objectives. This is the task of the Council and the Commission through the exercise of their powers under the treaty.

Secondary legislation

This is as follows:

Regulations

These are generally applicable throughout the Union so that they may give rise to rights and obligations for states and individuals without the need for further national legislation. Regulations in the areas of agriculture and transport are examples of this type of legislation.

Directives

These are binding in terms of the result to be achieved, e.g. reform of company law. However, the member states must enact national laws to achieve the required effect. The UK's response to many Directives on company law is included in the Companies Act 1985.

Decisions

These are of more particular application and also are immediately operative. Decisions may be addressed to a state or individual or a corporation and an example would be a Commission ruling that a company was adopting restrictive practices in its operations within the Union contrary to Arts 81/82 of the treaty (see Chapter 16). Such a Decision could also impose a fine. Decisions have the force of law but affect the recipient only.

Union law: direct effect in the UK

The position is as follows:

Primary law (or legislation)

This is law contained in treaty Articles. If they are sufficiently precise, they are effective in the UK. They then have what is known as *vertical effect*, i.e. they create rights against 'emanations of the state', e.g. government departments, local authorities and hospital trusts. They also have *horizontal effect* in that rights are created in individuals against other individuals and organisations in the private sector of industry. An example is provided by Art 141 on equal pay that is directly applicable in a vertical and horizontal sense in the UK.

If an Article is not sufficiently precise to be enforced as such it is not directly applicable at all in the UK and requires national legislation to implement it.

Secondary legislation

Here the position is as follows:

Regulations. These are usually directly applicable with vertical and horizontal effect.

Directives. These are not directly applicable in that normally the member state has to pass legislation to implement them. If there is no such implementation after the expiry of the deadline set to member states for implementation, a Directive can be directly applicable if it is sufficiently precise but only in a vertical sense in creating rights against emanations of the state.

Decisions. These are binding upon the person or organisation to which they are addressed.

A EU constitution

In December 2000 there was a meeting of heads of state and government at Nice, where it was concluded that enlargement of the EU would require constitutional reform. In 2001 the European Council adopted a Declaration on the Future of the European Union. This led to the setting up of a European Convention to develop a draft treaty to establish a Constitution for Europe. The draft constitution was published in full in 2003.

This draft is not, at the present, a profitable area for study. It requires approval by all member states and has been turned down by France and the Netherlands. Whether in these circumstances there will be a referendum in the UK remains to be seen, although it would appear to have only a marginal chance of success.

Those who wish to pursue this matter further should access **http://europa.eu.int.** This is Europa, the EU's gateway, which carries most of the relevant sites.

Application of EC law in UK cases

Section 3 of the European Communities Act 1972 requires our courts to take note of the provisions of the EC Treaty and also the decisions of the European Court.

Although arguments about the subject rage on, there can be little doubt now that EC law is supreme and that the sovereignty of the UK Parliament is thereby reduced.

Factortame Ltd v *Secretary of State for Transport (No 2)*, 1991 – Supremacy of EC law (**34**)

Monetary union – impact of the euro

Our concern is purely that of the effect of the introduction of the euro on UK law, in particular, on business law. The arrival of the euro on 1 January 1999 (though not in the UK) could affect contracts in terms that they might be frustrated by impossibility of performance and so discharged (see further Chapter 17). This could occur where payment under the contract is required to be, say, in French francs and yet this has become impossible by the eventual takeover of this and other currencies by the euro, payment in French francs being no longer possible. The Maastricht Treaty introduced the solution by providing that, in the absence of a contrary intention by the parties, the introduction of the euro will not:

- affect any term of the contract;
- discharge or excuse performance under any contract; or
- on its own give any party the right unilaterally to alter or terminate any contract.

These matters will be considered as necessary in relevant parts of the text.

