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WHEN IS A CAR PARK A ROAD?

The definition of what constitutes a road is central to the whole scheme of compulsory insurance under the Motor Vehicles (Third-Party Risks and Compensation) Act. This is due to the fact that compulsory insurance against third party liability for personal injuries is imposed whenever a motor vehicle is "used". This concept of use is defined as "use on any road", and road is in turn defined as "any public road or any other road to which the public has access". This means that in order to understand the obligation imposed by the MVA, one has to understand the meaning of the word "road". Of particular interest is whether a car park is a road for the purposes of the Act. This article looks at recent developments in the UK and compares the UK approach with that of Singapore courts.

I. Introduction

UNDER the scheme of compulsory motor insurance imposed by the Motor Vehicles (Third-Party Risks and Compensation) Act[1] in Singapore, the extent of the respective rights and liabilities of the various parties involved in a traffic accident turn on the phrase "caused by or arising out of the use" of a motor vehicle.[2]

1 Cap 189 (Rev Ed, 1985). Hereafter, the Act will be referred to as the "MVA".

2 S 3 of the MVA provides that

> (1) Subject to the provisions of this Act, it shall not be lawful for any person *to use or to cause or permit any other person to use* –
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> (a) *a motor vehicle* in Singapore; or
>
> (b) a motor vehicle which is registered in Singapore in any territory specified in the Schedule,
>
> unless there is in force in relation to the use of the motor vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third-party risks as complies with the requirements of this Act. (emphasis my own)
>
> (2) If a person acts in contravention of this section, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000 or to imprisonment for a term not exceeding 3 months or to both ...

S 4(1) further provides that:

> In order to comply with the requirements of this Act, a policy of insurance must, subject to subsection (2), be a policy which –
>
> (a) is issued by an insurer who at the time the policy is issued is lawfully carrying on motor insurance business in Singapore; and

Insofar as "caused" is concerned, it is clear that the normal rules of causation would apply. An interesting question relates to the ambit of the word "use" in relation to a motor vehicle, as does the use of the phrase "arising out of".[3] The issue which will be dealt with this paper is that which is raised by the statutory definition of "use". The MVA defines "use" as "use on any road...".[4] The question as to the ambit of the meaning of the word "road" has seen some clarification lately, particularly in the context of whether such "road" has to be within the territorial limits of Singapore in order for the MVA to apply.[5] However, this paper will examine a different aspect of the question of what is meant by a "road" – whether, and when does, a car park constitute a "road" for the purposes of the MVA. The definition of "road" as meaning "any public road and any other road to which the public has access"[6] is singularly unhelpful. As was pointed by Yong Pung How CJ, albeit in a slightly different context:

> The word 'road' is defined in section 2 of the Road Traffic Act as 'any public road and any other road to which the public has access ...' (the remainder not being relevant for the purposes of the present appeal). Plainly and somewhat regrettably, it is not a definition capable of affording us much assistance, since it employs as one of its terms of reference the very word it is meant to explain.[7]

The question of whether and when a car park can constitute a "road" within the meaning of the MVA is one which has not been explored much in Singapore. On the other hand, there is a long line of cases in the United

> (b) insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person *caused by or arising out of the use of the motor vehicle* in Singapore and in any territory specified in the Schedule. (emphasis my own)

The other important provision is s 9 which gives the injured third party, who has successfully obtained judgment against the tortfeasor but who has not been satisfied, the right to sue the insurers directly provided all the procedural steps have been complied with. However, s 9 only gives the third party such right to sue for the loss as is required to be insured under the MVA, which is in turn circumscribed by ss 3 and 4 of the Act.

3 This question has been explored by the author in a different context: see "Arising Out of the Use of a Motor Vehicle" [1998] SAcLJ.

4 S 2.

5 See the case of *Sim Jin Hwee* v *Nippon Fire & Marine Insurance Co Ltd* [1998] 2 SLR 806. (High Court decision unreported – Suit No 1128 of 1996 (judgment delivered on 20 October 1997).

6 *Supra*, note 4.

7 *Teo Siong Khoon* v *PP*, *infra*, note 78, at 109.

Kingdom which have explored the issue of what constitutes a road and, more specifically, whether a car park is within the statutory meaning of a "road". Recently, there has been some significant case law development in the United Kingdom on the meaning of the word "road". There were two contemporaneous Court of Appeal decisions which appeared to take different approaches to the same question. The House of Lords had the opportunity to review these two decisions in a conjoined appeal. What this paper will endeavour to do is to review the background to the question of law before moving on to consider the decisions in question. The decision of the House will then be compared to the local judicial approach.

II. Statutory Framework

An appropriate place to start at, before considering the case law development on the word, is to consider the statutory framework behind the use of the word "road". Such an understanding will no doubt facilitate the understanding of the legislative aims behind the MVA as well as show the relevance of the word in the context of this framework.

The statutory requirement of compulsory motor insurance is limited only to third party risks in relation to compensation for death or personal injury and does not extend to property damage. Such a compulsory motor insurance against third party risks is imposed by and governed by the provisions of the MVA. In fact, the MVA provides that it is an offence under for any person to "use or to cause or to permit any other person to use" a motor vehicle without such insurance cover.[8] As has been pointed out, "use" has been defined as "use on a road".

In order for this requirement for compulsory insurance to be satisfied, the policy in question must be one which

> insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person *caused by or arising out of the use of the motor vehicle* in Singapore and in any territory specified in the Schedule. (emphasis my own)[9]

[8] See s 3, reproduced in *supra*, note 2.

[9] S 4(1)(b) is important because although s 9 of the MVA gives the right to the third party to sue the insurer directly upon obtaining judgment against the tortfeasor driver, it only does so if the liability in question is something which is covered by the MVA: see *eg*, *QBE Insurance* v *Thuraisingam* [1982] 2 MLJ 62 (note: the Malaysian Road Traffic Act 1985 contain *in pari materia* provisions).

Thus, in order for a right of action to be vested in the third party against the insurer directly, the cause of action must be something which arises out of "in respect of the death of or bodily injury to any person *caused by or arising out of the use of the motor vehicle*". This also has an impact on the obligation of the Motor Insurers' Bureau to compensate victims of uninsured as well as victims of untraced drivers.[10] It has to be noted that the MIB would only be liable if the liability is one for which it is compulsory to be insured under the MVA.[11]

III. English Decisions

It is quite evident that car parks cannot fall within the meaning of "public road". Thus, the issue of whether car parks can amount to "roads" for the purposes of traffic legislation would have to depend on the second limb of the definition of "use", *ie,* use on a road to which the public have access. Any enquiry into whether nor not this limb is satisfied revolves around two distinct questions – firstly, whether the public have access; and secondly, whether the car park in question is a "road".

[10] By a memorandum of agreement made in 1975, the Motor Insurers' Bureau of Singapore has agreed implement a scheme to "secure compensation to third party victims of road accidents where, notwithstanding the provisions of the Motor Vehicles (Third-Party Risks and Compensation) Act ... relating to compulsory insurance, the victim is deprived of compensation by the absence of insurance, or of effective insurance" as well as to implement "a scheme to secure compensation for third party victims of road accidents when the driver responsible for the accident could not be traced."

[11] See clause 3 of the Agreement:

> If judgment in respect of any liability *which is required to be covered by a policy of insurance under the Act* is obtained against any person or persons in any Court in Singapore and either at the time of the accident giving rise to such liability there is not in force a policy of insurance as required by the Act or such policy is ineffective for any reason (including the inability of the insurer to make payment) and any such judgment is not satisfied in full within twenty-eight days from the date upon which the person or persons in whose favour such judgment was given became entitled to enforce it then the Bureau will, subject to the provisions of this Part of this Agreement, pay or cause to be paid to the person or persons in whose favour such judgment was given any sum payable or remaining payable thereunder in respect of the aforesaid liability including taxed costs (or such portion thereof as relates to such liability) or satisfy or cause to be satisfied such judgment.
>
> (emphasis my own)

See also clause 8(1) of the same Agreement which provides for compensation of victims of untraced drivers:

> Subject to paragraph (2) of this clause, this Part of this Agreement applies to any case in which an application is made to the Bureau for a payment *in respect of the death or bodily injury to any person caused by or arising out of the use of a motor vehicle*

The most convenient place to begin is with the decision of *Harrison* v *Hill*.[12] The case involved a person who had been driving while disqualified.[13] The appellant had been driving a motor vehicle on a road forming the access from a public highway to an adjoining farm. The said road led only to the farmhouse where it ended, and was part of the farm. The road was not maintained by any public authority, but by the farmer tenant under the terms of his lease. Thus, the case revolved around whether this road was within the definition of "road" within the meaning of section 121 of the Road Traffic Act, 1930.[14] It was found that there was no gate at the entrance of the road and there was also no indication that it was not open to the public and at most times there was no obstacle to prevent public access. It was further found that it was used by the public as an access to the farm and other members of the public having business at the farm also frequently walked on it. Thus, the road though private, was held nonetheless to be a road to which the public had access and the conviction of the lower court was upheld.

