

GUIDANCE NOTES ON STATUTORY INTERPRETATION AND CASE LAW ANALYSIS

The exercise attached to Chapter 7 which appears in "Seminar Problems" on this website (concerning the fictitious Prevention of Violence (Football Games) Act 1999) explored how to read statutes. The exercise below now combines elements of case law analysis, reading statutes and statutory interpretation technique in a problem setting.

All the material below is fictitious but is designed to bring together a number of statutory interpretation and case law points and problems.

As we have not yet explored in any depth issues of European Legal Method this exercise does not deal with the use of Directives etc. However, at the end of the material we have included a fictitious Directive and, once you have read Chapter 10 you may wish to revisit this exercise, but this time taking into account the Directive as if it had generated the legislation.

Below we set out:

- (i) A short Act;***
- (ii) Material extracted from Hansard;***
- (iii) The case law;***
- (iv) A problem based on all this material;***
- (v) Guidance on how you would answer the problem;***
- (vi) General guidance on answering legal problems***

Supplemental:

- (vii) Extracts from a Directive which gave rise to the Act.***

(i) The Act

CURFEW AND CIVIL DISORDER ACT 1998

1998 CHAPTER 31

An Act to prevent civil disorder and the occurrence of violence, or the threat of violence, in public places between sunset and sunrise. [3rd October 1998]

- 1** It shall be an offence to be present in large groups on a street or in a public place during the hours of darkness without lawful excuse.
- 2** For the purposes of section 1 of this Act, "lawful excuse" shall be limited to matters of emergency, public concern or other essential purposes. Without prejudice to this definition it shall not be a lawful excuse to congregate where serious damage to property or serious disruption to the life of the community is likely to occur.

- 3 For the purposes of section 1, "public place" shall be construed as one to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.

(ii) *Material extracted from Hansard*

HANSARD REPORTS

In Parliamentary debate, *Hansard* reports reveal the following speeches relating to the Act:

- (i) **By the Home Secretary, in introducing the Bill:** *"The aim of the Act is to make our streets safe for the public and to ensure that one can sit in one's home with security. This is not oppressive legislation nor does it curtail basic rights for the vast majority of citizens. Only the malicious and anti-social element of our society will feel affected by this Act."*
- (ii) **By the Home Secretary, on February 2nd 1997 in response to a question from Elizabeth Nightingale MP (Opposition party) on the meaning of the phrase "limited to matters of urgency, public concern or other essential purposes" in Clause 2 of the Bill:**
"This is straightforward. Urgency is not something with which the Hon Member for Coventry will be too familiar, but it clearly carries with it a meaning of necessity"
- (iii) **By the Home Secretary, on May 4th 1997, in response to a question from the leader of the Opposition regarding the "hidden agenda" in the Act:**
"It is scurrilous in the extreme for the Rt. Hon. Member to suggest that Her Majesty's Government is seeking to curtail the freedom of ordinary citizens in this Act. The clear, and most justifiable, aim is to prevent the danger caused from gatherings. Statistics show that most crimes of this nature occur during the hours of darkness. Obviously this refers to official sunset and sunrise times. To what else could it apply?"

(iii) *The case law*

THE FOLLOWING FICTITIOUS CASES REFLECT THE AUTHORITIES UNDER THIS ACT:

***R v. Atkinson* [1999] [Court of Appeal]**

Mayhem L.J. gave the only judgment of the Court of Appeal.

"Atkinson organised a 24-hour anti-curfew rally at the local football stadium. Two hundred people attended. He was convicted under the Act. He now appeals. The offence, should we find one, occurred in a place which is a "public place" for the purposes of section 3 of this Act. Though it is obvious that members of the public might be denied access to the stadium for all manner of reasons, and are not normally admitted in the early hours of the morning, that is not the issue. The stadium is privately owned, but the reason it exists is to entertain the public. What else could it be but a "public place"?"

There is no realistic way that a football fan could be excluded on a normal Saturday even with police crowd control; in any case no such limitations on access were attempted here. The public at large had permission to be there. That is enough for this Act.

Atkinson incited and attended at the rally for only a part of the rally, and then in daylight. Section 1 of the Act requires the person to be "present". Nevertheless one must not be bound by the simple wording of the Act where clearly the purpose is not only to prevent the gathering of people but also the organisation of such meetings. To penalise those who attended, but not those who organised it (because they only attended for a part of the time) would be absurd. A person who organises a public assembly which is contrary to the purposes of this Act commits an offence under this Act."

