POLICE COURT APPEAL

4th, 6th and 10th August, 1987

Before the Deputy Bailiff assisted by Jurats Le Boutillier and Bonn

Her Majesty's Attorney General

-v-

Anthony Robert Ruban

(1st Appeal)

The Appellant was convicted on the 19th May, 1987, of three offences. These were that between 21.30 and 23.45 hours on the 7th March, 1987, at Patriotic Street Car Park in St. Helier he had taken and driven away a motor vehicle J54109 contrary to Article 28(1) of the Road Traffic (Jersey) Law, 1956; that on the same occasion, in the same car park, he had used the same vehicle whilst uninsured against third party risks, in breach of Article 2 of the Motor Traffic (Third Party Insurance) (Jersey) Law, 1948; and that at about 23.45 hours on Rue des Sablons, Grouville, he had breached Article 16 of the Road Traffic (Jersey) Law, 1956, by attempting to drive the same motor vehicle whilst he was unfit to drive through drink. The Appellant pleaded guilty to the first and second charges but not guilty to the third.

The relevant facts, stated as briefly as possible, are:- the Appellant, together with his co-accused Glen Barry Sheehan, took and drove away the motor vehicle from one of the upper stories of the multi-storey car-park in Patriotic Street; the Appellant drove the vehicle to the bottom of the car-park; thereafter, Sheehan drove the vehicle on roads in the Island; it is not clear from the transcript of evidence to what extent the Appellant was a passenger in the vehicle whilst Sheehan was driving it or to what extent the Appellant followed on his motor-cycle; however, at about 23.45 hours the vehicle was involved in a road traffic accident outside La Rocque Post Office on the Rue des Sablons; at that time Sheehan was driving and the Appellant was his passenger; as far as the Court is aware no other vehicle was involved; the Appellant's motor cycle was "up the road"; the motor vehicle involved in the accident suffered severe damage; unknown to the Appellant at the time the vehicle was so damaged that, in the words of Mr. Frank Maletroit M.I.M.I., a consultant engineer and claims investigator and assessor, there was "absolutely no doubt that the car was undriveable"; the prosecution agreed that it would have been impossible to put the vehicle into motion; Sheehan tried to start the

vehicle but was unsuccessful; both Sheehan and the Appellant got out of the car, went round behind the car, thus exchanging places; the Appellant got into the driver's seat and attempted to start the car but once again it would not start; two neighbours, Mr Trevor Clark and Mr Kenneth George de la Haye, who are to be commended for their actions, heard the noise of the crash and went out to investigate; both Sheehan and the Appellant were emerging from the car; although Mr.Clark instructed them to stay where they were they ran away; Mr. Clark gave chase; Sheehan ran across the fields and got away; Mr Clark caught hold of the Appellant, brought him back to the vehicle, and told him to sit down outside the shop window at the Post Office pending the arrival of the police; the Appellant, under the pretence of getting his helmet out of the car, ran away again, up a private driveway, through a timber fence, down a steep bank and over the sea wall onto the beach where he was again apprehended by Mr Clark; Mr de la Haye had followed and the two men escorted the Appellant back to the vehicle where they held him until he was detained by the Police; Sheehan was arrested later; Sheehan was charged with five offences and pleaded guilty as charged.

The Magistrate convicted the Appellant of the third charge brought against him and it is against that conviction which he now appeals; he does so on the sole ground that the Magistrate erred in law and/or in fact in finding him guilty of attempting to drive. That sole ground of appeal was sub-divided by Mr Begg into three parts 1) that the Appellant had no intention to drive; 2) that the turning of the ignition key of the vehicle was not sufficently proximate to actual driving to constitute an attempt; and (3) that because the car was undriveable, the attempt was an attempt to do what was impossible and did not constitute an offence.

The Court can easily dispose of the second of those three points. In Kelly v Hogan (1982) RTR 352, an unfit driver had no ignition key, but was sitting in the driver's seat attempting to insert other keys into the ignition. The Divisional Court held that he was properly convicted of attempting to drive while unfit.

