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Arrest without a Warrant and Guarantees of the Arrestee: A Comparative Study between the Emirati Law and the English Law

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Abstract:

'Individuals… have rights that public authority must respect. They are to be written into law and defended via independent courts.'(1) Striving for an optimal balance that both safeguards the safety and stability of society by combating crime with efficacy, and protects the guarantees of the arrestee poses a difficult challenge.(2) Legislators have a crucial responsibility to safeguard the voiceless and the vulnerable. Disproportionately, those already marginalised and socially deprived in our communities are those that stand accused; finding themselves further disadvantaged facing the full force of the state's resources, poised to potentially lose both freedom and reputation, perhaps forever. This research is a comparative study of the lawfully prescribed guarantees of the arrestee contained within the English and Emirati legal systems, considering statutory and common law. The adopted approach throughout the paper utilises contrast, correlation and analogous analyses to ascertain areas requiring amelioration.

Keywords: Arrest, Guarantees, Arrestee.

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(1) DP Forsythe, *Human Rights in International Relations* (2nd edn, Cambridge University Press, Cambridge 2006) 31.

(2) MQ Luong Thi, 'Guarantee of the Accused Person's Right to Defense Counsel: A Comparative Study of Vietnamese, German and American Criminal Procedural Laws' (Doctoral thesis, Lund and Hochiminh City Universities) 2 <http://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=4003072&fileOId=4057785> accessed 30 April 2015.

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Introduction:

Those that stand accused of a criminal offence occupy a particularly vulnerable position in our communities, both since they stand to lose their freedom, reputation and even their very lives, and since they find themselves facing the full weight of the state; their rights must therefore be respected and their position must be properly protected. It is the task of legislators to achieve the requisite equilibrium to act in the public interest and in the interests of this at risk minority.(1) It is the task of this research to help ensure that the successful safeguarding the former is not achieved at the expense of the latter.

The primary aim of this research is to discuss and analyse the extent and limitations of guarantees afforded for the arrestee under Emirati and English law. This will be achieved through Identifying guarantees protecting the individual facing arrest and establishing whether or not it is permissible to use force against him or her, and under what circumstances. The significance of this research also lies in the fact that a critical element of its purpose within both of the jurisdictions under study is to encourage the amendment of identified problematic situations and restrictions on guarantees under the law as it currently stands, whether these be found in the letter of the law or in its implementation, since there can be a wide gap separating theory from practice.

Law enforcement officials may carry out certain procedures amounting to prejudice personal freedoms in practice and, at least purportedly, of necessity. It is sometimes necessary to consider theory and practice distinctions since after all, 'the law is also governed by practicality.'(2) The most important procedures potentially prejudicing the arrestee's guarantees approved by the jurisdictions compared by this research will be addressed and limited to arrest. Although police officers are protected by a warrant's authority, their decisions may be challenged if certain conditions are not met regarding arrests without a warrant, as will be seen.(3) No definition exists in either English or Emirati legislation; both confine mentions

(1) T Zaki, *Alitijahat Alhaditha Lillmuhakamat Aljinaia Biyena Alkadeem Waljadid ('Modern Trends for Criminal Trials between the Old and the New')* (Almuassasa Aljamieea Linnasher Wa Alttowzia (University Foundation for Publishing and Distribution), Beirut 2003) 251.

(2) J Herring, *Criminal Law* (6th edn, Palgrave Macmillan, Hampshire 2009) 12.

(3) D Keenan, *Smith and Keenan's English Law* (13th edn, Pearson Education, Essex 2001) 536.

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in law solely to its conditions and its exercise. Thus, it has been left to judiciary and jurisprudence to define. In the case law (Lewis v Chief Constable of the South Wales Constabulary) the England and Wales Court of Appeal confirms that it is not a legally defined concept, but rather something which arises factually from the denial of the arrestee's freedom, ruling that an arrest only becomes lawful when the arrestee has been informed of the grounds for it.(1) It has been noted in Arabic legal scholarship that Emirati jurisprudence follows this English jurisprudence definition closely.(2)

1.1 Arrest without a warrant

An arrest is a serious procedure which, in addition to prejudicing the arrestee's personal freedom, may also cause social stigma; the latter not being contingent on guilt. Some legislative systems put adequate guarantees in place to preserve human rights and freedoms, the most important being arrests must be ordered by a competent authority, with the exception of in flagrante delicto cases, in which law enforcement officials are authorised to do so independently. However, some legislative systems have opted to extend the authority to arrest to police in other cases, dependent on there being sufficient evidence to justify the accusation.

1.1.1 Definition of flagrante delicto and its types

Some deliberation on definitions is necessary. A legal scholar with specialist knowledge, Tantawi, defines in flagrante delicto as cases involving confirmed witnessing of the crime being committed, witnessing the effects a short time after; near-convergence of the time a crime occurs and the time of its discovery being the critical element.(3) Thus, if a crime is determined to have been committed in flagrante delicto, then arrest of all contributors without explicit competent authority sanctioning would be lawful, whether they were seen in its place of occurrence

(1) *Lewis & Anor v Chief Constable of the South Wales Constabulary* [1991] 1 All ER 206 (11 October 1990) *All England Law Reports - 1991*, vol I (P Hutchesson ed, Butterworths, London 1991) 206-213, 209-210.

(2) M Salama, *Alejiraat Aljinaia ('Criminal Proceedings')* aljuzza 1 (pt 1) (Matbaat Jamiaat Alqahira (Cairo University Press), Cairo 2007) 517.

(3) I Tantawi, *Jerimat Altalebuss Wa Tathiraha Allah Alhurria Alfardia ('Flagrante Delicto and its Impact on Personal Freedom')* (Maktabat Alqanunn (Law Library), Cairo 1995) 11.

