SHORTER ARTICLES AND NOTES

THE SCOPE OF GUERNSEY’S AUTONOMY – A BRIEF REJOINDER

Jeffrey Jowell QC

In the previous issue of this Review, Richard Young writes clearly about the scope of Guernsey’s autonomy in law and practice.\[1\] Resting his conclusions very much on the authority of the Kilbrandon Report (The Royal Commission on the Constitution which was established in 1969 and reported in 1973)\[2\], Young contends that in practice Guernsey is virtually autonomous in respect of its domestic affairs, including taxation. According to Young, the UK has “paramount” legal power over Guernsey, but this power is tempered by a constitutional convention not to exercise the power over domestic matters. Young commends the “stability and success” of this de facto relationship.

In respect of international relations, however, Young submits that “. . . it is London that occupies the . . . cockpit”. Young agrees that it is “settled practice” that London will consult with its Crown Dependencies before entering an international agreement. In cases where such an agreement then requires the alteration of domestic legislation in order to conform with the new international obligation, the UK will request the Crown Dependencies so to legislate. Young contends (again following Kilbrandon, and much other authority) that if such legislation is not forthcoming, then the UK could themselves legislate for the Islands.

At a time when international law is encroaching increasingly upon matters formerly considered purely domestic (such as human rights, taxation and environmental control), the view put forward by Young could have severe consequences for the autonomy of the Crown Dependencies. For example, the United Kingdom has recently threatened to refuse Royal Assent to Jersey’s Finance Law\[3\] on the alleged ground that some of its provisions involved unfair tax competition, in contravention of recent declarations by bodies such as the OECD (a an international body, but one which possesses no binding executive authority). In the face of Jersey’s protests, that threat was, sensibly, withdrawn but it may signal a willingness to stretch the conclusions of Kilbrandon about the scope of the UK’s power over the Crown Dependencies in international matters to a point which seriously undermines their traditional autonomy in domestic matters.

Kilbrandon’s confidence in its bare assertions about the paramount power of the UK over the Channel Islands and the Isle of Man was by no means matched by its tentative attempts to identify the source of that power, or to delineate its reach. Its justification of the primacy of the UK’s power was ultimately based not on any legal source but upon a general notion of de facto control, coupled with the well known Dicean fallback of the sovereignty of Parliament.

Looking back at Kilbrandon from the perspective of the early twenty-first century, its approach is heavily dated. It reflects the attitudes and assumptions of an age now well past –
a post colonialist age, in which the sovereignty of Parliament was the only firm constitutional rule. Subsequent events have substantially altered the constitutional landscape – such as the UK’s accession to the European Community; the great advance of judicial review, the recent judicial endorsements of common law constitutional rights and, more recently still, the direct application of the principles contained in the European Human Convention of Human Rights through the provisions of the Human Rights Act 1998.

To look afresh at the relationship between the UK and the Crown dependencies we need an analysis that is based not upon the vague shibboleths of Kilbrandon’s mid-twentieth century but upon the much firmer democratic standards adhering in a modern “European liberal democracy”[4]. Such an analysis must start by seeking a justification for the UK-Crown dependency relationship that relies not merely upon a blunt notion of Parliamentary sovereignty but seeks also to apply other constitutional principles which now prevail. Secondly, the analysis must draw a distinction between those powers which inhere in the Crown and those which inhere in Parliament. Thirdly, in relation to international relations, it must give close consideration to the hierarchy of international and constitutional norms and to the obligations which they respectively engage.

These three issues shall now be considered in outline. Within the conventions of a brief rejoinder the issues will not be fully adumbrated and the arguments by no means teased out as far as I believe they could go. I shall apply my remarks to the UK-Jersey relationship in particular, of which I have more familiarity than those of the other Crown Dependencies[5], to which I assume they will apply in most respects.

**Constitutional principle**

To justify the “ultimate” or “paramount” power of the UK over the Channel Islands on the ground of Parliamentary sovereignty is by no means correct. In the late nineteenth century Dicey had elevated Parliamentary sovereignty to status of the primary (and indeed sole) constitutional rule (tempered only by the principle of the rule of law)[6]. But even Dicey had difficulty in invoking that doctrine to justify the ultimate power of the UK over the Channel Islands. He believed that an Act of Parliament intended to bind the Channel Islands would do so, whether registered in the Royal Court or not, *proprio vigore* (by its own force). Dicey thus invoked raw power, rather than principle, as the source of the primacy of the UK’s legislation over the Channel Islands. Kilbrandon rested the source upon “convenience”[7].

It is of course true that the UK-Islands relationship appears to rest upon UK dominance, under the structures that Young describes. This may appear at first sight to entrust the UK to act for the ultimate welfare of Islands’ residents. Looking deeper into the relationship, however, we see that the Islands have their own common law system, and are economically self-sufficient. The United Kingdom has never enacted laws for their domestic affairs without their consent. The Channel Islands are not and never have been a colonial possession or a conquered or ceded territory.

If raw power justifies the UK’s ultimate power over the Islands, then we are left with a gaping question as to why that power has not been exercised over so large an area of the polity and economy of the Islands. That question is normally answered by attributing the UK’s restraint to the existence of a constitutional convention. But the ultimate power, which is said to be legally open for use when required, and may lawfully trump the mere convention, is justified by the notion of Parliamentary sovereignty or supremacy. It is here
that the argument weakens. Parliamentary sovereignty is a constitutional precept that is
directed to a specific issue, namely, the division of power within branches of government
inside the UK. In particular, it justifies the supremacy of the elected legislature, Parliament,
over the Crown. The endorsement of Parliamentary sovereignty in the seventeenth century
shifted the locus of governmental power from the King (the repository of divine right) to
Parliament (the repository of the will of the people). In other words, Parliamentary
sovereignty is a democratic principle based not only upon a notion of where power lies, or
whether it will be implemented proprio vigore, but upon a principle of where power ought to
lie, namely, with the representatives of the people, rather than with an unelected monarch.

Seen in this light, it is clear that democratic principle, rather than force, fact or convenience,
does not justify the supremacy of the UK Parliament over the domestic affairs of the Islands.
On the contrary, democratic principle insists that the will of the UK Parliament should not
prevail over that of the Islands. This is because Island residents do not have any
representation in the UK Parliament and indeed have full representation in their own
legislatures. The phrase “no legislation without representation” is no mere catchword; it
embodies a fundamental tenet which requires, in the words of Article 3 of Protocol 1 of the
European Convention on Human Rights, the right to free elections “that will ensure the free
expression of the people in the choice of the legislature”. For the UK to thwart the
expression of a freely elected Island legislature, where no alternative means of political
representation of Jersey residents in the UK Parliament is provided, would, in the words of
the European Court of Human Rights “undermine one of the fundamental tools by which
effective political democracy can be maintained”.[9]

Until the late 1990s, it is unlikely that the UK courts would have engaged constitutional
principle as overriding the words of the sovereign UK Parliament, whose supremacy they
would conscientiously guard. Nowadays, however, foundational requirements of a democracy
(such as access to justice or freedom of expression) are explicitly recognised by the courts as
common law principles, and applied unless there is a clear duty to apply Parliament’s words,
clearly spoken.[10] The UK Human Rights Act firmly endorses this development. Under the
terms of that Act UK judges are bound to abide by and enforce Convention rights. Although
the courts may not actually strike down Parliamentary legislation that offends Convention
rights, they may issue a declaration of incompatibility with which it is likely that Parliament
will comply. These two factors dramatically alter our constitutional landscape. They starkly
contradict Young’s assumption that the “heady concept of unconstitutionality is alien to the
British Islands”[11]. They enliven the possibility that the courts would in future hold
unconstitutional – in common law or under the European Convention - any imposition of the
UK Parliament’s will upon the Islands in domestic matters without their consent.

Crown or Parliament?

Kilbrandon provided a list of matters in which the UK should be free to exercise its
“paramount powers” over the Islands[12]. It is strongly arguable that, in so far as these
categories are correct, they lie in the realm not of Parliament but the Crown. The broadest of
these categories, and the one most likely to permit interference with the Islands’ domestic
matters, concerns “the ultimate responsibility of the Crown for the good government of the
Islands”. Note that Kilbrandon specifically refers to this as a power of the Crown.

Kilbrandon, however, does not define with any accuracy the scope of this power for “good
government”, although he warns that the UK government and Parliament ought not lightly to
employ that power to “impose their will in the Islands merely on the grounds that they know better than the Islands what is good for them”. [13] It has been too often assumed that that power is equivalent to the power of the UK over conquered or ceded territories “to make such laws as appear necessary for the peace, order or good government of the territory”. That formulation has been held in a number of cases to “connote, in British constitutional language, the widest law-making powers appropriate to a sovereign”. [14]

As Young appreciates[15], and as the UK government now acknowledges[16], the power for the “good government” of the Islands is one that is narrower than that by far. It is the classic Crown prerogative to maintain the Queen’s peace in times of grave emergency or the breakdown of law and order[17]. Its scope to intervene in matters outside of that extreme situation is therefore strictly limited. If that is the case, as it surely is, it follows that the “strictly legal” powers generally of the UK over the Islands are restricted to those exercised under the diminishing scope of the Royal prerogative alone and do not attach to Parliament more generally.

**International agreements**

A well known prerogative of the Crown is to make international treaties. In Kilbrandon’s time no prerogative power could be challenged in the courts. That situation has now changed and the prerogative power is challengeable in the same manner and under the same grounds as any other governmental power, if justiciable[18].