In coming to this decision, it was observed by Lord Clyde, in relation to the question of whether the meaning of "road to which the public had access", that

> *on a road in Singapore* and the case is one in which the following conditions are fulfilled, that is to say –
>
> ...
>
> (d) the liability of the untraced person to pay damages to the applicant is one which is required to be covered by insurance or security under the Act, it being assumed for this purpose, in the absence of evidence to the contrary, that *the vehicle was being used in circumstances in which the user was required by the said Act to be insured or secured against third party risks.*
>
> (Emphasis my own)

Thus, it was held in *Buchanan* v *Motor Insurers' Bureau* [1955] 1 All ER 607 that the use of a 'motor vehicle' within the limits of the Port of London Authority was not a "use" as is covered by the ambit of the UK Road Traffic Act 1930. It was found, as a fact, that the road in question was not one to which the public had access since only authorised persons were allowed to enter into the port area. Under the UK Act, "use" is defined as "use on any road" and "road" is defined as "any public road and any other road to which the public has access". Since this use was not required to be covered by insurance under the Act, the MIB successfully denied liability to compensate for the injuries in question.

12 1932 JC 13.

13 S 7(4) of the Road Traffic Act 1930 renders liable to penalties any person who, while disqualified under the provisions of Part I of the Act for holding a driving license, drives a motor vehicle on a "road".

14 Which defines "road" as "any highway and any other road to which the public has access ...."

> It is plain, from the terms of the definition, that the class of road intended is wider than the class of public roads to which the public has access in virtue of a positive right belonging to the public, and flowing either from statute or from prescriptive user. A road may therefore be within the definition (1) although it belongs to the class of private roads, and (2) although all that can be said with regard to its availability to the public is that the public 'has access' to it.[15]

His Lordship went on to amplify on the question and degree of public access required to fulfil the latter of the definition "road to which the public has access":

> I think that, when the statute speaks of "the public" in this connexion, what is meant is the public generally, and not the special class of members of the public who have occasion for business or social purposes to go to the farmhouse or to any part of the farm itself; were it otherwise, the definition might just as well have included all private roads as well as all public highways
>
> I think also that, when the statute speaks of the public having 'access' to the road, what is meant is neither (at one extreme) that the public has a positive right of its own to access, nor (at the other extreme) that there exists no physical obstruction, of greater or less impenetrability, against access by the public; but that the public actually and legally enjoys access to it. It is, I think, a certain state of use or possession that is pointed to. There must be, as a matter of fact, walking or driving by the public on the road, and such walking or driving must be lawfully performed – that is to say, must be permitted or allowed, either expressly or implicitly, by the person or persons to whom the road belongs. ... In arriving at these conclusions I am partly influenced by the broad consideration that, as the statute is intended for the protection of the public, it is natural to suppose that the statutory traffic regulation should apply to any road on which the public may be expected to be found. Hence the inclusion of such private roads as the public (generally) is, as a matter of fact, allowed to use, and the exclusion of those which the public (generally) cannot lawfully use at all.[16]

[15] *Ibid*, at 16.
[16] *Ibid*, at 16.

In the same case, Lord Sands also observed that

> ... from the terms of the Act here in question, the object of the special legislation in regard to certain prosecutions and offences was the protection of the public. This explains why the prohibition here dealt with is not limited to public highways but extends to any road to which the public have access. It is the public who are to be protected, and the provisions of the Act are made to apply to all roads to which the motorist may encounter members of the public.
> ... In my view, any road may be regarded as a road to which the public have access upon which members of the public are to be found who have not obtained access either by overcoming a physical obstruction or in defiance of prohibition express or implied.[17]

The next case which deals directly with the question of whether a car park can constitute a road is *Griffin* v *Squires.*[18] The defendant was alleged to have driven a motor vehicle in a car park owned and maintained by the local authority without holding a driving licence and there not being in force third party insurance. The car park in question was maintained for free parking and was accessed via an entrance fronting the main road. The car park in question only had an opening where the entrance was and another from which a footpath led: all other sides of the car park were surrounded by either hedges, railings or fences. The Court of Appeal held that although the car park was a place to which the public had access, it agreed with the magistrate's decision that this particular car park could not be treated as a road in the ordinary sense, and hence was not one within the meaning of the Road Traffic Act, 1930. Lord Parker CJ observed that

> The question is whether anything else remains to be fulfilled, in other words, is it enough that it is a place to which the general public have access, or must there be something more which is as a matter of common sense and ordinary meaning is a road. ... It has been said many times that it is eminently a question of fact for the magistrates to say whether a certain space is a road. Having decided that the general public have access to it they must then go further and ask whether this place to which the public have access is a road ... I think it was a matter for the magistrates to decide as a matter of fact whether this car park in the ordinary sense could be treated as a road. It seems to be that

[17] *Ibid*, at 17.
[18] [1958] 1 WLR 1106.

> there must a limitation of that sort, otherwise any place to which the general public have access could be said to be a road within the definition.[19]

This observation of Lord Parker CJ is clearly correct as there are two separate questions to be asked when deciding if a particular place qualifies as a "road to which the public has access". One is not to be confused with the other, nor does it necessarily follow that satisfying one requirement means that the other will be as well – all because the public has access to a place does not mean that it is a road or the other way around.

Streatfeild J observed that:

> If the definition of the word "road" in the Act of 1930 was in line with that in the Oxford Dictionary and described as a line of communication ... I have no doubt whatever that a public car park adjoining a public highway, there being two entrances from the highway on to the car park, is in fact a line of communication from either entrance to any point in that car park, both to and from. If that was the sole test I should undoubtedly come to the conclusion myself that the justices were wrong; but I have to give proper effect to the words in the Act of Parliament, where the offence consists in the act complained of being performed on a road and, by section 121 of the Road Traffic Act, 1930, road means a highway or other road to which the public has access. Although a car park is, in my opinion, a line of communication, I do not think that anybody in the ordinary acceptance of the word "road" would think of a car park as a road. If we were to hold that this was a road, a piece of waste land by the side of the road to which the public could resort for picnics would have also to be a road, and nobody would call that a road.[20]

[19] *Ibid*, at 1108-9.

[20] *Ibid*, at 1109-10. His Lordship gave reason for his view:

> I am, I think, confirmed somewhat in this view when I look at s 15(1) of the Road Traffic Act, 1930, which deals with the punishment of persons for driving motor vehicles when under the influence of drink or drugs; in s 15(1) the phrase is:
> "Any person who when driving or attempting to drive, or when in charge of, a motor vehicle on a road or other public place is under the influence of drink ..."
> There, clearly the words "or other public place" are wide enough to embrace a car park such as we have described in this case. If it had been simply "on a road" it may be that a public car park would not be embraced by the word "road", but in s 15(1) there is that distinction between a road and another public place. Unfortunately, under this particular section, s 4, the word is simply "road" and nothing else, and so in interpreting

The observations made above by Streatfeild J has to be treated with some caution. To begin with, his Lordship may have been too concerned with the test of "line of communication". Although he suggests that this test is not sufficient in itself in deciding if a car park is a road, one does query if he does take too narrow a view of when there would be a line of communication – he seems to suggest that there must be a line from the entrance to the exit of the car park and the line would traverse the car park. This construction seems to suggest that the line must lead from a place outside of the car park to another place external to the same park. This is overly restrictive as even what no one might quarrel with being roads would have to end somewhere, whether at a simple *cul de sac* or a roundabout. If one would not dispute that these are roads even though they may come to a dead end, when should it not be a line of communication even if the line should end in one of the lots in the car park? This whole question of a "line of communication" really boils down to a question of characterisation of where it ends. The line of communication surely can be said to extend from beyond the entrance of the car park to the parking lots therein.

Streatfeild J also feels fortified in his conclusion that a car park cannot be a road within the statutory meaning by reference to certain other statutory provisions which make reference to "road or other public places".[21] He seems to reason that since "other public places" would be wide enough to cover car parks, the fact that there is no such mention here means that car parks are outside the legislative contemplation. This reasoning is, at best, suspect. The fact that other provisions may have another statutory formula to cover a wider class of things does not, in itself, explain the meaning of or throw any more light on the ambit of "road".

The illustration given by Streatfeild J in relation to the piece of wasteland and the traffic travelling there from the main road and how it cannot be called a road seems to suggest being overly concerned with physical manifestations. There is no rule anywhere that a road is one only when it is lined with pavements or railings and that it must be laid with a layer of bitumen. If there are such characteristics, it would certainly be easier to identify it as a road, but the mere fact that there are no such physical indications does not in itself mean that the possibility is entirely excluded. It surely also has to depend on the function of the pathway. Whether a

the word "road" in accordance with its definition in s 121 I have, albeit with reluctance, come to the conclusion that it was open to the justices to find that this public car park was not a road.

[21] *Ibid*.

particular thing is a road or not is also decided by its function, not solely by its physical characteristics.

Perhaps what might be the most difficult obstacle to relying on the observations of Streatfeild J as a general rule in other cases is that it is purely *obiter* and the main judgment of Lord Parker CJ contains nothing to support the former's contentions. At best, these observations have to be confined to the particular facts of the case; at worse, they are simply unsupportable.

