criminal status. In particular this should include the right to examine witnesses pursuant to article <5(3){d).
The application of the criminal standard of proof as being "likely to be appropriate" in the majority of applications for an anti-social behaviour order was accepted by the Court of Appeal in ***McCann.*** That is an unsatisfactory approach in relation to the appropriate standard of proof. It would lead to a lack of clarity and certainty, which in turn is likely to cause ***C*** injustice, actual or perceived. The proper interpretation is that the appropriate standard of proof to be applied in relation to the making of any anti-social behaviour order is the criminal standard. It is unrealistic to suggest some sort of sliding scale between the criminal and civil standard of proof. Application of the criminal standard of proof would go a long way to achieving a fair trial.
In ***Clingham*** the allegations involve serious criminal conduct including burglary, dealing in drugs and assaults. One of the consequences of this is that a person may find himself having to attempt to answer an allegation founded on multiple hearsay to resist an application for an order, only to later have to answer a formal criminal charge founded on the same "facts" which were only proved to the civil standard. Anything said in the course of the first proceedings could be used against hint in respect of the later criminal charge. This also has the potential of effectively depriving the person of his right to silence under article 6(2) in any such subsequent proceedings. If he is to seek to preserve this right by not exposing himself to such risk, by not seeking to challenge the basis on which the anti-social behaviour order is sought, he would be compelled to constrain himself in the initial proceedings such that his general right to a "fair" hearing under article 6(1) in determination of his "civil rights and obligations" regardless of any minimum guaranteed rights afforded in respect of a "criminal charge" under article 6(3}, would be compromised. Anonymity of witnesses probably will not be achievable in these circumstances. The problem of fearful witnesses can be dealt with improving the role of the CPS and police rather than reducing the threshold required for an order to be made.
The jurisdiction to accept ***Clingham*** is properly exercised. The definition ^ of "criminal cause or matter in section r(I)(a) of the Administration of Justice Act 1.960, for the purpose of appeal to the higher courts, is wider than the phrase "criminal proceedings": see ***Exp Alice Woodhall*** (1888} 20 QBD 832; ***Amand v Home Secretary*** [1943] AC 1:47; ***Bonalwni v Secretary of State for the Home Department*** [1985] QB 675; ***Carr v Atkins*** f 1 987] r. QB 963; ***Customs and Excise Comrs v City of London Magistrates' Court H*** [2000] 1 WLR 2020. Applying that approach the making of an anti-social behaviour order would clearly be a criminal cause or matter, as is everything that flows from it.
Adrian Eulford QC and ***fames Stark*** for the Mc Cans. Anti-social behaviour orders require proof of conduct that is criminal in nature, closely

101,

Simon Cordell's Skeleton Argument (2) Pdf

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

[2003] 1 AC

akin to offences under sections 4A and 5 of the Public Order Act 1986 and section 1 of the Protection from Harassment Act 1997 and may lead to restrictions on liberty that constitute a punishment. Although the wording of sections 4A and 5 Public of the 1986' Act is not identical to section 1 of the Crime and Disorder Act .1998, the conduct involved all falls within section 1. Furthermore, there is no limitation placed on the definition of harassment in section 7(2) of the Protection from Harassment Act 1997.
English law contains a number of strict liability offences. The lack of a requirement of intent cannot render the proceedings civil. Furthermore, men's rea in both section 5 of the Public Order Act 1986 and section 2. of the Protection from Harassment Act 1997 offences is