

19 It is necessary to consider whether under domestic law proceedings under the first part of section 1 should be classified as criminal or civil proceedings. In law it is always essential to ask for what purpose a classification is to be made or a definition is to be attempted. It is necessary in order to decide whether the provisions of the Civil Evidence Act 1995, which permits the admission of hearsay evidence in civil proceedings, and the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999, are available to establish the requirements of section 1(1). It is also relevant to the appropriate standard of proof to be adopted.

20 In a classic passage in *Proprietary Articles Trade Association v Attorney General for Canada* [1931] AC 310, 324 Lord Atkin observed:

“Criminal law connotes only the quality of such acts or omissions as are prohibited under appropriate penal provisions by authority of the state. The criminal quality of an act cannot be discerned by intuition; nor can it be discovered by reference to any standard but one: Is the act prohibited with penal consequences?”

In *Customs and Excise Comrs v City of London Magistrates<sup>3</sup> Court* [2000] 1 WLR 2020, 2025 Lord Bingham of Cornhill CJ, expressed himself in similar vein:

“It is in my judgment the general understanding that criminal proceedings involve a formal accusation made on behalf of the state or by a private prosecutor that a defendant has committed a breach of the criminal law, and the state or the private prosecutor has instituted proceedings which may culminate in the conviction and condemnation of the defendant.”

21 Absent any special statutory definition, in the relevant contexts, this<sup>F</sup> general understanding must be controlling. Counsel for Clingham invited the House to approach the question from the point of view of the meaning given in decided cases to the words “criminal cause or matter” which appear in section i(i)(a) of the Administration of Justice Act 1960 and section i8(i)(a) of the Supreme Court Act 1981. The decided cases on both sides of the line are helpfully summarised in *Taylor On Appeals* (2000),

O pp 516-518, paras 14-020-14-021. The cases were decided in the context of regulating and determining the appropriate appeal route. Often pragmatic considerations played a role. These cases do not help the true inquiry before the House and distract attention from the ordinary meaning of civil proceedings which must prevail. Similarly, the fact that proceedings under the first part of section 1 of the Act are classified as criminal in order to ensure the availability to defendants of legal assistance is in my view entirely

H neutral: see section 12(2) of the Access to Justice Act 1999 and paragraph 1(2) of the Access to Justice Act 1999 (Commencement No 3, Transitional Provisions and Savings) Order 2000 (SI 2000/774). I would approach the matter by applying the tests enunciated by Lord Atkin and Lord Bingham of Cornhill CJ.