

FACULTY OF
LAW

LAW INDUCTION COURSE

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PRIMARY SOURCES FOR EXERCISES

Reading Cases Exercise

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Reading Statutes Exercise

Confiscation of Alcohol (Young Persons) Act 1997 (as enacted)	29
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LAW INDUCTION COURSE

1. AIMS AND STRUCTURE OF THE INDUCTION COURSE

This brief induction course is designed to introduce you to some important aspects of studying law. The introductory lecture given by the Dean at 9am on Monday of week 1 at St Catherine's College will also provide some guidance on studying law at Oxford. The Bodleian Law Library induction in Week 0 and the compulsory Research & Mooting Skills tutorial (Finding and Using Sources on Reading Lists) in Michaelmas term will introduce you to the skills you will need to access legal materials and conduct legal research.

The tutorial system requires you to study independently. You will be given reading lists with sources of information that you will be required to locate, read and understand. Although you may be familiar with reading textbooks and, perhaps, academic journals, a large proportion of the material that you will need to read may well be unfamiliar to you – in particular reports of case law and statutes. Case law and statutes are primary sources. Textbooks and articles are secondary sources: they aim to describe, comment upon and evaluate the primary material. You need to be able to read these primary materials for yourself.

The induction course is designed to help you develop:

- (a) a general overview of the primary sources of law and the relationship between case law and statutes; and
- (b) a basic understanding of the system of precedent and the difference between *ratio decidendi* and *obiter dicta*; and
- (c) the skills necessary to read and take notes on cases and statutes; and
- (d) an initial strategy for approaching essay and problem questions for tutorials; and
- (e) an understanding of how to refer to legal materials in your work.

In addition to some introductory guidelines and readings in relation to these topics, the induction course includes two exercises, requiring you to read and interpret, respectively, statute law and case law. The course is designed to take approximately two hours. Some colleges may conduct the course over two one-hour sessions, dealing with the exercises separately.

Please read the material comprised in this induction pack before your induction session(s). All of the required readings are attached. Listed after the material for each section, but not attached to this induction pack, are additional sources that you may find useful later in your legal studies, explaining approaches to studying law and suggesting approaches to answering problem questions and writing essays.

2. APPROACHING READING LISTS

There is no single way of approaching a reading list. Different tutors may have different advice concerning the best way to read the material in their subject. Some reading lists may be divided into essential and additional reading; others may indicate the order in which material should be prioritised; still others may simply present a list of references in alphabetical or chronological order (or no particular order at all).

When faced with a reading list, it is tempting to read everything in the order it is found on the list, concentrating on text book reading, hoping to memorise these facts, reproduce them in the exam and obtain a 2(i). Tempting as this path may be, there is no guarantee of success in following this path and it is not the way to tackle a reading list if you wish to engage with the material presented and enjoy the reading. Instead, consider the following tactics:

- (a) Read the textbooks to obtain an overview of the subject you are studying and understand the main issues that are raised in the reading material. Some of you may find it useful to take notes at this stage; others may not. It is generally not a good idea merely to paraphrase your entire textbook. You need to make sure you understand the subject the textbook is discussing, not merely memorise the information.
- (b) Tackle the reading list by topic. Concentrate on understanding the key ideas and concepts, using your textbook to get an initial overview of the subject, which you can then supplement by further reading. Think about the arguments presented and the way in which facts are used to support or reject these arguments. Read the cases carefully and take detailed notes to make sure that you understand how the cases relate to one another. When you understand the law, read articles to further your understanding and to develop a critical approach to the law.
- (c) Engage critically with the reading. Do you agree with the view presented? Are there any weaknesses in the arguments that you can exploit?

What follows is an introductory guide to understanding references to the different kinds of sources that may feature on your reading lists.

(1) References to text books

Bradley & Ewing, Constitutional & Administrative Law, ch 1

Normally, the reference will indicate, first, the author of the work, then the title and, finally, the specific chapter or pages that you are required to read.

(2) Reference to cases (pre-2001)

Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256 (CA)

The name of the case – ‘*Carlill v Carbolic Smoke Ball Co*’ – appears in italics. ‘[1893] 1 QB 256 (CA)’ is known as the ‘citation’. You can search for this case electronically either by entering the name of the case or its citation.

The numbers in square brackets – ‘[1893]’ – refer to the year that the case was reported. Where a series of law reports has consecutively numbered volumes, the year is given in parentheses (round brackets) and is followed by the volume number: e.g., ‘*Bailey* (1983) 77

Cr App R 76 (CA)’. Square brackets are used where the series has no consecutive volume numbers and the year is essential for finding the correct volume.

The number after the square brackets – ‘2’ – refers to the volume of the law report series in which the case is reported. Even where law reports are numbered according to the year, there may nevertheless be more than one volume for each year.

The letters – ‘QB’ – refer to the series of law reports that the case is reported in. ‘QB’ stands for Queen’s Bench. A good place to find out the name of the law report series to which an abbreviation corresponds is the Cardiff Index to Legal Abbreviations, which you can access online at <http://www.legalabbrevs.cardiff.ac.uk/>.

The number after the report abbreviation – ‘256’ – refer to the first page of the report.

The letters in parentheses at the end (which are omitted in some citation systems) – ‘CA’ – indicate the court in which the case was determined: here, the Court of Appeal. Many law reports include cases decided in more than one court.

(3) Reference to cases (post-2001)

R (Roberts) v Parole Board [2004] EWCA Civ 1031, [2005] QB 410

Judgments issued after 2001 have a ‘neutral’ (or ‘medium neutral’) citation: in this example, ‘[2004] EWCA Civ 1031’. The year in a neutral citation is always indicated in square brackets.

The letters that follow are an abbreviation identifying the court in which the case was decided. Some common court abbreviations include ‘UKSC’ (Supreme Court), ‘UKHL’ (House of Lords), ‘UKPC’ (Privy Council), ‘EWCA Crim’ (Court of Appeal of England and Wales, Criminal Division), and ‘EWCA Civ’ (Court of Appeal of England and Wales, Civil Division). Decisions of the High Court of England and Wales are identified by EWHC, with the various Divisions indicated in brackets after the judgment number. (QB) indicates the Queen’s Bench Division, (Fam) indicates the Family Division, (Ch) indicates Chancery, etc.

The number following the court abbreviation is the judgment number.

If a judgment has been issued with a neutral citation and is then reported in a law report series, both citations may be given, as in the example above.

(4) Reference to statutes

Human Rights Act 1998 (UK), s 6

The name of the statute is given first, followed by the year the statute was enacted.

The letters in parentheses – ‘UK’ – denote the jurisdiction of the statute. The jurisdiction is not usually indicated unless statutes from several jurisdictions appear.

‘s 6’ refers to the section of the statute that you are required to read.

(5) Reference to articles

Wade, 'The Basis of Legal Sovereignty' [1955] CLJ 172

The name of the author is given first, followed by the title of the article in quotation marks.

The numbers in square brackets – '[1955]' – refer to the year the article was published. As with cases, where the journal has numbered volumes, the year is given in parentheses and is followed by the volume number: e.g., '(1997) 113 LQR 445'.

The letters – CLJ – refer to the journal. 'CLJ' is a reference to the Cambridge Law Journal. You will find lists of standard abbreviations of law journals in the library and in the Cardiff Index to Legal Abbreviations (above). They may also be explained in your reading list. Further information on this topic will be covered in the Research & Mooting Skills tutorial.

The numbers after the (abbreviated) journal title – 172 – refer to the page where you will find the article.

(6) Further reading

Your tutors will give you advice on how to tackle reading lists and approach your legal studies, and may suggest general reading on this topic. You may also find some of the following resources useful. The Bodleian Law Library (BLL) Call Number (ie the location of the item on the shelves) is given after the publishing details. Check in SOLO, the library catalogue, (<http://solo.bodleian.ox.ac.uk/>), to see if your College also has any of these books.

- S Askey and I McLeod, *Studying Law* (4th edn, Palgrave Macmillan 2014) KL130.35.ASK 2014
- A Bradney et al, *How to Study Law* (7th edn, Sweet & Maxwell 2014) KL155.BRA 2014
- E Finch and S Fafinski, *Legal Skills* (5th edn, OUP 2015) KL130.35.FIN 2015
- R Huxley-Binns and J Martin, *Unlocking the English Legal System* (3rd edn, Hodder Arnold 2010) KL11.HUX 2010
- C Manchester and D Salter, *Manchester and Salter on Exploring the Law: The Dynamics of Precedent and Statutory Interpretation* (4th edn, Sweet & Maxwell 2011) KL32.MAN 2011
- N McBride, *Letters to a Law Student: A Guide to Studying Law at University* (3rd edn, Pearson 2013) KL131.1.MCB 2013
- A Smith (ed), *Glanville Williams: Learning the Law* (15th edn, Sweet & Maxwell 2013) KL130.WIL 2013

3. APPROACHING ESSAYS AND PROBLEM QUESTIONS

(1) Essays

You will need to write an essay for most tutorials. Ensure that you allocate sufficient time to prepare the essay. Before you tackle the reading, think about the question that the essay raises and the arguments that you will have to make in response to the question. You may find that it helps, when reading, to keep a note of the material that you can use to help you make the arguments you wish to make. You also need to make sure that you understand the law, including the material that is not relevant to the particular question you are asked to answer.

Do not approach the essay as an opportunity to provide a précis of your reading for the week. It is your chance to think and engage with the topic.

