Statute Law

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Introductory notes

For the convenience of readers this article, like the corresponding articles in previous editions of the All ER Annual Review, 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. A Supplement updating the book was published by Butterworths in March 1989.

As in previous years, attention is drawn to examples of statute law principles being overlooked or ignored in certain cases reported during the year. These are referred to in the notes below respectively related to Code ss 125 (powers and duties exercisable from time to time), 127 and 171.

The tort of breach of statutory duty (Code s 14)

Negligence

Under the rule in *Anns v Merton London Borough* [1977] 2 All ER 492 a breach of statutory duty may give rise to a cause of action in negligence (see Code pp 38-41 and All ER Review 1987, p 245). The position where the duty is imposed on a Minister of the Crown, and is a duty to construe legislation correctly, was considered by the Judicial Committee of the Privy Council in *Rowling v Takaro Properties Ltd* [1988] 1 All ER 163. The respondents brought an action for breach of statutory duty against the New Zealand Minister of Finance claiming damages for negligence in the exercise of his statutory powers arising out of his negligent construction of the Capital Issues (Overseas) Regulations 1965 (NZ), reg 3. The action failed on the ground that the facts were not as alleged, but Lord Keith of Kinkel, giving the judgment of the Board, delivered certain dicta on the points of law upon which the claim was based.

Lord Keith said (at 172) that a too-literal application of the well-known observation of Lord Wilberforqe in *Anns v Merton London Borough* [1978] AC 728 at 751-2 'may be productive of a failure to have regard to, and to analyse and weigh, all the relevant considerations in considering whether it is appropriate that a duty of care should be imposed'. 1$ the present case there were four factors militating against the imposition of such a duty: (i) The only effect of a negligent decision would be delay, since it could be challenged on judicial review, (ii) Anybody, even a judge, is capable of misconstruing a statute, and it is very rare indeed that this can be called 'negligent', (iii) Imposing such a duty may lead to harmful consequences, since ministers may think it necessary to obtain legal advice more frequently thus causing delay.

(iv) A minister cannot be placed under a duty to seek legal advice every time a statute has to be applied and it is difficult to see how a dividing line could be drawn. It may be better 'that citizens should be confined to their remedy, as at present, in those cases where the minister or public authority has acted in bad faith' (at 174). (After making these remarks Lord Keith curiously said that their Lordships 'must not be thought to be expressing any opinion on the point'. Nevertheless an opinion, even if not concluded, is discernible from Lord Keith's preceding dicta and can scarcely be ignored considering its weighty source.)

Courts and other adjudicating authorities (Code s 19)

The essential functions of courts and other adjudicating authorities are threefold: to find facts, to decide what law to apply to the facts found, and to exercise judgment or discretion. Judgment is needed where it is necessary to determine whether a specified criterion is satisfied, for example whether a certain thing is 'necessary'. Discretion is to be applied where it is left to the court to make a determination at any point within a given range, for example in fixing the sentence following conviction of an offence. Unfortunately judges often blur the distinction between judgment and discretion, as in *George v Devon County Council* [1988] 3 All ER 1002 at 1006, where Lord Keith of Kinkel said of a local authority's duty under the Education Act 1944, s 55(1) to determine whether free school transport is 'necessary': 'The authority's function in this respect is capable of being described as a "discretion", though it is not, of course, an unfettered discretion but rather in the nature of an exercise of judgment'.

Act of Parliament: whether binding the Crown (Code s 34)

Rights conferred on subjects

Where by the exercise of the royal prerogative a private right is conferred on a subject, the doctrine of Crown immunity does not apply to prevent any relevant enactment from regulating the exercise of that right.

Spook Erection Ltd v Secretary of State for the Environment [1988] 2 All ER 667 concerned a market franchise granted by the Crown in respect of Moreton-in-Marsh in 1638. The market was held in the High Street there until 1923. It then moved to another site, where it was held until 1956. Thereafter the market was not held again until the franchise was acquired by the controller of the appellate company in 1976, when it was once more held on the High Street site. This constituted a change of use under the Town and Country Planning Act 1971, since the market was not being held in the High Street on the relevant date (1 July 1948). The 1971 Act does not bind the Crown.

Held The owner of a market franchise is in the same position as a tenant of Crown lands, and cannot claim the benefit of Crown immunity. The Court of Appeal upheld the dictum of Macpherson J in the court below that 'it is fallacious to say that a person holding a grant given under prerogative powers is himself exercising the royal prerogative'.