The next relevant case is *Oxford* v *Austin*.[22] Here the defendant had left his motor vehicle parked in a car park where the lots were marked out clearly by white lines. The car park in question was privately owned. It was meant for the use of office workers, tenants of the flats and shoppers. There were signs at the entrance and exit of the car park which declared that use of the park was for a restricted class of persons. There was no insurance covering the vehicle. He was thus charged with use of a vehicle without insurance cover in contravention of the Road Traffic Act, 1972. The magistrates threw out the case. On appeal, the court found the lower court had erred. Since they had considered whether the public or a section thereof had access, without considering first if it was in fact a road, they had misdirected themselves and the case was remitted for reconsideration. In any event, the court opined that the magistrates were erroneously fazed by the fact that it was a privately owned car park since even such a car park may be one to which the public has access.[23]

Kilner Brown J made several interesting observations. The first related to the steps to be taken the analysis of the issue:

> [T]here is a well established process which is founded in findings of fact. The first question which has to be asked is whether there is in fact in the ordinary understanding of the word a road, that is to say, whether or not there is a definable way between two points over which vehicles could pass. The second question is whether or not the public, or a section of the public, has access to that which has the appearance of a definable way. If both questions can be answered affirmatively, then there is a road for the purposes of the various Road Traffic Acts and Regulations, and the usually quoted definition is to be found in section 196(1) of the Road Traffic Act 1972.[24]

[22] [1981] RTR 416.

[23] *Ibid*, at 419.

[24] *Ibid*, at 418. At the end of the day, the court found that the magistrates had addressed their minds only to the second question, *ie*, whether the public had access, without first considering if the car park was indeed a "road".

The other important observation made related to the comment by Streatfeild J in *Griffin* v *Squires*[25] that a car park can not be a road:

> That case is sometimes cited as being an authority for saying that a car park cannot be a road. In point of fact the only observation to that effect, at p 1109, is plainly one which is obiter by Streatfeild J and does not appear anywhere in the leading judgment of Lord Parker CJ. In any event I would respectfully suggest that it is not correct to say that a car park cannot be a road. There must be many cases, and this case probably is such a case, where there is obviously a definable way over which vehicles may pass which in plain common sense qualifies as a road.[26]

A few important pointers arise from this case. To begin with, Kilner Brown J is correct in laying down the proper analytical process to be followed when undertaking an enquiry into whether it is a "road to which the public has access". The two questions of whether it is a road, and whether the public has access to it are quite distinct and separate. This point was also made amply clear in the decision of Lord Parker CJ in *Griffin* v *Squires*.[27]

The second thing which emerges from the case, although there was not much emphasis on it, is that even private car parks may fall within the class of roads to which the public have access. This, of course, is in line with what was said in *Harrison* v *Hill*,[28] where the road in question was a private farm road. It is precisely that private roads are contemplated that there is this qualifying requirement that it must be one to which the public have access.

Another observation which arises from the case relates to the treatment of the obiter observations of Streatfeild J in *Griffin* v *Squires*[29] – it is obviously one which is to be treated with caution and not to be taken to apply to all cases. Indeed, as pointed out by Kilner Brown J, one way in which a car park may be considered as a road is when it acts as a through route

25 *Supra*, note 18.

26 *Ibid*, at 418. It is interesting to note that although the entrance and exit of the car park had signs suggesting that they were meant for a restricted class of persons, as long as a motor vehicle was of a size which could fit through both openings, the same vehicle could pass through the car park, using the car park as a sort of access route between the two main roads that the entrance and exit were facing respectively. This was because the signs of restricted access were not supported by physical barriers to prevent public access.

27 *Supra*, note 18, at 1108-9.

28 *Supra*, note 12.

29 *Supra*, note 18.

from one main road to another. This is in line with the line of communication analysis. However, there is nothing in the judgment of Kilner Brown J to suggest that the only way a car park may be a road is when there is a line of communication from two points outside of the car park. In any event, it was not necessary, on the facts of the particular case, for his Lordship to consider any other factual matrix.

IV. Recent Decisions of the English Court of Appeal

Recently, the question of whether a car park could constitute a "road" has come up for consideration by the House of Lords. There were two decisions of the Court of Appeal to consider. The first is that of *Clarke* v *Kato*.[30] In this case, the plaintiff suffered personal injuries when she was hit by a car driven by the first defendant. The accident occurred in a car park at the rear of a row of shops. The car park was rectangular in shape and two of the sides ran parallel to the row of shops. The side that was immediately adjacent to the shops was separated from these shops by a high wall. This wall only had an opening through which was a covered passageway which gave access to the row of shops from the car park. Because the row of shops was higher than the level of the car park, there was a ramp which led from the car park up to the shops. The car park was always open to the public despite a notice that suggested that the car park was for the exclusive use of shoppers. The first defendant was uninsured. The third defendant was an insurance company substituted for the Motor Insurers Bureau. The preliminary issue was whether the accident had occurred through the use of the car on a "road" within the meaning of section 192 of the Road Traffic Act 1988. It was found by the court at first instance that since a line of communication existed *via* the car park and ramp, and that since wheeled vehicles in the form of prams and bicycles used the route, it was a road for the purposes of the Act.

The fascinating thing about the decision of the lower court is that the court seems to have jumped on the test of "line of communication" without bearing in mind that, at the end of the day, the Road Traffic Act related to the use of roads by motor vehicles rather than all manner of vehicles. The decision of Potter LJ goes even further. Potter LJ, with whom McCowan and Waite LJJ agreed, took this line of reasoning to its logical conclusion. As long as there was a line of communication, *ie*, traffic from one point to another, it did not matter if this was a route taken by vehicles. As long as there was some form of traffic, even pedestrian, this would suffice for

[30] [1997] 1 WLR 208.

the purposes of determining if there was indeed a line of communication, and following that, there was a "road" for the purposes of the Act.

Potter LJ began by examining the proposition made by Kilner Brown J in *Oxford* v *Austin*[31] relating to the two-stage test to be applied in considering if a car park was to be considered a road to which the public had access. His Lordship took issue with the characterisation of a definable way on the car park as being made with reference to passage by vehicles – this was too restrictive. Potter LJ opined that it was too narrow in scope in light of what he saw as the "protective intention of the legislature"[32] which should properly include ways which were only used by pedestrian traffic. Potter LJ felt he was fortified in his belief by his own suggestion that in *Griffin* v *Squires*,[33] if access to the footpath which led from the car park in question had not been restricted to a particular class of persons, but was open to the general public, Lord Parker CJ might have decided differently.[34] Potter LJ then sought to get around the strong *obiter* remarks by Streatfeild J in the same case by suggesting that what Streatfeild J was contemplating was a simple situation where traffic both vehicular and pedestrian was restricted to passage over the car park for the sole purpose of getting to and from a parking lot. A very different conclusion, which was not contemplated by Streatfeild J would be where the car park was used by "through" traffic, *ie*, where the car park was part of an access path from one point to another.[35] Here, the character of the car park would clearly be altered in that it is no longer being used simply as a car park per se, but used as, or as part of, a road. This would be "an appropriate distinction, consistent with common sense, the intention of the legislature, and the authorities such as they are."[36]

Pursuant to the point made by Potter LJ, it became unnecessary to decide if prams and bicycles did in fact fall within the class of "vehicles" as contemplated by Kilner Brown J in his characterisation of the issue. All

[31] *Supra*, note 22. The proposition in question is laid out in the main text corresponding to note 24.

[32] *Supra*, note 30, at 214.

[33] *Supra*, note 18.

[34] *Ibid*, at 214:

> In this connection, it is relevant also to note that in *Griffin* v *Squires* [1958] 1 WLR 1106, 1108, Lord Parker CJ plainly anticipated that, had the justices not made a finding that only a restricted class, and not the general public, used the footpath to the bowling green, including the car park as part of that footpath, the decision might properly have gone the other way.

[35] Of course, this line of reasoning would find support in the observations made by Kilner Brown J in *Oxford* v *Austin*, *supra*, note 22, at 418.

[36] *Ibid*, at 215.

that had to be proved was that the car park was used beyond its basic purpose of parking and the traffic that passed through the park was beyond that which is purely incidental to its characteristic as a car park, and the car park formed part of a through route for any form of traffic, whether vehicular or pedestrian. If that could be shown, then the car park in question would qualify as a "road". As put by Potter LJ:

> It was not marked out in lanes with directional signs. It was a fairly small open area, marked along its western and northern edges with car spaces ... However, the route for "through" pedestrian or other traffic between the car park entrance and the foot of the ramp was readily and properly definable as all that are of the car park (and drive) north of the point at which the base of the ramp meets the surface of the car park. No doubt, at any time when vehicles were parked on one or more of the spaces marked out, then the road as defined would be obstructed to that extent. However, this was not the position on the evening in question and, in principle, is beside the point.[37]

This decision of the Court of Appeal shows some interesting reasoning. To begin with, the assumption seems to made that the intention of the legislature is to include footpaths generally in the concept of roads. This Potter LJ gathers from the decision of the Court of Appeal in *Lang* v *Hindhaugh*.[38] The case revolved around section 6(1) of the Road Traffic Act 1972 which related to drunken driving on a "road". The accused was alleged to have driven, while intoxicated, his motorcycle on a footpath. The court held that the footpath was within the meaning of a "highway" and therefore the charge was made out. The interesting thing here is that what Potter LJ sought to do was to first point out that the court here had held that a highway included a footpath. The next step was then to suggest that there was really no difference intended by Parliament between a highway and a road. Thus, since a highway includes a footpath, so would a road since the statutory definition of "road" included a highway. Therefore, there was a line of communication running through the car park from the main road at the entrance cum exit to the footpath leading up the ramp to the shops.

