Statute Law

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Note

For the convenience of readers this article, like the corresponding article in the *All ER Annual Review 1985,* is arranged in conformity with the Code set out in the author's book *Statutory Interpretation* (Butterworths 1984), a reference to the relevant section of the Code being given after each heading.

Introductory

In the field of statute law, the year **1986** was noteworthy for the decision in *R v Horseferry Road Magistrates' Court, ex p Independent Broadcasting Authority* [1986] 2 All ER 666, which revolutionised the law of contempt of statute. The case, in which the present author appeared as counsel, is described in the note below related to Code s **13.**

The year **1986** brought the usual crop of examples of widespread ignorance by the profession of the principles of statute law. This does much harm to the working of the law, and the implementation of the will of Parliament. The notes below respectively related to Code **SS13, 26, 125** (para **(2)** under the heading *Number),* **171, 174, 181, 190, 323** and **391** indicate ignorance or misunderstanding of statute law principles.

Mandatory and directory requirements (Code s 10)

The court will be more willing to hold that a statutory requirement is merely *directory* if any breach of the requirement is necessarily followed by an opportunity to exercise some judicial or official *discretion* in a way which can adequately compensate for that breach.

In *Re T (a minor) (adoption: parental consent)* [1986] 1 All ER 817 the Court of Appeal had to decide whether the notification requirements of the Adoption Agencies Regulations **1983,** regsn(2)(a) and **12(2)**(f), are mandatory or merely directory. *Held* The requirements are directory only. Balcombe LJ said (at **827):**

> 'If these regulations are treated, as I believe they should be, as directory, any breaches can still be taken into account at the hearing before the court for the making of the adoption order . . . Thus the rights of all parties concerned ... can be properly and adequately protected at a stage where the court has a discretion . . .'

The offence of contempt of statute (Code s 13)

The important decision of the Divisional Court in *R v Horseferry Road Magistrates' Court, ex p Independent Broadcasting Authority* [1986] 2 All ER 666

('the IBA Case') revolutionised the law relating to contempt of statute. Section 13 of the Code, which sets out this common law offence, runs as follows:

> 'Except where criminal sanctions are expressly laid down by the legislation in question, it is taken to be the legislator's intention, *unless the contrary intention appears,* that contravention of an enactment shall constitute the offence known as contempt of statute. For this at common law the offender, on conviction on indictment, is liable, subject to any other enactment, to imprisonment for such term as the court thinks fit, or a fine of any amount, or both.' (Italics added).

The significance of the IBA Case concerns the italicised phrase. Previously it was to be construed in the ordinary way, that is by gathering the legislative intention from any passages expressly bearing on the question and from the overall tenor of the enactment. Now, in the light of the IBA Case, the following sentence spelling out the meaning of the italicised phrase in this context needs to be added:

> In considering for the purposes of the foregoing provision whether the contrary intention appears, the court is required to have regard, among other relevant considerations, to the following questions: (1) is the statutory duty mandatory or prohibitory? (2) is the enactment ancient or modern? (3) is there any other means (such as an application for judicial review) of enforcing the statutory duty?

The IBA Case turned on whether a breach of the Broadcasting Act 1981, 84(3), which requires the IBA to satisfy themselves that their television programmes do not include subliminal images, constitutes the offence of contempt of statute. If it does, then the Divisional Court was required to allow the criminal proceedings instituted by Mr Norris McWhirter for an alleged breach of s 4(3) to continue. If it does not, then the IBA were entitled to succeed in their application for certiorari and prohibition to put a stop to the criminal proceedings.

In granting the IBA's application, the Divisional Court advanced the following reasons for holding that in a provision such as s 4(3) the contrary intention does indeed appear, thus displacing the presumption that contempt of statute applies.

1. When Parliament intends to create an offence then nowadays it almost always says so in express terms.
2. Breach of a statutory duty is more likely to amount to the common law offence of contempt of statute where the duty is prohibitory (ie where the doing of certain acts is *forbidden)* than where it is mandatory (positively *requiring* something to be done).
3. Where breach of a statutory requirement can be dealt with by some other remedy, such as judicial review, it is less likely that Parliament intended a penal sanction. The existence of the other remedy ensures that the enactment will not, without an imputed criminal sanction, be a mere *brutum fulmen.*

4. It is extremely unlikely that Parliament intended to create a criminal offence where the statutory duty depends on subjective considerations, for example whether the person who is under the duty used his best endeavours.

The Divisional Court held that the doctrine of contempt of statute is a mere rule of construction. They were unimpressed by the argument that statutes are drafted with the doctrine in mind, and that when it is intended to be disapplied that is achieved expressly, as for example in the Consumer Credit Act 1974, s 170. Leave to appeal to the House of Lords was refused. Accordingly the Divisional Court's decision stands, at least for the present, as the leading authority.

Since the decision may be challenged in some future case it is worth pointing out that the reasoning employed is in a number of aspects unsatisfactory.

It is not, with respect, correct to say, as Lloyd LJ did in this case (at 674), that the doctrine of contempt of statute is merely a rule of construction. On the contrary, the doctrine is a manifestation of the substantive common law rule that *any unlawful act affecting the public is indictable in the absence of an enactment to the contrary*. The question of construction solely concerns the point of whether a relevant enactment is or is not to the contrary. In other words the interpreter must decide, by construction of the enactment laying down the statutory duty, whether or not Parliament intended to disapply a substantive common law rule.

Again, to assert that when Parliament intends to create an offence it says so in terms is to beg the very question the court had to decide. In fact, as the court were told, Parliamentary Counsel draft (or ought to draft) with the doctrine of contempt of statute in mind. Where it does not seem necessary or advisable to spell out the offence expressly (perhaps because it is highly unlikely the statutory duty will be contravened, or the person subjected to it is a 'dignified' unit of the Constitution) the draftsman falls back on the common law doctrine as a long stop. The courts should accept that this is so. A substantive doctrine of the common law can be abolished only by legislation. As respects contempt of statute, Parliament deliberately chose not to enact the clause in a Law Commission Bill that would have abolished it (the Bill, minus this clause, was enacted as the Criminal Law Act 1977). The Divisional Court were informed of this but chose to ignore it, Lloyd LJ merely saying (at 675) that he found he could attach no weight to this argument.

Futhermore, to draw a distinction in this connection between prohibitory and mandatory duties is, it is submitted, erroneous. A statutory duty is a statutory duty. The draftsman of s 4(3), instead of saying that the IBA must satisfy themselves that their programmes do not include subliminal images, might equally have prohibited the IBA from broadcasting such images. That is indeed what the draftsman of the provision imposing a corresponding duty on the BBC chose to do. The way such a duty is worded is nothing more than a draftsman's quirk.