Law reform

It should be noted that a number of official bodies exist to consider and make proposals for *law reform*, and the work of these bodies can have a considerable influence on the development

of statute law. The most important of these bodies is the *Law Commission*, which was set up by the Law Commissions Act 1965. Section 1 of the Act establishes the Commission to promote the reform of English law and deals with the constitution of the Commission. The Lord Chancellor appoints the members of the Commission, on a full-time basis, from among persons holding judicial office, experienced barristers and solicitors and university teachers of law. Section 3 states the duty of the Commission to be to keep under review the whole of English law with a view to its systematic development and reform, including the codification of such law, the elimination of anomalies, the repeal of obsolete enactments and generally the simplification and modernisation of the law. The programme of the Law Commission includes the codification of the law of contract. In this connection, and of major importance to business is the Contracts (Rights of Third Parties) Act 1999, which stems from Law Commission Report No 242 and provides for major and far-reaching changes in the privity of contract rule (see further Chapter 10).

In arriving at its programme, the Commission consults with the chairmen of the Home Secretary's Criminal Law Revision Committee and the Lord Chancellor's Law Reform Committee, which are bodies set up on a part-time basis to consider specific matters of law reform which he may refer to them in the fields of criminal and civil law respectively. The work of the Commission and the Committees may be regarded as a source of law in that it is a *historical source* of the law contained in the statute which implements its proposals. Thus, the proposals of the Law Commission may be regarded as a historical source of the Criminal Law Act 1967.

There is also the *Civil Justice Council* set up under s 6 of the Civil Procedure Act 1997. Under s 6(2) it must include members of the judiciary appointed by the Lord Chief Justice after consultation with the Lord Chancellor, and the legal professions, together with civil servants concerned with court administration and persons with experience in and knowledge of consumer affairs and the lay advice sector, e.g. Citizens' Advice Bureaux and representatives of employers and employees and business generally appointed by the Lord Chancellor after consultation with the Lord Chief Justice. Its functions are set out in s 6(3) as follows:

- keeping the civil justice system under review;
- considering how to make the civil justice system more accessible, fair and efficient;
- advising the Lord Chancellor and the Lord Chief Justice and the judiciary on the development of the civil justice system;
- referring proposals for changes in the civil justice system to the Lord Chancellor and the Lord Chief Justice and the Civil Procedure Rules committee; and
- making proposals for research.

8

PERSONS AND THE CROWN

In law a *person* possesses certain rights and owes certain duties. There are two categories of persons as follows:

(a) Natural persons. These are human beings who are referred to as natural persons. An adult human being has in general terms a full range of rights and duties. However, even in regard to human beings, the law distinguishes between certain classes and gives to them a *status* which may carry with it a more limited set of rights and duties than are given to the normal adult. These classes include minors, persons of unsound mind, bankrupts and aliens, and the significance of belonging to these categories will be more fully examined in connection with the chapters on substantive law, such as contract, tort and crime. Non-human creatures are not legal persons and do not have the full range of rights and duties which a human being acquires at birth. However, animals may be protected by the law for certain purposes, e.g. conservation (see Wildlife and Countryside Act 1981).

(b) Juristic persons. Legal personality is not restricted to human beings. In fact various bodies and associations of persons can, by forming a corporation to carry out their functions, create an organisation with a range of rights and duties not dissimilar to many of those possessed by human beings. In English law such corporations are formed by charter, statute or registration under the Companies Act 2006 or previous Acts; there is also the common law concept of the corporation sole.

Natural persons

Here we shall consider some of the more important general principles of law relating to minors, persons of unsound mind, bankrupts and aliens together with the rules governing a natural person's domicile and nationality and the general principles of law preventing discrimination against natural persons.

Minors

The Family Law Reform Act 1969, s 1(1) reduced the age of majority from 21 to 18 years. There is also a provision in the Act which states that a person attains a particular age, i.e. not merely the age of majority, at the first moment of the relevant birthday, though this rule is subject to any contrary provision in any instrument (i.e. a deed) or statute (s 9).

Section 1(2) provides that the age of 18 is to be substituted for 21 wherever there is a reference to 'full age', 'infancy', 'minor', 'minority' in:

(*a*) any statutory provision made *before or after* 1 January 1970;
(*b*) any deed, will or other instrument made *on or after* that date.

