behaviour orders in Scotland strongly suggests that its intention was that applications for these orders which were made in England and Wales should be made by way of civil proceedings also. The grounds on which these applications may be made in both jurisdictions are similar, and the consequences of the making of an anti-social behaviour order are the same. In neither jurisdiction does an anti-social behaviour order have them. character of a punishment for an offence such as a fine or imprisonment. The fact that an anti-social behaviour order has been made against him does not appear on the person's criminal record. On the contrary, the order is described in both section 1(4) and section 1:9(3) as a prohibition. In this respect it has the character of a civil injunction or, in Scotland, a civil interim interdict. A criminal sanction is available in both jurisdictions if the person is convicted of having breached the order: see section 1 (Ro) for England and Wales and section 1 for Scotland. But the proceedings which must be brought in the event of a breach are separate proceedings. Overall, the scheme is so similar in both jurisdictions that the intention of Parliament as to the nature of the proceedings under which the application was to be made can be taken, in the absence of any contrary indication, to have been the same.

127,

Simon Cordell's Skeleton Argument (2) Pdf

79

R (McCann) v Manchester Crown Ct (HL(E)

[2003] AC

Lord Hope of Craighead

The second point is that it would not be inconsistent with a finding that the proceedings under section I(I) of the Crime and Disorder Act 1998 were civil proceedings for your Lordships to hold that the standard of proof to be applied was that which is required in criminal proceedings. In ***Constanda v M*** r 997 SC 217 the ground on which the child had been referred to a children's hearing was that he was exposed to moral danger in terms of section 3 2. (2.) (b) of the Social Work (Scotland) Act 1968. The Court of Session held that, as the whole substratum of the ground of referral was that the child had performed certain acts which constituted criminal offences, the commission of these offences had to be proved to the criminal standard. This was despite the fact that the proceedings before the sheriff were civil proceedings, and in the absence of any rule laid down by the Act which required the criminal standard to be applied in any case other than where the child had been referred under section 32(2) ^) on the ground that he had committed an offence.

Classification under the Convention

The fact that the proceedings are classified in our domestic law as civil proceedings is not conclusive of the question whether they are of that character for the purposes of article 6 of the Convention. It provides no more than a starting point, as the question has to be examined in the light of the common denominator of the legislation of the contracting states: ***Engel v The Netherlands (No 1)*** 1 EHRR 647, 678, para 82.

The examination must begin with the wording of article 6 itself, and in particular with the opening sentence of article 6(1). It provides:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Then there are the opening words of article 6(3) which provides chat everyone "charged with a criminal offence" is to have the minimum rights which are set out in that article.

There are two aspects of the wording of article 6 that I think are worth noting before I turn to the authorities. The first is that, for article 6 to apply at all, the proceedings must be capable of being classified either as proceedings for the determination of the person's "civil rights and obligations" or as proceedings for the determination of a "criminal charge" against him. Rut