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The Highways Act 1980

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INTRODUCTION

HIGHWAY law has for a long time been statute based. The bulk of modern highway law is now contained in the consolidation which makes up the Highways Act 1980. However, the common law rules (*e.g.* those regarding dedication and public nuisance) are still of considerable importance. A number of other statutory provisions (*e.g.* the National Parks and Access to the Countryside Act 1949, the Public Utilities Street Works Act 1950 and the Town and Country Planning Act 1971) remain outside the consolidation and continue to deal with particular aspects of highway law. This introduction does not purport to provide a comprehensive guide to highway law but rather to deal with some fundamental aspects of the law.

The Meaning of "Highway"

Broadly speaking a highway may be defined as a way over which the public have the right to pass and repass. Thus defined, it includes waterways. However, although the Highways Act 1980, like its predecessors, does not provide a definition of "highway," it does indicate that for the purposes of this consolidation (and therefore for the purposes of this work) the word "highway" is to be restricted to public rights of way over land—although the bridges and tunnels over and under the way are included in the definition (s. 328).

Highways may be classified in two different ways, according to the extent of the use that may be made of them by the public and according to the responsibilities for maintenance. A right of way may be exercisable on foot only (a footpath), on foot or by horse (a bridleway) or on foot, by horse and by vehicle (a carriageway). Statute has created two other types of restricted public right of way in "cycle tracks"—a right of way on pedal cycle only, with or without an accompanying right of way on foot (s. 329 (1))—and "walkways"—being footpaths over, through or under buildings and structures. Walkways" are created by agreement and are subject to such limitations and conditions as may be contained in such agreements (s. 35). This classification is by no means exhaustive. Roads can be further classified into special roads, trunk roads, classified roads and unclassified roads. The term "road" is also not defined in the Act of 1980. The National Parks and Access to the Countryside Act, in s. 27 (6), contains a further class of road—"a road used as a public path" meaning a highway, other than a public path, used by the public mainly for the purposes for which footpaths and bridleways are so used.

Highways may also be classified by reference to whether they are maintainable at the public expense or whether they are not so maintainable. The main consequence of a highway being maintainable at the public expense is that the highway authority are under an enforceable duty to keep the highway in repair (s. 41).

Highway Authorities

Before April 1, 1974, most types of local authority were capable of being highway authorities. The system was considerably simplified as a result of the Local Government Act 1972 and the present position is set out in Part I of the 1980 Act. The several highway authorities are now as follows:

(*a*) *The Minister of Transport* [1] is the highway authority for trunk roads (s. 1), and for certain other roads in respect of which it is expressly provided by statutory order that he should be a highway authority or where he has constructed the highway himself. The Minister may, under s. 6 (1) of the 1980 Act, delegate to a county council any of his functions with regard to the maintenance and improvement of trunk roads, and under s. 6 (5) may enter into an agency agreement for the construction of trunk roads. In Wales the Minister is the Secretary of State for Wales.

(*b*) *County Councils* are local highway authorities for all highways in their areas except those for which the Minister is the highway authority (s. 1 (2) of the 1980 Act). They may exercise functions delegated to them by the Minister with regard to the maintenance and improvement of trunk roads, construct trunk roads, enter into agency agreements with the Minister, and with his consent, may arrange for those functions to be undertaken by a district council.

(*c*) *Highway Authorities in London.* The Greater London Council are the highway authority for all metropolitan roads. London Borough Councils and the Common Council of the City of London are the highway authorities for all highways, whether or not maintainable at the public expense, except metropolitan roads or those highways for which the Minister is the highway authority.

(*d*) *A District Council* is not a local highway authority but may have certain functions (s. 50 (2) of and Part I of Sched. 7 to the 1980 Act). Additionally, a district council has power to carry out urgent repairs to private streets under s. 230 (7) and has powers with respect to footpaths under s. 57 (3) of the National Parks and Access to the Countryside Act 1949 and s. 134 (7) of the Act of 1980.

