criminal proceedings. The first limb constitutes the "offence" the second limb the need for a "penalty".

The fact that a penalty, which may have severe consequences, is described as being imposed to protect the public in the future, and not as a punishment c for a crime already committed does not prevent the proceedings being criminal proceedings when the correct test is applied: see *Proprietary Articles Trade Association v Attorney General for Canada* [1931] AC 310; *Customs and Excise Comrs v City of London Magistrates' Courts* [2000]

1 WLR 2020. The object of a penalty by way of sentence is that it seeks to "protect" as well as to "punish" eg removing an offender from society by custody to prevent further offending. In sentencing protective considerations, rather than society's need to punish the individual, often play the major role in deciding what penalty to impose. Thus, to define an anti-social behaviour order as protective does not in any way diminish its punitive effect.

A The conditions that may be attached to an anti-social behaviour order are unlimited. Curfews and orders banning people from certain areas are now expressly recognised as criminal penalties under sections 37 and 40A of the Powers of the Criminal Court (Sentencing) Act 2000. Restrictions upon liberty have also included a limit upon the number of visitors a person can have to their home or the number of persons with whom they may

B congregate.

The injunction analogy is a false one. Injunctions seek to prevent the interference by one person with another's civil rights whether in contract, tort or equity or to ensure that civil obligations are carried out as in the case of a mandatory injunction. They are not aimed at preserving public order or containing anti-social behaviour. Committal is in consequence of disobedience to the court not as a punishment or penalty for the actual

C conduct involved. Furthermore, a contempt can be purged but an anti-social behaviour order lasts for two years.

There are fundamental differences between an anti social behaviour order and a sex offender order under section 2 of the Crime and Disorder Act 1998. Section 1 requires proof. Section 2 only requires "reasonable cause to believe". Thus the court does not, under section 2, apply a simple objective

D test of whether acts took place as in section 1 but has a further subjective element to apply that is not consistent with a criminal offence. Furthermore, the sex offender has already had his fair trial to the criminal standard of proof on the conduct which gave rise to the jurisdiction to make an order. The sex offender order is a mechanism to control the further conduct of those already convicted of criminal offences.The essential prerequisite for the order does not need to be proved in proceedings for making the order. In

E the context of European jurisprudence a sex offender order is made against a very limited class of persons, those already convicted of sex offences while the anti-social behaviour order is of general application. That is a significant factor: see *Benham v United Kingdom (1996)* 22 EHRR 293

The relevant criteria for the consideration of whether proceedings are criminal for the purpose of article *6 of* the Convention rights are: (a) the domestic classification; (b) The nature of the proceedings; (c) The nature and severity of the punishment: see *Engel v The Netherlands (No 1) (1976)* 1 EHRR 647. Those criteria are not cumulative. Any one of the three may render the proceedings as being in respect of criminal charge: see *Gary fallow AEBE v Greece* (1997) 28 EHRR 344; *Lauko v Slovakia* (1998) 33 EHRR 994. There does not have to be the formal constituent elements of an offence as recognised in domestic law: see *Deweer v Belgium* (1980) 2 EHRR 439.

C There is a broad similarity between proceedings for anti-social behaviour orders and breach of the peace. In both cases what is effectively sought is an order prohibiting