Lastly, under present conditions the s 4(3) duty is not, as the court held in the IBA Case, subjective. The technology exists, as the court were informed, to monitor all programmes automatically to ensure that subliminal messages are not included. The necessary machines can be easily obtained, at little cost.

Dynamic processing of legislation (Code s 26)

Decisions arrived at per incuriam

A court decision as to the legal meaning of an enactment which is arrived at per incuriam is not a binding precedent, and therefore does not amount to dynamic processing of the enactment.

In *Linnett v Coles* [1986] 3 All ER 652 the Court of Appeal held that, in the face of the wide discretion given to the court by the Administration of Justice Act 1960, s 13, previous decisions where s 13 had not been drawn to the court's attention must be treated as decided per incuriam. Lawton LJ said (at 655): 'None of the cases in this court to which counsel for the Official Solicitor has invited our attention are binding on us because seemingly the court never considered what powers it had to make a suitable order under s 13 of the 1960 Act'. (As to this case see also the notes on p 281 below related to Code s 290 and s 313).

Delegated legislation: parliamentary control of (Code s 51)

Judicial review

Where the enabling Act provides for parliamentary control of a Minister's exercise of a power to make delegated legislation, this precludes judicial review 'unless the minister and the House must have misconstrued the statute or the minister has ... deceived the House': *Nottinghamshire County Council v Secretary of State for the Environment* [1986] 1 All ER 199 at 204, per Lord Scarman. In this case the Secretary of State's guidance as to local authority expenditure limits, required to be laid down by him under the Local Government, Planning and Land Act 1980, s60(7) and (8), was ordered by the Act to be laid before and approved by the House of Commons.

Delegated legislation: doctrine of ultra vires (Code s 58)

Residual powers

An enabling enactment frequently includes so-called 'sweeping-up words' intended to confer residual powers to complete those expressly spelt out.

The Customs and Excise Management Act 1979, s93(i) empowers the Commissioners of Customs and Excise to make regulations to 'regulate the deposit, keeping, securing, and treatment of goods in and the removal of goods from warehouse'. Section 93(2) goes on to state that such regulations may include provisions of certain specified kinds, and ends 'and may contain *such incidental or supplementary provisions* as the Commissioners think necessary or expedient for the protection of the revenue' (emphasis added).

The italicised words are typical 'sweeping-up words'. The courts tend to regard such words as being strictly limited in scope, as was illustrated by *R v Customs and Excise Commissioners, ex p Hedges & Butler Ltd* [1986] 2 All ER 164. The Divisional Court relied on the dictum of Viscount Dilhorne LC in *Daymond v South West Water Authority* [1976] AC 609 at 644 that:

> '. . . "supplementary" means . . . something added to what is in the Act to fill in details or machinery for which the Act itself does not provide—supplementary in the sense that it is required to implement what was in the Act.'

They held that regulations made in purported exercise of the residual power were ultra vires as not merely filling in details but attempting to create a new and radically more extensive set of powers additional to those detailed in the enabling enactment.

Duty to consult

Where an enactment conferring power to make delegated legislation requires the delegate to consult interested persons before exercising the power, this duty is mandatory rather than directory. It requires (a) the communication of a genuine invitation to give advice, and (b) a genuine consideration of that advice when given: *R v Secretary of State for Social Services, ex p Association of Metropolitan Authorities* [1986] 1 All ER 164 (insufficient time given for consultation before making regulations under Social Security and Housing Benefits Act 1983 s 36(1)).

Failure to comply with conditions for making delegated legislation

The fact that the delegate has failed to comply strictly with the conditions laid down in the enabling Act for the making of delegated legislation does not mean that the purported delegated legislation is necessarily void. If it has been acted on for a substantial period and rendering it ineffective would give rise to inconvenience the court may, in its discretion, decline to revoke it or to declare it void: *R v Secretary of State for Social Services, ex p Association of Metropolitan Authorities* [1986] 1 All ER 164 (insufficient time given for consultation before making regulations under Social Security and Housing Benefits Act 1983 s 36(1)).

Finding of implications (legitimacy of) (Code s 109)

It is not legitimate to find a restrictive implication limiting wide words conferring a statutory discretion on the court, since the necessary restriction can be effected by treating the discretion as *incorrectly exercised* if applied too widely. In *Aiden Shipping Co Ltd v Interbulk Ltd* [1986] 2 All ER 409 the House of Lords considered the Supreme Court Act 1981, s 51(1). This states that costs shall be in the discretion of the court, which 'shall have full power to determine by whom and to what extent the costs are to be paid'. *Held* No implication should be found restricting the width of this discretion.

Rules of interpretation laid down by statute (Code s 125)

Contrary legislative intention

A contrary legislative intention displacing a statutory rule of construction relating to a particular term may be manifested by the enactment which uses the term spelling out, in a way different to the statutory rule, how the term is to be construed.

In *Austin Rover Group v Crouch Butler Savage Associates* [1986] 3 All ER 50 the statutory rule in question was laid down by the Interpretation Act 1978, s 7. This states that, unless the contrary intention appears, service by post of a letter is deemed for the purposes of any Act to be effected by 'properly addressing', pre-paying and posting the letter. The Court of Appeal accepted that the Interpretation Act 1978 is applied to RSC Ord 10, r 1(2). Nevertheless the court held that r1(2) displays a 'contrary intention' as respects the term 'properly addressing' in s 7. This is because r 1(2) describes in detail how a letter should be addressed, namely by putting on it 'the usual or last-known address' of the intended recipient.

Number

(1) The simple phrase in the Interpretation Act 1978, s6(c) 'words in the singular include the plural' disguises a number of difficulties. One of these is illustrated by the Agricultural Holdings (Notices to Quit) Act 1977, S2(1)(b), which refers to a counter-notice given by 'the tenant'. What is the effect of this where there is a joint tenancy and not all the tenants join in giving the counter-notice? Does s6(c) convert the reference into 'all the joint tenants' or into 'all or any of the joint tenants'? In *Featherstone v Staples* [1986] 2 All ER 461 the Court of Appeal held with some difficulty that the former meaning was correct. (On this point see further Bennion *Statute Law* (2nd edn, 1983) pp 194-195).

