point out that the definition of "anti-social behaviour" in section 1(1) of the Crime and Disorder Act 1998 is modelled on

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Simon Cordell's Skeleton Argument (2) Pdf

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

Lord Hope of Craighead

A "harassment" in the Protection from Harassment Act 1997, which is a criminal offence under section z of that Act, and that such conduct may also be treated as criminal under section 5 of the Public Order Act 1986 and a variety of other statutory provisions dealing with offences such as assault, theft and burglary. They also invoke section 3 of the Human Rights Act 1998 in support of the proposition that an application made under section 1 of the Crime and Disorder Act 3 998 should be construed in domestic law as 6 criminal proceedings in the absence of an express provision in the legislation to the contrary.

• 1 would reject these arguments. The question is whether, as it was put in ***Engel v The Netherlands (No 1)*** 1 EHRR 647, 678, para 81, the provision defining the offence belongs to criminal law, disciplinary law or both concurrently. It cannot be answered without examining the nature and purpose of the proceedings in which the conduct is alleged. The analogies to which Liberty refer are all examples of situations in which the conduct described is defined in the statute for the purpose of enabling a charge to be brought with a view to the imposition of a penalty. In ***Engel v The Netherlands*** (No 1), at p 677, para 79 the court described the aim of repressing the applicants' conduct through penalties as an objective which was analogous to the "general goal of the criminal law". I hat is not the 0 purpose for which proceedings for the imposition of an anti-social behaviour order are brought. Their purpose is to protect the public from further antisocial acts by the defendant. As for the argument regarding section 3 of the Human Rights Act 1998, it is, as Liberty themselves recognise, circular. According to the jurisprudence of the Strasbourg Court, the first criterion is how the proceedings are classified according to the legal system of the £ respondent stat**e: *Engel v The Netherlands*** (No 1), at p 678, para 8z. Section z of the Human Rights Act 1998 provides that a court or tribunal determining a question which has arisen in connection with a Convention right must take the Strasbourg jurisprudence into account. Strasbourg jurisprudence tells us that the question of classification is a matter for our own domestic system. Under our system, for the reasons already given, the proceedings arc civil proceedings and not criminal.

The second criterion: the nature of the offence

• This question looks to the nature of the offence charged. But there is a preliminary question that has to be examined. Do proceedings for the imposition of an anti-social behaviour order involve the bringing of a charge at all? For the reasons already given, 1 think that the answer to this question in domestic law is clear. They do not involve the bringing of a charge because the purpose of the procedure is to impose a prohibition, not a penalty. But the domestic answer to this question does not resolve the issue, because for tire purposes of the Convention it is necessary to look at the substance of what is involved and not the form. Moreover, the question cannot be answered according to what Parliament is thought to have intended. In this context it is the effect of what Parliament has done that has H to be examined. The court looks behind the appearances and investigates the realities of the procedu**re: *Deweer v Belgium (1980) z EHRR.*** 439, 438, para 44.

• The grounds for making the application involve making an allegation against the defendant that he has acted in a manner which may

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