Young’s contention that the UK government occupies the cockpit in respect of international relations is, with respect, questionable. The fact that the UK has entered into an international agreement (e.g. a tax treaty), the territorial scope of which was intended to extend to the Islands, may not ipso facto confer upon the UK a competence to impose obligations upon the Islands, contrary to the UK-Islands’ constitutional arrangements. The reason is straightforward, namely, that treaties in our “dualist” system are not self-executing. Irrespective of whether a treaty engages the UK’s international responsibility, its content can only form part of domestic law if an enabling Act of Parliament has been passed. Domestic law or practice in contravention of an international law obligation of this kind is therefore not ipso facto unlawful.[19] This is because, under our constitutional system, the executive should not be permitted to alter domestic law; this is a matter for Parliament.[20]

The point here is that, for a treaty obligation to prevail over domestic law (or constitutional arrangement), Parliament must transform that treaty into UK law. Even that fact may, however, not permit the statute to run to areas over which the UK has no legitimate control. Surely the UK, in enacting any legislation, whether in response to an international obligation or not, should always be subject to its domestic limitations in constitutional law? It is a well established principle, applied in many jurisdictions throughout the world, that international obligations are, rightly or wrongly, subject to domestic constitutional competence.[21] In that case, the UK’s power to bind the Islands to international obligations in the areas of their exclusive constitutional competence would be limited to matters to which the Islands had agreed to be bound.

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At the hearing of an appeal before the Superior Number in Cooper v Att. Gen.[22] counsel for the appellant criticised the conduct of the Crown Advocate for being too partisan in his presentation of the case before the Inferior Number. The Court rejected the criticism but Birt, Deputy Bailiff, sounded a cautionary note in stating -

“The Crown Advocate, on behalf of the Attorney General, is however fulfilling a quasi-judicial role. It is incumbent upon him to be measured in his language. Most importantly, there is a heavy duty upon him to be both fair and accurate. He must satisfy himself that he can justify any description or assertion which he makes and that it is a fair reflection of the case. However, within these bounds he is free to comment on the case in such manner as he thinks fit to assist in developing his conclusions.”

The Crown Advocate must therefore at all times be measured in his language and objective in approach. In that respect his duty is not very different from that of prosecuting counsel in England. But the Crown Advocate has additional responsibilities. At the sentencing of defendant he must move conclusions and recommend the appropriate disposal to the Court. Furthermore at sittings of the Samedi division he represents the Attorney General in all the functions of that important office. The Crown Advocate therefore speaks directly for the Attorney General who is the principal law officer of the Crown.

What then are the functions that the Crown Advocate performs on the Attorney’s behalf? The Royal Court sits every Friday morning (“the Friday court”) for public business, that is to say to deal with business with which the Attorney General, as partie publique[23], is concerned. Matters are listed on the agenda generally in order of precedence. First come matters emanating from the Crown, e.g. Orders-in-Council and communications from the office of the Lieutenant Governor. Next are matters concerning reports from the Court, e.g. public elections[24]; then comes the swearing-in of elected public officials, or representations concerning such officials, and the swearing-in of officials whose appointment carries an obligation to take an oath before the Royal Court. Next are miscellaneous matters where the Attorney General is a respondent to an application as a result of custom or statute[25], or has
an advisory or administrative function to perform, and licensing applications. Last on the list are criminal matters.

**Crown business**

The official channel of communication between the Crown and the Insular Authorities runs from the Lord Chancellor’s Department through the Lieutenant Governor to the Bailiff. It is through the official channel that Orders-in-Council and statutory instruments are transmitted for registration in the Royal Court. The Bailiff passes them down to the Crown Advocate so that the conclusions of the Attorney General may be heard. On the assumption that they reflect the grant of royal sanction to a law adopted by the States, or have otherwise been made after consultation with the Insular Authorities, the Crown Advocate will read out the first of the Orders-in-Council (if there is more than one) and will summarise the effect of any statutory instrument before moving “that they be registered and published in the usual way”. The conclusions of the Attorney General are important. If the Order-in-Council or statutory instrument infringed in any way the constitutional rights and privileges of the Island it would be the duty of the Attorney General, through the Crown Advocate, to move that registration be suspended, or that the matter be referred to the States for consideration.

The official channel of communication is also used to notify the Insular Authorities of the appointment of a consular official whose authority extends to the Island. No intervention is however required from the Crown Advocate. The Bailiff will simply announce the appointment which will be registered in the Rolls of the Court.

If the Lieutenant Governor has granted approval to the naturalisation of a foreign national as a British citizen, the papers will have been sent to the Crown Office. The only function of the Crown Advocate is to announce that the Attorney General has received from the office of the Lieutenant Governor an application for naturalisation by a foreign citizen and to pass up the papers. The individual is called forward. The Bailiff will then administer the oath of allegiance.

**Public elections**

The result of a public election is announced in Court by the returning officer who is usually a Jurat. The Crown Advocate will simply inform the Court that the Jurat in question has a report to make in connection with a public election. Occasionally however the Jurat will be sitting or otherwise unavailable, and the Crown Advocate will then give the report on the Jurat’s behalf. The time-honoured formula is to refer to the Connétable’s letter to the returning officer and to report that, in accordance with an Act of the Royal Court of a certain date, an assembly of electors was held in the parish in question on the given date. Only one candidate [if that be the case] was duly nominated, namely ----, and after the statutory period of time had elapsed, he was declared to have been duly elected to the office of centenier [or as the case may be]. If there had been an election, then the names of the candidates would of course be given and the number of votes cast for each at the election. The successful candidate is called forward by the Greffier, the Crown Advocate will customarily offer a few words of congratulation and move “Assermentez”, and the appropriate oath is administered by the Bailiff.

At this stage of proceedings in the Friday court the Court will also order a public election to be held. The Crown Advocate will state that the Attorney General has received a letter from
the Connétable of the parish in question[30] reporting that the term of office of centenier ---- [or his own term] has expired. The Crown Advocate moves that the Court order an election for centenier in the parish in question, fix the dates for the election should one prove necessary and for the swearing-in of the successful candidate, and nominate a Jurat as returning officer for the election[31]. The Greffier will have advised the Court of appropriate dates, and the order is then made.

**Swearings-in**

Numerous different oaths are administered to sundry public officers and officials at the Friday court. It is important to distinguish those public officers where the Crown Advocate moves that the oath be administered from those where no conclusions are appropriate. In the latter category fall officials of the Employment and Social Security Department, Income Tax Department, Customs and Excise Department and others[32] who are required by the various statutes under which they are appointed to take an oath (primarily of secrecy) before the Royal Court. The exercise of these functions is a matter for which neither the Royal Court, nor the Crown Office, has any responsibility. The power of appointment rests with the relevant committee or the States, and the only function of the Crown Advocate is to inform the Court that there are officials of the relevant department in court who are present to take the appropriate oath. He should not move that the oath be administered.[33]

The position is different in relation to the honorary offices of the public (including parochial) administration. The Royal Court, exercising a quasi-supervisory function on behalf of the Crown, will not administer an oath unless it is satisfied that the candidate is a fit and proper person to hold the office to which he has been elected. The Court thus looks, in the first instance, to the Crown Office for guidance. By moving that the oath be administered to a particular public officer, whether a Connétable or a Roads’ Inspector, the Crown Advocate is signifying that, in the view of the Attorney General, the public officer is a fit and proper person to act in that capacity[34] and that there is no incompatibility.

There is an obvious tension here between democratic accountability and the responsibility of the Court. Most public officers serving in an honorary capacity are elected to office. In relation to senators and deputies the fitness for office may generally be assumed from the electoral process. If however a disqualification for office[35] were found to exist between the election and the swearing-in, for example if the candidate were declared en désastre, it would be the duty of the Attorney General, through the Crown Advocate to bring that disqualification to the attention of the Court and to decline to move that the oath be administered.

In relation to connétables, notwithstanding that they sit ex officio in the States, the Court will be more assertive. A connétable exercises important policing functions on behalf of the Crown[36] and the Court will remove from office[37] or reprimand[38] a connétable in appropriate circumstances. The Court will also decline to administer the oath to a re-elected connétable until an incompatibility involving a directorship of a company owning licensed premises has been removed.[39] There are numerous instances of the court removing a centenier from office if found unfit. In Representation of Att. Gen. re Pearce[40] the Attorney General declined to move that the oath of centenier be administered to a candidate who had been re-elected despite being required to resign pursuant to the Honorary Police (Jersey) Regulations 1977. So far as the subordinate ranks of the honorary police and other
parochial officers are concerned, the supervisory function exercised by the Royal Court is a vital aspect of the integrity of the honorary system.

Occasionally, a person is elected to an honorary office which is incompatible with an office which he already holds. [41] The Crown Advocate should draw the incompatibility to the attention of the Court which will then put the individual to his election as to which office he wishes to renounce. Invariably he will renounce the office which he already holds and the Court will declare that office vacant and direct the connétable to take the necessary steps to find a replacement.

**Miscellaneous matters**

In this category fall petitions under the Legitimacy (Jersey) Law 1974, applications for the incorporation of an association or for the creation of a fidéicommis under the *Loi (1862) sur les teneures en fidéicommis et l’incorporation d’associations* and any other applications to which the Attorney General is customarily made a respondent. The function of the *partie publique* is to ensure that all statutory requirements have been fulfilled and to advise the Court on the merits of the relief being sought.

Applications for the confirmation of licences and for the registration of managers under the Licensing (Jersey) Law 1974 involve the Attorney General primarily in an administrative capacity. The function of the Crown Advocate is to ensure that the requisite consents for the confirmation of a licence exist[42] and that, in relation to the registration of managers, the observations of the connétable and, if appropriate, the decision of the Tourism Committee are relayed to the Court. The Crown Advocate is not obliged to offer *conclusions* on an application to register a manager of licensed premises. Any record of relevant convictions is however brought to the attention of the Court, without comment, for the Court’s consideration. The Attorney General has the right under Article 9 of the Law to refer a particular licence to the Licensing Assembly, but only so that the Assembly may decide whether the licence should be revoked or any other action taken. The Attorney does not offer *conclusions*.