(2) In *R v Secretary of State for the Environment, exp Hillingdon LBC* [1986] 1 All ER 810 (affd [1986] 2 All ER 273) the Divisional Court held that 'committee' as used in the Local Government Act 1972, s101(1)(a) was intended to have its modern meaning of a group of two or more persons, and not its former meaning of a person to whom any function is committed. This meant that the chairman of a local authority planning committee could not by himself constitute a 'committee' within the meaning of s 101(1)(a). The judgments below and on appeal do not mention the Interpretation Act 1978, s6(c), under which, unless the contrary intention appears, words in the plural are to be taken as including the singular. This appears therefore to be yet another instance of s 6(c) being overlooked (for a previous example see All ER Rev 1985, P258). It can scarcely be argued that Parliament's choice of a plural term in settling the wording of s101(1)(a) indicates a 'contrary intention' since this would deprive s 6(c) of any effect. (As to this case see also the note on p 288 below related to Code s 370).

Potency of the term defined

An example of how the ordinary meaning of a term to which a special statutory definition is attached may sway the court in construing the definition is furnished by *A-G's Reference (No 1 of 1985)* [1986] 2 All ER 219. The prosecution alleged that the conduct of a salaried manager of a tied public house in selling his own beer on the premises and pocketing the proceeds fell within the statutory definition of theft as partially set out in the Theft Act 1968, s 5. *Held* This was not the true construction of the section. Lord Lane CJ said (at 226): 'If something is so abstruse and so far from the

understanding of ordinary people as to what constitutes stealing, it should not amount to stealing'.

Powers and duties exercisable from time to time

The case of *R v Ealing LBC, ex p McBain* [1986] 1 All ER 13 concerned the duty of a housing authority under s 4(5) of the Housing (Homeless Persons) Act 1977. This says that where the authority are satisfied that an applicant is homeless and has a priority need their duty 'is to secure that accommodation becomes available for his occupation'.

When she had one child the applicant had unreasonably refused an offer of accommodation. A year later, by which time she had a second child, the applicant was refused accommodation on the ground of her earlier refusal. However by this time the accommodation previously offered would have been unsuitable because of the addition to the household. *Held* By virtue of ***the Interpretation*** Act 1978, s 12(1)., which provides that where an Act imposes a duty it is implied, unless the contrary intention appears, that the duty is to be performed from time to time as occasion requires, the authority were in view of the changed circumstances under a fresh duty to house the applicant, and could not rely on her earlier refusal.

Service by post: presumed time of delivery

In the Interpretation Act 1978, s 7 (service deemed to be effected at the time at which letter would be delivered in the ordinary course of post, unless the contrary is proved) the phrase 'unless the contrary is proved' means 'unless the contrary is proved by evidence to the satisfaction of the court'. There is no room for any implication that such evidence can be adduced only by the defendant. See *Hodgson v Hart District Council* [1986] 1 All ER 400; *Abu Dhabi Helicopters Ltd v International Aeradio pic* [1986] 1 All ER 395.

Principles of interpretation derived from legal policy: the nature of legal policy (Code s 126)

Legal policy is an aspect of public policy. The court ought not to enunciate a new head of public policy in an area where Parliament has demonstrated its willingness to intervene when considered necessary.

In *Re Brightlife Ltd* [1986] 3 All ER 673 Hoffmann J was asked to declare that to allow parties to determine by agreement between them that a floating charge would become crystallised if the chargor ceased trading was an innovation which was contrary to public policy. Declining to do so, Hoffmann J said (at 680-681):

> 'The public interest requires the balancing of the advantages to the economy of facilitating the borrowing of money against the possibility of injustice to unsecured creditors. These arguments for and against the floating charge are matters for Parliament rather than the courts and have been the subject of public debate in and out of Parliament for more than a century. Parliament has responded [in various ways]. The limited and pragmatic interventions by the legislature make it in my judgment wholly inappropriate for the courts to impose additional restrictive rules on the ground of public policy. It is

certainly not for a judge of first instance to proclaim a new head of public policy which no appellate court has even hinted at before.'

Presumption that ancillary rules of law apply (Code s 144)

Development of applied rules

The court will not merely treat an existing rule of law as intended to apply in the construction of an enactment, but will if necessary go further and modify or develop the rule as it applies to that enactment.

The House of Lords did this in *British Leyland Motor Corp Ltd v Armstrong Patents Co Ltd* [1986] 1 All ER 850. The plaintiffs alleged that in copying parts of their vehicles, and marketing the copies as spare parts, the defendants were guilty of breaches of design copyright under the Copyright Act 1956, **S3.** *Held* Parliament could not be taken to intend that the copyright should apply so as to enable the plaintiffs to deny purchasers of their cars the right to have them repaired by use of spare parts. In arriving at this result the House of Lords applied and modified the real property principle whereby a person is not to be permitted to derogate from his grant. (As to this case see also the note on p280 below related to Code S248).

Need for updating construction (Code s 146)

In *Pierce v Bemis* [1986] 1 All ER 1011 at 1019 Sheen J held that because of changes since its passing 'it is now necessary to disregard some part of the language of [the Merchant Shipping Act 1894]'.

Construction of Act or other instrument as a whole (Code s 149)

Effect of specific on general provision

Draftsmen who wish to make clear that a specific provision is not intended to modify the meaning of a wider general provision often preface the former with the formula 'without prejudice to the generality of [the general provision] . ..' Sometimes the words 'the generality of are omitted, but the intended effect is the same. This formula has its dangers, since often courts find themselves mentally unable to disregard the special provision when construing the wider one: see, eg, *R v Akan* [1973] QB 491, followed *in Rv Secretary of State for the Home Department, ex p Thornton* [1986] 2 All ER 641.

Every word to be given meaning

The Consumer Credit Act 1974, S138 allows relief to be given where a credit bargain is 'grossly exorbitant'. In *Davies v Directloans Ltd* [1986] 2 All ER 783 at 794 the judge, Edward Nugee QC, expressed doubt whether the word 'grossly' added anything. He cited the well-known remark of Lord Cranworth (then Rolfe B) in *Wilson v Brett* (1843) 11 M & W 113 at 115-116 that he 'could see no difference between negligence and gross negligence—that was the same thing, with the addition of a vituperative epithet'. Mr Nugee did not advert to the established principle of construction

requiring every work of an enactment to be given meaning. This particularly applies in a modern Act, where the draftsman must be taken to have inserted each word after due consideration. Here the addition of 'grossly' is clearly intended to tilt the balance away from any watered-down interpretation of the term 'exorbitant'.

Interpretation of broad terms (Code s 150)

Narrowing of term by implication

An implied intention that an unqualified broad term shall be construed as if a narrowing provision had accompanied it will not be found where the absence of such a provision is explicable only on the ground that it was not intended.

