

THE OBLIGATION TO ACCOUNT IN ENGLISH LAW

L'OBLIGATION DE
RENDRE DES COMPTES

L'*accountability* anglaise est difficile à traduire en français, car elle est difficile à comprendre en-dehors d'un système jurisprudentiel de longue tradition. Elle ne se confond pas avec la responsabilité, ou la possibilité d'incriminer une personne pour ses actions, mais elle entretient avec ces autres concepts une relation qui varie d'un domaine à un autre. Pour pouvoir reprocher ses actions à quelqu'un, qu'il s'agisse d'un *trustee*, d'un espion, d'un employé, d'un juge ou d'un ministre, il faut parfois établir l'obligation qu'avait cette personne d'en rendre compte. Les derniers développements des lois sur les entreprises, avec leur définition assez large des informations dues par les sociétés cotées, pourraient remettre en question cet équilibre entre compte-rendu et responsabilité, qui évoluait lentement depuis la fin du moyen-âge anglais. Il nous est apparu qu'une publication de cet article dans sa langue d'origine permettait de lui conserver toutes les nuances nécessaires à sa lecture approfondie.

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Accountability has at least two meanings: both 'holding someone accountable' for their actions, that is, holding them responsible, and requiring someone to 'give an account' of their actions, that is, to give a description of past action, perhaps including reasons for it. The latter seems logically sometimes to be a part of the former.

The law in England functions broadly to hold people responsible for their actions in a range of circumstances, for example when they commit a crime, or a tort, or have a contractual obligation. But the circumstances in which someone will be required to give an account, or to give reasons for their action, to another person, or to the public, are narrower. This paper considers some of those circumstances in English law, of interest for themselves, but also of interest both for what they show of the range of possible responses and what they show of the English method of regulation. Necessarily, the paper can only provide a sketch of sur-

face, and each of these areas has subtleties that space does not allow to be drawn out.

THE ACTION OF ACCOUNT

One specific meaning of 'account' in the law comes from the sense of it as an 'accounting' peculiar to money. The common law recognised in the thirteenth and fourteenth centuries that there might be circumstances in which someone would have to provide an account, and this became a cause of action itself (1). The 'action of account' provided that a plaintiff could

(1) See generally S. F. C. MILSOM, *Historical Foundations of the Common Law* (London: Butterworths, 1981, 2nd edition) at 275-282; J. H. BAKER, *An Introduction to English Legal History* (London: Butterworths, 2002, 4th edition) at 363-365.

ask the court to compel the defendant to an accounting. The defendant could reply that he already had done so, or had no obligation to do so. But if he was unsuccessful he would be imprisoned and be required to give an account, before two auditors, appointed by the court if the defendant was unwilling to account, and any money that was determined to be owing at the end of the account would be owed in debt, another specific cause of action, to the plaintiff and payable before the defendant's release. At the heart of the matter was not the debt itself but rather the obligation to give an account (2).

Thus there were several questions that could arise. An initial issue was whether there was a relationship between the plaintiff and defendant sufficient to give rise to the action. Originally this was restricted to those managing land for another; the relationship between lord and bailiff, and the bailiff's account « checked on more than arithmetic: it controlled the proper and honest use of managerial discretion » (3).

Another relationship giving rise to the obligation to account, under statute of 1267, was that of guardian in socage (4). Socage land, was, essentially, land held of a lord in the feudal system with obligations attached, but those obligations were certain in advance: thus the holder of socage land could be

distinguished from those holding land with uncertain obligations, that is, those effectively unfree or villeins (5). When the land passed to an infant heir on the death of the holder of the land, guardianship for the benefit of the infant would pass to the infant's relatives, a situation similar to that of a trust, discussed below. When the heir reached 14, he would be able to seek an action of account against the relative under the terms of the legislation known as the *Statute of Marlborough*.

The other important relationship giving rise to an obligation to account was receipt of money on behalf of another, initially presumably where there was a pre-existing relationship of agency, but later even when the receipt itself constituted the relationship. By the seventeenth-century, the process was relatively old and cumbersome, for example the auditors had no powers to compel documents to be produced. Non-agency cases were largely pursued just in debt, or later in actions on the case, and by the mid-century those resulting from the bailiff or guardian or agency relationship were also pursued through faster and more efficient process in the courts, and the action of account declined (6). The notion of accounting for illicit profits however lives on in



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(2) J. H. BAKER, *An Introduction to English Legal History* (London: Butterworths, 2002, 4th edition) at 363.

