Problem Questions

INTRODUCTION

The Point of Problem Questions

Problem questions are used in most law subjects because they are excellent training. They test several legal techniques – organising law, applying law to facts, interpreting law and writing an opinion or judgment.

Technique for Answering Problems Questions

Students should take note of three particular issues when comparing their answers to problem questions with the model answers which follow. First, the way in which the elements are listed; secondly, the treatment of application of law to the facts; and, thirdly, the way in which argument is dealt with.

Listing the Elements

The answers set out the elements as sentences rather than as words or phrases. To illustrate, the elements in Question 1 in Problem Questions on Hypothetical Statutes, Zachary v Police, are as follows:

Element (1) The defendant is a person.
Element (2) The person holds a licence.
Element (3) The licence is a licence to drive a motor car.
Element (4) The licence is held under the *Motor Traffic Act 1955*.
Element (5) The person has been convicted of an offence before a court.
Element (6) The offence is an offence in connection with the driving of a motor car.

This may look a bit funny, but it does make the check list flow better. If an alternative approach is adopted, that is just putting the key word or phrase in the list, it would not flow so well and so would not be self-explanatory. One way to keep the sentences and to highlight just the word or phrase which is the element is to put the word or phrase in italics. This is not done in the model answers; if it was the listing of elements in Question 1 would look like this:

Element (1) The defendant is a *person*.
Element (2) The person holds a *licence*.
Element (3) The licence is a licence to *drive a motor car*.
Element (4) The licence is held under the *Motor Traffic Act 1955*.
Element (5) The person has been convicted of an *offence before a court*.
Element (6) The offence is an offence in *connection with the driving of a motor car*.
Applying Law to the Facts

The model answers spell out the application of the law in more detail than may ordinarily be needed in a written answer. This extra detail and depth emphasises and demonstrates the careful checking of each element of law against the facts.

Arguments

Arguments are abbreviated in the model answers. They consist of simple and obvious arguments based on (1) policy gleaned from obvious sources such as common sense, the substance of the provisions, the title of the Act and the headings to sections; and (2) some of the rules of statutory interpretation. These are enough to demonstrate the technique; however, any lawyer handling the matter in practice would need to pursue all reasonable arguments from all relevant sources.

Since the policy arguments are abbreviated, they are not spelt out in an elaborate way which tries to predict and then evaluate the effect. This, however, may well be required of students, particularly if problem questions include additional material, for example extracts from cases and extrinsic material.
These problem questions are based on the Constitution. The Constitution is set out in s 9 of the Commonwealth of Australia Constitution Act (UK) passed in 1900. Sections of this United Kingdom statute are called “covering clauses”; this distinguishes them from sections of the Constitution which are referred to as “sections”.

These questions build on and use the answers to the questions in Analysing the Constitution which involve breaking various provisions of the Constitution into their elements and consequences. This analysis becomes a check list to use in answering a problem question based on the provision. Thus, these questions show how first breaking a provision into elements and consequences is indispensable to the task of applying the provision in a question, be it a problem question in law school, an opinion for a client by a practising lawyer, or a judgment by a court.

Hence, analyse a provision before doing a problem question on it. This means that, before attempting to answer a problem question involving a particular provision of the Constitution, readers should go the section Analysing the Constitution and attempt the question which involves analysing the provision first. Then check the answer and use the correct version of the analysis as a basis for doing the problem question.

Questions

Question 1
Terry Collins lives in New South Wales. Having nothing better to do Terry goes to Victoria for a holiday. Terry applies for a driver’s licence there and is told that the fee if you are a Victorian is $15, but is $45 if you are not. What can Terry do?

Question 2
Kim Catswalk is about to pay tax. The Prime Minister telephones and says: “As a special favour to me would you write your cheque directly in favour of the XYZ Company which is doing business for the government. We need the money urgently to pay them”. Is there a problem with this?

Question 3
You try to cross the border into Queensland with a load of white shoes to sell. You are turned back at the border by the police who say that there are too many white shoes already in Queensland. Is this legal?
Question 4
The Commonwealth decides to legislate to license hotels to sell beer to tourists on Sundays. What powers might the Commonwealth use? Assume that a New South Wales statute says: “No tourist may drink beer on a Sunday”. What is the position?

Question 5
Assume that the New South Wales government feared terrorist violence at the Olympic Games in Sydney in 2000 and raised a special army to deal with it. Would this have been legal?

Question 6
The Commonwealth government decides that there are too many atheists in the public service. It therefore passes a law providing that to be a public servant it is necessary to be a member of a Christian Church. Is this legal?

Question 7
You decide to go to Victoria for a holiday. At the border you are charged an entry fee of $25. You are told: “The place is just one big fun park. It is money well spent”. Do you have to pay?

Question 8
(1) What power does the Commonwealth parliament have to legislate on divorce?
(2) What power does a State parliament have to legislate on divorce?
(3) Assume that the Commonwealth passes the *Quick and Easy Divorce Act 1997* in which s 25 says: “A woman may divorce her husband at any time by saying to him: ‘Get out you lazy wretch’.” Assume that New South Wales passes the *Hard and Slow Divorce Act 1996* in which s 10 says: “Persons in New South Wales cannot obtain a divorce until they have been married for at least 5 years”. Kate has been married for one year and wants to divorce her husband. What can she do?

Question 9
Assume that on the Sydney Harbour Bridge (in the State of New South Wales) the government requires motorists to pay a toll of $10 with a $10 dollar note. Is this legal?

Question 10
New South Wales decides that to raise more revenue it will set up a customs barrier along the State borders and collect money on all goods imported from other States. Is this legal?

Question 11
Faith has been charged with blasphemy arising out of an interview she did in Victoria on a Melbourne television station. Assume that blasphemy is a crime against the Commonwealth. The Commonwealth Attorney General issues the indictment. What can you say about the trial?
Answers to Problem Questions on the Constitution

These answers are in short form, just stating the key points. To see an answer in full form, showing how an answer should be structured, look at the answer to Hypothetical Statutes, Question 1, Zachary v Police.

Answer to Question 1

This question involves s 117 of the Constitution. Section 117 is analysed in Question 5 of the Questions in “Analysing the Constitution”.

This action may be illegal under s 117 of the Constitution. When we check these elements against the facts we see that the elements are satisfied. Therefore, s 117 applies. Consequently, the attempt by the Victorian government to charge Terry $30 more for a licence than Victorians is unconstitutional and invalid.

Answer to Question 2

This question involves ss 81 and 83 of the Constitution. Sections 81 and 83 are analysed in Question 12 of the Questions in “Analysing the Constitution”.

First, s 81. Element (1) is satisfied because tax is revenue. Element (2) is satisfied because tax is obligatory and hence, when the tax is imposed on Kim, it is “raised”. Therefore, the Commonwealth has to collect it from Kim and pay it into the Consolidated Revenue Fund. Given this, the action proposed by the Prime Minister is illegal.

Second, s 83. Once revenue is in the Consolidated Revenue Fund s 83 provides that it can be appropriated, i.e. paid out to a government agency. Element (1) of s 83 requires that the appropriation is done by statute. This is to ensure that parliament is responsible for all spending. Thus, the action of the Prime Minister in this case thwarts this requirement. Strictly it does not breach s 83 because s 83 applies only when money is already in consolidated revenue. It does, however, thwart s 83 by its breach of s 81.

Answer to Question 3

This question involves s 92 of the Constitution. Section 92 is analysed in Question 14 of the Questions in “Analysing the Constitution”.