In *Puhlhofer v Hillingdon LBC* [1986] 1 All ER 467 the House of Lords declined to treat the term 'accommodation' in the Housing (Homeless Persons) Act 1977, ss 1 and 4 as qualified by an implied epithet such as 'appropriate' or 'reasonable'. If Parliament had intended such a narrowing of the meaning of 'accommodation' it would surely have said so. Moreover such a narrowing ran contrary to features of the Act. The Act did not increase the stock of housing available to authorities governed by it, and was not intended to enable persons to jump the queue of those whose names were on the waiting list for housing.

Textual amendment (Code s 171)

Rule in A-G v Lamplough

The rule in *A-G v Lamplough* (1878) 3 Ex D 214 requires that where some only of the words of an enactment have been repealed the remaining unaltered words must be given the same meaning they had before, unless the contrary intention appears from the amending Act.

The view that this rule no longer applies in the case of modern Acts gains support from the decision of the Divisional Court in *Wood v Commissioner of Police of the Metropolis* [1986] 2 All ER 570, though admittedly the rule was not mentioned in the judgments. Referring to the Vagrancy Act 1824, S4, Nolan J said (at 574):

> 'The original wording of the part of s 4 under which the appellant was charged was:
>
> > ". . . every person having in his or her custody or possession any picklock, key, crow, jack, bit, or other implement, with intent ... to break into any dwelling house, warehouse, coach house, stable or outbuilding or being armed with any gun, pistol [etc]".'
>
> The words between "every person" and "being armed" might have supported the proposition that this part of the section was concerned only with itinerant offenders, but those words were repealed by s 33(3) of and Pt I of Sch 3 to the Theft Act 1968. Consequently in the present case, as in *Ford v Falcone* [1971] 2 All ER 1138, there is nothing in the language of the present section in its amended form to prevent it from applying to those occupying or present on private property'.

(As to this case see also the note on p 281 below related to Code **S255** and the note on p 288 below related to Code ss 378-385).

Amendment of Act by delegated legislation (Code s 174)

The delusion that it is constitutionally improper for delegated legislation to amend Acts of Parliament persists. The damage it can do is shown by the following dictum of Donaldson MR in *Aden Refinery Co Ltd v Ugland Management Co* [1986] 3 All ER 737 at 739:

> 'With some prescience [the Commercial Court Committee in its 1978 Report on Arbitration (Cmnd7284)] foresaw that there would be a need for successive amendments to the law of arbitration . .. Accordingly, the committee recommended the establishment of an "Arbitration Rules Committee" with a view to relieving Parliament of the need frequently to consider amendments to the current Arbritration Acts. Unfortunately this recommendation was rejected on the grounds that it was constitutionally improper for subordinate legislation to be used to amend primary legislation. If this is indeed a constitutional principle, the presence of the Hallmarking Act 1973 on the statute book is somewhat surprising . . . An analogous power in [the Arbitration Act 1979] might have obviated the need for a great deal of judicial effort, regarded by some as more legislative than adjudicative, and the idea of a specialist body with legislative powers seems worth reviving'.

Generalia specialibus non derogant (Code s 181)

In *Roberts v Roberts* [1986] 2 All ER 483 the principle *generalia specialibus non derogant* was in effect applied, though it is not specifically referred to in the judgment. In matrimonial proceedings an order had been made requiring the husband, an army non-commissioned officer, to pay the wife as a lump sum one quarter of his terminal gratuity, if and when received. The order was made under the Matrimonial Causes Act 1973, s 25(i)(a), which enables a financial provision order to be made having regard to 'the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future'. Allowing an appeal by the husband, Wood J held that this general provision was subject to an earlier provision contained in the Army Act 1955, s 203 which prohibits a court from making any order restraining a person from receiving his army gratuity in full.

The case illustrates the frequency with which points are decided by the courts in apparent ignorance of relevant principles of statutory interpretation. There was in fact a possible argument for saying that s 203 does not apply in such a case as this, since it is not within the mischief aimed at by that section.

Retrospective operation: general presumption against (Code s 190)

Nature of retrospectivity

In applying the principles relating to retrospectivity it is important correctly to analyse whether or not the relevant application of the enactment in question would truly be retrospective. Confusion often arises on this score. In particular an application is not retrospective where the enactment is applied at a time after its commencement to a state of affairs subsisting at that time, even though that state of affairs came into existence before commencement.

This was overlooked by Sheldon J in *Chebaro v Chebaro* [1986] 2 All ER 897. The case concerned the application of the Matrimonial and Family Proceedings Act 1984, s **12(1)**, which provides that, where a marriage has been dissolved or annulled, or parties to a marriage have been legally separated, by proceedings in an overseas country, either party may apply for financial relief under the Act. This provision came into force on 16 September 1985. In *Chebaro* the parties' marriage had been dissolved in Lebanon on 16 April 1985.

Section **12(1)** sets out a qualifying condition, namely that the marriage *has been dissolved etc.* On the ordinary meaning of this phrase, the question whether it has been dissolved etc before or after the commencement of s 12(1) is immaterial. All that matters is that the condition is satisfied at the time the application for financial relief is made. To treat s 12(1) as applying to the parties in *Chebaro* was not therefore to apply it retrospectively.

Nevertheless Sheldon J treated such an application of **si2**(i) as retrospective. This involved him in a lengthy (but strictly unnecessary) examination of the authorities relating to retrospectivity. He concluded that these authorities did not require him to dismiss the application for financial relief, and that s **12(1)** was applicable. This process would have been avoided if, as is submitted was the correct analysis, the case had been treated as not in truth involving retrospectivity.

Contrary intention

Where an amending enactment is expressed to be retrospective it will apply to pending actions, including appeals from decisions taken before the passing of the amending Act.

In *Hewitt v Lewis* [1986] 1 All ER 927 the Court of Appeal heard an appeal from a county court decision given before the coming into effect of the Rent (Amendment) Act 1985. The Act was passed to reverse the decision in *Pocock v Steel* [1985] i.AU ER 434; All ER Rev 1985, p262 as to the legal meaning of the Rent Act 1977, Schi5, PtII Case 11. By si(4) of the 1985 Act this change of law was stated to apply to tenancies granted and notices given before, as well as after, the commencement of the 1985 Act. *Held* The change applied for the purposes of the instant appeal. Fox LJ said (at 930) 'I can see no reason why Parliament, having acted so speedily, should be taken as intending to force on the landlord a new action on an issue which more easily could be determined in the existing proceedings'.

This is in conformity with the principle, explained in Code **S332,** that courts frown on attempts to construe an enactment in such a way as to frustrate or stultify legal proceedings under the Act. The courts are also reluctant to require litigants to embark on futile or unnecessary legal proceedings (see Code p 702).