The Court accepts that the same principles must be applied to 'attempts to drive' as to any other criminal attempt, i.e. there must be an act sufficiently proximate to the commission of the full offence, in this case, driving, but has no hesitation in saying that the turning of the ignition key is an act that is sufficiently proximate. Mr Begg seemed to suggest that a successful turning of the ignition key would be sufficiently proximate whilst the unsuccessful turning of the ignition key could not. This does not accord with

common sense. In Kelly v Hogan the attempt to insert the wrong key was sufficiently proximate - a fortiori the unsuccessful turning of the correct key must be sufficiently proximate. The Court rejects the second part of the submission.

With regard to the first part of the submission i.e. that the Appellant had no intention to drive, it was quite unnecessary to enter into a long discussion of mens rea in attempts. The Court accepts that, in order to be guilty of attempt, an accused must intend to commit the relevant full offence. Therefore, the Appellant could only be guilty of attempting to drive the vehicle if he intended to drive it.

The Court doubts the necessity to cite any authority to support this proposition but, if authority is necessary, the Court would rely on Words and Phrases Legally Defined 2nd Edn. Vol 1 p. 136, cited to us by Mr Begg, which cites Davey v Lee (1967) 2 All ER 423 per Lord Parker, C.J. at p 425:-

> "What amounts to an attempt has been described variously in the authorities, and, for my part, I prefer to adopt the definition given in Stephen's Digest of Criminal Law (5th Edn, 1894), art 50, where it says that 'An attempt to commit a crime is an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commision if it were not interrupted'. As a general statement that seems to me to be right, though it does not help to define the point of time at which the series of acts begins. That, as Stephen said, depends on the facts of each case. A helpful definition is given in para. 4104 in Archbold's Pleading, Evidence and Practice (36th Edition), where it is stated in this form: 'It is submitted that the actus reus necessary to constitute an attempt is complete if the prisoner does an act which is a step towards the commission of the specific crime, which is immediately and not merely remotely connected with the commission of it, and the doing of which cannot reasonably be regarded as having any other purpose than the commision of the specific crime'."

There followed a New Zealand authority which seems to this Court to be most apt:-

"In order to constitute an attempt.....there must be some overt act immediately connected with the proposed crime....and indicating an intention to commit that crime". R v Barker (1924) N.Z.L.R. 865 per Sim J, at p. 870.

In this instant case, the Appellant sat in the driver's seat (the first overt act) and attempted to start the engine (the second overt act) indicating an intention to drive.

Of course, the Magistrate had to consider the Appellant's explanation and that explanation is contained at page 46 of the transcript. He was not really sure why he tried to start the car, it was just impulse at the time; he had difficulty enough driving it in the first place down to the bottom of the car park so he wouldn't have tried driving it again; if it had started he would have got out and sat back in the passenger seat; and he would not have put the car into gear or taken the hand brake off. Against that he would not have gone back on his motorcycle because that was 'up the road', he did not know the area well, so he did not know where it was and he had trouble finding it the next day and he was not sure that Glen Sheehan would have driven the car.

The Magistrate found that the Appellant "was attempting to drive the car". This Court does not lightly upset a decision of the Magistrate on a finding of fact, he having the advantage of hearing the witnesses and studying their demeanour. Here there was corroboration of an intent to drive, in order to drive away and escape detection, from the fact that the Appellant twice ran away from Mr Clark and Mr de la Haye.

In the judgment of this Court the decision of the Magistrate on the issue of intention was well founded and the Court rejects the first part of the ground of appeal.

The Court now turns to the third part of the sole ground of appeal namely that what the Appellant did was to attempt the impossible and, thus, that he did not commit an offence.

Mr Begg relied principally upon Haughton v Smith (1975) AC 476.H.L.