(3) S. F. C. MILSOM, *Historical Foundations of the Common Law* (London: Butterworths, 1981, 2nd edition) at 278.

(4) La tenure en socage était une tenure libre, c'est-à-dire une tenure dont les services féodaux étaient clairement définis d'avance (cf. la définition du *Oxford English Dictionary*, édition 1959 : *The tenure of land by*

certain determinate services other than knight-service). Le service prévu prit la forme d'un paiement annuel d'une somme déterminée (ndlr).

(5) See A. W. B. SIMPSON, *A History of the Land Law* (Oxford: Oxford University Press, 1986, 2nd edition) at 13 and 18.

(6) J. H. BAKER, *An Introduction to English Legal History* (London: Butterworths, 2002, 4th edition) at 364.

trust and other contexts (7), and has recently been invoked in contract law.

CONTRACT

The obligation to account for profits appears to have been invoked in certain circumstances in contract. If A contracts with B, the general remedy for a breach of the contract by B is to compensate A for his loss, including the loss of profits that A stood to make under the contract with B had it in fact been performed. This may not, however, suffice to render justice between the parties where B has gained a benefit through breaching the contract. The courts have had to balance the previously clear principle that, in English law, a party may choose whether to perform a contract or whether to be in breach and hence liable in monetary damages, with the principle that the court should do justice.

An example may illustrate matters. In *Attorney-General v. BLAKE* (2001) (8), the defendant, Blake, had been a member of the security and intelligence services, but during this time had also spied for Russia, to where he defected. In breach of an undertaking in his contract with the UK government, he had published with a London publisher a memoir of his time in employment with the intelligence services. The Attorney-General sought recovery of the amount Blake was owed by his publishers. In the House of Lords, this was argued on the basis that Blake had been in breach of his contract. The ordinary principle would be that the Crown would be entitled to damages compensating it for any financial loss, but there was no such loss here. There was, however, gain to Blake.

In this, the first case argued on this point, the House of Lords held that Blake had to make an account of his profits (9). There was a paramount interest in making sure that the operation of the secret services remained confidential, and hence in ensuring that there was no incentive for breach of that confidence. Thus, more generally, Lord Nicholls considered it a useful guide for future cases to inquire “*whether the plaintiff had a legitimate interest in preventing the defendant’s profit-making activity, and, hence, in depriving him of his profit*” (10).

(7) For a discussion of the other contexts (for example, wrongful use of another’s property) in which an obligation to give an account of profits arises, see E. MCKENDRICK, ‘Breach of Contract, Restitution for Wrongs, and Punishment’ in A. BURROWS and E. PEEL (eds), *Commercial Remedies: Current Issues and Problems* (Oxford: Oxford University Press, 2003) 93 at 100-101, and sources cited therein.

(8) [2001] 1 AC 268.

(9) At 285-288 per Lord Nicholls, with whom Lord Goff, Lord Browne-Wilkinson, and Lord Steyn agreed. See now also *World Wide Fund for*

TRUSTS

A trust is a means of keeping separate the legal ownership of something from the beneficial use of it: for example, a farm could be legally held by the farmer’s sons, on the farmer’s death, for the benefit of the farmer’s widow and all of his children. The duties of those administering the trust, the trustees, are strict fiduciary obligations to administer the trust for the benefit of those for whom it was set up. Thus, in the 1726 case of *Keech v. Sandford* (11), a trust had been created in favour of an infant, the beneficiary. It was a trust of a lease, and before the lease came to an end, the trustee sought to renew it, once again in favour of the infant, but this request for renewal was refused by the lessor (the lessor being the person who leases out the property to the tenant). So the trustee renewed the lease in his own favour. This resulted in the Lord Chancellor holding that the lease was to be assigned back to the infant, and that the trustee had to make an account of profits made under the lease over the time it had been in his name, that is, return any such profits to the trust. The case of *Reading v Attorney-General* (1951) (12) is somewhat analogous to BLAKE, but on different grounds. In this case, a uniformed British soldier leant his presence to illicit shipments of whisky and brandy in Egypt, so that they would not be stopped by the police. He was paid a large sum of money for this, and when he was finally arrested this was confiscated by the police. Upon his release from prison, he wanted this money back from the Crown. It was held that he was a servant of the Crown and owed it a fiduciary duty, and that profits made by the use of his status were held for the Crown. Thus the Crown kept the money. This line of argument was not run in the House of Lords in BLAKE as the memoirs published there covered a period so old that the material was no longer confidential, and so Blake no longer owed a fiduciary duty (13).