Application of Act: foreigners and foreign matters within the territory (Code s 222)

Sovereign immunity

The existence of sovereign immunity may render compliance with a

statutory requirement impracticable. In such a case the requirement is necessarily subject to an implied exception.

In *Westminster City Council v Government of the Islamic Republic of Iran* [1986] 3 All ER 284 the plaintiffs sought to serve on the defendants under the State Immunity Act 1978, s 12 an originating summons whereby the High Court would be empowered to resolve the question whether the plaintiffs could register a local land charge against the defendants under the Land Charges Act 1975, si(i)(a). The State Immunity Act 1978, s 12 required the originating summons to be served by being transmitted through the Foreign and Commonwealth Office to the Iranian Ministry of Foreign Affairs. It was not possible to do this because there was no British diplomatic representation in Iran and the Swedish embassy, which was looking after British interests there, declined to act. *Held* In the unavoidable absence of prior service of the summons on the defendants the court could not rule on the question which had been referred to it.

Drafting error

The common failure of draftsmen to provide adequately for the application of an enactment in relation to foreign elements, and the consequent need for the court to grope for a solution, is exemplified by *Re Collens (deceased)* [1986] 1 All ER 611, where Sir Nicolas Browne-Wilkinson V-C said:

> 'The truth of the matter is that the draftsman of [the Administration of Estates Act 1925] did not have in mind circumstances such as arise in the present case and one has to do one's best on the basis of the words he has used'.

The case concerned the application of the words in s 46 of the Act conferring a statutory legacy in cases of intestacy where part only of the estate fell to be administered under English law. *Held* In relation to the remaining part of the estate the literal meaning of s 46 must be modified by the court, since Parliament could not be taken to have intended the section to create a charge on assests the succession to which is regulated by a foreign law.

Application of Act: foreigners and foreign matters outside the territory (Code S223)

Submission to the jurisdiction

The fact that a person has a presence within the territory does not mean that he is to be taken to have submitted to the jurisdiction of the territorial court where the subject-matter is wholly foreign.

In *MacKinnon v Donaldson Lufkin & Jenrette Securities Corp* [1986] 1 All ER 653 the plaintiff in an action before the High Court obtained against Citibank, a bank registered under United States law, a subpoena, and an order under the Bankers' Books Evidence Act 1879, S7, in respect of a customer of Citibank which was a Bahamian company and relating to matters wholly outside the area of the High Court's territorial jurisdiction. Both the order and the subpoena were addressed to and served on Citibank at its London branch.

Held The order and subpoena would be discharged as beyond the jurisdiction of the court. Hoffmann J distinguished between the court's jurisdiction over persons and its jurisdiction over the subject-matter of an action. While the existence of the London branch office gave jurisdiction to bring Citibank before the court, it did not enable the court to make the orders sought, which were in respect of a wholly foreign subject-matter.

Application of Act: Britons and British matters outside the territory (Code s 224)

As Hoffmann J said in *MacKinnon v Donaldson Lufkin & Jenrette Securities Corp* [1986] 1 All ER 653 at 660: 'International law generally recognises the right of a state to regulate the conduct of its own nationals even outside its jurisdiction, provided that this does not involve disobedience to the local law'. (As to this case see further the note above related to Code S223.)

Enacting history: amendments to Bill (Code S239)

In *Pierce v Bemis* [1986] 1 All ER 1011 at 1017 Sheen J allowed counsel to cite, and himself cited in his judgment, extensive details as to the parliamentary proceedings on the Bill which became the Merchant Shipping Act 1906, including details as to how the clause that became the Merchant Shipping Act 1906, **S72** was added to the Bill during its passage through the House of Commons.

Enacting history: to ascertain the mischief (Code s 248)

In *British Leyland Motor Corp Ltd v Armstrong Patents Co Ltd* [1986] 1 All ER 850 the House of Lords allowed detailed argument relating to the Gregory Report (Report of the Copyright Committee (1952) Cmd 8662), upon which the Copyright Act 1956 was based. The argument was permitted to go beyond merely ascertaining the mischief, and touched on the intended legal effect of certain of the Act's provisions. It led to Lord Templeman saying (at 871): 'Thus S9(8) of the Copyright Act 1956 was defective to achieve the intended purpose .. .' On this Lord Edmund-Davies commented (at 853):

> 'My Lords, I have to say respectfully that I do not know what Parliament intended to do. Assume, as one reasonably may, that the Gregory Report was available to the legislators in 1956, and one will still have no knowledge of how far they intended to implement any of its recommendations when legislating as expansively as they did. We may think that they could, and should, have done better, but that is by the way.'

(As to this case see also the note on p 275 above related to Code s 144.)

Post-enacting history: delegated legislation made under Act (Code S254)

In *Pharmaceutical Society of Great Britain v Storkwain Ltd* [1986] 2 All ER 635 the House of Lords used the language of the Medicines (Prescriptions Only)

Order 1980 as an aid in the construction of the enactment under which it was made, namely the Medicines Act 1968, S58. Lord Goff of Chieveley said (at 639):

> 'It is unnecessary, in the present case, to consider whether the relevant articles of the order may be taken into account in construing s 58 of the 1958 Act: it is enough, for present purposes, that I am able to draw support from the fact that the ministers, in making the order, plainly did not read s 58 as subject to the implication proposed by counsel for the appellants.'

Post-enacting history: later Acts (Code s 255)

Where a term is used without definition in one Act, but is defined in another Act which is in pari materia with the first Act (ie deals with the same subject matter), the definition may be treated as applicable to the use of the term in the first Act.

This may be done even where the definition is contained in a later Act. Thus in *Wood v Commr of Police of the Metropolis* [1986] 2 All ER 570 the Divisional Court construed the undefined term 'offensive weapon' in the Vagrancy Act 1824, S4 in the light of the definition of that term laid down for different though related purposes by the Prevention of Crime Act 1953, s 1(4). (As to this case see also the note on p 276 above related to Code s 171 and the note on p288 below related to Code ss 378-385.)

Principle against doubtful penalisation: physical restraint of the person (Code s290)

Habeas corpus

In *Linnett v Coles* [1986] 3 All ER 652 at 657 Dillon LJ said that the dictum by Lord Denning MR in *Mcllwraith v Grady* [1968] 1 QB 468 at 477 that 'the fundamental principle that no man's liberty is to be taken away unless every requirement of the law has been strictly complied with' had been applied in relation to committals for contempt 'so rigorously as to lead to results, in some cases, that tend to make the court's own process appear ridiculous'. The Court of Appeal held that, in the face of the wide discretion given to the court by the Administration of Justice Act 1960, 513(3), it could not support Lord Denning's dictum in *Cinderby v Cinderby* (1978) SJ 436 that where a committal is not in proper form the court cannot correct the slip. (As to this case see also the note on P271 above related to Code S26 and below related to Code s 313.)