The law prior to Haughton v Smith is succinctly and sufficiently stated in Archbold's Pleading, Evidence and Practice (36th. edn) para 4108, which reads....

> "It is no defence to an indictment for attempting to commit a crime to prove that it was physically impossible, either relatively or absolutely, to commit the complete offence: R v Brown 24 QBD 357 (attempt to commit an unnatural offence with a duck); R v Ring 17 Cox 494 (attempt to pick a pocket which is in fact empty). It is submitted that these decisions overrule R v Collins L & C 471 in which it was held that it was not indictable to pick a pocket which turned out to be empty".

Haughton v Smith was concerned with the handling of stolen goods. It decided that for the purposes of section 22(1) of the Theft Act 1968, in order to constitute the offence of handling, the goods specified in the particulars of offence must not only be believed to be stolen but actually continue to be stolen goods at the moment of handling and that it was not possible to convert a completed case of handling, which was not itself criminal because it was not the handling of stolen goods, into a criminal act by the simple device of alleging that it was an attempt to handle stolen goods on the ground that at the time of handling the accused falsely believed them still to be stolen.

However, their Lordships went much further than was necessary to decide the question relating to the handling of stolen goods and undertook a wider consideration of the principles involved and per Lords Hailsham, Morris and Salmon, said that steps on the way to the commission of what would be a crime, if the acts were completed, may amount to attempts to commit that crime, to which, unless interrupted, they would have led; but steps on the way to the doing of something, which is thereafter done and which is no crime, cannot be regarded as attempts to commit a crime. Equally, steps on the way to do something which is thereafter not completed, but which if done would not constitute a crime, cannot be indicted as attempts to commit that crime.

Lord Hailsham at p 495 suggested that Reg v Collins and Reg v McPherson (1857) Dears & B 197 were good law and that Reg v Brown and Reg v Ring had been wrongly decided. Lord Reid did likewise at p 499. But at page 500 Lord Reid said "I would not seek to lay down the law in detail beyond what is necessary for the present case". Viscount Dilhorne at p 505 did not regard the decisions in Reg v Brown and Reg v Ring as authoritative, and, at p 506 expressed the opinion that Reg v Collins and Reg v McPherson were rightly decided.

Smith and Hogan's Criminal Law 5th Edn. at p 263, said of the decision in Haughton v Smith:-

> "The problem of impossibility in attempts has a long history in case law and academic writing. English law on the matter was in a reasonably satisfactory state until the decision of the House of Lords in Haughton v Smith in 1975 which held, broadly, that impossibility is generally a defence, the only exception recognised being the case where the attemptor was using inadequate means to achieve his object. The decision produced wholly unacceptable results. For instance, a person searching through another's wallet for money was held not guilty of attempting to steal because there was no money in the wallet

(Partington v Williams (1975) 62 Cr App Rep 220). Legislation was clearly required".

In the 4th edition of Smith and Hogan which was post Haughton and Smith, but pre the Criminal Attempts Act 1981, the learned authors, at page 258 said this:-

> ".....Haughton v Smith .... made a clear and important change in the law. It had been accepted for the previous 80 years since the famous "empty pocket" case of Ring that the non-existence of the subject matter of the proposed theft was no answer to a charge of attempt to steal. It was not strictly necessary to the decision to deal with this case at all but it has since been held by the Divisional Court in Partington v Williams that the decision on this point is part of the ratio decidendi. It is submitted that this was a deplorable and unnecessary change in the law.....this is not a case of mere intent, for D has in fact done all in his power to put the intent into execution; it is true that the crime could never have been committed by this act - but neither could it in the case where the means are inadequate - the definition of an attempt relied on is therefore a bad one; and ...common-sense, it is submitted, points clearly to the fact that it is an attempt (emphasis added). D. has done all in his power to achieve an objective which would have been a crime, had he been able to do so. It is regrettable that a person who searches through another's wallet or handbag for money and finds none is guilty of no offence, and ludicrous that he is not guilty if he puts his hand into P's empty right trouser pocket whereas he would be guilty if he had gone for the left pocket where P keeps his money. Regrettably it seems that only legislation can restore the position."