The reliance on the decision of Croom-Johnson LJ dictates that it should be scrutinised. To begin with, even if as suggested by his Lordship that

[37] *Ibid*, at 217.
[38] [1986] RTR 271.

the word highway contemplates any place to which the public have access,[39] this must be read in the context of, and necessarily limited by, the subject matter of the Road Traffic Act, *ie*, the regulation of the use of motor vehicles. In that light, it might be a little too imaginative to think that the legislature, when enacting such legislation, was contemplating the use of vehicles even where they are not expected to be found. In any event, Croom-Johnson LJ felt fortified in his views by reference to section 36(1) which specifically made reference to "a footpath or bridleway". However, it is suggested that it could be precisely because that no one would ever consider a footpath a road that special provision has to be made for it in the provision in question. It is finally suggested that the decision in *Lang* v *Hindhaugh*[40] is weak authority as the court does not seem to have any authority for their conclusion. In any event, the case could be explained on the basis that section 6 actually provides not just for drunken driving on a road but also "or other public place". Surely, it was not necessary to adopt such reasoning in order to fit a footpath within the meaning of the word "road" when a footpath would fit nicely into the phrase "public place".

One last observation should be made about Potter LJ's decision. He suggested in the course of his decision that Lord Parker CJ in *Griffin* v *Squires*[41] would have decided that the car park in question would be a road if not for the fact that the pathway leading away from the car park was not one to which the public had access. To begin with, there is no suggestion in that part of Lord Parker's decision which suggested this. In any event, he had taken great pains to point out that the mere fact that the public had access to a place did not, of itself, necessarily mean that it was a road. All he said about the matter was that it was a question of fact to be left to the magistrates.

Cutter v *Eagle Star Insurance Co Ltd*[42] was decided by the Court of Appeal just a few days later. Although the decision of the court was just

[39] It is interesting that the English acts should use the word "highway" which, at common law, means any path over which the public have right of way, including, *inter alia*, footpaths. However, this line of reasoning would not be applicable in Singapore precisely because the MVA does not use the word "highway" but rather the phrase "public road". The MVA and the RTA do not define "public road". Instead it is used in and defined by other unrelated statutes: *eg,* s 2 of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997) defines it as "includes every road, street, passage, footway or square over which the public has a right of way"; see also s 2 of the Internal Security Act (Cap 143, 1985): "any public highway or any road over which the public has a right of way or is granted access, and includes any road, street, bridge, passage, footway or square over which the public has a right of way or is granted access".

[40] *Ibid*.

[41] *Supra*, note 18.

[42] [1997] 1 WLR 1082.

as expansive as that in *Clarke* v *Kato*,[43] the technique used was quite different. In a sense the facts in this case was even more unusual. The plaintiff was a passenger in a motor vehicle parked in a lot in a multi-storey car park. He was injured when an explosion was caused by leaking lighter fuel from a can in the car. The question was whether the car was being used on a road as defined in section 192 of the Road Traffic Act 1988. At first instance, the court dismissed the case, holding that the car park did not constitute a road. This was reversed on appeal to the Court of Appeal.

Beldam LJ delivered the only considered judgment. His Lordship began by reaffirming the two-stage enquiry: "(i) is the place in question a road? (ii) if it is a road, do the public have access to it?"[44] In the present case, the focus was on the first question:

> [W]hether the car park or any part of it can be considered to be a road having regard to its layout, its physical characteristics and the type of use made of it.[45]

Beldam LJ further cautioned against falling into the trap of being concerned with whether certain defining features are present. These were mere guides and should not to focused on to the exclusion of all other enquiry.

> In some of the case it appears to have been assumed that a car park is capable of being a road if members of the public have access to it for the purpose of passing across it or if it is possible to use it as a means of access from one road to another but, unless the evidence shows those characteristics, it is not a road within the definition. In my views these are relevant but not determinative attributes.[46]

The starting point for Beldam LJ was to go back to the original statute[47] and its immediate successors to discern the policy behind the statutory provisions. He pointed out that the long title of the Road Traffic Act 1930 provided that it was

[43] *Supra*, note 30.
[44] *Supra*, note 42.
[45] *Ibid*, at 1085.
[46] *Ibid*.
[47] Motor Car Act 1903.

> "An Act to make provision for the regulation of traffic on roads and of motor vehicles and otherwise with respect to roads and vehicles thereon, to make provision for the protection of third parties against risks arising out of the use of motor vehicles ..."[48]

In any event, Beldam LJ observed that section 151 of the Road Traffic Act 1988 requiring an insurer to meet a judgment against a compulsorily insured risk originated as section 10 of the Road Traffic Act 1934. This was passed as a means of securing to the benefit of the victims of accidents the compensation actually awarded to them by the courts. He concluded therefore that

> Taken in the context of the legislation as a whole, I consider that the definition in section 192 of the Act of 1988 should be given a meaning consistent with the intention to protect the public and to secure compensation for third parties injured ... by the use of motor vehicles. I would give the definition a broad rather than a confined meaning to achieve the declared aim of the statute.[49]

Beldam LJ then proceeded to faithfully go through the relevant authorities. He also acknowledged the decision of the county court where the court was of the opinion that a road required some form of defined way from one defined point to another. On that basis, since there was no evidence that the vehicles drove across the car park by any defined route to go anywhere but to get into or out of the car park, and since there was only one entrance cum exit, it would be stretching the English language to say that the car park was a road.[50]

Beldam LJ took a revolutionary approach to the question – the issue was not so much whether nor not the car park in question was a road. The issue is more correctly characterised as "Is there within the car park a roadway?"[51] Previous cases made the mistake of placing too much emphasis on the former question. Applying the latter test to the current car park, he observed that there was within the car park a roadway. A roadway was defined as "a way marked out for the passage of vehicles controlled by conventional traffic signs and markings and regularly used by members

[48] *Supra*, note 42, at 1086.
[49] *Ibid*, at 1087.
[50] Observations made by Judge Chalkley in *Cragg* v *McGuire* (unreported, 21 July 1992). Referred to at *ibid*, at 1087-88.
[51] *Ibid*, at 1090.

of the public seeking a car parking space."[52] In any event, bearing in mind the legislative intention behind the statutory provisions, it was noted that the risks of accidents causing injury arising out of the use of cars on this particular roadway would hardly any less than on any other road. Users of the car park could just as easily get injured walking from or walking back to their cars. They could also get injured driving their cars within the car park. Persons merely walking through the car park could also conceivably be injured. In the view of his Lordship, there was no merit in the suggestion that the mere fact that a car is being driven to or from a car park lot, as compared with driving through a space as a definable way from one road to another, ought to have any impact on the possibility of the injured party recovering compensation awarded to him. Once Beldam LJ laid down the proposition that there was a roadway within the car park, he then took it to its logical conclusion by suggesting that the parking spaces must also be considered as part of the roadway:

> Where vehicles drive regularly over and into parking spaces from a roadway, the area of the parking space is in my view to be regarded an integral part of the roadway. The spaces are provided to be driven into; I do not regard it as significant that vehicles are only "driven" in such spaces for a short distance as they are coming to rest or reversing from them.[53]

Based on that reasoning, Beldam LJ allowed the appeal by the plaintiff. This approach is very attractive and does offer compelling reasons why there might be a road within a car park. The starting point of seeking out the legislative intent behind the progenitor of the series of Road Traffic Acts does avoid the trap of being too concerned with the question of physical attributes. Indeed, the focus too often placed on whether the car park could be considered a road does obscure the real question: whether within that car park there runs a roadway? The mere fact that the roadway should be surrounded by parked cars or parking lots is irrelevant. Nor should it matter that it runs through a parking compound or a building like a multi-storey car park. The real question is whether or not there is a road to be found. However, the case does have its weaknesses, in particular, the last step of the reasoning process where Beldam LJ takes suggests that since there is a roadway running through the car park, the parking lots must be taken

[52] *Ibid*, at 1090.
[53] *Ibid*, at 1091.

to be part and parcel of that same roadway. If that has to follow, then perhaps the same argument could be made for anything running alongside a road, *eg*, a footpath or a field.

The two Court of Appeal decisions show the problems inherent in defining the question. The two different approaches show that the courts are unable to come up with a consistent characterisation of what constitutes a road. To begin with, they do not even seem able to agree on how the question should be framed. The use of the word "highway" does not help either. Although all highways are roads, it does not necessarily follow that all places which qualify as highways are necessarily roads, especially if they are not places to which the public have a right to access. It is precisely because it is contemplated that there will be places where the public do not have a right to access, *ie,* where the place is on private land, that it must be a question of whether the public do in fact have *de facto* access.