You may find the following discussion useful:

- E Finch and S Fafinski, *Legal Skills* (5th edn, OUP 2015), chs 10-13
KL130.35.FIN 2015
- S Foster, *How to Write Better Law Essays* (4th edn, Pearson 2016) ch 5
KL130.2.FOS 2016

(2) Problem questions

When faced with a problem question, you need to make sure that you identify the legal issues raised in the question. Consider, too, what the particular claimant wishes to achieve – does she want to know whether she will be prosecuted for a criminal offence, or does she wish to obtain damages for harm that she has suffered? Think about how the law could help support her case. Again, you need to make sure that you provide a legal argument and avoid using your answer to the problem as an opportunity to give an account of everything that you have read.

The objective of problem questions is to identify the issues that arise on the facts, identify the applicable legal rules, apply those rules and reach a conclusion. That is not to say that the exercise will be mechanical or that there is no scope for evaluation of the legal rules but the key is application of the law to the facts in order to reach a conclusion on the issues presented.

For more information on approaching problem questions, see:

- E Finch and S Fafinski, *Legal Skills* (5th edn, OUP 2015) ch 15
KL130.35.FIN 2015
- S Strong, *How to Write Law Essays and Exams* (4th edn, OUP 2014) chs 3–6
KL130.2.STR 2010
- S Foster, *How to Write Better Law Essays* (4th edn, Pearson 2016) ch 6
KL130.2.FOS 2016

4. REFERRING TO LEGAL MATERIALS IN YOUR WORK

(1) Plagiarism

It is important to ensure that you do not plagiarise the work of others. You must properly attribute the work of others that you use. It is important to bear in mind the following considerations when approaching your writing, to help to avoid plagiarism:

- Writing an answer to an essay or a problem question requires you not to merely give information, but to take a step back and to think critically about the law that you have read. It is an opportunity for you to develop your own ideas. It is not meant to be an opportunity for you to merely present information that you have found elsewhere.
- In forming your own ideas, it is not only acceptable, but also encouraged for you to be aware of the work of others and to use this to help develop your arguments further. It helps to strengthen your argument if you name the source of the information that you are using and explain how their work helps you to develop your own argument.

The Law Faculty's Law Moderations Handbook has more extensive advice about plagiarism and how to avoid it, as does the University website at:

<http://www.ox.ac.uk/students/academic/goodpractice/about/>

(2) References

It is important to refer properly and accurately to legal materials in your essays and answers to problem questions, although different tutors will have different expectations in this regard. By and large, you should refer to sources in the manner described in section 2, above.

For statutes, give the short title, year and, if relevant, section number: e.g., Theft Act 1968, s 16(2).

For cases, give the names of the parties (italicised if typed or underlined if handwritten), followed, at least on the first occasion, by the citation. Depending on your own preferences and those of your tutor, you may use footnotes if you wish. Note that, in criminal law, it is conventional to cite only the name of the defendant (e.g., *Vickers*), except in Divisional Court cases (e.g., *Rogers v Arnott*) and in House of Lords or Supreme Court cases (e.g., *DPP v Smith*). Otherwise, you should give the name of the case exactly as it appears in the relevant report.

If you are referring to books, journals or other sources, these, too, should be cited in the appropriate fashion. For comprehensive guidance on appropriate citation, you can consult OSCOLA (the Oxford Standard for Citation of Legal Authorities) at www.law.ox.ac.uk/oscola.

There is advice about citing legal authorities in the online resource provided by Cardiff University, called 'Citing the Law' at <https://ilrb.cf.ac.uk/citingreferences/oscola/tutorial/>.

(3) Courts

It is important to know in which court a case has been heard. If you refer to the court in your work, you can state the name in full, or else use an abbreviation. The following are standard abbreviations for different courts:

- SC (Supreme Court)
- HL (House of Lords)
- CA (Court of Appeal) – (Crim) or (Civ) as appropriate
- DC (Divisional Court of the Queen's Bench)
- HC (High Court) – (QB), (Fam), (Ch), (Admin), etc. as appropriate
- CC (Crown Court)
- CJEU (reference to one of three courts comprising the Court of Justice of the European Union in Luxembourg)
- ECtHR (European Court of Human Rights, based in Strasbourg)

(4) Judges

When referring to judges, you should adopt the following standard styles and abbreviations:

Supreme Court	The President	Lord Smith [of Anytown*] PSC
	The Deputy-President	Lord Smith [of Anytown*] DPSC
	Lord Smith	Lord Smith [of Anytown*] JSC
	Lady Smith	Lady Smith [of Anytown*] JSC
	Lord Smith and Lord Jones	Lord Smith [of Anytown*] and Lord Jones [of Sometown*] JJSC
	Sir John Smith	Sir John Smith JSC

House of Lords	The Lord Chancellor	Lord Smith [of Anytown*] LC
	Lord Smith	Lord Smith [of Anytown*]
	Baroness Smith	Baroness Smith [of Anytown*]
	Lord Smith and Lord Jones	Lord Smith [of Anytown*] and Lord Jones [of Sometown*]

* Note that whether or not a territorial designation – the ‘of Anytown’ part – is needed depends on the letters patent creating the peerage, so you should follow the practice adopted in the law reports for each judge. You may choose to omit it altogether and, in any event, it is usually sufficient to include it only on the first reference.

Court of Appeal	Lord Chief Justice	Lord/Lady Smith CJ
	Master of the Rolls	Lord/Lady Smith MR
	Lord/Lady Justice Smith	Smith LJ
	Lord Justices Smith and Jones	Smith and Jones LJJ
High Court	Mr/Mrs Justice Smith	Smith J
	Justices Smith and Jones	Smith and Jones JJ

5. READING CASES EXERCISE

(1) Reading

Fagan v Commissioner of Metropolitan Police [1969] 1 QB 439 (DC) (page 13 of this pack) *R v Miller* [1983] 2 AC 161 (HL), 173–80 (Lord Diplock) (page 21 of this pack)

(2) Preliminary questions

Please think about the following preliminary questions. The questions are guidelines only: although these will guide discussion in the class, it may be that your answers to these questions lead to further avenues of discussion.

- (a) Which court decided *Fagan*? Could you tell that from the law report series in which the case is reported?
- (b) How many judges presided?
- (c) In which series of law reports, and in which volume, can the decision be found?
- (d) On what page does the judgment begin?
- (e) Which part of the report corresponds to the judgment of the court?
- (f) What does the rest of the report contain? Who wrote the rest of the report?
- (g) Was the court concerned with establishing the facts of the case? Why not?

(3) Further questions

- (a) With what offence had Fagan been charged?
- (b) What aspect of the offence gave rise to controversy in this case (*Fagan*)?
- (c) What is the meaning of *actus reus* and *mens rea*?
- (d) Do James J and Bridge J reach the same conclusion? If not, what is the conclusion of the court?
- (e) What is the *ratio* of the case?
- (f) Can you give an example of *obiter dictum* found in this case?
- (g) How would you summarise the differences in reasoning of James J and Bridge J?
- (h) Who has the better conclusion in the case: James J or Bridge J?
- (i) What would happen to Michelle, if she accidentally drives onto PC Jones's foot, gets out of the car when she realises what she has done, but leaves the engine running and runs down the road shouting, "Stay there, you pig!" Would it make any difference if Michelle had run away silently?
- (j) Would *Fagan* still be decided in the same way today, following *Miller*?
- (k) Would the case be easier to resolve if there were a general liability for omissions in criminal law?
- (l) Why do you think that there is no general liability for omissions in criminal law?

(4) Further reading

The sources below include exercises similar to the exercises provided in this induction course. At this stage, it may help you to read through guidance that they provide as to how to read and

take notes on a case and on the system of precedent. If you feel that you would benefit from more experience after the induction class, then you could work your way through one or more of the exercises provided in these reference materials.

- S Askey and I McLeod, *Studying Law* (4th edn, Palgrave Macmillan 2014) ch 8, 114– 30
KL130.35.ASK 2014
- A Bradney et al, *How to Study Law* (7th edn Sweet & Maxwell, 2014)
Reading Chapters and Statutes chapter
KL155.BRA 2010
- E Finch and S Fafinski, *Legal Skills* (5th edn, OUP 2015)
chs 4, 6 KL130.35.FIN 2015
- R Huxley-Binns and J Martin, *Unlocking the English Legal System* (3rd edn, Hodder Arnold 2010) chs 1.1-1.4, 2
KL11.HUX 2010

6. READING STATUTES EXERCISE

(1) Reading

Confiscation of Alcohol (Young Persons) Act 1997 (as enacted) (page 29 of this pack)

Confiscation of Alcohol (Young Persons) Act 1977 (Commencement) Order 1977, SI 1977/1725 (page 31 of this pack)

Confiscation of Alcohol (Young Persons) Act 1997 (consolidated version) (page 32 of this pack)

Licensing Act 2003, ss 155, 191, 198, Sch 6 para 115 (page 35 of this pack)

Serious Organised Crime and Police Act 2005, ss 110, 111, Sch 7 Pt 1 para 33 (page 37 of this pack)

Policing and Crime Act 2009 s 29, 112(2), Sch 8 Pt 3 (page 40 of this pack)

(2) Preliminary questions

- (a) Is the Confiscation of Alcohol (Young Persons) Act 1997 is an Act of Parliament?
- (b) Is the Act in force yet?
- (c) Does the Act extend to Scotland?
- (d) Where would you find detailed definitions of ‘intoxicating liquor’ and ‘licensed premises’?
- (e) What effect on the Act do s 155(1) and s 198(1), Sch 6, para 115 of the Licensing Act 2003 have?
- (f) What effect on the Act is created by sections 29, 112(2), Schedule 8, pt 3 of the Policing and Crime Act 2009?
- (g) Consider the (unofficial) consolidated version of the Act. What does the ellipsis (...) next to s 1(5) indicate? What other amendments and repeals have been effected?