***R v. Bantam* [2000] [Court of Appeal]**

Affray L.J.: "Bantam organised a vigilante group (of twenty people) to supplement police patrols during the night. He was convicted under section 1. He was not present at the gathering owing to illness. Strictly speaking he was therefore not "present", which the wording of the Act requires. In *R. v. Atkinson*, however, Mayhem L.J. clearly felt that physical presence was not a necessary requirement where the accused was the organiser of the event. I would agree. There is a second point here, however, and that is to do with the question of "lawful excuse". Bantam claims that, under section 2 of the Act he has a lawful excuse: his reasons for forming the vigilante group being either one of "public concern or other essential purpose". There is some force in this submission. Bantam and his group intended to protect property and person. They did not intend to cause "serious disruption to the life of the community". The Act, descended as it is from the Directive 95/113/EEC, is clearly aimed at hooligans who roam the street and cause problems for the police. Vigilante actions should normally be deplored. But we live in troubled times. The Act says nothing on the point. I find that "public concern" is wide enough to embrace vigilante actions. Bantam is therefore not guilty under this Act."

Lord Battery M.R.: "I am in some doubt as to why Mayhem L.J. held the accused to be "present" in *R. v. Atkinson*. However, here the position is clear cut. Bantam is an organiser who did not attend his own meeting at any time. Was he "present"? Normally one would think not. But, equally, the doctrine of *stare decisis* means I am bound to follow *R v. Atkinson* unless there is a difference in material facts. Clearly that is the case here: non-attendance cannot amount to being "present". Therefore, I see no reason to depart from logic in this case. His actions may be contrary to the spirit of the Act, but they do not offend the letter. Whatever my own views, I cannot see that an offence has been committed.

The second question, as to "lawful excuse" does not therefore arise. If I had had to comment on this provision I feel that I would have found there to be no lawful excuse. I do not believe the action satisfies the exceptions laid down in either the Act or the Directive. The matter is not of public concern. "Public concern" is a matter of judgment for the authorities. We are all concerned about civil disorder. Vigilante groups are not the answer. Moreover, vigilante groups are not covered under "other essential purposes"; those words must be read *eiusdem generis* with the preceding words. If these actions are construed as "other essential purposes" they still fall under the second part of section 2. This would obviously mean that such a congregation would have fallen foul of the Act.

Assault L.J. gave no opinion, agreeing with both judgments.

(iv) A problem based on all this material

R v. Cantwell [2001]

Cantwell is the president of *SLIP* (Save Leviathans in Peril). Contrary to police advice, he organised a meeting to protest against the slaughter of whales. The meeting took place one evening in Spring this year in a private hall in Clifton, Bristol. The hall belonged to one of *SLIP*'s members and was normally hired out to local clubs for dining purposes. It has a maximum capacity of 120 people seated. No charge was made for the hire of the hall to *SLIP*.

The meeting had to be held, Cantwell says, in order to submit a vital report to a United Nations' committee. The deadline for the submission was three weeks after the scheduled meeting. It was anticipated that about 100 people would attend.

Non-members were not allowed access. Only eight people attended. Cantwell was delayed getting to the meeting and only arrived when the meeting was ending and, coincidentally, being broken up by the police. The meeting's chairman was attempting to bring the meeting to an orderly end, but the presence of the police meant that there was general disorder when Cantwell arrived. Although Cantwell had entered the hall he was prevented from doing anything further by the police.

The meeting was planned to end before official sunset. There were two minutes left before that time, but the weather was bad and it was already very dark.

If you were the barrister representing Cantwell, how would you argue the following legal points?

1. *THAT CANTWELL WAS NOT PRESENT "ON A STREET OR IN A PUBLIC PLACE" FOR THE PURPOSES OF SECTION 1 AND SECTION 3.*
2. *THAT EIGHT PEOPLE CANNOT CONSTITUTE A LARGE GROUP FOR THE PURPOSES OF SECTION 1.*
3. *THAT "HOURS OF DARKNESS" IN SECTION 1 SHOULD NOT INCLUDE THE POSITION WHERE, BY REASON OF THE WEATHER, IT HAS BECOME DARK OR GLOOMY BEFORE OFFICIAL SUNSET HAS OCCURRED.*
4. *THAT THE HOLDING OF THE MEETING FOR THE REASONS WAS, IN LAW, ENOUGH TO CONSTITUTE A "LAWFUL EXCUSE" UNDER SECTION 2.*

(v) *Guidance on how you would answer the problem;*

Below are some of the points you should have noted and analyzed. The list is not exhaustive, but gives some indication of the intricacies and problems raised.

GENERAL POINTS

1. *The major obstacles to avoid:*
 - (i) Undertaking limited research, especially as regards the finding, understanding, questioning and *explaining* relevant cases/statutes (including, here, the given material). You must assume that

there is nothing "obvious" in the problem. By this we mean: although you may think the provision on "darkness" is silly, for instance, that is what is in the statute and so that is what you must deal with. It is not an argument to write, "Surely Parliament cannot have intended this to be the case..." or some such phrase. This is the sort of trap weak students fall in to.

