

Volume 11, Number 2, January 2016

Revision

Strict liability and private prosecutions

Giles Bayliss

- 1 Blasphemy is an example of a strict liability offence. What is a strict liability offence? What elements had to be proven to establish this offence?
- 2 What factors led to the abolition of the offence?
- 3 Blasphemy was a common law offence. What is a common law offence and why are these unusual?
- 4 What was the difference between blasphemous libel and blasphemy?
- 5 On what grounds did the European Court of Human Rights (ECtHR) rule that blasphemy law did not breach the European Convention?
- 6 What laws now exist to protect religious freedom?
- 7 The *Lemon* case was an example of a private prosecution. What does this mean?

Answers on p. 3

Private prosecutions

The right to bring a private prosecution is seen as an essential feature of our criminal justice system and safeguard against arbitrary government. This was noted by Lord Wilberforce in *Gouriet v Union of Post Office Workers* (1978):

‘...This historical right which goes right back to the earliest days of our legal system, though rarely exercised in relation to indictable offences...remains a valuable constitutional safeguard against inertia or partiality on the part of authority.’

The right to bring a private prosecution is contained in section 6 **Prosecution of Offences Act 1985 (POA)**. The party bringing the case would have to fund the proceedings, as legal aid is not available.

Under section 6(2) of the POA the Crown Prosecution Service (CPS) has the right to take over any prosecution and conduct the prosecution or discontinue it. This is determined according to the two key tests used in all prosecutions: the **evidential** and **public interest tests**. There must be a realistic prospect of conviction and it must be in the public interest. For certain offences the director of public prosecutions or attorney general must give permission for the prosecution to proceed.

Stephen Lawrence

In 1995 the family of Stephen Lawrence brought a private prosecution against three suspects alleged to have murdered their son. This prosecution was reported to be the first private prosecution for

murder in a century. The case was stopped by the judge after a week on grounds of insufficient evidence. Two of the men were later convicted in 2012 after fresh evidence was presented in court and following a change to the double jeopardy law (under the **Criminal Justice Act 2003**).

Links

<http://www.independent.co.uk/news/first-private-prosecution-for-murder-3-held-1616684.html>

Stephen Lawrence case Q&A: <http://www.theguardian.com/uk/1999/feb/23/lawrence.ukcrime9>

News clip about the private prosecution: <http://www.bbc.co.uk/news/uk-16227424>

Baltic Art Gallery

In 2008 an evangelical Christian, Emily Mapfuwa, sought to bring a private prosecution against Gateshead's Baltic Art Gallery for outraging public decency. The case concerned an exhibition (*Gone, Yet Still*) by the artist Terence Koh, which included a plaster statue of Christ with an erection. The legal costs were met by the Christian Legal Centre, which also funded the case concerning *Jerry Springer: The Opera* (see pp. 11–13 of the magazine). In this case the CPS exercised its powers under section 6(2) mentioned above and ruled that there was no case to answer (presumably on the grounds that there was no realistic prospect of conviction). The case was dropped.

<http://www.theguardian.com/world/2008/sep/03/religion.art>

<http://news.bbc.co.uk/1/hi/england/tyne/7720587.stm>

Research exercises

1 Read the following article on the increase in private prosecutions due to public spending cuts. What examples are given of the growing number of private prosecutions?

<http://www.independent.co.uk/news/uk/crime/two-tier-justice-private-prosecution-revolution-9672543.html>

2 Read about an attempt in 2013 to bring a private prosecution against doctors carrying out terminations:

<http://www.telegraph.co.uk/news/health/news/10306200/Abortion-doctors-may-face-private-prosecution.html>

The CPS took over this case and dropped it on grounds of insufficient evidence:

https://www.cps.gov.uk/news/latest_news/cps_decision_to_stop_private_prosecutions_of_doctors_charged_with_abortion_offences/

Links

The CPS website, explaining its policy on private prosecutions:

http://www.cps.gov.uk/legal/p_to_r/private_prosecutions/

Find out more about private prosecutions:

<http://thejusticegap.com/2012/06/private-prosecutions-an-individual%E2%80%99s-right/>

Example of police officers being prosecuted:

<http://www.telegraph.co.uk/news/9477981/Police-officers-in-court-as-man-brings-private-prosecution.html>

Answers

1 A strict liability offence is one where *mens rea* does not have to be established as to one or more of the elements of the offence (in simple terms: where *mens rea* does not have to be proven).

To establish the offence it had to be shown that the defendants intended to publish the poem and that the jury regarded the poem as blasphemous. There was no need to prove that they intended to outrage or insult a believer of the Christian faith.

2 One key factor in the abolition of blasphemy was the fact that it was inappropriate in a multi-faith society. Other factors include the decline in religious observance and more generally changing attitudes towards free speech and what is and is not socially acceptable. By 2008 the law of blasphemy was probably unenforceable because of the difficulty in obtaining a conviction.

Blasphemy was finally abolished under section 79 of the **Criminal Justice and Immigration Act 2008**.

3 A common law offence is one not contained in statute but defined in case law through judicial decisions. Most offences today are contained in statute — there are few common law offences remaining and it is unlikely in modern times that any new common law offences will be recognised.

4 Blasphemy was the spoken form of the offence and blasphemous libel the written form of the offence.

5 The ECtHR ruled that freedom of expression was a qualified right and could be restricted on grounds of the protection of public morals provided this restriction was proportionate.

6 The **Racial and Religious Hatred Act 2006** makes it an offence to incite religious hatred. The offence applies to any religion. There had been numerous attempts to introduce legislation governing religious hatred but attempts met with opposition from comedians and secular groups concerned that any law might undermine free speech and criticism of religious viewpoints. Section 1 of the 2006 Act amends the **Public Order Act 1986** — inserting section 29B into that Act:

‘A person who uses threatening words or behaviour, or displays any written material which is threatening...if he intends thereby to stir up religious hatred.’

The new offence does not refer to ‘insulting behaviour’ and requires an ‘intention’ to stir up religious hatred. This deals with some of the concerns levelled at original government proposals.

7 The *Lemon* case was an example of a private prosecution. What does this mean?

A private prosecution is one brought by a private citizen or body rather than one brought by the state.

In *Lemon* the case was brought by Mary Whitehouse, who was the chair of the National Viewers’ and Listeners’ Association (now known as Mediawatch-uk). The organisation campaigned on a range of issues and influenced the introduction of the **Protection of Children Act 1978**, the **Indecent Displays Act 1981** (both concerning pornography) and the **Video Recordings Act 1984** (video classification):

<http://www.telegraph.co.uk/news/obituaries/culture-obituaries/tv-radio-obituaries/6605110/Mary-Whitehouse.html>

This resource is part of A-LEVEL LAW REVIEW, a magazine written for A-level students by subject experts. To subscribe to the full magazine go to www.hoddereducation.co.uk/lawreview