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or not.(1) The Emirati Code of Criminal Procedures makes it clear that an offence may be deemed in flagrante as long as at least one of several conditions is met: if it is readily apparent immediately, or almost immediately after its execution; if the victim gives chase to the apparent perpetrator; if others pursue this individual accompanied by loud exclamation; if that perpetrator is subject to arrest soon after commission of the crime in possession of implements or other effects signifying involvement; or finally, if shortly after occurrence the perpetrator displays signs signifying guilt.(2) The flagrante concept differs in English legislation, as it is restricted solely to the culprit when he or she commits a legal violation, and requires direct witnessing thereof; the arresting police officer, or citizen, must be at the scene of the crime.(3) Case law established individuals exercising this power of arrest should enjoy legal protections: referencing an earlier House of Lords' judgment, the presiding judge in Evans v Governor HM Prison Brockhill observed that this power's efficacy (when the arrestee seems to be caught in the act) depends on this protection which includes safeguarding police officers should they erroneously, but honestly, feel they witnessed a crime's commission.(4)

Thus, despite noted distinctions, both studied jurisdictions have clearly defined in flagrante delicto cases exclusively, rendering expansion impermissible. Such restrictions are warranted since flagrante cases effectively expand law enforcement officials' powers whilst weakening approved guarantees for the arrestee.(5) Such cases might be characterised as literally in flagrante delicto as the crime is witnessed during commission, amounting to comprehension of the acts which form the material element of the crime or its attempted execution. Ocular viewing is not a requisite condition, other senses may trigger realisation of a crime

(1) M Misbah, *Alhimia Aljinaia Lillhurria Alfardia Fi Marhallat Maqablaa Almuhakama ('Criminal Protection of Personal Freedom at the Pre-Trial Stage')* (Dar Alnhada Alarabia (House of Arab Renaissance), Cairo n.d.) 155.

(2) UAE Government, The Code of Criminal Procedures, Federal Law No. 36 of 1992, as amended by Federal Law No. 29 of 2005 (tr and ed DA Abdo, 7th edn, AA Abdo, Amman 2008) art 42.

(3) R Haigh, *Legal English* (2nd edn, Routledge, Oxford 2009) 306.

(4) *Evans v Governor HM Prison Brockhill* [1998] EWCA Civ 1042 (19 June 1998) <www.bailii.org/ew/cases/EWCA/Civ/1998/1042.html> accessed 12 February 2017.

(5) K Al-Muhairi, *Almausouah Aljinaia Alshamilla Fi Alemarat Alarabia Almuttaheda ('The Comprehensive Criminal Encyclopedia of the United Arab Emirates')* (El Fath Litibaha Wa Alnasher (El Fath for Printing and Publishing), Dubai 2000) 508.

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taking place, such as smelling a drug or hearing a gunshot. Comprehending the crime when carried out is the sole condition; the law enforcement official may be elsewhere when a crime commences, but must have realised it is taking place before its completion.(1)

A further type of in flagrante delicto case involves perceiving the crime shortly after its occurrence when its effects are still visible.(2) Such cases are achieved when, for example, a law enforcement official observes blood still flowing from a murder victim, or witnesses a thief emerging from a private dwelling.(3) The Federal Supreme Court in Abu Dhabi's ruling during a 1998 appeal case, rendered a situation in which a law enforcement official had seen a reportedly stolen car with the culprits still inside an in flagrante delicto case.(4) Another type involves the victim or members of the general public pursuing the offender very shortly after the occurrence of the crime issuing verbal exclamations.(5) Such cases do not mandate actual pursuit necessarily, rather it is sufficient to be facing the way the culprit is fleeing and loudly entreating others to catch him or her.(6) A further and final type of flagrante case involves viewing the culprit, shortly after the crime's occurrence, carrying tools, weapons or other effects or implements indicating he or she is either principal or accomplice. This type is such that it is possible to infer the offender's identity via carrying of these items either used in, or obtained from, commission of the crime.(7) Such cases require that: on arrest the accused be in

(1) Tantawi, *Flagrante Delicto*, *op. cit.*, 13.

(2) R Obaid, *Mabade Alejiraat Aljinaia ('The Principles of Criminal Proceedings')* (Maktaba Alkutub Alalamia (Global Books Library), Cairo 1999) 353.

(3) M Zaki, *Alejiraat Aljinaia ('Criminal Procedures')* (Matbaat Jamiaat Alqahira (Cairo University Press), Cairo 1994) 182.

(4) Abu Dhabi Federal Supreme Court, Appeal No. 101 of 1998, Unpublished Session 12/7/1998.

(5) R Mahdi, *Alqawahid Alamma Fi Qanunn Alejiraat Aljinaia ('The General Rules in the Code of Criminal Procedures')* (Dar Alnhada Alarabia (House of Arab Renaissance), Cairo 2003) 174.

(6) M Eid, *Alektasaas Alqadaee Lemaamor Aldubt Fi Alahwahl Aladia Wal Alestithnaia ('The Judicial Jurisdiction of Law Enforcement Officials in Regular and Exceptional Conditions')* (Dar Alnhada Alarabia (House of Arab Renaissance), Cairo 2010) 70.

(7) Salama, *op. cit.*, 555.

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possession of such items and these are directly linked to the crime.(1)

1.1.2 Conditions for veracity of arrest in flagrante delicto

Certain conditions must be met for in flagrante delicto arrests to be valid: it is insufficient for a law enforcement official to have received news of the crime via witnesses, legally instead, the police officer must observe the crime or its immediate after effects. Further, said witnessing must occur legitimately and without prejudicing individuals' rights.(2) Should officers be engaged in impermissible crime detection, such as peeping into a private house violating this dwelling's sanctity, then arrest(s) are rendered void.(3)

1.1.3 Definition of sufficient evidence

Although both English and Emirati law require sufficient evidence (signifying reasonable cause) to enable law enforcement officials to conduct some investigative procedures, including arrests in cases not involving a suspect being caught in an illegal act, neither jurisdiction includes an entirely clear definition of 'sufficient evidence'.(4) Therefore, to some extent, it falls to jurisprudence. Legal scholarship has defined sufficient evidence to be clearly manifest signs and seemingly established facts from which it is deduced that a particular person is the perpetrator.(5)

The legal system in England does not indicate with perfect clarity what constitutes reasonable grounds or reasonable suspicion, under which police officers may conduct arrests without a warrant. However, at the police station, the Custody Officer has to make a determination as to the sufficiency of the evidentiary support for charging a suspect, which must also satisfy the Crown prosecutor who reviews all cases.(6) During court proceedings for A v Secretary

(1) M Aqidh, *Sharh Qanunn Alejiraat Aljinaia ('Explaining the Code of Criminal Procedures')* (2nd edn, Dar Alnhada Alarabia (House of Arab Renaissance), Cairo 2001) 359.