To answer this question we have to work out which border of Queensland is involved. We will consider both possibilities.

First, assume that the Queensland border referred to in this question is the border with New South Wales. This action is then illegal under s 92 of the Constitution. Trying to cross the Queensland border with a load of white shoes to sell is interstate trade and falls within the prohibition in s 92 – s 92 makes interstate trade absolutely free. In this case the Queensland police make this trade unfree. They prevented it from happening by turning the would-be trader away at the border. This violates s 92. Consequently, it is illegal and has no legal effect.

Next, assume that the Queensland border is the border with the Northern Territory. Although the Northern Territory functions like a State, it is not a State. It is a Commonwealth Territory (under the control of the Commonwealth through s 122 of the Constitution). Consequently, in this case s 92 would not strike down the action of the Queensland police.
Answer to Question 4

This question involves s 51(xx) of the Constitution. Section 51(xx) is analysed in Question 25 of the Questions in “Ambiguity”.

There are two points here. First, the power of the Commonwealth. There is no power which directly or specifically gives the Commonwealth power to license hotels to sell beer. A number of powers, however, give the Commonwealth power to do so indirectly. One such power, which could be very wide ranging, is the corporations power in s 51(xx). This would authorise the Commonwealth to license corporations in the categories delineated by s 51(xx) to sell beer to any type of person and on any day. If the Commonwealth proceeded in this way, any would-be beer seller can form themselves into a company and apply for a licence.

Second, let us consider the New South Wales statute. Assume that the Commonwealth has passed a statute authorising licences for hotels to sell beer to tourists on Sundays. A New South Wales statute providing that no tourist may drink beer on a Sunday would be in conflict with the Commonwealth licensing law. It is trying to forbid something which the Commonwealth law allows. In these circumstances the New South Wales law is invalid under s 109 and the Commonwealth law prevails.

Answer to Question 5

This question involves ss 114 and 119 of the Constitution. Section 114 is analysed in Question 9 and s 119 is analysed in Question 11 of the Questions in “Analysing the Constitution”.

Section 114 forbids a State from raising or maintaining a military force without the consent of the parliament of the Commonwealth. This makes the action of New South Wales illegal. Note, however, that it could train a special squad of its police force to do the job without infringing s 114.

If New South Wales needed army protection it has three options. (1) It can ask the Commonwealth parliament for consent under s 114 to raise its own army. (2) It can invoke s 119. Section 119 imposes a duty on the Commonwealth government to protect a State against domestic violence. (3) To the extent that the need for army protection is wider than that provided by s 119, New South Wales can make a simple request to the Commonwealth government to help it and hope that it does.

Answer to Question 6

This question involves s 116 of the Constitution. Section 116 is analysed in Question 6 of the Questions in “Analysing the Constitution”.

Section 116 has four parts. One of them forbids the Commonwealth to impose a religious test for any office under the Commonwealth. In this case the Commonwealth passed a law requiring a person to be a member of a Christian church to be a public servant. A person who is a public servant holds an “office”. Requiring a person to be a member of a Christian church is a “religious test”. Consequently, the Commonwealth law breaches this arm of s 116 and is invalid.
Answer to Question 7

This question involves s 92 of the Constitution. Section 92 is analysed in Question 14 of the Questions in “Analysing the Constitution”.

Assume that the person going to Victoria and trying to cross the border is coming from another State. Section 92 makes interstate “intercourse” absolutely free. Intercourse means passing from one State to another. In this case the person is trying to cross the border into Victoria from another State. This is interstate intercourse. Victoria tries to charge $25. This action make interstate intercourse unfree to the extent of $25. Consequently, it infringes s 92 and so is illegal and invalid. You do not have to pay. Walk right in and enjoy yourself.

Answer to Question 8

This question involves s 109 of the Constitution. Section 109 is analysed in Question 10 of the Questions in “Analysing the Constitution”.

(1) Constitution s 51(xxii).
(2) State parliaments can legislate on divorce because it falls within their general powers.
(3) Applying s 109 the State law is inconsistent with the Commonwealth law, so (a) the Commonwealth law prevails, and (b) the State law is invalid to the extent of the inconsistency. Karen therefore, can obtain a divorce under the Commonwealth statute, the Quick and Easy Divorce Act 1997.

Answer to Question 9

This question involves s 115 of the Constitution. Section 115 is analysed in Question 8 of the Questions in “Analysing the Constitution”.

Section 115 forbids a State government from making anything but gold and silver legal tender for payment of a debt. Here the New South Wales government is requiring motorists to pay a toll of $10 with a 10 dollar note. This breaches s 115 and is illegal.

Answer to Question 10

This question involves ss 90 and 92 of the Constitution. Section 90 is analysed in Question 7 and s 92 is analysed in Question 14 of the Questions in “Analysing the Constitution”.

Section 90 makes power to raise customs duties exclusive to the Commonwealth so the action of New South Wales is illegal and invalid on this count. Section 92 make interstate trade and commerce absolutely free so the action is also illegal and invalid being in breach of s 92.

Answer to Question 11

This question involves s 80 of the Constitution. Section 80 is analysed in Question 13 of the Questions in “Analysing the Constitution”.

Faith’s proposed trial falls within s 80. Therefore, there must be trial by jury. Further, accepting that the offence was committed in Melbourne (in Victoria), the trial has to be held in Victoria.
PROBLEM QUESTIONS ON HYPOTHETICAL STATUTES

Nature of the Questions

These problem questions are based on hypothetical statutes and involve simple statutory interpretation. Generally just the facts and the relevant section or sections of the statutes are reproduced.

More advanced and complicated questions would include additional material, real or hypothetical. This could include other provisions of the statute, cases which have considered the ambiguous provision, and extrinsic material or legislative history which indicates the policy of the legislation.

Questions on Hypothetical Statutes

Hypothetical Statutes Question 1
Licence to Hurt – Zachary v Police

Section 14 of the Motor Traffic Act 1955 has the following provision:

14. Cancellation of licence
Any court before which a person is convicted for any offence in connection with the driving of a motor car may, if the person convicted of the offence holds any licence to drive a motor car under this Act, cancel the licence.

Zachary was the holder of a driver’s licence under the Motor Traffic Act. When he was driving his car down the street he became annoyed at the way another motorist, Tina, was driving. Zachary followed Tina to a shopping centre where Tina parked her car. Zachary stopped his car and went over to Tina who was still sitting at the wheel of her parked car. Zachary said to Tina, “You’re a fool, an imbecile and an idiot. You’re not fit to drive a golf ball, let alone a motor car”. Zachary then punched Tina on the nose. Further violence was prevented by passers by. Zachary was later convicted of assault in the Local Court, fined $3000, and his licence was suspended for 12 months under s 14. Advise Zachary as to whether he has grounds for appeal.

Hypothetical Statutes Question 2
Road Art – Police v Fang

There is a Road Traffic Act which contains the following sections:

4 Definitions
In this Act “traffic sign” shall include all signals, warnings, signposts, direction posts, or devices.

48 Endangering public
Any person who deliberately obscures any traffic sign or any part of a traffic sign shall be guilty of an offence.
Penalty: $200 fine or disqualification of driver’s licence for up to six months.
Fang was a keen motorist and also a practical joker. She decided she would like to have a bit of a joke so she acquired some white phosphorescent paint and painted some rude drawings on a number of large yellow diamonds which had been painted on the road to warn motorists that they were approaching a pedestrian crossing. She was just about to finish the drawing on the seventh diamond when she was apprehended by the police and charged under s 48 of the Road Traffic Act. She now seeks your assistance. What advice would you give her?