Challenge to validity of an enactment (Code s 75)

European Communities Act ***igy2***

It was held by the House of Lords in *Duke v GEC Reliance Ltd* [1988] **1** All ER 626 that the European Communities Act 1972, s 2(4), which states that any enactment passed or to be passed shall be construed and have effect subject to the foregoing provisions of that section, 'does no more than reinforce the binding nature of legally enforceable rights and obligations imposed by appropriate Community law' (per Lord Templeman at 629). Lord Templeman added (at 636) that s 2(4) does not enable or constrain a British court to distort the meaning of a British statute in order to enforce against an individual a Community directive which has no direct effect between individuals: it 'applies and only applies where Community provisions are directly applicable'.

(As to this case see pp **123** et seq above, and also the note on p 286 below related to Code s 240.)

Filling in the detail: interstitial articulation by the court (Code s **114**)

In *Francis & Francis (a firm) v Central Criminal Court* [1988] 3 All ER 775 at 788, 792, 800 the House of Lords engaged in judicial articulation in relation to the Police and Criminal Evidence Act 1984, s 10(2). This says: 'Items held with the intention of furthering a criminal purpose are not items subject to legal privilege'. *Held* The words 'of either the holder or any other person' should be treated as inserted after 'intention'.

An example of interstitial articulation by the court was furnished by Lord Griffiths in *Porter v Honey* **[1988]** 3 All ER 1045 at **1049** when he held that the Town and Country Planning (Control of Advertisements) Regulations **1984,** reg 14, Class III, para (a) should be read as if the italicised words had been included by the draftsman in the following passage (which in fact they were not)—

> 'Advertisements relating to the sale or letting of the land on which they are displayed; limited, in respect of each such sale or letting, to one advertisement *that being the first advertisement displayed when more than one is displayed* consisting of a board (whether or not attached to a building) not exceeding **2.3** square metres in area . . .'

(See also pp 336 et seq, below).

A further example of judicial interstitial articulation was provided by Lord Templeman in *Pickstone v Freemans pic* [1988] 2 All ER 803 at 813 where he said that in the Equal Pay Act 1970, s 1(2)(c) 'there must be implied in para (c) after the word "applies" the words "as between the woman and the man with whom she claims equality"'.

It is submitted that such express articulation is more helpful to those seeking guidance from a judicial decision on how a particular enactment should be construed then the more usual alternative typified by Lord Oliver in the same case, where he said (at 817) 'there has to be read into the Act some qualifying words which will restrict the word "applies" to a particular comparator selected by the claimant'. Articulation of the missing words is also valuable as an aid to codification (see Code p 253).

(On this case see further pp **114** et seq, 127, 128 above and the note on p 286 below related to Code s **241.)**

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

Potency of the term defined

In *British Amusement Catering Trades Association v Westminster City Council* [1988] 1 All ER 740 the House of Lords held that the term 'cinematograph exhibition' as defined in the Cinematograph (Amendment) Act 1982, s **1**(3) should not be construed as including video games, although they were within the literal meaning of the definition. The term 'cinematograph exhibition', said Lord Griffiths (at 745) 'immediately brings to mind a film show'.

(As to this case see also the note on p 287 below related to Code s 254.)

Powers and duties exercisable from time to time

Another example of how the Interpretation Act 1978, s 12 (statutory powers and duties deemed to be exercisable from time to time) is overlooked in practice arose in *R v Pinfold* [1988] 2 All ER 217 (see the note below related to Code s 127). For a previous example of this oversight, see All ER Review 1985, p 258.

Principle that law should serve the public interest (Code s 127)

Interest reipublicae ut sit finis litium

InRv Pinfold [1988] 2 All ER 217 the Court of Appeal, Criminal Division, construed the Criminal Appeal Act 1968, ss **1(1)** and 2(1) (which confer a right of appeal in cases of conviction on indictment) by applying the maxim *interest reipublicae ut sit finis litium*. The convict had already instituted one (unsuccessful) appeal, and now sought to lodge a second appeal on the ground of new evidence. Delivering the judgment of the court Lord Lane CJ did not cite the maxim directly. Dismissing the application he said

> '. . . one must read those provisions against the background of the fact that it is in the interests of the public in general that there should be a limit or a finality of legal proceedings, sometimes put in a Latin maxim, but that is what it means in English'.

