay of the reason for his arrest or detention’. **Section 5 2 (c) (i) of the Constitution** states,

“(2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not,

(c) deprive a person who has been arrested or detained—

(i) of the right to be informed promptly and with sufficient particularity of the reason for his arrest or detention”

It is sound law that an arrested person is entitled to be informed of the reason for his arrest. In the case of **Christie v Leachinsky [1947] 1 All ER 567**, the House of

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Lords expounded five basic propositions of law on the need to inform an arrested person of the reason for his arrest. The principles are as follows:

- a police officer who arrests a person without warrant must ordinarily inform him of the true ground of the arrest;
- if the citizen is not so informed, the police officer will usually be liable for false imprisonment;
- if the circumstances are such that the arrested person must know the general nature of the alleged offence, the duty does not exist (such as where he is caught red-handed);
- the language need not be technical, but must convey the substance of the reason for his restraint to the arrested person;
- if the arrested person creates a situation (such as running away), which makes it impossible to inform him of the reason for his arrest, he cannot complain.

THE RIGHT TO AN ATTORNEY

In Trinidad and Tobago, citizens are entitled to the constitutional and common law right to an attorney and also, the right to be informed of one's right to an attorney. In the case of **Thornhill v AG (1976) 31 WIR 498, PC**, it was emphasised that this right was granted to an arrested person both by the Constitution of Trinidad and Tobago and the common law. **Section 5 (2) (c) (ii) of the Constitution** provides for the right of a citizen to "*retain and instruct without delay a legal adviser of his own choice and to hold communication with him*". An arrested and/or detained individual is entitled to the aforementioned protection codified by the Constitution: **Rajesh Ramsarran v AG of Trinidad and Tobago (2005) 66 WIR 280**. According to the author of Commonwealth Caribbean Criminal Law, it matters not if the arrest was for non-payment of a fine as opposed to arrest in the course of police investigations.

THE RIGHT TO BE BROUGHT PROMPTLY BEFORE THE COURT

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Section 5 (c)(iii) of the Constitution provides for citizens' right to be brought promptly before an appropriate judicial authority. However, it is important to note that in the case of **Seeromani Maraj-Naraynsingh v AG of Trinidad and Tobago and The DPP [2010] UKPC 19**, the Privy Council clarified that the constitutional right to be brought promptly before an appropriate judicial applies to the initial arrest or detention and not continuously during any period when a person is under arrest or detention.

THE RIGHT AGAINST SELF-INCRIMINATION

Section 5 (2) (d) of the Constitution states,

“(2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not—

(d) authorise a Court, tribunal, commission, board or other authority to compel a person to give evidence unless he is afforded protection against self-incrimination and, where necessary to ensure such protection, the right to legal representation.”

The Court in the case of **Central Bank of Trinidad and Tobago and Colonial Life Insurance Company (Trinidad) Limited v Lawrence Duprey and Others CV 2011-02140** stated,

“... under the Constitution of Trinidad and Tobago, any person charged with a criminal offence is entitled to a right to a fair hearing in accordance with the principles of fundamental justice. The right to a fair trial includes the right of anyone charged with a criminal offence to remain silent and not contribute to incriminating himself.”

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Additionally, in the case of **Rowley v The Integrity Commission (Unreported) Claim No. CV2007-00185**, Justice Rajnauth-Lee in the course of her considered judgment stated,

“The Constitution of Trinidad and Tobago protects an individual who is before any Court, tribunal, commission, board or other authority from being compelled to give evidence unless he is afforded protection against self-incrimination by virtue of section 5 (2) (d). The privilege against self-incrimination is an important element of the principles of a fair trial and due process. In order to maintain a claim that his right to the protection against self protection has been breached, the onus is on (Dr. Rowley) him to (a) demonstrate that there is a real and appreciable danger that the information that was provided (by his wife) was either incriminatory of him or could eventually lead to incriminating evidence and the risk of a criminal charge...”.

According to the principles set out above, citizens are afforded the right against self-incrimination, which said right is protected by the Constitution of Trinidad and Tobago. This protection is an important tenet of a fair trial and due process. An individual who alleges that his right against self-protection has been breached must satisfy the Court that there is a real and appreciable danger that the information that was provided was either incriminatory of him or could eventually lead to incriminating evidence and the potential risk of a criminal charge against him.

Interestingly, in the case of **The State v Gerald St Louis and Ors. No. 26 of 2008**, the Court explained that a person must be informed of the basis of the police interest in him before being advised against self-incrimination. The Court further stated that to do so would be a blatant breach of the principles of natural justice. Justice Volney expressed,

“To offer a person the caution against self-incrimination without first informing him of the factual basis for the police interest in him is effectively to offer an interviewee a hollow benefit. It would seem to the Court that a person in whom the police have an interest to question, or who is being

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treated as a suspect, must be informed of such basis if the advice against self-incrimination is to have any worth to it. It would be offensive to natural justice if such an interviewee were not first specifically informed of the reason for the police interest in him before he were to exercise caution in his response.”