(2) Eid, *Judicial Jurisdiction*, *op. cit.*, 76.

(3) Misbah, *op. cit.*, 160.

(4) M Zaki, *op. cit.*, 148.

(5) A Edriss, *Qareenat Albaraha Lille Muttaham ('Presumption of the Innocence of the Accused')* (Matbaat Jamiaat Alqahira (Cairo University Press), Cairo 1994) 379.

(6) Slapper and Kelly, *2013-2014*, *op. cit.*, 313.

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of State for the Home Department, preceding decisions issued by the same court, the England and Wales Court of Appeal, including Secretary of State for the Home Department v M, were relied upon in consideration of what constitutes reasonable grounds to suspect an individual of committing an offence.(1) In this earlier case Lord Woolf stated that when contemplating 'whether or not reasonable grounds exist… the word "reasonable" means… has to come to an objective judgment'.(2) He continued, particularly pertinently, by noting that the entirety of every unique situation must be taken into consideration, including the potential public threat posed by an individual, who ought to be imprisoned, remaining at liberty and the impact on the detainee:

> To be detained without being charged or tried or even knowing the evidence against you is a grave intrusion on the individual's rights. Although, therefore, the test is an objective one, it is also one which involves a value judgment as to what is properly to be considered reasonable in those circumstances.(3)

The English Code for Crown Prosecutors mandates that: 'Prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction', and further requires prosecutors to objectively evaluate evidence, considering reliability, credibility and admissibility in court.(4) It has been noted that reasonable grounds may be based principally around a set of presumptions, some being material and some intelligence. There is some consensus in the literature on this point: such presumptive evidence may include an amalgamation of reasonable suspicions and other elements, such as suspected past criminal behaviour and hearsay, even should these fail to pass requisite evidentiary tests

(1) *Secretary of State for the Home Department v M* [2004] EWCA Civ 324 (18 March 2004) para 16 <www.bailii.org/ew/cases/EWCA/Civ/2004/324.html> accessed 9 February 2017; *A & Ors v Secretary of State for the Home Department* [2004] EWCA Civ 1123 (11 August 2004) paras 235-236 <www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2004/1123.html> accessed 9 February 2017.

(2) *Secretary of State v M*, *op. cit.*, para 16.

(3) ibid.

(4) UK Government, Crown Prosecution Service, 'The Code for Crown Prosecutors' (7th edn, January 2013) paras 4.4-4.6 <www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf> accessed 11 February 2017.

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for admissibility.(1) The assessment of such presumptions is what justifies the police officer's action in executing the arrest. To constitute reasonable grounds, how procedures have been implemented and the special circumstances of each incident must be taken into account, such as a law enforcement official witnessing a suspect carrying certain materials at an unusual time or somewhere frequented by perpetrators of robberies.(2) The judiciary in the Federal Supreme Court in Abu Dhabi has clarified that what is 'meant by sufficient evidences, are manifestations and signs deduced from the facts and circumstances which alert a policeman that a crime was committed by the arrestee present as long as they were justified in his mind.'(3) Therefore, sufficient evidence may be material manifestations indicating that a particular person has committed the crime, as a matter of probability rather than certainty.(4) Finally, it is not required that an investigation leads to proving the accusation for an arrest to have validity.(5)

Both English and Emirati law have expanded cases wherein it is permissible to implement an arrest without a warrant beyond simply caught in the act cases. The English expansion has been significant. This authority originates in two types of law, namely common law and codified, written laws, the most prominent being PACE 1984.(6) However, certain limitations can still be observed; common law is noted to be critical here and regarding the arrestee's rights: several decades prior to the enactment of PACE, the 'right to resist' illegal, unjustified arrests was emphasised in Leachinsky v Christie.(7) English law also abolished the differentiation between

(1) KW Lidstone, C Palmer and V Bevan, *Bevan and Lidstone's the Investigation of Crime: A Guide to Police Powers* (2nd edn, Butterworth, London 1996) 75ff; A Sanders, R Young and M Burton, *Criminal Justice* (4th edn, Oxford University Press, Oxford 2010) 157ff.

(2) Sanders et al, *op. cit.*, 216, 42.

(3) Abu Dhabi Federal Supreme Court, Appeal No. 69 of 2003, Unpublished Session 20/12/2003.

(4) RCA White, *The English Legal System in Action: The Administration of Justice* (3rd edn, Oxford University Press, Oxford 1999) 39.

(5) Salama, *op. cit.*, 520.

(6) JH Baker, *An Introduction to English Legal History* (4th edn, Butterworth, London 2002) 23.