Nature of purposive construction (Code s 313)

Purposive construction and judicial discretion

It is the duty of the court to exercise any discretion vested in it by an enactment in such a way as to further the purpose of the legislature in passing the enactment, and so as not to hinder that purpose. The same principle applies as respects furthering the purpose of related enactments, or indeed the law generally.

RSC Ord 6, r 8(2) confers a discretion to renew the validity of an expired writ. The Limitation Act 1980, s 11 provides that an action for damages for negligence in respect of personal injury shall not be brought after the expiry of a period of three years. In *Wilkinson v Ancliff (BLT) Ltd* [1986] 3 All ER 427 the Court of Appeal held that the discretion to renew a writ which has expired at the end of 12 months from the date of its issue should not be so exercised as to deprive a defendant of a reasonably arguable case that the limitation period had expired.

Slade LJ said (pp 435-436):

> 'If the court grants an application for renewal of a writ in a case where the application for renewal has not been made until after the 12-month period, and with it the validity of the writ, have expired, it is granting the applicant a substantial indulgence. If, on the other hand, the effect of such an order is to deprive the defendant of a limitation defence, it is depriving him of a defence which Parliament.. . intended he should have as of absolute right, for reasons of public policy .. . With these points in mind, it seems to me that, in the absence of special circumstances, it cannot be an appropriate exercise of the court's discretion to grant an indulgence of this nature . ..'

In *Linnett v Coles* [1986] 3 All ER 652 at 657 the Court of Appeal held that, in the face of the wide discretion given to the court by the Administration of Justice Act 1960, **S13,** it could not support Lord Denning's dictum in *Cinderby v Cinderby* (1978) SJ 436 that where a committal is not in proper form the court cannot correct the slip. Lawton LJ said (at 655):

> 'I accept, of course, that judges must be vigilant concerning the liberty of the subject; but, if Parliament gives them discretionary powers, as s 13 of the 1960 Act seems to do, it is not competent for them to refuse to exercise those powers. It would be a misuse of powers for a judge to say: "I know Parliament has given me a discretion to vary orders in contempt appeals and make just ones, but I'm never going to use [it] . . ."'

(As to this case see also the note on p 271 above related to Code s 26 and the note on p 281 above related to Code s 290).

Judicial acceptance of legislator's purpose (Code s 318)

As to the duty of the court to comply loyally with a wish or intention clearly evinced by Parliament see the note on P284 below concerning *R v Secretary of State for Social Services, ex p Connolly* [1986] 1 All ER 998 and related to Code s 335.

Construction against 'absurdity': avoiding an anomalous or illogical result (Code s 323)

Remedy not available in like cases

In *Coltman v Bibby Tankers Ltd* [1986] 2 All ER 65 Sheen J had to decide whether the definition of 'equipment' in the Employer's Liability (Defective Equipment) Act 1969, si(3) included a ship. The somewhat ill-drafted definition states that the term 'includes any plant and machinery, vehicles,

aircraft and clothing'. Despite the failure to mention ships, which might thus have been held to be excluded either under the rank principle (Code **S386**) or the expressio unius principle (Code **SS388**-394), neither of which were mentioned in the judgment, Sheen J held that ships should be treated as included since it would be anomalous for the Act to give a remedy to a worker injured by a defect in say an aircraft or train but not to one injured by a defect in a ship.

Evasion distinguished from avoidance (Code s 327)

Ramsay principle

The *Ramsay* principle, whereby the court sets its face against purely artificial tax-avoidance schemes, is not confined to revenue cases.

In *Sherdley v Sherdley* [1986] 2 All ER 202 the Court of Appeal held that the principle should also be applied by the Family Division. A divorced father having care and control of his young children, who were being privately educated, sought under the Matrimonial Causes Act 1973, **S23**(i)(d) an order against himself requiring him to pay to each child periodical amounts equivalent to its school fees. The sole purpose was to avoid tax by rendering the sums in question income of the children instead of their father. *Held* Since the sole purpose of the application was tax avoidance the court below was right to exercise its discretion by deciding to refuse the order.

Implied application of decision-making rules of natural justice, etc (Code s335)

Duty to give reasons

Where a tribunal gives reasons 'one must somehow be able to read from the reasons the issue to which the reasons are directed': *R v Mental Health Review Tribunal, ex p Pickering* [1986] 1 All ER 99 at 104, per Forbes J. In this case it was held that reasons given under the Mental Health Tribunal Rules 1983 r23(2) did not clearly indicate whether they referred to the diagnostic issue or to the issue whether public safety required the patient's retention in hospital.

R v Secretary of State for the Home Department, ex p Swati [1986] 1 All ER 717 concerned the requirement of the Immigration Appeals (Notices) Regulations 1984, reg 4(i)(a) that written notice of a decision shall 'include a statement of the reasons for the decision'. The notice given by the immigration officer said 'I am not satisfied that you are genuinely seeking entry only for this limited period' (ie one week). It was argued that this mere assertion of dissatisfaction was inadequate. *Held* The statement was adequate, and the immigration officer was not required to go further and state in the statutory notice the reasons for her dissatisfaction. Parker LJ said (at 728): 'What counsel for Mr Swati is in effect seeking is not the reasons for the refusal but the reasons for the reasons for the refusal and for that the 1984 Regulations do not provide'.

In *R v Secretary of State for Social Services, ex p Connolly* [1986] 1 All ER 998 at 1006 Slade LJ said that there is no basic requirement of natural justice that reasons should always be given when a discretion is exercised by a tribunal such as a social security commissioner (cf *The Antaios* [1985] AC 191). The Court of Appeal held that, where Parliament has conferred on the tribunal an express exemption from giving reasons, courts should not exert pressure on the tribunal in an attempt to induce it to give reasons in certain cases. (As to this case see further the note on p 282 above related to Code s 318).

Implied application of rules of contract law (Code s 337)

Frustration

Even though to treat the doctrine of frustration as applying in relation to a contract may defeat the apparent legislative purpose as respects contracts of that type, the court will, unless the contrary intention appears, nevertheless treat the doctrine as intended by Parliament to apply.