This sub-section draws a distinction between statutory provisions and private dispositions. In the case of the former the new age of 18 is substituted. Thus, in s 164 of the Law of Property Act 1925 which uses the word 'minority' to deal with restrictions on the accumulation of income in a trust as where the income is reinvested and not given to a beneficiary, references to 'minority' will be construed as applying to persons under 18 years of age. However, in the case of private dispositions such as deeds, wills and settlements the Act does not apply retrospectively. Accordingly, if in a deed made before 1 January 1970 a person X (say, a grandchild of the maker of the deed) is to take property 'on attaining his majority', he will take it at age 21 years. If the deed was on or after 1 January 1970, he would take it at 18 years. The reason for this rule is that where persons in the past have arranged their affairs in reliance on the law as it stood, it would be unjust to interfere. The following general matters relating to minors can be considered at this point.

(*a*) A minor cannot contract a valid marriage under the age of 16 years and requires the consent of his parents or if the parents are divorced or separated, the one with custody, or if one parent is dead, the survivor (or on failure that of a magistrates' court) to marry under 18 years of age.
(*b*) A person under 18 years cannot vote at elections and must be 21 before he can sit in Parliament or be a member of the council of a local authority.
(*c*) With regard to civil litigation, a minor sues through a 'litigation friend', i.e. an adult who is liable for the costs (if any) awarded against the minor in the action, though the minor must indemnify him. A minor defends an action through a 'litigation friend' who is not liable for costs. The minor's father or mother often acts as 'litigation friend'.
(*d*) A person of 16 or over can give valid consent to medical treatment and it is not necessary as before to obtain the consent of a parent or guardian (Family Law Reform Act 1969, s 8). However, the court can override a minor's refusal to consent to medical treatment (*Re W* (1992) 142 NIJ 1124).
(*e*) The Tattooing of Minors Act 1969 makes it an offence, punishable by fine, for a person other than a duly qualified medical practitioner to tattoo a person under the age of 18. The person charged with the offence will have a defence if he can show that at the time he had reasonable cause to believe that the person tattooed was 18 years of age or over.

The position in contract, tort and criminal law is set out in Chapters 11, 20 and 25 respectively.

The protection of children

The Children Act 1989 introduced a new regime to ensure the safety and protection of children. Of major importance are two orders provided for by Part V of the Act. The first is an emergency protection order.

Under s 44 an emergency protection order will only be made if the court which is asked to grant it is satisfied that:

(*a*) there is reasonable cause to believe that the child is likely to suffer significant harm; or
(*b*) enquiries are being made by the relevant local authority and these are being frustrated by denial of access to the child where such access is urgently required; or
(*c*) the applicant is an authorised person such as a local authority or the National Society for the Prevention of Cruelty to Children and the applicant has reasonable cause to suspect that a child is suffering or likely to suffer significant harm and the enquiries of the authorised person are being frustrated by lack of access.

It will be seen that an emergency protection order will be granted only on the basis of hard evidence.

However, s 43 provides for child assessment orders and these allow a local authority or authorised person to apply to the court to take the child away from home, if necessary, for assessment in cases which are not necessarily emergencies. Here the court must be satisfied that the child is suffering or is likely to suffer 'significant harm' and that an assessment is needed which would not otherwise be likely to take place. This order is not designed for absolute emergencies but could be asked for following a case conference of interested professionals which had considered a case where a child had, e.g., suddenly ceased to attend a day nursery in suspicious circumstances or where neighbours had reported repeated screaming.

Also of importance is the concept of 'parental responsibility' introduced by ss 2, 3 and 12 of the 1989 Act. The court may make a parental responsibility order. This involves maintenance of the child and seeing to its education and providing accommodation, medical attention and so on. This is no longer a matter for the natural parents. Parental responsibility can now be held by others, e.g. grandparents and even the local authority. It can be held by several people concurrently. Every person who has parental responsibility can act alone in most cases to ensure the welfare of the child. In many cases, therefore, there will be a small army of persons including relatives and the local authority who will be able to intervene legally for a parental responsibility order if the natural parents are found wanting in terms, e.g., of the welfare of the child.