Hypothetical Statutes Question 3
Dog Bites Man – Jones v Credence

Mr and Mrs Jones were a respectable suburban couple. They lived in a house which they owned surrounded by a garden in a quiet suburb of Brisbane. At this time they had no household pets although years ago Mr Jones had kept a wart-hog for a short period. Their house was situated on an average suburban block and somewhere near the front of the block so there was a reasonable backyard. On the evening of 20 March they were seated at the table having their dinner when they heard the sound of barking in the backyard. They got up to investigate and when they went outside they saw a stray dog there looking very miserable, very forlorn and very underfed. Feeling rather sorry for it they gave it some scraps although they did not then let it into the house. During the next four or five weeks the dog was frequently around and they or their children would throw scraps to the dog. After a couple of weeks the dog would occasionally stray inside and remain in the house for a while. Early on, the Jones’s children started calling the dog Cerberus. At no stage did the family provide a kennel or any form of bedding for the dog. They would occasionally call him by name when he was around. They did not call him to be fed but merely fed him when he was around, although after a short while this turned out to be almost every day.

On the morning of 17 April a travelling salesman named Credence opened the Jones’s front gate and started walking up the front path intent on selling the Jones family a book entitled “How to Resist Salesmen”. Just as Credence was about to walk up the front steps, Cerberus, who had been hiding in the bushes, leapt out and bit him on the left ankle very hard. Credence was very upset by this and yelled out in pain. He received two severe gashes in his left ankle from the bite. He subsequently brought an action against Mr and Mrs Jones under the Dog Act. The relevant provisions are these:

20 Owner responsible
The owner of a dog shall be liable in damages for injury done to any person, property, or animal by his dog, and it shall not be necessary for the party seeking such damages to show a previous mischievous propensity in the dog, or the owner’s knowledge of that previous mischievous propensity, or that the injury was attributable to neglect on the part of the owner.

4 Definition of owner
A reference in this Act to the owner of a dog shall be construed as a reference to the person by whom the dog is ordinarily kept and where a dog is ordinarily kept on any land or on any premises, it shall, in the absence of evidence to the contrary, be deemed to be ordinarily kept by the person who is the occupier of that land or those premises.
When the action was heard at first instance the trial judge found the facts as stated above. In addition she found that, although Mr and Mrs Jones had not made any attempt to exclude the dog from their premises, their sole motive in feeding him was sympathy for its poor and starving condition. Credence succeeded in his action and Mr and Mrs Jones are now contemplating an appeal on any questions of law which may be available to them. Advise them.

**Hypothetical Statutes Question 4**  
**Keeping Tabs – Police v Rob’**

Rob was a well known and successful but unlicensed bookmaker. During his colourful career he has been barred from attending race meetings for life on three occasions, but on each occasion he was able to have the bar removed. His practice was to go to a race meeting and to conduct a betting ring in an uncovered area behind the stables. At last the police caught up with him, arrested him and charged him under s 7 of the *Betting Act* which says:

7 Protection of neighbourhood  
No person shall keep a house, office, room or other place for betting with persons resorting thereto.  
Penalty: One year’s gaol or a fine of $2000.

He comes to you for advice and admits that he had been conducting his betting operations for about an hour when the police came and there had been a continual stream of people coming to and fro to bet with him. What arguments could you use on his behalf?

**Hypothetical Statutes Question 5**  
**Jane’s Fighting Words – Police v Jane**

Jane was a pacifist and very active in promulgating her views. She decided to hold a one-person protest at the RAAF Base at Williamtown. Accordingly, she painted a placard which had on it the words, “Wars Will Cease When Men Refuse to Fight” and set out on foot from Newcastle for the RAAF Base at Williamtown.

**Incident 1**

About 350 metres from the RAAF Base, Jane came across some bunkers which had been dug by members of the Air Defence Guard (ADGs), a section within the RAAF. These servicemen were staying at the Base for six weeks to make use of the excellent ground for training which surrounded the base. Some ADGs were in these bunkers. Jane picked up some handfuls of sand and threw them at some of the ADGs. The sand went down the barrels, and into the firing mechanism, of, their rifles. In consequence they had to stop what they were doing to clean their rifles. To avoid a confrontation the officer commanding the ADGs at the time made no attempt to stop or arrest Jane.

**Incident 2**

Buoyed by her success Jane continued. As she arrived at the Base she saw that the guards at the main gate were about to be relieved. She entered the RAAF Base and made her protest by standing in the path of the relieving guards as they marched.

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up to take up their duty. She refused to budge when ordered and had to be moved out of the way.

Charges

Subsequently, Jane was charged in relation to both incidents under s 21 of the Prohibited Places Act. It says:

21 Protection of perimeter
No person in the vicinity of any prohibited place shall obstruct any member of Her Majesty’s forces engaged on guard, sentry, patrol or other similar duty in relation to the prohibited place.
Penalty: Six months’ imprisonment or a fine of $500.

Question

Jane asks you to conduct her defence. From information available to you there is no doubt that the RAAF Base at Williamtown was a prohibited place. What arguments would you use on her behalf?

Hypothetical Statutes Question 6
McDonald’s Tractor – Police v McDonald

McDonald was a farmer and the owner of a four-ton Massey-Ferguson tractor. Due to the massive size of the tractor it had a large platform behind the driver’s seat. One Sunday McDonald decided she would take her family, being a husband and 11 children, for a picnic. Accordingly, she loaded her family and some food onto the back of the tractor so that the containers with the food were resting on the platform and her husband and 11 children (her First XI cricket team as she affectionately called them) were all standing on the platform. She started to drive some miles up the road to a river where she intended to have the picnic. She had only gone some distance when she was stopped by Constable Plod, who said “Why don’t you have a red flag on the back of your tractor?” McDonald said: “I didn’t know I had to have a red flag”. The constable said: “You are required by the Carriage of Persons Act to have a red flag on the back of your tractor. I am going to charge you”. Subsequently, McDonald was charged under s 5 of the Carriage of Persons Act which says:

5 Red Flag
Any vehicle adapted for the carriage of more than eight persons shall display at its rear a red flag at all times while it is on a public road.

McDonald was also charged under s 7 of the Act which says:

7 Vehicle to be checked
The owner of any vehicle referred to in section 5 of this Act shall, unless prevented by a war, disturbance or any other cause, have his vehicle mechanically checked during the month of July of each year.

McDonald had been unable to have her vehicle checked in July because owing to the bad weather her tractor was ice-bound in the shed during the whole of the month. She had, however, had it inspected in August as soon as the weather broke. McDonald comes to you for assistance. What arguments would you use on her behalf?
Hypothetical Statutes Question 7
Bond Money – Police v Swot

Swot, a penniless hardworking student at Bond University, published the following advertisement in the *Gold Coast Morning Herald*, a daily newspaper: “Today is the last day for sending your one dollar to PO Box 1234, Tweed Heads”. Four thousand people responded to the advertisement and Swot was consequently $4000 richer. Following complaints, Swot was arrested in the library and taken to the Police Station where he was charged under s 39(1) of the *Summary Offences Act 1970* which says:

Division 5 Frauds, unlawful possession, etc.

39 Fortune telling
(1) A person who by pretending or professing to tell fortunes or by using any deception, artifice or trick obtains or attempts to obtain any money or valuable thing, or any benefit, from another person is guilty of an offence.
Penalty: Two hundred dollars.
(2) It is sufficient defence to a prosecution for an offence under subsection (1) of this section if the defendant satisfies the court that he obtained or attempted to obtain the money, valuable thing or benefit by pretending or professing to tell fortunes for the purpose of and in accordance with an appeal for support of a charity which is registered; or is exempted from registration, by or under the Charitable Collection Act 1934.