- (ii) Presenting arguments which are persuasive in general terms but which are not *legal arguments* in that they fail to use authorities (i.e. cases and statutory material) as sources. No matter how good an argument is it is not a *legal* argument if it is merely your opinion. This means you must find case law and/or legislation to back up the points you are seeking to make.
- (iii) Believing that knowing the rules of statutory interpretation is the same as constructing an argument. Merely telling a tutor or examiner that there are three "rules" of statutory interpretation or that the courts are bound by the doctrine of *stare decisis* does not mean anything. The key point is how you are arguing the application of those rules.
- (iv) Over-simplifying or failing to understand the use of *Pepper v Hart*. This is a common mistake made by students (and some practitioners): see the statements on the use of *Pepper v Hart* at **8.5** in Learning Legal Rules (and see below under heading 2)

2. *Comments on the Hansard references given in the text:*

- (i) Why would a court give you permission to refer to them at all? What are the conditions?
- (ii) The first statement allowed room to argue what the mischief of the Act might be:

By the Home Secretary, in introducing the Bill: *"The aim of the Act is to make our streets safe for the public and to ensure that one can sit in one's home with security. This is not oppressive legislation nor does it curtail basic rights for the vast majority of citizens. Only the malicious and anti-social element of our society will feel affected by this Act."*

- (iii) The second statement is a red herring because the word "urgency" does not appear in the Act itself - it has been replaced by "emergency". This is a common occurrence in using *Hansard* and is not a trick perpetrated by some sadistic tutor.

By the Home Secretary, on February 2nd 1997 in response to a question from Elizabeth Nightingale MP (Opposition party) on the meaning of the phrase "limited to matters of urgency, public concern or other essential purposes" in Clause 2 of the Bill:
"This is straightforward. Urgency is not something with which the Hon Member for

- (iv) The third statement is another angle on mischief and raises the point as to which quote reveals the real purpose.

By the Home Secretary, on May 4th 1997, in response to a question from the leader of the Opposition regarding the "hidden agenda" in the Act:
"It is scurrilous in the extreme for the Rt. Hon. Member to suggest that Her Majesty's Government is seeking to curtail the freedom of ordinary citizens in this Act. The clear, and most justifiable, aim is to prevent the danger caused from gatherings. Statistics show that most crimes of this nature occur during the hours of darkness. Obviously this refers to official sunset and sunrise times. To what else could it apply?"

MORE SPECIFIC POINTS

1. "PUBLIC PLACE" IN POINT 1 OF THE APPEAL.

Section 3 talks not only of the public but also "any section of the public". The problem with this section is how to draw the line between, say, a private dwelling to which guests might be invited, and a public venue. In *Atkinson* Mayhem L.J. places emphasis on "place of entertainment" and the exclusion of certain people. This had to be discussed. Careful reading of s3, however, shows that access must "be of right" or with permission. No members had access as of right. A "section of the public" in s3 also imputes a significant number to distinguish this situation from dinner parties etc. This could be related to your argument on "large group" below. It is also arguable that "public place" should be read *noscitur a sociis* with "street" in s1 and that the Public Order Act 1986, which contains very similar wording, (and is arguably *in pari materia* with this Act), distinguishes in s16 between open air and closed assemblies. The wording of Section 3 of the Act is derived from a real Act, namely, s16 Public Order Act 1986.

2. BEING "PRESENT" IN POINT 1 OF THE APPEAL.

This question was raised in both *Atkinson* and *Bantam*. It is very easy to over-simplify the *ratio* of *Atkinson* to be: that an organiser is automatically "present". This ignores the material fact of *Atkinson* that he **actually attended for part of the time**. In *Bantam* Affray L.J. extends the *ratio* of *Atkinson*, but you must look at the other judgments. Thus Lord Battery M.R. both doubts and distinguishes *Atkinson*. And a point usually missed is that there was a third judge in *Bantam* - Assault L.J. - who agreed with both decisions. Thus the *ratio* of *Bantam* is difficult to assess and must be doubted as an authority. It probably does not have to be distinguished because it is making a different point from *Atkinson* altogether - but note that Mayhem L.J.'s decision in *Atkinson* was the decision of the entire court.

There is also an interesting division in the Public Order Act in s.14 between organisers and participants which is in keeping with the difference in emphasis in *Atkinson* and *Bantam*. Note also that "the meeting was ending" is not necessarily the same as "the meeting had ended". This should have affected your argument.

3. MEANING OF "LARGE GROUPS" IN POINT 2 OF THE APPEAL.

There is no discussion of this in the cases. All we know is that 200 people can constitute a large group. You could look for help from numerous Public Law and Criminal Law statutes which might be *in pari materia*, and can argue the applicability of "large" to the circumstances and especially the venue.