Apparently the Interpretation Act 1978, s 12, which provides that statutory powers and duties are to be deemed to be exercisable from time to time, was not cited to the court (see further p 99 above and the note above related to Code s 125).

Principle that law should be just (Code s 128)

Construction of discretionary powers

In *Tower Hamlets London Borough Council v Chetnik Developments Ltd* [1988] **1** All ER 961 the House of Lords laid down the principle that where an apparently unfettered discretion is conferred by statute on a public authority it is to be inferred that Parliament intended the discretion to be exercised in the same high-principled way as is expected by the court of its own officers.

The General Rate Act 1967, s 9(1) confers on rating authorities an apparently unfettered discretion to refund any amount paid in respect of rates on any of five specified grounds, namely that the amount entered in the valuation list was excessive, or the rate was not levied in accordance with the

valuation list, or an exemption or relief was wrongly disallowed, or the hereditament was unoccupied, or the payment was not in fact due. *Held* The discretion was not to be construed as unfettered, but must be exercised with regard to the purpose for which it had clearly been conferred. This was to enable rating authorities to redress the injustice which would arise if they were to retain rates to which they had no right. Lord Bridge said (at 969-70)—

> 'the retention of moneys known to have been paid under a mistake at law, although it is a course permitted to an ordinary litigant, is not regarded by the courts as a "high-minded thing" to do, but rather as a "shabby thing" or a "dirty trick" and hence a course which the court will not allow one of its own officers, such as a trustee in bankruptcy, to take . . . Parliament must have intended rating authorities to act in the same high-principled way . . .'

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 the repeal, unless the contrary intention appears from the repealing Act (see Code p 420; All ER Review 1986, p 276; All ER Review 1987, p 248). Although not referred to as such, the rule was in effect applied by the House of Lords in *Hayward v Cammell Laird Shipbuilders Ltd* [1988] 2 All ER 257 in relation to the repeal of the Equal Pay Act 1970, s 3(4) (see per Lord Mackay of Clashfern LC at 261-262).

Consequential amendments (Code s 175)

Construction of consequential amendments

It is presumed that Parliament, in making amendments to an Act dealing which one subject matter which are consequential on the passing of an Act dealing with a quite different subject matter, did not intend to make any fundamental change in the former Act.

Ye Olde Cheshire Cheese Ltd v Daily Telegraph pic [1988] 3 All ER 217 concerned the question whether a lease of two cellars forming part of a restaurant was within the protection given by Pt II of the Landlord and Tenant Act 1954 (which enables a business tenant to claim an extension of an expired lease). This depended on the meaning of s 43(i)(d) of the Act. As originally enacted this provision removed from protection premises licensed for the sale of intoxicating liquor for consumption on the premises, other than premises where the licence fell under certain paragraphs of the Customs and Excise Act 1952, Sch 4 (which contained provisions dealing with excise licences). When repealing Sch 4, the Finance Act 1959, s 2(6) made consequential amendments to s 43(i)(d). On a literal reading of the amended version (though not of the original version), demised premises consisting of a part only of a restaurant might be taken to be excluded from the protection of Pt II of the 1954 Act. *Held* Such a drastic change, which had nothing to do with the objects of Parliament in repealing Sch 4, could not have been

intended by the draftsman of the consequential amendments to s 43(i)(d) set out in the 1959 Act. Accordingly the premises were to be taken to be entitled to protection. (See also p 197 above).

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

International organisations

The decision in *Re International Tin Council* [1987] 1 All ER 890 (see All ER Review 1987, p 249) was affirmed by the Court of Appeal in *Machine Watson & Co Ltd v Department of Trade and Industry* [1988] 3 AH ER 257.

Pre-enacting history: explanatory memoranda (Code s 240)

White papers

The House of Lords in *Duke v GEC Reliance Ltd* [1988] 1 All ER 626 referred to the 1974 government White Paper *Equality for Women* (Cmnd 5724) as a guide to Parliament's intention in enacting provisions of the Sex Discrimination Act 1975. Lord Templeman said (at 634)—

> 'If the government had intended to sweep away the widespread practice of differential retirement ages, the 1974 white paper would not have given a contrary assurance and if Parliament had intended to outlaw differential retirement ages, s 6(4) of the Sex Discrimination Act 1975 would have been very differently worded in order to make clear the profound change which Parliament contemplated.'

(As to this case see also the note on p 283 above related to Code s 75.)