Swot requests that you defend him. What argument would you use in Swot’s favour?

Hypothetical Statutes Question 8
Land of Our Fathers – Wild Scrub

Sections 16 and 17 of the *Recreational Land Act* are:

16 No interference with enjoyment of land
When land has been designated by the Minister for use as a picnic area or for any other use, all other existing use of land must cease.

17 Designation of land
The Minister is hereby authorised to designate land for the purpose of section 16.

Chitter is the Minister responsible for administering ss 16 and 17 of the *Recreational Land Act*. On 26 January Chitter designated some land known as Wild Scrub for “use by Aborigines as camp sites and for hunting and gathering”. At the time this order is made, Pelaw Main Ltd was engaged in underground mining of coal under “Wild Scrub” pursuant to mining leases. Advise Pelaw Main whether it must cease mining. Would your answer be any different if s 17 was not in the Act?

Hypothetical Statutes Question 9
Influencing the Case – Police v Fred

Fred took a regular dose of a mineral supplement on the advice of his doctor for an infection. This supplement had the side effect of making a person’s reflexes slightly slower than normal. Having just taken the supplement Fred got into his
car and tried to start it. While he is doing this he is arrested by the police and charged under s 12 of the Dangerous Drugs Act. It says: “Any person who drives a motor car while under the influence of a drug is guilty of an offence. Penalty: A fine of $1000 or three months in jail”. What argument would you use on Fred’s behalf? Would it make any difference if the offence was in an Act called the Motor Traffic Act?
Answers to Problem Questions on Hypothetical Statutes

Answer 1 is set out in full. Answers to the remaining question just state the main points.

Hypothetical Statutes Answer 1
Licence to Hurt – Zachary v Police

The facts are set out in the question. So too is the relevant law – s 14 of the Motor Traffic Act. We are asked to advise Zachary on his proposed appeal against the suspension of his licence.

Elements and Consequences

Section 14 has the following elements and consequences:

Element (1) The defendant is a person.
Element (2) The person holds a licence.
Element (3) The licence is a licence to drive a motor car.
Element (4) The licence is held under the Motor Traffic Act 1955.
Element (5) The person has been convicted of an offence before a court.
Element (6) The offence is an offence in connection with the driving of a motor car.

Consequences The court can cancel the person’s licence.

Application of Law

Many of the items in s 14 are clearly satisfied. Element (1) is satisfied because Zachary is a person. Element (2) is satisfied because Zachary holds a licence. Element (4) is satisfied because Zachary holds this licence under the Motor Traffic Act. Zachary was convicted of an offence before a court so Element (5) is satisfied.

There is doubt about three things. First, there is doubt as to whether Element (3) is satisfied. Zachary, the facts tell us, holds a driver’s licence but we are not told that it is a licence to drive a motor car.

Second, there is doubt as to whether Element (6) is satisfied. Zachary was convicted of assault. There is doubt as to whether an assault is an offence in connection with the driving of a motor car.

Third, there is doubt in relation to the consequences as to whether the court properly suspended Zachary’s licence. When all of the requirements are satisfied s 14 authorises the court to cancel the licence. In fact in this case the court has suspended Zachary’s licence.

These issues are discussed below. If either of the issues is decided in Zachary’s favour he will succeed on the appeal. If Zachary succeeds on the first or second issue he will show that the court did not have any power to take action on his licence. If he succeeds on the third issue he will show that the court took an action on his licence which it was not authorised to take.
Licence to Drive a Motor Car

Zachary was the holder of a driver’s licence under the *Motor Traffic Act*. It is not clear whether it is a licence to drive a motor car. This detail is omitted from the facts. It is likely that Zachary’s licence was a licence to drive a motor car but it needs to be checked.

In Connection with Driving a Motor Car

The issue here is whether the offence for which Zachary was convicted, ie assault, is an “offence in connection with the driving of a motor car”.

The phrase “in connection with” indicates that there must be some link or relation between the “offence” and “the driving of a motor car”. While there must be some sort of link, it leaves open both the nature and strength of the link. This is the ambiguity.

Meanings

Given that the phrase “in connection with” is so open there are many possible meanings. Three obvious and plausible ones are suggested here.

Meaning 1

One meaning is that driving a motor vehicle is one of the legal elements of the offence. For example, a provision making the driving of a motor vehicle while under the influence of alcohol an offence would read something like this: “Any person who *drives a motor vehicle* on a public street while under the influence of alcohol is guilty of an offence”. The very words of the offence refer to the offender as a person who drives a motor vehicle. It is therefore not possible to commit the offence without driving a motor vehicle. If this meaning is correct, Zachary is not guilty.

Meaning 2

A second meaning is that driving a motor vehicle is in fact (rather than in law as above) involved in committing the offence. This may happen in at least two ways:

1. Directly, eg a person assaults another by running them down with their motor vehicle.
2. Indirectly, eg a motor vehicle is used as the get-away car after a robbery.

If this meaning is correct Zachary is not guilty.

Meaning 3

A third meaning is that driving a motor vehicle is involved in the facts as part of the overall picture. This meaning covers Zachary’s situation. So, if this meaning is correct Zachary is guilty.

Arguments

In this case several arguments point strongly towards Meaning 1, ie driving a motor car is an element of the offence. These arguments are:

1. Both the short title (the *Motor Traffic Act*) and the penalty provided by s 14, viz cancellation of the licence, indicate that the Act is concerned with the safe regulation of motor traffic. It is likely, therefore, that the Act contains offences where driving a motor vehicle is an ingredient of the offence. (Here
we speculate on the content of the statute. In real life we would look at the provisions.) If this supposition is correct, it points strongly toward the meaning of the provision proposed here.

(2) Generally, provisions creating criminal offences or imposing penalties are construed narrowly and this meaning is narrower than the others.

(3) This meaning is clear, simple, relatively unambiguous and easy to apply, whereas the other meanings involve a further test of degree.

There is an argument which favours either of the wider meanings, i.e., Meaning 1 and Meaning 2. This argument is that the punishment, cancellation of a licence, is intended to fit the crime. Therefore, where a person uses a car to commit a criminal offence part of the punishment should be to have his or her licence cancelled.

Cancel

Here the issue arises because the court has suspended Zachary’s licence whereas s 14 authorises it to “cancel” the licence. The issue therefore is whether power to “cancel” a licence confers power to “suspend” the licence.

Meanings

According to the Macquarie Dictionary, the usual meaning of “cancel” is to make void or to annul, while “suspend” means to cause something to cease for a time from operation or effect. Thus, the ambiguity is whether “cancel” can include a temporary annulment as there is with suspension, or whether it is confined to permanent annulment.

Arguments

The literal meaning of “cancel” is to annul or to avoid completely. So, a literal reading suggests that “cancel” does not include “suspend”.

There are at least two arguments against the literal meaning. (1) There is an argument in logic that the greater must include the lesser – therefore, a power to cancel includes the lesser power to suspend. (2) An argument in justice is based on the fact that the power is discretionary because the words are “may … cancel”. Hence, there is no obligation to do so. Thus, if the literal meaning is correct, the choices open to the court are (a) to do nothing to the licence, or (b) to cancel it completely. Therefore, it seems just and proper to allow an intermediate step of a temporary cancellation as there is with a suspension. This just result is achieved by abandoning the literal meaning of cancel and construing it to include suspension. There is some support for this approach from the golden rule of interpretation.