(7) Herein Viscount Simon states that the significance of this House of Lords' judgment is that it underlines this important point: 'If, when a charge which does not justify arrest has been expressly made, the person charged is entitled to resist apprehension'. *Leachinsky*

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felonies and misdemeanours under Section 2 of the Criminal Law Act 1967, and introduced two types of offences: those which permit arrest without a warrant and fall under the term "arrestable offences"; and those which do not permit arrest without a warrant, called "non arrestable offences".(1) The simple principle here is that an offence is arrestable should it carry possible sentencing of five years' imprisonment or over.(2) Section 24 of PACE empowers police officers, subject to certain conditions of necessity, to arrest without a warrant: individuals about to commit crime; individuals committing crime; persons the police officer has reasonable grounds for suspecting is about to, or is committing crime; persons the police officer has reasonable grounds for suspecting has committed offences that said police officer has reasonable grounds for suspecting has taken place; persons guilty of a crime which has occurred, or that the police officer has reasonable grounds for suspecting is guilty of the same.(3) It is highly difficult to challenge this, even regarding interpretation of wording, given the ruling in R v Self that: 'the words of section 24 do not admit of argument.'(4)

Additionally, British police officers may also conduct arrests in accordance with the provisions of other punitive laws. The Criminal Justice Act of 1967 empowers police officers to arrest the accused, without a warrant, should this person have been released on bail subject to certain conditions, and should the police officer have reasonable grounds for suspecting that the accused is breaching, has breached, or is likely to breach these conditions.(5) Emirati law has similarly expanded permissible cases for arrest without warrant. Reference to the Code

v Christie [1947] UKHL 2 (25 March 1947) 16 <www.bailii.org/uk/cases/UKHL/1947/2.html> accessed 6 February 2017.

(1) UK Government, Criminal Law Act 1967, s 2 <www.legislation.gov.uk/ukpga/1967/58/section/2> accessed 7 February 2017; H Fenwick, *Civil Liberties and Human Rights* (4th edn, Routledge, Oxford 2007) 1140.

(2) Keenan, *Smith and Keenan's* (13th edn) *op. cit.*, 119.

(3) UK Government, Police and Criminal Evidence Act 1984, s 24(1-3 and 5) <www.legislation.gov.uk/ukpga/1984/60/section/24> accessed 7 February 2017. See also I Bing, *Criminal Procedure and Sentencing in the Magistrates' Court* (5th edn, Sweet & Maxwell, London 1999) 10.

(4) *R v Self* [1992] EWCA Crim 2 (25 February 1992) <www.bailii.org/ew/cases/EWCA/Crim/1992/2.html> accessed 8 February 2017.

(5) UK Government, Criminal Justice Act 1967, art 23(1) <www.legislation.gov.uk/ukpga/1967/80/pdfs/ukpga_19670080_en.pdf> accessed 9 February 2017.

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of Criminal Procedures reveals several detailed hypothetical scenarios enabling arrest of the accused without a competent authority order:

> A law enforcement official shall order the arrest of the accused who is present and concerning whom there is sufficient evidence that he has committed a crime, in any of the following cases:
>
> First: In felonies.
>
> Second: In flagrante misdemeanours which are punishable by a sentence other than a fine.
>
> Third: In misdemeanours which are punishable by other than a fine if the accused is under police surveillance, or if it is probable that the accused may abscond.
>
> Fourth: In misdemeanours of theft, fraud, breach of trust, severe trespass, resistance of the public authority by force, infringement of public morals, and offences related to weapons, ammunition, liquor and hazardous drugs.(1)

It is noted that lawful powers of arrest for law enforcement officials in the Emirates have become rather broad, permitting arrests without the investigative authority's permission in most crimes.(2) To summarise the conditions of arrest in Emirati law, there is no minimum limit to the prescribed punishment for misdemeanours for which persons may be arrested. This situation is criticised here since this expansion covers all misdemeanours, despite applicable punishment not exceeding a month's imprisonment. Furthermore, Emirati law grants police officers arresting authority when sufficient available evidence indicates the accused has committed a felony in flagrante delicto or sometimes in a non-flagrante case.

1.1.4 The authority of ordinary citizens to arrest

The legal systems under discussion have both empowered citizens to arrest the accused under certain conditions, with varying controls placed on this. Under English common law provisions, ordinary individuals have long been able to arrest anyone committing a crime in their presence, or to do so with reasonable suspicion

(1) Code of Criminal Procedures, *op. cit.*, art 45.

(2) M Ramadan, *Alqabt Wa Alttaftish Fi Qanunn Alejiraat Aljinaia Fi Alemarat Alarabia Almuttaheda ('The Arrest and Search in the Code of Criminal Procedures for the United Arab Emirates')* (Dar Alnhada Alarabia (House of Arab Renaissance), Cairo 1999) 15.

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of a crime having been committed. This precedes the advent of a professional, organised police force in England and Wales in 1829.(1) Citizens' powers of arrest are governed by the Serious Organised Crime and Police Act 2005 which extended these from solely arrestable offences to all indictable offences.(2) PACE also provides on this right articulating that persons other than police constables have a right of arrest: firstly, if an individual witnesses an indictable offence being committed, he or she can arrest either the person committing the offence or for whom reasonable grounds exist to suspect the same; secondly, if an indictable offence has occurred, he or she can arrest the person guilty of this act or again, for whom reasonable grounds exist to suspect the same.(3)

It has been contended that bestowing any police powers on ordinary citizens is inadvisable on the grounds that it is not necessitated by society's interests since it exposes rights and freedoms to unjustified prejudice.(4) Nevertheless, Emirati law also authorises citizens to arrest suspects in its procedural code: 'Whoever witnesses the culprit in the act of committing a crime or misdemeanour shall surrender him to the nearest public authority members without the need for a warrant of arrest.'(5) Therefore the legality of citizens' arrests depends on observing the suspect while when he is actually engaged in committing the offence.(6) The handing over of the accused must be executed without delay, other than that which is necessary.(7) The researcher believes that the Emirati legislator has been too expansive in granting ordinary individuals the power of arrest, and that it would be preferable to restrict this extension of arresting authority solely to felony crimes, rather than to misdemeanours as well. In the existing legal situation there has been an arguably potentially dangerous conflation of ordinary individuals and law enforcement officials.

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(1) Sanders et al, *op. cit.*, 152-153.

(2) UK Government, Serious Organised Crime and Police Act 2005, s 110 <www.legislation.gov.uk/ukpga/2005/15/section/110> accessed 6 February 2017.