In *Notcutt v Universal Equipment Co (London) Ltd* [1986] 3 All ER 582 the Court of Appeal held a contract of employment frustrated by the worker's suffering of a heart attack inducing permanent unfitness for work even though the effect was to deprive him of a statutory benefit. Dillon LJ, in considering whether the Employment Protection (Consolidation) Act 1978, Sch 3 applied to give the worker a right to sick pay during his period of notice, accepted (at 585) that in this case 'the argument of frustration is of course unashamedly put forward to avoid the provisions of the Act'.

Held The contract of employment had been frustrated by the worker's illness. This brought the contract to an end before the date of service of the notice purporting to terminate it, and therefore the Act's provisions regarding sick pay during a period of notice never operated. (As to the doctrine of frustration see also the note on *F C Shepherd & Co Ltd v Jerrom* [1986] 3 All ER 589 on p 286 below, related to Code s 354).

Implied application of rules of criminal law (Code s 340)

Defences

An enactment which forbids specified conduct in absolute terms is nevertheless qualified by the implied importation of rules laying down defences.

In *R v Renouf* [1986] 2 All ER 449 the defendant was convicted of contravening the Road Traffic Act 1972, s 2, which states: 'A person who drives a motor vehicle on a road recklessly shall be guilty of an offence'. His defence was that his conduct was excused by the Criminal Law Act 1967, S 3(1), which states: 'A person may use such force as is reasonable ... in effecting or assisting in the lawful arrest of offenders'. The trial judge refused to leave this defence to the jury.

Held The judge was wrong, and the defence should have been left to the jury. Lawton LJ said (at 451):

> 'This evidence had two facets: one was what the prosecution alleged to be the acts of recklessness; and the other was that these same acts amounted to the use of reasonable force for the purpose of assisting in the lawful arrest of offenders ... In our judgment the alleged presence of these two facets . .. was capable of providing [the appellant] with a defence'.

Implied application of rules of jurisdiction, evidence and procedure (Code s 341)

The Scherer principle

The reluctance of the courts to countenance attempts to oust their jurisdiction is strikingly illustrated by a case decided in 1977 but not reported until 1986. In *Scherer v Counting Instruments Ltd* [1986] 2 All ER 529 the Court of Appeal considered the Supreme Court of Judicature (Consolidation) Act 1925, **S3i**(i)(h), re-enacted in the Supreme Court Act 1981, si8(i)(f)), which states:

> '. .. no appeal shall lie without the leave of the court or judge making the order, from an order of the High Court or any judge thereof made ... as to costs only which by law are left in the discretion of the court'.

The court below, although dismissing applications by the defendants in two actions brought against them by the plaintiffs for dismissal of the actions for want of prosecution, ordered the costs of the unsuccessful applications to be borne by the plaintiffs. The plaintiffs appealed, not having obtained leave to do so from the judge making the order. *Held* Since there was no material before the judge on which he could properly make the order it would be discharged notwithstanding s 3i(i)(h).

Commenting on this decision in *Aden Refinery Co Ltd v Ugland Management Co* [1986] 3 All ER 737 at 744 Donaldson MR said:

> 'Counsel for the charterers' whole argument is based on the curious, but well-established, view of the law which binds this court to hold that s i8(i)(f) of the Supreme Court Act 1981 ... has no application, if this court is able to say that the judge in the court below did not really exercise his discretion at all or based the exercise of his discretion on an inadmissible reason. This is referred to by the cognoscenti as "the *Scherer* principle" .. .'

Right to cross-examine

Where a new statutory forensic system is laid down it is to be assumed that Parliament intended the normal procedures of adversarial justice to apply.

In *Chilton v Saga Holidays pic* [1986] 1 All ER 841 the Court of Appeal considered the form of County Court arbitration procedure laid down by CCR Ord 19, r 5(2), which provides that any hearing shall be informal, and authorises the arbitrator to adopt any method of procedure which he may consider convenient. The arbitrator refused to allow the solicitor appearing for Saga Holidays to cross-examine Mr Chilton, who was appearing in person.

Held To deny cross-examination was effectively to deprive Saga Holidays of the services of their solicitor, and the rule could not be taken as intending this. Donaldson MR said (at 844):

> '. .. both courts and arbitrators in this country operate on an adversarial system of achieving justice. It is a system which can be modified by rules of court; it is a system which can be modified by agreement between the parties; but, in the absence of one or the other, it is basically an adversarial system, and it is fundamental to that that each party shall be entitled to tender their own evidence and that the other party shall be entitled to ask questions designed to probe the accuracy or otherwise, or the completeness or otherwise, of the evidence which has been given.'

Reliance on illegality (allegans suam turpitudinem non est audiendus) (Code s 345)

Where a plaintiff cannot succeed unless he relies on an act by him which contravened a statute or was otherwise illegal, his action will fail.

In *Phoenix General Insurance Co of Greece SA v Halvanon Insurance Co Ltd* [1986] 1 All ER 908 the plaintiffs had, in contravention of the Insurance Companies Act 1974, entered into certain reinsurance contracts. By virtue of s 11(1) of the Act (repealed by the Insurance Companies Act 1981, s 36(2) and Sch 5 Pt I) it was an offence for the plaintiffs to enter into each of these contracts. The plaintiffs sued the reinsurers under the contracts.

Held Entry into the reinsurance contracts constituted the very type of business against which the system of Government authorisation created by the Act for the benefit of insured persons was directed. Accordingly the plaintiffs could not succeed. Hobhouse J relied on the following dictum of Denning LJ in *Maries v Philip Trant & Sons Ltd (No 2)* [1954] 1 QB 29 at 38:

> 'So far as the cause of action itself is concerned, the principle is well settled that if the plaintiff requires any aid from an illegal transaction to establish his cause of action, then he-shall not have any aid from the court'.

Hobhouse J (at 918) distinguished the reinsurance contracts in the instant case from transactions in relation to which contravention of a statute is merely casual, adventitious or collateral. He also held (ibid) that the original contracts of primary insurance could be enforced by the innocent insureds, since the ultimate intention of the statute was clearly to benefit and protect them.

Hearing both sides (audi alteram partem) (Code s 346)

Oral representations

The decision in *R v Diggines, exp Rahmani* [1985] 1 All ER 1073; All ER Rev 1985, p266 was affirmed by the House of Lords on other grounds, not relevant to the audi alteram partem rule.

Benefit from own wrong: nullus commodum capere potest de injuria sua propria (Code s 354)

In *F C Shepherd & Co Ltd v Jerrom* [1986] 3 All ER 589 the respondent, an apprentice under a four-year contract of apprenticeship, was sentenced to detention in Borstal, for a period between six months and two years, in

respect of convictions for affray and conspiracy to assault. He was released after six months, whereupon the employers refused to take him back. He sought to argue that the apprenticeship contract had not been terminated under the doctrine of frustration because the frustration was self-induced, and that therefore he was entitled under the Employment Protection (Consolidation) Act 1978, s 72 to compensation for unfair dismissal.