**Criminal matters**

In the context of the criminal law the offering of *conclusions* on behalf of the Attorney General is the *raison d’être* of the Crown Advocate. But for the moving of *conclusions* any advocate could represent the Attorney General in criminal proceedings. What are the *conclusions*? They are the recommendation of the Attorney General to the Court as to what is the appropriate disposal in a particular case; they are in a sense a preliminary judgment. They should thus always be fair and proportionate. In arriving at this recommendation the Crown Advocate is required to weigh in the balance the aggravating and mitigating features of both the offence and the offender. It is not the duty of the Crown Advocate to be harsh and unyielding; but nor is it his duty to accept every point in mitigation at its highest. If he considers that mitigating factors propounded by the defence have in fact no substance, he has a duty to negate them[43] The Crown Advocate should not attempt to predict the decision of the Court and offer *conclusions* accordingly. Sometimes the choice between a custodial and a non-custodial option is finely balanced. In such circumstances the Crown Advocate should in general move for the custodial option leaving it to defence counsel to urge the alternative. It is the prerogative of the Court to temper justice with mercy. Above all however, the Crown Advocate should proceed in accordance with principle in determining the appropriate
sentence for which to move. That principle will often be shaped by guideline decisions of the Royal Court or Court of Appeal. Such decisions, if relevant to the case, should always be drawn to the attention of the Court. Decisions other than guideline decisions will rarely be helpful [44]. The presumption against custody is relation to young offenders mandated by statute should be borne in mind [45]. If moving for custody in relation to a young offender it is helpful to remind the Court not only of the statutory presumption but also of the Court’s duties to state in open court its reasons for imposing youth detention and to tell the offender that he will be liable to post-release supervision. [46]

In outlining the conclusions to the Court the Crown Advocate is entitled to make such observations *pro bono publico* on the nature and character of the offence and to criticise the conduct of the offender as he thinks fit. No-one else can speak for the victim. The criticism may be trenchant but it should be expressed with appropriate restraint and in moderate language; most importantly it should never be unfair[47]. Such comment should be balanced by reference to any mitigating factors before the Crown Advocate moves for sentence.

The conclusions will have been preceded by the Crown Advocate’s summary of the facts. A summary should be exactly that. The investigation need not be described blow by blow but only in sufficient detail to give an indication of the difficulties experienced by the police and the measure of co-operation offered by the defendant. In the case of an indictment containing a multiplicity of counts[48], it is not always necessary to give particulars of each offence; having given the detail of the principal offences, the remainder may be referred to in brief outline. The purpose of the summary is to give the Court a sufficient understanding of the offences and the offender to enable the Court to pass an appropriate sentence. As always in the criminal process, the hall-mark of a summary of facts should be fairness. The Crown Advocate should not refer to matters where the Attorney General has accepted a “not guilty” plea unless it is an absolutely necessary part of the background to the offences for which the defendant is being sentenced. The aim should be to provide a balanced account of all material facts whether they are favourable to the prosecution or to the defence.

*Common traps for the unwary*

The Crown Advocate should always be aware of the maximum penalty allowed by law for each count on the indictment or charge on the *billet*. If the legislature has recently increased that maximum, the Court should be made aware of the change. Plainly a sentence unauthorised by statute cannot be imposed. The Crown Advocate should not move for a custodial sentence where the statute provides only for a fine, e.g. the offence of driving without a licence[49]. Where the Crown Advocate moves for a fine with a custodial sentence in default of payment, the default sentence should be commensurate with the offence and should not in any case exceed the maximum permitted default sentence of twelve months’ imprisonment[50].

Following the coming into force of the Criminal Justice (Community Service Orders) (Jersey) Law 2001 on June 1st, 2001, the Court may now impose community service as a free-standing penalty without attaching it to a probation order as a condition. Like a probation order, however, community service is a consensual penalty and the defendant must have indicated a willingness to perform such service[51]. In view of article 3(5) of the Law the Crown Advocate should state the period of imprisonment or youth detention for which he would have moved if not moving for community service.
Where the Crown Advocate is moving for a custodial sentence following the breach of a probation order, the Court will want to know how much time, if any, was spent in custody on remand prior to the imposition of the probation order. Contrary to the general rule, by which time spent in custody on remand is deducted from the custodial sentence eventually imposed, no credit is given by the prison authorities for such time if it preceded the making of a probation order\(^5\)\. Nonetheless the sentencing court should take it into account and make such allowance for it as it thinks fit\(^6\)\. The Crown Advocate will also need to ensure that the Court is aware of the facts of the offences (whether dealt with in the Royal Court or the Magistrate’s Court) for which the offender was placed on probation.

The Crown Advocate should also consider whether the case is an appropriate one for the making of a compensation order\(^7\) or a forfeiture order depriving the offender of property used or intended to be used for the purposes of crime\(^8\)\. A power which is seldom used, but which may occasionally be appropriate, is the power to disqualify an offender for holding a driving licence where a vehicle is used for the purpose of an offence\(^9\)\. Consideration should of course always be given to the making of a confiscation order in cases of drug trafficking and other serious crime\(^10\)\.  

**Conclusion**

The office of the Crown Advocate is an office of honour. It is also an office which carries the heavy responsibility of ensuring that the Court is accurately and fully informed so that justice may be done. The Crown Advocate carries the bâton of the Attorney General and may therefore be regarded as a minister of justice. As Birt, Deputy Bailiff, stated in *Cooper v Att.Gen.*, he or she is “fulfilling a quasi-judicial rôle”\(^11\)\.  

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**CORPORATE INSOLVENCY – RECENT DEVELOPMENTS**

**Robin Dicker QC and Roxanne Ismail**

**Introduction**

There have been two recent important developments in cross-border insolvency. The first concerns the EU Regulation on Insolvency Proceedings and the second concerns the UNCITRAL model law. Neither applies, at present, directly to Jersey. Both will however have an impact on cross-border insolvency cases that affect Jersey.
We do not suggest that these developments provide a complete answer to the problems encountered in cross-border insolvency, but they represent an international effort to take a step in the right direction. The Brussels Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (1968) does not cover insolvency matters.

It is worthwhile starting by recalling three of the main problems that arose in cross-border insolvency cases during the last round of major collapses. They were-

(1) Ring fencing:- many jurisdictions, including France and in some respects the United States, ring fence assets in their own jurisdictions for the benefit of local creditors.

(2) Conflicts between jurisdictions:- there were countless examples of conflicts between jurisdictions. This was not surprising given the differences between the insolvency laws of commonwealth countries and civil law jurisdictions and the fact that both regard their insolvency laws as matters of public policy which require to be enforced.

(3) Lack of assistance:- the assistance which the English court was capable of giving administrators in foreign insolvency proceedings was in most cases very limited. Section 426 of the Insolvency Act 1986 did not apply to the United States, any European country or Japan. Administration orders, the main restructuring regime under English law, are not available in relation to any company which is incorporated outside England.

**The EU Regulation**

On May 29th, 2000 the EU Council adopted the Regulation on Insolvency Proceedings. It is important to note that this is a Regulation not a Convention so that it will be directly applicable in the European Union when it comes into force on May 31st, 2002.

As presently understood, the Regulation will not apply to insolvency proceedings in the Channel Islands. But the Regulation will impact on the Channel Islands in so far as those in the Channel Islands are doing business with people in the EU member states.

The Regulation provides for "main insolvency proceedings" and "secondary insolvency proceedings". Main insolvency proceedings are to be opened in the member state where "the centre of a debtor's main interest" is situated; the interpretation of that phrase is of course likely to be an issue. Secondary insolvency proceedings may be opened in another member state if the debtor possesses "an establishment" in that member state.

The main insolvency proceeding will be dominant. The effect of a secondary insolvency proceeding is restricted to the assets within the member state where it was opened. The Regulation provides for automatic recognition between member states of judgments relating to the opening and conduct of insolvency proceedings. It also provides for mandatory co-ordination and co-operation between the liquidators of the main and secondary insolvency proceedings.

The Regulation provides for the replacement of national private international law rules. Essentially, the law of the member state opening the main insolvency proceedings will apply, unless otherwise stated. There are important exceptions in relation to, for example, rights in


rem, set-off, payment systems and financial markets, retention of title claims, and existing lawsuits.

There is also an in-built difference in treatment between EU creditors and non-EU creditors; any creditor who has his habitual residence, domicile or registered office in a member state other than the member state which opened the main insolvency proceedings can lodge a claim in the main insolvency proceedings. The treatment of creditors based outside the EU will be governed by the law of the member state opening the proceedings.

If you are doing business with a person with substantial links to an EU member state do you know:

(a) in which jurisdiction(s) your counterparty will be amenable to insolvency proceedings?

(b) which assets would be amenable to the insolvency proceedings?

(c) which law would apply?

And should you impose disclosure requirements on the counterparty in relation to any change in its jurisdictional circumstances or location of its key assets?

The UNCITRAL model law

A second development which will profoundly alter the position is the UNCITRAL model law. This is a model law which it is intended should be adopted by individual jurisdictions. In this short piece it is possible to give only a very brief overview of the terms of the UNCITRAL model law which is divided into five chapters.

Chapter 1 deals with the scope of the model law. It applies where (a) assistance is sought in the home state by a foreign court or a foreign representative in connection with a foreign proceeding, (b) assistance is sought by the home state in a foreign state in connection with an insolvency proceeding, (c) there are concurrent proceedings, or (d) creditors of other interested persons in a foreign state have an interest in requesting the commencement of a proceeding in the home state.