V. Car Parks in the House of Lords

The final case in the trilogy of cases is the House of Lords decision[54] from these two Court of Appeal decisions. Both decisions of the Court of Appeal were reversed and the appeals allowed. Lord Clyde delivered the only judgment, and the other members of the House agreed with him. As was pointed out by his Lordship, the decision that the House was asked to make would have "far-reaching consequences".[55]

Lord Clyde began by trying to lay down some ground rules as to how to identify if there was indeed a road. He took pains to point out, however, that although his suggestions were helpful, they were not intended to by exhaustive:

> In *Oxford* v *Austin* [1981] RTR 416 at 418 Kilner Brown J referred to a road as 'a definable way between two points over which vehicles could pass'. I would hesitate to formulate a comprehensive definition whereby a place may be identified as a road, but some guidance should be found by considering its physical character and the function which it exists to serve. One obvious feature of a road as commonly understood is that its physical limits are defined or at least definable. It should always be possible to ascertain the sides of a road or to have them ascertained. Its location should be identifiable as a route or way. It

[54] *Cutter* v *Eagle Star Insurance Co Ltd*; *Clarke* v *Kato* [1998] 4 All ER 416.
[55] *Ibid*, at 420.

> will often have a prepared surface and have been manufactured or constructed. But it may simply have developed by the repeated passage of traffic over the same area of land. It may be continuous, like a circular route, or it may come to a termination, as in the case of a *cul-de-sac*. A road may run on a single line without diversion or it may have branches. A branch which leads for example to a hotel or some other place of refreshment may qualify as a road, particularly, but by no means exclusively, where it leads into and continues out of the place in question, such as for example the forecourt in *Bugge* v *Taylor* [1941] 1 KB 198. I do not find it helpful to use the language of a 'through route' beyond recognising that a road should lead from one point to another.
>
> But it is also necessary to consider the function of the place in order to see if it qualifies as a road. Essentially a road serves as a means of access. It leads from one place to another and constitutes a route whereby travellers may move conveniently between the places to which and from which it leads. It is thus a defined or at least a definable way intended to enable those who pass over it to reach a destination. Its precise extent will require to be a matter of detailed decision as matter of fact in the particular circumstances. Lines may require to be drawn to determine the point at which the road ends and the destination has been reached. Where there is a door or a gate the problem may be readily resolved. Where there is no physical point which can be readily identified, then by an exercise of reasonable judgment an imaginary line will have to be drawn to mark the point where it should be held that the road has ended. Whether or not a particular area is or is not a road eventually comes to be a matter of fact.[56]

A few points emerge from Lord Clyde's observations. The first is that, in the ultimate analysis, whether or not a place is to be considered a road is a question of fact. The second is that the physical limits of a road should be definable. Moreover, the road should be identifiable as a route or a way. That would logically suggest the road must lead somewhere since in order to be a route or a way, it ought to be a means of accessing a particular destination. However, it does not seem to matter that the destination in question is a dead end. This is where the physical characteristics of a road shades into the question of function.

Insofar as car parks were concerned, Lord Clyde opined that car parks were quite different creatures from roads, both in terms of character and

[56] *Ibid*, at 421-2.

function.[57] To begin with, it would go against ordinary use of the word to consider a car park as a road. In any event, the functions of the two things are essentially different – the road is for getting to a particular destination, while the car park is merely for cars to be left in lots. While one may stop and wait along a road, or even park on the side, this does not detract from the main function of a road, and is merely incidental thereto. Similarly, while one may drive over the surface of a car park to get to a parking space, this is merely incidental to the principal function of the car park.

In relation to the suggestions made in relation to the two car parks in question that it was possible to identify roads within the car parks, Lord Clyde felt that the one in *Clarke* v *Kato*[58] faced the insurmountable difficulties of not having any definable limit of a carriageway, since there were no markings short of those designating the parking spaces. On the other hand, it was perhaps easier to identify a carriageway running through the car park in *Cutter* v *Eagle Star Insurance Co Ltd.*[59] However, Lord Clyde is uncertain if making such a fine distinction between the carriageway and the parking spaces was desirable. In any event, his Lordship cautioned against the technique used by the Court of Appeal where the court first identified a carriageway running through the car park, drew a distinction between the parking lots and the road, and then proceeded to treat the parking spaces as an integral part of the carriageway and, as such, part of the road. Once a clear distinction is made between the parking spaces and the carriageway,

[57] *Ibid*, at 422:

> In the generality of the matter it seems to me that in the ordinary use of language a car park does not so qualify. In character and more especially in function they are distinct. It is of course possible to park on a road, but that does not mean that the road is a car park. Correspondingly one can drive from one point to another over a car park, but that does not mean that the route which has been taken is a road. It is here that the distinction in function between road and car park is of importance. The proper function of a road is to enable movement along it to a destination. Incidentally a vehicle on it may be stationary. One can use a road for parking. The proper function of a car park is to enable vehicles to stand and wait. A car may be driven across it; but that is only incidental to the principal function of parking. A hard shoulder may be seen to form part of a road. A more delicate question could arise with regard to a lay-by, but where it is designed to serve only as a temporary stopping place incidental to the function of the road it may well be correct to treat it as part of the road. While I would accept that circumstances can occur where an area of land which can be reasonably described as a car park could qualify as a road for the purposes of the legislation I consider that such circumstances would be somewhat exceptional.

[58] *Supra*, note 30.

[59] *Supra*, note 42.

the former cannot be integrated with the former.[60] The whole reasoning process in *Cutter* v *Eagle Star Insurance Co Ltd*[61] was thus suspect.

Lord Clyde felt fortified in his views by making references to certain provisions in the Road Traffic Act 1988 where a distinction had been made between a road and a car park.[62] He felt further vindication of his views were to be found in the changes made pursuant to the recommendations of the North Committee in the Road Traffic Law Review Report where

[60] *Supra*, note 30, at 422-3:

> The possibility was canvassed in each of the two present cases whether there might not be a road within the respective car park. In *Clarke*, where there were only some marked bays for parking, there was no definable limit of a carriageway short of the whole area, with the possible exception of the marked bays. In *Cutter* it seems easier to identify a carriageway running through the building up or down the ramps and over the floors. But there is one trap to be guarded against in such an approach, to which I shall have to refer again later. The initial analysis distinguishes the carriageway and the car parking areas within the car park. That may be an acceptable analysis in some cases, although it may lead to undesirably fine questions whether a vehicle was in a bay or on the carriageway. But once that analysis has been adopted it is not then permissible to claim that the car parking areas are an integral part of the carriageway and so establish the whole as a road. Once the analysis has been made which distinguishes areas of road from areas of car park, the latter cannot simply be integrated with the former.

[61] *Supra*, note 42.

[62] *Ibid*, at 423:

> The distinction between a road and a car park which is reflected in the ordinary use of words is reinforced by a consideration of the language of the legislation. S 25 of the 1988 Act, which prescribes the offence of tampering with a vehicle, starts with the words: 'If, while a motor vehicle is on a road or on a parking place ...' This plain recognition of a distinction between the two things cannot, as was suggested in argument, be put aside as simply a fortuitous anomaly in a consolidation statute, particularly when one finds the same distinction in the earlier appearance of the provision in s 29(2) of the Road Traffic Act 1930. Indeed the recognition of parking places for vehicles as a distinct matter can be found in s 68 of the Public Health Act 1925, where a specific definition of the term is given. A corresponding distinction can be seen in the language of the Road Traffic Regulation Act 1984 between roads and parking places. While there is a difference in the precise terms of the statutory definition in that Act from those in the 1988 Act, there appears to be no difference intended as regards what is meant by the words 'any other road to which the public has access'. The distinction recognised by Parliament between a road and a parking place can be found in the provisions forming Pt IV of the 1984 Act and the definition of 'street parking place' and 'off-street parking place' in s 142. In particular s 57(1)(b) empowers the provision and maintenance of 'suitable parking places, otherwise than on roads, for vehicles'. While a parking place could be on a road, it is nevertheless not itself a road. All the less is there reason to regard a car park as a road.

certain references in the Road Traffic Act 1991 were made not just to "roads" but to "roads or other public place".[63]

The justification used by both Court of Appeal decisions, that they were giving a broad interpretation of the word "road" in order to give effect to the intention of Parliament, was also dismissed by Lord Clyde.[64] As far as he was concerned, it is one thing to adopt a strained construction to give effect to the purpose of the legislation, it is quite another to take it

[63] *Ibid*, at 423:

> A more formidable argument for the appellants in my view lies in the fact that the legislation is in certain sections expressly made to apply not simply to 'a road' but to 'a road or other public place'. These added words appeared in s 15(1) of the Road Traffic Act 1930 in relation to the offence of driving a motor vehicle when under the influence of drink or drugs. Following on the report of the North Committee in April 1988 (the Road Traffic Law Review Report) these added words were introduced by ss 1 and 2 of the Road Traffic Act 1991 into the first three sections of the 1988 Act, which prescribe certain serious driving offences. While there was some discussion in argument before us whether the North Committee had correctly stated the law on the meaning of the word 'road', the express addition of the words seems to me to be a clear indication that a conscious extension of the scope of the provisions in question was being made, reinforcing the conclusion that where the word 'road' stands alone it bears its ordinary meaning and is not to be extended to public places such as car parks. The North Committee referred in para 8.10 of its report to the provision for insurance which was then in s 145(3)(a) of the Road Traffic Act 1972, but it was not within its remit to consider the desirability of making a similar addition to its terms. Attention was thus drawn to the matter, but no such addition has been made to that section. The contrast in the terminology used remains as a matter of significance.

