

University of London: Diploma/LLB CLRI Class

Professor Wayne Morrison

First guest class 2009-10 session.

Lecture Topic: How to succeed on the CLRI course.

This lecture will reflect on the use of the London materials, the learning objectives, the link between learning OBJECTIVES, MATERIALS, ACTIVITIES AND THE ASSESSMENT. Examples of mistakes from examination papers will be given

Reading: CLRI subject guide Chapter 1. The lecture will assume you have read the guide **Studying Law with the University of London**.

You are also required to read: *The Politics of the Common Law* (Gearey, Morrison and Jago) Chapter 2. "Recording law's experience: features of the 'case'."

Learning objectives.

At the end of this session and reading the material distributed you should:

- 1. have a reasonable appreciation of the nature of the London LLB degree, the history and operation of the External Programme and the academic organisation of the Law Programme at London University**
- 2. be familiar with the academic progression of the degree, the standards expected to pass the examinations**
- 3. understand the role of the subject guides and appreciate how they fit with the providers courses**
- 4. have worked on one activity that is representative of the type of learning activity internal students undertake**
- 5. have thought on the nature of law's experience in building up case law.**

Activity: I set out an exercise: the answers to the questions are not matters of doctrine but can be found by close reading of the texts. This is a basic introductory exercise and demands no prior knowledge of law.

This is the sort of exercises that internal students do in the first few weeks of their study. Internally we would estimate that each exercise would take a student perhaps three hours to complete

You are to produce written answers to each question and sub-question: please bring these to the tutorial to be held with me.

Exercise 1: Reading Legislation and Reconstructing Legal Reasoning Concerning Statutory Interpretation from Actual Judgements

Read in full the attached materials:

Guard Dogs Act 1975, 1975 c.50, Statutory Instruments 1975 No 1767
Hobson –v- Gledhill (1978).

Then prepare answers to the following questions: [Note: all the answers are contained in the text although you may wish to consult a law dictionary to find exactly what Case Stated means]

1.
 - (a) In reading the extracted sections from the act what is the significance of the date [1st August 1975]?
 - (b) when did the Act come into force?
 - (c) how may the act be cited?
 - (d) to what parts of the United Kingdom does the Act apply?
2. Summarise the relevant facts of the case giving rise to the issue on statutory interpretation.
3. What were the possible constructions of the Guard dogs Act 1975 s1 (1) discussed by Peter Pain J.?
4. What construction had been put upon the sub-section by the Magistrates' Court and what was the point of law in the case stated to the Divisional Court?
5. How did Peter Pain J. come to his decision? i.e. follow thought the steps in legal reasoning he explains in his judgement. Another way of asking this same question is this: which principles of statutory interpretation did Peter Pain J. explain he considered and were these followed by the other judges in the Divisional Court to reach their conclusion? [Hint: quote the actual words used in the judgements first].
6. What was the decision in the case and what proposition of law has been established by that decision?
7. How should the sub-section be re-drafted to avoid ambiguity and to overcome the restrictions of the interpretation in *Hobson –v- Gledhill*?

Guard Dogs Act 1975

1975 Chapter 50

An Act to regulate the keeping and use of guard dogs and for the purposes connected therewith [1st August 1975]

BE IT ENACTED BY THE QUEEN'S MOST EXCELLENT MAJESTY, by and with the advice and consent of the Lord's Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. (1) A person shall not use or permit the use of a guard dog at any premises unless a person ("the handler") who is capable of controlling the dog is present on the premises and the dog is under the control of the handler at all times while it is being so used except while it is secured so that it is not at liberty to go freely about the premises.
- (2) The handler of a guard dog shall keep the dog under his control at all times while it is being used as a guard dog at any premises except:
 - (a) while another handler has control over the dog, or
 - (b) while the dog is secured so that it is not at liberty to go freely about the premises.
- (3) A person shall not use or permit the use of a guard dog at any premises unless a notice containing a warning that a guard dog is present is clearly exhibited at each entrance to the premises.

Unless he holds a license under section 3 of this Act in respect of the kennels
- (4) A person shall not use or permit the use at any premises of a guard dog if he knows or has reasonable cause to suspect that the dog (when not being used as a guard dog) is normally kept at guard dog kennels in breach of subsection (1) of this section

.....

[the rest of the sections are deleted from the exercise.....]

8. In this Act, unless the context otherwise requires –

"agricultural land" has the same meaning as in the Dogs (Protection of Livestock) Act 1953.