Statutory instruments

In *Pickstone v Freemans pic* [1988] 2 All ER 803 at 818 Lord Oliver said that though an explanatory note attached to regulations is not part of the regulations it 'is of use in identifying the mischief which the regulations were attempting to remedy'. As to the details of this case see the note below related to Code s 241.

Enacting history: special restriction on parliamentary materials (Code s 241)

A further exception to the exclusionary rule forbidding citation of Hansard as an aid to statutory interpretation was laid down by the House of Lords in *Pickstone v Freemans pic* [1988] 2 All ER 803. The case concerned the Equal Pay Act 1970, s i(2)(c). This was added to the Act by the Equal Pay (Amendment) Regulations 1983, which were made under the European Communities Act 1972, s 2(2)(a) in order to comply with a ruling of the European Court that English law failed to comply with Council Directive 75/117/EEC as to equal pay for work of equal value. The House held that in construing the new s i(2)(c) it was proper for the court to refer to Hansard

reports of the parliamentary proceedings on the draft 1983 regulations. Lord Templeman said (at 814)—

> 'The draft of the 1983 regulations was not subject to any process of amendment by Parliament. In these circumstances the explanations of the government and the criticisms voiced by members of Parliament in the debates which led to the approval of the draft regulations provide some indication of the intentions of Parliament.'

(See also the note on p 283 above related to Code s 114.)

Post-enacting history: delegated legislation made under Act (Code s 254)

In *Jackson v Hall* [1980] AC 854 at 884 Viscount Dilhorne rejected the submission that the contents of a form produced pursuant to rules made by the Agricultural Land Tribunals (Succession to Agricultural Tenancies) Order 1976 could be relied on as an aid to the construction of the Agriculture (Miscellaneous Provisions) Act 1976. In *British Amusement Catering Trades Association v Westminster City Council* [1988] 1 All ER 740 the House of Lords declined to take this as authority for the general proposition that subordinate legislation can never be used as an aid to statutory interpretation, citing *Hanlon v The Law Society* [1981] AC 124. They held that the meaning of the term 'cinematograph exhibition' as defined in the Cinematograph (Amendment) Act 1982, s 1(3) should be arrived at by reference to the Cinematograph (Safety) Regulations 1955.

(As to this case see also the note on p 284 above related to Code s 125.)

Post-enacting history: judicial decisions on Act (Code s 256)

Decision impliedly adopted by Parliament

The House of Lords held in *Otter v Norman* [1988] 2 All ER 897 (see the note on p 291 below related to Code s 396) that the provision of a continental breakfast only amounted to 'board'. In so holding it was influenced by the fact that Parliament had impliedly adopted a similar ruling on the meaning of this term laid down by the Court of Appeal in *Wilkes v Goodwin* [1923] 2 KB 86. (See also p 196 above).

Nature of purposive construction (Code s 313)

Deeming provisions

In *Russell v IRC* [1988] 2 All ER 405 at 415 Knox J cited two judicial views on hypotheses laid down by statute which he appeared to find conflicting, though it is submitted they are not. The first was a dictum by Lord Asquith in *East End Dwellings Co Ltd v Finsbury BC* [1952] AC 109, 132—

> 'If one is bidden to treat an imaginary state of affairs as real, one must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.'

The other was Megarry V-C's comment in *Polydor Ltd and RSO Records Inc v Harlequin Record Shops Ltd and Simons Records Ltd* [1980] CMLR 669 at 673 made in relation to Lord Asquith's dictum: 'The hypothetical must not be allowed to oust the real further than obedience to the statute compels'.

It is submitted that both dicta are correct. The intention of an enactment, in laying down an hypothesis, is that the hypothesis shall be carried as far as necessary to achieve the legislative purpose, but no further.

Construction against 'absurdity': avoiding an artificial result (Code s 325)

In *Ex p Walton* (1881) 17 Ch D 746 it was held (see Code pp 704-705) that the provision in the Bankruptcy Act 1869, s 23 deeming a lease to have been surrendered on the date of adjudication in bankruptcy applied (though the Act did not say so) only as between the lessor and the bankrupt's estate. In *Rhodes v Allied Dunbar Pension Services Ltd* [1988] 1 All ER 524 this reasoning was followed in relation to the Law of Distress Amendment Act 1908, s 6 (which, on the crystallisation of a floating charge over a tenant's property, deems his sub-tenant to be converted into a direct tenant of the superior iandlord).