(*e*) *A Parish or a Community Council* is not a highway authority but may make representations to the highway authority as to the protection of particular public rights of way (s. 130 (6)). Such a council may undertake the maintenance of footpaths and bridleways under ss. 43 and 50 of the Act of 1980. A parish or community council may also enter into an agreement with any person for the dedication or widening of a highway where it would be beneficial to the inhabitants of the area and may carry out or contribute towards works of maintenance incidental to or consequential on the making of such an agreement (ss. 30 and 72 of the Act of 1980).

[1] The functions of the Minister of Transport were transferred to the Secretary of State for Transport by the Transfer of Functions (Transport) Order 1981 (S.I. 1981 No. 238), which came into operation on February 26, 1981. This Order substitutes the words by the Secretary of State for Transport " for the words by the Minister of Transport and not by the Secretary of State " in s. 329 (5) of the Highways Act 1980.

Creation of Highways

(*a*) *Creation of a highway at common law.* A highway may be created at common law by the dedication by the owner of a right of passage across his land for use by the public at large coupled with acceptance and use by the public as of right. Dedication whether expressed or implied contains several essential ingredients. There must be, in the first place, an intention to dedicate. This intention may be express or implied: it will only be implied where the acts of the owner conclusively point to such an intention. The courts have sometimes drawn a distinction between the intention to dedicate and tolerance. In *Steel* v. *Houghton* (1788) 1 H.Bl. 51, Heath J. said (at p. 60):

> "It is the wise policy of the law, not to construe acts of charity, though continued and repeated for never so many years, in such a manner as to make them the foundation of legal obligation."

Secondly, the right of passage must be exercised by or granted to the public at large and not limited to particular groups or classes of people: *Poole* v. *Huskinson* (1843) 11 M. & W. 827. Dedication may be subject to restrictions as to the mode of user—the way may be dedicated for use by pedestrians only, and it may be subject to physical restrictions and defects, to obstructions and to nuisances—and the public in accepting the way will be taken to have accepted it as it is (*Fisher* v. *Prowse* (1862) 2 B. & S. 770). Finally, dedication will not be effective unless the grantor is capable of giving a right over his land for all time.

Dedication, it must be noted, is insufficient to create a public highway: there must be acceptance by user, and it must be acceptance as of right, not on sufferance or by licence. These two factors, dedication and acceptance by user are interrelated, for user may serve as evidence of dedication. If the public uses a way as of right and the owner knows of it and acquieses, dedication may be inferred. As Lord Blackburn said in *Mann* v. *Brodie* (1885) 10 App.Cas. 378 at p. 386:

> "Where there has been evidence of a user by the public so long and in such a manner that the owner of the fee, whoever he was, must have been aware that the public were acting under the belief that the way had been dedicated, and has taken no steps to disabuse them of that belief it is not conclusive evidence, but evidence on which those who have to find that fact may find that there was a dedication by the owner whoever he was."

The court will examine the circumstances as a whole, taking into account any evidence which negatives the intention to dedicate. As Parke B. said in *Poole* v. *Huskinson* (1843) 11 M. & W. 87 at p. 830: "A single act of interruption by the owner is of much more weight, upon a question of intention, than many acts of enjoyment."

There is not now a rule of law, if ever there was, that a highway must end in another highway (*William-Ellis* v. *Cobb* [1935] 1 K.B. 310). Whereas the motive of the public in using a way is irrelevant in considering whether or not it has been dedicated to the public (*Hue* v. *Whiteley* [1929] 1 Ch. 440) the general public cannot acquire by user only a right to visit a public monument or other public interests upon private property, nor is there any right simply to wander over land (*Att.-Gen.* v. *Antrobus* [1905] 2 Ch. 188). There is no presumption of law against a cul-de-sac being a highway provided of course

that sufficient user by the public is proved (*Att-Gen.* v. *Chandos Land Building Society* (1910) 74 J.P. 401; *Roberts* v. *Webster* (1967) 66 L.G.R. 298).