[64] *Ibid*, at 424:

> Certainly the purpose is to achieve some greater public protection. That was recognised in *Harrison* v *Hill* 1932 JC 13 in relation to the construction of the words 'to which the public has access' in the Road Traffic Act 1930. But in the present context a more precise definition of the purpose is required.
>
> The question is what is the danger from which the public are to be protected. Is it the use of vehicles on roads, or is it more widely the use of vehicles? If it is the former then one is left with no guidance for a purposive construction. If the purpose of the Act is to protect persons on roads then one is still left with the problem of defining a road. Such might well be thought to be the purpose of the Act given the repeated references to roads throughout the legislation. However I am prepared to proceed on the basis that the latter view is correct. It may have some support from the terms of the title set out in the Road Traffic Act 1930 and in the heading to Pt II of that Act, 'Provision against third-party risks arising out of the use of motor vehicles'. The provision of insurance to cover liability for injury sustained by third parties in the same context may then be seen as a measure designed for the protection of the public from dangers arising out of the use of motor vehicles. It may also be noted that in s 34 of the 1988 Act the driving of motor vehicles on any land elsewhere than on roads is prohibited. By giving a purposive construction to the word 'road' what is meant is a strained construction, beyond the literal meaning of the word or beyond what the word would mean in ordinary usage, sufficient to satisfy that expression of the purpose of the legislation.

to the point of distorting the language used in the statute and giving unnatural meaning to familiar words. This is particularly where there is no obvious ambiguity about the language used.[65] In addition, there were two disturbing consequences if all car parks were to be considered to be roads. To begin with, the purpose behind the statute, of ensuring that victims of accidents involving motor vehicles would be compensated, is backed up by the creation of an offence for any person using such vehicles without the requisite insurance cover. Whilst one might be tempted to give an expansive meaning to the word "road" to secure to as many persons as possible the benefits of the Act, this must be tempered by the reasons why penal provisions are interpreted strictly.[66] The other unfortunate repercussion was the burdens of the wide range of laws and rules which would be imposed on the owner of the car park. It might not be justifiable to have such a wide reading of the word "road" such private rights of the owners of car parks would be interfered by the public authorities, even if it is in the name of the public good.[67]

[65] *Ibid*, at 424:

> It may be perfectly proper to adopt even a strained construction to enable the object and purpose of legislation to be fulfilled. But it cannot be taken to the length of applying unnatural meanings to familiar words or of so stretching the language that its former shape is transformed into something which is not only significantly different but has a name of its own. This must particularly be so where the language has no evident ambiguity or uncertainty about it. While I have recognised that there could be some exceptional cases where what can reasonably be described as a car park may also qualify as a road, it is the unusual character of such cases which would justify such a result in the application of the statutory language rather than any distortion of the language itself.

[66] *Ibid*, at 424:

> But beyond this objection in the present context there are in my view two particular considerations which militate against any such broad approach. In the first place it has to be remembered that in many instances the purpose of the legislation is achieved by the creation of an offence. Against the employment of a broad approach to express the purpose of the Act must be put the undesirability of adopting anything beyond a strict construction of provisions which have penal consequences.

[67] *Ibid*, at 424-5:

> Secondly, it is clear that on the respondents' construction the whole body of statutory provisions and regulations will be applicable to car parks. But these provisions include powers to carry out works which will constitute some invasion of the proprietor's rights in his land. The provisions of Pts I, III and V to VIII of the 1984 Act contain a variety of such powers. It is true that to an extent such an invasion has already been authorised by the legislation, but in so far as this can be said in respect of roads in the ordinary sense of that word that fact cannot be founded upon in relation to car parks without begging the question in the present appeals. I do not regard it as an insignificant consideration that on the respondents' construction a greater opportunity is afforded to statutory authorities to interfere with private property, even though this may be thought to be in the interests of public safety.

At the end of the day, the House of Lords found that there would be insuperable difficulties if all car parks were to be roads. In fact, many of the regulations relating to road traffic would simply be unworkable.[68] At end of the day, Lord Clyde concluded that:

> If one has recourse to the ordinary use of language I do not consider that either of these car parks would be regarded as a road or as a part of a road. They seem on the contrary to be places to which a road may lead. They are not places designed or dedicated for the passage of vehicles. Neither in character nor function do either of the car parks in the present appeals readily qualify as roads. The open area in the case of Clarke does not seem like what one usually regards as a road. More strikingly the six-storey structure in the case of Cutter is in character even less like a road. In each case the function of the place was for the parking of vehicles. Nor does it seem to me to accord with the ordinary use of language to describe the passage and the car park in the case of Clarke as constituting a road. While a route useable by pedestrians or even bicycles may be identified across the park and through the passage it seems to me that cannot suffice to make the car park a road.[69]

[68] See the various examples laid down: *ibid*, at 429.

[69] *Ibid*, at 429-30. See further at *ibid*, 430, where Lord Clyde concluded:

> The application of the statutory term 'road' comes to be a matter of fact and circumstance to be determined by the tribunal of fact properly directing itself in the law. In the case of Clarke the judge held that the park taken by itself was not a road. I think that was correct and that finding should be respected. Where he erred, and where the Court of Appeal also went astray, was to take account of the passage. The character and the function of the car park does not in my view change even although one can drive a motor cycle, or push a perambulator through the passage in order to enter or leave the park. Even if the passage was a road that does not mean that the park becomes a road. In the case of Cutter the judge took the view that the multi-storey park was not a road. I find no error in his approach and I would respect that decision as a finding in fact. It seems to me that the Court of Appeal fell into the trap to which I have earlier referred of first identifying a road within the park, thereby identifying two things, the road and the park, and then, inconsistently, treating the parking bays as integral with the road. Even if the carriageway should be treated as a road, the bays must retain their own integrity and it was while the car was in a parking bay, not on the carriageway, that the incident occurred. One cannot but feel sympathy for the unfortunate victims of these two accidents, but it must be for the legislature to decide as matter of policy whether a remedy should be provided in such cases as these, and more particularly it must be for the legislature to decide, if an alteration of the law is to be made, precisely how that alteration ought to be achieved.

The House of Lords decision deserves further comment, particularly since it purports to be the last word on how the issue should be analysed insofar as car parks are concerned. Lord Clyde's starting point is that the way to identify a road is to look at the putative road from two closely related angles – the question of physical attributes and the question of function. Roads are here to facilitate the travelling of vehicles from one point to another. They should provide access; they must provide a route or a way to get to a destination. The fact that one may be able to park cars at the side of a road does not detract from the primary function of the road – as a driveway or route. Lord Clyde seems to be place great importance in the question of primary function. It is precisely because the primary function of a car park, in his Lordship's view, is for cars to stop and stay, that even though cars, in order to get to the designated parking lots, may have to drive over an area in the car park, the driving or travelling within the car park is incidental or secondary to the primary function or purpose of the car park. As such, even though there may be travelling within the car park, this travelling is only secondary to the primary function of a car park. Of course, this line of reasoning could be open to the possibility that there are two distinct entities within the car park – one is the parking lots whose primary function is for cars to park and stay; the other is the driveway leading around the car park whose principal function is for vehicles to drive from the main road to the parking lots. As has been pointed out by his Lordship, it does not matter if the road is long or short; nor should it matter if the road terminates in a dead end.

Another matter which deserves closer examination is the treatment of the Court of Appeal decision in *Cutter* v *Eagle Star Insurance Co Ltd*.[70] The House of Lords opined that the analysis of initially distinguishing between the car park lots and the driveway leading around the car park would be making undesirable fine distinctions. Moreover, Lord Clyde felt that it was unsupportable to make this distinction and then later choose to incorporate the lots into the driveway as part of a road. To begin with, it is difficult to see how this is such a fine distinction. After all, courts have to engage in such an exercise whenever they deal with cases where the vehicle in question is straddling a public road and private property (to which the public have no access). One such case is that of *Randall* v *Motor Insurers' Bureau*[71] where the vehicle which caused personal injury was being driven from a school ground to the main road. In fact the front wheels of the lorry was on the main road. Nonetheless, Megaw J did not have

[70] *Supra*, note 42.
[71] [1968] 1 WLR 1900.

any great problems deciding that since the most part of the lorry was already on the main road, the vehicle was being used on a "road" and attracted the statutory regime insofar as motor insurance was concerned. This case shows that courts will take a sensible view of facts and the difficulties, if any, which may arise would not prove to be insuperable. Of course, one cannot quarrel with the assertion of the House of Lords that the Court of Appeal in *Cutter* v *Eagle Star Insurance Co Ltd*[72] was attempting to do something which was inconsistent with its earlier distinction between the driveway and the lots when it suggested that the lots be considered part of the driveway. Be that as it may, the mere fact that the Court of Appeal made a quantum leap in reasoning which is unsupportable does not detract from the fact that the other parts of its reasoning process is attractive and eminently sensible.