Hypothetical Statutes Answer 2
Road Art – Police v Fang

This case by the police against Fang under s 48 of the Road Traffic Act arose out of a practical joke played by Fang in painting rude drawings on some diamonds on the road.
Elements and Consequences
The elements of s 48, with the definition in s 4 incorporated, are as follows:

Element (1)  The defendant is a person.

Element (2)  There is a traffic sign. Traffic signs include, because of the definition in s 4 any of the following – “signals, warnings, signposts, direction posts, or devices”.

Element (3)  The defendant obscures a traffic sign or part of a traffic sign.

Element (4)  The defendant does this deliberately.

Consequences  The defendant is guilty of an offence. The penalty is a fine of $200 or disqualification of driver’s licence for up to six months.

Application of Law
Element (1) is satisfied because Fang is a person, even if a very silly one. Element (2) is satisfied because the large yellow diamonds which had been painted on the road are a traffic sign according to the ordinary meaning. They are also a “warning” as provided by the definition of “traffic sign” in s 4 because they were “painted on the road to warn motorists that they were approaching a pedestrian crossing”. With regard to Element (3), Fang painted some drawings on the diamonds which had been painted on the road. Even if the outlines of the diamonds were still visible Fang has still obscured them. In any event, an attempt to argue this point is met by the provision in this element that the offence is committed if the person obscures just part of a traffic sign. Element (4) is satisfied by inference from the facts. Fang set out definitely and deliberately to do what she did.

This analysis shows that all of the elements are satisfied. Therefore, there are no issues to consider.

Hypothetical Statutes Answer 3
Dog Bites Man – Jones v Credence

Mr and Mrs Jones are contemplating an appeal from the decision of the court at first instance in an action brought against them by Credence. Credence brought the action under s 20 of the Dog Act claiming that he had been bitten and injured by a dog owned by Mr and Mrs Jones.

Elements and Consequences
Here we state the elements and consequences of s 20. Before we do this, comment is needed about two elements. Section 20 says, in defining the civil action which it creates, that “it shall not be necessary for the party seeking such damages” to show any of three things: (a) “a previous mischievous propensity in the dog”, (b) “the owner’s knowledge of that previous mischievous propensity”, or (c) that the injury was attributable to neglect on the part of the owner”. By providing that it is not necessary to show these items to make out the action s 20 is indicating that they are not elements of the action. Hence, they are left out of our list of elements below. (Why, you may ask, would a legislature insert provisions such as these? A possible explanation is that to sue a dog owner at common law a plaintiff had to prove these things. Section 20 is creating a new action without these requirements.
To avoid the possibility that they come into this statutory action by implication from the common law they are specifically excluded.)

The elements and consequences of s 20 are as follows:

**Element (1)** There is a dog.

**Element (2)** The defendant is the person who owns the dog. Because there is a very tortuous and difficult definition of owner in s 4, I have to treat this element in a special way. Strictly, according to s 20, the element is that the defendant owns the dog. I have translated this to mean defendant is the person who owns the dog because this squares the element with the effect of the definition in s 4. To proceed now, there are two sub-elements here, “owns” and the “person” who owns the dog:

(a) Owns. A person owns a dog if they ordinarily keep the dog.

(b) Person. The person who owns the dog can be either of two classes of person. (i) Ordinarily, and subject to an exception (namely, the special case below), the person who owns the dog is the person who ordinarily keeps the dog. (ii) There is a special meaning which applies when two things occur - (A) the dog is ordinarily kept on any land or premises, and (B) there is no evidence as to who actually keeps the dog. In this case the person who ordinarily keeps the dog is the occupier of the land or premises.

**Element (3)** The dog does injury to a person, property, or animal.

**Consequences** The defendant is liable in damages for the injury.

**Application of Law**

Element (1) is satisfied because Cerberus is a dog. Element (3) is satisfied because Cerberus injures a person, Credence. There is, however, considerable doubt about Element (2) which requires that the defendants “own” the dog. The key issue is whether Cerberus is ordinarily kept at the Jones’ house as the definition of ownership in s 4 requires. If he is, then there are two possibilities:

(a) Mr and Mrs Jones and their children are the owners on the basis that they actually keep Cerberus.

(b) Mr and Mrs Jones are deemed to be the owners under s 4 since they are the occupier of the premises where Cerberus is ordinarily kept.

Clearly the only difference between these two cases is the liability of the children. Since this is of little practical importance we will not pursue it.

**Ordinarily Kept**

The issue is whether by doing what they and their children do to Cerberus, he is ordinarily kept at the Jones’ house.

**Ordinarily**

“Ordinarily” in the phrase “ordinarily keeps” means that in ordinary circumstance or most of the time a person keeps the dog. The facts tell us that almost everyday Cerberus was at the Jones’ house and was fed by them. There is also no mention of anyone else taking care of Cerberus. This means that if Cerberus was kept by the Jones, he was ordinarily kept by them.
Keeping

The issue, therefore, is what constitutes “keeping” a dog.

First, we need to get something out of the way. The concept of keeping a dog does not evoke consideration of how the dog was acquired. So the fact that Cerberus was a stray dog who wandered into the Jones’ yard is not relevant. What counts is whether the Jones then kept him.

Now for “keeping”. It is a difficult concept to be precise about. To focus on it consider two extremes. Where people own a dog and deal with it in the ordinary way, they obviously keep it. Where a stray dog comes in to the yard and the people feed it once, they are not keeping it. If they feed it more, and start to look after it, at some point they move from just being kind to a stray to keeping the dog. This point, however, is impossible to state precisely.

I suggest that “keeping” is a concept with variable characteristics. To remind you, a concept with variable characteristics is one “which potentially has a number of components or characteristics”, and two further requirements are satisfied (see further Legal Technique [12.42]–[12.43], citing L Wittgenstein Philosophical Investigations 1953 ss 66, 67). (1) The “presence of only some of these characteristics is necessary to constitute” the thing defined (see further Legal Technique [12.42]–[12.43]). (2) These “constituent characteristics are not fixed but vary from case to case” (Legal Technique [12.42]–[12.43]).

These characteristics are used to construct a definition of a term by indicating all of the characteristics that can be used. Then this definition is used to identify things that come within the term defined by taking four steps which involve subjective judgments. (1) Identify the characteristics which the particular thing has. (2) Since these characteristics can be “present in varying degrees” (see further Legal Technique [12.42]–[12.43]), where relevant determine the degree which a characteristic has. (3) Some characteristics have greater weight or importance than others. This may vary from cases to case, so in each case assess the importance of each characteristic. (4) Finally, weigh up the characteristics to see if they are sufficient to constitute the thing defined taking into account (a) which characteristics are present and which are absent, (b) the importance of each characteristic that is present, (c) where applicable, the degree to which these characteristics are present (see further Legal Technique [12.42]–[12.43]).

By its nature this type of definition does not yield a precise result. Whether something falls within this definition involves considering and weighing characteristics which are not constant from one use of the concept to another. Clearly different people are likely to do these tasks in different ways producing different results. Moreover, there will be further uncertainty because (1) this type of definition does not exclude things from its potential scope which are not properly included in the term defined, and (2) not all of those who seek to define a term will use the same set of characteristics in the definition.

What we need to do therefore is to try to identify these characteristics. It is impossible to be precise but they would consist of doing things to the dog such as giving food and water, giving shelter in the house or in a kennel, giving bedding, grooming, training, playing with it, patting it, naming it and giving it medical care (ie taking him to the vet).