(3) PACE, *op. cit.*, s 24A; Sanders et al, *op. cit.*, 152.

(4) M Halabi, *Ektasaas Maamor Aldubt Fi Alttahari, Alestidlal Wa Altahqiq ('The Jurisdiction of Law Enforcement Officials in the Detection, Inference and Investigation')* (2nd edn, Alsalassal Linnasher (Chains Publishing), Kuwait n.d.) 224.

(5) Code of Criminal Procedures, *op. cit.*, art 48.

(6) M Zaki, *op. cit.*, 236.

(7) Awad, *op. cit.*, 281.

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2.1 Guarantees of the arrestee

The jurisdictions being compared have put several guarantees in place to protect the arrestee, the most important being: that the arrestee be informed of the reasons for the arrest; that he or she be heard promptly with regard to the accusation attributed to him or her; that there are strict limitations on how long the accused will remain deprived of personal liberty; and that there are controls governing force used in the implementation of arrests.

2.1.1 The arrestee's right to know the reasons for the arrest

Both the UK and UAE constitutions require that those arrestees be informed of the reasons for their arrest and of charges against them.(1) Importantly, the term "charge" does not solely signify an accusation by the state's representatives of an illegal act. Indeed, within its semantic scope are a military strike (both the order to launch it and the action itself) and the cost of something. For those that stand accused, a charge embodies these other meanings since it amounts to an attack on them, a strike against their name, and a cost that must be borne irrespective of the ultimate outcome of the subsequent trial, though naturally the degree to which this cost impacts their lives is dependent on said outcome, and on the severity of said charge(s). Therefore, it is imperative that the rights and guarantees of those arrestees are safeguarded at this and every stage of proceedings against them. HRA guarantees the arrestee the right to be informed without delay, and in a manner comprehensible to him or her, of the reasons behind this, as well as of any charge(s) being brought.(2) PACE renders any arrest unlawful should the accused not be promptly made aware of the grounds.(3) Similarly, the UAE Criminal Procedures Code stipulates that the accused be informed as to the reasons behind his or her arrest.(4) However, the dissimilarity between the two jurisdictions lies in the differing timings of this requirement. Rather than providing that this be done 'as soon as is practicable', as the English statute requires, the equivalent in the Emirates only stipulates that the accused be made aware of the grounds

(1) UK Government, Human Rights Act 1998, art 5(2) <www.legislation.gov.uk/ukpga/1998/42/schedule/1> accessed 14 March 2017; PACE, *op. cit.*, s 28(3); UAE Constitution, *op. cit.*, art 26.

(2) HRA, *op. cit.*, art 5(2).

(3) PACE, *op. cit.*, s 28(3).

(4) Code of Criminal Procedures, *op. cit.*, art 99.

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for the arrest on the first encounter with the Public Prosecution.(1) Emirati law is thus devoid of any text requiring such prompt notification, although it would be preferable and beneficial for the Emirati legislator to guarantee this.(2)

English law also stipulates within PACE that an arrest is not valid should the arrested individual not be promptly informed that he has been arrested.(3) Certain longestablished but limited exceptions exist: should the arrestee require an interpreter or be under the influence of alcohol, a police officer may postpone informing the suspect of the arrest; should the reasons for the arrest be readily apparent, such as in flagrante delicto cases, then the arrest remains sound even if the police officer does not observe formalities and immediately inform the suspect of the rationale behind it.(4) Due attention must be paid by the police under such circumstances since the Divisional Court in R v West London Coroner, Ex parte Gray acknowledged that law enforcement officials must act with a duty of care regarding arrested individuals, especially those which are intoxicated.(5) Wheatley v Lodge raises a similar issue: an intoxicated and deaf individual was arrested by a police officer on suspicion of driving under the influence of alcohol.(6) The constable in question was initially unaware of the accused's disability, although this fact and his inability to lip-read became evident at the police station. Thereafter the charge against him and all relevant materials were communicated using printed or hand-written documents, notably including all statutorily required information to be conveyed to an arrestee in such a situation.(7) The Queen's Bench Divisional Court's judgment negated the arrest's validity. However, the Criminal Division of the Court of Appeal allowed the appeal, thereby upholding the validity of the

(1) PACE, *op. cit.*, s 28(3).

(2) E Ghali, *Alejiraat Aljinaia ('Criminal Proceedings')* (2nd edn, Matbaat Ghraib (Ghraib Press), Cairo 1999) 353.

(3) PACE, *op. cit.*, s 28(1).

(4) C Hampton, *Criminal Procedure and Evidence* (Sweet & Maxwell, London 1973) 61; Keenan, *Smith and Keenan's* (13th edn) *op. cit.*, 474.

(5) *R v West London Coroner, ex p Gray* [1988] QB 467 (15-16, 19 December 1986) *Law Reports 1988 – Queen's Bench Division* (C Ellis ed, Incorporated Council of Law Reporting for England and Wales, London 1988) 467-480, 479.

(6) *Wheatley v Lodge* [1971] 1 All ER 173 (26-27 October 1970) *All England Law Reports - 1971*, vol I (RNG Harrison ed, Butterworths, London 1971) 173-179.

(7) ibid 174-175.