Chapter 2 deals with the access of foreign representatives and creditors to courts in the home state. In short, a foreign representative is entitled to apply directly to a court in the home state and can commence insolvency proceedings under the law of the home state. Article 13 also provides, importantly, that foreign creditors have the same rights to commence or participate in insolvency proceedings as creditors in the home state and must be given equal notice of matters.

Chapter 3 deals with the recognition of a foreign proceeding and relief. This is one of the most important chapters. A foreign representative may apply to the court of the home state for recognition of the foreign proceeding in which he has been appointed. From the time of filing such application the court of the home state may grant the foreign representative urgent relief to stay execution or entrust the administration or realisation of all or part of the debtor's assets located in the home state to him. If the foreign proceeding is recognised as a foreign main proceeding, the commencement or continuation of individual actions against the debtor is stayed, execution against the debtor's assets is stayed and the right to transfer or dispose of
any of the debtor's assets is suspended. In addition, upon recognition of the foreign proceeding (whether as a main proceeding or not) the courts of the home state may grant any appropriate relief, including orders providing for the examination of witnesses or entrusting the administration or realisation of all or part of the debtor's assets located in the home state to the foreign representative.

Chapter 4 deals with co-operation with foreign courts and foreign representatives. Article 25 provides that in matters covered by the model law, the courts of the home state "shall co-operate to the maximum extent possible with foreign courts or foreign representatives". The courts of the home state are also entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

Chapter 5 deals with concurrent proceedings. After recognition of a foreign main proceeding, an insolvency proceeding under the laws of the home state may be commenced only if the debtor has assets in the state and the effect of those proceedings shall be restricted to the assets of the debtor that are located in the home state.

The present position in England is that section 14 of the Insolvency Act 2000 provides that the Secretary of State may by regulation make any provision which he considers necessary or expedient for the purposes of giving effect, with or without modifications, to the UNCITRAL model law. When implemented, the UNCITRAL model law will have a considerable impact on how cross-border insolvency cases are dealt with in England and elsewhere. It is something which all jurisdictions, including Jersey, should certainly consider adopting.

Robin Dicker QC is a barrister at 3–4 South Square, Gray’s Inn, London, WC1R 5HP, specialising in commercial, business and financial law, including banking, corporate restructuring and insolvency.

Roxanne Ismail is a barrister in the same set of chambers.

CASE SUMMARIES

ARBITRATION

STAY OF PROCEEDINGS

_Emans v Jumpertz and others_ Royal Ct: (Birt, Deputy Bailiff and Jurats Rumfitt and Allo) May 18th, 2001 unreported.

D.R. Wilson for the plaintiff; M.J. Thompson for certain defendants.

The plaintiff sued the defendants following his purported removal from a consultancy partnership in which he and the defendants were partners. Certain defendants applied to stay
the plaintiff’s action on the ground that clause 26 of the partnership agreement provided for arbitration of the disputed matter. They relied upon Article 6 of the Arbitration (Jersey) Law 1998, as amended, which provides in terms that if there is an arbitration agreement “in respect of any matter agreed to be referred” and legal proceedings have been commenced, the court shall stay the proceedings. The plaintiff contended that clause 26 was inconsistent with the preceding clause in the partnership agreement whereby the parties submitted to the exclusive jurisdiction of the court.

**Held**, granting the application,

that on the facts clause 26 of the partnership agreement constituted a valid arbitration agreement and that, applying Article 6 of the Law, the action would accordingly be stayed.

**STAY OF PROCEEDINGS**

*Makarenko v CIS Emerging Growth Ltd*. Royal Ct: (Birt, Deputy Bailiff and Jurats Le Breton and Georgelin) June 29th, 2001 unreported.

D.J. Benest for the plaintiff; J.P. Speck for the defendant.

On July 16th, 1997, the parties entered into a written brokerage agreement whereby the defendant agreed to provide advisory and brokerage services in connection with foreign securities. By Clause 8.2 of the agreement, the parties agreed that any dispute “arising out of, or in connection with” the agreement should be referred to arbitration, including any question of the agreement’s “existence validity or termination”.

The plaintiff subsequently instituted proceedings before the Royal Court seeking, *inter alia*, the rescission of the contract on the ground of alleged fraudulent misrepresentations made by the defendant’s agents.

The defendant applied pursuant to Article 6 of the Arbitration (Jersey) Law 1998 (as amended) (“the 1998 Law”) for a stay of the proceedings, on the ground that the matters in dispute should be referred to arbitration pursuant to the arbitration agreement.

This case also raised the issue as to the way in which the Court should exercise its discretion under Article 28(2) of the 1998 Law to refuse to order a stay, given the apparently mandatory wording of Article 6.

**Held**, ordering a stay,

(1) applying the dicta of Lords Wright and Porter in *Heyman v Darwins Ltd*[60], it was a matter of construction as to whether a relevant arbitration provision conferred jurisdiction upon an arbitrator to decide questions relating to the existence or validity of the contract in which it appeared, although clear words were required in order to confer such jurisdiction;

(2) the wording of the arbitration provision was sufficiently clear and unambiguous to confer jurisdiction on the arbitrator to determine the matters in dispute;

(3) in exercising a discretion to refuse to order a stay under Article 28(2), as the agreement was governed by English law the Court should apply principles derived from English cases
interpreting equivalent English legislation. These principles were as follows: first, there had to be a concrete and specific issue of fraud. Once that threshold had been crossed, a discretion arose as to whether to refuse a stay. Where the party against whom fraud was alleged opposed the stay, the Court should, almost as a matter of course, refuse a stay so that the party had the opportunity to clear his name in public. Where the party alleging the fraud opposed the stay, this would not normally be sufficient for the Court to refuse a stay;

(4) applying these principles, the Court declined to refuse a stay, as no concrete and specific issue of fraud was raised by the pleadings.

_Per curiam_: the Court also commented, _obiter_, that the general principles set out at paragraph (3) above were equally applicable in Jersey, save that the burden upon the person opposing a stay was somewhat higher than in Jersey.

The Court also reminded practitioners of a fundamental rule of pleading, namely that general allegations of fraud were not permitted; it was the duty of counsel not to enter a plea of fraud unless he or she had clear and sufficient evidence to support it.

**CIVIL PROCEDURE**

**COSTS**

_Gheewala v Compendium Trust Company Ltd. and others_ Royal Ct: (Birt, Deputy Bailiff) July 27th, 2001 unreported.

M.J. Thompson for the second and eighth defendants; G.S. Robinson for the plaintiff.

The second and eighth defendants (“the defendants”) appealed against an order of the Greffier Substitute taxing the costs which the Court of Appeal had ordered them to pay on the standard basis following the plaintiff’s successful appeal against a stay ordered by the Royal Court. The Greffier had made his order on the basis that he was obliged to act under the new costs’ system which came into force on June 1st, 1999 between the hearing before the Royal Court and that before the Court of Appeal. The result was that the costs before the Royal Court were taxed on a basis more favourable to the plaintiff (“the standard basis”) than that which obtained at the date of the hearing itself (“the taxed costs’ basis”). The defendants submitted that this was unfair and unreasonable and that Practice Direction 99/2, which laid down that all orders for costs made on or after June 1st, 1999 should be taxed on the new basis, was not binding on the Greffier. The plaintiff contended that the assessment of costs was often retrospective and that even under the old system costs were taxed at the rate prevailing at the time of the costs’ order even if that was greater than the rate which obtained at the time the work was done.

_Held_, allowing the defendants’ appeal, that

(1) the costs should be taxed on the standard basis as ordered by the Court of Appeal;

(2) Rule 9A (4) of the RCR 1992 provided that standard costs should be in a reasonable amount but that in exceptional circumstances the Greffier had a discretion to depart from Practice Direction 99/2 which laid down the basis of assessment of the reasonable amount;
(3) Such exceptional circumstances existed in this case and the costs before the Royal Court would as a matter of fairness be taxed on the scale in force at the time of the hearing before that Court.

DISMISSAL FOR WANT OF PROSECUTION

Kinsella v Lido Bay Hotel (Jersey) Ltd. Royal Ct: (Wheeler, Master) April 24th, 2001 unreported.

C.R. Deacon for the plaintiff; D. Gilbert for the defendant.

On March 23rd, 1995, the plaintiff issued an Order of Justice against the defendant claiming damages for personal injury. The Order of Justice was placed on the pending list on March 31st, 1995. No further procedural steps were taken thereafter.

On February 9th, 2001, the Master issued a circular giving notice of the intention of the Royal Court to consider dismissing the action pursuant to Rule 6/20 (1) of the RCR 1992. The plaintiff issued a summons seeking to avoid the dismissal of the action.

Held, refusing the application and dismissing the action,

(1) in the absence of any authority in Jersey as to how Rule 6/20(1) should be applied, the proper approach was to follow the principles which had been adopted in considering whether to strike out an action for want of prosecution, namely whether there had there been inordinate delay, whether the delay was inexcusable, and whether the delay gave rise to a substantial risk that it would not be possible to have a fair trial of the issues in the action, or was likely to cause serious prejudice to the defendant;

(2) “inordinate” delay meant delay that was materially longer than the time regarded by the profession as an acceptable period, applying the principles laid down at paragraph 25/L/5 of the 1999 Edition of the Supreme Court Practice. The delay in this case had been inordinate;

(3) no cogent or coherent evidence had been given by the plaintiff for the delay, and it was therefore regarded as inexcusable;

(4) in considering whether the delay gave rise to a substantial risk that it would not be possible to have a fair trial, or was likely to cause serious prejudice to the defendant, it was necessary to examine all the circumstances. In appropriate cases the Court was entitled to draw an inference that, by reason of the delay, serious prejudice would be caused as a result of the impairment of witnesses’ recollections: applying Shtun v Zalejska[61]. On balance, the Court was satisfied that the delay in this case would prevent a fair trial or cause prejudice the defendant;

(5) the facts of the case were sufficiently exceptional to justify the dismissal of the action, notwithstanding that the limitation period for the plaintiff’s claim in contract had not expired: applying Benest v Kendall[62];

(6) having regard to the plaintiff’s circumstances, and the defendant’s own general inactivity, the Court made no order for costs.