Haughton v Smith was also reported (as R v Smith) in (1974) Crim. L.R. 305. The commentary of the learned editors at page 306 includes the following:-

> "The opinions of the House go far beyond that of the Court of Appeal in limiting the scope of the law relating to attempts and beyond what was necessary for the decision.....This very surprising decision casts grave doubt upon, if it does not upset, the law of attempts as it has been understood for over eighty years.....All the judges in the present case thought that Ring was wrongly decided and preferred the earlier inconsistent case of Collins. Yet, Lord Reid said of the empty pocket case that "The ordinary man would say without stopping to think - of course he was attempting to steal". It is respectfully submitted that the

ordinary man's immediate reaction would be absolutely right".

Mieras v Rees is reported at (1975) C.L.R. 224. It was a case concerning the alleged attempt to supply a controlled drug. In fact the substance supplied was not proved to be a prescribed drug. The Court held that, applying Haughton v Smith, there was no actus reus and, therefore, notwithstanding the presence of mens rea, it was impossible to establish attempt. The commentary of the learned editors includes the following:-

> "The wider remarks of the House impose a very severe restriction upon the law of attempts as it had been understood for 80 years; and it is hoped (though without great optimism) that they might be regarded as obiter.
>
> However in Partington v Williams (supra) the Divisional Court held that the disapproval of R v Ring was part of the ratio decidendi and so settled that there could be no attempt to steal from a wallet which was empty. The acquittal of the pickpocket, as Lord Diplock said, "seems to offend common sense and common justice".

Mr Begg also referred the Court to an interesting article entitled "The Criminal Attempts Act and Attempting the Impossible" by Brian Hogan of Smith and Hogan which appeared in (1984) CLR at page 584. Whilst the article does not constitute legal authority it is interesting in demonstrating the unacceptability of Haughton v Smith.

At page 584 Professor Hogan says:-

> "Then again there is that arcane problem of 'impossibility' in attempts, so beloved of teachers and examiners bent on confusing generations of law students".

And

> "Before Haughton v Smith pretty well all commentators were agreed that so-called factual impossibility (the empty pocket case) was no defence to a charge of attempt and it was also generally thought after Ring that the courts took the same view of the law".

At page 585 he says:-

> "In Haughton v Smith the House of Lords decided, to put it at its narrowest, that on a charge of attempting to handle stolen goods, knowing or believing them to be stolen, it was necessary for the prosecution to prove that the defendant attempted to handle stolen goods and that it was not enough for the prosecution to prove that the defendant attempted to handle (or succeeded in handling) non-stolen goods believing them to be stolen.

The Court can usefully interpose here to say that it makes sound reasoning to say that where the charge is handling stolen goods it is necessary for the prosecuton to prove that the goods are stolen; in the instant case there is not a shadow of doubt that it was a motor vehicle which the appellant attempted to drive.

Professor Hogan continued at page 586:-

"The House of Lords then went on in Haughton v Smith to say some very curious things about cases of factual impossibility. This aspect of the decision immediately spawned problems for lower courts which loyally sought to make the best of it and the House itself, while not prepared to gainsay what it had said in Haughton v Smith, was forced into some very refined reasoning to make the best of what it would not admit was a bad job. All I need do here is to ally myself with the many critics of this ascept of the decision in Haughton v Smith.

"The Law Commission was left to pick up the peices, to guide us as to what the law ought to be, and to put their proposals into legislative form. There was really no doubt where the Commission would come down so far as factual impossibility was concerned and that it would restore the position as it was generally thought to be after Ring and before Haughton v Smith."

This Court has to decide whether it must follow Haughton v Smith in its wider aspects.