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original arrest.(1) Keenan, a respected authority on English law, commented on this ruling that seemingly it follows therefore, that should a police officer arrest an individual who does not understand English, then there is no obligation to locate a suitable interpreter.(2) However, this perspective may be challenged in the light of PACE 28(3) which states that the accused must be 'informed of the ground for the arrest at the time of, or as soon as is practicable after, the arrest'.(3) This condition appears to have been met in the Wheatley case. Indeed, arguably the delay could be attributable either to the arrestee's intoxication or to the, conceivably related, initial lack of comprehension of the arrestee's deafness, and was therefore permissible. Furthermore, it would seem a little overstated to argue that this decision sets a precedent which would deny those arrestees who do not speak English an interpreter, after all, in the case in question, a broadly effective means of communication seems to have been found.(4)

2.1.2 The arrestee's right that his/her statements to be heard promptly

Considering the arrestee's right to be heard promptly concerning the accusation, the UAE Code of Criminal Procedures provides the following:

A law enforcement official shall hear the statements of the accused immediately after his arrest and arraignment, and if he fails to produce any proof of his innocence, he shall send him within forty-eight hours to the competent public prosecutor. The public prosecutor shall open an enquiry with the accused within twenty-four hours, and hence shall order his arrest or release.(5)

Accordingly, police officers are legally obliged to listen to the arrestee's statements, although this does not extend to an accompanying right to interrogate him as noted.(6) Thus, the law enforcement official records the arrestee's account of events, without engaging in detailed discussion or confronting him with witnesses or those co-accused, and must send him on in two days or less to the Public Prosecutor, who in turn interrogates the arrestee for up to a full day from

(1) ibid 175, 179.

(2) Keenan, *Smith and Keenan's* (13th edn) *op. cit.*, 536.

(3) PACE, *op. cit.*, s 28(3).

(4) Wheatley, *op. cit.*, 174-175.

(5) Code of Criminal Procedures, *op. cit.*, art 47

(6) M Zaki, *op. cit.*, 253.

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the moment of arrival before determining a course of action. However, should the arrestee, through his statements, remove suspicions surrounding him, then it there is no longer any necessity to continue proceedings and the police officer should release him.(1)

English law differs from Emirati law on this issue since hearing statements from and questioning the arrestee amounts to an interrogation (also frequently referred to as an interview). Practice norms differ here too. When British police locate and arrest a suspect they always question this individual.(2) However, although this process should generally proceed promptly, circumstances sometimes permit a delay. For instance, an unconscious individual suspected of driving while impaired by drugs or alcohol, could be arrested and watched in hospital for weeks without being questioned.(3) Similarly, if, for example, a suspect was arrested in Dover at the request of Merseyside Police, no police officer in Kent would question this person. Instead, he or she would be collected by Merseyside officers, but not questioned until reaching Liverpool. As long as the arrestee had been cautioned earlier, an officer could record in a personal police pocket book any relevant matters volunteered by the arrestee, but not ask questions.(4) These unsolicited comments should be signed by both the officer and, wherever practicable, the arrestee. Seemingly however, nothing explicitly prohibits this officer from facilitating further comments via such nonquestions as "Really" or "Interesting."(5) An interview is defined in the recently updated PACE

(1) G Gerges, *Alsharia Aldistoria Liamal Aldubt Alqanunni ('The Constitutional Legitimacy of the Law Control Works')* (Akademiat Mubarak Alshuratia (Mubarak Police Academy), Cairo 2010) 166.

(2) A Ashworth, *Principles of Criminal Law* (3rd edn, Oxford University Press, Oxford 1999) 9.

(3) Under such circumstances, during this period, medical practitioners may lawfully collect blood samples irrespective of whether the patients are conscious or not and whether they consent or not, and hand them over to a police officer. UK Government, Road Traffic Act 1988, s 7A <www.legislation.gov.uk/ukpga/1988/52/contents> accessed 11 March 2017.

(4) UK Government, Health and Safety Executive (HSE) 'Interviewing Suspects', paras 34-35 <www.hse.gov.uk/enforce/enforcementguide/investigation/witness-questioning.htm> accessed 13 March 2017; PJ King, *Negotiated Disclosure: An Examination of Strategic Information Management by the Police at Custodial Interrogation* (Doctoral thesis, University of Warwick, Warwick 2002) 210 <http://wrap.warwick.ac.uk/4049/1/WRAP_THESIS_King_2002.pdf> accessed 13 March 2017.

(5) The police officer is also herein required to enable the arrestee to disagree with (part

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Codes of Practice for police officers as 'the questioning of a person regarding their involvement or suspected involvement in a criminal offence or offences which, under paragraph 10.1, must be carried out under caution.'(1) The English judiciary has similarly interpreted the term "interview" as discussion between suspect and police regarding the accusation of having committed a crime.(2) In Hughes v Director of Public Prosecutions (DPP) consideration was paid to the definition of interview.(3) Here, a constable attending a road traffic accident pursued the driver following the direction indicated by a witness and, having caught up with her, inquired as to whether she had been driving the car in question, cautioning her before she replied. Her incriminating answers led to her subsequent arrest. The court held since the police officer was initially uncertain of her status, she was not then a suspect and consequently, this discussion did not constitute an interview as per PACE. The judge, Mr Justice Silber, added after issuing his ruling, that in the event of his having been erroneous in concluding that no interview took place, that 'there were no breaches of the Code in any event.'(4) This judgment does, however, seem a little counterintuitive given the facts of the case, since the accused was cautioned before being questioned.(5) It might therefore, have been preferable for the court to justify its decision by accepting that the conversation was an interview, but stating that the police constable's choice to conduct it in the street was defensible since at the time, he had yet to decide whether or not to arrest the suspect.(6) In further support, it has long been noted that the interview's results,

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of) the record and, if he or she chooses to do so, to refuse to sign the record. HSE, 'Interviewing Suspects', paras 33ff.

(1) UK Government, 'PACE Code C: Revised Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers' (2014) para 11.1A <www.gov.uk/government/uploads/system/uploads/attachment_data/file/117589/pace-code-c-2012.pdf> accessed 11 March 2017.

(2) Zander, *PACE*, *op. cit.*, 65.

(3) *Hughes v Director of Public Prosecutions* [2010] EWHC 515 (Admin) (12 October 2009) paras 6, 15, 19 <www.bailii.org/ew/cases/EWHC/Admin/2009/515.html> accessed 10 March 2017.

(4) ibid paras 3, 28-29 (quotation: 29).

(5) ibid para 3.