“guard dog” means a dog which is being used to protect:

- (a) premises; or
- (b) property kept on the premises;
- (c) a person guarding the premises or such property;

“guard dog kennels” means a place where a person in the course of business keeps a dog which (notwithstanding that it is used for other purposes) is used as a guard dog elsewhere, other than a dog which is used as a guard dog only at premises belonging to its owner.

“local authority” means..... [further definitions are deleted]...

9. (1) **This Act may be cited as the guard dogs Act 1975.**
- (2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint, and different days may be so appointed for, or for different purposes.
- (3) This Act does not extend to Northern Ireland.

Hobson v Gledhill

QUEEN'S BENCH DIVISION

LORD WIDGERY CJ., CANTLEY AND PETER PAIN JJ.

12TH OCTOBER 1977

Animal – guard dog – Control by handler – Dog secured so that it is not at liberty to go freely about the premises – Handler not present on premises – Whether necessary that handler should be on premises while dog is secured – Guard Dogs Act 1975, S 1(1).

On the true construction of S 1(1) of the Guard Dogs Act 1975 (which forbids a person to use or permit the use of a guard dog unless a dog handler is on the premises and the dog is under the handler's control 'except while the dog is secured so that it is not at liberty to go freely about the premises'), the exception applies to the requirement that a handler should be on the premises as well as to the requirement that the dog should be under his control, and therefore it is not necessary that a handler should be on the premises while the dog is secured (see p 947 c and g h, post).

Whether a dog which is secured by a length of chain is 'secured so that it is not at liberty to go freely about the premises', within S 1(1), is a question of degree depending on the facts of the individual case (see p 0947 d to h, post).

Notes:

For control of guard dogs, see Supplement to Halsbury's laws (4th Edn) para 368a.

For the Guard Dogs Act 1975, S 1, see 45 Halsbury's Statutes (3rd Edn) 27.

Case Cited

Cummings v Granger (sued as Grainger) (1977) 1 All ER 104, (1977) QB 397, CA.

Case Stated

On 7th May 1976 three informations were preferred by the appellant, James Hobson, against the respondent, Norman Gledhill, alleging that on 27th March 1976 at Huddersfield, the respondent had used a guard dog at premises in George Street, Milnsbridge, when no person who was capable of controlling the dog was present on the premises and the dog was not under the control of a handler at all times while it was being used, the dog not being secured so that it was not at liberty to go freely about the premises, contrary to S 1(1) of the Guard Dogs Act 1975. On 21st July 1976 the justices for Huddersfield, sitting as a magistrates' court at Huddersfield dismissed the information. At the request of the appellant the justices stated a case for the opinion of the High Court. The facts are set out in the judgement of Peter Pain J.

Robert Taylor for the appellant.

Gordon Lakin for the respondent.

PETER PAIN J. delivered the first judgement at the request of Lord Widgery CJ. This is an appeal by way of case stated by the Huddersfield justices in respect of information which they heard on 21st July 1976. There were three charges, all of them similar in nature, that on 27th March 1976 at Huddersfield the respondent did use

a guard dog at premises in Milnsbridge when no person who was capable of controlling the dog was present on the said premises and the dog was not under the control of the handler at all times while it was being used, the said dog not being secured so that it was not at liberty to go freely about the said premises. There were in fact three similar charges because there were three Alsatian dogs.

One only has to read the charge with the several negatives in it to see how it can give rise to difficulties of construction. The court is told that the true meaning of S 1(1) of the Guard Dogs Act 1975 is a matter that has been of some concern to the authorities who are responsible for enforcing it, and there has as yet been no decision on it. The authorities are anxious for the ambiguity which appears to arise on the section to be disposed of by this court.

Before I come to read the section, I will deal with the short facts as found by the justices. They found that on 27th March 1976 the respondent was the owner of premises consisting of a yard and buildings situate at George Street, Milnsbridge, Huddersfield. On that date the respondent used three Alsatian dogs as guard dogs at the premises.

The dogs were secured in the following manner, that is they were fastened independently on chains 12 feet, 12 feet and 13 feet long respectively and were unable to reach the gates by at least two feet. Two of the chains were securely anchored to the ground on either side of the main gate which were locked. The third chain was secured at a point set back from the main gates.

They also found that the dogs were not able to go into every part of the premises, and that at the time no person was present on the premises of the respondent. But they did not make any finding as to the extent of the premises, though one supposes from the fact that there was a yard and buildings that they must have been a good deal more extensive than the 12 feet chains by which the dogs were held.

Section 1(1) of the 1975 Act provides:

‘A person shall not use or permit the use of a guard dog at any premises unless a person (“the handler”) who is capable of controlling the dog is present on the premises and the dog is under the control of the handler at all times while it is being so used except while it is secured so that it is not at liberty to go freely about the premises.’