Since the passing of the Rights of Way Act 1932, now contained in Part III of the Act of 1980, 20 years user by the public as of right and without interruption is sufficient to establish that the way has been dedicated as a highway unless there is sufficient evidence to negative intention. Whether or not there has been an interruption of the public right is essentially a question of fact (*Merstham Manor Ltd.* v. *Coulsdon & Purley Urban District Council* [1937] 2 K.B. 77). The period of 20 years must be calculated back from the date "when the right of the public to use the way is brought into question" and not from the action brought (*Fairey* v. *Southampton County Council* [1956] 2 All E.R. 843; s. 31 (2) of the Act of 1980). Since 1934 an owner has been able to take steps to ensure that the 20-year period does not run against him, either by erecting notices inconsistent with the dedication of the way as a highway (s. 31 (3)) or by depositing with the highway authority a map of his land together with a statement indicating what ways, if any, he admits have been dedicated as highways over that land (s. 31 (6)). The latter method is not conclusive but provision is made for the owner (or his successor in title) to lodge a statutory declaration with the same council and within six years of the deposit to the effect that no additional way—other than any specifically mentioned in the declaration—has been dedicated since the deposit or since the lodgement of a previous declaration. Such a declaration will, in the absence of proof of a contrary intention, be sufficient to negative any presumed intention of the owner or of his successors in title to dedicate any such additional way as a highway (s. 31 (6)).

Part IV of the National Parks and Access to the Countryside Act 1949 required county councils to carry out reviews of all "public paths" (defined as footpaths and bridleways) in their areas, and to record these paths on maps. An elaborate procedure is provided to enable landowners and others to make representations. Under this procedure "a definitive map" is prepared, and s. 32 of the 1949 Act provides that the particulars contained in this map shall be conclusive evidence of the existence of the paths shown and of certain other matters. In particular, it is now established that the marking of a footpath on the definitive map is conclusive evidence that no greater right of way exists (*Suffolk County Council* v. *Mason* [1979] 2 W.L.R. 571). Reviews of the map are to be carried out every five years and new paths or old paths omitted from the map may be added on the review. So far as these types of highway are concerned, therefore, there will not be so much scope for argument as to the existence of public paths as formerly. However, the 1949 Act does not operate so as to exclude other methods of establishing whether a public right of way exists, nor does it provide that the absence of any path from the definitive map is to be conclusive evidence that such a path does not exist as a highway.

(*b*) *Creation of highways by statute.* The Act of 1980 contains a number of provisions regulating the several statutory methods by which a highway may be created. These may be summarised as follows:

(i) S. 24 gives a general power to the Minister, and to the local highway authority, to construct new highways. Powers of compulsory acquisition are contained in Part XII of the Act.

(ii) Footpaths or bridleways may be created by an agreement entered into between the local authority (the county council, the district council or a joint planning board) and any person " having the necessary power in that behalf," for the dedication by that person of a footpath or bridleway (s. 25).

(iii) Under s. 26, where the local authority consider there is a need for a new public footpath or bridleway and they are satisfied that it is expedient that such a way should be created, having regard to the matters listed in the section, they may make a " public path creation order."

(iv) S. 232 provides that where a development plan defines land as being the site of a proposed road, or as land required for the widening of an existing road which is less than " by-law width," the authority may by order declare the land to be a private street, and the land is thereupon deemed to have been dedicated as a highway.

(v) Not all " streets " are highways (see s. 329 (1)), but if a street works authority declare a street to be a highway maintainable at the public expense, private street works having carried out therein to their satisfaction, the effect of such a declaration is to make the street in question a highway (ss. 34 and 228).

(vi) A highway authority may adopt a private road by agreement under s. 38. This will have the effect of making the road a highway maintainable at the public expense.

(vii) By s. 35 a walkway may be created by agreement.

Rights In and Over the Highway

(*a*) *The interest of the highway authority.* By s. 263 (1) of the Highways Act 1980 " every highway maintainable at the public expense, together with the materials and scrapings of it, vests in the authority who are for the time being the highway authority for the highway." This " vesting " confers on the highway authority a fee simple determinable (*Tithe Redemption Commission* v. *Runcorn Urban District Council* [1954] 2 W.L.R. 518). As the estate is brought into being by a statute " similar " to the School Sites Acts, this particular kind of fee simple determinable is a fee simple absolute for the purposes of the Law of Property Act 1925 (s. 7 (1)) and, as it is in possession, the highway authority are the holders of a legal estate in land: the *Runcorn* case (*supra*).