In his summing-up to the Court in the case of Edward John Louis Paisnel, reported as an Appendix to the Judgment of the Court of Appeal in Attorney General v Paisnel (1972) Jersey Judgments 2201 at page 2226, and approved by the Court, the then learned Bailiff, at page 2228 defined an attempt under Jersey Law as follows:-

"An attempt consists of steps taken in furtherance of an offence which the person attempting intends to carry out <u>if he can</u> (emphasis added). The steps must include the doing of acts the purpose of which is clear beyond all reasonable doubt, together with an equally clear intention of achieving that purpose".

In Corby and Lewis v Le Main (1982) Jersey Judgments, 157, at page 163, the Royal Court said this:-

"In the United Kingdom before the passing of the Civil Evidence Act 1968, evidence of a Plaintiff's former convictions was not admissible. (Hollington v Hewthorn (1943) K.B. 587). Nevertheless, that decision has been questioned in a number of subsequent cases notably

that of Goody v Odhams Press Limited (1967) 1 QB 333."

And at page 164:-

"Hollington v Hewthorn was criticised even more trenchantly again by Lord Denning, in the case of McIlkenny v Chief Constable of the West Midlands (1980) Q.B. 293 at page 319".

And at page 165:-

"Should the Royal Court then apply the principle of Hollington v Hewthorn or take a more robust view? The essence of the defence of justification lies in the truth of the imputation.....It seems to us that the Defendant in this case should not be prevented from adducing evidence to support the defence of justification and we rule that the Defendant should be allowed to prove the Second Plaintiff's conviction".

Hollington v Hewthorn had been much criticised and replaced by section 11 of the Civil Evidence Act 1968. The Royal Court chose to depart from it. In the instant case Haughton v Smith was much criticised and was replaced by the Criminal Attempts Act 1981. Applying Corby and Lewis v Le Main this Court is entitled to depart from it.

As has often been said in this Court, the Courts of this Island are not bound by judgments of the English Courts (v A.G. v Contractors Plant Service Ltd (1967) J.J. 785 at 786). The Royal Court applies the principles stated by the House of Lords where it finds them wholly persuasive (v Romeril v Comptroller of Income Tax (1967) 817 at p 822).

In the judgment of the Lords of the Judicial Committee of the Privy Council in Renouf v H.M. Attorney General for Jersey (1936) AC 445, their Lordships, having traced the development of the Jersey criminal law, continued: "In modern times, however, it has been usual to refer to English legal works and precedents as authorities, and the Royal Court has in many cases regarded the English Law as a guide in laying down the modern law of Jersey." After giving reasons for this and explaining why there has existed a system of treating the criminal law as not being of a rigid character, the judgment continued: "Criminal law in Jersey thus rests almost entirely on the modern practice of the Royal Court, and this tends more and more to imitate English models. It may not be improper to add that a similar practice has been adopted in a number of British dominions including those where English law does not prevail, without, in many cases, any statutory authority for such a course."

In Attorney General v Makarios (1979) J.J. 85, the Court, having cited the above extracts, said:-

> "It is to the knowledge of this Court and it is to the knowledge of all practitioners in this Court that it is quite usual, and was quite usual for the Royal Court in the past, to follow English cases in declaring the criminal law of Jersey. The fact that those cases might in turn have been based on an English Statute did not invalidate and does not now invalidate the boundaries which have been drawn by the Royal Court in the past in respect of established categories of crime."

If this Court adopts this alternative approach, it finds that the Criminal Attempts Act 1981 can form the basis of persuasive cases. The persuasive case under the Criminal Attempts Act 1981 is that of R v Shivpuri (1986) 2 All ER, 334 H.L. The House of Lords there held that, on the construction of s.1 (1) of the 1981 Act a person was guilty of an attempt merely if he did an act which was more than merely preparatory to the commission of the offence which he intended to commit, even if the facts were such that the actual offence was impossible."