The section clearly is ambiguous, and one asks oneself: does the exception which applies while the dog is secured so that it is not at liberty to go freely about the premises apply to the whole previous sentence, or does it apply only to the latter part of the sentence, which would be the time when the dog might be out of the control of the handler who is nonetheless on the premises? Or, to put it another way, does the section, and this is the important point, require a person who uses a guard dog to have a handler on the premises all the time the dog is there, and when the dog is not under the immediate control of the handler to tie him up, or does it require the person using the guard dog either to have a handler on the premises under whose immediate control the dog is or to tie the dog up? If it be the latter, then the handler can leave the premises leaving the dog secured.

Realising this ambiguity, one comes to the rule that a penal statute where there is an ambiguity should always be construed in favour of the citizen who may find himself the subject of the penalty.

That was the first point which was put before us by counsel for the appellant and, applying that principle, it would seem clear that the more restricted duty should be placed on the citizen, that is to say that to use a guard dog either he must have a handler on the premises with the dog under his control or he must have the dog secured. For myself, it seems to me also that, if that be done, it does meet the mischief which Parliament was seeking to provide against because, provided the dog is properly secured, the person who may come on the premises whether lawfully or not is in a position to remove himself from the ambit of the dog's teeth.

One also does have the point that, although there is no finding on this, one can probably take judicial notice of the fact that a number of fairly small premises do protect themselves by use of guard dogs, the economic burden on a person's using those premises would be very heavy indeed.

One does ask oneself, as Lord Widgery CJ. asked in the course of the argument, would it satisfy S 1 if the handler just tied the dog up and went away and left it indefinitely. On the construction which I favour there would, I think, be no offence under S 1. But it has to be remembered that there are several other sections in the Act providing for the licensing of kennels used for guard dogs by the local authority, and it is to be assumed that the local authority in imposing conditions and the like in respect of those licenses will take proper steps to see that dogs are properly treated and cared for as they should be and are not abused.

Coming, therefore, to the questions propounded by the justices, the first question they ask is:

‘Whether by virtue of S 1(1) of the Guard Dogs Act 1975 where a guard dog is used on premises it is necessary for a person capable of controlling the dog to be present on the premises at all times whilst the dog is being so used notwithstanding that the dog is secured so that it is not at liberty to go freely about the premises’.

The answer that I give to that is that it is not necessary.

They ask a second question:

“Whether a dog secured on a chain 12 feet in length can be regarded as ‘not at liberty to go freely about the premises’”.

This is a question which I feel unable to answer at large. Whether it is able to go freely about the premises must depend on the size of the premises. If it is a small workshop it might, despite the chain, be able to go freely about the premises; it would be quite wrong for this court to attempt to give any sort of guidance as to the appropriate length of chain for a dog because it must depend on all the circumstances, bearing in mind of course the purpose of the chain, which is to enable the person,

even though he may be a trespasser or burglar, to be able to remove himself from the dog's range. That would always have to be borne in mind in considering the length of chain provided. But, subject to that, this must be a question of degree depending on the facts of the individual case.

The justices having in this case dismissed the information, I would dismiss the appeal.

CANTLEY J. I agree. I must confess that my initial impression on reading s 1(1) was that the exception applied only to the phrase 'the dog is under the control of the handler at all times while it is being so used' and not to the entire paragraph. But I am persuaded that the ambiguity to which Peter Pain J. has referred does exist, and accordingly I agree that the section should be construed in this way, it being a penal section.

LORD WIDGERY CJ. I agree with all the propositions put forward so clearly by Peter Pain J. One thing is clear to me, and that is, that since the passing of the Guard Dogs Act 1975 one can no longer have a guard dog roaming at large on premises with no handler in control of it. That has gone once and for all.

I think there is a good deal for saying that it would be desirable to take the reform further and to abolish for all time the conception of a dog alone on the premises, even when it is tied up. But for the reasons which have been given, I am quite unable to say which of the solutions canvassed was the intention of parliament, and the right course in those circumstances is to favour the citizen. I would do so, as have already the other members of the court.

If we are wrong, and if we have chosen a solution which is contrary to the wishes of Parliament, it will not be very difficult for Parliament to put it right in a suitable statute hereafter. The appeal is, therefore, dismissed.

Appeal Dismissed.

Solicitors: Hewitt, Wollacott & Chown, agents for M D Shaffner, Wakefield (for the appellants); Drabble & Co, Huddersfield (for the respondent).

Barrister

N P Metcliffe Esq