Notwithstanding the aforementioned, we must remember that the right against self-incrimination is not absolute: **Hayden Toney v PC Joseph Corraspe MAG. APP. NO. 68 OF 2008**. According to Justice of Appeal Bereaux in **Hayden Toney (supra)**,

“...mere curtailment of fundamental rights by the enactments of laws which, in the public interest, may criminalise certain categories of behaviour does not per se render the law unconstitutional if it is reasonably directed to a clear and proper public purpose.”

Arrested individuals are also entitled to:

- ✓ the right to a fair hearing in accordance with the principles of fundamental justice: **section 5(2) (e) of the Constitution;**
- ✓ the presumption of innocence until proven guilty according to law: **section 5(2) (f)(i) of the Constitution;**
- ✓ the right to a fair and public hearing by an independent and impartial tribunal: **section 5(2) (f)(ii) of the Constitution;**
- ✓ reasonable bail, which a citizen ought not to be deprived of without just cause: **section 5(2) (f)(iii) of the Constitution;**
- ✓ the right to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a Court, commission,

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board or other tribunal, if he does not understand or speak English: **section 5(2) (g) of the Constitution;**

- ✓ the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms: **section 5(2) (h) of the Constitution.**

To show the importance of knowing your rights in this area of the Law, just yesterday the Honourable Justice Boodoosingh awarded a combined total of ONE MILLION DOLLARS in a matter of wrongful arrest and detention and he made it clear that there is a great deal of confusion among Police officers about their powers in this regard. Please see the report below from Nikita Braxton-Benjamin in the Trinidad Express Newspapers -:

Police officers have no power in this country to detain a person against their will merely for questioning or to assist with investigations.

Justice Ronnie Boodoosingh made this statement yesterday as he awarded two men a total of \$1 million in compensation after they filed legal action for being kept in custody for two and half days without being charged.

He said evidence in this case showed "there is a great deal of confusion among some police officers about their powers".

Boodoosingh said State attorneys "must provide guidance to police officers on powers they have and do not have since there are too many

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cases which have come before the court where persons have been falsely imprisoned".

Ricardo Jack and Peter Griffith had sued the State for wrongful detention following the August 26, 2012 murder of Tevin Alexander who was found dead at the side of the road at Cedar Hill, Claxton Bay. Another person was charged with his murder.

In statements to the police, Jack and Griffith admitted that they were liming with Alexander that night when a car pulled up and when Alexander entered, gunshots were then heard. Jack admitted that he touched Alexander's body and got blood on his clothes. Both men were swabbed by the police and handed over articles of clothing.

Jack, Alexander's cousin, gave himself up to police on August 26. Griffith, who was a customs clerk back in 2012, was home asleep when police officers held him. Jack was interviewed for two hours by police officers. Griffith was interviewed by police 29 hours after his arrest. Boodoosingh said there was no indication that they were being interviewed as suspects, were cautioned or told of their rights. Both said they were placed in a dirty cell and Jack said it smelt of urine and faeces and there were cockroaches. They said they slept on the concrete floor. Jack and Griffith said they felt humiliated and embarrassed and disgraced.

An assistant superintendent of police, a sergeant and a constable gave evidence and were cross examined in the case.

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Police confused

In his judgment, Boodoosingh said the police were completely confused as to the status of the claimants describing them as persons of interest and suspect and then "not suspects" and also contradictory about whether or not they were under arrest. He said: "Notwithstanding the obvious flip flopping and confusion by the police officers, it is clear that they considered both claimants to be suspects."

The judge said given the context of the case, there was reasonable and probable cause for Jack and Griffith's arrest but found that their detention was "unreasonable and unlawful" as officers had the option of releasing the claimants and re-arresting them.

He said: "When persons are arrested certain formalities must follow. They must be cautioned. They must be told of their constitutional rights. If they are a suspect for the offence of murder, the police must comply with the requirements of the Legal Aid Act in terms of duty counsel. The police only have power to arrest persons without a warrant who are reasonably suspected to have committed an arrestable offence or in circumstances where statute permits. They are not entitled to detain persons as a 'person of interest', 'for questioning' or to 'assist with investigations'. Those concepts which may apply in other jurisdictions are not part of our law."

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He said if a person is assisting with investigations then such assistance must be voluntary and they must be free to leave and must be told such. "The police must be straightforward with persons under their control,"

Acceptable standards

Boodoosingh said, "When a person is arrested the police must proceed as diligently as possible with their investigations to ensure the period of detention is for the least time necessary. Where, having arrested a suspect on reasonable grounds, it becomes clear that there is insufficient evidence to lay a charge, the police must release the person immediately...There is no set time allowed (such as two days or four days) for arresting someone unless this is provided for in a statute for specific offences. A shorter period than two days or one day or even hours can be held to be unlawful in the context and circumstances of a case."

He also said that while police cells are not required to be "luxurious" they must "meet basic acceptable standards".

Boodoosingh awarded each of the men \$500,000 in compensation and \$2,500 in legal fees. Special damages and interest were also awarded from the filing of claims in August 5, 2014 to the date of the judgment

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