REINSTATEMENT OF ACTION

_Ebor SA v Incat Construction (Holdings) Ltd. and others_ Royal Ct: (Wheeler, Greffier Substitute) May 17th, 2001 unreported.

T.J. Le Cocq for the plaintiff; P.C. Sinel for the defendants.

In December 1992 the plaintiff issued an Order of Justice claiming that one of the defendants was in breach of an oral contract relating to the transfer of shares in the first defendant. Pleadings were exchanged and further and better particulars produced in July 1993. Thereafter all procedural activity in the action ceased. In June 1999, after the requisite 28 days’ notice had been given to the parties, the Court dismissed the action pursuant to Rule 6/20 (1) of the RCR 1992. In January 2001 the plaintiff issued a summons seeking to reinstate the action, contending that the Court had jurisdiction to do so by virtue of Rule 1/5 (1). That paragraph provides –

“The Court ….. may, on such terms as it ….. thinks just, by order extend or abridge the period within which a person is required or authorized by rules of Court, or by any judgment, order or direction, to do any act in any proceedings.”

_Held,_ dismissing the application, that Rule 1/5 did not confer jurisdiction on the Court to reinstate an action which had, by virtue of Rule 6/20 (1), been dismissed by a judicial act.

STAY OF PROCEEDINGS

_EMM Capricorn Trustees Ltd. v Compass Trustees Ltd. and another_ Royal Ct: (Birt, Deputy Bailiff and Jurats Quéree and Bullen) April 23rd, 2001 unreported.

S. Young for the plaintiff; D. Gilbert for the defendants.

The first defendant applied to the Court to stay allegations of breach of trust made against it. The trust deed in question included a clause which conferred exclusive jurisdiction on the Royal Court of Guernsey. The Court considered the approach it should take in the light of such a clause.

_Held,_ refusing to grant a stay, that -

the correct approach was that established for exclusive jurisdiction clauses in relation to contracts, but with the burden upon the plaintiff being less onerous than in relation to such cases. The principles to be applied were as follows:

(i) the Court was not bound to grant a stay but had a discretion whether to do so or not;

(ii) the starting position was that exclusive jurisdiction clauses meant what they said, and that there had to be good reason to depart from their effect;

(iii) the burden of showing that there was good reason not to grant a stay was on the plaintiff;

(iv) in exercising its discretion, the Court should take into account all the circumstances of the particular case including: in what country the evidence on the issues of fact was situated;
whether the law of the foreign court applied; and whether the defendants genuinely desired trial in the foreign country, or were only seeking procedural advantages.

**CONTRACT**

**DAMAGES**

*Channel Islands Knitwear Company Ltd. v Hotchkiss* CA: (Southwell, Smith and Carey JJA) May 3rd, 2001 unreported.

C.J. Dorey for the appellant; N.M. Santos-Costa for the respondent.

The respondent claimed damages against the appellant for injuries alleged to have been sustained in the course of her employment, on the ground that these had been caused by the appellant’s negligence. The appellant asserted that it had not been guilty of negligence and that, even if it had been, this was not causative of the respondent’s alleged injuries.

At the conclusion of the trial, the Royal Court found that it was not satisfied on the medical evidence that the respondent’s injury had been caused by her work, but was satisfied that it had been exacerbated by her work. The parties were therefore faced with a finding that had not been pleaded by the respondent.

The appellant appealed to the Court of Appeal, seeking an order that judgement be entered in favour of the appellant, or alternatively that there be a re-trial. The appellant also appealed against the quantum of damages awarded.

**Held,** reducing the quantum of damages awarded to the respondent,

(1) it was the duty of a Court at first instance to make clear findings of primary fact and of the inferences of secondary fact drawn from them, and to explain why such inferences had been drawn: *Coleman v Dunlop Ltd*[63]. The Royal Court had not complied with these propositions, and should have done so;

(2) the Court would not however substitute a verdict for the appellant, as to do so would not accord with any modern concept of justice: distinguishing *Pickford v ICI plc*[64]. Furthermore, the Court would not order a re-trial, on the basis that to do so would be expensive and impracticable;

(3) in failing to consider what the respondent’s position would have been but for the exacerbation of her condition, the Royal Court had made a fundamental error in its calculation of damages. The only way to deal justly with the issues that had arisen in this case was for the Court of Appeal itself to re-assess damages on an exacerbation basis.

**CRIMINAL LAW**

**DRUGS; SENTENCE**

A.D. Hoy for Rimmer; R. Juste for Lusk; S.E. Fitz for Bade; W.J. Bailhache Q.C., Attorney General, for the Crown.

The appeals of three appellants were considered together as each raised issues as to the sentencing guidelines in drug trafficking cases provided in *Campbell and others v Att.Gen.*[65] The Attorney General invited the Court to review the guidelines and submitted –

(1) that the rôle of the defendant in the relevant drug trafficking was a factor of minimal relevance in determining the starting point because every person was a link in the chain whether he was the organiser or a one-off courier, and every defendant tended to minimize his involvement;

(2) that the approach of the English Court in *R v Aranguren*[66] should be adopted so that in determining the weight of a drug for sentencing purposes it should be converted to the equivalent 100% purity weight in order that the capacity for “cutting” the drug could be taken into account;

(3) that the street value of a drug should no longer be taken into account;

(4) that the Court should establish more detailed starting points by reference to the weight of drugs sold in powder form.

**Held,**

(1) that the Court could not accept this submission which ran counter to the judgment in *Campbell*; the degree of harm to society caused by, and hence the culpability of the organiser was plainly greater than that of those at a lower level in the chain;

(2) that the courts in Jersey should not adopt the *Aranguren* approach and the degree of purity of the drug should not generally be taken into account, although if it was very high (75% or greater) then it might be appropriate to increase the starting point;

(3) that the street value was a factor of less importance than the amount of the drug, but should always be put in evidence;

(4) that the following table of bands should give guidance as to the appropriate starting point before any mitigating factors are taken into account:

<table>
<thead>
<tr>
<th>Weight in grams</th>
<th>Starting point in years of imprisonment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 20</td>
<td>7</td>
</tr>
<tr>
<td>20 – 50</td>
<td>8 – 10</td>
</tr>
<tr>
<td>50 – 100</td>
<td>9 – 11</td>
</tr>
<tr>
<td>100 – 250</td>
<td>10 – 13</td>
</tr>
<tr>
<td>250 – 400</td>
<td>11 – 14</td>
</tr>
</tbody>
</table>
CRIMINAL PROCEDURE

APPEALS


The appellant was sentenced to six months’ imprisonment by the Relief Magistrate for acting in a manner likely to cause a breach of the peace. He had been argumentative with the police and with another man after consuming alcohol. The appellant had a long history of offending, including breaching a non-molestation order obtained by his wife, was an alcoholic and was possibly suffering from a psychotic disorder. The Magistrate was influenced by a probation report which suggested that in prison psychiatric treatment and alcohol counselling would be available to him. The appellant contended that his sentence was excessive.

**Held,** allowing the appeal and substituting a four months’ probation order, that a disproportionate prison sentence should not be imposed with a view to ensuring treatment for an offender.

RECOMMENDATION FOR DEPORTATION

*Att.Gen. v Monteiro* Royal Ct: (Birt, Deputy Bailiff and Jurats Rumfitt and Allo) April 27th, 2001 unreported.

S.E. Fitz, Crown Advocate, for the Crown; D.Gilbert for the accused.

The accused pleaded guilty to drug trafficking offences and was sentenced to two years’ imprisonment. The Crown submitted that a recommendation for deportation should be made. Counsel for the accused resisted the recommendation on the grounds that the offences were not sufficiently serious and that his fiancée, with whom he had come to the Island in 1996 at the age of 27, and their child aged three were living in Jersey.

**Held,** applying *R v Nazari*[^67], that the test was whether having regard to all the personal circumstances of the accused, including the interests of his family, his continued presence in the Island was to Jersey’s detriment; applying that test, a recommendation for deportation would be made.

Note – the accused’s appeal was dismissed by the Superior Number on August 7th, 2001.

LIMITATION OF ACTIONS

AGREEMENT TO ADMIT LIABILITY

*Gallaher v Dauny* Royal Ct: (Birt, Deputy Bailiff and Jurats de Veulle and Georgelin) May 24th, 2001 unreported.

[^67]: Reference to a case number or legal citation.
D. Gilbert for the plaintiff; N.J. Chapman for the defendant.

On January 11th, 1997 the plaintiff was a passenger in a car when it was struck from behind by a car driven by the defendant. The defendant’s insurers subsequently wrote to the plaintiff’s solicitors stating that “it appears that our insured was responsible for the accident”. They later paid various items of special damage on a 100% basis but always asserting that payment was made without admission of liability. In December 1999 the claim was still extant because the plaintiff’s injuries had not settled down. The solicitors wrote to the insurers indicating an intention to issue proceedings “on a purely protective basis”. An Order of Justice was served on January 4th, 2000 but not tabled owing to an administrative error. It was subsequently re-served and tabled on February 4th, 2000 by which time the three years’ limitation period had expired. The plaintiff contended that the defendants had in correspondence and by conduct admitted liability and furthermore had waived prescription; she relied on English case-law[68] which establishes that once a defendant has agreed to accept liability he cannot thereafter plead prescription.