Held The respondent was not entitled to rely on his own default in order to obtain compensation under the statute. Mustill LJ said (at 601) that to rule otherwise would infringe what Diplock LJ described in *Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd* [1962] 2 QB 26 at 66 as 'the fundamental legal and moral rule that a man should not be allowed to take advantage of his own wrong'.

Agency: qui facit per alium facit per se (Code s 356)

Act done to agent

It is provided by the Road Traffic Act 1972, s 10(5) that a document of a type there mentioned is admissible in evidence 'only if a copy of it has been served *on the accused* not later than seven days before the hearing' (emphasis added). In *Penman v Parker* [1986] 2 All ER 862 the question arose whether this requirement was satisfied where, in the absence of the accused and his solicitor, the copy was served in the courtroom on counsel acting for the accused in proceedings related to the offence in question.

Held Such a notice may be validly served on an authorised agent. While counsel, as compared to a solicitor, possesses only a limited authority to accept service of documents, and has discretion to refuse to accept such service, his acceptance of the copy in the present circumstances constituted a valid service of it on the accused. The case is authority for saying that in a provision such as s 10(5) the words 'or his authorised agent' are to be treated as present by implication following the reference to the person on whom a document is to be served.

Ordinary meaning of words (Code s 363)

Words with several ordinary meanings

In *Hall v Cotton* [1986] 3 All ER 332 the Divisional Court considered the meaning of the word *possession,* as used in the Firearms Act 1968, **S2**(i). This renders it an offence for a person to have a shotgun in his possession without holding a certificate under the Act. The respondent C left his two shotguns with the respondent T while he went on holiday. T lacked a shotgun certificate, and the question was whether he had acquired possession of the shotguns.

Held The term *possession* must here be regarded as having two meanings, either of which was applicable. While C retained proprietorial possession of the shotguns, T acquired custodial possession and was therefore guilty. Stocker LJ cited (at 335) a dictum of Lord Parker CJ in *Towers & Co Ltd v Gray* [1961] 2 QB 351 at 361: 'The term "possession" is always giving trouble'.

Technical terms (Code s 365)

Where a term appears which has both an ordinary and a technical meaning, the court will, when determining in which sense it is used, be guided by whether or not it is accompanied by other related technical terms. In *Knocker v Youle* [1986] 2 All ER 914 the term under consideration was *interest,* as used in the Variation of Trusts Act 1958, s 1(1)(b). To counsel's invitation to construe the word loosely, as a layman might, WarnerJ replied (at 916) that it was clearly used in its technical legal sense, since otherwise 'the words "whether vested or contingent" in para (a) of s 1(1) would be out of place'.

Archaisms (Code **S370)**

Where in a modern Act Parliament uses a term which has an archaic meaning and also a (different) modern meaning it will be presumed, in the absence of any indication to the contrary, that the modern meaning is intended.

In *R v Secretary of State for the Environment, ex p Hillingdon LBC* [1986] 1 All ER 810 (affd [1986] 2 All ER 273) WoolfJ held that 'committee' as used in the Local Government Act 1972, s101(1)(a) was intended to have its modern meaning of a group of two or more persons, and not its obsolete meaning of a person to whom any function is committed. (As to this case see also the note on p 273 above related to Code s 125).

Ejusdem generis principle (Code ss 378-385)

The Divisional Court applied the ejusdem generis principle in *Wood v Commr of Police of the Metropolis* [1986] 2 All ER 570. The appellant was convicted of being armed with an offensive weapon with intent to commit an arrestable offence, contrary to the Vagrancy Act 1824, s 4. This applies to 'every person . . . being armed with any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon'. The appellant was armed with a piece of broken glass which had just accidentally fallen out of a panel in his front door.

Held Applying the ejusdem generis principle, the term 'offensive weapon' in this phrase was to be construed as confined to articles made or adapted for use for causing injury to the person. (As to this case see also the note on P276 above related to Code s 171 and the note on p281 above related to Code **S255**).

Expressio unius principle: words of extension (Code s 391)

Without explicitly saying so, the Commercial Court applied the principle *expressio unius est exclusio alterius* in *Swiss Bank Corp v Brink's MAT Ltd* [1986] 2 All ER 188. The case concerned the Warsaw-Hague Convention, which is set out in the Carriage by Air Act 1961, Sch 1, and declared by s 1(1) of the Act to have the force of law in the United Kingdom. Although, as he said (p189), starting off with an inclination to award interest on damages payable to the plaintiffs by virtue of the Convention, Bingham J reached an opposite conclusion. Article 24(1) of the Convention places a

monetary limit on the damages that can be awarded, while art 22(4) states that this shall not preclude the award of costs. There is no mention of interest.

Held The statement in art 22(4) indicated that but for it costs would be within the limit imposed by art 24(1), and it must therefore be treated as an extending provision. Since there were no such words of extension in relation to interest it must be taken as intended to be excluded.

Implication where statutory condition only partly met (Code s 396)

Ultra vires acts

Where a public authority reaches a decision for two purposes, one only of which is within its statutory powers, the validity ofthe decision depends on whether the other purpose is one of the main purposes or is merely subsidiary.

In *R v Inner London Education Authority, ex p Westminster City Council* [1986] 1 All ER 19 the Inner London Education Authority ('ILEA') had resolved under s 142(2) of the Local Government Act 1972 (which authorises spending on the publication ofinformation on matters relating to local government) to spend £651,000 on an advertising campaign designed not only to publish legitimate information but also (illegitimately) to promote ILEA's opposition to the Government's rate-capping policy. *Held* The illegitimate purpose was a main purpose of the decision, which was therefore invalid.

Public interest immunity

Public interest immunity attaches to statements made for the purposes of a complaint against the police under the Police Act 1964, **S49** (see Code pp752—753). Where statements are made partly for these purposes and partly for other purposes in relation to which public interest immunity does not he, the question whether such immunity attached depends on the *dominant* purpose for which the statements were made: *Peach v Commr of Police for the Metropolis* [1986] 2 All ER 129. In this case statements of witnesses to the incident in which Blair Peach was killed in a demonstration were taken (1) for purposes of **S49;** (2) for purposes of the inquest into the death; and (3) for purposes of a possible prosecution. *Held* The **S49** inquiry was not the dominant purpose, and therefore public interest immunity did not lie.