But while trustees as fiduciaries are required to make an account of profits improperly made, any account of information that they need to disclose to the beneficiaries is surprisingly limited, and they need not always provide reasons for their actions. Thus, in *Re Londonderry’s Settlement* (14), the trustees exercising their discretion in good faith decided to end the trust in that case, as they were entitled to do, by distributing the remaining trust property among the various bene-

Nature (formerly World Wildlife Fund) v World Wrestling Federation Entertainment Inc [2006] EWHC 184.

(10) At 286.

(11) (1726) Sel Cas T King 61; 25 E.R. 223.

(12) [1951] A.C. 507.

(13) [2001] 1 AC 268 at 292 per Lord Steyn.

(14) [1965] Ch 918.

ficiaries in particular proportions. One of the beneficiaries was not happy with the distribution, and sought to have the trustees provide the agenda and minutes of their meetings, among other documents. Harman LJ in the Court of Appeal recognised that there was, on the one hand, an argument of principle that these documents “*came into existence for the purposes of the trust and are in the possession of the trustees as such and are, therefore, trust documents, the property of the beneficiaries, and as such open to them to inspect*” (15).

But overriding this was the principle that trustees need not provide reasons for their exercise of their discretion (16). The reason for this was in part that the discretion, if exercised in good faith, was not challengeable in court, and hence the reasons were immaterial (17). Further, as Harman LJ put it, revealing the reasons could be “*to wash family linen in public which would be productive only of family strife and also odium for the trustees and embarrassment in the performance of their duties*” (18). Hence, providing reasons might not be in the interests of the beneficiaries. And, as Salmon LJ noted, it might, in the future hence, be difficult to persuade anyone to act as a trustee if such reasons were to be revealed (19).

Thus, a beneficiary under a trust is limited: he can gain access to certain materials, for example the accounts of the trust holdings, but not to others (20). It seems likely that the greater weight given by the courts to withholding material restricts accountability of trustees in the broader sense. A useful contrast may be made with the provision of reasons in administrative decisions.

ADMINISTRATIVE DECISIONS

In certain circumstances when a decision has been made by a public official, it may be that there is a possibility of seeking review of it in the courts (21). In 1985 Lord Diplock spelt out three grounds for review: illegality, irrationality, and procedural impropriety (22). This last ground, natural justice, or due process, as it might be termed loosely, does not yet, however, appear to include a general right to reasons, although there is perhaps a trend towards it.

(15) At 929.

(16) At 933.

(17) At 936-937 per Salmon LJ.

(18) At 931.

(19) At 937.

(20) See S. GARDNER, *An Introduction to the Law of Trusts* (Oxford: Oxford University Press, 2003, 2nd edition) at 238-240.

(21) See generally A. TOMKINS, *Public Law* (Oxford: Oxford University Press, 2004) at 170-211; W. WADE and C. FORSYTH, *Administrative Law* (Oxford: Oxford University Press, 2004, 9th edition) at 522-527.

Thus, in the leading Doody case in the House of Lords (23), in an application of the peculiar sentencing regime in England for murder, four prisoners had been given terms in prison of 15, not more than 20, 12, and 11 years by the Secretary of State. The prisoners sought to know the reasons behind the time periods allotted. Lord Mustill gave a judgment with which the other members of the House of Lords concurred, and in which he noted that what was fair would vary depending on the context (24). He noted that the law “*does not at present recognise a general duty to give reasons for an administrative decision*” (25). But he held further that “*such a duty may in appropriate circumstances be implied*”, and in particular here he held that such a duty should be implied. There were two approaches provided by Lord Mustill.

The first was to “*ask simply: Is refusal to give reasons fair?*” The length of sentence was a matter of crucial interest to a prisoner. Prisoners sentenced for other crimes were given a reasoned decision on sentence by the trial judge; those convicted of murder were sentenced remotely by the Secretary of State without reasons being provided. It was, he decided, unfair that the person convicted of murder should be “*wholly deprived of the information which all other prisoners receive as a matter of course*” (26).