The references made by Lord Clyde to other provisions in the Act, as well as the recommendations to add "or other public place" to other provisions is curious. One does wonder how the mere fact that other provisions have a more extensive area of application affect the interpretation of the word "road"? It still does not answer the crucial question – what is the meaning of the word "road" and does it include a car park?

Lord Clyde also dismissed the arguments based on the legislative intent. Although it is justifiable to resolve ambiguity by reference to legislative intent, it is quite another to strain the language where there is none. In any event, his Lordship expressed two concerns – firstly, that there were penal provisions in the same Act which also depended on the definition of "road" for its ambit and secondly, if all car parks were roads, then the private rights of the owners of private car parks would be subject to all manner of rules in the name of public good. To begin with, the converse argument can surely made against the first concern – if it is something which is important enough for the public good and the preservation of life and limb from dangerous or irresponsible use of motor vehicles, then such reckless disregard for life and limb ought to be deterred by the terror of criminal penalties. With regards to the second concern, in earlier cases like *Harrison* v *Hill*[73] and *Oxford* v *Austin*,[74] the mere fact that the roads or car parks in question were privately owned has not stopped the respective courts from holding that the places were indeed "roads" for the purposes of the Act. In any event, it is not unusual for private rights to be set aside

[72] *Supra*, note 42.
[73] *Supra*, note 12.
[74] *Supra*, note 22.

for the greater good of the general public if it relates to a matter of sufficient importance.[75]

The House of Lords began on a positive note by pointing out that mere physical characteristics are not in themselves conclusive as to whether a place is a road. The point made on the question of the principal function or character of a place being indicative of whether it is a road or not is also instructive. However, Lord Clyde may have been overly restrictive in refusing to recognise that there might be driveway within a car park and recognising both existing alongside each other would not detract from his functional analysis. In any event, the problem cannot be that the driveway ends in a parking lot because as his Lordship himself pointed out, it is conceivable that a road might terminate at a dead end.

So, there appears from the trilogy of cases three distinct approaches to the question:

1. In *Clarke* v *Kato*,[76] the emphasis is on the traditional test of "line of communication". Insofar as the test itself, it is orthodox enough. The question, however, is how does one draw this line of communication. Normally, this test uses two points outside of the car park on main roads. Here, however, the Court of Appeal suggest that since a "highway" is a term of art which includes, among other things, footpaths and bridleways to which the public have access, then one of the external points may be a footpath leading away from the car park in question, thereby satisfying the test.

[75] *Eg*, Under s 5(1) of the Rapid Transit Systems Act (Cap 263A, 1996):

> The Authority or any person authorised by the Authority shall have the right to enter upon and take possession of any land or part thereof not being State land within or adjoining the railway area not being land belonging to or acquired by the Authority and lay and construct any railway on, under or over the land and do all things as are reasonably necessary for the purpose of laying and constructing the railway.

See also s 87(1) of the Environmental Public Health Act (Cap 95, 1996):

> The Commissioner, any public health officer or any public officer or any person as the Commissioner may authorise in writing in that behalf may, for the purposes of this Act or any regulations made thereunder, enter between the hours of 6 am and 6 pm into and upon any premises in order to make any survey, inspection or search or to execute any work authorised by this Act or any regulations made thereunder without being liable to any legal proceedings or molestation on account of such entry or of anything done in any part of those premises.

[76] *Supra*, note 30.

2. In *Cutter* v *Eagle Star Insurance Co Ltd*,[77] on the other hand, there is a complete departure from the traditional analysis. It is suggested that the traditional approach misses the crux of the issue. It is not so much a question of whether or not the car park is a road because it forms a line of communication between two external points. Rather, the question should be whether there is within the car park a roadway, *ie,* is there within the car park a roadway either running around or through it.

3. The House of Lords, on appeal from the two Court of Appeal decisions, was of the view that it is partly a question of the physical nature and mainly a question of the primary or principal character or function. The convergence between these two questions dictates that the road should lead somewhere – it should an access to a destination. Lord Clyde took the view that a road remains a road even though vehicles may be parked alongside it because the primary function of the road remains unchanged, and this parking is merely incidental or secondary to its use. Similarly, since the principal character of a car park is a place for vehicles to stand and stay, the mere fact that in order to support this main function, the cars need to be driven over the car park does not detract from this character – the driving would be merely incidental.

VI. Local Position

There appears to be only one reported case where the issue of whether a car park could constitute a road for the purposes of either the Road Traffic Act or the MVA. The case is that of *Teo Siong Khoon* v *PP*.[78] The decision of the Chief Justice is instructive to see how the local courts will interpret the English decisions on when a car park will qualify as a "road". Although the decision itself revolved around an offence under the Road Traffic Act, the definition of "road" in section 2 of the said Act[79] is the same as that found under the MVA. Thus, the decision would be useful not just to decisions relating to road traffic legislation, but would be equally applicable to motor insurance decisions. The accused was charged with driving his car on a road while he was disqualified from driving. The incident was alleged to have occurred when he drove his car along the driveway of a Housing and

[77] *Supra*, note 42.
[78] [1995] 2 SLR 107.
[79] Which defines "road" as "any public road and any other road to which the public has access."

Development Board car park in Yishun Central. He was convicted in the district court and he appealed against the conviction.

The issue on appeal was whether the driveway in question could be considered a "road" within the meaning of the Road Traffic Act.[80] There were two main thrusts to the arguments made on behalf of the accused. The first relied on the decision of *PP* v *Ng Khiok Ngee*,[81] in particular where the magistrate had opined that it was stretching the ordinary meaning of the word "road" to suggest that it could extend to a car park. The second, which flowed from the first, was that in order for the car park to amount to a road, there must be evidence that it was being used as a through route from one point to another, both being outside the car park. Since there was only one entrance cum exit to the car park, this physical characteristic must therefore take the car park outside that definition of a road.

The Chief Justice began by explaining away the decision of the magistrate in *PP* v *Ng Khiok Ngee*.[82] Counsel for the accused had relied on the definition suggested by the magistrate that in order for a car park to constitute a road, it had be used as a "thoroughfare or shortcut for vehicles between two points outside of it".[83] The Chief Justice was of the view that the definition could not be of general application as it would lead to absurd results – in particular, it was pointed out that one of the consequences of taking that definition as conclusive, then a road that leads a *cul-de-sac* could never within the purview of the Road Traffic Act, regardless of how much vehicular traffic

[80] At the trial in the district court, the accused did not deny the facts as alleged were true. His contention lay in whether the driveway was a road under the Road Traffic Act.

[81] [1990] 1 MLJ xix.

[82] *Ibid*.

[83] See *supra*, note 78, at 109:

> In that case the magistrate, in considering whether a car park could be a 'road' within the meaning of the Road Traffic Act, stated:
>
> > In my opinion, to hold that a car park is a road would stretch too thinly the ordinary meaning of the word road. There must be some evidence to show that in addition to being a car park, the place is used, *inter alia*, *as a thoroughfare or shortcut for vehicles between two points outside of it*.' (Emphasis added.)
>
> Counsel contended that the above observation was especially pertinent in the present case because the evidence appeared to show that no vehicle entering from Yishun Central could drive through the car park and use it as a shortcut to emerge onto Yishun Ring Road. There was only one entrance to the car park and one exit from it, both from Yishun Central. In other words, the car park driveway along which the appellant had driven could not be said to constitute a *thoroughfare or shortcut for vehicles between two points outside of it* (emphasis added).

might pass over it.[84] In any event, the definition offered by the magistrate could be more easily understood in the context of the case – the charges had been drafted to refer to driving not so much on a particular area of the car park in question, but the multi-storey car park in general.[85] In such a situation, Yong CJ felt that it was necessary for the magistrate to try to restrict the case accordingly.

The court then went on to consider the English authorities on this point. Yong CJ noted that the magistrate had relied on the remarks of Streatfeild J in *Griffin* v *Squires*.[86] Yong CJ was of the opinion that Streatfeild J's remarks that a car park could never constitute a road were not to be followed. In the first place, the court was doubtful if the use of the phrase "other public place", as an alternative to "road" in certain provisions of the Road Traffic Act, did in fact cast any light on the meaning of the word "road" itself.[87] In any event, Streatfeild J's observations was strictly *obiter* which

[84] *Ibid*, at 109:

> More importantly, a perusal of the decision in *PP* v *Ng Khiok Ngee* showed plainly that any attempt to apply on a general scale the limits set in that case on the scope of the term 'road' could lead only to artificial, even arbitrary, results. To say that in all cases a road must be a place forming a thoroughfare or shortcut between two points outside of it would mean, for example, that a *cul-de-sac* (not being a public road) could never amount to a road within the meaning of the Road Traffic Act, however much vehicular traffic might travel along it, simply because it was open at one point only!