(3) Further questions

- (a) Does this Act make it an offence for a person under the age of 18 to drink alcohol in a public place?
- (b) Is this statute an unmerited intrusion into civil liberties?
- (c) If you were able to reform this statute, would you do so and, if so, how would you reform its provisions?
- (d) The Licensing Act 2003 makes a number of amendments to the Act. Some of those amendments are effected by sections in the main body of the Licensing Act and others by paragraphs in one of the schedules. Why?

(4) Discussion problem

Kevin is 20 and is drinking cider on the High Street. He is wearing his old school uniform, as he has just been to a fancy dress party. PC Plum is patrolling his beat and, seeing Kevin, asks Kevin to hand over the cider to him and to give his name and address. He also tells Kevin that he will be committing an offence if he refuses to hand over the cider or provide his name and address.

- (a) Does PC Plum have the power to do this?
- (b) Is there anything that PC Plum should have said to Kevin that he has not said?
- (c) Kevin refuses to give his name and address, but does hand over the cider. PC Plum then arrests Kevin. Does he have the power to do so?

Sandra is sitting next to Kevin. Sandra is 15 years old. Whilst PC Plum was talking to Kevin, Sandra was giggling and shouting loud obscenities. There is a half-empty bottle of cider on the floor besides where she is sitting.

- (d) Can PC Plum ask Sandra to hand over the bottle of cider and give her name and address?
- (e) What would happen if Sandra were to refuse to hand over the bottle of cider?
- (f) Would your answer be different if the bottle of cider did not belong to Sandra?

(5) Further reading

- S Askey and I McLeod, *Studying Law* (4th edn, Palgrave Macmillan 2014) ch 8, 130–38 KL130.35.ASK 2014
- A Bradney et al, *How to Study Law* (7th edn, Sweet & Maxwell 2014) Reading Cases and Statutes chapter KL155.BRA 2014
- E Finch and S Fafinski, *Legal Skills* (5th edn, OUP 2015) section A KL130.35.FIN 2015
- R Huxley-Binns and J Martin, *Unlocking the English Legal System* (3rd edn, Hodder Arnold 2010) chs 1.5–1.6, 3 KL11.HUX 2015

1967

Barnett
v.
Chelsea
and
Kensington
Hospital
Management
Committee
NIELD J.

A Without going in detail into the considerable volume of technical evidence which has been put before me, it seems to me to be the case that when death results from arsenical poisoning it is brought about by two conditions; on the one hand dehydration and on the other disturbance of the enzyme processes. If the principal condition is one of enzyme disturbance—as I am of the view it was here—then the only method of treatment which is likely to succeed is the use of the specific antidote which is commonly called B.A.L. Dr. Goulding said in the course of his evidence:

C “The only way to deal with this is to use the specific B.A.L. I see no reasonable prospect of the deceased being given B.A.L. before the time at which he died”—and at a later point in his evidence—“I feel that even if fluid loss had been discovered death would have been caused by the enzyme disturbance. Death might have occurred later.”

D I regard that evidence as very moderate, and it might be a true assessment of the situation to say that there was no chance of B.A.L. being administered before the death of the deceased.

For those reasons, I find that the plaintiff has failed to establish, on the balance of probabilities, that the defendants' negligence caused the death of the deceased.

Judgment for the defendants.

E Solicitors: *W. H. Thompson; Nigel Ryland.*

FAGAN v. COMMISSIONER OF METROPOLITAN POLICE

1968
June 28;
July 1, 31

LORD
PARKER C.J.,
JAMES
and
BRIDGE JJ.

F *Crime—Assault—Police—Car driven on to policeman's foot—Doubt whether intentional or accidental—Deliberate delay in removing car—Mens rea—Actus reus—Whether subsequent inception of mens rea capable of converting original unintentional act into an assault.*

G *Crime—Mens rea—Assault—Unintentional battery—Car driven on to policeman's foot—Supervening mens rea constituted by deliberate delay in removing car—Whether an assault.*

A police constable wishing to question the defendant driver directed him to park his vehicle at a precise space against the kerb, whereupon the defendant drove his car on to the police

[Reported by MRS. JENNIFER WINCH, Barrister-at-Law.]

1968
Fagan
v.
Metropolitan
Police
Commissioner

constable's foot. After the latter had repeated several times, "Get off my foot!" the defendant reversed the car off the constable's foot. The defendant was convicted by justices of assaulting a police constable in the execution of his duty. He appealed to quarter sessions, who found that while they were left in doubt as to whether the initial mounting of the wheel was intentional or accidental, they were satisfied beyond all reasonable doubt that the defendant knowingly, provocatively and unnecessarily allowed the wheel to remain on the police constable's foot after he had been told to drive off, and that on those facts an assault was proved.

On appeal, on the ground that on the justices' finding the initial mounting of the wheel could not be an assault; that the act of mounting the foot came to an end without any mens rea and that, accordingly, there was no act done by the defendant which could constitute an actus reus:—

Held, dismissing the appeal (Bridge J. dissenting) (1) that where an assault involved a battery it could be inflicted through the medium of a weapon or instrument controlled by the action of the offender.

(2) That although the elements of actus reus and mens rea were necessarily present at the same time in an assault, it was not necessary for the mens rea to be present at the inception of the actus reus: it could be superimposed on an existing act provided it was a continuing act.

(3) That the defendant's act in mounting the policeman's foot with his car was an unintentional battery which his later conduct in purposely delaying the removal of the car from the foot rendered criminal from the moment the necessary intention to inflict unlawful force was formed.

Per curiam. An assault is any act which intentionally—or possibly recklessly—causes another person to apprehend immediate and unlawful personal violence (post, p. 444b).

Per Bridge J. There was no act done by the appellant after he had driven the car on to the police constable's foot which could constitute an assault (post, p. 446B-C).

CASE STATED by Middlesex Quarter Sessions.

On October 25, 1967, the appellant, Vincent Martel Fagan, appealed to Middlesex Quarter Sessions against his conviction at Willesden magistrates' court upon a charge preferred by David Morris, a constable of the Metropolitan Police Force, for and on behalf of the respondents. He had been convicted of assaulting David Morris when in the execution of his duty on August 31, 1967, contrary to section 51 of the Police Act, 1964. The appellant's appeal was dismissed.

On the hearing of the appeal the following facts were either proved or admitted.

A (a) David Morris was at all material times in the execution of his duty.

1968

Fagan
v.
Metropolitan
Police
Commissioner

B (b) On August 31, 1967, the appellant drove a motor vehicle in Fortunegate Road, London, N.W.10, near the junction with Craven Park Road, London, N.W.10. While the appellant was in the course of reversing his motor vehicle from the said road on to a pedestrian crossing in Craven Park Road, David Morris asked the appellant to pull into the road against the north kerb so that he could ask the appellant to produce documents relating to the appellant's driving. First of all the vehicle stopped and it did not move. David Morris, who had walked into the middle of the road, pointed out to the appellant a suitable parking space against the kerb. The appellant drove the vehicle towards David Morris and stopped it with its rear side a substantial distance from the kerb. David Morris went up to the appellant and asked him to park the vehicle closer to the kerb. David Morris walked to a position about one yard in front of the vehicle and pointed to the exact position against the kerb. The appellant drove the vehicle in David Morris's direction and stopped the vehicle with its front off-side wheel on David Morris's left foot. David Morris said to the appellant, "Get off, you are on my foot!" The appellant's driving window was open. The appellant said "Fuck you, you can wait." The appellant then turned off the ignition or at least the engine stopped running. David Morris then said to the appellant several times, "Get off my foot!" The appellant then said very reluctantly, "Okay, man, okay." The appellant thereafter very slowly turned on the ignition and reversed the vehicle off David Morris's foot.

C (c) As a result of the appellant's act or omission David Morris's left big toe was injured. The toe was swollen and slightly bruised.

F It was contended for the appellant that David Morris was uncertain that the appellant deliberately mounted the wheel of his vehicle on to his foot. To establish the charge of assault the prosecution must prove that it was deliberate on the appellant's part. The incident might have been accidental. At any rate it was not proved to the satisfaction of the court that what the appellant was alleged to have done was done by him deliberately. It was further contended for the appellant that if one drove a vehicle over some part of a man's body that might be accidental but if one held it there it required a rather more positive act and if one did hold the vehicle in the said manner it was not an assault, because the actual assault, whether it was by accident or not, was that the vehicle got on to the foot; the fact that the

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driver might have taken a little longer to take it off—if the court accepted the time deposed by David Morris, that is to say twenty-five seconds—could not be an assault, because the assault had already taken place. It was also contended for the appellant that the continued pressure on David Morris's foot was not a fresh assault.

It was contended for the respondents that if the vehicle was deliberately left in a position where pressure was still being exerted and if the appellant had reasonable time in which to get the vehicle off David Morris's foot and if the appellant in those circumstances left the vehicle on his foot, an assault in law would commence as soon as the reasonable time had elapsed for the appellant to get the vehicle off altogether, if the appellant deliberately delayed in getting the vehicle off, that would be an assault in law. No authorities were cited to the deputy chairman and the justices.

On those facts the deputy chairman and the justices were left in doubt as to whether the initial mounting of the motor wheel on David Morris's foot was intentional on the part of the appellant or accidental. They were satisfied beyond all reasonable doubt that the appellant knowingly, provocatively and unnecessarily allowed the motor wheel to remain on David Morris's foot after the latter said, "Get off, you are on my foot." They came to the conclusion that the charge of assault on David Morris had been made out, and dismissed the appeal.