Held, striking out the action,

(1) that the defendant had by his conduct agreed to accept liability but;

(2) that by Jersey law it did not follow that prescription could not be pleaded and that there had been no agreement to waive the limitation period.

PLANNING LAW

APPEALS

Le Maistre v Planning and Environment Committee Royal Ct: (Bailhache, Bailiff and Jurats Le Ruez and Allo) July 25th, 2001 unreported.

D.J. Benest for the appellant; A.J. Belhomme for the Committee.

The appellant appealed against a decision of the Committee to refuse development permission for the construction of a bungalow on a small field in St. Mary. The Committee had based its decision on two factors, viz (i) that the medical condition of the appellant’s wife was not a special factor justifying the granting of permission, and (ii) that the field’s situation in the Agricultural Priority Zone created a presumption against development.

Held, allowing the appeal,

(1) that the personal circumstances of an applicant or a member of his family should rarely carry much weight and should never be determinative of an application; but

(2) that the presumption against non-agricultural development in the Agricultural Priority Zone was not a straitjacket and could be overridden by other compelling considerations; in this case the small size of the field and its unmarketability for agricultural purposes and the minimal adverse impact upon the character of the countryside in the vicinity were such considerations.
TORT

NEGLIGENCE

Eves v The Viscount Royal Ct: (Birt, Deputy Bailiff and Jurats Quérée and Georgelin) May 16th, 2001 unreported.

The plaintiff on his own behalf; P. de C. Mourant for the defendant.

The plaintiff claimed damages against the Viscount for the loss of certain items of property which had allegedly been misplaced in the course of the plaintiff’s eviction from his home in March 1996. Officers of the Viscount’s Department had supervised the removal of all items situated at the property. Those items were subsequently delivered to the plaintiff and his wife at their new address, or placed in temporary storage. The plaintiff’s wife had then been asked signed to sign a disclaimer in respect of the remaining items at the property, being items of supposed nominal value, authorising the Viscount to dispose of such property. She duly did so. The plaintiff subsequently claimed that various items that had belonged to him had been lost, and he instituted proceedings against the Viscount.

Held, awarding the plaintiff damages of £50,

(1) the Viscount owed a duty of care to the plaintiff and to his wife in relation to the carrying out of the eviction procedure, and was under a duty to account to them in damages for any items lost;

(2) the plaintiff had satisfied the Court that he was the owner of two of the items, namely two pictures, and was therefore entitled to claim damages in respect of those items. Damages would be awarded on the basis of market value: the plaintiff was not entitled to claim for sentimental value;

(3) in so far as concerned the other items claimed, the Court was not satisfied that these were owned by the plaintiff, but found that they belonged to the plaintiff’s wife. Any claim for damages on her part would have failed, because she had signed a disclaimer which was a legally binding document. The “cause” for the disclaimer was the avoidance of storage charges for items of nominal value, or their delivery to her new accommodation.

Per curiam: whilst the Court found that the Viscount’s officers had carried out their task in a proper and professional manner, the Court nonetheless invited the Viscount to review his practice in certain respects so as to prevent the difficulties that had been experienced in the present case from recurring in the future.

TRUSTS

VARIATION

In the matter of the Peter Hynd “H” Settlement Royal Ct: (Crill, Commissioner and Jurats Myles and Bullen) April 3rd, 2001 unreported.
R.G.S Fielding for the representor; N.F. Journeaux for the minor and unborn beneficiaries and for the trustee; M.H.D Taylor for the adult beneficiaries.

This case concerned an application under Article 43 of the Trusts (Jersey) Law 1984 to vary the terms of the Peter Hynd “H” Settlement. The purpose of the proposed variation was to enable the trustees to have a more flexible form of settlement, to allow them to plan how best legitimately to avoid taxation in the United Kingdom.

Held, that it was proper to make the order and variations sought. The Court applied dicta from In the Settlement of Douglas[69] to the effect that the avoidance, minimisation or deferral of taxation was capable of being a benefit and that the fact that such avoidance, minimisation or deferral was the principal object of the variation, was not a reason for the Court to refuse its consent, if satisfied that the arrangement was for the benefit of the person concerned.

SUMMARY OF LEGISLATION

1ST MAY 2001 - 31ST AUGUST 2001

1. LAWS ADOPTED BY THE STATES

(a) Powers of Arrest (Injunctions) (Amendment) (Jersey) Law 2001 (P.88/2001 - adopted 3.7.2001)

This Law extends the categories of injunction to which the Powers of Arrest (Injunctions) (Jersey) Law 1998 applies to injunctions containing a provision, in whatever terms, restraining a person from taking out of the Island a person who has not attained the age of majority.

(b) Companies (Amendment No. 6) (Jersey) Law 2001 (P.84/2001 - adopted 17.7.2001)

This Law amends the Companies (Jersey) Law 1991 (“the principal Law”) so as to provide for -

(i) a wider range of options for persons who wish to form companies in the Island;

(ii) two or more companies to be able to merge and continue as a single company;

(iii) an overseas body corporate to apply to the Jersey Financial Services Commission for a certificate to continue as a company incorporated in the Island under the principal Law, and for a company incorporated in the Island, if authorized by the Commission to do so, to apply to the appropriate authority in an overseas country to continue as a body incorporated under the laws of that country.
The Law also makes various other amendments to existing provisions of the principal Law.

(c) Customary Law Amendment (Amendment) (Jersey) Law 2001 (P.98/2001 - adopted 24.7.2001)

This Law amends the Customary Law Amendment (Jersey) Law 1948 to provide for a cause of action to survive the death of a person, either for the benefit of, or against, that person’s estate.


This Loi removes a reference to penal servitude and to hard labour in Article 4 of the Loi (1884) sur les matières explosives.

(e) Marriage and Civil Status (Jersey) Law 2001 (P.89/2001 - adopted 24.7.2001)

This Law repeals and replaces the Loi (1842) sur l’Etat Civil with new provisions for the registration of births, marriages and deaths.

(f) Telecommunications (Jersey) Law 2001 (P.103/2001 - adopted 31.7.2001)

This Law abolishes the exclusive privilege of the States in telecommunications, makes new provision about telecommunications that concern Jersey, enables the staff, assets and liabilities of the Telecommunications Board to be transferred to one or more companies and empowers the Jersey Competition Regulatory Authority to license any such company and other operators with respect to telecommunications that concern Jersey.

(g) Standard Chartered Bank (CI) Limited (Jersey) Law 2001 (P.111/2001 - adopted 31.7.2001)

This Law carries into effect the acquisition of the undertaking of Standard Chartered Grindlays Bank (Jersey) Limited by Standard Chartered Bank (CI) Limited.

2. LAWS, ORDERS IN COUNCIL, ETC., REGISTERED IN THE ROYAL COURT

(a) Loi (2001) concernant la Police Honorifique de St. Laurent
   (L.17/2001 - registered 4.5.2001. In force - on registration)

(b) Loi (2001) concernant la Police Honorifique de la Trinité
   (L.18/2001 - registered 4.5.2001. In force - on registration)

(c) Finance (Jersey) Law 2001

(d) Shops (Sunday Trading) (Amendment No. 4) (Jersey) Law 2001

(e) Aerodromes (Administration) (Amendment No. 4) (Jersey) Law 2001
(f) Criminal Justice (International Co-operation) (Jersey) Law 2001  
(L.22/2001 - registered 10.8.2001. In force - day or days to be appointed)

(g) Airport Dues (Amendment No. 4) (Jersey) Law 2001  

3. APPOINTED DAY ACTS

(a) Royal Bank of Canada (Jersey) Law 2000 (Appointed Day) Act 2001  
(R & O 107/2001)  
Day appointed for transfer of undertaking - 1.8.2001)

(b) Adoption (Amendment No. 4) (Jersey) Law 1999 (Appointed Day) Act 2001  
(R & O 112/2001)  

4. REGULATIONS MADE BY THE STATES

(a) Costs in Criminal Cases (Witnesses Allowances) (Amendment No. 5) (Jersey) Regulations 2001  
(R & O 103/2001 - in force 5.7.2001)  
These Regulations increase the allowances payable out of public funds to persons attending at court to give evidence in criminal cases.

(b) Gambling (Channel Islands Lottery) (Amendment No. 4) (Jersey) Regulations 2001  
(R & O 114/2001 - in force 2.8.2001)  
These Regulations enable the Gambling Control Committee, acting jointly with the States of Guernsey Gambling Control Committee, to issue separate lottery scratch cards (i.e. not in conjunction with public lottery draws).

(c) Motor Traffic (No. 7) (Jersey) Regulations 2001  
(R & O 115/2001 - in force 5.8.2001)  
These Regulations amend the Motor Traffic (Jersey) Law 1935 (“the principal Law”) to the following effect -

(i) on considering an application for a road service licence or for the variation of a condition of such a licence, the Public Services Committee may grant the application either on the terms sought by the applicant or on such other terms as the Committee thinks fit;

(ii) the Committee’s discretion whether to grant a licence or variation (and, if it does, as to the terms on which it should do so) will continue to be subject to its duty to consider the matters set out in Article 23(2) of the principal Law when dealing with an application, but, in having regard to those considerations, the Committee is also required to take into account relevant traffic and transportation policies and plans of the States.

5. OTHER SUBORDINATE LEGISLATION OF NOTE
(a) *The Liberia United Nations Sanctions (Channel Islands) Order 2001*  
(R & O 99/2001 - in force 16.3.2001)

This Order makes provision to give effect to a decision of the Security Council of the United Nations in Resolution 1343 of 7th March 2001. The Order restricts the delivery or supply of arms or related *matériel* and the provision of technical assistance and training to Liberia.