The second approach was to consider that without reasons being provided the prisoner would have “*virtually no means*” of determining whether the decision making process had been correct, and hence whether there were grounds to apply to the courts to intervene (27). Thus the reasoning had to be disclosed.

This second line of reasoning had been also set out by the Court of Appeal in the prior *Cunningham* case (28), of which Lord Mustill approved. In that case a prison officer had been dismissed from his work, and the Civil Service Appeal Board ruled that the dismissal had been incorrect. The Home Office declined to reinstate him, but the Civil Service Appeal Board awarded him a small sum in compensation, without providing reasons. *Cunningham* sought judicial review of the administrative decision. Lord Donaldson MR held that the Civil Service Appeal Board had to provide reasons, not because there was a general common law right to reasons, but because there was a legitimate expectation on the part of

(22) *Council of Civil Service Unions v. Minister for the Civil Service* [1985] AC 374 at 410.

(23) [1994] 1 AC 531.

(24) At 561 per Lord Mustill.

(25) At 564. This has not changed under the regime of the Freedom of Information Act 2001, though see s19.

(26) At 565.

(27) At 565.

(28) *Reg. v. Civil Service Appeal Board, Ex parte Cunningham* [1991] 4 All E.R. 310, approved by Lord Mustill at 564.

Cunningham that he would get reasons, as he would have done had he been privately employed and hence in front of a different decision maker, for example an industrial tribunal set up to regulate such matters for the private sector, instead of the Civil Service Appeal Board, and because fairness required that Cunningham be aware of the issues the Civil Service Appeal Board had considered and whether it had acted lawfully (29). McCowan LJ considered several factors. He held that as the Civil Service Appeal Board was susceptible to judicial review of its actions, and as the procedures in place were unfair (as Cunningham couldn't know to what extent his submissions had been considered) and not strictly required by statute, and as requiring the Civil Service Appeal Board to give reasons would not frustrate the intention of the rules generally governing civil service pay and work conditions, and as the giving of reasons would not be harmful to the public, reasons should be given, though these need not be "more than a few simple sentences" (30).

For Leggatt LJ, the absence of reasons meant that there was no argument provided against the inference that the amount awarded was "irrational, if not perverse." There was no right to reasons, but the "unexplained meagreness" compelled the inference of irrationality (31).

Thus one can see the interplay between an account, in the narrow sense of reasons, and accountability, in the sense of responsibility. Without the former, the latter becomes more difficult, and thus the courts sometimes require reasons, albeit the presumption being that they are not generally required (32).

CORPORATE ACCOUNTABILITY

Accountability of companies is a complex matter. Directors of companies have fiduciary obligations and may be accountable in ways similar to trustees (33). The board of the company is required to hold an annual general meeting of the shareholders, and if certain requirements are met the shareholders may use this meeting to have resolutions passed that bind the directors. The annual report of the company should be tabled at the meeting, and questions may be asked about it of the directors.

(29) At 320 per Lord Donaldson MR.

(30) At 323 per McCowan LJ.

(31) At 326 per Leggatt LJ.

(32) Though reasons often are required by statute. See for example: A. LE SEUR, "Taking the Soft Option? The Duty to Give Reasons in the Draft Freedom of Information Bill" [1999] *Public Law* 419-427. (33) Thus for example an account of profits needs to be rendered when the director has profited improperly: see *Guinness v Saunders* [1990] 2 AC 663.

Companies themselves, as distinct from their directors, are mainly held accountable through mandatory reporting requirements. These are governed by a series of Company Acts, and indeed "the fundamental principle underlying the Companies Acts has been that of disclosure" (34). Thus some information must be registered at Companies House and be held there for public inspection, some published in the official Gazette, some detailed in company registers, and set out in annual published company accounts that detail the company's financial position (35).

One new feature of the Company Act 2006 is that large companies are now obliged to provide a "business review" in their directors' report (36). This requirement has detailed reporting criteria, worth noting at least in part:

Section 417(5): *In the case of a quoted company the business review must, to the extent necessary for an understanding of the development, performance or position of the company's business, include:*

(a)...

(b) information about:

(i) environmental matters (including the impact of the company's business on the environment),

(ii) the company's employees, and

(iii) social and community issues,

including information about any policies of the company in relation to those matters and the effectiveness of those policies...