Evasion distinguished from avoidance (Code s 327)

The Ramsay principle

In *Gisborne v Burton* [1988] 3 All ER 760) the Court of Appeal, following *Johnson v Moreton* [1980] AC 37, applied the *Ramsay* principle (Ralph Gibson LJ dissenting) in the case of the protection intended to be given to tenants by the Agricultural Holdings (Notices to Quit) Act 1977, s 2(1). This renders a notice to quit ineffective where the tenant serves a counter-notice on the landlord, unless the Agricultural Land Tribunal consents to the operation of the notice to quit. It does not apply to protect sub-tenants. In *Gisborne v Burton* the owner of land sought to deny this protection to a farmer by granting a tenancy of the land to his wife, who in turn granted a sub-tenancy to the farmer.

Held The *Ramsay* principle is applicable wherever, as here, there is a pre-ordained series of transactions which is intended to avoid some mandatory statutory provision, even if not of a fiscal nature. The fact that the present scheme had some enduring legal consequences and was not wholly self-cancelling was not sufficient to render the *Ramsay* principle inapplicable to it. Accordingly the sub-tenant was to be treated for the purposes of protection under the 1977 Act as the immediate tenant of the owner of the land. (See also p 186 above).

Construction which hinders legal proceedings under Act (Code s 332)

See the note on p 289 below related to Code s 341.

Implied application of rules of constitutional law (Code s 334)

Parens patriae doctrine

It was held in *T v T* [1988] 1 All ER 613 that even where an enactment covering the same ground as a part of the prerogative jurisdiction under the parens patriae doctrine does not displace or remove that part, the jurisdiction cannot be exercised in the absence of a royal warrant authorising the Lord Chancellor to exercise it on behalf of the Crown.

Following the enactment of the Mental Health Act 1959, Pt VIII (now the Mental Health Act 1983, Pt VII), which contained provisions for managing the property and affairs of mental patients, the warrant dealing with this aspect of the parens patriae jurisdiction was revoked (London Gazette, 11 November 1960). In *T v T* it was held by Wood J that the current non-existence of a warrant meant that the parens patriae jurisdiction could not be exercised so as to authorise termination of the pregnancy and sterilisation of the mental patient in question. He therefore made a declaration under RSC Ord 15, r 16 that the said operations would not be unlawful.

This ruling is open to question on three grounds. First, it seems that the judge could have given consent to the operation under the Mental Health Act 1983, s 96(i)(k), which expressly refers to the exercise of any power of the patient to give consent. Second, failure to carry out an administrative act such as the issue of a royal warrant cannot abolish an element of the royal prerogative, or even place it in abeyance. While not exercisable by the Lord Chancellor in the absence of the warrant, the jurisdiction was, it is submitted, exercisable by Her Majesty in person under the royal sign manual. On receipt of a message from Wood J, one of Her Majesty's judges, that the authorisation was expedient it would have been proper for Her Majesty to issue it. Third, the power to make such a declaration is highly doubtful, since no medical practitioner affected by it possessed a relevant legal right. A declaration can be made only in support of a legal right: *Nixon v Attorney-General* [1930] 1 Ch 566 at 574. It is contrary to principle for the court to authorise by means of a declaration some action which would otherwise be unlawful. It seems that this is one more illustration of the maxim that hard cases make bad law. (See further, Bennion (1989) 133 SJ 245, at the time of writing the point is being considered by the House of Lords; see also pp 157 and 206 above.)

Implied application of rules of procedure (Code s 341)

Power to grant an injunction

The Supreme Court Act 1981, s 37(1) empowers the High Court to grant an injunction 'in all cases where it appears to the court to be just and convenient to do so'. *In Associated Newspapers Group pic v Insert Media Ltd[i98&]* 2 All ER 420 Hoffmann J, following the decision of the House of Lords in *Siskina (cargo owners) v Distos Cia Naviera SA, The Siskina* [1979] AC 210, refused to allow a statement of claim to be amended so as to seek an injunction to restrain acts that were not unlawful even though this might be 'just and convenient'. The power conferred by s 37(1) must be treated as limited by the long-standing procedural rule that an injunction will be granted only where the act enjoined would be unlawful.

Judge's control over court proceedings

The Criminal Procedure Act 1865, s 2 provides that the defendant 'shall be entitled to examine such witnesses as he . . . may think fit, and when all the evidence is concluded to sum up the evidence'. In *R v Morley* [1988] 2 All ER 396 the Court of Appeal, Criminal Division, held that this does not give an unqualified right to call witnesses, even though they can give no material evidence. Nor does it entitle the defendant to make a closing speech where through misbehaviour he has rightly been removed from the courtroom. It must, said Woolf LJ (at 398), 'be construed in the context of the obligation of the judge to ensure the proper conduct of the trial'. He added (at 401): 'A judge has a duty to avoid the prolongation of a trial and to avoid the incurring of unnecessary expense'. See also pp no, 149 and Code s 298.