The question of law for the opinion of the High Court is whether upon the facts stated above the deputy chairman and the justices were right in dismissing the appeal.

A. Abbas and *A. Azhar* for the appellant. The actus reus consisted of the appellant driving his car on to the policeman's foot. The justices had been in doubt as to whether the mounting of the wheel on to the policeman's foot was intentional or accidental, accordingly there was no mens rea at the time of the actus reus and there could not be an assault. The continued pressure on the policeman's foot was not a fresh assault. The appellant's failure to remove the car from his foot could not be an assault in law: *Stone's Justices' Manual* (1968), Vol. 1, p. 651.

James Rant for the respondent. The actus reus was a continuing act and the intervention of mens rea turned that act into an assault: *Hunter v. Johnson*.¹ The essence of assault was an attempt to injure or put into fear. There was no reason why a sustained

¹ (1884) 13 Q.B.D. 225.

- A attempt should not be an assault. Alternatively, there might be a duty to act in which case an omission to act in breach of duty would amount to an assault.

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Cur. adv. vult.

- B July 31. LORD PARKER C.J. I will ask James J. to read the judgment which he has prepared, and with which I entirely agree.

- C JAMES J. The appellant, Vincent Martel Fagan, was convicted by the Willesden magistrates of assaulting David Morris, a police constable, in the execution of his duty on August 31, 1967. He appealed to quarter sessions. On October 25, 1967, his appeal was heard by Middlesex Quarter Sessions and was dismissed. This matter now comes before the court on appeal by way of case stated from that decision of quarter sessions.

The sole question is whether the prosecution proved facts which in law amounted to an assault.

- D On August 31, 1967, the appellant was reversing a motor car in Fortune Gate Road, London, N.W.10, when Police Constable Morris directed him to drive the car forwards to the kerbside and standing in front of the car pointed out a suitable place in which to park. At first the appellant stopped the car too far from the kerb for the officer's liking. Morris asked him to park closer and indicated a precise spot. The appellant drove forward towards him and stopped it with the offside wheel on Morris's left foot. E "Get off, you are on my foot," said the officer. "Fuck you, you can wait," said the appellant. The engine of the car stopped running. Morris repeated several times "Get off my foot." The appellant said reluctantly "Okay man, okay," and then slowly turned on the ignition of the vehicle and reversed it off the officer's foot. F The appellant had either turned the ignition off to stop the engine or turned it off after the engine had stopped running.

- G The justices at quarter sessions on those facts were left in doubt as to whether the mounting of the wheel on to the officer's foot was deliberate or accidental. They were satisfied, however, beyond all reasonable doubt that the appellant "knowingly, provocatively and unnecessarily allowed the wheel to remain on the foot after the officer said 'Get off, you are on my foot'." They found that on those facts an assault was proved.

Mr. Abbas for the appellant relied upon the passage in Stone's Justices' Manual (1968), Vol. 1, p. 651, where assault is defined. He contends that on the finding of the justices the initial mounting of the wheel could not be an assault and that the act of the wheel

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mounting the foot came to an end without there being any mens rea. It is argued that thereafter there was no act on the part of the appellant which could constitute an actus reus but only the omission or failure to remove the wheel as soon as he was asked. That failure, it is said, could not in law be an assault, nor could it in law provide the necessary mens rea to convert the original act of mounting the foot into an assault.

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Mr. Rant for the respondent argues that the first mounting of the foot was an actus reus which act continued until the moment of time at which the wheel was removed. During that continuing act, it is said, the appellant formed the necessary intention to constitute the element of mens rea and once that element was added to the continuing act, an assault took place. In the alternative, Mr. Rant argues that there can be situations in which there is a duty to act and that in such situations an omission to act in breach of duty would in law amount to an assault. It is unnecessary to formulate any concluded views on this alternative.

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In our judgment the question arising, which has been argued on general principles, falls to be decided on the facts of the particular case. An assault is any act which intentionally—or possibly recklessly—causes another person to apprehend immediate and unlawful personal violence. Although “assault” is an independent crime and is to be treated as such, for practical purposes today “assault” is generally synonymous with the term “battery” and is a term used to mean the actual intended use of unlawful force to another person without his consent. On the facts of the present case the “assault” alleged involved a “battery.” Where an assault involves a battery, it matters not, in our judgment, whether the battery is inflicted directly by the body of the offender or through the medium of some weapon or instrument controlled by the action of the offender. An assault may be committed by the laying of a hand upon another, and the action does not cease to be an assault if it is a stick held in the hand and not the hand itself which is laid on the person of the victim. So for our part we see no difference in principle between the action of stepping on to a person’s toe and maintaining that position and the action of driving a car on to a person’s foot and sitting in the car whilst its position on the foot is maintained.

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To constitute the offence of assault some intentional act must have been performed: a mere omission to act cannot amount to an assault. Without going into the question whether words alone can constitute an assault, it is clear that the words spoken by the appellant could not alone amount to an assault: they can only shed

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- A a light on the appellant's action. For our part we think the crucial question is whether in this case the act of the appellant can be said to be complete and spent at the moment of time when the car wheel came to rest on the foot or whether his act is to be regarded as a continuing act operating until the wheel was removed. In our judgment a distinction is to be drawn between acts which
- B are complete—though results may continue to flow—and those acts which are continuing. Once the act is complete it cannot thereafter be said to be a threat to inflict unlawful force upon the victim. If the act, as distinct from the results thereof, is a continuing act there is a continuing threat to inflict unlawful force. If the assault involves a battery and that battery continues there is a
- C continuing act of assault.

- D For an assault to be committed both the elements of *actus reus* and *mens rea* must be present at the same time. The "*actus reus*" is the action causing the effect on the victim's mind (see the observations of Park B. in *Regina v. St. George*¹). The "*mens rea*" is the intention to cause that effect. It is not necessary that
- E *mens rea* should be present at the inception of the *actus reus*; it can be superimposed upon an existing act. On the other hand the subsequent inception of *mens rea* cannot convert an act which has been completed without *mens rea* into an assault.

- F In our judgment the Willesden magistrates and quarter sessions were right in law. On the facts found the action of the appellant may have been initially unintentional, but the time came when knowing that the wheel was on the officer's foot the appellant (1) remained seated in the car so that his body through the medium of the car was in contact with the officer, (2) switched off the ignition of the car, (3) maintained the wheel of the car on the foot and (4) used words indicating the intention of keeping the wheel in that position. For our part we cannot regard such
- G conduct as mere omission or inactivity.

There was an act constituting a battery which at its inception was not criminal because there was no element of intention but which became criminal from the moment the intention was formed to produce the apprehension which was flowing from the continuing act. The fallacy of the appellant's argument is that it seeks to equate the facts of this case with such a case as where a motorist has accidentally run over a person and, that action having been completed, fails to assist the victim with the intent that the victim should suffer.

We would dismiss this appeal.

¹ (1840) 9 C. & P. 483, 490, 493.

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BRIDGE J. I fully agree with my Lords as to the relevant principles to be applied. No mere omission to act can amount to an assault. Both the elements of actus reus and mens rea must be present at the same time, but the one may be superimposed on the other. It is in the application of these principles to the highly unusual facts of this case that I have, with regret, reached a different conclusion from the majority of the court. I have no sympathy at all for the appellant, who behaved disgracefully. But I have been unable to find any way of regarding the facts which satisfies me that they amounted to the crime of assault. This has not been for want of trying. But at every attempt I have encountered the inescapable question: after the wheel of the appellant's car had accidentally come to rest on the constable's foot, what was it that the appellant did which constituted the act of assault? However the question is approached, the answer I feel obliged to give is: precisely nothing. The car rested on the foot by its own weight and remained stationary by its own inertia. The appellant's fault was that he omitted to manipulate the controls to set it in motion again.

Neither the fact that the appellant remained in the driver's seat nor that he switched off the ignition seem to me to be of any relevance. The constable's plight would have been no better, but might well have been worse, if the appellant had alighted from the car leaving the ignition switched on. Similarly I can get no help from the suggested analogies. If one man accidentally treads on another's toe or touches him with a stick, but deliberately maintains pressure with foot or stick after the victim protests, there is clearly an assault. But there is no true parallel between such cases and the present case. It is not, to my mind, a legitimate use of language to speak of the appellant "holding" or "maintaining" the car wheel on the constable's foot. The expression which corresponds to the reality is that used by the justices in the case stated. They say, quite rightly, that he "allowed" the wheel to remain.

With a reluctantly dissenting voice I would allow this appeal and quash the appellant's conviction.

Appeal dismissed.

Solicitors: *Clinton Davis, Hillman & Parkus; Solicitor, Metropolitan Police.*

2 A.C.

Reg. v. Miller (H.L.(E.))

A hand there for about five minutes. He neither does nor says anything to encourage her: *Reg. v. Speck* [1977] 2 All E.R. 859.

B Deception. (Section 15 of the Theft Act 1968.) (i) D and X go into a shop. D wants to purchase goods but is short of cash. X offers to pay for him by cheque. He makes out a cheque and hands it over. While the assistant is away wrapping the goods, X confides to D that there is no chance that the cheque will be met. D takes no steps to tell the assistant and receives possession of the goods: section 16 (2) (a) of the Theft Act 1968 before amendment by the Theft Act 1978. (ii) D goes into a restaurant and orders a meal intending to pay for it. Having eaten the meal, he dishonestly decides not to pay and seizes his opportunity to run out: contrast *Ray v. Sempers* [1974] A.C. 370.