If such information is not present in the review, the company must specifically note that it is absent. For quoted companies these reports and accounts must be posted on the internet. The business review is a reflection of the recognition that "in a modern economy, those who run successful companies need to develop relationships with employees, customers, suppliers and others which support long-term value creation" (37). While it remains to be seen how effective this particular reporting requirement is, it provides not only for the shareholders but also for other interested parties a way of gaining an account of what it is that the company has been doing, and this transparency may help corporate governance and thus ultimately shareholder and creditor value.

(34) P. L. DAVIES, *Gower and Davies' Principles of Modern Company Law* (London: Sweet and Maxwell, 2003, 7th edition) at 533. The law in England is currently undergoing reform, and a new Companies Act 2006 received Royal assent in November 2006, and will be completely operative by October 2008.

(35) P. L. DAVIES, *Gower and Davies' Principles of Modern Company Law* (London: Sweet and Maxwell, 2003, 7th edition) at 533-540.

(36) Company Act 2006, section 417.

(37) *Company Law Reform White Paper*, Cm 6456 (London, HMSO, 2005) at 10.

EMPLOYMENT

No general obligation to give an account of proceedings as an employee arises. There are many ways to work, and generally one may distinguish the 'self-employed' on the one hand from the 'employee' on the other. The former is epitomised by someone in business for themselves with a contract to provide specific services. The latter is employed under a contract for services that they, rather than some sub-contractor, must perform themselves. In both circumstances, an obligation on an employee to provide an account of actions could arise explicitly under the terms of the work contract, and it is the contract, and any applicable statutes, that will determine the relation between the parties.

An obligation on an employee to account for profit can arise directly from the contract of employment, as in *BLAKE*, discussed above. And where an employee has fiduciary obligations, restrictions such as those discussed above with respect to trustees may also arise. But an obligation to give an account does not arise in general. The distinction between an independent contractor and an employee is, of course, the more complicated, and is spread more on a spectrum. But the classification matters, because an employee, as opposed to a contractor, has certain obligations of obedience, co-operation, and fidelity, which, if they are not made explicit in the contract of employment, will be implied by the courts (38).

These obligations are not, however, absolute. For example in *Laws v London Chronicle* (1959), Laws was an employee of the *London Chronicle* newspaper. After her immediate superior was involved in a disagreement with the managing director of the company, the immediate superior walked out of a meeting. The managing director told Laws to stay where she was, but she walked out too, out of, she said at trial, loyalty and embarrassment (39). The *London Chronicle* purported to dismiss her for misconduct in not obeying the order to remain. The Court of Appeal held that one act of disobedience would only be enough to justify dismissal if it went to show that the employee was effectively wilfully repudiating their contract of employment, and that was not the case here (40). Thus, though there is an at least implied obligation to obey orders in the way in which work is carried out, this is not without qualification. Nonetheless, in response to a request for an account of actions, it seems likely that such an account should be given. Such an account need not necessarily

(38) See S. DEAKIN and G. S. MORRIS, *Labour Law* (Oxford: Hart Publishing, 2005, 4th edition) at 331 to 345.

(39) *Laws v London Chronicle* [1959] 2 All ER 285 at 288.

(40) *Laws v London Chronicle* [1959] 2 All ER 285 at 288 per Lord Evershed MR.

(41) D. BRODIE, *The Employment Contract: Legal Principles, Drafting, and Interpretation* (Oxford: Oxford University Press, 2005) at 107.

(42) [1932] AC 161.

be volunteered however. For the implied duty of fidelity, while it includes an obligation not to act against the interests of the employer (41), does not include an implied duty to report one's own actions in violation of the contract of employment.

In the celebrated case of *Bell v Lever Bros* (1933) (42), Lever Bros hired Bell, and paid him under the terms of his contract of employment with them, and in particular paid him a termination payment at the end of his work under the terms of a side agreement to compensate him. Unknown to Lever Bros, Bell had entered into certain other transactions, which would have given Lever Bros the right to terminate the contract with him without entering into the side agreement for termination pay. Lever Bros sought to set aside the side agreement about termination pay on the grounds of the law governing mistake in contract, and thus sought to be excused its obligation to pay. The case is mainly noteworthy for what it says or does not say about the rules surrounding contractual mistake, but it also stands for the proposition that Bell was not obliged to inform Lever Bros of his own breach of contract.