The 1989 Act also provides for the making of *contact orders*. Where the parents of a child are divorced or separated, an application may be made for a contact order (normally by the man) where access cannot be achieved by arrangement between the parents. The court will refuse such an order to prevent direct contact between a father and his child where the father is, e.g., violent and/or has an alcohol problem.

The effect of adoption

The material that follows is not concerned with the procedure for adoption but only with the effects of adoption on the individual adopted in the law once adoption has taken place.

An adopted person is to be treated in law as if born as the legitimate child of the adopters or adopter whether the adopters or adopter are married or unmarried (s 67 Adoption and Children Act 2002). This principle applies in interpreting wills, settlements made during lifetime and intestacies. Where questions of seniority arise, ss 69 and 70 of the 2002 Act provide that the adopted child is deemed to have been born on the date of the adoption and if adoptive parents adopt two or more children on the same day they are regarded as born on that day in the order of the actual dates of their births. For example, we may take a gift in the will of a testator 'to the eldest son of X'. Suppose that X had a natural child (A) in 1975 and in 1976 adopted a child (B) then aged 10, it appears that the natural child (A) takes the gift although B is biologically the elder.

However, the above rules do not affect a document where there is reference to the age of a child (s 69 of the 2002 Act).

Thus, if a testator gave his estate 'to the children of X at 25', it is clear that an adopted child would take the gift when he in fact attained that age and not 25 years after his adoption. It also seems that a gift to 'the first son of X to attain 25' would go to an adoptive child if he attained 25 before X's natural born children, although, as we have seen, he would not take as X's 'eldest son' in the example given above.

Adopted persons may, on reaching the age of 18, have a copy of their birth certificate as of right and not as formerly only by leave of the court (s 60 Adoption and Children Act 2002).

Under s 63 of the 2002 Act when information such as a birth certificate is supplied the registration authorities must tell the applicant that counselling services are available and from whom, e.g. a local authority. The Registrar must also maintain a register of relatives of adopted persons who wish to make contact. A person supplied with information about his natural parents may have access to this register if he wishes.

Persons suffering from mental disorder

We shall be giving fuller consideration to the position of mentally disordered persons in contract, tort and crime in the chapters which follow. However, the following general points can be noted now.

If a person suffering from mental disorder goes through a ceremony of marriage but cannot understand the nature of marriage, i.e. the responsibilities and change of status involved, the marriage will be void.

In connection with mental disorder, it is of interest to note the existence of the Court of Protection which under the Mental Capacity Act 2005 is concerned with proper management of a mental patient's property. The court operates through deputies who are, in many cases, close relatives of the patient. The court can administer the patient's property and make a will for the patient or make lifetime gifts of that property on the application of the patient's deputy.

Undischarged bankrupts

Bankruptcy procedure is set out in the Insolvency Act 1986. Bankruptcy proceedings which involve asking the court to make a bankruptcy order may be taken against a debtor by his creditor(s). The debtor's affairs will then be taken over by an insolvency practitioner who is generally an accountant in practice though in the case of many bankruptcies the estate is too small for this and a state official called the Official Receiver (OR) does the work. A petition to the court for a bankruptcy order is most usually presented by a creditor who must be owed £750 or more. Two or more creditors (none of whom is owed as much as £750) may present a joint petition if they are together owed £750 or more by the debtor as where creditor A is owed £280 and creditor B is owed £600.