4. MEANING OF "HOURS OF DARKNESS" IN POINT 3 OF THE APPEAL.

Use can be made of sections in statutes which are *in pari materia* with section 1 of the Curfew Act. Various Highways Acts, for instance, are not in themselves *in pari materia* but the individual sections can be used persuasively; likewise The Theft Act 1968, sched 1 (2)(2) has a definition of "daytime" which might be useful. More likely to be helpful are Public Order Acts (use volumes such as Halsbury's Laws to track these down, or "Words and Phrases Judicially defined". The long title in the Curfew Act cannot be used indiscriminately to discover the purpose of the Act: see *Vacher v. London Society of Compositors* and *R. v Galvin* (on use of both the long title and short title).

It would be fair to point out that "hours" of darkness indicate more than a bad spell of weather; that the vagaries of climate and the latitude of this country should not be used to determine what should be a fixed time; that "dark" is a difficult word to define other than by an agreed set of criteria; and that the

word "curfew" in the title of the Act derives from the Norman-French meaning "cover one's fires" and relates to night time - though the use of the short title in this way is not safe ground in itself. However, you should note that in *Atkinson* it appears that attendance during daylight hours alone can apparently constitute "attendance" during darkness.

- Are there any references in *Hansard* either for or against your client? If so, how would you get to apply them?

5. WHETHER THE MEETING CONSTITUTED A "LAWFUL EXCUSE" IN POINT 4 OF THE APPEAL.

In *Bantam Affray* L.J. gave a wide meaning to this phrase, but paid little attention to the actual wording of section 2 which does not directly relate lawful excuse to civil disruption etc. Further, Lord Battery M.R.'s comments to the contrary are *obiter dicta* and his discussion of *eiusdem generis* does not in fact tell us the genus applicable. It is against you that the meetings in *Atkinson* on the Act itself were not deemed to cover public concern.

Only Affray L.J. discusses the civil disruption aspect and appears to misread section 2 regarding the use of "intent" to assess lawful excuse.

(vi) Supplemental:
Extracts from a Directive which gave rise to the Act.

If the Act had been implemented in order to comply with the following Directive, would this have affected your answer?

EXTRACTS FROM DIRECTIVE 95/113/EEC

The Council of the European Communities..... having regard to the opinion of member states,

whereas it is necessary to adopt measures with the aim of regulating the increase in criminal actions in cities and towns noticeable throughout the Community;

whereas more effective protection of the individual can be achieved by adopting uniform rules of law in controlling large crowds;

whereas, in particular, the laws of member states relating to public order show marked divergences;

whereas the laws of member states should permit ordinary citizens to perform their lawful activities safely and without fear of violent interruption;

has adopted this directive:

ARTICLE 1

The purpose of this directive is to approximate the laws, regulations and public safety policies of the member states relating to the maintenance of public order during the hours of darkness.

ARTICLE 2

Each member state will ensure that the issue of crowd control and public order will be subject to laws regulating behaviour which will safeguard the rights of individuals to undertake legitimate activities at all times.

ARTICLE 3

Legitimate activities will encompass all matters which do not offend against the law of the member state in terms of national security.

ARTICLE 4

Member states shall lay down that the considerations referred to in article 3 may be the subject of further exceptions of the same kind provided always that the legitimate concerns of the individual citizen are not jeopardised.

ARTICLE 5

Member states shall bring into force laws, regulations and administrative procedures necessary to comply with this directive no later than 31 December 1998.

• **Further Points To Note If The Directive Had Been Relevant:**

Under "general points":

The use and application of Directives is a complex topic and one which many find confusing. That is why we set aside the whole **Chapter 10** to deal with it. We fully accept that it is complicated stuff, but you must learn to deal with it. Many students attempting the sort of exercise set out below tend to ignore the impact of the Directive, but you cannot do this.

See also the "diagrams" section of this website for advice.

Under "specific points"

Use of the Directive: To the Common Law lawyer the text looks extremely vague - in keeping with most Directives. Nevertheless, the key concepts are here. As this is a Criminal Law statute, the Directive would have had **direct vertical effect**. The Directive does not use the same language and, as this is a Criminal Law statute, both the Act and Directive should be read liberally in favour of the accused.

What effect would this have had? Three points are really worth noting:

- (i) Article 1 uses the term "hours of darkness" as per the Act so this reduces the force of your argument that one should look only to "official" times of sunset etc.
- (ii) Article 2 talks about "crowd control" which implies concern over very large groups, which strengthens any argument that the size of this particular group is too small to fall within the ambit of the Act.
- (iii) Article 4 is also worth noting because it allows for each country to go beyond the "legitimate activities" noted in Article 2. This point therefore surfaces under section 2 of the Act in the form of "lawful excuse". It weakens your case.