[85] *Ibid*, at 109-110:

> I should add at this juncture that no intention exists herein to deprecate the learned magistrate's decision in 1 itself, based as it was on the facts of that case and on the somewhat clumsily drafted charge preferred. In Ng Khiok Ngee's case the accused had hit the complainant's car whilst driving his own car on the second storey of the Golden Shoe Multi Storey Carpark. He was charged under r 27(B) of the 1981 Road Traffic Rules with driving on a road otherwise than in an orderly and careful manner and with due regard for the safety of others. Unfortunately, however, the 'road' specified in the charge against the accused was not a particular storey of the car park building, but the Golden Shoe Multi Storey Carpark itself. Read literally, this would have encompassed in effect the entire building structure, including all storeys, all parking lots and all office units! No doubt this was a case of infelicitous drafting; and in the circumstances, therefore, it made sense to hold that in order for a car park to amount to a road, there
>
> > ... must be some evidence to show that in addition to being a carpark, the place is used, *inter alia*, as a thoroughfare or shortcut for vehicles between two points outside of it.

[86] *Supra*, note 18.

[87] *Supra*, note 78, at 110:

> Streatfeild J, as one of the three judges of the Queen's Bench Division, stated that he did not think 'anybody in the ordinary acceptance of the word 'road' would think of a car park as a road'. In support of this proposition, he referred to s 15(1) of the 1930 Road Traffic Act (in largely similar terms to s 67(1) of our Road Traffic Act), which dealt with the punishment of persons for driving when under the influence of drink or drugs, pointing out that the phrase employed in the section was 'driving or attempting to drive ... a motor vehicle on a road or other public place'. In his view,

was not supported by the other members of the court, and clearly ran counter to other decisions of the English courts.[88] As far as the court could discern, the consistent approach of the English courts has been that at the end of the day it depends on the particular facts and circumstances of each case whether the car park in question could be considered a road "as a matter of common sense and ordinary meaning".

In applying the same test to the facts of the case, the court took the time to point out that, at the end of the day, any fear that the test might lead to an over-inclusiveness was unfounded as there was built into the definition a limiting factor since it refers not just to roads, but to "*roads to which the public has access*". In any event, Yong CJ was of the view that such an approach as espoused by the English cases would be consistent with the aim of the Road Traffic Act of protecting the public from vehicular traffic.[89] Turning to the facts of the case itself, the court of the view that

> the words 'or other public place' are wide enough to embrace a car park such as have described in this case. If it had been simply 'on a road' it may be that a public car park would not be embraced by the word 'road', but in s 15(1) there is that distinction between a road and another public place.
>
> With respect, however, I could see no logical basis for the above observations. To say that a distinction appears to have been drawn in the Act between a 'road' and 'other public place' tells us nothing about the meaning of the word 'road' itself; and to place car parks within the category of 'other public place' simply because this seems a 'wide enough' category is surely to put the cart before the horse: it brings us no closer to an understanding of that category denoted by the term 'road'.

[88] *Ibid*, at 110-1:

> Indeed, if Streatfeild J's intention was to establish a general proposition that a car park could never amount to a road, then it would appear that he was at odds with the principles consistently adhered to by the English courts; and in this respect it may be noted that neither of the other two judges sitting with Streatfeild J expressed agreement with the general statement of principle he seemed to be making. So far as may be discerned from the *ratio decidendi* of the various authorities, the only real test of what constitutes a 'road' is, simply, whether the area or space in question can be said to be a road 'as a matter of common sense and ordinary meaning': see for example Lord Parker CJ's judgment at 470 of *Griffin* v *Squires*.

[89] *Ibid*, at 111:

> Within the context of our own experience, the principles espoused in these English authorities clearly complement one of the legislative aims behind the Road Traffic Act, namely, protection of the public from vehicular traffic. Nor is the test too loosely put, since the definition of 'road' in s 2 of the Road Traffic Act is subject to the limiting condition that it be a road to which 'the public has access'. Thus, for example, an unnamed pathway leading off a main road to a picnic area may amount to a 'road' within the meaning of s 2, if it is used by motor vehicles as a way of communication between the main road and the picnic area; and it is open to the public. On the other hand, a pathway on a rubber plantation to which only the plantation owner and his rubber workers have access would not amount to a 'road' for the purposes of our Road Traffic Act, even if the plantation owner regularly drove his jeep along this pathway.

the driveway of the car park in question did indeed constitute a "road" for the purposes of the Road Traffic Act. Yong CJ took a very sensible approach. He pointed to three matters which dictated that the driveway was a road: firstly, there was clearly a definable way between the blocks of flats and the main road; secondly, it was also clear that the driveway was a two-way carriageway fit for vehicular traffic; and most importantly, it would run counter to common sense to suggest that this was not a road merely because one could not use it a shortcut from one main road to another.[90] Thus, the accused was correctly convicted in the district court and his conviction was upheld.

The local approach makes good sense. To begin with, the Chief Justice rightly dismissed the argument that there must be a line of communication between two points external to the car park. There is no logical reason why that has to be the case, especially if one recognises, as the Chief Justice did later in his judgment, that there is a driveway or roadway in the car park itself. In any event, such a requirement would exclude what otherwise are clearly roads merely on the basis that there are no identifiable points external to them, *eg*, a road which ends in a roundabout or a *cul de sac* or is simply a road which terminates there and then. If one recognises that roads must terminate somewhere, why could one not acknowledge that this termination could occur within a car park or, more specifically, a point therein?

The reason which the Chief Justice gives for holding that there are roadways running through car parks is compelling. It is really a question of the purpose behind the Road Traffic Act (and the MVA) – to protect the public from motor vehicles. It is therefore a question of vehicular traffic: if one expects to find traffic flow, then it ought to be a road. This form of analysis takes into account the legislative intent behind the Act to help define what constitutes a road.[91] Moreover, if there is a flow of traffic or

[90] *Ibid*, at 111:

> In the present case, the 'road' along which the appellant was said to have driven his car was the driveway of the HDB car park for Blocks 325 and 320 Yishun Central. From the sketch plan shown as exh A, it was clear that the driveway was a definable way between the relevant HDB blocks and the main road Yishun Central; and, from the evidence given at trial, it was clear also that the driveway was a two-way carriageway along which vehicular traffic could comfortably pass. It seemed to me that any person driving along this driveway should have been most astonished to be told that they were not driving upon a 'road', simply because they could not exit through to Yishun Ring Road from the car park.

[91] See *supra*, note 90, where the Chief Justice contemplates there being a road even where it is merely a path taken by vehicles to gain access from the main road to a picnic ground.

it is used as a driveway or roadway to gain access to a place or spot, it should be a road. An additional factor in this commonsensical approach is the question of markings and other manifestations of a normal road. It may well be possible to point out a road if there are such markings, traffic signs, *etc*. In the present case, it was convenient that the Chief Justice could point out that there was a driveway for two way vehicular traffic. However, it has to be noted that this is does not mean that the physical characteristics, or lack thereof, is conclusive. This is clear from the illustrations which the Chief Justice himself gave which included a pathway from the main road to a picnic ground as well as a plantation pathway. This showed that the Chief Justice did not think the lack of the usual look of a road was a fatal problem as long as regular vehicular traffic travelled over.

In any event, the Chief Justice rightly pointed out that the danger of overinclusion was overstated, particularly in light of the limitation which was built into the definition "road to which the public had access". Merely proving that there was a road was not sufficient in itself to attract the operation of the Act.

It would appear that the local approach laid down by the Chief Justice entails the following inquiry:

1. The definable way from one point to another may be from outside the car park to a point within the car park itself. There is no necessity to show that both points must be external to the car park.

2. Is a driveway apparent within the car park? Traffic markings on the surface, traffic signs, direction signs may suggest that there is indeed such a driveway within the car park.

3. Is the putative road fit for vehicular traffic? Is there regular vehicular traffic passing over it?

It should be pointed out that there are striking similarities between the approach taken by the Chief Justice and that taken later by the English Court of Appeal in *Cutter* v *Eagle Star Insurance Co Ltd*[92] in that the issue all boils down to the aim of the Act and that both cases recognise that there may be a roadway or driveway within a car park. However, it is pertinent to note that the Chief Justice has nicely avoided the inherent dangers of overinclusion, which the English Court of Appeal arguably ran into.

[92] *Supra*, note 42.

VII. Conclusion

It is clear that the issue of whether a car park is within the statutory meaning of a "road", for the purposes of the MVA, is far from settled in England in light of the unsatisfactory decision of the House of Lords in *Cutter* v *Eagle Star Insurance Co Ltd; Clarke* v *Kato*.[93] The fact that three of the highest law tribunals of the land in England cannot find a consensus shows that the issue is indeed a difficult one to resolve.

However, it must be admitted that such a problem is nicely avoided in Singapore due to the approach adopted by Yong CJ in *Teo Siong Khoon* v *PP*.[94] Under this approach, one avoids the pitfalls associated with trying to fit all putative roads into a rigid model and rejecting it as a "road" if it does not so fit. If the issue should arise again in Singapore, it is suggested that the local courts would be well advised to steer clear of the pitfalls and confusion attendant to the English test and to simply follow in the footsteps of the court in *Teo Siong Khoon* v *PP*.[95]

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[93] *Supra*, note 54.
[94] *Supra*, note 78.
[95] *Supra*, note 78.

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