As regards the disabilities of an undischarged bankrupt, he is disqualified from being an MP and cannot be a member of a local authority council. This, however, applies under ss 265–267 of the Insolvency Act 1986 (as amended) only to those bankrupts who are the subject of a bankruptcy restriction order (BRO). These are made by the court and are intended for 'culpable bankrupts', such as those who have not kept proper accounting and other business records. The restrictions also apply to those culpable bankrupts who have not waited for the court to make a BRO but have offered a BRO to the Secretary of State who has accepted the undertaking. Under s 360 of the 1986 Act he is guilty of an offence punishable by a maximum of two years' imprisonment and/or an unlimited fine if either alone or jointly with another person he obtains credit of £500 or more unless he tells the person giving it that he is an undischarged bankrupt – in general he will not then get the credit. Under s 11 of the Company Directors Disqualification Act 1986 it is an offence for an undischarged bankrupt to act as a company director or to promote or form or manage a company without the permission of the court which made the bankruptcy order.

The position is as follows.

- there is automatic discharge from bankruptcy on the 12-month anniversary of the bankruptcy order. This will be the end of the bankruptcy disabilities, e.g. there is no credit restriction;

- for the culpable bankrupt there will normally be a BRO in place that imposes such restrictions as are contained in the order, e.g. the credit restriction (the length of a BRO can be any period between two and 15 years);
- many non-culpable bankrupts may be discharged even sooner than the 12-month period following a small investigation by the Official Receiver following which the OR may file a certificate in court discharging the bankrupt.

Any money owed by the debtor which has not been paid at the date of discharge is no longer payable by the debtor, who can then go back into business legally free of his or her old debts and with no restriction on credit. This does not apply where there is a BRO.

However, damages awarded against all bankrupts for personal injury caused by negligence or nuisance, money payable under maintenance and other matrimonial orders, and fines and debts incurred by fraud are not discharged and remain payable, as does money due under the Child Support Act 1991.

Domicile – generally

The basis of jurisdiction and the law to be applied in many matters coming before English courts, e.g. wills, matrimonial causes and taxation, may depend on the domicile of the parties. A person's domicile is the country which he regards as his permanent home, and thus contains a dual element of actual residence in a country and the intention of remaining there. Where a country has within its national boundaries several jurisdictions, the person's domicile must be determined with reference to a particular jurisdiction, e.g., there is no such thing as domicile in the United States of America, though a person may be domiciled in a particular state. England and Wales, Scotland, Northern Ireland, the Channel Islands, and the Isle of Man are distinct jurisdictions within the British Isles. A person must always have a domicile, and he can only have one domicile at a time. It should be noted that the concepts of domicile and nationality are, as appropriate, applied to corporate bodies.

IRC v *Bullock*, 1976 – Domicile and taxation (**35**)

Domicile of origin

The domicile of origin of a child is that of its father at the date of the child's birth if the father is alive at that date and is married to the child's mother, i.e. if the child is legitimate (for example, the Nova Scotia domicile of Mr Bullock in *IRC* v *Bullock* (1976)). If the child is illegitimate or, though legitimate, the father is not alive when it is born, it takes its domicile of origin from that of its mother at the date of the child's birth. Foundlings take their domicile of origin from the place where they were found.

Dependent domicile

The concept of dependent domicile applies as follows:

Minors (i.e. persons under the age of 18 years)

(a) At common law. The domicile of a legitimate, legitimated or adopted child is dependent on, and changes with, that of its father or adoptive father, and after the father's death with that of its mother or adoptive mother. The domicile of an illegitimate child depends on, and changes with, that of its mother.

(b) Under statute. Sections 3 and 4 of the Domicile and Matrimonial Proceedings Act 1973 are concerned with the domicile of minors. Where previously the domicile of a minor had to follow that of his father until the age of majority, a minor can under the Act acquire an independent domicile at the age of 16, or under that age if he marries before then. This latter principle cannot, of course, apply to any marriages in this country, but it may apply to those in this country, e.g. Nigerians, who may be married under 16 according to their domiciliary law. The provision referred to above, which is in s 3 of the Act, avoids the previous possibility of a father leaving this country and establishing a domicile elsewhere, thus changing the domicile of his minor son who had remained in this country. Furthermore, it had always been uncertain whether, after the divorce of the parents, a child's domicile continued to follow his father's or followed that of his mother with whom the child was living. Now s 4(2) of the 1973 Act provides that the child's domicile where he is under 16 or has not set up an independent domicile and his father and mother are alive but living apart shall be that of his mother if:

(*a*) he then has his home with her and has no home with his father; or
(*b*) he has at any time had her domicile by virtue of (*a*) above and has not since had a home with his father.