It is only highways maintainable at the public expense which vest in the highway authority. There is a presumption that the surface, as well as the subsoil, of other highways remains with the owners on either side *ad medium filum*, and this is true also of highways that have been declared to be prospectively maintainable under the Public Utilities Street Works Act 1950, the management of which has passed to the local highway authority by virtue of the provisions of that Act.

The exact extent of the rights of the highway authority in respect

of their interest in the highway is not wholly clear. In the *Runcorn* case it was said (*per* Denning L.J. (as he then was), at p. 530) that the Act vested in the local authority "the top spit, or perhaps, I should say, the two top spits of the road." Earlier cases had shown that a sufficient vertical section of the road was vested in the authority, both above and below the surface, as would be necessary for the discharge of their duties *qua* highway authority (see, *e.g. Rolls* v. *Vestry of St. George Martyr, Southwark* (1880) 14 Ch.D. 785), but not in any other capacity or for any other purpose; not, for example, for the construction of a public lavatory beneath the surface of the street, for which operation they must depend upon some power (*Mayor, etc., of Tunbridge Wells* v. *Baird* [1896] A.C. 434). Trees, at least those planted in a highway after dedication, are, it would seem, the property of the highway authority (*Stillwell* v. *New Windsor Corporation* [1932] 2 Ch. 155), and so are items of street furniture such as street lamps or direction signs erected by the highway authority themselves. So far as other items placed in a highway under statutory authority by somebody other than the highway authority are concerned, it seems that these remain the property of the body concerned and they do not become the property of the highway authority.

Horizontally, the limits of the highway are in some cases well defined; it will include any footpaths or cycle tracks as well as the carriageway, and also any verge *de facto* enjoyed by the public as part of the highway. Where the highway in question is a public path and recorded in the course of the survey made under Part IV of the National Parks and Access to the Countryside Act 1949, the written statement should record the width of the path and this will be conclusive (National Parks and Access to the Countryside Act 1949, s. 32 (4) (*c*)). In other cases, the general principle, to be applied until the contrary be shown, is that the highway extends between the outer edge of hedges or fences (*Harvey* v. *Truro R.D.C.* [1903] 2 Ch. 638). In general terms, therefore, it seems that what vests in the highway authority in fee simple is the surface of the highway between these more or less defined limits, and sufficient of the top crust and of the air above the highway to enable the highway authority to carry out their functions as such.

A fee simple owner can normally do as he likes with his own property, subject to the common law principle *sic utere tuo ut alienum non laedas*. This is not, however, the case with a highway authority. As the highway authority's land is a determinable fee then the authority's estate in the land will cease once the land ceases to be used for highway purposes. In some cases, however, the authority may have acquired the subsoil as well as the highway, as in the case where they have purchased land as the site for an intended highway under Part XII of the Highways Act 1980. The highway authority cannot in any event interfere with the rights of the public to use the highway or otherwise cause an obstruction except in so far as they are expressly authorised to do so by statute and are generally subject to the principle of *ultra vires*. Furthermore the highway authority are not the occupiers of the highway for the purposes of rating law (*Lambeth Overseers* v. *L.C.C.* [1897] A.C. 625). Similarly as a highway is *extra commercium* it cannot be charged with streetworks expenses under the private streetworks code. "Owner" is defined in s. 329 (1) as being the person entitled to receive the rack-rent

of the premises and clearly it would not be possible to let a highway at a rack-rent, or indeed at any rent.