De minimis principle (Code s 348)

The House of Lords held in *Otter v Norman* [1988] 2 All ER 897 (see the note on p 291 below related to Code s 396) that the provision of a continental breakfast only genuinely amounted to 'board', and was not within the de minimis principle.

Necessity and duress (Code s 352)

In *R v Conway* [1988] 3 All ER 1025 at 1029 Woolf LJ said that 'duress is an example of necessity', citing the following dictum of Lord Hailsham of St Marylebone LC in *R v Howe* [1987] AC 417 at 429—

> 'duress arises from the wrongful threats or violence of another human being and necessity arises from any other objective dangers threatening the accused. This, however, is in my view a distinction without a relevant difference, since on this view duress is only that species of the genus necessity which is caused by wrongful threats.'

The test is thus an objective, rather than a subjective one, being whether, as Lord Hailsham put it (ibid), the pressure is such that 'a person of ordinary fortitude' could be expected to resist or yield to it. In *Conway* Woolf LJ called necessity other than duress by threats 'duress of circumstances'. In that case the circumstances were that a person accused of reckless driving was carrying a passenger whose life had been threatened. When two plain-clothes constables tried to stop the vehicle the accused thought they were would-be assassins and drove recklessly in order that his passenger might escape. *Held* Since the defence of duress or necessity is available where the acts charged were done to escape what from an objective standpoint was a genuine risk of death or serious injury to the accused or another it should have been left to the jury. (See also p 94 above).

Ordinary meaning (Code s 363)

The word 'necessary'

Despite the dictum of Dunn LJ in *R v Swan Hunter Shipbuilders Ltd* [1982] 1 All ER 264 at 272 (cited in Code pp 798-799) that 'necessary' is an ordinary

English word requiring no explanation or expansion when found in a statute, the House of Lords in *George v Devon County Council* [1988] 3 All ER 1002 at 1006 upheld the dictum of Lord Griffiths in *Re an inquiry under the Company Securities (Insider Dealing) Act 1985* [1988] AC 660 at 704; [1988] 1 All ER 203 at 209 that the word should be construed as meaning 'really needed'.

Archaisms (Code s 370)

Term becoming archaic

Where a term used in relation to a statutory procedure has become archaic since the statute was enacted, the procedure should if possible employ an alternative term in current use.

Shoulder notes to the Coroners Act 1887, Sch 2, which used the term 'misadventure' in relation to one possible cause of death, introduced this term into the field of coronership. Schedule 2 was revoked by the Coroner's Rules 1927, r 6. The only current reference to misadventure is in Note 4 to Form 22 (a form of inquisition) set out in the Coroners Rules 1984, Sch 4. This suggests that a finding as to cause of death may be in the words 'CD died as a result of an accident/misadventure'. In *R v Portsmouth Coroner, ex p Anderson* [1988] 2 All ER 604 at 608-609 Mann J said—

> 'The meaning of "misadventure", which is a word I suspect now little employed in ordinary speech, is in my view indistinguishable from that of "accident" . . . Coroners and their juries would be relieved of an unnecessary burden and verdicts on deaths occurring in similar circumstances could become consistent if the contrast between "accident" and "misadventure" is eliminated from consideration. In my judgment, "accident" is all that is requisite and the word "misadventure" which had an apparent vogue in 1887 should now be given its quietus . . .'

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

Cases of substantial correspondence

The House of Lords held in *Otter v Norman* [1988] 2 All ER 897 that a tenancy was not a protected tenancy within the meaning of the Rent Act 1977, s 7(1), which says that a tenancy is not a protected tenancy if the premises are bona fide let at a rent 'which includes payments in respect of board', where a daily continental breakfast (but no other meal) was provided by the landlord. The House upheld *Wilkes v Goodwin* [1923] 2 KB 86, where Bankes LJ said (at 93) that the test was satisfied by 'any amount of board . . . which is not ruled out by the application of the rule "de minimis non curat lex"' (as to which see Code s 348).

(See further p 196 above and the notes on pp 287 and 290 above respectively related to Code ss 256 and 348.)