The section also deals with other possible situations: for example, where the mother is dead and the child has not returned to his father, he will keep the domicile he acquired under s 4(2).

Married women

By s 1 of the Domicile and Matrimonial Proceedings Act 1973, the domicile of a married woman is not bound to be determined by that of her husband, as was the case at common law. She is capable of acquiring a separate domicile in exactly the same manner as her husband. By s 1(2) of the 1973 Act a married woman is treated as retaining the domicile of her husband (as a domicile of choice if it is not one of origin) at the coming into force of the Act unless and until it is changed in accordance with common law rules for determining such change.

Certain consequences regarding jurisdiction in divorce proceedings follow from the general principles enacted by the above section. As a wife can now acquire a separate domicile from that of her husband, jurisdiction is now based upon the domicile of either party in England and Wales at the time of the proceedings or on the ground that either party was habitually resident in those countries for one year before the proceedings commenced (but see below). The court has power to stay proceedings where courts in two countries have jurisdiction. This would prevent, for example, divorce proceedings being taken in an English court and a Scottish court contemporaneously as where the husband had an English domicile but his wife had acquired one in Scotland.

The rules on jurisdiction in matrimonial cases set out above are now governed by the European Communities (Matrimonial Jurisdiction and Judgments) Regulations 2001. Jurisdiction in matrimonial suits is now available where:

- both parties are habitually resident here (period irrelevant);
- both parties were last habitually resident here and one still is (period irrelevant);
- the respondent is habitually resident here (period irrelevant);
- the petitioner is resident here and has been for at least 12 months;
- the petitioner is domiciled here and has resided here for at least six months; or
- both parties are domiciled here (no matter where they may reside).

On the matter of 'habitual residence', the High Court ruled in *Ikimi* v *Ikimi (Divorce: Habitual Residence)* [2001] 1 FLR 913 that where a person had two residences and occupied both from time to time even though for only short periods in one of them that person could be regarded as 'habitually resident' in both.

Domicile of choice

A person, other than a minor under 16, can change his domicile of his own volition. To do so he must be in the new country, and have a 'fixed and settled intention' to abandon his domicile of origin or choice, and to settle instead in the new country.

A person retains his domicile of origin until he acquires a domicile of choice, and since a person must always have a domicile, there can be no abandonment of the domicile of origin unless a domicile of choice is acquired instead. However, having acquired a domicile of choice, a person who abandons it without acquiring a fresh domicile of choice, reverts to his domicile of origin.

The country in which a person resides is on the face of it the country of his domicile. Where it is claimed that a domicile of origin has been changed for one of choice, the onus of proof is on the party claiming that such a change has taken place. Examples of evidence which suggest a change of domicile are oral or written declarations to this effect, letters, wills as in *IRC* v *Bullock*, the adoption of a new name, as where a German living in England changes his name to Richmond from Reichman, an application for naturalisation, the purchase of land, or a grave, or of a home or a business in the new country. It was decided in *Plummer* v *IRC* [1988] 1 All ER 97 that it is not enough merely to express an intention eventually to live and work in the new country. Furthermore, it was held in *Cramer* v *Cramer* [1987] 1 FLR 116 that domicile is not established by an *intention to marry* a person resident in the new country at some time in the future even where the intention to marry is reciprocated by the other party.

Tee v *Tee*, 1973 – Reverting to domicile of origin (**36**)
Steiner v *IRC*, 1973 – Evidence of change of domicile (**37**)

Residence

The residence of a person is important for certain purposes, e.g. liability for income tax, and a person who is not domiciled in the UK may nevertheless be liable to UK tax if he is regarded as resident here in the year of assessment. The matter is of considerable importance to international high-earners since income tax is charged broadly on the world income of UK residents. Non-residents are liable to UK tax only on income that arises in the UK. Furthermore, the jurisdiction of magistrates in matrimonial matters is based on the residence of the parties and not their domicile, as is the right to vote in a particular constituency at an election under s 1(1) of the Representation of the People Act 1983. On the other hand, the jurisdiction of the High Court in matrimonial proceedings is based either on domicile or habitual residence for one year (Domicile and Matrimonial Proceedings Act 1973, s 5). Domicile must, therefore, be distinguished from residence.