(b) *The Afghanistan (United Nations) (Channel Islands) (Amendment) (Jersey) Order 2001*  
(R & O 120/2001 - in force 20.7.2001)

This Order amends the Afghanistan (United Nations) (Channel Islands) Order 2001 (R & O 39/2001) to extend the financial sanctions regime imposed against the Taliban.

(c) *Education (Discretionary Grants) (Jersey) Order 2001*  
(R & O 121/2001 - in force 1.9.2001)

This Order specifies, in relation to the discretionary award of grants and allowances by the Education Committee for courses of higher, vocational and further education, when a student will be eligible to be considered for a discretionary award and the maximum amount that may be awarded by the Committee in any case.

INTERNATIONAL CONVENTIONS AND AGREEMENTS

EUROPEAN DIRECTIVES

PART 1: NEW ISSUES REFERRED TO THE INSULAR AUTHORITIES BETWEEN 1ST OCTOBER 2000 AND 31ST MARCH 2001

1. *International Labour Organisation*

A. The Island is party to a number of Conventions under the auspices of the International Labour Organisation. During this reporting period, the Island was not required to submit any Convention reports.

B. The Insular Authorities were asked whether they wished ILO Convention 111: Discrimination in Respect of Employment and Occupation, to be ratified on the Island’s behalf.

After consideration, the Insular Authorities declined extension. Whilst the Insular Authorities are sympathetic to, and supportive of the principles which underlie Convention 111, the
Island did not feel it was yet in a position to request that the Convention be extended. The Island continues to develop legislation concerning discrimination and employment issues, but until such legislation is in place, the Insular Authorities did not wish to have the Convention extended.

2. Council of Europe Convention on Cyber-Crime

Purpose: To enable international mutual assistance to be provided in the investigation and prosecution of crimes committed with the help of or entirely by computer (e.g. computer-related forgery and fraud, and offences related to child pornography).

Action: As the Convention is still in draft form, the Insular Authorities have not been asked to decide whether it should be extended, but Article 35 of the draft provides scope for the Convention to be extended in the future if the Island so chooses.

The Insular Authorities have indicated support for the initiative and have asked to be kept informed of Convention developments as well as of the proposed UK legislation.


Purpose: To eliminate inconsistencies among States that are frequently exploited by multinational criminal groups. Specific issues include combating money laundering, mafia activity and the growth in sexual slavery, illegal smuggling of migrants and trafficking of women and children.

Action: At the time of consultation the United Kingdom had not signed the Convention which is now under consideration by the Insular Authorities.

4. European Vehicle and Driving Licence Information System Treaty - (EUCARIS)

Purpose: To ensure the accuracy of member states’ central vehicle and driving licence registers and to prevent vehicle related crime by the electronic exchange of information.

Action: The Insular Authorities have been sent a copy of the Convention for consideration and are in discussion with the Lord Chancellor’s Department as to its territorial scope.

5. United Kingdom/Romania Agreement

Purpose: To improve co-operation between the United Kingdom and Romania with regard to the prevention and combating of illegal cross-border migration, and to facilitate the expulsion of persons whose entry or residence in their territories is illegal.

Action: The Insular Authorities have asked that the proposed Agreement with Romania which is currently under consideration be capable of extension to the Island.

6. Agreement on the Conservation of Bats in Europe (EUROBATS) - Amendment to the Agreement

Purpose: To protect migratory species of wild animals.
Action: The Insular Authorities have agreed that the proposed amended EUROBATS Agreement should be extended to the Island.

7. Convention on Customs Treatment of Pool Containers

Purpose: To provide potential opportunities for improved efficiency in the use of containers in all forms of international transport. The Convention defines and updates the conditions under which containers are utilised and circulated around the world trading system.

Action: The Insular Authorities were first asked if they wished the Convention to be extended in 1997, and had at that time replied in the affirmative. Since the Convention is expected to come into force in 2001, once the European Community has ratified it, the Insular Authorities were asked to confirm that they wished to included in the United Kingdom’s ratification.

The Insular Authorities confirmed that the Island would wish to be included in the ratification of the Convention.

8. European Convention on Mutual Legal Assistance and Co-Operation between Customs Administrators (Naples II)

Purpose: To provide for enhanced administrative co-operation in relation to customs offences and for special forms of cross-border co-operation.

Action: The Insular Authorities are considering whether to seek extension of the United Kingdom’s ratification.

9. Convention on Biological Diversity

Purpose: To ensure the maintenance of the variety of life forms for present and future generations.

Action: The Island was included in the United Kingdom’s ratification in September 1994. The Insular Authorities were asked to comment on the 2000 United Kingdom Report to the Convention on Biological Diversity (CBD). At the request of the Insular Authorities, an exploratory meeting with the Department of the Environment, Transport and Regions (DETR) was held. The Insular Authorities had no additional comments to make on the United Kingdom Report.

PART TWO: OUTSTANDING MATTERS WHICH REMAIN UNDER CONSIDERATION

1. International Plant Protection Convention (IPPC) Revised

Purpose: To secure common and effective action to prevent the spread and introduction of pests of plants and plant products, and to promote appropriate means for their control.

Action: The United Kingdom’s ratification of the original Convention was extended to the Island in 1982. The Convention was revised in 1997 to reflect responsibilities
arising under the World Trade Organisation’s Sanitary and Phytosanitary Agreement (SPS)

The Island has confirmed its acceptance of the IPPC 1997 revised text, but the United Kingdom has informed the Insular Authorities that ratification is unlikely to occur in the near future.


Purpose: To provide effective mechanisms for dealing with cases of cross-border insolvency in order to promote greater legal certainty for trade and investment; to bring about fair and efficient administration of such insolvencies; to protect the interests of all creditors and other interested parties; to protect and maximise the value of the debtor’s assets; to facilitate the rescue of financially troubled businesses; and to bring about co-operation between courts and other competent authorities involved in insolvencies which have an international dimension.

Action: In June 1997 the Insular Authorities had stated that there was no reason why the Island should not in due course give consideration to the enactment of domestic legislation which would go towards achieving the goals which had been set out in the draft UNCITRAL Model Legislative Provisions.

In October 2000 the United Kingdom updated the Insular Authorities, declaring that it had not yet signed the Convention but would be sending a consultation and cost compliance document to the Island as soon as it was made available.


Purpose: To limit and control the movement of hazardous and other wastes between countries and provide assistance to developing countries with the movements of such waste.

Action: The Insular Authorities were asked what progress had been made with the preparation of new legislation for the purpose of enabling the extension of the Convention to the Island. The Insular Authorities reported that two sessions with the consultant had been held since August 2000, and the final draft of the Law was being prepared. The Insular Authorities envisage having legislation in place during 2002.

4. International Convention on Oil Pollution Preparedness, Response and Co-Operation (OPRC)

Purpose: To prepare for, respond to and co-operate in oil pollution incidents.

Action: The Insular Authorities were asked about the draft Merchant Shipping (Jersey) Law which will implement the Convention. The Law has been drafted and will be brought to the States in due course.

5. Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)

Purpose: To provide a modern system for the protection of intellectual property rights.
The Insular Authorities were asked what steps had been taken to enact appropriate legislation on intellectual property so that the TRIPS Agreement may be extended to the Island.

The Insular Authorities have replied that the Industries Committee has established a working group which is responsible for handling consultation on the draft legislation, both within and outside the Island. This has included consultations with the United Kingdom Patent Office on the draft Copyright (Jersey) Law. A number of changes to the draft Law are to be incorporated in a final draft, which is under consideration.

PART THREE: MATTERS RECENTLY RESOLVED

1. Convention on Wetlands of International Importance (RAMSAR)

Purpose: To achieve sustainable development throughout the world by the conservation and wise use of wetlands.

Action: The Insular Authorities formally submitted a request for the designation of the foreshore of the south-east coast of Jersey as a designated wetland site as agreed by the States in November, 1999. The Planning and Environment Committee was named as the lead agency for the implementation of Ramsar.

The Insular Authorities received formal confirmation that the site was designated as a Ramsar wetland of international importance on November 10th, 2000.


Purpose: To tackle the issue of global terrorism by the financing of terrorist activity.

Action: The United Kingdom ratified the Convention on March 7th, 2001, and has confirmed that the terms of the Convention allow for the United Kingdom’s ratification to be extended to the Island.

3. United Kingdom/Japan Double Contributions Convention

Purpose: Exchange of diplomatic notes for reciprocal Contributions Convention.

Action: Diplomatic Notes were exchanged between the United Kingdom and Japan, and the Agreement came into force on February 1st, 2001. This followed the adoption by the States of the Social Security (Reciprocal Agreement with Japan) (Jersey) Act 2000 (R & O 82/2000), which enabled implementation of the Convention.

4. UK/Australia Social Security Agreement

Purpose: A bilateral Social Security Agreement between Australia and the United Kingdom, which included Jersey.

Action: The Insular Authorities were notified that the Australian Government gave the United Kingdom notice that it intended to terminate the Social Security Agreement on March 1st, 2001. This will ipso facto terminate the bilateral arrangements between Jersey and Australia. Negotiations are continuing with a view to the signature of a new Jersey/Australia Social Security Agreement.
LETTER TO THE EDITOR

Dear Sir,

ANNULMENT OF LEASES

Both long and short leases commonly include clauses designed, for example, to render a debtor’s lease annulled in the event of the debtor’s insolvency. The question arises whether such a clause would be effective against the Viscount in a désastre (say, where the rent is paid up and he hopes otherwise to be able to effect an assignment for value) having regard to the fact that, in principle, la convention fait la loi des parties - persons are free to contract on whatever basis they see fit.