(*b*) *The rights of the public.* At common law the public rights over the highway are simply those to pass and repass. The existence of these rights are indeed an essential characteristic of the highway subject only to restrictions on the extent of the public right which may arise out of the particular status of the highway. As the rights of the public in the highway at common law are only for passage a user of the highway which goes beyond this may be restrained by the owner of adjoining land or, in some cases, by other users of the highway. Thus, a user of the highway may be restrained if he strides to and fro annoying a neighbouring land owner and disturbing his grouse shooting (*Harrison* v. *Duke of Rutland* [1893] 1 Q.B. 142), or spying on the form of horses training for a race (*Hickman* v. *Maisey* [1900] 1 Q.B. 752), or if he pickets on the highway otherwise than in contemplation or in furtherance of a trade dispute (*Hubbard* v. *Pitt* [1975] 2 W.L.R. 254). Some of these cases have been explained on the basis that the user which goes beyond the right of public passage constitutes a trespass against the owner of the subsoil beneath the highway, yet it is not obvious how there can be said to be, in any real sense, a trespass to the subsoil.

Any lawful user of a highway which is maintainable at the public expense is entitled to assume that the highway authority will carry out their statutory duties to maintain that highway to such an extent that he will not suffer injury as a result of its bad condition (s. 41 (1)). If he does suffer an injury, the authority will have a defence in any action for damages brought against them if they can establish that they had taken such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous to traffic (s. 58 (1)). In the case of a highway which is not maintainable at the public expense any user takes the surface as he finds it; the frontagers or street managers in whom the surface is vested are under no corresponding duty to keep the surface in repair, and they will not be liable if any injury is caused as a consequence of its lack of repair. They may, however, be liable for any obstruction caused to the highway.

(*c*) *The rights of statutory undertakers.* By " statutory undertakers " are meant public undertakers authorised by statute to supply some service to the public such as the gas and electricity boards, water authorities and the various transport undertakers (s. 329 (1)). All these authorities have powers under their respective constituent statutes to break open the surface of a public highway and to place in it their wires, pipes, mains, switchgear, junction boxes and other impedimenta, such items remaining the property of these statutory undertakers concerned. The procedure to be followed by the undertakers concerned when exercising these rights is prescribed by the Public Utilities Street Works Act 1950.

(*d*) *The rights and duties of adjoining landowners.* At common law an adjoining landowner had a right to make a means of access from any point on his land to the adjoining highway (*Marshall* v. *Blackpool Corporation* [1935] A.C. 16) and had a private right attached to his property to gain access to the highway. These rights have been greatly reduced by statute, for the making of any access to a highway amounts

to development for which express planning permission is normally necessary under the Town and Country Planning Act 1971, and the making of such an access may also be restricted by the provisions of the Highways Act 1980 (ss. 124–129). At common law the adjoining landowner was presumed to be the owner *ad medium filum* of the subsoil beneath the " two spits " vested in the highway authority, and also of a column of air above the highway beyond what is needed by the highway authority. The presumption of ownership *ad medium filum* is both rebuttable and supportable (*St. Edmundsbury Board of Finance* v. *Clark* [1973] 1 W.L.R. 1572). The rights of the adjoining landowner are, however, very much restricted by statute with respect to what he can do both above and below the highway (see ss. 176–185 of the Highways Act 1980). Furthermore, an adjoining landowner has a number of duties imposed on him by statute by virtue of the proximity of his land to the highway. First, he may not allow waters to be discharged from gutters or downpipes on his property onto users of the highway (s. 163), he may not maintain barbed wire on a fence on his land which is made a nuisance to the highway (s. 164), and any unfenced or inadequately fenced source of danger to persons using a street which is on land adjoining the street must be protected or enclosed, on notice served by the local authority (s. 165). There are a number of other restrictions on the adjoining landowner contained in Part IX of the Act of 1980. The adjoining landowner does, however, have power to break open the surface of the street for the purpose of connecting his premises to the public sewers situate within the highway (see Public Health Act 1936, s. 34). He may also be entitled, as owner of the subsoil, to prevent another landowner from running his services through that subsoil in front of his own property. In some respects, the common law regards the highway authority and the adjoining landowner in same manner as any other two owners of adjacent properties. Thus it seems that the landowner would be held responsible for any damage caused to the highway by trees planted on the owner's land (*Butler* v. *Standard Telephones Cables* [1940] 1 K.B. 399). The landowner may also be liable in damages to a user of the highway if he should be injured as a consequence of a nuisance arising on his land (*Caminer* v. *Northern and London Investment Trust, Ltd.* [1951] A.C. 88). It is not clear to what extent the highway authority may be similarly liable to the adjoining landowner.