The term residence imports a certain degree of permanence, and must not be casual or merely undertaken as a traveller. In *Fox* v *Stirk* [1970] 3 All ER 7, the Court of Appeal decided that two undergraduates were resident at their universities and entitled to have their names on the electoral register for that constituency although their parental homes were elsewhere. On the other hand, in *Scott* v *Phillips* 1973 SLT (Notes) 75 it was held that the claimant, who lived mainly at his house in Inveresk but had a cottage on lease in Berwickshire in which he spent $3^1/_2$ months each year, was not resident in Berwickshire and therefore not entitled to have his name included on the electoral roll for that county. Obviously, residence can be changed at any time by moving to a new home. Temporary absences abroad while on holiday or on business do not create a gap in the period of residence, which is determined on the facts of the case.

Racial and Religious Hatred Act 2006

The Public Order Act 1986 (see below) is amended by the Racial and Religious Hatred Act 2006 to create offences which involve stirring up hatred on racial and/or religious grounds. The offences cover: use of words or behaviour or display of written material; publishing or distributing written material; the public performance of a play; distributing, showing or playing a recording; broadcasting programmmes; and possession of inflammatory material. There are powers of entry to property and seizure of material. The Act makes clear that freedom of speech is protected in terms of discussion and also, for example, criticism. The police have powers of arrest but there is no power for a citizen's arrest. The Act does not apply to reports of parliamentary or judicial proceedings. Offences are triable either way and a conviction on indictment attracts a penalty of a maximum of seven years' imprisonment or an unlimited fine or both. On conviction before magistrates the maximum imprisonment is six months and/or a fine of up to £5,000. The bringing of proceedings requires the consent of the Attorney-General.

Discrimination

We shall now consider the rules of law which are designed to prevent discrimination against natural persons. Discrimination in employment is dealt with in Chapter 19.

Racial discrimination

The Race Relations Act 1976 and the Public Order Act 1986 are designed to deal with discrimination on racial grounds and with relations between different racial groups. It should be noted before considering the main provisions of the Acts that under s 72 of the 1976 Act a term in a contract which purports to exclude or limit any provisions of that Act is unenforceable by any person in whose favour the term would operate.

The Race Relations Act 1976

Discrimination to which the Act applies

Section 1 provides that it is *direct discrimination* to treat a person less favourably on racial grounds and *indirect discrimination* where there is some requirement or condition, e.g. of employment, which, although it applies to all potential employees, is discriminatory since a smaller proportion (or none) of black applicants can comply with it than white. Thus a rule insisting that bus conductors wear company caps could be *indirect discrimination* against Sikh applicants, who were held to be a protected ethnic group by the House of Lords in *Mandla* v *Dowell Lee* [1983] 1 All ER 1062.

Section 2 deals with *discrimination by way of victimisation* of a person who has, for example, brought or given evidence in proceedings under the Act against a discriminator or alleged discriminator. Thus if A brings proceedings against his employer, B, for alleged discrimination and as a consequence A's landlord, C, will not allow A to use a goods lift provided for common use in the block of flats where A lives, then C could be guilty of victimisation under s 2. Under s 3, 'racial grounds' means colour, race, nationality, or ethnic or national origins, and 'racial group' means a group of persons defined by reference to colour, race, nationality, or ethnic or national origin.

For example in *Commission for Racial Equality* v *Dutton* (1988) *The Times*, 29 July, the Court of Appeal held that gypsies were a racial group for the purposes of the Act. They were not, however, synonymous with 'travellers' so that a notice in a public house saying 'sorry, no