The obligation of co-operation, or to maintain a relationship of mutual trust and confidence (43), may be illustrated by reference to an example. In the *ASLEF (No 2) Case* (1972) (44), workers taking industrial action with the aim of increasing their pay worked in strict compliance with their instructions, but were nonetheless, at least by Lord Denning MR, held to be in breach.

Thus the implied duties in employment are of a different sort to a duty to account. Such a duty may arise as a consequence of a request for an account, but such an account need not be volunteered.

POLITICAL ACCOUNTABILITY

The Government is accountable to Parliament, and on losing the confidence of Parliament must resign (45). This is relatively rare. Further, however, each Minister is also individually accountable. The 'orthodox doctrine' in the area of Ministerial accountability now appears to be that a Minister will be responsible, in the sense of being liable for censure, for what his department does at his request or for what he ought to know his department is doing, but will be accountable for, in the sense of being required to give an

(43) See D. BRODIE, *The Employment Contract: Legal Principles, Drafting, and Interpretation* (Oxford: Oxford University Press, 2005) at 63.

(44) *Secretary of State for Employment v. Associated Society of Locomotive Engineers and Firemen and Others* (N° 2) [1972] 2 Q.B. 455.

(45) A. TOMKINS, *Public Law* (Oxford: Oxford University Press, 2003) at 133.

account to Parliament, of everything that his department does (46).

But holding the Executive branch to account is a complex and demanding business, and it is not clear that Parliament operates well in the area; “*Ministerial responsibility is an erratic and defective instrument for this purpose*” (47). Part of the problem is that in a system with an un-written constitution, all one can point to for examples of the rules are past political practice.

One perhaps unexpected consequence in English law of Ministers being accountable to Parliament is that the courts have sometimes been too ready to leave it *only* to Parliament to hold Ministers to account, deferring to Parliament as the appropriate venue for such an accounting under their understanding of the separation of powers in the British constitution (48). Famously, in *Liversidge v Anderson* (1942), a case now no longer good law, a majority of the House of Lords (Lord Atkin dissenting) held that actions by the Home Secretary under a regulatory stipulation which provided that the Home Secretary, if he had “*reasonable cause to believe*” that a person had “*hostile origin or associations*”, could order that person detained, were not reviewable as to the reasonableness of the Home Secretary’s belief (49). As Lord Wright put it:

...if the sense of the country was outraged by the system or practice of making detention orders, or, indeed, by any particular order, it could make itself sufficiently felt in the Press and in Parliament to put an end to any abuse and Parliament can always amend the regulation. (50)

Nonetheless, Ministerial responsibility to Parliament, which is itself elected, does remain a constraint on Executive power (51).

CONCLUSIONS

This essay has attempted to show some areas of English law where accountability, in a sense narrower than complete

‘responsibility,’ is an issue. Of necessity, it has been the merest sketch: so many areas are interesting that detail has been sacrificed. But some themes emerge: where one party is privileged by having information, the other cannot hold them responsible unless they can compel them to account for their actions. The extent to which this consideration shapes the law differs: the result in administrative law is different to the result in trust law and to the regulatory scheme set up by statute in company law. The different viewpoints both provide an illustration of the flexibility of approach possible and a possible source of ideas for future regulation. On the other hand, undoubtedly, English law is complicated by its development through common law method: no rational actor planned it, and no rational actor, beginning now, would design the system this way exactly. But it does operate, in certain areas, to hold actors to account. ■



Part of the problem is that in a system with an un-written constitution, all one can point to for examples of the rules are past political practice. (Court of King’s Bench, Westminster Hall, 1460)

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(46) C. TURPIN, *British Government and the Constitution* (Cambridge: Cambridge University Press, 2005 (reprint of 2002) 5th edition) at 460.

(47) W. WADE and C. FORSYTH, *Administrative Law* (Oxford: Oxford University Press, 2004, 9th edition) at 30.

(48) C. TURPIN, *British Government and the Constitution* (Cambridge: Cambridge University Press, 2005 (reprint of 2002) 5th edition) at 92.

(49) [1942] AC 206 at 222 per Viscount Maugham.

(50) [1942] AC 206 at 270.

(51) A. TOMKINS, *Public Law* (Oxford: Oxford University Press, 2003) at 134 and generally 133-170 for a detailed description.