Protection of the Highway

The rights of the public to pass and repass without hindrance are protected both at common law and by statute. The statutory provisions are contained in Part IX of the Highways Act 1980. The common law principles fall into two categories.

(*a*) *Criminal proceedings by way of indictment.* An obstruction of a highway without express statutory authority is at common law a public nuisance and is an indictable offence punishable on conviction by a fine or imprisonment or both. In *R.* v. *Clark* [1963] 3 All E.R. 884, the defendant was tried at the County of London Sessions on a count in an indictment charging that he unlawfully incited persons to commit a nuisance to the public by unlawfully obstructing the highway. On

appeal against conviction it was held that an obstruction was a public nuisance at common law only if the user of the highway is unreasonable: see also *Lowdens* v. *Keavey* [1903] 2 I.R. 82; *R.* v. *Andrews, ex p. Cheshunt Urban District Council* (1962) 60 L.G.R. 211; *R.* v. *Dunraven (Earl)* (1837) Will.Woll. and Dav. 577; and *R.* v. *Pagett* (1862) 3 F. & F. 29.

(*b*) *Civil action founded on public nuisance.* An unlawful interference with a highway which constitutes a public nuisance may be either an obstruction of the highway, *i.e.* something which permanently or temporarily removes the whole or part of the highway from public use (*Trevett* v. *Lee* [1955] 1 W.L.R. 113), or a danger to highway users, *i.e.* something which may not physically obstruct but nonetheless renders the highway dangerous for public passage (*R.* v. *Train* (1862) F. & F. 22; *Trevett* v. *Lee* (*supra*); *Dymond* v. *Pearce* [1972] 1 Q.B. 496). Not every physical obstruction of the highway will constitute a nuisance in law. Different considerations may well apply depending upon which type of interference is alleged: see *Dymond* v. *Pearce* (*supra*); *Morton* v. *Wheeler* [1956] C.L.Y. 6164.

An obstruction or danger prima facie constituting a public nuisance will only be actionable by an action for damages where the aggrieved party has suffered injury or loss of a substantial nature which is greater than that suffered by the public at large. An action for an injunction may be mounted by the Attorney-General or by a local authority (by virtue of s. 222 of the Local Government Act 1972), or by a private person who suffers substantial damage over and above that suffered by the public at large.

The law of nuisance depends upon the balancing of competing interests and the assessment of whether one of those interests is unreasonably interfering with the other. In highway nuisance, the issue is whether there is an unreasonable interference with the lawful rights of the public to pass and repass and to have access to the highway. Such interference may arise from the acts or omissions of the adjoining landowners (*Harper* v. *Haden and Sons Ltd.* [1933] 1 Ch. 298; *Trevett* v. *Lee* (*supra*)) or from other users of the highway (*Dymond* v. *Pearce* (*supra*)). It is essentially a question of degree—whether the act or user complained about is unreasonable in its nature or by reason of its effects. The courts may have regard to the manner or creation of the interference, the status of its creator, the degree of fault, if any, attributable to its creation or continuance and the physical or temporal extent of the interference.

The authorities were examined in *Harper* v. *Haden* (*supra*) and the following general propositions were stated:

(i) A permanent obstruction erected in a highway without lawful authority is necessarily wrongful and constitutes a public nuisance at common law as it in fact operates as a withdrawal of part of the highway from the public.

(ii) A temporary obstruction of the highway may or may not constitute a public nuisance according to its circumstances. As a general rule, such an obstruction is wrongful and constitutes a public nuisance unless it is negligible in point of time, or authorised by Parliament, or occasioned by the reasonable and lawful user of the highway.

(iii) The fact the highway authority has given its consent to such an obstruction affords no defence as such consent cannot legalise that which is otherwise illegal.