What we need to do is to see to what extent the Jones family did these things. As we do this we can, if we think it appropriate, comment on their weight, or their weight compared to other characteristics.
Intention
According to the facts, the “sole motive” of the Jones family in feeding Cerberus “was sympathy for his poor and starving condition”. This indicates that they did not intend, as such, to acquire Cerberus as a pet. On the other hand, it may be argued that what they did to Cerberus because of this sympathy still amounted to acquiring Cerberus as a pet, and for this reason “keeping” him.

Presence
Cerberus was around the Jones’ place “almost every day without exception”. They did not make any attempt to turn him away. This weighs strongly towards their keeping Cerberus, especially when allied with the other matters such as feeding him.

Food
There are two aspects to feeding Cerberus.

(1) Several facts describe how the Jones family fed Cerberus. (a) Initially, when he strayed in, feeling rather sorry for Cerberus the Jones gave him “some scraps”. (b) During the next four or five weeks the dog was frequently around and they or their children would throw scraps to the dog. (c) They would not call him to be fed but merely fed him when he was around, although after a short while this turned out to be almost every day without exception.

(2) In the end, the Jones family were feeding Cerberus daily. This weighs heavily towards the fact that they were feeding Cerberus.

Shelter
There are three pertinent facts on shelter.

(1) Feeling rather sorry for Cerberus the Jones gave him some scraps although they did not then let it into the house.

(2) After a couple of weeks the dog would occasionally stray inside and remain in the house for a while.

(3) Mr and Mrs Jones made no attempt to exclude the dog from their premises.

These efforts in providing shelter would weigh strongly toward the conclusion that the Jones family was keeping Cerberus.

Kennel
At no stage did the family provide a kennel for the dog.

Bedding
At no stage did the family provide any form of bedding for the dog.

Naming
There are two facts relevant to naming Cerberus. (1) Early on the Jones’s children started calling the dog Cerberus. (2) They would occasionally call him by name when he was around. Naming a dog strongly suggests that you are keeping him.

Other Criteria
These other criteria are grooming, training, playing, patting and taking the dog to the vet. There is nothing in the facts to indicate that the Jones family did any of these things to Cerberus.

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Conclusion
Weighing the arguments then who ordinarily keeps Cerberus? It is impossible to be precise about questions such as these but there is a strong chance that the Jones family kept Cerberus and thus are his owners for the purpose of an action under s 20.

Hypothetical Statutes Answer 4
Keeping Tabs – Police v Rob
This case by the Police against Rob under s 7 of the Betting Act arose out of Rob’s activities in conducting a betting ring on race days behind the stables.

Elements and Consequences
Here are the elements and consequences of s 7:

Element (1) The defendant is a person.
Element (2) There is a house, office, room or other place.
Element (3) The person keeps the house, office, room or other place.
Element (4) The person keeps the house, office, room or other place for betting.
Element (5) The betting is with persons.
Element (6) The betting is with persons resorting thereto (ie to the house, office, room or other place).

Consequences (1) The person is guilty of an offence. (2) The person is liable to one year’s gaol or a fine of $2000.

Application of Law
Element (1) is satisfied because Rob, the bookmaker, is a person. Element (2) is that there is a house, office, room or other place. There is no reference in the facts to a house, office or room, so to consider this element we have to be satisfied that the uncovered area behind the stables constitutes an “other place”. This is an issue. Element (3) is that Rob keeps this place. This is also an issue. Element (4) is satisfied because, if Rob keeps the place, he certainly keeps it for the purpose of betting. Element (5) is satisfied. Rob was conducting a “betting ring”. Implicitly this tell us that Rob was betting with persons. Element (6) is that the persons were resorting to the place. Again the betting ring is the key. Implicitly the fact that there is a betting ring tells us that the punters go to the place behind the stables. Given this they resort to the place.

Other Place
At face value “other place” means any other place of any sort and therefore includes the uncovered area behind the stables. If, however, “other place” is read eiusdem generis with house, office and room then it is read more narrowly to mean a place which is a structure, ie it is covered with a roof and has walls. The heading to s 7 suggests that it is concerned with protecting the amenity of the neighbourhood and argues for the wider meaning. On the other hand, there is a presumption that a criminal statute is read narrowly.
Keep
Is Rob keeping the area behind the stables by using it during race meetings?

“Keep” is one of those words that has a spread of meanings. In this context its sense is that he maintains the area in some way and/or regularly attends and uses it. It has the notion that one has some constant relationship with a place. Rob has some sort of relationship like this because he uses the place regularly. The question is whether this relationship is sufficient to satisfy the requirement that he “keeps” the place.

“Keeping” is a concept with variable characteristics (see further Legal Technique [12.41]–[12.45]). To remind you, a concept with variable characteristics is one which potentially has a number of components or characteristics, and two further requirements are satisfied. (1) The presence of only some of these characteristics is necessary to constitute the thing defined. (2) These constituent characteristics are not fixed but vary from case to case.

These characteristics are used to construct a definition of a term by indicating all of the characteristics that can be used. Then this definition is used to identify things that come within the term defined by taking four steps which involve subjective judgments. (1) Identify the characteristics which the particular thing has. (2) Since these characteristics can be present in varying degrees where relevant, determine the degree which a characteristic has. (3) Some characteristics have greater weight or importance than others. This may vary from cases to case, so in each case assess the importance of each characteristic. (4) Finally, weigh up the characteristics to see if they are sufficient to constitute the thing defined taking into account (a) which characteristics are present and which are absent, (b) the importance of each characteristic that is present, (c) where applicable, the degree to which these characteristics are present.

By its nature this type of definition does not yield a precise result. Whether something falls within this definition involves considering and weighing characteristics which are not constant from one use of the concept to another. Clearly different people are likely to do these tasks in different ways producing different results. Moreover, there will be further uncertainty because (i) this type of definition does not exclude things from its potential scope which are not properly included in the term defined, and (ii) not all of those who seek to define a term will use the same set of characteristics in the definition.

Hypothetical Statutes Answer 5
Jane’s Fighting Words – Police v Jane

Jane has been charged with two offences under s 21 of the Prohibited Places Act following a demonstration at RAAF Williamtown. One alleged breach of s 21 involved conduct about 350 metres from the RAAF Base, and the second conduct on the Base itself.

Elements and Consequences
The elements and consequences are as follows:

Element (1) The defendant is a person.
Element (2) There is a prohibited place.
Element (3) The person is in the vicinity of the prohibited place.

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Element (4) While there, the person obstructs another person.
Element (5) The other person is a member of Her Majesty’s forces.
Element (6) The member is engaged on duty.
Element (7) The duty is guard, sentry, patrol or other similar duty.
Element (8) The member is engaged in this duty in relation to the prohibited place.

Consequences (1) Implicitly, the person is guilty of an offence. (2) The person is liable to a penalty of six months imprisonment or a fine of $500.

Application of Law

Let us consider the elements in turn.

- Element (1) is satisfied because Jane is a person.
- Element (2) is satisfied because you are told in the facts that RAAF Williamtown is a prohibited place.
- Element (5) is satisfied. With Incident 1, the ADGs are members of Her Majesty’s forces as are the members of the relieving guard party in the incident on the Base. The RAAF is the Royal Australian Air Force. Under s 68 of the Constitution the Governor General is commander in chief of Australian military forces, just as Her Majesty the Queen is of United Kingdom military forces.
- Element (6) is satisfied. The members of both the ADGs and the relieving guard were engaged on whatever duty they were performing at the time.
- Element (8) is satisfied in relation to Incident 2 because the guard’s duty was performed on and for the RAAF Base at Williamtown.