C *Gorman Q.C.* in reply. The Crown's appeal to "ordinary parlance" cannot be the proper canon of construction; ordinary parlance would not distinguish culpable from innocent action. A penal statute should not be construed to penalise conduct which under previous legislation was not culpable in the absence of clear words.

Their Lordships took time for consideration.

D March 17. LORD DIPLOCK. My Lords, the facts which give rise to this appeal are sufficiently narrated in the written statement made to the police by the appellant Miller. That statement, subject to two minor orthographical corrections, reads:

E "Last night I went out for a few drinks and at closing time I went back to the house where I have been kipping for a couple of weeks. I went upstairs into the back bedroom where I've been sleeping. I lay on my mattress and lit a cigarette. I must have fell to sleep because I woke up to find the mattress on fire. I just got up and went into the next room and went back to sleep. Then the next thing I remember was the police and fire people arriving. I hadn't got anything to put the fire out with so I just left it."

F He was charged upon indictment with the offence of "arson contrary to section 1 (1) and (3) of the Criminal Damage Act 1971"; the particulars of offence were that he:

G "on a date unknown between August 13 and 16, 1980, without lawful excuse damaged by fire a house known as No. 9, Grantham Road, Sparkbrook, intending to do damage to such property or recklessly as to whether such property would be damaged."

H He was tried in the Leicester Crown Court before a recorder and a jury. He did not give evidence, and the facts as set out in his statement were not disputed. He was found guilty and sentenced to six months' imprisonment.

From his conviction he appealed to the Court of Appeal upon the ground, which is one of law alone, that the undisputed facts did not disclose any offence under section 1 of the Criminal Damage Act 1971. The appeal was dismissed, but leave to appeal to your Lordships' House was granted by the Court of Appeal who certified that the following question of law of general public importance was involved:

"Whether the actus reus of the offence of arson is present when a defendant accidentally starts a fire and thereafter, intending to destroy or damage property belonging to another or being reckless as to whether any such property would be destroyed or damaged, fails to take any steps to extinguish the fire or prevent damage to such property by that fire? "

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The question speaks of "actus reus." This expression is derived from Coke's brocard in his *Institutes*, Part III (1797 ed.), c. 1 fo.10: "et actus non facit reum, nisi mens sit rea," by converting, incorrectly, into an adjective the word "reus" which was there used correctly in the accusative case as a noun. As long ago as 1889 in *Reg. v. Tolson* (1889) 23 Q.B.D. 168, 185-187, Stephen J. when dealing with a statutory offence, as are your Lordships in the instant case, condemned the phrase as likely to mislead, though his criticism in that case was primarily directed to the use of the expression "mens rea." In the instant case, as the argument before this House has in my view demonstrated, it is the use of the expression "actus reus" that is liable to mislead, since it suggests that some positive act on the part of the accused is needed to make him guilty of a crime and that a failure or omission to act is insufficient to give rise to criminal liability unless some express provision in the statute that creates the offence so provides.

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My Lords, it would I think be conducive to clarity of analysis of the ingredients of a crime that is created by statute, as are the great majority of criminal offences today, if we were to avoid bad Latin and instead to think and speak (as did Sir James Fitzjames Stephen in those parts of his judgment in *Reg. v. Tolson* to which I referred at greater length in *Sweet v. Parsley* [1970] A.C. 132, 162-163) about the conduct of the accused and his state of mind at the time of that conduct, instead of speaking of actus reus and mens rea.

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The question before your Lordships in this appeal is one that is confined to the true construction of the words used in particular provisions in a particular statute, viz. section 1 (1) and (3) of the Criminal Damage Act 1971. Those particular provisions will fall to be construed in the light of general principles of English criminal law so well established that it is the practice of parliamentary draftsmen to leave them unexpressed in criminal statutes, on the confident assumption that a court of law will treat those principles as intended by parliament to be applicable to the particular offence unless expressly modified or excluded. But this does not mean that your Lordships are doing any more than construing the particular statutory provisions. These I now set out:

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"(1) A person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence. . . . (3) An offence committed under this section by destroying or damaging property by fire shall be charged as arson."

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This definition of arson makes it a "result-crime" in the classification adopted by Professor Gordon in his work *The Criminal Law of Scotland*,

A 2nd ed. (1978). The crime is not complete unless and until the conduct of the accused has caused property belonging to another to be destroyed or damaged.

B In the instant case property belonging to another, the house, was damaged; it was not destroyed. So in the interest of brevity it will be convenient to refer to damage to property and omit reference to destruction. I should also mention, in parenthesis, that in this appeal your Lordships are concerned only with the completed crime of arson, not with related inchoate offences such as attempt or conspiracy to destroy or damage property belonging to another, to which somewhat different considerations will apply. Nor does this appeal raise any question of "lawful excuse." None was suggested.

C The first question to be answered where a completed crime of arson is charged is: "Did a physical act of the accused start the fire which spread and damaged property belonging to another (or did his act cause an existing fire, which he had not started but which would otherwise have burnt itself out harmlessly, to spread and damage property belonging to another)? " I have added the words in brackets for completeness. They do not arise in the instant case; in cases where they do, the accused, for the purposes of the analysis which follows, may be regarded as having started a fresh fire.

D The first question is a pure question of causation; it is one of fact to be decided by the jury in a trial upon indictment. It should be answered "No" if, in relation to the fire during the period starting immediately before its ignition and ending with its extinction, the role of the accused was at no time more than that of a passive bystander. In such a case the subsequent questions to which I shall be turning would not arise. The conduct of the parabolical priest and Levite on the road to Jericho may have been indeed deplorable, but English law has not so far developed to the stage of treating it as criminal; and if it ever were to do so there would be difficulties in defining what should be the limits of the offence.

F If on the other hand the question, which I now confine to: "Did a physical act of the accused start the fire which spread and damaged property belonging to another?" is answered "Yes," as it was by the jury in the instant case, then for the purpose of the further questions the answers to which are determinative of his guilt of the offence of arson, the conduct of the accused, throughout the period from immediately before the moment of ignition to the completion of the damage to the property by the fire, is relevant; so is his state of mind throughout that period.

G Since arson is a result-crime the period may be considerable, and during it the conduct of the accused that is causative of the result may consist not only of his doing physical acts which cause the fire to start or spread but also of his failing to take measures that lie within his power to counteract the danger that he has himself created. And if his conduct, active or passive, varies in the course of the period, so may his state of mind at the time of each piece of conduct. If at the time of any particular piece of conduct by the accused that is causative of the result, the state of mind that actuates his conduct falls within the description of one or other of the states of mind that are made a necessary ingredient of the

offence of arson by section 1 (1) of the Criminal Damage Act 1971 (i.e. intending to damage property belonging to another or being reckless as to whether such property would be damaged) I know of no principle of English criminal law that would prevent his being guilty of the offence created by that subsection. Likewise I see no rational ground for excluding from conduct capable of giving rise to criminal liability, conduct which consists of failing to take measures that lie within one's power to counteract a danger that one has oneself created, if at the time of such conduct one's state of mind is such as constitutes a necessary ingredient of the offence. I venture to think that the habit of lawyers to talk of "actus reus," suggestive as it is of action rather than inaction, is responsible for any erroneous notion that failure to act cannot give rise to criminal liability in English law.

No one has been bold enough to suggest that if, in the instant case, the accused had been aware at the time that he dropped the cigarette that it would probably set fire to his mattress and yet had taken no steps to extinguish it he would not have been guilty of the offence of arson, since he would have damaged property of another being reckless as to whether any such property would be damaged.

I cannot see any good reason why, so far as liability under criminal law is concerned, it should matter at what point of time before the resultant damage is complete a person becomes aware that he has done a physical act which, whether or not he appreciated that it would at the time when he did it, does in fact create a risk that property of another will be damaged; provided that, at the moment of awareness, it lies within his power to take steps, either himself or by calling for the assistance of the fire brigade if this be necessary, to prevent or minimise the damage to the property at risk.

Let me take first the case of the person who has thrown away a lighted cigarette expecting it to go out harmlessly, but later becomes aware that, although he did not intend it to do so, it has, in the event, caused some inflammable material to smoulder and that unless the smouldering is extinguished promptly, an act that the person who dropped the cigarette could perform without danger to himself or difficulty, the inflammable material will be likely to burst into flames and damage some other person's property. The person who dropped the cigarette deliberately refrains from doing anything to extinguish the smouldering. His reason for so refraining is that he intends that the risk which his own act had originally created, though it was only subsequently that he became aware of this, should fructify in actual damage to that other person's property; and what he so intends, in fact occurs. There can be no sensible reason why he should not be guilty of arson. If he would be guilty of arson, having appreciated the risk of damage at the very moment of dropping the lighted cigarette, it would be quite irrational that he should *not* be guilty if he first appreciated the risk at some later point in time but when it was still possible for him to take steps to prevent or minimise the damage.