(iv) A private individual can maintain an action in respect of wrongful obstruction; but, in order to do so, he must establish that he has suffered some particular, direct and substantial loss beyond what is suffered by him in common with all other members of the public affected by the nuisance.

So far as a temporary obstruction is concerned a plaintiff is not likely to succeed if the obstruction is reasonable in quantum and in duration. It is not necessary for the highway to be completely obstructed (*Dymond* v. *Pearce* [1972] 1 Q.B. 496; *Homer* v. *Cadman* (1886) 54 L.T. 421). To succeed the act must have been something " exceptive and unreasonable " (*Gaunt* v. *Fynney* (1872) L.R. 8 Ch. 8), or wrongful in the sense that the user complained of was unreasonably exercised (*Fritz* v. *Hobson* (1880) 14 Ch.D. 542). It may be that, in deciding what is a " reasonable " obstruction, greater latitude would be allowed to an adjoining owner than a person who is simply a highway user (*Trevett* v. *Lee* [1955] 1 All E.R. 406; *Dunn* v. *Holt* (1904) 73 L.J.K.B. 341). Where a dangerous state of affairs has been created by the adjoining landowner different considerations again will apply (*Macfarlane* v. *Gwalter* [1958] 1 All E.R. 181). Negligence is not an essential ingredient in highway nuisance (*Dymond* v. *Pearce*, *supra*), but the degree of fault or negligence in the creation or continuance of the obstruction or danger will be relevant in assessing the reasonableness of the interference (*Hudson* v. *Bray* [1917] 1 K.B. 520; *Maitland* v. *R. T. & J. Raisbeck & Hewitt Ltd.* [1944] K.B. 689). In considering whether an obstruction on a highway is a nuisance it must be remembered that a highway may be dedicated subject to the existence of an obstruction in which case there is no nuisance (*Fisher* v. *Prowse*, *Cooper* v. *Walker* (1862) 2 B. & S. 770).

The Highways Act 1980

(*a*) *Purpose and scope.* Prior to 1960 highways law had been contained in a number of disparate statutes. The Act of 1959, which became law on January 1, 1960, was the result of a draft Bill prepared by parliamentary counsel which was closely examined and amended by a special committee of civil servants and local government lawyers appointed jointly by the Ministers of Transport and Civil Aviation and of Housing and Local Government. The Bill, with the report of the Committee (Cmnd. 630), was then presented in the House of Lords and considered by a Joint Committee of both Houses. The Act of 1959 remained the principal statutory source of highway law until the present consolidation which was made necessary by the passing of three substantial amending statutes—the Highways (Miscellaneous Provisions) Act 1961, the Highways Act 1971 and the Local Government (Miscellaneous Provisions) Act 1976. Also in the years between 1959 and 1980 substantial changes had been made in the general law relating to local government, land acquisition and town and country planning.

The Highways Act 1980, which received the Royal Assent, on November 13, 1980, and became law on January 1, 1981, incorporates a

number of minor amendments recommended by the Law Commission (Law Com. No. 100). A few further amendments were made on the passage of the Bill through Parliament—mainly consequent upon the passing of the Local Government, Planning and Land Act 1980 (c. 65). These amendments rectified omissions and inconsistencies which had occurred as a consequence of certain amendments made to the Act of 1959 by subsequent legislation, and they relaxed certain ministerial controls.

(*b*) *The arrangement of the Act.* The Act of 1980 consists of 345 sections and 25 Schedules. In addition to the Highways Acts 1959 to 1971 the following statutes were referred to sufficiently frequently in the table of derivations to merit inclusion in the special list of abbreviations.

Town and Country Planning Act 1959 (c. 53)
Road Traffic and Road Improvements Act 1960 (c. 63)
Public Health Act 1961 (c. 64)
London Government Act 1963 (c. 33)
Local Government Act 1966 (c. 42)
Criminal Justice Act 1967 (c. 80)
Countryside Act 1968 (c. 41)
Transport (London) Act 1969 (c. 35)
Town and Country Planning Act 1971 (c. 78)
Local Government Act 1972 (c. 70)
Land Compensation Act 1973 (c. 26)
Local Government Act (c. 7)
Local Government Act (Miscellaneous Provisions) Act 1976 (c. 57)
Statute Law (Repeals) Act 1977 (c. 18)
Criminal Law Act 1977 (c. 45).