Several elements are not clear:

- Element (3) raises a major issue in relation to both incidents as to whether the defendant, Jane, was “in the vicinity of” the prohibited place.
- Element (4) raises some doubt in relation to both incidents as to whether Jane obstructed the guard.
- Element (7) is in doubt in relation to both incidents over whether the guard was engaged at the time of Jane’s action on guard, sentry, patrol or other similar duty.
- Element (8) is in issue in relation to Incident 1. Was the duty of the ADGs performed in relation to the RAAF Base at Williamtown?

Vicinity

Incident 1

When Jane has her tangle with the ADGs she is 350 metres from the RAAF Base. This raises the question as to whether Jane is now “in the vicinity of” the RAAF Base. Is she close enough? It is possible that the closeness necessary for “vicinity” may vary according to circumstances.

Incident 2

Jane has now “entered the RAAF Base”. Literally, someone is in the “vicinity” of a prohibited place when they are near it. The issue here is whether they are still in
the vicinity when they are actually on it. There are two possible meanings of vicinity.

First, the literal meaning in *The Macquarie Dictionary* is “the region near or about a place”. On this strict view one ceases to be in the vicinity or a place when one enters the place. This view is favoured by the literal rule of interpretation. It is also favoured by the heading to s 21 “Protection of perimeter”. It is also favoured by the presumption that criminal statutes are read narrowly.

Second, one might try to extend the literal meaning so that one is in the vicinity of a prohibited places if one is actually on it. The policy is compelling. If it wrong to do something near a prohibited place surely it is wrong, even more wrong, to something on a prohibited place. This approach is favoured by the golden rule of interpretation. Yet compelling as this is as a matter of logic and policy, this is departing from the accepted meaning of “vicinity”.

**Obstruct**

**Incident 1**

Jane has her tangle with the ADGs when she is 350 metres from the RAAF Base. As the facts describe it: “Some ADGs were in these bunkers. Jane picked up some handfuls of sand and threw them at some of the ADGs. The sand went down the barrels, and into the firing mechanism, of, their rifles. In consequence they had to stop what they were doing to clean their rifles”. Does this amount to obstruction? I suggest that it does because it impeded the ADGs by effectively stopping them from going about their duties. It is, however, only an indirect obstruction.

**Incident 2**

Does Jane obstruct the relieving guard? Jane stood “in the path of the relieving guards as they marched up to take up their duty”. She refused to budge when ordered and had to be moved out of the way”. Jane clearly stops the guard from marching where they want to go, but does not stop them completely since (a) they moved her out of the way and (b) they could have walked around her. Jane does not prevent the guard from doing what it is doing but she does make it difficult for them.

**The Macquarie Dictionary**

In *The Macquarie Dictionary* “obstruct” is defined to mean “to block or close up, or make difficult of passage, with obstacles”. To succeed on this point Jane has to argue for both Incidents 1 and 2 that “obstruct” means block (completely) but not “make difficult of passage”. There are, however, no obvious arguments for reading down “obstruct” in this way.

**Nature of Duty**

**Incident 1**

There must be considerable doubt as to whether the ADGs satisfy the duty requirement. They were engaged in training, rather than being specifically posted to “guard, sentry, patrol or other similar duty”.
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Incident 2
The issue is the nature of the duty that the relieving guard were performing when Jane stood in their way. The relevant part of the facts are these. “[T]he guards at the main gate were about to be relieved. [Jane] entered the RAAF Base and made her protest by standing in the path of the relieving guards as they marched up to take up their duty”. It is clear that as they march to take up their post the relieving guards are on duty. The question is the nature of their duty. Clearly once they relieve the guards they are on guard duty. But before they do, are they on guard duty? When does guard duty begin and end? In general terms there is no easy and obvious answer to this question. We might suggest, though, that given the importance of their task, once the troops were assembled and formed as a guard they were on guard duty. Hence, they were on guard duty when they were marching up to relieve the current guard.

Relationship of Duty to Prohibited Place
When Jane is at 350 Metres from the RAAF Base and interacts with the ADGs they are on some sort of duty. As we have just discussed, this duty may not satisfy a requirement of s 21 that it be one of four kinds of duty, namely “guard, sentry, patrol or other similar duty”. Here we consider a second problem with this duty (although it does not apply to the other incident when Jane was actually on the base). There is a requirement that the duty that the members of Her Majesty’s Forces perform is a duty “in relation to the prohibited place”. What makes the claim here a bit difficult is that the bunkers which the ADGs occupied were purely for training purposes. They had no direct connection with the base. On the other hand, they were staying at the RAAF Base and this may be enough.

Hypothetical Statutes Answer 6
McDonald’s Tractor – Police v McDonald
McDonald had a farm and drove a tractor. We are asked to advise McDonald as to whether she has breached ss 5 or 7 of the Carriage of Persons Act.

Elements and Consequences
There are two provisions to consider, s 5 and s 7 of the Carriage of Persons Act.

Section 5
The elements and consequences of s 5 of the Carriage of Persons Act are as follows:

Element (1) There is a vehicle.
Element (2) The vehicle is adapted for the carriage of more than eight persons.
Element (3) The vehicle is on a public road.
Element (4) The vehicle does not display a red flag at all times while it is on the public road.

Consequences There are no consequences stated in s 5 so they would have to be in some other part of the Act. We assume, for the sake of the advice, that the owner or driver is guilty of an offence.
**Section 7**

The elements and consequences of s 7 of the Carriage of Persons Act are as follows:

Element (1) There is a vehicle.
Element (2) The vehicle is adapted for the carriage of more than eight persons.
Element (3) The owner of the vehicle fails to have the vehicle mechanically checked during the month of July of a year.
Element (4) There is no war, disturbance or any other cause which prevents the owner from having the vehicle checked.

Consequences There are no consequences stated in s 7 so they would have to be in some other part of the Act. We assume, for the sake of the advice, that the owner is guilty of an offence.

**Application of Law**

We have to consider separately the application of ss 5 and 7.

**Section 5**

Element (1) is satisfied because the tractor is a vehicle. Element (3) is satisfied in that we are told in the facts that McDonald drove on a “road” which we can reasonably assume from the circumstances was a public road. Element (4) is satisfied because the vehicle did not display a red flag at all times while it is on the public road. Element (2) is satisfied to the extent that the vehicle carries more than eight persons. Whether it has been “adapted” for this purpose is another question. It is an issue.

**Section 7**

Element (1) is satisfied because the tractor is a vehicle. Element (2) is satisfied to the extent that the vehicle carries more than eight persons. Whether it has been “adapted” for this purpose is another question. It is an issue. Element (3) is satisfied because McDonald, the owner of the vehicle, did not have the vehicle mechanically checked during the month of July. It is not clear whether Element (4) is satisfied. It is an issue.

**Adapted**

There is an issue over “adapted” for both s 5 and s 7. The requirement is that the vehicle is adapted for the carriage of more than eight persons. This element is satisfied to the extent that the vehicle carries more than eight persons. Whether it has been “adapted” for this purpose is the issue.

Adapt is defined in the *Macquarie Dictionary* to mean “to make suitable to requirements, adjust or modify fittingly”. In simpler language it means to make it [that way] from the outset, or to change it after it is made. Here one meaning is satisfied because the tractor was made from the beginning to carry more than eight people. The other meaning is not satisfied because it has not been adjusted. The question is which meaning should apply or should both. Common sense suggests both.
Other Cause
There is a defence under s 7 if an owner can show that war, disturbance or any other cause prevented them from having the vehicle checked. If other cause is taken literally, ie at face value, it means any other cause at all. In this case, being ice-bound is a defence. If, on the other hand, it is read eiusdem generis with war and disturbance it means a cause that is similar to war or disturbance. Arguably, being ice-bound would not then be an “other cause” on this interpretation.