In that example the state of mind involved was that described in the definition of the statutory offence as "intending" to damage property belonging to another. This state of mind necessarily connotes an apprecia-

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- A tion by the accused that the situation that he has by his own act created involves the risk that property belonging to another will be damaged. This is not necessarily so with the other state of mind, described in the definition of the statutory offence as "being reckless as to whether any such property would be damaged." To this other state of mind I now turn; it is the state of mind which is directly involved in the instant case.
- B Where the state of mind relied upon by the prosecution is that of "intending," the risk of damage to property belonging to another created by the physical act of the accused need not be such as would be obvious to anyone who took the trouble to give his mind to it; but the accused himself cannot form the intention that it should fructify in actual damage unless *he himself* recognises the existence of some risk of this happening.
- C In contrast to this, where the state of mind relied upon is "being reckless," the risk created by the physical act of the accused that property belonging to another would be damaged must be one that would be obvious to anyone who had given his mind to it at whatever is the relevant time for determining whether the state of mind of the accused fitted the description "being reckless whether such property would be damaged": *Reg. v. Caldwell* [1982] A.C. 341, 352. See also *Reg. v. Lawrence* [1982] A.C. 510, 526 for a similar requirement in the mental element in the statutory offence of reckless driving.
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- E In *Reg. v. Caldwell* this House was concerned with what was treated throughout as being a single act of the accused: viz., starting a fire in the ground floor room of a residential hotel which caused some damage to it; although, if closer analysis of his conduct, as distinct from his state of mind, had been relevant, what he did must have been recognised as consisting of a series of successive acts. Throughout that sequence of acts, however, the state of mind of Caldwell remained unchanged, his acknowledged intention was to damage the hotel and to revenge himself upon its owner, and he pleaded guilty to an offence under section 1 (1) of the Act; the question at issue in the appeal was whether in carrying out this avowed intention he was reckless as to whether the life of another would be thereby endangered, so as to make him guilty also of the more serious offence under section 1 (2). This House did not have to consider the case of an accused who although he becomes aware that, as the result of an initial act of his own, events have occurred that present an obvious risk that property belonging to another will be damaged, only becomes aware of this at some time after he has done the initial act. So the precise language suggested in *Caldwell* as appropriate in summing up to a jury in the ordinary run of cases under section 1 (1) of the Criminal Damage Act 1971 requires some slight adaptation to make it applicable to the particular and unusual facts of the instant case.
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- H My Lords, just as in the first example that I took, the fact that the accused's intent to damage the property of another was not formed until, as a result of his initial act in dropping the cigarette, events had occurred which presented a risk that another person's property would be damaged, ought not under any sensible system of law to absolve him from criminal liability, so too in a case where the relevant state of mind is not intent but recklessness I see no reason in common sense and justice why *mutatis mutandis* a similar principle should not apply to impose criminal

liability upon him. If in the former case he is criminally liable because he refrains from taking steps that are open to him to try to prevent or minimise the damage caused by the risk he has himself created and he so refrains because he intends such damage to occur, so in the latter case, when as a result of his own initial act in dropping the cigarette events have occurred which would have made it obvious to anyone who troubled to give his mind to them that they presented a risk that another person's property would be damaged, he should likewise be criminally liable if he refrains from taking steps that lie within his power to try and prevent the damage caused by the risk that he himself has created, and so refrains either because he has not given any thought to the possibility of there being any such risk or because, although he has recognised that there was some risk involved, he has nonetheless decided to take that risk.

My Lords, in the instant case the prosecution did not rely upon the state of mind of the accused as being reckless during that part of his conduct that consisted of his lighting and smoking a cigarette while lying on his mattress and falling asleep without extinguishing it. So the jury were not invited to make any finding as to this. What the prosecution did rely upon as being reckless was his state of mind during that part of his conduct after he awoke to find that he had set his mattress on fire and that it was smouldering, but did not then take any steps either to try to extinguish it himself or to send for the fire brigade, but simply went into the other room to resume his slumbers, leaving the fire from the already smouldering mattress to spread and to damage that part of the house in which the mattress was.

The recorder, in his lucid summing up to the jury (they took 22 minutes only to reach their verdict) told them that the accused having by his own act started a fire in the mattress which, when he became aware of its existence, presented an obvious risk of damaging the house, became under a duty to take some action to put it out. The Court of Appeal upheld the conviction, but their ratio decidendi appears to be somewhat different from that of the recorder. As I understand the judgment, in effect it treats the whole course of conduct of the accused, from the moment at which he fell asleep and dropped the cigarette on to the mattress until the time the damage to the house by fire was complete, as a continuous act of the accused, and holds that it is sufficient to constitute the statutory offence of arson if at any stage in that course of conduct the state of mind of the accused, when he fails to try to prevent or minimise the damage which will result from his initial act, although it lies within his power to do so, is that of being reckless as to whether property belonging to another would be damaged.

My Lords, these alternative ways of analysing the legal theory that justifies a decision which has received nothing but commendation for its accord with commonsense and justice, have, since the publication of the judgment of the Court of Appeal in the instant case, provoked academic controversy. Each theory has distinguished support. Professor J. C. Smith espouses the "duty theory"; Professor Glanville Williams who, after the decision of the Divisional Court in *Fagan v. Metropolitan Police Commissioner* [1969] 1 Q.B. 439 appears to have been attracted by the duty theory, now prefers that of the continuous act. When applied to cases

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A where a person has unknowingly done an act which sets in train events that, when he becomes aware of them, present an obvious risk that property belonging to another will be damaged, both theories lead to an identical result; and since what your Lordships are concerned with is to give guidance to trial judges in their task of summing up to juries, I would for this purpose adopt the duty theory as being the easier to explain to a jury; though I would commend the use of the word "responsibility,"

B rather than "duty" which is more appropriate to civil than to criminal law, since it suggests an obligation owed to another person, i.e., the person to whom the endangered property belongs, whereas a criminal statute defines combinations of conduct and state of mind which render a person liable to punishment by the state itself.

C While in the general run of cases of destruction or damage to property belonging to another by fire (or other means) where the prosecution relies upon the recklessness of the accused, the direction recommended by this House in *Reg. v. Caldwell* [1982] A.C. 341 is appropriate, in the exceptional case, (which is most likely to be one of arson and of which the instant appeal affords a striking example) where the accused is initially unaware that he has done an act that in fact sets in train events which, by the

D time the accused becomes aware of them, would make it obvious to anyone who troubled to give his mind to them that they present a risk that property belonging to another would be damaged, a suitable direction to the jury would be: that the accused is guilty of the offence under section 1 (1) of the Criminal Damage Act 1971 if, when he does become aware that the events in question have happened as a result of his own

E act, he does not try to prevent or reduce the risk of damage by his own efforts or if necessary by sending for help from the fire brigade, and the reason why he does not is either because he has not given any thought to the possibility of there being any such risk or because, having recognised that there was some risk involved, he has decided not to try to prevent or reduce it.

F So, while deprecating the use of the expression "actus reus" in the certified question, I would answer that question "Yes" and would dismiss the appeal.

G LORD KEITH OF KINKEL. My Lords, for the reasons given in the speech of my noble and learned friend, Lord Diplock, which I have had the benefit of reading in draft and with which I agree, I too would dismiss this appeal.

LORD BRIDGE OF HARWICH. My Lords, for the reasons given by my noble and learned friend, Lord Diplock, I would dismiss this appeal.

H LORD BRANDON OF OAKBROOK. My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Diplock. I agree with it, and for the reasons which he gives I would answer the certified question "Yes" and dismiss the appeal.

LORD BRIGHTMAN. My Lords, I would dismiss this appeal for the reasons given by my noble and learned friend, Lord Diplock.

Appeal dismissed.

Solicitors: *Lee, Bolton & Lee for Michael T. Purcell & Co., Birmingham; Sharpe, Pritchard & Co. for Ian S. Manson, Birmingham.*

J. A. G.

[HOUSE OF LORDS]

CHEALL RESPONDENT

AND

ASSOCIATION OF PROFESSIONAL EXECUTIVE
CLERICAL AND COMPUTER STAFF APPELLANTS

1983 Feb. 21, 22;
March 24

Lord Diplock, Lord Edmund-Davies,
Lord Fraser of Tullybelton, Lord Brandon
of Oakbrook and Lord Templeman

Trade Union — Membership — Wrongful termination — Member resigning from union and joining another union — Former union complaining to T.U.C. disputes committee — Finding that union accepting member in breach of Bridlington agreement — Union giving notice under its rules terminating membership — Whether membership validly terminated

The plaintiff, a security officer for a motor manufacturing company, was secretary of the local branch of the union, A.C.T.S.S., a subsidiary of the T.G.W.U. Disenchantment led the plaintiff to resign from the A.C.T.S.S. and to join the defendant union, A.P.E.X. Although the plaintiff had not, on his application form, stated that he had been a former member of the A.C.T.S.S. the local officials of A.P.E.X. were aware of that fact. In breach of the T.U.C. Disputes Principles and Procedures known as the Bridlington principles, in particular, principle 2 which governed the recruitment of former members of any affiliated union, A.P.E.X. had failed to inquire whether the plaintiff's former union objected to the transfer prior to accepting the plaintiff into its membership. The T.G.W.U. having complained to the T.U.C., the T.U.C. disputes committee found that A.P.E.X. had contravened principle 2 and directed A.P.E.X. to exclude the plaintiff and to advise him to rejoin his former union. Accordingly, the A.P.E.X. executive council, relying on rule 14 of its membership rules (which permitted the expulsion of an individual member in order to comply with a decision of the T.U.C. disputes committee) purported to terminate the plaintiff's membership. The plaintiff, who had not at any stage of the dispute been accorded a hearing, brought an action for a declaration that the notice terminating his membership of A.P.E.X. was invalid. Bingham J. dismissed the plaintiff's action. On appeal by the



Confiscation of Alcohol (Young Persons) Act 1997

1997 CHAPTER 33

An Act to permit the confiscation of intoxicating liquor held by or for use by young persons in public and certain other places; and for connected purposes. [21st March 1997]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Confiscation of intoxicating liquor

- (1) Where a constable reasonably suspects that a person in a relevant place is in possession of intoxicating liquor and that either—
 - (a) he is under the age of 18; or
 - (b) he intends that any of the liquor should be consumed by a person under the age of 18 in that or any other relevant place; or
 - (c) a person under the age of 18 who is, or has recently been, with him has recently consumed intoxicating liquor in that or any other relevant place,the constable may require him to surrender anything in his possession which is, or which the constable reasonably believes to be, intoxicating liquor and to state his name and address.
- (2) A constable may dispose of anything surrendered to him under subsection (1) in such manner as he considers appropriate.
- (3) A person who fails without reasonable excuse to comply with a requirement imposed on him under subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

- (4) A constable who imposes a requirement on a person under subsection (1) shall inform him of his suspicion and that failing without reasonable excuse to comply with a requirement imposed under that subsection is an offence.
- (5) A constable may arrest without warrant a person who fails to comply with a requirement imposed on him under subsection (1).
- (6) In subsection (1) “relevant place”, in relation to a person, means—
 - (a) any public place, other than licensed premises; or
 - (b) any place, other than a public place, to which the person has unlawfully gained access;and for this purpose a place is a public place if at the material time the public or any section of the public has access to it, on payment or otherwise, as of right or by virtue of express or implied permission.
- (7) In this section “intoxicating liquor” and “licensed premises”, in relation to England and Wales, have the same meanings as in the Licensing Act 1964 and, in relation to Northern Ireland, have the same meanings as in the Licensing (Northern Ireland) Order 1996.