The statute is divided into 14 Parts broadly following the pattern of the Act of 1959, the brief effect of which is as follows.

Pt. I (ss. 1–9): Highway Authorities and Agreements between authorities.

Certain highway functions may be exercised by local authorities which are not highway authorities.

Pt. II (ss. 10–23): Trunk Roads, Classified Roads, Metropolitan Roads and Special Roads.

This part deals with the classification of particular types of highways and with the procedure by which they are to be created.

Pt. III (ss. 24–35): Creation of Highways.

These provisions supplement the common law relating to dedication and acceptance by the public.

Pt. IV (ss. 36–61): Maintenance of Highways.

This part deals with liability for maintenance of highways and, in particular, with the circumstances under which highways become repairable at the public expense. This part is to be read in conjunction with Sched. 7.

Pt. V (ss. 62–105): Improvement of Highways.

This part contains the general powers of highway authorities with respect to the improvement of highways. Some street lighting powers are still to be found in other statutory provisions (see s. 161 of the

Public Health Act 1875). See also Scheds. 8–10 and the following two Parts.

Pt. VI (ss. 106–111): Construction of Bridges over and Tunnels under Navigable Waters and Diversion, etc., of Watercourses.

The various powers to construct bridges and tunnels over and under and to divert navigable waters are now consolidated in a separate part of the Act. This part contains its own interpretation section at s. 111.

Pt. VII (ss. 112–115): Provisions of Special Facilities for Highways.

The provisions of the Highways Act 1971 and the Countryside Act 1968 in relation to picnic sites, public conveniences, and lorry parking areas are consolidated in this Part.

Pt. VIII (ss. 116–129): Stopping up and Diversion of Highways.

This part contains only some of the statutory provisions dealing with extinguishment and diversion of highways. Reference must still be had to the Town and Country Planning Act 1971 and s. 3 of the Acquisition of Land (Authorisation Procedure) Act 1946 where other powers are to be found.

Pt. IX (ss. 130–185): Lawful and Unlawful Interference with Highways and Streets.

This part consolidates the various provisions dealing with obstructions on the highway. See also Scheds. 13 and 14.

Pt. X (ss. 186–202): New Streets.

This part is concerned with the laying out, rather than the making up, of new streets. S. 202 is a special interpretation section for this part.

Pt. XI (ss. 203–237): Making Up of Private Streets.

Since 1972 the "Code of 1892" has applied to the making up of private streets. This is now simply called the private street works code to distinguish it from the advance payments code. For interpretation of this part see s. 203. See also Scheds. 15 and 16.

Pt. XII (ss. 238–271): Acquisition, Vesting and Transfer of Land, etc.

The provisions of this part bring together the several powers of the various highway authorities to acquire (compulsorily or by agreement) land required for highway purposes. See also Scheds. 17 to 21.

Pt. XIII (ss. 272–281): Financial Provisions, are of administrative importance only.

Pt. XIV (ss. 282–345): Miscellaneous and Supplementary Provisions.

See also Scheds. 22 to 25. A number of these provisions relate to "machinery," to such subjects as the service of notices, legal proceedings and the recovery of expenses by the local highway authority. Others deal with the various special cases, such as the Crown, London, the Isle of Wight and the Scilly Isles, and the Act closes with a lengthy definition section, transitional provisions, "savings" and date of operation.

(c) *List of the principal amendments contained in the Highways Act* 1980. Although the Highways Act 1980 is primarily a consolidating Act there are a number of amendments which make some minor alterations to the previous law. These amendments come from three sources: from the recommendations of the Law Commission (Law Com. No. 100) whose alterations were, for the most part, designed to remedy anomalies which had crept into the legislation as a result of the various statutes