There are a variety of matters to which regard must be had in this regard. A long lease can be formally cancelled only by Act of the Royal Court and a short lease arguably so (at least where a claimed right of cancellation is disputed); indeed, most such clauses are, on their face, executory in the sense that judicial (i.e. public) determination of the agreement is anticipated; each such clause falls to be construed distinctively; when considering applications for cancellation the Court has long exercised a discretion which provides relief for a lessee whose breach, in conscience, should not lead to forfeiture - this has been extended to take into account the fact, and effect, of a lessee’s declaration en désastre; and for the future the protection given by Article 1 of Protocol 1 of the European Convention on Human Rights will need to be considered. Taking all such considerations into account the conclusion, we respectfully suggest, is that, in appropriate circumstances, the Royal Court will be reluctant to adopt a course which allows the adverse consequences to creditors in a désastre to be outweighed by bare contractual rights vesting in a landlord. Should this reason be accepted, a similar situation would of course apply in a creditors’ winding up. See: Representation of Seale Street Developments Limited[70]; Representation of David Henry Chapman[71]; Seale Street Developments Limited v Chapman[72]; cf Re Atlantic Computer Systems Plc[73].

Yours faithfully

Anthony Dessain,            Michael Wilkins,
26, New Street,             Morier House,
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POSTSCRIPT

In 1984, a Jersey advocate took his last case on the tour de rôle. It concerned a dispute over paternity. His client, the mother, sought maintenance for a second illegitimate child. The
defendant admitted knowing the lady, but not in the biblical sense. Her hospitality had been warm, but limited to the provision of food. On the occasions when the defendant had dined, he had, it seemed, been allowed to use the sofa in the living room to pass the night. He had, however, on his account never slept with the plaintiff.

When taking instructions from the plaintiff, the advocate invited her to provide evidence of any distinguishing marks on the defendant’s body which might have been discovered only in intimate circumstances. The plaintiff volunteered the information that the defendant’s back was covered in freckles. The advocate objected that such marks could have been spied while the dinner guest slept on the sofa. Something better was called for; for example, was the man circumcised? Though the client was slow to understand, the significance of the question was revealed to her by two freehand pencil sketches. She concluded that the defendant was indeed circumcised.

Later, in court, during cross-examination, the defendant denied the loss of his foreskin. He was thereupon invited by counsel to remove his trousers and show the court the truth of the matter. The witness appeared paralysed at the prospect. He made no movement, even when the invitation was repeated. After a pause, the advocate ostentatiously consulted his watch. It was then half an hour after noon: perhaps the moment for an adjournment. The Court readily agreed and adjourned until after lunch to enable the defendant to consider his position.

When the proceedings were resumed the defendant, by then visibly shaken, again took the witness stand. Counsel suggested that the removal of trousers might not in the event be necessary if the defendant were first to address some related questions. The following exchange ensued:

Advocate: “You do, Mr E, I take it, have a penis?”

Witness: “Yes Sir”.

Advocate: “Your penis does, I take it, when you are not in drink, sometimes become erect. Is this the case?”

Witness: “Yes Sir”.

Advocate: “Suppose that you were in such a condition, could it be that the plaintiff might well have thought you to have been circumcised?”

Witness: “She could”.

Advocate: “Thank you Mr E. No further questions Sir”.

Paternity was found to be proved and judgement given for the plaintiff. Unfortunately the following day it was reported that the defendant had left the Island, presumably “sans esprit de retour”.
The scope of Guernsey’s autonomy in law and practice


[5] Through recent advice to the Attorney General of Jersey on the constitutional relationship between the UK and Jersey. Although there are historical differences between Jersey and Guernsey on the one hand and the Isle of Man on the other, for the purpose of this article the term “Islands” will refer to the Channel Islands and the Isle of Man


[7] Ibid., note 2 above, para.1469 et seq

[8] See also Article 21 of the Universal Declaration of Human Rights (the right to take part in the government of one’s country) and Article 25 of the International Covenant of Civil and Political Rights (the right to vote)


[11] Ibid., note 1 above, p.130

[12] At para. 1499 et seq

[13] Ibid., para.1502


[15] Young, note 1 above, at p.132


[18] *Council for the Civil Service Unions v Minister for the Civil Service* [1985] A.C. 374

[19] Different criteria may of course apply in respect of customary international law, which is still narrow in scope

See e.g. the recent decision of the United States Supreme Court, *Breard v Greere*, 118 S.Ct. 1352 (1998)

2001 JLR N-2; January 10th, 2001 unreported; noted at [2001] 5 JL Review 191

See *Le Cocq v Att.Gen.* 1991 JLR 169 at 193 *et seq* where Tomes, Deputy Bailiff, considers the meaning of the phrase.

A “public election” is defined by article 1 of the *Loi (1897) sur les élections publiques* as an election for senator, deputy, *connétable* or *centenier*.

*E.g.* under the Legitimacy (Jersey) Law 1974

“The Insular Authorities” is an expression, like “the Crown”, which is not without ambiguity. Generally it means “the States” but sometimes the States Assembly has devolved authority, by custom and practice, to one of its committees (often the Policy & Resources Committee), to its President (the Bailiff), or to its legal adviser (the Attorney General).

Responsibility on behalf of the Crown for relations between the United Kingdom and the Crown Dependencies was transferred from the Home Office to the LCD in June 2001. The Lord Chancellor exercises this formal responsibility as a Privy Councillor and not by virtue of his ancient office.

Such diplomatic appointments are an instance where the Attorney General is authorised to convey, through the Bailiff, the approval of the Insular Authorities to the consular official’s acting within the Bailiwick. The Attorney General will have caused inquiries to be made as to the character and antecedents of the proposed appointee before signifying his approval.

Article 4 of the *Loi (1897) sur les élections publiques* requires that a meeting of electors shall last for at least 20 minutes, thus ensuring that any persons desiring to be nominated can be duly proposed.

If the vacancy is for a senator or deputy the letter to the Attorney General will have emanated from the Bailiff whose duty it is to notify the existence of a casual vacancy. See article 14 of States of Jersey Law 1966.

If the vacancy is for senator, returning officers will of course be required for each constituency in the Island.

The second interim report of the Jersey Judicial and Legal Services Review Committee chaired by Sir Godfray Le Quesne QC (RC24/1990) expressed some surprise at the number of such officials and recommended that some at least should take their oath elsewhere. That recommendation has not been implemented and indeed the list has subsequently expanded; *e.g.* commissioners appointed pursuant to the Financial Services Commission (Jersey) Law 1998

The only exceptions are officers of the States of Jersey Police appointed pursuant to the Police Force (Jersey) Law 1974. Although the Chief Officer is appointed by the States, and
other officers by the Home Affairs Committee, police officers hold office under the Crown. It is customary therefore for the Crown Advocate to move that the oath be administered.

[34] The Law Officers obviously rely for advice in this connection largely upon the Connétable of the relevant parish. In relation to honorary police officers statutory provision is likely to be proposed by the Home Affairs Committee. See report on P67/2001 presented to the States on May 29th, 2001

[35] See articles 8 and 9 of States of Jersey Law 1966

[36] The bâtons de justice formerly used by connétables and centeniers as symbols of their authority were surmounted by a crown

[37] In re Constable of St John 1994 JLR N-11; July 14th, 1994 unreported

[38] In re the Constable of St. Helier 2001 JLR N-13; [2001] 5 JL Review 208

[39] In re Clarke 1989 JLR N-9; May 8th and June 5th, 1989 unreported.

[40] Subsequently reported at 1987-88 JLR 109 in relation to a different issue

[41] A full list of officers which have been found by the Court to be mutually incompatible is beyond the scope of this note. But, e.g. the office of centenier is incompatible with that of procureur du bien public. The connétable has a duty to draw the Attorney General’s attention to a possible incompatibility.

[42] See article 8 of Licensing (Jersey) Law 1974


[45] Article 4 of Criminal Justice (Young Offenders) (Jersey) Law 1994 provides that youth detention should not be imposed unless no other method of dealing with the offender is appropriate.

[46] See articles 4 and 10 of Criminal Justice (Young Offenders) (Jersey) Law 1994

[47] Cooper v Att.Gen.; see footnote 1

[48] Such indictments should now be rare following the enactment of the Criminal Procedure (Taking offences into consideration ) (Jersey) Rules 2000 R&O 156/2000

[49] For this and other minor road traffic offences the maximum penalty is a fine on level 2 of the standard scale, i.e. £500

[50] Article 4 of the Criminal Justice (Jersey) Law 1957

[51] Article 3 of the Criminal Justice (Community Service Orders) (Jersey) Law 2001
[52] Criminal Proceedings (Computation of Sentences) (Jersey) Rules 1968


[54] Criminal Justice (Compensation Orders) (Jersey) Law 1994

[55] Criminal Justice (Forfeiture Orders) (Jersey) Law 2001

[56] Driving Disqualification (Non-Motoring Offences) (Jersey) Law 1979

[57] Drug Trafficking Offences (Jersey) Law 1986; Proceeds of Crime (Jersey) Law 1999

[58] See footnote 1; January 10th, 2001 unreported at para 17

[59] No 1346/2000

[60] [1942] 1 All ER 337

[61] [1996] 1 W.L.R. 1270; [1996] 3 All ER 411

[62] February 24th, 1992 unreported

[63] [1998] PIQR 398

[64] [1998] 2 All ER 462

[65] 1995 JLR 136

[66] [1994] 99 Cr. App. R 347

[67] [1980] 3 All ER 880

[68] *Cohen v Snelling* [1943] 2 All ER 577; *Wright v Bagnall (John) and Sons Ltd* [1900] 2 QB 240

[69] 2000 JLR 73

[70] September 3rd, 1992 unreported

[71] November 17th, 1992 unreported

[72] 1992 JLR 243

[73] [1992] Ch 505