2 Short title, commencement and extent

- (1) This Act may be cited as the Confiscation of Alcohol (Young Persons) Act 1997.
- (2) Section 1 shall not come into force until such day as the Secretary of State may by order made by statutory instrument appoint.
- (3) This Act extends to England and Wales and Northern Ireland.

1997 No. 1725 (C. 73)

POLICE

The Confiscation of Alcohol (Young Persons) Act 1997 (Commencement) Order 1997

Made 18th July 1997

In exercise of the power conferred upon him by section 2(2) of the Confiscation of Alcohol (Young Persons) Act 1997^(a), the Secretary of State hereby makes the following Order:

1. This Order may be cited as the Confiscation of Alcohol (Young Persons) Act 1997 (Commencement) Order 1997.
2. Section 1 of the Confiscation of Alcohol (Young Persons) Act 1997 shall come into force on 1st August 1997.

Home Office
18th July 1997

Alun Michael
Minister of State

(a) 1997 c.33.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force on 1st August 1997 section 1 of the Confiscation of Alcohol (Young Persons) Act 1997. Section 2 came into force on Royal Assent (21st March 1997).

ISBN 0 11 064645 2

Enabling power: Confiscation of Alcohol (Young Persons) Act 1997, s. 2 (2). Bringing into operation various provisions of the 1997 Act on 01.08.97.. -

Effect: None.. -

Issued: 24.07.97.

Territorial extent & classification: E/W/N.I. General.

Confiscation of Alcohol (Young Persons) Act 1997

1997 CHAPTER 33

An Act to permit the confiscation of intoxicating liquor held by or for use by young persons in public and certain other places; and for connected purposes.

[21st March 1997]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Confiscation of intoxicating liquor

(1) Where a constable reasonably suspects that a person in a relevant place is in possession of [alcohol] and that either—

- (a) he is under the age of 18; or
- (b) he intends that any of the [alcohol] should be consumed by a person under the age of 18 in that or any other relevant place; or
- (c) a person under the age of 18 who is, or has recently been, with him has recently consumed [alcohol] in that or any other relevant place,

the constable may require him to surrender anything in his possession which is, or which the constable reasonably believes to be, [alcohol] [or a container for [alcohol]] . . .

[(1AA) A constable who imposes a requirement on a person under subsection (1) shall also require the person to state the person's name and address.

(1AB) A constable who imposes a requirement on a person under subsection (1) may, if the constable reasonably suspects that the person is under the age of 16, remove the person to the person's place of residence or a place of safety.]

[(1A) . . .]

(2) A constable may dispose of anything surrendered to him under subsection (1) in such manner as he considers appropriate.

(3) A person who fails without reasonable excuse to comply with a requirement imposed on him under subsection (1) [or (1AA)] commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(4) A constable who imposes a requirement on a person under subsection (1) shall inform him of his suspicion and that failing without reasonable excuse to comply with a requirement imposed under that subsection [or (1AA)] is an offence.

(5) . . .

(6) In subsection (1) [. . .] "relevant place", in relation to a person, means—

- (a) any public place, other than licensed premises; or

- (b) any place, other than a public place, to which the person has unlawfully gained access;

and for this purpose a place is a public place if at the material time the public or any section of the public has access to it, on payment or otherwise, as of right or by virtue of express or implied permission.

[(7) In this section—

“alcohol”—

(a) in relation to England and Wales, has the same meaning as in the Licensing Act 2003;

(b) in relation to Northern Ireland, has the same meaning as “intoxicating liquor” in the Licensing (Northern Ireland) Order 1996; and

“licensed premises”—

(a) in relation to England and Wales, means premises which may by virtue of Part 3 or Part 5 of the Licensing Act 2003 (premises licence; permitted temporary activity) be used for the supply of alcohol within the meaning of section 14 of that Act;

(b) in relation to Northern Ireland, has the same meaning as in the Licensing (Northern Ireland) Order 1996.]

NOTES

Initial Commencement

To be appointed

To be appointed: see s 2(2).

Appointment

Appointment: 1 August 1997: see SI 1997/1725, art 2.

Extent

This Act does not extend to Scotland: see s 2(3).

Amendment

Sub-s (1): word “alcohol” in square brackets in each place it occurs substituted by the Licensing Act 2003, s 198(1), Sch 6, para 115(1), (2)(a).

Date in force: 24 November 2005: see SI 2005/3056, arts 1(2), 2(2).

Sub-s (1): in para (b) word “alcohol” in square brackets substituted by the Licensing Act 2003, s 198(1), Sch 6, para 115(1), (2)(b).

Date in force: 24 November 2005: see SI 2005/3056, arts 1(2), 2(2).

Sub-s (1): words in square brackets beginning with the words “or a container” inserted by the Criminal Justice and Police Act 2001, s 29.

Date in force: 1 September 2001: see SI 2001/2223, art 4(b).

Sub-s (1): word “alcohol” in square brackets substituted by the Licensing Act 2003, s 198(1), Sch 6, para 115(1), (2)(c).

Date in force: 24 November 2005: see SI 2005/3056, arts 1(2), 2(2).

Sub-s (1): first words omitted repealed by the Licensing Act 2003, ss 155(1)(a), 199, Sch 7.

Date in force: 10 September 2003: see SI 2003/2100, art 2.

Sub-s (1): final words omitted repealed by the Policing and Crime Act 2009, ss 29(1), (2), 112(2), Sch 8, Pt 3.

Date in force: 29 January 2010: see SI 2010/125, art 2(f), (q), (u).

Sub-ss (1AA), (1AB): inserted by the Policing and Crime Act 2009, s 29(1), (3).

Date in force: 29 January 2010: see SI 2010/125, art 2(f).
 Sub-s (1A): inserted by the Licensing Act 2003, s 155(1)(b).
 Date in force: 10 September 2003: see SI 2003/2100, art 2(a).
 Sub-s (1A): repealed by the Policing and Crime Act 2009, ss 29(1), (4), 112(2), Sch 8, Pt 3.
 Date in force: 29 January 2010: see SI 2010/125, art 2(f), (q), (u).
 Sub-s (3): words “or (1AA)” in square brackets inserted by the Policing and Crime Act 2009, s 29(1), (5).
 Date in force: 29 January 2010: see SI 2010/125, art 2(f).
 Sub-s (4): words “or (1AA)” in square brackets inserted by the Policing and Crime Act 2009, s 29(1), (6).
 Date in force: 29 January 2010: see SI 2010/125, art 2(f).
 Sub-s (5): repealed by the Serious Organised Crime and Police Act 2005, ss 111, 174(2), Sch 7, Pt 1, para 33, Sch 17, Pt 2.
 Date in force: 1 January 2006: see SI 2005/3495, art 2(1)(m), (t), (u)(xli).
 Sub-s (6): words “and (1A)” in square brackets inserted by the Licensing Act 2003, s 155(1)(c).
 Date in force: 10 September 2003: see SI 2003/2100, art 2(a).
 Sub-s (6): words omitted repealed by the Policing and Crime Act 2009, ss 29(1), (7), 112(2), Sch 8, Pt 3.
 Date in force: 29 January 2010: see SI 2010/125, art 2(f), (q), (u).
 Sub-s (7): substituted by the Licensing Act 2003, s 198(1), Sch 6, paras 115(1), (3).
 Date in force: 24 November 2005: see SI 2005/3056, arts 1(2), 2(2).

2 Short title, commencement and extent

- (1) This Act may be cited as the Confiscation of Alcohol (Young Persons) Act 1997.
- (2) Section 1 shall not come into force until such day as the Secretary of State may by order made by statutory instrument appoint.
- (3) This Act extends to England and Wales and Northern

Ireland. **NOTES**

Initial Commencement

Royal Assent

Royal Assent: 21 March 1997: (no specific commencement provision).

Extent

This Act does not extend to Scotland: see sub-s (3) above.

Subordinate Legislation

Confiscation of Alcohol (Young Persons) Act 1997 (Commencement) Order 1997, SI 1997/1725 (made under sub-s (2)).

Licensing Act 2003

Section 155 Confiscation of sealed containers of alcohol

- (1) In section 1 of the Confiscation of Alcohol (Young Persons) Act 1997 (c 33) (right to require surrender of alcohol)--
 - (a) in subsection (1), omit "(other than a sealed container)",
 - (b) . . .
 - (c) . . .
- (2) . . .