(6) See also: DC Ormerod (ed), *Blackstone's Criminal Practice 2012* (Oxford University Press, Oxford 2011) 2669; 'Blackstone's Criminal Practice 2011 Part D' (Oxford University Press, Oxford Companion Website, 2013) <http://global.oup.com/booksites/

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including confessions, may only be accepted if lawful guarantees were taken into account, and that the most important of these is that this interrogation be held at the police station or any place designated for the arrestee.(1) When the interview ends the police interviewer decides on the sufficiency of available evidence to charge or release the arrestee, either with or without bail.(2) If released, the arrestee may be entirely free to go or may be asked to attend court on a specified date, or the setting of a court date may be deferred in the interests of the investigation.(3)

2.1.3 Deprivation of liberty may only be for a limited period

As noted, the jurisdictions being compared have both taken steps to prevent arbitrary arrests or detentions and to limit detention periods. However, they differ regarding the exact length of time. This is hardly counterintuitive since although there are almost ubiquitous steps taken globally to ascertain that confinement is both necessary and restricted to a reasonable amount of time, determining what constitutes "reasonable" varies by State and case.(4) In accordance with UAE law, there is a restriction on how long the arrestee may be detained, prior to being charged with an offence, which must be strictly adhered to by law enforcement. This is set at a maximum of fortyeight hours, as detailed in the Criminal Procedural Code.(5) This provision also incorporates deterrents to prevent abuse: a law enforcement official may not prolong detention beyond fortyeight hours or he would be guilty of committing a crime; thereby nullifying the arrest and exposing him to administrative and criminal accountability.(6) In practice, the upper limit of this permissible period is not usually reached, except

content/9780199589272/updates11/part_d/> accessed 10 March 2017.

(1) Hampton, *op. cit.*, 62.

(2) A Ashworth, *The Criminal Process: An Evaluative Study* (Clarendon, Oxford 1998) 72.

(3) B Gibson and P Cavadino, with the assistance of D Faulkner, *The Criminal Justice System: An Introduction* (3rd edn, Waterside Press, Hampshire 2008) 58.

(4) RKM Smith, *Texts & Materials on International Human Rights* (Routledge, Oxford 2007) 386.

(5) Code of Criminal Procedures, *op. cit.*, art 47.

(6) 'Detention shall be the punishment imposed upon any public officeholder or person in charge of a public service who arrests, detains or remands a person in cases other than those provided for in the law.' UAE Government, The Penal Code, Federal Law No. 3 of 1987, as amended by Federal Law No. 34 of 2005 (tr and ed DA Abdo, 8th edn, AA Abdo, Amman 2008) arts 47 and 240.

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in fairly exceptional circumstances; in general, suspects are not held for any time exceeding twentyfour hours, typically sufficient for police officers to conduct questioning and take a statement.(1) Thus, the arrestee's rights are respected by these generally standard practices. By contrast, English legislators have opted to extend the maximum lawful pre-trial, precharging period of the arrestee's detention, at least under exceptional circumstances involving terrorism suspects and threats to national security. Generally though, Section 41 of PACE restricts the period of detention to 24 hours, with limited extensions of up to ninety-six hours permissible when strictly necessary subject to authorisation from a senior police officer (superintendent rank or higher) or Magistrate in Sections 42 and 43 respectively.(2) In practice, nearly all accused persons are detained for less than a twenty-four hour period, the generally permitted maximum time.(3)

2.1.4 The legitimised use of force in the implementation of arrests

Law enforcement officials sometimes exercise this right in performance of authorised duties, which must be in accordance with certain controls, differing with different legislative systems.(4) English law permits the police to use reasonable force during arrests. Section 3 of the Criminal Law Act (CLA) 1967 permits police officers and the public alike to use force when implementing an arrest, but PACE 1984 subsequently restricted this authorisation solely to police officers.(5) The earlier legislation originally allowed ordinary individuals to use force to prevent the commission of a crime or to conduct a legally permissible arrest, or to provide assistance with either.(6) Under PACE, police constables may exert reasonable force in the course of an arrest 'if necessary' which may be interpreted as provided circumstances dictate that it would not have been possible

(1) EM Hassam, *Haq Almuttaham Fi Alsamtt ('The Accused's Right to Silence')* (3rd edn, Dar Alnhada Alarabia (House of Arab Renaissance), Cairo 2003) 210.

(2) PACE, *op. cit.*, s 41-43.

(3) Keenan, *Smith and Keenan's* (13th edn) *op. cit.*, 93.

(4) M Odeh, *The Jurisdiction of the Law Enforcement Official* (Cairo University Press, Cairo 1999) 307.

(5) UK Government, Criminal Law Act (CLA) 1967, s 3 <www.legislation.gov.uk/ukpga/1967/58/section/5> accessed 12 March 2017; PACE, *op. cit.*, s 117.

(6) CLA, *op. cit.*, s 3. See also: Fenwick, *op. cit.*, 1140; R Card, *Card, Cross & Jones: Criminal Law* (20th edn, Oxford University Press, Oxford 2012) 310.

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to carry out the arrest without resorting to using force.(1) Thus, a policeman who uses reasonable force to enable an arrest has a 'justificatory defence for his conduct.'(2) Precisely what amounts to 'reasonable force' may be estimated in accordance with the circumstances of the incident. However, strict domestic and international standards must be adhered to. There is a requirement in the HRA that the aforementioned statutory mentions of reasonable force (i.e. Article 3 of CLA and Section 117 of PACE) be considered and effected in order to constitute compliance with Article 2 of ECHR which stipulates that such permissible force must be 'no more than is absolutely necessary'.(3) The judiciary in the European Court of Human Rights declined to allow any distinction between these standards in McCann v UK.(4) Therefore, force is not necessary if the arrestee complies with the arrest.(5) This is since in such instances force is unjustified and unnecessary, and thus exposes the policeman to liability.(6) These breaches do not constitute illegal acts, but can trigger disciplinary action.(7) In contrast with English equivalents, Emirati law does not explicitly provide for the use of force in implementing arrests, but it may be implicitly understood from some texts, that the intent is to permit law enforcement officials this liberty in carrying out their duties. For instance, Article 41 of the Emirati Code of Criminal Procedures provides that: 'In the course of performing their duties, law enforcement officials shall have direct access to the public force.'