Thus, if the Court were to adopt that approach, instead of departing from Haughton v Smith, it would still find that the Appellant was guilty of the attempt to drive because he did an act (turning the ignition key) which was more than merely preparatory to the commission of the offence which he, the Appellant intended to commit, i.e drive the car.

This Court finds persuasive authority in R v Farrance (1978) Crim.L.R. 496. Farrance was indicted for attempting to drive wth a blood alcohol concentration above the prescribed limit (in England). When the Police arrived Farrance was seated at the driving wheel and revving the engine in the hope that he would be able to move his van. In fact, the clutch had burnt out and the van was undriveable. The judge ruled that whether Farrance was attempting to drive was a matter of fact for the jury. The jury was directed that an attempt was a combination of two things - an intention to do something and action directed towards accomplishing the event which failed to produce it. They could only convict if they were satisfied that Farrance did not realise that it ws impossible to move the van by mechanical means and that he was attempting to move the van by such means. On appeal against conviction counsel submitted that to establish attempt the Crown had to prove that the full offence was capable of achievement. The appeal was dismissed. The appellant was truly attempting to drive the van and his attempt would have been successful but for the intervention of the burnt out clutch. If somebody

was seated at the driving seat of a car attempting to start it, put it in gear or accelerating the engine so as to try to make the car move, he was attempting to drive. The fact that there was some intervening factor which in the end would prevent him from fulfilling his attempt did not prevent it from being an attempt to drive.

This Court is going to follow the lead of the Royal Court in Corby and Lewis v Le Main and is going to take a robust view. This Court is going to apply common-sense which points clearly to the fact that what the Appellant did was attempt to drive. This Court is going to follow the ordinary man's immediate reaction that if somebody is seated at the driving seat of a car attempting to start it then, unless there is some other explanation e.g. a mechanic engaged in repair starting the engine to test it, he is attempting to drive.

The decision of this Court can be arrived at in three ways. Firstly, by refusing to follow Haughton v Smith at all and relying on the view taken over the preceding eighty years in reliance on R v Brown and R v Ring and on R v Farrance. Secondly, by regarding the decision in Haughton v Smith as a decision restricted to the handling of stolen property and the remainder of the remarks as obiter and for that purpose declining to follow Partington v Williams. Thirdly, by following Renouf v H.M. Attorney General for Jersey and applying not only Haughton v Smith but R v Shivpuri based on the Criminal Attempts Act 1981 as well.

By all three routes the Court arrives at the same result. In our judgment, in Jersey law an attempt consists of a step or steps taken towards the commission of an offence which the offender intends to commit if he can. Mere intention (mens rea) is not enough. Some act (actus reus) must be proved to have been done by the offender directly connected with the offence. There must be both mens rea and actus reus. But it is no defence to prove that it was physically impossible to commit the complete offence.

Accordingly, we reject the third part of the sole ground of appeal against conviction and dismiss the appeal.

I wish to add a few remarks which the Court hopes may bear fruit in other places. The trial of this issue and the hearing of this appeal has been expensive in both time and money. Although it has settled an interesting legal point, the expense in time and money could and should have largely been avoided. On his own admissions the Appellant did all his drinking before the taking of the vehicle. This is borne out by the fact that the co-accused Sheehan was not charged with any Art 16 offence. Further, on his own

admission, the Appellant drove the vehicle in the multi-storey car-park. If he had been charged with the complete offence in St. Helier instead of the attempt in Grouville the only issue to be tried would have been that of his fitness to drive and, not surprisingly, he did not appeal the Magistrate's finding on that issue. Moreover is it not improper for the prosecution to be selective in the number of charges brought, nor is it improper for the prosecution to accept a plea of not guilty on one charge and offer no evidence, where other charges are admitted. It is to be noted that the Appellant suffered no greater penalty on the Article 16 offence since he was sentenced to 24 hours at the attendance centre concurrent with Count 1 and he was disqualified for 18 months on each of the three counts concurrently. Earlier last week, in the Sangan case the Court had occasion to criticise the charge that was brought when a different charge would have fitted the facts. Miss Nicolle tended to brush these difficulties aside with 1) the limitations of the charging office 2) the limitations of the honorary system and 3) the lack of a professional prosecutor in the Police Court. The Court does not accept that a better standard cannot be expected within the existing system. The Centeniers have a duty to decide on the charges to be brought and a duty to verify their accuracy. The States Police Officers involved in a case have a duty to take an interest in the manner in which the case is presented and a duty to assist the Centeniers. Much time and money could have been saved with closer supervision in these two cases and we hope that such supervision and exercise of discretion will be more apparent in the future.