Hypothetical Statutes Answer 7
Bond Money – Police v Swot
This case under s 39 of the Summary Offences Act arose out of an advertisement which Swot put in the Gold Coast Morning Herald.

Elements and Consequences
The elements and consequences of s 39 of the Summary Offences Act are as follows:

Element (1) The defendant is a person.
Element (2) The defendant obtains or attempts to obtain something from another person.
Element (3) The something is any money, valuable thing or benefit.
Element (4) The defendant obtains or attempts to obtain this by (a) pretending or professing to tell fortunes, or (b) by using any deception, artifice or trick.
Element (5) The defendant does not fall within the defence stated in s 39(2). Since this does not apply here we will not analyse it nor consider it further.

Consequences (1) Implicitly, the defendant is guilty of an offence. (2) The defendant is liable for a fine of $200.

Application of Law
Element (1) is satisfied because the defendant, Swot, is a person. Element (2) is satisfied. Swot obtains $4000 from the 4000 people who replied to his advertisement. Element (3) is satisfied because Swot obtains money. Element (4) raises an issue. Does Swot obtain the money by using any deception, artifice or trick?

Deception, Artifice or Trick
These terms seem to overlap. Swot might argue that all he did was invite people to send money which they did. Yet there is a degree of trickery in saying that today is the “last” day. It implies that there is something to be gained by sending the money in today that cannot be gained by sending the money in tomorrow or later. This seems to be a trick. It also has an element of deception because of the implied dishonesty.
Hypothetical Statutes Answer 8
Land of Our Fathers – Wild Scrub

This question involves land called Wild Scrub and ss 16 and 17 of the Recreational Land Act.

Elements and Consequences
Here I analyse both ss 16 and s 17. Below I consider the position if s 17 was not in the Act.

Element (1) There is a piece of land.
Element (2) The land is used for a particular purpose (called Purpose X).
Element (3) There is a Minister.
Element (4) The Minister designates land for either of two purposes:
   (a) For use as a picnic area.
   (b) For any other use.

Consequence Use of the land for Purpose X must cease.

Application of Law
Element (1) is satisfied because Wild Scrub is a parcel of land. Element (3) is satisfied because Chitter is the Minister responsible for ss 16 and 17.

Element (4) is satisfied to the extent that the Minister purports to exercise the power conferred by s 17. There is, however, a question about the scope of the power. The Minister designates the land for “use by Aborigines as camp sites and for hunting and gathering”. There is a question as to whether this constitutes “any other use” within the meaning of s 16.

Element (2) is in issue because Pelaw Main Ltd is using the land for underground coal mining. This is another issue to consider. Is the subsoil where mining takes place “land” as the term is used in s 16?

Land
The issue here is whether the subsoil (under the surface) is land for the purposes of s 16. Certainly land in general use as a legal term takes in some of the subsoil. There may still be an argument here, though, that the Recreational Land Act is about land on the surface only. This is borne out to some extent by the title of the Act, and also by the heading to s 16 referring to “enjoyment” of land.

Use
The Minister designates the land for “use by Aborigines as camp sites and for hunting and gathering”. There is a question as to whether this constitutes “any other use” within the meaning of s 16.

Under s 16 the Minister can designate land for use as “a picnic area or for any other use”. This, we need to note, is a rather silly way of drafting an Act. At face value “any other use” means any other use at all. On this basis it would authorise designating the land for “use by Aborigines as camp sites and for hunting and gathering” as the Minister had done.
There is an alternative interpretation. “Any other use” can be read *eiusdem generis* with picnic area to mean some use that has some affinity with picnics. Some support for this reading comes from the title of the Act, the Recreational Land Act. Some support also comes from the heading to s 16 referring to “enjoyment of land”.

**Source of Power**

Here we consider the second part of the question, namely, the position if s 17 was not in the Act. This raises the question of sources of power. Power to designate the land for a particular use can come from either of two sources.

First, it can be conferred explicitly, eg by statute, common law (as owner of the land), or the prerogative (as owner of the land also). In the first part of the questions, discussed above, the power is conferred by s 17.

Second, it may be implied by s 16 (*Minister for Immigration v Mayer* (1985) 61 CLR 609). This is relevant to the second part of the question – the position if s 17 was not in the Act. The issue here is whether s 16 implicitly confers power on the Minister to designate the land for the purpose stated in s 16, or whether there has to be some other source of the power. This issue involves principles of administrative law of which not all students would be aware. Hence, two simple comments must suffice. First, a court can construe s 16 as conferring the power by implication. This involves an implied extension to the scope of a statute. Second, it is clumsy drafting to leave the power conferred by implication.

### Hypothetical Statutes Answer 9
#### Influencing the Case – Police v Fred

Fred took a mineral supplement and tried to start his car. He has been charged under s 12 of the Dangerous Drugs Act.

#### Elements and Consequences

The elements and consequence of s 12 of the Dangerous Drugs Act are as follows:

- **Element (1)** There is a person
- **Element (2)** There is a motor car.
- **Element (3)** The person drives the motor car.
- **Element (4)** There is a drug.
- **Element (5)** The person drives the motor car while under the influence of the drug.

**Consequences**

1. The person is guilty of an offence.
2. The person is liable to a fine of $1000 or three months’ jail.

#### Application of Law

Element (1) is satisfied because Fred, the defendant, is a person. Element (2) is satisfied because the facts tell us that Fred has a motor car. There is some doubt as to whether Element (3) is satisfied since there is an issue as to whether Fred drives the motor car. Element (4) is also in doubt because there is some doubt as to whether the substance which Fred takes is a drug. There is some doubt as to
whether Element (5) is satisfied because there is an issue as to whether Fred is under the influence of a drug.

**Driving the Motor Car**

Fred got into his car and tried to start it. The question is whether this constitutes driving. It is not driving in the full sense because Fred does not get under way. But Fred goes some of the way. He gets into the car, and he tries to start it. The issue is how far someone has to go before they are driving. Some possibilities to consider are as follows. (1) They get into the car. (2) They try to start the car. (3) They actually start the car. (4) The car moves.

**Drug**

Fred took a regular dose of “a mineral supplement on the advice of his doctor for an infection”. This supplement had “the side effect of making a person’s reflexes slightly slower than normal”. The question here is whether this mineral supplement is a drug. The *Macquarie Dictionary* gives two relevant meanings of “drug” – “1. a chemical substance given with the intention of preventing or curing disease or otherwise enhancing the physical or mental well being of men or animals. 2. a habit-forming medicinal substance; a narcotic”. On the first meaning Fred’s supplement is a drug. On the second meaning it is not. The question is whether both meanings apply here or just the second. The title of the Act can be a source of argument. If the Act is entitled the Dangerous Drugs Act it suggests that only the second meaning is correct. If it is entitled the Motor Traffic Act it favours both the first meaning as well as the second.

**Influence of a Drug**

Fred has just taken the supplement when he got into his car. If influence is construed literally it means that the drug has taken effect, or taken effect in a significant way. One would need pharmacological evidence to determine how long the drug took to take effect. If, on the other hand, influence is construed broadly it means that the person is under the influence of a drug once they have taken it regardless of whether the drug has started to take effect.