2.1.5 The permissible extent of the use of deadly force

Following examination of the permissibility of using reasonable force as necessary, the ensuing question that arises here is: what is the permissible extent

(1) PACE, *op. cit.*, s 117.

(2) CMV Clarkson, *Understanding Criminal Law* (4th edn, Sweet & Maxwell, London 2005) 82.

(3) ECHR, *op. cit.*, art 2; HRA, *op. cit.*, s 3.

(4) *McCann v United Kingdom* - 19009/04 [2008] ECHR 385 (13 May 2008) <www.bailii.org/eu/cases/ECHR/2008/385.html> accessed 9 March 2017.

(5) DJ Baker, *Glanville Williams Textbook of Criminal Law* (3rd edn, Sweet & Maxwell, London 2012) 573; H Davis, *Human Rights Law: Directions* (3rd edn, Oxford University Press, Oxford 2013) 166.

(6) LH Leigh, *Police Powers in England and Wales* (2nd edn, Butterworth, London 1985) 49.

(7) Davis, *op. cit.*, 142.

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of the use of deadly force? English law authorises such force in all crimes without distinguishing between serious and petty crimes, but requires this force be exercised logically and reasonably in accordance with the conditions of the incident. As such, even if the crime in question is minor, should the police officer in question be facing robust resistance and violence from the person he or she intends to arrest, then this officer may, according to the circumstances, use reasonable force by escalating, proportionate degrees.(1) However, police officers are not authorised to use force, even in cases involving the most serious of crimes, if no resistance is offered by the individual being arrested.(2) So, positive resistance and its degrees denote the level of permissible force. This is supported in the case law: A v Secretary of State, cited earlier, refers to a precedent set by the European Court of Human Rights in Selmouni v France: 'recourse to physical force which has not been made strictly necessary by [the arrestee's] own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3.'(3) Anyone assaulting any individual with the intention of resisting or preventing either himself or another person being lawfully detained or apprehended may face a prison sentence of up to two years in accordance with Section 38 of the 1861 Offences Against the Person Act (OAPA).

The UAE Code of Criminal Procedures does not explicitly provide for using this type of force, but Federal Law No. 12 of 1976, which speaks to issues of police force and security, references this matter.(4) This provision identifies certain cases in which arms may be used during arrests. These include the arrest of any person against whom a warrant has been issued, should this arrestee individual resist or attempt escape.

(1) CLA, *op. cit.*, art 3; Davis, *op. cit.*, 166.

(2) Lidstone et al, *op. cit.*, 179. It is worthy of note here that during protests and public demonstrations in the UK, police officers have occasionally intervened in response to colleagues' use of excessive force. Sanders et al, *op. cit.*, 184.

(3) *Selmouni v France* - 25803/94 [1999] ECHR 66 (28 July 1999) para 99 <www.bailii.org/eu/cases/ECHR/1999/66.html> accessed 4 March 2017.

(4) UAE Government, Federal Law No. 12 of 1976, on the Police Force and Security, art 9.

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3.1 Conclusion

The most important findings are given here. Initially, a definition of arrest is notably absent from both Emirati and English legislation. Both jurisdictions have attached various guarantees to arrests without a warrant such that they prevent law enforcement officials from acting except in flagrante delicto cases, in accordance with strict conditions, or when there is sufficient evidence available that the arrestee has committed a crime. The Emirati Code of Criminal Procedures does not expressly provide for force, including deadly force, during arrests. However, English law authorises police to exercise reasonable force according to circumstance, provided it is not possible to arrest without force, taking into account criteria of necessity and proportionality. It incorporates a guarantees to be immediately informed of his or her status, and the rationale behind the arrest. Contrastingly, UAE legislation does not contain similar text despite its importance, differs on this point, reserving this right until responsibility for the investigation has been handed over to the Public Prosecution.

Emirati law permits a statement from the arrestee to be heard by a law enforcement official immediately following arrest, but also prevents interrogation by the same, this being the Public Prosecutor's jurisdiction. This is divergent from English law wherein police listen to the arrestee and conduct both investigation and interrogation.

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القبض من دون إذن وضمانات المقبوض علية:
دراسة مقارنة بين القانون الإماراتي والقانون الإنجليزي

حمود خليفة المنصوري

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أبوظبي - الإمارات العربية المتحدة

ملخص البحث:

إن السعي إلى تحقيق التوازن الأمثل الذي يحافظ على سلامة واستقرار المجتمع من خلال مكافحة الجريمة بفعالية من ناحية، وحماية ضمانات الشخص المقبوض علية من ناحية أخرى يشكل تحدياً صعباً، لذلك فإن مهمة المشرع الجنائي هي إيجاد ذلك التوازن المطلوب والمتمثل في تحقيق المصلحة العليا للمجتمع وتحقيق مصلحة المقبوض علية في ذات الوقت. أن المكلفين بإنفاذ القانون وهم مأموري الضبط القضائي قد يرتكبون في بعض الأحيان في الواقع العملي بعض الإجراءات التي قد تصل إلى المساس بالحريات الشخصية للشخص المقبوض علية، وبناء على ذلك فإن الهدف الأساسي لهذا البحث هو مناقشة وتحليل مدى الضمانات الممنوحة للمقبوض علية بموجب القانون الإماراتي والقانون الإنجليزي. وتجدر الإشارة إلى أن المنهج المتبع في البحث يستخدم التحليل النقدي والمقارن لمعرفة التباين والارتباطات المتشابهة بين النظم القانونية المقارنة في البحث بالإضافة للوقوف على الجوانب التي تتطلب تحسين في كلا القانونين.

الكلمات الدالة: القبض، ضمانات، المقبوض علية.

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