IN THE ROYAL COURT OF THE ISLAND OF JERSEY

On Appeal from the Police Court

Police v. Anthony Robert Ruban

("Attempt Appeal")

LIST OF AUTHORITIES TO BE CITED
BY THE APPELLANT

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0. Smith v. Hogan "Criminal Law" (5th Edition) pp 255-269: "Attempt".

1. Wilkinson's "Road Traffice Offences" (12th Edition)

   (i) p. 71-72: "Attempt"

   (ii) p. 186-189: "Drives or attempts to drive"

   (iii) p.652: "Attempts"

2. Wilkinson's "Road Traffice Offences" (First Supplement to 12th Edition) p.8: "Attempt".

3. Wilkinson's "Road Traffic Offences" (10th Edition) pp 24-28: "Driver".

4. "The Working Paper on Inchoate Offences: (1) Incitement and Attempt" by Richard Buxton [1973] CLR 656.

5. "Words and Phrases Legally Defined" (2nd Ed) Vol 1 A-C Page 136: "Attempt".

6. "Words and Phrases Legally Defined" (2nd Ed) Vol 2 D-H Pages 114-117: "Drive-Driver".

7. "Words and Phrases Legally Defined" (2nd Ed) 1986 Supplement

(i) pp 28-29: "Attempt"

(ii) pp 106-110: "Drive-Driver".

8. A.G. v. Le Mottee (Unreported Jersey Judgements 1984/18).

9. Archbold: "Criminal Pleading Evidence in Practice" (42nd Edition) pp 2301-2305.

10. R. v. Collins [1864] 169 English Reports 1477.

11. R. v. Cook [1964] Crim LR 56.

12. Harman v. Wardrop [1971] 55 Cr App R 211.

13. Edkins v. Knowles [1973] 2 All ER 503.

14. Shaw v. Knill [1973] Crim LR 623.

15. R. v. Bogacki and Others [1973] 1QB 833.

16. R. v. MacDonagh [1974] 2 All ER 257.

17. Haughton v. Smith [1975] AC 476.

18. Miers v. Rees [1975] CLR 224.

19. Partington v. Williams [1976] Cr App R 220.

20. R. v. Stonehouse [1977] 2 All ER 909.

21. R. v. Farrance [1978] Crim LR 496.

22. R. v. Nock; R. v. Alsford [1978] CLR 483.

23. Anderton v. Ryan [1985] 2 All ER 355.

24. R. v. Shivpuri [1986] 2 All ER 334.

25. R. v. Shivpuri [1986] CLR 536.

26. Chatters v. Burke [1986] 3 All ER 168.

27. R. v. Tulloch [1986] CLR 50.

28. "The Criminal Attempts Act and Attempting the Impossible" by Brian Hogan [1984] CLR 584.

29. "Circumstances, Consequences and Attempted Rape" by Richard Buxton QC [1984] CLR 25.

30. (i) D.A. Thomas "Principles of Sentencing" (2nd Edition): pp 64-73: "Disparity of Sentence".

(ii) C.J. Emmins "A Practical Approach to Sentencing" (1st Edition) pp 8890: "Disparity of Sentence".

31. (i) Le Crom v. Constable of St Brelade (1975) JJ197.

(ii) A.G. v. Vickers (Unreported Jersey Judgements 1984/7).