Section 191 Meaning of "alcohol"

- (1) In this Act, "alcohol" means spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor, but does not include--
 - (a) alcohol which is of a strength not exceeding 0.5% at the time of the sale or supply in question,
 - (b) perfume,
 - (c) flavouring essences recognised by the Commissioners of Customs and Excise as not being intended for consumption as or with dutiable alcoholic liquor,
 - (d) the aromatic flavouring essence commonly known as Angostura bitters,
 - (e) alcohol which is, or is included in, a medicinal product [or a veterinary medicinal product],
 - (f) denatured alcohol,
 - (g) methyl alcohol,
 - (h) naphtha, or
 - (i) alcohol contained in liqueur confectionery.
- (2) In this section--
 - "denatured alcohol" has the same meaning as in section 5 of the Finance Act 1995 (c 4);
 - "dutiable alcoholic liquor" has the same meaning as in the Alcoholic Liquor Duties Act 1979 (c 4);
 - "liqueur confectionery" means confectionery which--
 - (a) contains alcohol in a proportion not greater than 0.2 litres of alcohol (of a strength not exceeding 57%) per kilogram of the confectionery, and
 - (b) either consists of separate pieces weighing not more than 42g or is designed to be broken into such pieces for the purpose of consumption;

"medicinal product" has the same meaning as in section 130 of the Medicines Act 1968 (c 67); and
"strength" is to be construed in accordance with section 2 of the Alcoholic Liquor Duties Act 1979;

["veterinary medicinal product" has the same meaning as in regulation 2 of the Veterinary Medicines Regulations 2006].

Section 198 Minor and consequential amendments

- (1) Schedule 6 (which makes minor and consequential amendments) has effect.
- (2) The Secretary of State may, in consequence of any provision of this Act or of any instrument made under it, by order make such amendments (including repeals or revocations) as appear to him to be appropriate in--
 - (a) any Act passed, or
 - (b) any subordinate legislation (within the meaning of the Interpretation Act 1978 (c 30) made, before that provision comes into force.

Schedule 6

115

- (1) Section 1 of the Confiscation of Alcohol (Young Persons) Act 1997 (confiscation of alcohol) is amended as follows.
- (2) In subsection (1)—
 - (a) for “intoxicating liquor”, in each place it occurs, substitute “alcohol”,
 - (b) in paragraph (b) for “liquor” substitute “alcohol”, and
 - (c) for “such liquor” substitute “alcohol”.
- (3) For subsection (7) substitute—
 - “(7) In this section—
 - “alcohol”—
 - (a) in relation to England and Wales, has the same meaning as in the Licensing Act 2003;
 - (b) in relation to Northern Ireland, has the same meaning as “intoxicating liquor” in the Licensing (Northern Ireland) Order 1996; and
 - “licensed premises”—
 - (a) in relation to England and Wales, means premises which may by virtue of Part 3 or Part 5 of the Licensing Act 2003 (premises licence; permitted temporary activity) be used for the supply of alcohol within the meaning of section 14 of that Act;
 - (b) in relation to Northern Ireland, has the same meaning as in the Licensing (Northern Ireland) Order 1996.”

Serious Organised Crime and Police Act 2005

Section 110 Powers of arrest

(1) For section 24 of PACE (arrest without warrant for arrestable offences) substitute--

"24 Arrest without warrant: constables

- (1) A constable may arrest without a warrant--
 - (a) anyone who is about to commit an offence;
 - (b) anyone who is in the act of committing an offence;
 - (c) anyone whom he has reasonable grounds for suspecting to be about to commit an offence;
 - (d) anyone whom he has reasonable grounds for suspecting to be committing an offence.
- (2) If a constable has reasonable grounds for suspecting that an offence has been committed, he may arrest without a warrant anyone whom he has reasonable grounds to suspect of being guilty of it.
- (3) If an offence has been committed, a constable may arrest without a warrant--
 - (a) anyone who is guilty of the offence;
 - (b) anyone whom he has reasonable grounds for suspecting to be guilty of it.
- (4) But the power of summary arrest conferred by subsection (1), (2) or (3) is exercisable only if the constable has reasonable grounds for believing that for any of the reasons mentioned in subsection (5) it is necessary to arrest the person in question.
- (5) The reasons are--
 - (a) to enable the name of the person in question to be ascertained (in the case where the constable does not know, and cannot readily ascertain, the person's name, or has reasonable grounds for doubting whether a name given by the person as his name is his real name);
 - (b) correspondingly as regards the person's address;
 - (c) to prevent the person in question--
 - (i) causing physical injury to himself or any other person;
 - (ii) suffering physical injury;
 - (iii) causing loss of or damage to property;
 - (iv) committing an offence against public decency (subject to subsection (6)); or
 - (v) causing an unlawful obstruction of the highway;
 - (d) to protect a child or other vulnerable person from the person in question;
 - (e) to allow the prompt and effective investigation of the offence or of the conduct of the person

in question;

- (f) to prevent any prosecution for the offence from being hindered by the disappearance of the person in question.

- (6) Subsection (5)(c)(iv) applies only where members of the public going about their normal business cannot reasonably be expected to avoid the person in question.

24A Arrest without warrant: other persons

- (1) A person other than a constable may arrest without a warrant--
 - (a) anyone who is in the act of committing an indictable offence;
 - (b) anyone whom he has reasonable grounds for suspecting to be committing an indictable offence.
- (2) Where an indictable offence has been committed, a person other than a constable may arrest without a warrant--
 - (a) anyone who is guilty of the offence;
 - (b) anyone whom he has reasonable grounds for suspecting to be guilty of it.
- (3) But the power of summary arrest conferred by subsection (1) or (2) is exercisable only if--
 - (a) the person making the arrest has reasonable grounds for believing that for any of the reasons mentioned in subsection (4) it is necessary to arrest the person in question; and
 - (b) it appears to the person making the arrest that it is not reasonably practicable for a constable to make it instead.
- (4) The reasons are to prevent the person in question--
 - (a) causing physical injury to himself or any other person;
 - (b) suffering physical injury;
 - (c) causing loss of or damage to property; or
 - (d) making off before a constable can assume responsibility for him."
- (2) Section 25 of PACE (general arrest conditions) shall cease to have effect.
- (3) In section 66 of PACE (codes of practice), in subsection (1)(a)--
 - (a) omit "or" at the end of sub-paragraph (i),
 - (b) at the end of sub-paragraph (ii) insert "or (iii) to arrest a person;"
- (4) The sections 24 and 24A of PACE substituted by subsection (1) are to have effect in relation to any offence whenever committed.

Section 111 Powers of arrest: supplementary

Schedule 7, which supplements section 110 by providing for the repeal of certain enactments (including some which are spent) and by making further supplementary provision, has effect.

Schedule 7 Part 1 Specific Appeals

33

Confiscation of Alcohol (Young Persons) Act 1997

In section 1 of the Confiscation of Alcohol (Young Persons) Act 1997 (confiscation of alcohol), omit subsection (5).

Policing and Crime Act 2009

Section 29 Confiscating alcohol from young persons

- (1) Section 1 of the Confiscation of Alcohol (Young Persons) Act 1997 (c 33) (confiscation of alcohol from young persons in a public place etc) is amended as follows.
- (2) In subsection (1) omit "and to state his name and address".
- (3) After subsection (1) insert--

"(1AA) A constable who imposes a requirement on a person under subsection (1) shall also require the person to state the person's name and address.

(1AB) A constable who imposes a requirement on a person under subsection (1) may, if the constable reasonably suspects that the person is under the age of 16, remove the person to the person's place of residence or a place of safety."

- (4) Subsection (1A) is omitted.
- (5) In subsection (3) after "subsection (1)" insert "or (1AA)".
- (6) In subsection (4) after "that subsection" insert "or (1AA)".
- (7) In subsection (6) omit "and (1A)".

Section 112 Minor and consequential amendments and repeals and revocations

- (1) Schedule 7 (which contains minor and consequential amendments and repeals and revocations of provisions which are superseded or no longer required or which have not been brought into force) has effect.
- (2) The provisions listed in Schedule 8 are repealed or revoked to the extent specified.
- (3) The Secretary of State may by order make such supplementary, incidental or consequential provision as the Secretary of State considers appropriate for the general purposes, or any particular purpose, of this Act or in consequence of any provision made by or under this Act or for giving full effect to this Act or any such provision.
- (4) The power conferred by subsection (3)—
 - (a) is exercisable by statutory instrument, and
 - (b) includes power to make transitional, transitory or saving provision.
- (5) The power conferred by this section may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under an enactment (including this Act and any Act passed in the same Session as this Act).
- (6) An instrument containing an order under this section may not be made unless a draft of the instru-

ment has been laid before, and approved by a resolution of, each House of Parliament.

- (7) Subsection (6) does not apply to an instrument containing an order under this section if the order does not amend or repeal a provision of a public general Act.
- (8) An instrument containing an order under this section to which subsection (6) does not apply is subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) For the purposes of subsection (7), an amendment or repeal is not an amendment or repeal of a provision of a public general Act if it is an amendment or repeal of a provision which has been inserted (whether by substitution or otherwise) into such an Act by a local Act or by any other Act which is not a public general Act.

Schedule 8

Part 3

Alcohol Misuse

<i>Reference</i>	<i>Extent of repeal</i>
Confiscation of Alcohol (Young Persons) Act 1997 (c 33)	In section 1-- (a) in subsection (1), "and to state his name and address", (b) subsection (1A), and (c) in subsection (6), "and (1A)".
Licensing Act 2003 (c 17)	Section 155(1)(b) and (c).